

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

BOROUGH OF MOUNTAIN LAKES,

"Public Employer,"

and

PBA LOCAL 310,

"Union."

**INTEREST
ARBITRATION
DECISION & AWARD**

Docket No. IA-2011-056

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

Appearances:

For the Employer:

Arthur R. Thibault, Jr., Esq.

Apruzzesse McDermott Mastro & Murphy

For the Union:

Bruce D. Leder, Esq.

Cohen Leder et al

On June 6, 2011, the Union filed a Petition to Initiate Compulsory Interest Arbitration. On June 13, 2011, I was randomly selected from PERC's Special Panel of Interest Arbitrators to serve as interest arbitrator. The law requires that I issue an Award within 45 days of my appointment.

On June 13, 2011, I notified the parties by letter that an interest arbitration hearing was scheduled for June 28, 2011. The parties submitted their final offers to me in accordance with my request, the last of which was received on June 21, 2011.

An interest arbitration hearing was held at Borough Hall in Mountain Lakes, New Jersey on June 28, 2011 at which time the parties argued orally, examined and cross-examined witnesses and submitted substantial documentary evidence into the record. Testimony was received from Detective Shawn Bennett, Borough CFO Barry R. Lewis, Jr., Mayor Charles Gormally, and Sergeant Andrew Piombino. A digital recording of the proceedings was taken. The parties provided post-hearing briefs on or before July 7, 2011, whereupon the record was declared closed.

On July 11, 2011, I conducted a mediation session with the parties' representatives in an effort to resolve the parties' impasse before the issuance of an Award. That session did not produce a resolution.

FINAL OFFERS OF THE PARTIES

The PBA's proposals:

1. Term of Agreement – five (5) years. January 1, 2011 through December 31, 2015.
2. Wages – three percent (3%) per year.

The Borough's proposals:

1. Term of Agreement – one (1) year. January 1, 2011 through December 31, 2011.
2. Section II – Wages
 - a) Wage increase of 1% for 2011
 - b) Add four new steps for new hires in current salary guide.
3. Section V – Vacations. Eliminate buy back of vacation time.
4. Section IX – Medical Benefits
 - a) Modify Article to provide that Borough will pay for NJDIRECT 15 Plan and employees selecting a different plan shall pay the difference in cost between NJDIRECT 15 and plan selected.
 - b) Effective January 1, 2011, all unit employees shall contribute 2.0% of their pensionable salary, or 10% of the premium cost, whichever is greater, toward the cost of health insurance.
5. Section XVIII – Severance Pay. Modify Article to eliminate severance payment for retirement, or termination for cause.

BACKGROUND

The Borough is located in Morris County. It has a total land area of approximately 2.67 square miles and a population of over 4,200 residents. It has a median income of \$65,086, a median household income of \$141,757, and a median family income of \$153,227. PