

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

TOWNSHIP OF WEST CALDWELL,

"Public Employer,"

and

**WEST ESSEX PBA LOCAL 81
(WEST CALDWELL UNIT)**

"Union."

**INTEREST
ARBITRATION
DECISION & AWARD**

Docket No. IA-2012-012

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

Appearances:

For the Employer:

James L. Lott, Jr., Esq.
Diane N. Hickey, Esq.
Riker Danzig Scherer Hyland & Perretti

For the Union:

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

On January 23, 2012, the PBA filed a Petition to Initiate Compulsory Interest Arbitration. On January 27, 2012, I was randomly selected from PERC's Special Panel of Interest Arbitrators to serve as interest arbitrator. I am required to render a decision on or before March 12, 2012.

On January 27, 2012, I notified the parties by letter that an interest arbitration hearing was scheduled for February 7, 2012. I requested the parties to submit their final offers to me on or before February 2, 2012. On February 1, 2012, I sent the parties a follow-up letter that addressed the 2.0% base salary cap set forth in N.J.S.A. 34:13A-16.7(b). The Township submitted its final offer to me on February 2, 2012. The PBA submitted its final offer orally immediately prior to the commencement of the hearing.

An interest arbitration hearing was held at the Township Municipal Building in West Caldwell, New Jersey on February 7, 2012. Prior to the commencement of the hearing on February 7, 2012, I met with the parties' representatives in an effort to resolve the parties' impasse. That meeting, however, did not produce a voluntary resolution. During the formal proceedings, the parties argued orally, examined and cross-examined witnesses and submitted substantial documentary evidence into the record. Testimony was received from Corporal William B. Styskal, Nikole Monroig – Assistant Chief Municipal Finance Officer, and Police Chief Michael Bramhall. The parties provided post-hearing briefs on

or before February 17, 2012, whereupon the record was declared closed. Submissions by the parties after February 17, 2012 were not admitted into evidence.

FINAL OFFERS OF THE PARTIES

The PBA's proposals:

1. **Article XX - Duration** – 3 Years; January 1, 2012 through December 31, 2014.
2. **Article II – Wages; Schedule A-1 & Schedule A-2 Wage Rates**

Effective and retroactive to 1/1/2012 – a three percent (3.0%) across-the-board pay increase.

Effective 1/1/2013 – a three percent (3.0%) across-the-board pay increase.

Effective 1/1/2014 – a three percent (3.0%) across-the-board pay increase.

The Township's proposals:

1. **Article XX - Duration** – 3 Years; January 1, 2012 through December 31, 2014.
2. **Salary**
 - Base salary increase of 1% wage in each year of the contract.
 - Modify the salary guide to add three (3) steps, for a total of five (5) steps each, to the rank of Sergeant and Lieutenant with no change to the top and bottom steps for the Sergeant and Lieutenant rank.
 - Establish a new salary guide for all employees hired on or after January 1, 2012 to add three (3) steps, for a total of five (5) steps each, to the rank of Sergeant and Lieutenant and five (5) steps to the rank of Patrolman. The new salary guide shall provide for a 10% reduction at both the top and bottom step, with the other steps adjusted accordingly at each rank, and freeze the Academy/Probation step for the duration of the contract.
3. **Longevity**
 - Freeze longevity at percentage of base rate as of January 1, 2012 and convert to a flat dollar amount based on 2012 base salary for existing officers.

- Effective January 1, 2012, eliminate longevity for new hires.

4. Health Care Contributions

- Effective January 1, 2012, all employees shall contribute 2.13% of their base salary, or the statutory contribution based on percentage of premium cost required by P.L. 2011, c. 78, whichever is greater, towards the cost of health insurance.

5. Stipends

- Effective January 1, 2012, freeze Detective/Corporal and Sergeant stipends.

	2012	2013	2014
Detective/Corporal	\$2,367	\$2,367	\$2,367
Sergeant	\$880	\$880	\$880

- Employees assigned to the Corporals position on or after January 1, 2012 shall be entitled to a fixed stipend in the amount of \$1,000.
- Employees assigned to the Detective position on or after January 1, 2012 shall be entitled to a fixed stipend in the amount of \$2,300.
- Eliminate stipend for Sergeants appointed on or after January 1, 2012.

	2012	2013	2014
Detective	\$2,300	\$2,300	\$2,300
Corporal	\$1,000	\$1,000	\$1,000

6. Article II, Section H – Acting Sergeant

Modify Article II, Section H as follows:

~~1. In the event a vacancy shall exist for any reason except as a result of a Department assigned training or schooling and, as a result, an Officer or Superior is directed to assume, in an acting capacity, a higher rank and perform the duties and responsibilities of such higher rank for a period of at least ten (10) working days, then such Officer or Superior shall receive the salary or pay for the higher rank for any period so worked beginning with the first hour of the eleventh (11th) day.~~

2. Whenever an Patrol Officer Employee is assigned to work by the Chief of Police or his designee as an Acting Sergeant for ten (10) consecutive working days ~~either at one time or cumulatively during several assignments~~ during a calendar year that Patrol Officer will be entitled to pay at the 5th Class Sergeant rate beginning on the eleventh (11th) day of such assignment(s). ~~The provisions of this paragraph shall become effective April 10, 1997.~~

3. ~~This Section shall be interpreted and applied consistent with the Grievance Arbitration and Award of Grievance Arbitrator Joel Douglas (PERC Docket No. :AR-99-112/issued December 30, 1999 and affirmed by the New Jersey Superior Court, Chancery Division on July 11, 2000 (Docket No.: C-110-00)).~~

7. **Article XIII, Section A– Sick Leave**

Modify Article XIII, Section A as follows:

[Add new]

Any unused sick leave days will be accumulated and compensated to the Employee at the rate of 1/3 per day fifty percent (50%), at the pay rate when earned, as terminal leave at time of retirement or by virtue of work-connected disability causing separation, subject to a maximum of 200 hours. The provisions of this paragraph shall apply to unused sick leave days accumulated on or after January 1, 2012.

In the event that legislation to limit the payout of accumulated unused sick leave is enacted subsequent hereto, such leave shall be paid at the lesser of the 1/3 per day rate agreed upon herein and the rate or cap established by such legislation.

8. **Article XIV – GENERAL, Section B – “Garment Allowance”**

Eliminate in its entirety.

BACKGROUND

The Township is a suburban community located in Essex County. It is comprised of approximately 5.2 square miles and has a population of over 10,500 residents. As of the 2000 census, it had a median household income of \$83,396, and a median family income of \$94,379. PBA Local 81 represents all "Probationary Patrolmen, Patrolmen, Sergeants, Lieutenants and non-uniformed Detectives, excluding the Chief of Police, Captain and all other Employees of the Township of West Caldwell." The Township does not maintain a paid fire department.

The parties' prior Agreement was effective from January 1, 2008 through December 31, 2011. This Award is subject to the 2% base salary cap imposed by P.L. 2010, c. 105 because the contract expired after December 31, 2010.

At the time of the interest arbitration hearing, there were 21 bargaining unit members – 4 Lieutenants, 5 Sergeants, and 12 non-supervisory officers (4 of which are assigned as Corporals). It has been over six (6) years since the Township has hired an officer. As of July 1, 2011, employees hired before April 3, 2003 were subject to the following wage guide: Lieutenant 1 - \$128,272; Lieutenant 2 - \$124,975; Sergeant 1 - \$113,616; Sergeant 2 - \$110,334; Patrolman 1st Class - \$100,303; Patrolman 2nd Class - \$87,828; Patrolman 3rd Class - \$75,353;

Patrolman 4th Class - \$62,879; and Academy/Probation - \$42,766. Employees hired on or after April 1, 2003 were subject to the following wage guide: Lieutenant 1 - \$128,272; Lieutenant 2 - \$124,975; Sergeant 1 - \$113,616; Sergeant 2 - \$110,334; Patrolman 1st Class - \$100,303; Patrolman 2nd Class - \$87,828; Patrolman 3rd Class - \$75,353; Patrolman 4th Class - \$62,879; Patrolman 5th Class - \$54,291; and Academy/Probation - \$42,766. In addition to all of the above, there is an annual stipend of \$2,343 for Detectives/Corporals, and \$879 for Sergeants, regardless of date of hire. All of the Patrolmen are at the top step of the salary guides. The current staffing level represents a decrease of 2 Lieutenants and 2 Corporals who separated from service due to retirement since the beginning of 2011.

The parties submitted substantial evidence in support of their respective positions. I thoroughly reviewed that information and now provide a general summary herein.

Summary of the PBA's Position

The PBA initially addresses the interest and welfare of the public. The PBA indicates that the Township is in close proximity to New York City and several major highways including Routes 80, 280, 46, 10 and 23. Bloomfield Avenue and a number of County and State roads pass through the Township. The Township has a "substantial number of shopping malls, office buildings and industrial complexes" within its boundaries. It has a public school system and several County and private schools. One in particular is Essex Valley School, "a private high school for troubled youths and has substantial issues such as gang problems and criminal activity within the school property." The factors above result in the Department having to serve between 40,000 and 60,000 people in the daytime.

The PBA maintains the evidence shows that the Department is "highly productive and most professional":

The Employer's own proofs would seem to support the high volume of Police activity and the increasing demand for Police services in recent years. Statistics introduced by the public employer show that between 2008 and 2009, the calls for service increased by 10.25% (*Employer Exhibit Tab 34*). In the succeeding year's statistics, 2011 as compared to 2010, the calls for service increased by an additional 6.2% to just under eighteen thousand (18,000) calls per year (*Employer Exhibit Tab 36*). The great variety of calls for service, the nature of service demanded, is significant. On the above noted exhibits there are listings of different types of calls in virtually every category of criminal activity. It should be

noted that in addition to these calls there was also was also a significant amount of traffic enforcement and other more routine types of patrolling and community policing activities as were described by the PBA witness. The Employer offered several exhibits with respect to the mid-range placement of certain criminal statistics for the Township, apparently indicating that there were not a lot of certain types of crimes such as murder and arson. While this may be true, it should not be taken as a criticism of the Department but rather a compliment a effective policing keeps crime rates down. This Police Department is doing an excellent job. The interest and welfare of the public is protected and advanced by this Police Department. [PBA Brief, pp. 8-9].

The PBA emphasizes that the Department has continued to provide efficient and effective services notwithstanding a decrease in sworn personnel, an increase in demand for police services, new services, and enhanced police activities. In fact, the Township for the past two (2) years has been responsible for handling call service (*i.e.* police, fire and emergency dispatch) for the Borough of Caldwell. This additional responsibility requires the Tour Commander to effective manage the calls for two (2) municipalities. It is noted that the Township receives a fee for these services.

The PBA points out that there has been “recent growth and expansion of retail shopping within the Township.” [PBA Brief, p. 11]. There are four (4) shopping centers with many national chains and well-known retailers. In addition, the Township has 39 eateries, 13 commercial banks, and many health care facilities. Toyota Motors, Vitaquest, and Lohmann Therapy Systems have

significantly increased the size of their facilities within the Township in the past year. All of these factors demonstrate that the Township "has a population with money", is "a good place to do retail business", and has significant commercial activity. [PBA Brief, p. 12].

Mass transportation adds to the Department's responsibility to provide safety services within the Township. In this regard, the PBA indicates that New Jersey Transit and DeCamp Bus Lines provide bus services within the Township.

The PBA then addresses under this criterion the Township's proposal to modify the existing provision for out-of title pay:

The extreme efficiency and productivity of the Township of West Caldwell Police Department is particularly important in this arbitration as the Employer, for some unknown reason, is seeking to change the inner workings of the Police Department with its challenge to the more than a decade old Arbitrator Joel Douglas decision and the successful delivery of services under a series of agreements since. The so-called "Out of Title" Article is being challenged by the Employer in this case without reason or justification. The old adage of "Don't try to fix something that's not broken" comes to mind. This Police Department is working.

The Arbitrator's attention is respectfully drawn to the testimony of the Chief of Police on cross-examination. He readily admitted that this Police Department was an exceptionally fine one with high levels of morale, professionalism and performance. He stated he was proud of the Police Department and all aspects of the delivery of service. He acknowledged the *esprit de corps* and good relationship with the public as well as respect by the public for

the Police Department. He echoed the testimony of Police Officer Styskal who earlier testified for the PBA in the clear expression of pride and performance and pride in the Department. Why then would anybody want to change anything? It would seem that "the bar" should be raised to a very high level with respect to any challenge to the current Department's inner workings, working relationships and supervision. The recent change, for example, of adding a dispatch system and supervision of fire, police and emergency service to the neighboring town of Caldwell is more work than has ever been seen at the West Caldwell Police Department and the fact that it is being handled properly and efficiently should be a note of pride, not a target of change. No other Police Department, in evidence, as noted by either party, runs two (2) towns. Only the Township of West Caldwell's Police Department does so. A Tour Commander does not just manage the West Caldwell Police Department but also manages the Caldwell Police Department. At substantial times of the day, as was identified in testimony, the supervisor in charge of the shift at the West Caldwell Police Department is the highest level supervisor in either of the two (2) towns. Any suggestion that there is an excess of supervisors at the West Caldwell Police Department is a misdirection. First of all, Corporals are not supervisors but assigned personnel without the privilege of rank. Secondly, if there have been no Police Officers hired for many years, the balance of course between the supervisory/non-supervisory ratio will change. The Employer should not here be able to lament that ratio when it created same.

This is an excellent well-functioning Police Department and was so recognized with specific testimony of both the PBA witness and the Chief of Police in his testimony. This is a Department that is serving an ever increasing workload, increasing demand for services and more challenging law enforcement environment with less personnel it had in many years per the proofs. With due respect to the Arbitrator, unless there is an exceptionally high showing, which is completely absent here, change should not be considered with respect to the methodology of delivery of services. [PBA Brief, pp. 15-17].

The PBA next addresses the comparison of compensation and terms and conditions of employment. It summarizes its position as follows:

The exceptionally high level of professionalism and the delivery of services within the West Caldwell Police Department is not reflected in total compensation. While the base compensation is within a few percentage points of average, all other aspects of compensation are at or below the average range. For example, virtually all the towns in the area have the same or better level of longevity as is found in West Caldwell. The Employer's own exhibits such as comparisons of uniform allowance (*Tab 55*) reflect only mid-range benefits. The work schedule in West Caldwell is nearly identical to all other towns in the immediate area. The two thousand eighty (2,080) hour work year at the West Caldwell Police Department is the longest of any work year obligation. Many of the towns, such as several of those identified by the Employer (*Passaic County, Little Falls and Totowa*) work a four/two (4/2) work schedule which has only nineteen hundred forty-six (1,946) hours per year, a sixteen (16) day lesser annual work obligation. Many of the towns have special benefits and stipends not found within West Caldwell's Police Department. The West Caldwell PBA is not complaining about these other items nor is it focusing on its longer work year than many of those Employer identified towns but rather points out that they are at best, in mid-range. [PBA Brief, p. 18].

With respect to wage increases, the PBA presents a comparison of the municipalities that are listed in both of the parties' exhibits:

	2012	2013	2014
Cedar Grove	4.2		
Essex County Corrections	2	2	
Glen Ridge	3.5		
Lincoln Park	4		
Parsippany	2.5	2.5	
Montville	4		
Livingston	4.25		
Caldwell	2	1.25	
Chatham	1.5	2	2
Essex Fells	2.5	2.5	
Florham Park	2	2	
AVERAGES	2.95%	2.04%	2%

The PBA submits that the increases above are closer to its proposal than the Township's.

The PBA also presents a comparison of salary steps for Patrol Officers, Sergeants and Lieutenants based upon both parties' exhibits:

	Police Officer	Sergeant	Lieutenant
Cedar Grove	6	1	1
Essex County Corrections	6		
Fairfield	8	1	1
Glen Ridge	7	3	3
Parsippany	8	1	1

Montville	6	1	1
Livingston	5	1	1
Caldwell	7	1	1
Chatham	10	2	1
Essex Fells	7	2	2
Florham Park		1	1
Morris Plains	8	4	3
North Caldwell	5	2	2
Roseland	4	2	2
Totowa	6	1	1
Verona	6	1	1
AVERAGES	6.6 Steps	1.6 Steps	1.5 Steps
West Caldwell	6	2	2

Based upon the above, the PBA contends there is no justification for the additional number of steps the Township proposes in its Final Offer, particularly for those who currently serve as Sergeants and Lieutenants who “would earn less money in their progression to maximum pay.” [PBA Brief, p. 22].

The PBA returns its attention to the Township’s proposal to modify Acting Sergeant’s Pay. Simply put, the Township did not present evidence to support its proposal:

Every Tour Commander on this Police Department is necessary. Reference is again made to the fact that there is more supervisory work being done today than at any time in the past. The Tour Commander is now overseeing two (2) towns for much of the day. Reference is again made to the call volumes and nature of activity and workload. Nothing is going down. If anything this Police Department needs more supervision not less. Notably the Employer could come up with no examples to support its proffered change in the Out of Title work program. The very cause itself challenged provides for a ten (10) day delay in the compensation at the higher level. The Police Chief acknowledged on cross-examination that he has never been given an order that has been disobeyed. He acknowledged on cross-examination that he believed he was in control of the Department and would provide appropriate services as needed and could do so by direct order. There is no evidence to support change, and certainly no "substantial creditable evidence". With due respect to the Arbitrator, this subject matter should be left in place as it has been for more than a decade of the noted successes and achievements of this Department. It has served the public well. [PBA Brief, p. 23].

Turning to private sector comparisons, the PBA maintains that this factor should not control the outcome of this case. It contends that it has long been recognized that local comparisons are more relevant. The PBA points to the unique training required and the responsibilities of law enforcement officers, and the lack of "portability of pension in the law enforcement community after age thirty-five (35)." [PBA Brief, p. 25]. The PBA emphasizes "certain statutory and other precedential laws controlling the relationship of Police Officers to their employers." [PBA Brief, p. 25; see generally pp. 25-27]. The PBA makes specific reference to the fact that police officers are required to act as law enforcement officers at all times, regardless of whether they are on duty.

As to the stipulation of the parties, there were none. The PBA points out, however, that both parties propose the term of the agreement to be three (3) years.

With respect to criteria g(5) - the lawful authority of the employer, g(6) - the impact on the governing unit, its taxpayers and residents, and g(9) - the statutory restrictions imposed on the Employer, the PBA contends that none of these factors will prohibit an award of its Final Offer. I include the entire section of the PBA's post-hearing brief that addresses these factors:

A analysis of the proofs in this case consistent with criteria g5, g6 and g9 under the Act establish no prohibition whatsoever to an award of the entire PBA Position as presented. The lawful authority and analysis generally imports a review of the proofs consistent with the three (3) statutory Caps generally identified as the "Appropriation Cap", "Tax Levy Cap" and the "Hard Cap". The Appropriation and Levy Caps are essentially limitations on the ability to increase appropriations beyond a statutory formula and further to increase that portion of the revenue of a municipality which originates in the Tax Levy beyond a certain formula. In this case neither of those Caps presents a problem as the cost of Police Operations in the succeeding year, here 2012, are actually less than they were in 2011.

The so-called "Hard Cap" on law enforcement base salary items also does not present a problem in this case as the Police payroll in 2012 will actually be less than the Police payroll in 2011. The two percent (2%) limitation is set forth at N.J.S.A.34:13A-16.7b which provides in pertinent part:

An arbitrator shall not render any award which, on annual basis, increases base salary items by more than two 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..." (citations omitted, underlining added).

The standard then by which the formula operates is the identification of a base percentage point of increase on an annual basis for the current bargaining unit as compared to prior expenditure for the twelve (12) months next preceding.

It is essential to first establish the value of a single percentage point for this bargaining unit. Chart No. 3 below identifies the current annualized cost of all bargaining unit personnel.

CHART NO. 3
BARGAINING UNIT BASE ANNUAL SALARY

(A) Rank	(B) Census	(C) Base Per (J-1)	(D) Col. (B) x Col. (C)
Lieutenant	4	\$128,272	\$513,088
Sergeant	5	\$113,616	\$568,080
Patrolman	12	\$100,303	\$1,203,636
TOTAL	21		\$2,284,804
			1% = \$22,848

Clearly identified at the bottom of Chart No. 3 is the total value of bargaining unit base annual salary as well as the calculation of a single percentage point. It must be noted that the calculations on Chart No. 3 above actually exceed the current annual cost to the extent that these calculations assume that all supervisors are at the maximum rate. Some are still at Step One of the two (2) year rate to reach maximum. The reason for the higher calculation is to avoid any issue of step movement. The value of the rank is set at the highest rate on Chart No. 3 on the preceding page

thereby obviating any question on costing out step movement. As has been previously established in the proofs and testimony at hearing, all Police Officers are at the maximum step. There has not been any hiring in many years within the Township of West Caldwell's Police Department and therefore there are no persons in the steps. Police Officer Step Movement is not an issue in this proceeding.

The PBA has proposed a three percent (3%) increase in base wages in each of the three (3) calendar years at issue in this arbitration. The cost of the first year is the simple three (3) percentage points which is increased in each year by an additional three percent (3%). The cost of implementation of the PBA's Position in each successive year may be calculated as follows:

2012 - \$68,544

2013 - \$70,600

2014 - \$72,718

The total increases proposed, assuming there are no further retirements, therefore total Two Hundred Eleven Thousand Eight Hundred Sixty-Two Dollars (\$211,862.00). It is the position of the PBA that the current savings due to personnel changes which have occurred as of the date of the hearing are more than adequate to fund the entire three (3) year program of wage proposals made by the PBA.

Significant to an analysis of this case is the fact that four (4) senior Police sworn personnel left the Department in the last twelve (12) months next preceding the arbitration hearing. The "breakage" of the separation of these four (4) persons is substantial and in of itself provides sufficient funding for the entire three (3) year proposal of the PBA. In sequence of retirement the first to retire was Corporal Mutz who retired in February of 2011. Next were Lieutenants Peter and Moran who both retired at mid-year of 2011. Most recently Corporal Hayes retired in September of 2011. The annualized value of these positions may be generally assessed as calculated below on Chart No. 4.

CHART NO. 4
ANNUALIZED SEPARATION SAVINGS BY RANK

LIEUTENANT

Base	\$128,272
Longevity	\$12,827
Pension (Employee Payment 24%)	\$33,863
Clothing	N/C
Medical (Estimated)	\$20,000
Vacation, Sick Leave	N/C
TOTAL	\$194,962

POLICE OFFICER

Base	\$100,303
Corporal Stipend	\$2,343
Longevity	\$10,030
Pension	\$26,480
Clothing	N/C
Medical (Estimated)	\$20,000
Vacation, Sick Leave	N/C
TOTAL	\$159,155

The calculations above and on the preceding page do not include the value which the Employer has ascribed to in its several Charts to vacations, sick leave and accumulated hours. There is also no assessment for clothing allowance added to the list as well. The reference to "N/C" means "Not Calculated". In order to give meaning to the separations of these individuals one would calculate the actual payroll on an annualized basis that was reduced by the separation of these persons. The two (2) months of service for Corporal Mutz in 2011 reduced the reciprocal savings going forward by ten (10) months or One Hundred Thirty-Two Thousand Six Hundred Twenty-Nine Dollars (\$132,629.00). The two (2) Lieutenants leaving into retirement at mid-year produced a

net savings of Ninety-Seven Thousand Four Hundred Eighty-Two Dollars (\$97,482.00) each. Finally, Corporal Hayes who retired in September of 2011 resulted in an annualized savings going forward of One Hundred Five Thousand Nine Hundred Ninety-Seven Dollars (\$105,997.00). The total reduction in annual costs to the Employer was Four Hundred Thirty-Three Thousand Five Hundred Ninety Dollars (\$433,590.00). As was noted above, the savings of over Four Hundred Thirty-Three Thousand Dollars (\geq \$433,000.00) in lost personnel through retirement is more than adequate flexibility to fund the entire three (3) year proposal of the PBA in this case. There have been no new hires. The force is simply working with less personnel. The only new cost were some promotions which the Employer identified in its testimony however those promotions are the target of the Employer's Last Offer. Apparently the Employer is unhappy with the slight increases in career path that it gave those few persons by some additional money through rank differential. In any event, the net cost of the sworn Officers in the bargaining unit and the resultant value of percent in the Last Offer Position is sufficient to settle this case. For perspective purposes, if one were to take the net breakage savings of Four Hundred Thirty-Three Thousand Five Hundred Ninety Dollars (\$433,590.00) and divide it by the value of a single percentage point (See *Chart No. 3, supra.*), the resulting value is 18.98 percentage points. If one compares the breakage to the total cost of the PBA Position over all three (3) years as calculated above Two Hundred Eleven Thousand Eight Hundred Sixty-Two Dollars (\$211,862.00) there is more than twice the requisite dollars required for funding the PBA Last Offer Position. While one is tempted to cease the argument at this point having established sufficient flexibility within the Police Salary Line Item to accommodate the entire PBA position without one penny of increase over 2011, the PBA will make additional notes with respect to the overall fiscal condition of this Municipality.

The PBA placed into evidence as *Exhibit P11* a publication from the New Jersey State Department of Community Affairs noting the modification of the PFRS billing amounts to the various municipalities and counties throughout the State. Page 28 of this seventy-two (72) page document reflects the reduction in rate of PFRS contribution to the Township of West Caldwell by Two Hundred Three

Thousand Five Hundred Sixty-Five Dollars (\$203,565.00). There are three (3) columns at the top of this form with the middle one being "Original 2012 Billing Amounts Pre Chapter 78" and the left column identified as "Revised 2012 Billing Amounts Post Chapter 78". The right-hand column is "Change in Contribution" and reflects the Two Hundred Three Thousand Five Hundred Sixty-Five Dollar (\$203,565.00) amount. This amount represents the reduction in Police pension payments by virtue of the billing modification reflected on this form which savings reduce the Township of West Caldwell's Pension bill for 2012. The Arbitrator may take note that the referenced Chapter 78 is that piece of legislation which included, among other things, pension contribution modification to Police personnel and a ceasing of cost of living adjustments for Police retirees under the PFRS System. This document reflects the savings provided to the Township of West Caldwell by virtue of this recent legislation. It is all attributable to law enforcement officers. There is no paid Fire Department in West Caldwell. Again, one may calculate the value of the reduced pension savings as being more than enough to fund the entire PBA Position for 2012 more than three (3) times over. Again, if one strictly adheres to the allocation of monies under the Police Compensation Line Items in the Budget there is sufficient funding for the PBA Position.

Pursuant to the statute, one may consider the "Appropriation Cap" as part of the overall fiscal evaluation. Here, for the Township of West Caldwell there is absolutely no problem with the "Appropriation Cap". Pursuant to the standard Municipal Data Sheet Budget Form for 2011 (*P6 in Evidence/Employer Tab 8*) there is a statutorily required calculation of the Appropriation Cap at Sheet 3d. The Appropriation Cap formula in this 2011 Municipal Budget states at the bottom on Sheet 3d under the line captioned "Allowable Appropriations for 2011 Within the 'CAP'" the amount of Thirteen Million Nine Hundred Eighty-Two Thousand Twenty-Five Dollars (\$13,982,025.00). This is the maximum amount which the Municipality may appropriate under the Budget as adopted. The actual amount appropriated within Cap for this same year under this same adopted Budget is set forth in the same Budget at Sheet 3, Line 1 where the amount is stated as Twelve Million Six Hundred Four Thousand Nine Hundred Fifty-Eight Dollars (\$12,604,958.00). The difference

between the allowable appropriation and the actual within Cap appropriation is One Million Three Hundred Seventy-Seven Thousand Sixty-Seven Dollars (\$1,377,067.00). This sum is the amount that the adopted Budget is under the Appropriation Cap. It must be noted that when the calculation for the most recent Budget of One Million Three Hundred Seventy-Seven Thousand Sixty-Seven Dollars (\$1,377,067.00) under Cap was calculated, the number does not go away but rather carries forward. Flexibility not utilized in a given budget year under the Appropriation Cap goes forward under the concept of "Cap Banking". The subsequent year's budget will have as a start point One Million Three Hundred Seventy-Seven Thousand Sixty-Seven Dollars (\$1,377,067.00) in flexibility. On this same Sheet (3d of Exhibit P6) on the left hand side of the page near the bottom is the statement of the 2009 and 2010 Cap Banks. In 2009 the Cap Bank was Three Hundred Thirty-Five Thousand Nine Hundred Eighteen Dollars (\$335,918.00). That amount more than doubled in 2010 where there was an Eight Hundred Fifty-One Thousand Eight Hundred Ninety Dollar (\$851,890.00) Cap Bank. That amount has increased by more than fifty percent (50%) to the more recent Cap Bank in 2011 going forward into 2012 of One Million Three Hundred Seventy-Seven Thousand Sixty-Seven Dollars (\$1,377,067.00). Two (2) points are made. First, there is a regular experience of Cap Banking in this Municipality where the successive Budgets have all been well under the Appropriation Cap. Further, the sequence of Cap Bank amounts going forward is very substantial in its level of increase. It is a virtual certainty that there will be no Appropriation Cap problem in successive years. The Cap Bank can go forward for two (2) years from calculation. All of these facts and references to the Budget were clarified and acknowledged on the cross-examination of the Assistant Chief Financial Officer Nikole Monroig at hearing. There is no question that ample flexibility exists in this area.

A review of the Levy Cap considerations also shows no issue with respect to said calculation. In the first instance, there is no need to raise any additional monies by Levy as the cost of Police services in 2012 and thereafter have gone down in comparison to 2011. There is no aggregate increase as there is in fact an aggregate decrease. The Levy Cap is calculated in the Budget document and was in fact introduced into evidence as *Employer's Exhibits Tab 9*. Here

we see the Cap calculation which reflects that the Budget was adopted well within the Levy Cap.

An analysis of the Levy Cap does not indicate an inability of the government to function beyond two percent (2%). The Levy Cap only applies to the Tax Levy. This clear fact was established and acknowledged on the cross-examination of Assistant CFO Monroig at hearing. The calculation as to what is included or excluded from the Levy portion of revenue is set forth on *Sheet 3* of the Budget (*P6/Employer Tab 8*). Line No. 4 on said sheet is the "Total General Appropriations" in the amount of Eighteen Million Six Hundred Sixty-Four Thousand Two Hundred Twenty-Nine Dollars (\$18,664,229.00). Line 5 on this sheet is captioned "Less: Anticipated Revenues Other Than Current Property Tax..." and has a number of Six Million Four Hundred Twenty-Six Thousand Eight Hundred Fourteen Dollars (\$6,426,814.00). The amount to be raised by the local taxes is set forth on the same page at Line 6(a) in the amount of Eleven Million Four Hundred Thirty-Nine Thousand Nine Hundred Seventy-Eight Dollars (\$11,439,978.00). The calculation acknowledged by Assistant CFO Monroig was that 32.4% of the Municipal revenue comes from other than the Tax Levy. There is no burden on the taxpayers for the total cost of appropriations for the government. The taxpayers pay approximately two-thirds ($\frac{2}{3}$) and the "Other Revenue" source is close to another third ($\frac{1}{3}$). Importantly, the non-Tax Levy Revenue is not subject to the Levy Cap. There are many sources of income in this Municipality, as in others, many of which are the direct result of Police services. Some of these include Municipal Court in the amount of One Hundred Forty-Two Thousand One Hundred Sixty-Nine Dollars (\$142,169.00), the most recent full year noted (*Budget Sheet 4*), Drunk Driving Enforcement Fund Grants, Body Armor Grants, and Specific Enforcement Grants noted on *Sheet 9* of the Budget. Here one must also consider the amount of money brought into the General Funds of the Township which was the result of "Police Dispatch for Borough of Caldwell" in the amount of One Hundred Forty-Seven Thousand One Hundred Thirty-Five Dollars (\$147,135.00) (*See Budget Sheet 7*). These items are not controlled by the Levy Cap. They are the result of Police Operations.

Even Police overtime of which the Employer opines on its several exhibits, is the subject of reimbursement by outside contractors in many cases.

The Municipal Budget is one conservatively drafted. This is not a criticism of the budget process but rather an acknowledgment that sufficient flexibility exists at many levels. For example, the Township has traditionally underestimated current tax collections. Notwithstanding an exemplary record of near perfect tax collections over the past five (5) years, the Township has again underestimated anticipated receipts. The history of tax collection may be found in the most recent Report of Audit (P8) at page 52. Excerpted from said page is the five (5) year tax collection history reflected below on Chart No. 5

CHART NO. 5

TOWNSHIP OF WEST CALDWELL TAX COLLECTIONS HISTORY

YEAR	PERCENTAGE OF OF COLLECTIONS
2010	98.8
2009	99.05
2008	99.28
2007	99.24
2006	99.36

The subject of the "Reserve for Uncollected Taxes" was reviewed on cross-examination of Assistant CFO Monroig. She acknowledged the history of high tax collections and the additional history of underestimation. The Assistant CFO acknowledged that the Municipality could go to the higher number of collections in the most recent, 98.8%, but instead adopted a Budget which was "Based on estimating" 97.27% (*Exhibit P6, Sheet 3, Line 3*). This differential is not a small amount in real dollars. The differential between the statutory limit and the actual amount used to estimate tax collections was a difference between 97.27% and 98.8%, a resultant

1.53%. If this 1.53% is applied to the actual most recent year's Tax Levy (*See Annual Financial Statement, P7, Sheet 22, Line 5*) of Forty-Eight Million One Hundred One Thousand Nine Dollars (\$48,101,009.00) the resultant reserve bank is calculated in real dollars as Seven Hundred Thirty-Five Thousand Nine Hundred Forty-Five Dollars (\$735,945.00). This arithmetic was acknowledged by Assistant CFO Monroig. There exists therefore an additional Seven Hundred Thirty-Five Thousand Nine Hundred Forty-Five Dollars (\$735,945.00) of flexibility in the Tax Levy alone. The Township has once again underestimated the Levy. There is nothing wrong with this approach. The approach is just very conservative from a planning standpoint. It once again adds up to the threshold premise of no tax pressure in this town. The impact of Municipal government on the overall tax rate is minimal in the Township of West Caldwell. On cross-examination of the Assistant CFO, the subject of overall percentage of the Tax Levy represented by the Municipal government portion was a subject. Referring to the most recent Annual Financial Statement (*P7*) at Sheet 17, near the bottom, there is a breakdown of the allocation of tax collections. The arithmetic of these numbers was covered on cross-examination. The entire Municipal government operates on only about twenty-five percent (25%) of the Tax Levy. Other portions of the Tax Levy go to education and County. The largest single piece goes to education at 52.4%. These numbers are significant for several reasons. First, the actual impact of whatever occurs in this proceeding is a fractional part of the twenty-five percent (25%) piece. There is no significant burden placed on the taxpayer by the operations of this bargaining unit. The base pay of this bargaining unit (*See Chart No. 3, supra.*), represents 4.6% of the total Levy. If someone had a tax bill of Seven Thousand Dollars *per annum* (\$7,000.00/year) then only Three Hundred Twenty-Two Dollars (\$322.00) of said tax bill would be attributable to base salary of this bargaining unit. That would be Twenty-Six Dollars and Eighty-Three Cents a month (\$26.83/mo.), or about Eighty-Six Cents per day (\$0.83/day). Each one percent (1%) of increase represents Three Dollars and Twenty Cents *per annum* (\$3.20/year) on a Seven Thousand Dollar (\$7,000.00) tax bill. This does not, of course, overlook the fact that there is no cost to the PBA Position and these numbers are only offered to show a perspective. There is indeed a bargain with respect to the cost of Police services, particularly this bargaining unit, to the

taxpayers of the Township of West Caldwell. Perhaps there would not be such development and commercial activity, or even basic value of their properties if this Police Department did not do such an excellent job.

A second note may be made as to the impact of the Tax Levy on the taxpayers and that is using the barometer of the annual school election. Under New Jersey law to date one cannot vote on a State, County or Municipal Budget. Such votes are made by elected persons. The significant exception is the School Budget Ballot. In the Township of West Caldwell and as established in the above paragraph, over fifty-two percent (52%) of the levy is attributable to education. The percentage of people who vote would seem to be a valid barometer of taxpayer pressure. In the Township of West Caldwell only 8.26% of the eligible voters even bother to vote. The most recent annual school ballot was introduced into evidence by the PBA as *Exhibit P9*. The ballot reflects a substantial Tax Levy issue being a valid question and it appears almost ninety-two percent (92%) of the eligible voters stayed home and did not even bother to cast their ballot either pro or con. A logical argument for taxpayer pressure that only represents the 4.4% piece of the levy would be hard to make. Not everyone uses public education. There are many without children or whose children have graduated or perhaps gone to private school. One hundred percent (100%) of the people use Police services either actively or passively.

The taxpayers of the Township of West Caldwell are most fortunate to have a very substantial aggregate true value of the taxable property and a very low tax rate. Introduced by the PBA as *Exhibit P10* was the Essex County Equalization Table for the year 2011. On the first page the "Aggregate True Value" of the Township of West Caldwell is set at just over 2.4 Billion Dollars. This is clearly a very substantial tax base. The Employer supplies data on the general tax rates in Essex but fails to order the "Effective Tax Rate" for the Essex municipalities. Reference is made to *Employer Exhibit Tab 15* which provides general tax rate information and effective tax rate information as well but does not put them in sequence. Chart No. 6 on the next page completes the arithmetic process. Not only is the West Caldwell taxpayer favored with an over 2.4 Billion Dollar

ratable base, but in addition has one of the lower tax rates in the entire County. The effective tax rates reflected on Chart No. 6 on the next page are based upon the Employer's own Tab 15.

CHART NO. 6

COMPARISON OF ALL ESSEX COUNTY MUNICIPALITIES EFFECTIVE TAX RATES BASED ON EMPLOYER EXHIBIT 15

1	East Orange	3.332
2	Irvington	3.267
3	Orange	3.118
4	West Orange	3.115
5	Bloomfield	2.891
6	Glen Ridge	2.815
7	South Orange	2.785
8	Maplewood	2.760
9	Montclair	2.643
10	Nutley	2.625
11	Belleville	2.596
12	Verona	2.323
13	Caldwell	2.135
14	Newark	2.107
15	Livingston	2.040
16	WEST CALDWELL	2.023
17	North Caldwell	1.886
18	Roseland	1.872
19	Millburn	1.815
20	Cedar Grove	1.784

21	Essex Fells	1.693
22	Fairfield	1.672

Only six (6) of the twenty-two (22) municipalities in the twenty-two (22) municipality County of Essex have lower effective tax rates than are found in West Caldwell and enjoyed by the taxpayers in said town.

In sum, there is absolutely no prohibition to an award of the employee organization position considering criteria g5, g6 or g9 under the Act. [PBA Brief, pp. 33-49].

Turning to the cost of living, the PBA indicates that the most recent data shows that the CPI-U has been at, or has exceeded 3.0%. The CPI-U for November 2011 was 3.4%, and for December 2011 it was 3.0%. [See Ex. P-12 & Tp. Exs. 85 & 86]. The PBA emphasizes that the cost of living figures, on average, exceed the PBA's proposed percentage wage increases.

With respect to the continuity and stability of employment, the PBA contends that its position, unlike the Township's, is supported by the private sector concepts of "area standards" and "going rate". The PBA reiterates its argument that the Township has not proven that a modification to the acting pay provisions is required. The PBA provides the history behind these provisions:

The target of the public employer's proposal has been the subject of a grievance arbitration Award of Arbitrator Joel Douglas (P14) which had been extensively litigated by both

parties (P13) and later the subject of a Court Order before the Superior Court of the State of New Jersey. A copy of the Order of the Superior Court dated July 14, 2000 was introduced into evidence as P15. Following the Court Order there were also a series of Side Letters of Agreement in which the Decision of Arbitrator Douglas and the Decision of the Superior Court were incorporated into language and attached to the contract (P16, P19 and P20). In addition, there were several contracts negotiated between the parties over the now twelve (12) years since Arbitrator Douglas' Award and the Arbitrator's Decision and Court Order appeared in each and was referenced in Side Letters for more than a decade. In the most recent contract preceding this arbitration there was some issue with respect to this subject matter and it was again negotiated. There had been a Mediator's Recommendation by then sitting Interest Arbitrator Robert M. Glasson and an ultimate resolution by consent of the parties. A history of that controversy and the numerous letters between counsel were introduced into evidence by the PBA as P17. The Employer's resolutions targeting the proposal which were offered into evidence have no probative value as they represent the aspirations of one party without foundation. [PBA Brief, pp. 51-52].

Lastly, the PBA addresses the information presented by the Township:

The Employer has provided a great deal of information however much of it is inconsistent and outside of the criteria. For example, the Employer calculates a value of compensatory time as though it could be limited. The Fair Labor Standards Act considers such time as vested and not subject to divesting. The same is true of accrued vacation time. The Employer has grouped all of these time frames together in its attempt to limit any terminal value upon retirement. There is nothing these parties can do with respect to vested time. Any attempt to limit vested time would likely be violative of the FLSA. The Employer introduced as Tabs 89 and 90 copies of proposed pieces of legislation that might impact the terminal value of a person at retirement. The only problem is that none of this legislation has passed and in fact

both of the Bills cited lapsed at the end of the last Legislative term. They are not even active Bills. Perhaps someone in the Legislative branch of government considered the apparent conflict with the Fair Labor Standards Act and decided not to move the Bills further. In any event, the absence of law on the subject and the fact that the Legislature has demurred from moving such legislation along with the Governor's Office further supports the concerns of the PBA on this subject. This is inappropriate for action at this time. [PBA Brief, p. 54-55].

Based upon the foregoing, the PBA requests that its offer be awarded and that the Township's offer be rejected in its entirety.

Summary of the Township's Position

The Township contends that its final offer is more reasonable under the statutory criteria because "it represents a fair balance of reasonable salary increases in an uncertain economy and furthers the future financial stability of the Township." [Tp. Brief, p. 4].

The Township first addresses the interests and welfare of the public. The Township contends that this criterion weighs in its favor because its proposals focus "on providing all municipal services rather than merely providing additional compensation to the already well compensated PBA members." [Tp. Brief, p. 6]. The Township indicates that from 2008 to 2011 there has not been a significant change in the number of crimes reported, service calls, or summonses issued. [See Tp. Exs. 34-39 & 84]. These facts are supported by Chief Bramhall who testified that "the nature and extent of the workload performed by each officer remains substantially unchanged even in light of recent retirements." [Tp. Brief, p. 7, footnote omitted].

The Township contends that its Final Offer will accomplish several goals:

The Township's Final Offer recognizes that the Township continues to be served by a professional Police Department and submits that it proposes a reasonable wage increase that, along with the total economic package provided to the

union, will keep the Township in the top tier among the comparable communities. At the same time, the Township's Final Offer will also accomplish several important policy goals and thus serve the public welfare. For example, the Township's proposal will maintain and improve fiscal stability, promote greater parity between the higher paid PBA members and civilian employees who do not enjoy the benefit of interest arbitration and allow the Township to continue to provide a full-range of diverse municipal services to Township residents. [Tp. Brief, p. 7, footnote omitted].

The Township indicates that the Police Department's budget of \$3.227 million represented 17.8% of the Township's entire budget for 2011. Assistant Chief Municipal Finance Officer Monroig testified that under the Township's anticipated budget for 2012 the Police Department's budget of over \$3.5 million will increase to 19% of the Township's entire budget of approximately \$18.8 million. The Township points out that based on a department-by-department comparison that it expends the greatest percentage of its budget on the Police Department. The next highest departments, public works and recreation, each have budgets of approximately \$1 million.

The Township seeks budget savings and the ability to spread its resources to its other departments. The PBA's Final Offer will not allow the Township to achieve its goals, and it is contrary to "the clear legislative policy to limit and control the costs of police and fire contracts and to reign in spending at the local level in order to achieve property tax relief." [Tp. Brief, p. 8].

The Township contends that its proposal to modify the Acting Sergeant provision set forth in Article II, Section H is consistent with the serve the public's welfare and interest:

Finally, the Township's offer specifically regarding out of rank entitlement, clearly furthers the public interest in that it strikes the appropriate balance in support of the Township's managerial prerogative while recognizing those instances where a patrolman is entitled to additional compensation for work as an acting sergeant. In this way, the Township's Final Offer respects the financial limitations imposed on the Township and is consistent with well-settled case law and comparison to other municipal departments. [Tp. Brief, p. 8].

The Township next addresses the comparison of wages, salaries, hours and conditions of employment. The Township compares its Department to municipal departments in the greater West Essex area as well as those in similar comparable jurisdictions. With respect to salary, the Township presents a comparison of top step pay for Patrol Officers, Sergeants and Lieutenants from 2011 to 2014 under the assumption that the Township's proposal of a 1% increase to base salary is awarded for its Department:

TOP PTL. STEP COMPARISON	2011	2012	2013	2014
		+1%	+1%	+1%
Township of West Caldwell	\$100,303	\$101,306	\$102,319	\$103,342
Borough of Caldwell	\$91,969	\$93,809	\$94,982	\$96,169

Township of Cedar Grove	\$95,979	\$100,111	NA	NA
Borough of Chatham	\$112,253	\$113,853	\$116,130	\$118,453
Borough of Fairfield	\$91,457	NA	NA	NA
Borough of Florham Park	\$99,757	\$103,318	\$107,006	NA
Borough of Essex Fells	\$89,527	\$91,766	\$94,060	NA
Township of Little Falls	\$94,296	\$97,125	NA	NA
Borough of Morris Plains	\$98,464	NA	NA	NA
Borough of North Caldwell	\$88,141	NA	NA	NA
Borough of Roseland – Patrolmen	\$95,436	NA	NA	NA
Borough of Totowa	\$107,204	NA	NA	NA
Township of Verona	NA	NA	NA	NA
Average	\$97,065	\$100,184	\$102,899	\$105,988
Median	\$95,707	\$100,111	\$102,319	\$103,342

TOP SGT. STEP COMPARISON	2011	2012 +1%	2013 +1%	2014 +1%
Township of West Caldwell	\$113,616	\$114,752	\$115,900	\$117,059
Borough of Caldwell	\$103,005	\$105,065	(1/1/13) \$106,378 (7/1/13) \$107,708	NA
Township of Cedar Grove	\$107,497	\$112,012	NA	NA
Borough of Chatham	\$120,159	\$121,872	\$124,310	\$126,796
Borough of Fairfield	\$103,541	NA	NA	NA
Borough of Florham Park	\$109,634	\$113,547	\$117,600	NA
Borough of Essex Fells	\$98,548	\$101,011	\$103,537	NA
Township of Little Falls	\$102,072	\$105,153	NA	NA
Borough of Morris Plains	\$108,110	NA	NA	NA
Borough of North Caldwell	\$98,869	NA	NA	NA
Borough of Roseland -	\$107,843	NA	NA	NA

Superior				
Borough of Totowa	\$111,661	NA	NA	NA
Township of Verona	NA	NA	NA	NA
Average	\$107,046	\$110,487	\$113,545	\$117,187
Median	\$107,670	\$112,012	\$115,900	\$117,059

TOP LT. STEP COMPARISON	2011	2012 +1%	2013 +1%	2014 +1%
Township of West Caldwell	\$128,272	\$129,555	\$130,850	\$132,159
Borough of Caldwell	\$115,366	\$117,673	1/1/13) \$119,144 (7/1/13) \$120,633	NA
Township of Cedar Grove	\$124,687	\$129,935	NA	NA
Borough of Chatham	\$128,707	\$130,541	\$133,152	\$135,815
Borough of Fairfield	\$118,069	NA	NA	NA
Borough of Florham Park	\$120,499	\$124,800	\$129,254	NA
Borough of Essex Fells	\$111,371	\$114,155	\$117,009	NA
Township of Little Falls	\$109,088	\$112,361	NA	NA
Borough of Morris Plains	\$115,224	NA	NA	
Borough of North Caldwell	\$105,589	NA	NA	NA
Borough of Roseland - Superior	\$120,249	NA	NA	NA
Borough of Totowa	\$116,467	NA	NA	NA
Township of Verona	\$116,926	NA	NA	NA
Average	\$117,731	\$122,717	\$126,179	\$133,987
Median	\$116,926	\$124,800	\$124,943	\$133,987

The Township emphasizes that its proposals will keep its Department competitive with the other departments notwithstanding the fact that some of them received "higher wage increases in a much different economic climate and prior to the change in law." [Tp. Brief, p. 11].

The Township turns the attention to its proposal to add steps to the salary schedules. I have included the entire section of the Township's post-hearing brief that addresses this proposal under criterion g(2):

Further, regarding the Township's offer with respect to additional step increases, this offer is reasonable in that it serves only to increase the amount of time for superior officers to reach top step at each rank and is consistent with the number of steps provided for by other comparable departments, notably at the patrolman level. The salary guide under prior agreement includes starting pay at \$42,766 and extending to a maximum pay of \$100,303 at the rank of patrolman, \$113,616 at the rank of sergeant and \$128,272 at the rank of lieutenant. The salary steps under this guide result in approximately a 134% salary increase from starting salary to top patrolman step in just six years and a 300% salary increase from starting salary to top lieutenant step. In light of this staggering statistic, the Township's proposal is justified in that it will assist the Township with future costs and lessen the impact of step increases to the Township in any one year while maintaining the stability of the Department with the continued guarantee of step increases.

For employees currently on the salary guide, the Township's proposal with respect to additional step increases in no way reduces compensation, but again, only lengthens the amount of time for an officer to reach top pay. For new hires, the Township's 10% reduction in base salary at the top and bottom step maintains the Township's competitive position among other municipal departments while at the same time offering much-needed savings to the Township under the 2% cap.

The need for additional steps to lengthen the amount of time for an officer to reach top step is of critical import in 2013. In 2013, all seven of the Township's newly promoted superior officers will receive top step pay for their respective ranks for a full year. With the additional steps proposed under the Township's offer the aggregate amount of this step up for these seven officers in 2013 is approximately \$5,800 (\$830 x 7

officers) compared to approximately \$23,100 under the existing two step salary guide for superior officers (\$3,300 x 7 officers). [Tp. Brief, pp. 11-12].

The Township then addresses longevity. The Township contends the following chart that compares longevity in 2011 demonstrates that its officers enjoy a highly competitive benefit:

	6 years	11 years	16 years	21 years	25 years
Township of West Caldwell	\$2,006	\$4,544	\$6,816	\$10,261	\$12,827
Borough of Caldwell	\$1,839	\$4,120	\$6,180	\$9,229	\$11,536
Township of Cedar Grove	\$1,919	\$4,480	\$6,720	\$10,394	\$12,993
Borough of Chatham	0	0	0	0	0
Borough of Essex Fells	\$1,790	\$3,941	\$5,913	\$8,909	\$12,250
Borough of Fairfield	\$1,829	\$4,141	\$6,212	\$9,445	\$11,806
Borough of Florham Park	\$500	\$500	\$800	\$1,600	\$2,100
Township of Little Falls	\$0	\$5,103	\$7,145	\$10,908	\$13,090
Borough of Morris Plains	\$300	\$450	\$550	\$650	\$750
Borough of North Caldwell	\$0	\$4,943	\$7,909	\$10,558	\$12,670
Borough of Roseland Patrolmen	\$1,909	N/A	N/A	N/A	N/A
Borough of Roseland Superior Officers	N/A	\$4,313	\$6,470	\$9,619	\$12,024
Borough of Totowa	\$1,072	\$2,233	\$8,932	\$11,646	\$13,976
Township of Verona	\$1,829	\$4,141	\$6,212	\$9,445	\$11,806
Average	\$1,153	\$3,301	\$5,374	\$7,897	\$9,833
Median	\$1,790	\$4,141	\$6,212	\$9,445	\$12,024

The Township indicates that the combination of base salary and longevity shows that its officers are well compensated.

The Township seeks to modify the longevity benefit:

The Township's Final Offer proposes to convert longevity to a flat fixed dollar amount as of the January 1, 2012 base rate with the benefit of the proposed 1% wage increase in 2012. This offer is desirable because it does not completely eliminate the benefit or result in a decrease in compensation, but rather recognizes length of service as of the January 1, 2012 date at a flat dollar amount that no longer automatically increases merely because salaries go up. The Township's proposal is a reflection of the current economic times and further recognizes that the total economic package offered by the Township, in terms of salary, longevity, stipends and other benefits, is top tier across the board. Simply put, something has to give and the Township cannot maintain this level of compensation going forward. For example, in 2011 alone, the Township spent \$130,938.76 in longevity payments. (Exhibit 58). The savings to the Township in connection with its longevity proposal are significant. The Township's longevity proposal is reasonable in that it offers the Township substantial savings during the contract term in the amount of over \$42,000. (Exhibit 58). [Tp. Brief, p. 14].

In support of its longevity proposal, the Township draws attention to the following benefits within its group of comparables. First, police officers in Morris Plains (hired prior to 1/1/1991) and Florham Park (hired prior to 1/1/2011) receive flat fixed dollar payments. Second, officers hired on or after January 1, 2011 in Caldwell and Fairfield receive a reduced percentage rate than those hired prior to that date. Third, five (5) of the comparable departments eliminated longevity

for officer hired on or after a designated date - Florham Park (on or after 1/1/2011), Little Falls (after 1/1/2009), Morris Plains (after 1/1/1991), Roseland (on or after 1/1/1996), Totowa (after 1/1/1997), and Verona (after 1/1/1997).

The Township then shifts its focus to its proposals to modify (1) the stipends for Corporal/Detective and Sergeant, (2) the manner in which unused sick leave can be accumulated, and (3) the unlimited garment cleaning benefit:

Stipends

With respect to stipends for current officers, the Township's proposal is to freeze the Corporal/Detective stipend and Sergeant stipend at their current rates and disconnect the stipends from the percent wage increase. (See Exhibit 64). The Township submits that there is simply no reason to continue to increase these stipend amounts tied to the percent wage increase in light of the total economic package offered by the Township, including the salary increases, step increases, and longevity payments. Further, the Township's offer is reasonable in that it continues the benefit for current officers and maintains it on par with other municipal departments, which offer Detective stipends ranging from \$1,000 to \$2000 a year. The Township's offer to freeze stipends will save the Township approximately \$2,000 over the life of the contract. (Exhibit 54). The Township's Final Offer also proposes to provide for a reduced fixed stipend amount for assignments made to the Corporal and Detective positions on or after January 1, 2012 and to eliminate the Sergeant stipend for officers promoted to the rank of Sergeant on or after January 1, 2012. Under this proposal, Corporals assigned on or after January 1, 2012 shall be entitled to a \$1,000 fixed stipend amount and Detectives assigned on or after January 1, 2012 shall be entitled to a \$2,300 fixed stipend amount. (Exhibit 54). Again, these amounts are comparable with stipends offered by comparable municipal departments and are adequate to

compensate officers for any additional duties and responsibilities that come with these assignments. Contrast this with Chief Bramhall's testimony in support of the elimination of the Sergeant stipend. Chief Bramhall unequivocally testified to the fact that there was no justification for the Sergeant stipend in addition to the impressive promotional salary increase.

Sick Leave

The Township proposes to payout any accumulated unused sick leave at a 1/3 rate of pay, at the pay rate when earned, subject to a maximum of 200 hours. The Township's proposal is applicable only to new hires and additional sick leave time accumulated on or after January 1, 2012. Thus, the Township offer will have no impact on sick leave already accumulated. The Township's proposal is also consistent with the \$15,000 limitation of sick leave payout for State employees and recent legislation proposed to impose a similar limitation on all public workers. (Exhibits 89 – 91). The Township's liability for accumulated sick leave for the Police Department as of December 31, 2011 in the amount of \$339,280.84 and is a large strain on the Township's budget. (Exhibit 64). As noted above, the Township's proposal is consistent with recent legislation on this issue and a reflection of a Statewide policy to push for reform. This policy is perhaps best expressed by Governor Christie's statement in his conditional veto message on recent proposed legislation, Senate Bill 2220, that "sick leave is to be used when you are sick, not as a supplemental retirement fund for people who already have taxpayer funded pensions. (Exhibit 91).

Unlimited Garment Cleaning

While the comparable municipal departments all address uniform cleaning and maintenance costs differently, the Township is the only one that offers unlimited garment cleaning, which costs the Township on average \$7,778 each year, in addition to uniform issue and replacement costs. (Exhibits 55 - 56). In light of the current financial position of the Township and comparison to other municipal departments, the continuation of unlimited garment cleaning is unjustifiable and all wet. [Tp. Brief, pp. 15-17, footnotes omitted].

With respect to internal comparisons, the Township indicates that its officers are 21 out of the 22 highest paid employees in the Township. The disparity between the compensation of the Township's officers and its civilian employees grows when benefits such as longevity, stipends, and unlimited garment cleaning are factored in because civilians receive either a reduced benefit or none at all. The Township points out that it eliminated longevity for civilian employees in 1997. And as of now only 14 of the 34 full-time non-uniformed employees receive longevity.

The Township compares the salary increase percentages received by its police officers over the life of the most recent contract and those received by other Township employees in 2010 and 2011. The Township indicates that its officers received a compounded increase of 4% per year from 2008-2011. As for its civilian employees, there was no increase in 2010. In 2011, there was an average increase of 2.5% retroactive to July. The Township contends that the PBA's proposals exceed the internal comparisons and the recent increases through settlements and awards.

With respect to sick leave payout, the Township indicates that its civilian employees already have a cap of \$15,000 and accumulate sick leave at a one-third rate which is in line with its proposal.

As to the overall compensation received by its officers, the Township maintains that the current salary and benefits package is highly competitive regardless of whether it is compared to other Township employees or other comparable municipal police departments:

In 2011, a sixth year police officer at the top patrolman step received \$100,303 in base pay, a longevity schedule ranging from 2% with 5 years service and 10% with 24 years service, the opportunity to earn substantial overtime, unlimited garment cleaning, unlimited accrual of sick leave, 120 hours of vacation leave, holiday pay, bereavement leave, terminal leave in the amount of 50% of the value of accumulated sick leave, comprehensive health insurance. (With respect to the Township's Health Care Plan see Exhibits 61-62). The Township submits that this overall level of compensation should be given great weight by the arbitrator because the taxpayers and the Township budget simply cannot maintain this level of overall compensation and benefits and continue to provide other essential municipal programs and services. [Tp. Brief, pp. 19-20].

As to the stipulations of the parties, the Township points out that each party seeks a term of three (3) years for the collective negotiations agreement.

Moving to the lawful authority of the employer, the statutory restrictions imposed on the employer, and the financial impact on the governing unit, its residents and taxpayers, the Township's arguments on these criteria is provided in its entirety:

5. The Lawful Authority of the Employer
and
9. Statutory Restrictions Imposed on the Employer

Pursuant to N.J.S.A. 34:13A-16(g)(5) and (9) an interest arbitrator must analyze any cap difficulties for the Township and the need for the Township to prepare a balanced budget. The Township is subject to an appropriations cap and tax levy cap, however, the Township analysis on these criterion is focused on the tax levy cap difficulties presented under both the Township's and PBA's offer.

While the Township's 2012 budget was near completion, but not yet finalized at the time of hearing, the testimony and evidence presented by the Township, including the Projected Levy Cap Worksheet offered in accordance with the Arbitrator's request (Exhibit 9), made clear that there was anticipated to be a problem with achieving a balanced budget. At hearing, the Township presented credible testimony that, in taking a conservation approach to project the 2012 budget based on 2011 realized revenues and 2012 Department requested budgets, the Township will be faced with an unbalanced budget in 2012 and \$200,000 above its 2% in-cap number. (Exhibit 9). The Township further offered testimony to clarify that this dismal forecast was not appropriations driven, but rather a result of decreased revenue sources. Based on this projection, 2012 obviously starts off on the wrong foot with the budget not only exceeding its 2% cap, but also with having to implement layoffs, reduce Department budgets and cut programs and services or raise taxes in order to balance the budget.

In addition, the Township presented testimony and evidence that a 2% wage increase and no change to the existing contract presented significant tax cap issues for the Township going forward. Indeed, such an award would impact the Township's budget as follows:

- \$85,986.87 increase over 2011 budget in 2012 representing 30.62% of the Township's estimated 2% cap;
- \$107,942.15 increase over 2012 budget in 2013 representing 37.69% of the Township's estimated 2% cap; and

- \$93,499.17 increase over 2013 budget in 2014 representing 32.01% of the Township's estimated 2% cap.

(Exhibit 50). With the Police Department representing over 30% of the 2% cap number, Ms. Monroig testified that this would present significant problems in budgeting for other essential municipal services and programs.

Given this testimony regarding the statutory limitation on how much the Township can raise taxes on taxpayers to fund its budget for in-cap expenditures under the 2% cap and the marked decrease in non-tax revenue in recent years, a development which is addressed more fully infra, the Township is left with no choice but to reduce spending and cut programs and services or raise taxes. Consistent with the position of the Township elected leadership to avoid significant tax increases, the Township has been proactive in its efforts to reduce budgetary expenditures in recent years through layoffs and cutbacks on the civilian side. The Police Department and PBA member salary and wages, however, have emerged from the economic downturn largely untouched without layoffs or demotions. Accordingly, the Township's offer with a 1% salary increase and other savings, is a more reasonable reflection of the current fiscal position of the Township and the need to realize savings from the union so that the Township can continue to provide a diverse range of municipal programs and services and achieve some measure of tax stabilization to Township residents.

In contrast to the tax cap difficulties presented by a 2% wage increase and no change in the prior contract, the Township's Final Offer results in a more manageable impact to the tax cap in each year of the agreement:

- \$33,738.62 increase over 2011 budget in 2012 representing 12.02% of the Township's estimated 2% cap;
- \$42,823.50 increase over 2012 budget in 2013 representing 14.95% of the Township's estimated 2% cap; and
- \$43,484.29 increase over 2013 budget in 2014 representing 14.89% of the Township's estimated 2% cap.

(Exhibit 46). As demonstrated by these numbers, even at 1% under the Township's offer, a large portion of the Township's 2% increase is eaten up by PBA salaries. Nonetheless,

between the two proposals, the Township's offer clearly represents the more reasonable approach to managing increases PBA salaries within the 2% cap.

In addition to considering the cap limitations, the arbitrator must also weigh the Township's lawful authority and prerogative to control its budget and allocate resources in the public interest. On this point, the Township submits that any alleged savings resulting from the statutory health care contributions or savings realized from recent retirements, should not work against the Township. Importantly, as the intent of the Legislature in requiring health care contributions to reduce the costs to the Township, these savings should not be "thwarted by raising the wages or giving credit for the savings against other expenses." Borough of Waldwick and PBA Local 217, Docket No. IA-2011-049 (2011); see also Borough of Spotswood and PBA Local 225, Docket No. IA-2011-48 (2011). Similarly, with respect to any savings due to recent retirements, it is the prerogative of the Township to use its funding as it sees fit in the most effective way and in consideration of the best interest of the Township. Simply put, once realized, any such savings realized from recent retirements are not earmarked to be redistributed among the remaining officers. In keeping with this idea, "[t]he public interest is in having the best services which can be provided within limited costs and when cost reductions are realized the money is not required to become a property to be granted to others." Borough of North Arlington and Police Benevolent Association Local 95, Docket No. IA-2011-050 (2011). On this point, Ms. Monroig testified that the Township has determined that any savings from these retirements will first be applied to the cost of promotions, to fund the increased overtime budget and the cost of hiring two new patrolmen under the benefit of this new contract going forward, and then as the Governing Body sees fit.

Finally, the principle issue in dispute for the Township at arbitration is the unique conflict between the parties regarding out of rank eligibility. Resolution of this issue goes to the very heart of the lawful authority of the employer and the Chief's managerial prerogative to assign the number and types of superior officers to a particular shift and to set the appropriate supervisory staffing levels. This issue will be addressed separately infra.

6. Financial Impact on Municipality, its Residents and Taxpayers

It is well established that the financial impact criteria “does not equate to the municipality’s ability to pay . . . [and] ‘[i]t 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.’” Hillsdale, 137 N.J. at 85-86 (internal quotations omitted). Importantly, in considering the financial impact, an arbitrator must consider that “an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget.” Id. at 86. In light of this standard, the Township’s offer appropriately considers the long range financial impact on its residents and taxpayers. The proposal is an effort to provide some stability to the Township’s difficult and uncertain financial situation and should be adopted in its entirety by the Arbitrator.

Previous revenue analysis for the term of the prior contract reveals a declining surplus, reduction in state aid, and several “one-shot” revenue enhancements, or non-recurring revenue, all of which demonstrate the Township’s inability to generate the same level of non-tax revenue going forward. For example:

- The Township’s fund balance has steadily decreased from approximately \$2.5 in 2007 to \$1.95 million in 2008 to approximately \$1.36 in 2011;
- The amount of State aid received by the Township has declined by almost a third over that same time;
- Miscellaneous revenue is down over \$600,000 over the life of the prior contract;
- The Township substantially raised water and sewer fees in 2010. This is essentially a one shot injection of revenue into the budget because such fee increases are largely self-regulating in that the Township cannot prohibitively raise such fees every year;

- Decrease in revenue from shared services agreements is down from 2010 to 2011 in the aggregate amount of almost \$85,000;
- "One-shot" revenue enhancement from the sale of municipal property in the amount of \$500,000 and successive "one-shot" revenue enhancements from the transfer of water utility surplus to the current fund in the amount of \$100,000 and \$200,000 in 2010 and 2011, respectively; and
- Transfer of capital surplus to the current fund in the amount of \$92,260 (See Exhibit 8).

Contrary to PBA's counsel's objections, the financial impact of these negative trends on the Township are supported in the record and based on realized revenue for 2011 and is more relevant to the offers presented for the proposed contract term than stale 2010 budget numbers. The Township submits that its budget projections should be given significant weight by the Arbitrator.

Based on this decline in revenue, the Township is forced to anticipate essentially the maximum amount of surplus in the budget and is faced with using surplus to offset the budget rather than continually raise taxes.

Also relevant to the financial impact, a review of staffing levels reveals that the Township has lost 10 employees on the civilian side through either layoff or attrition during the term of the prior agreement and four (4) officers to attrition in 2011. The Township's offer calls for a 1% wage increase for the duration of the agreement in an effort to avoid the need for future layoffs or demotions and to permit the Township to hire two (2) additional police officers to replace the recent retirees.

Finally, in 2011, the Township also faced a flood of tax appeals because of the declining real estate market which have only further strained the Township budget. These appeals have resulted in tax appeal settlements in the aggregate amount of \$645,871. As noted at hearing, as a direct result of the Township's poor financial condition, the Township will have to bond for approximately \$442,000 of this

amount because the Township simply does not have the cash on hand to pay these refunds.

The economic downturn and drastically declining revenues coupled with the 2% limitation cap are game-changers for municipal budgets. The simple calculus is that the Township does not have the same discretion and flexibility in its budget strategy. As noted repeatedly throughout, in view of the statutory limitation on its ability to raise revenue through taxation under the cap coupled with recent declining miscellaneous revenues, the Township, like so many other municipalities throughout the State, has been forced to curtail expenditures and cut services and programs in order to balance its budget. This revenue constraint has a ripple effect that is felt throughout the Township budget. It serves to turn unexpected expenses that unfortunately are all too common in the day-to-day operation of local government, such as the costs associated with Hurricane Irene and "Snowtober", into major headaches. For example, as testified by Ms. Monroig, the Township utilized emergency appropriations of \$250,000 to cover storm related costs, including tree removal and disposal, street closures, heavy equipment rental and repairs, dewatering, emergency power generation, DPW work and overtime. This constraint is also then unfortunately further complimented on the expenditure side with increasing costs that are outside of the Township's control the cost of health insurance, fuel and utilities, for example.

It is with this bleak budget picture in mind that the arbitrator must consider the financial impact criteria. The Township's Final Offer, whether viewed in the aggregate or as individual components, results in significant documented savings over the life of the contract to help alleviate the strain Township's current financial position. As noted, the Township's proposal regarding longevity results in savings of approximately \$42,000 over the life of the contract. (Exhibit 58). The Township's offer on stipends would result in savings of approximately \$2,000 during that same term. (Exhibit 54). It should be noted that the financial impact of both these offers, with the elimination of longevity for new hires fixed stipend amounts, and elimination of the Sergeant stipend, is incalculable beyond the life of the agreement. Specifically with respect to the Township's proposal on health care costs,

the Township submits that its proposal to increase employee contribution from 1.5% of base salary to 2.13% of base salary for 2012 only is reasonable and presents only a de minimis impact on PBA members in light of the Township's overall health care costs. On this issue, it must be noted that PBA members previously agreed to contribute 2.13% of base salary towards health care costs in 2011 as a cost saving measure. The Township's offer merely represents a continuation of this contribution for year 2012 because the statutory contribution based on premium cost controls in 2013 and 2014. (Exhibit 60). The savings to the Township with the continuation of the 2.13% contribution for calendar 2012 alone represents \$17,000 savings to the Township. (Exhibit 60). In addition, the Township will also realize approximately \$7,778 savings with the elimination of the unlimited garment cleaning benefit. (See Exhibit 56). Finally, the Township offer with respect to sick leave payout as well as the out of rank eligibility will also result in immeasurable savings to the Township over the term of the agreement. In fact, the Township submits that the award of its proposal on out of rank eligibility would be priceless in that it would restore the managerial prerogative and lawful authority of the employer. In light of the measurable savings to the Township and those anticipated savings that are incalculable at this time, the Township's Final Offer is fair, well-balanced and provides a reasonable approach for future financial stability.

In contrast, PBA offers a 3% wage increase in each year of the contract with no other contract savings. The position PBA takes here is contrary to previous concessions agreed to by Side Letter, such as increased health care contributions, in recognition of the Township's poor financial situation and in order to avoid layoffs and demotions. (P-19; P-20). It is clear that in the current economic climate, the Township cannot provide the increases requested by PBA without a significant impact to the overall Township budget and the services it provides to residents or the need to raise taxes.

Under the heading of the financial impact, it is also important to address various additional revenue sources cited by PBA at hearing presumably to argue that the Township's financial position is stable and therefore the Township can fund PBA's offer. For example, PBA cites grant monies

received by the Police Department as additional revenue, however, such grant monies represent anticipated revenue with offsetting appropriations for the same amount. PBA also points to revenue from the shared services agreement with the Borough of Caldwell as additional revenue, however, revenue received pursuant to this agreement is dedicated to civilian dispatcher salaries. In short, these revenues are not additional revenues available to fund PBA's offer or to help balance the budget in light of the Township's current fiscal position and declining revenues generally. These funds are anticipated each year solely for their intended budgetary purpose. [Tp. Brief, pp. 21-29, footnotes omitted].

The Township next addresses the cost of living. The Township indicates that the CPI-U for December 2011 was 3.0% and that "there was an increase of 1.5% in 2010, 2.7% in 2009 and virtually no change in CPI in 2008." The Township emphasizes that the CPI figures include the increased cost of health insurance. The percentages that the Township's officers received over the prior contract exceeded the CPI. Even now, the Township will absorb "a large portion" of the cost of health insurance for the bargaining unit.

In addressing the continuity and stability of employment, the Township provides the following support of its view that this criterion favors its position:

The Township has maintained stable and continuous employment for its police officers. While the Township has run leaner in recent years due to retirements, the Township has weathered the economic downturn with no police officer layoffs or demotions. The Township has considered demotions twice during the term of the prior contract, most recently in 2010, but only because of the Township's

precarious financial position in an effort to achieve contract savings. Ultimately, on two separate occasions the Township avoided such demotions with the execution of a Side Letter achieving contract concessions, including, for example, a contribution of 2.13% of base salary toward health care insurance costs.

The same stability of employment, however, is not enjoyed on the municipal side. As noted supra, the Township has lost 10 employees due to layoffs or attrition without replacement during the term of the prior agreement, (Exhibit 13), and eliminated the Township Engineering Department for reasons of economy and efficiency. In addition, the stability of employment with the Township must be compared to the macro-level with large scale job cuts in both the private and public sector and an unemployment rate in New Jersey of 9.0%, which includes and drastic layoffs and demotions of police officers throughout the State.

Also evidencing the continuity and stability of employment, all patrol officers are currently at top pay indicating that they have been with the Township for at least five (5) years. In 2011, seven (7) officers also recently accepted promotions within the Department indicating a demonstrable continuity of employment through the ranks and an intention to continue their employ with the Township.

The Township's offer fully preserves the stability and continuity of the Department. The Township's Final Offer proposes to restructure the salary guide merely to slow the progress of officers to the top salary step and pay with no impact to existing compensation or change to top pay. The Township proposal also continues to recognize additional experience gained by an officer at each step. Similarly, the Township's offer to convert longevity at the existing percentage with the benefit of the 2012 1% salary increase presents no impact on current officer's salary. Importantly, the impact of these proposals when weighted with the total value of the full economic package offered by the Township is minimal. In this way, the Township will continue to be able to retain its existing officers and recruit high quality professional officers in the future. [Tp. Brief, pp. 30-32].

Lastly, the Township provides support for its proposal to modify the out-of-rank provision:

The principal issue in dispute between the parties for the Township at arbitration is the interpretation of the out of rank eligibility provision. The out of rank eligibility provision has been a source of much contention between the Township and PBA, including two (2) grievances and a scope of negotiations petition.

By way of background, the out of rank provision under the prior agreement, as interpreted by the Grievance Arbitration and Award of Grievance Arbitrator Joel Douglas, Docket No. AR-99-122 (December 30, 1999), effectively requires the Township to maintain a sergeant and lieutenant on every shift, or have an officer act in those ranks in the absence of the sergeant or lieutenant or both on a shift, regardless of whether the officer is assigned by the Chief or his designee. As noted by Chief Bramhall, this interpretation further results in the absurd result of "double-bumping", for example, where a lieutenant is absent on a shift, the sergeant or senior patrolman bumps up to act as the lieutenant out of rank and the next senior patrolman then bumps up to act as sergeant in an out of rank capacity. (See also Douglas Award at 18-19).

Since the Douglas decision, PBA has desperately clung to this interpretation of out of title eligibility as a means, not to guarantee compensation for additional work performed, but to strong arm the Township into maintaining a static top heavy table of organization which is bloated with redundant superior officer positions. For example, following the Douglas decision in 2000, PBA and the Township settled the grievance involving out of rank pay eligibility filed by PBA which precipitated the decision and agreed to suspend the out of rank provision of the agreement in exchange for the Township maintaining a Table of Organization with a staff of senior officers including a chief, captain, 4 lieutenants and 5 sergeants and 4 corporal positions. (P-16). More recently, in 2011, again in connection with grievance involving out of

rank pay requests,¹ the cost of which the Township simply could not absorb, the Township was forced to promote in exchange for waiver of these requests and promotions to fill a static table of organization of a chief, captain, 4 lieutenants, 5 sergeants, and 4 corporals. (P-20).² As indicated in the recitals of the Side Letter between the parties settling this grievance, the Township's main consideration in settling this grievance was its financial position, particularly the fact that it could not afford to pay the out of rank requests at issue. (P-20). The Township also agreed to settlement in exchange for additional contract concessions, including the 2.13% contribution towards health care costs. (P-20).

Contrary to assertions on the part of PBA that the Township has lived with this provision for nearly 14 years, the out of rank provision of the prior agreement that PBA so vigorously defended at hearing has been suspended for the vast majority of the 14 years since the Douglas decision pursuant to Side Letter. This represents a settlement pattern on the part of PBA that clearly demonstrates that its motivation is not to secure additional compensation for work performed out of rank at any particular time, as was at issue in the Douglas decision, but to force upon the Township promotions and promotional salary increases.

Further, to the extent that the Side Letter seeks to establish a Table of Organization for the Township Police Department, it infringes on the Township's inherent managerial prerogative and is unlawful. As the Arbitrator is well aware, both New Jersey case law and PERC have consistently held that the Table of Organization of a local police department, which must be established by ordinance, is not negotiable. See, e.g., Rueter v. Borough Council of the Borough of Fort Lee, 167 N.J. 38 (2001) (the type and number of positions must be created by ordinance); In re City of Plainfield, PERC No. 91-9318 NJPER ¶ 23041 (1991); In re City of Edison, PERC No. 84-89, 10 NJPER ¶ 15063 (1984); In re City of

¹ While PBA counsel argued at hearing that Arbitrator Douglas retained jurisdiction over this issue, that jurisdiction extends only to the previous grievance arbitration, Docket AR-99-122. Further to this point, PBA did not direct its latest grievance related to the out of rank eligibility provision to Arbitrator Douglas.

² The trigger for the reinstatement of the out of rank pay provision was the deviation from the fixed Table of Organization set by Side Letter with a vacancy resulting from retirement.

Plainfield, PERC No. 84-29, NJPER ¶ 1454 (1983); In re Borough of Ramsey, 9 NJPER ¶ 14240 (1983).

Notably, PBA's continued reliance on the Douglas decision here is misplaced and fails to recognize the essential distinction between grievance arbitration and interest arbitration. The Douglas decision resulted in the context of grievance arbitration and involved the interpretation and enforcement of the existing agreement between the Township and PBA. It is well established that, at interest arbitration, the focus is completely different. As set forth by the New Jersey Supreme Court in New Jersey State Policemen's Benevolent Ass'n Local 29 v. Town of Irvington, 80 N.J. 271, 284, (1979), "[i]nterest arbitration involves the submission of a dispute concerning the terms of a new contract to an arbitrator, who selects those terms and thus in effect writes the parties' collective agreement. It is to be distinguished from 'grievance' arbitration, which is a method of resolving differences concerning the interpretation, application, or violation of an already existing contract." (internal citations omitted). See also Hillsdale, 137 N.J. at 80. In sum, this means that at interest arbitration, the Township should not be forever bound to the status quo and the oppressive and inefficient out of rank provision of the prior agreement as interpreted by Arbitrator Douglas. Rather, interest arbitration is the statutorily-mandated process for resolving terms of the new contract upon sufficient showing in accordance with the relevant statutory criteria. Hillsdale, 137 N.J. at 80 (emphasis added).

With this in mind and a focus on the statutory criteria relevant to the out of rank eligibility provision, it is clear that the Township's proposal with respect to out of rank eligibility should be awarded. First, the continuation of the status quo under the provision of the prior agreement as offered by PBA clearly impacts the lawful authority of the employer.³ As Chief Bramhall testified at hearing, the current out of rank provision, when operative, completely abrogates his

³ As noted, consistent with this position, the Township filed a Scope of Negotiations Petition in connection with the most recent grievance involving the out of rank eligibility provision filed by PBA, Docket No. SN 2011-027. At scope, the Township maintained that the out of rank eligibility provision and the Side Letter, to the extent that it seeks to establish a Table of Organization, infringes on the Township's inherent managerial prerogative and is therefore unlawful and invalid.

managerial prerogative to assign the number and types of officers to a particular shift and set the appropriate level of supervision. It essentially requires an unnecessary 1 to 1 supervisory ratio in the Department and on any given shift. This is clearly contrary with the standard pyramid shaped organization typical of police departments and paramilitary organizations. Further, the current provision effectively permits individual officers to unilaterally determine when out of title work in the rank of sergeant and lieutenant, and at times in both ranks, will be performed and to assign themselves to such duties, regardless of experience and qualifications and the need for such supervision at any given time. Accordingly, the out of rank eligibility provision essentially turns over the keys to the individual police officers, but will end with the Township turning off the lights because of the prohibitive cost involved with same.

Additionally, as noted supra, when the provision itself is not operative but rather suspended by Side Letter, the Side Letter impermissibly infringes on the Governing Body's inherent and exclusive managerial prerogative to establish the Table of Organization for the Police Department.

From a budget perspective, the status quo under the out of rank eligibility provision of the prior agreement ignores the financial constraints of the Township under the 2% cap. It should be noted that the Douglas decision was decided many years ago with no consideration for what the free-for-all unilateral assignment to out of title work would mean under the 2% cap or the current fiscal reality facing the Township. This is not to say that the Township should sacrifice adequate staffing and supervision in an effort to achieve cost savings, however, adequate consideration must be given to the Chief's authority to set staffing and his decision as to the appropriate staffing on any given shift. In addition, as testified by Ms. Monroig at hearing, it is impossible to budget for out of title expenditures because individual officers determine their own out of title eligibility with no oversight or control.

As set forth in the Township's Final Offer, the Township's proposal with respect to out or rank eligibility is that a patrol officer, when assigned by the Chief to work as acting sergeant for 10 consecutive working days, is entitled to the

higher pay at the sergeant 5th class rate beginning on the 11th date of such assignment(s). This position is reasonable in terms of the lawful authority of the employer and its financial impact to the Township. Importantly, the Township's offer restores the Chief's managerial prerogative to assign the number and type of officers and to set supervisory staffing levels while at the same time recognizing that, in contrast to a sergeant or lieutenant who has tested and voluntarily accepted a promotion to be a superior officer and been awarded the additional compensation that comes with the promotion, the senior patrolman is entitled for compensation in those instances where he assumes those duties. It also rightfully returns the managerial prerogative to establish the Table of Organization to the Governing Body.

The Township's Final Offer further recognizes that there need not be a one to one supervisory ratio with a lieutenant and sergeant on every shift and that individual shifts can be effectively supervised by either the sergeant or lieutenant, unless otherwise directed by the Chief or his designee. As the Chief explained at hearing, this position is consistent with the Department's existing call out procedure -- for example, where a lieutenant calls out on a shift, the Chief testified that he calls in the most junior officer to fill out the squad, and does not necessarily fill the lieutenant position. Again, this confirms that there need not be a lieutenant and sergeant on every shift as held by the Douglas decision.

The Township's proposal also serves to preserve the continuity and stability of employment when compared to the status quo offered by PBA. The Township's offer appropriately recognizes the position of the superior officers and provides that a patrolman acting as a sergeant would be entitled to sergeant's pay at the 5th class rate. Under PBA's proposal with a continuation of the status quo and the suspension of the out of title provision of the prior agreement, a patrolman would not be entitled to such compensation for work performed.

A comparison to the agreements of comparable municipal police departments reveals that not one agreement includes a provision similar to the out of rank eligibility provision of the prior agreement as interpreted by the Douglas decision. Rather, where these agreements

provide for out of title eligibility, the vast majority of these agreements provide that a patrolman, where assigned by the Chief to work in an out of title capacity as sergeant, is entitled to out of title payment.

Finally, from a policy perspective, the Township's offer is consistent with the Table of Organization it wishes to achieve in the future. By Resolution 8927 dated January 17, 2012, the Township indicated its desire to take back the Table of Organization achieve the aspirational Table of Organization, notably through attrition and not the demotion of existing officers, with an authorized strength of a chief, captain, 2 lieutenants, 5 sergeants, 4 corporals and 12 patrol officers. (Exhibit 68). As testified by the Chief at hearing, this Table of Organization will promote the efficiency and cost-effectiveness of the Department. This Resolution clearly indicates the Township's desire to move away from the oppressive and outdated out of rank provision of the prior agreement and the Douglas decision.

Based on the foregoing, the Township's offer with respect to out of rank eligibility is completely justified and should be awarded. [Tp. Brief, pp. 32-39].

For all of the reasons above, the Township requests that its final offer be awarded in its entirety.

DISCUSSION

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

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

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

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

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

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

All of the statutory factors are relevant, but they are not necessarily entitled to equal weight. In this case, I conclude that the interests and welfare of the public, the lawful authority of the employer, the financial impact on the governing unit, its residents, and taxpayers, the limitations imposed by the tax levy cap, and the comparison of wages, salaries, hours, and conditions of employment for law enforcement employees in comparable jurisdictions must be given greater weight than the other factors. The party proposing a change in an employment condition 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.

In simple terms, the PBA's proposals represent an effort to obtain wage increases that exceed the going rates without a compromise to the current level of their other contractual benefits. Conversely, the Township's proposals demonstrate its desire to significantly reduce the benefits in numerous provisions that have been bargained-for over many years. I find that the evidentiary

record does not require me to award the entire package presented in either of the final offers.

In addressing N.J.S.A. 34:13A-16g(5), the lawful authority of the employer, and g(9), the statutory restrictions imposed on the employer, the PBA presented in its post-hearing brief an analysis in support of its claim that its proposals will not require the Township to exceed the appropriations cap, the hard cap, or the tax levy cap. The Township plainly indicated in its post-hearing brief that its analysis of g(5) and g(9) was focused on the tax levy cap. It did not expressly claim that either party's proposal, if awarded, would cause the Township to exceed either the appropriations cap or the hard cap. Notably, the retirement of two (2) Lieutenants and two (2) Corporals since the beginning of 2011 effectively reduced the cost of the Township's personnel costs for the bargaining unit between 2011 and 2012. The Township is not legally obligated to apply the savings it achieved through the recent retirements to the salary increases for the bargaining unit in the years to come. However, the retirements do provide the Township with the flexibility to afford the salary increases awarded herein.

As to the tax levy cap, the Township did not provide a tax levy cap calculation sheet for 2012 because its budget for 2012 was not finalized as of the

date of the interest arbitration hearing.⁴ In lieu of finalized figures for 2012, the Township presented a tax levy cap calculation based upon its projected budget for 2012. The Township anticipated under its projections that it will face “an unbalanced budget in 2012 and \$200,000 above its 2% in-cap number.” [See Tp. Ex. 9, Tp. Brief, p. 21]. The projected amount above the cap that the Township referenced is the difference between the amount to be raised by taxation for municipal purposes of \$12,677,505 and the maximum allowable amount to be raised by taxation of \$12,351,197. [See Tp. Ex. 9].

It was established during the proceedings that the Township has historically taken a conservative approach in its budgeting practices. In addition, Assistant CMFO Monroig acknowledged that the budgetary projections are subject to modification before the finalized budget and the tax levy cap calculation are submitted to the Division of Local Government Services. Further, as noted by the PBA, the Township's practice of underestimating its percentage of tax collections results in a conservative forecast of the tax levy. These factors lead me to conclude that when the 2012 budget is finalized it is more likely than not that the Township will take responsible measures to allow its budget to fall below the tax levy cap. To summarize, I have taken the local tax levy cap into consideration to the extent that is possible with the Township's projected budgetary figures. But I am not

⁴ This case represents a proceeding that would have benefited from an extension of time that is not currently permitted under the law.

persuaded by the evidence that my award will require the Township to exceed the tax levy cap for 2012 or its lawful authority.

Having considered the information above, and the entire record of this proceeding, I conclude that the modifications awarded below will not have an adverse impact on the Township. They also reflect a fair review of the contracts for police officers in the municipal police departments presented as comparables in this matter. Further, they take into consideration the Township's need for cost-containment notwithstanding that it has not been shown through the evidence that the modifications below will create cap issues for the Township.

1. Term of Agreement

Each party proposed a term of three (3) years. Based upon these proposals, I award a term of three (3) years effective from January 1, 2012 through December 31, 2014.

2. Salary/Salary Steps

The parties presented an abundance of evidence on these issues. In this case, both parties rely on external comparability but the Township places

added emphasis on the fact that its officers represent 21 out of the 22 highest paid employees. Having considered all of the above, I conclude that the salary increases discussed below represent a reasonable determination of the salary issue after weighing all of the competing interests between the parties. The award of these items will enable the Township to provide reasonable increases that it can fund without adverse financial impact. The increases also fall within a reasonable range of the cost of living data which I do not find to be a significant factor in this proceeding.

Based upon my review of the entire record, I award across-the-board increases at each step of the salary schedule of 1.75% effective and retroactive to January 1, 2012, 1.95% effective January 1, 2013, and 1.95% effective January 1, 2014. These figures keep the bargaining unit salaries competitive with the comparables while enabling the Township to remain under the caps.

I now turn to the Township's proposals to add salary steps. I find that the evidentiary record does not support the Township's proposal to add steps to the rank of Sergeant and Lieutenant. But I do find there is a financial justification for adding one (1) step on the salary guide for all employees hired on or after January 1, 2012. The Academy/Probation Step for new hires will mirror the one provided in the patrolman step guide for police officers hired on or after April 1, 2003. The new step ["6th Class"] will be added between the Academy/Probation

Step and the 5th Class step in 2011, and it will have dollar amount halfway between the Academy/Probation Step and the 5th Class step in 2011. The new step will significantly and effectively reduce the incremental cost of the salary guide while continuing to provide competitive salaries to new hires. It will provide the Township with future cost savings as the additional step will reduce the cumulative earnings of each new hire who will receive competitive salaries under the agreement. Given this modification, I award none of the other Township's proposals to add or freeze steps.

3. Longevity

The evidence presented in support of the parties' comparables shows that PBA members receive competitive longevity benefits. It also demonstrates that in many police contracts where longevity has been in place that benefits have been effectively reduced or eliminated for officers hired after a designated date. As to internal comparison, it has been established that the Township's officers are among the highest paid employees in the Township. Between the two, I give greater weight to the comparison of this unit to other municipal police units but still give due consideration to the fact that the benefits received by the Township's civilian employees do not necessarily rise to the levels provided to PBA members. It is for the reasons above that for those officers hired on or after January 1, 2012, I award a reduction in the longevity

benefits by one (1) base rate percentage point at each level. Article II, Section E shall be modified to include the following chart for officers hired on or after January 1, 2012:

<u>Length of Service</u>	<u>Amount</u>
Completion of five years	1% of base rate
Completion of ten years	3% of base rate
Completion of fifteen years	5% of base rate
Completion of twenty years	7% of base rate
Completion of Twenty-four years or more	9% of base rate

I do not award the Township's proposals to modify to the longevity benefits for officers hired prior to January 1, 2012.

4. Health Care Contributions

As of December 31, 2011, PBA members were contributing 2.13% of their base salaries towards the cost of health insurance. I conclude that the evidence supports the continuation of this contribution level unless a greater amount is required under P.L. 2011, c. 78. I therefore award the Township's proposed language as modified below:

Effective and retroactive to January 1, 2012, all employees shall contribute 2.13% of their base salary, or the statutory contribution based on percentage of premium cost required by P.L. 2011, c. 78, whichever is greater, towards the cost of health insurance.

5. Stipends

For Sergeants, a base pay differential of 10% is built into the express language in Article II, Section A. Unlike the stipends provided for Corporals and Detectives, the additional stipend received by the Township's Sergeants is not a benefit that is commonly provided in the contracts for the external comparables presented by the parties. I award a freezing of the Sergeant's stipend that will be increased to \$900 for 2012, but award none of the other proposals presented by the Township to reduce or freeze the other stipends.

6. Article II, Section H – Acting Sergeant

Section H has been the subject of various legal disputes between the PBA and the Township. In the actions following the Douglas Award of December 1999 and the Essex County Chancery Division's Order dated July 14, 2000, the parties resolved their disputes over this provision for periods of time through voluntary, bargained-for settlements that directly resulted from each party accepting a compromise to its respective position on the outstanding issues. The most recent settlement agreement was executed in 2011.

As delineated in the summary of the Township's position above, the Township provided reasons for seeking a modification to Section H that are

mainly directed at the Township's cost of having to comply with Section H and the settlement agreements related thereto, and the alleged infringement of same on the Township's inherent managerial authority. I can reasonably conclude that there is a monetary cost to the Township if and when an officer receives acting pay. On this record, however, I cannot state with any certainty that the cost associated with providing acting pay would prohibit the Township from meeting its statutory obligations or cause it to exceed its lawful authority. As to the Township's claim there has been an infringement upon its managerial authority, it is an issue the Township must address through a scope of negotiations proceeding before PERC. Accordingly, I conclude that the evidence does not require me to modify Section H or to change the manner in which the parties have addressed Section H in the past.

7. Article XIII, Section A– Sick Leave

The Township presented a chart of the accrued compensatory, vacation time and sick leave for the Department. [See Tp. Ex. 64]. Having considered this information, and factoring in the external comparables as is required by law, I award a modification to the rate of accumulation for sick leave for employees on or after January 1, 2012. The rate of accumulation for new hires shall be reduced from 50% to 33%.

8. Article XIV – GENERAL, Section B – “Garment Allowance”

The Township indicated that the unlimited garment allowance has an average annual cost to the Township of \$7,778. Assuming this figure applies to PBA members only, the average cost per employee based upon 21 bargaining unit members (as opposed 25 in 2011) is about \$371. The Township does not claim that this benefit has been abused by PBA members. Further, I do not conclude that this benefit is grossly disproportionate to similar benefits provided in the contracts of the external comparables. Given the items awarded above, and having considered all of the statutory criteria, I conclude that there is insufficient evidence in the record to support a modification to this provision. Thus, I do not award the Township’s proposal on this benefit.

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 lawful authority of the employer, and the financial impact on the governing unit, its residents, and taxpayers, the limitations imposed by the tax levy cap, and the comparison of wages, salaries, hours, and conditions of employment for law enforcement employees in comparable jurisdictions. I considered all of the other factors, but

find that they weigh less in my determination. The terms of this Award are within a reasonable range of the CPI, and will provide for the continuity and stability of employment for the Township's police officers. I have also examined the overall levels of compensation-related items in the existing contract and do not find any benefits therein that would compel a different result than I have determined in this proceeding.

AWARD

1. Term of Agreement

Three (3) years effective from January 1, 2012 through December 31, 2014.

2. Salary/Salary Steps

Effective and retroactive to January 1, 2012 – an across-the-board increase to each step of 1.75%;

Effective January 1, 2013 – an across-the-board increase to each step of 1.95%;

Effective January 1, 2014 – an across-the-board increase to each step of 1.95%.

One (1) step shall be added to the salary guide for employees hired on or after January 1, 2012. The Academy/Probation Step for new hires will mirror the one provided in the patrolman step guide for police officers hired on or after April 1, 2003. The new step ["6th Class"] will be added between the Academy/Probation Step and the 5th Class step in 2011, and it will have dollar amount halfway between the Academy/Probation Step and the 5th Class step in 2011.

3. Longevity

Article II, Section E shall be modified to include the following chart for officers hired on or after January 1, 2012:

<u>Length of Service</u>	<u>Amount</u>
Completion of five years	1% of base rate
Completion of ten years	3% of base rate
Completion of fifteen years	5% of base rate
Completion of twenty years	7% of base rate
Completion of Twenty-four years or more	9% of base rate

4. Health Care Contributions

Effective and retroactive to January 1, 2012, all employees shall contribute 2.13% of their base salary, or the statutory contribution based on percentage of premium cost required by P.L. 2011, c. 78, whichever is greater, towards the cost of health insurance.

5. Stipends

The Sergeant's stipend shall be increased to \$900 in 2012 and shall remain frozen for the duration of the 2012-2014 agreement.

6. Article II, Section H – Acting Sergeant

No change.

7. Article XIII, Section A– Sick Leave

Section A shall be modified to reflect that for employees hired on or after January 1, 2012, unused sick leave days will be accumulated and compensated to the employee at the rate of thirty-three (33%) as terminal leave at time of retirement or by virtue of work-connected disability-causing separation.

8. Article XIV – GENERAL, Section B – “Garment Allowance”

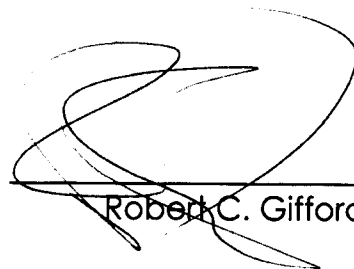
No change.

9. All other Proposals:

All other proposals not specifically addressed above are rejected and not awarded.

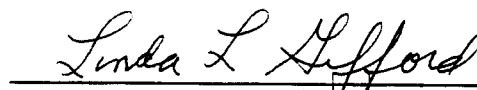
Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken "the statutory limitation imposed on the local tax levy cap into account in making the award." My Award also explains how the statutory criteria factored into my final determination.

Dated: March 12, 2012
Sea Girt, New Jersey


Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this 12th day of March, 2012, 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
Expires 1/10/16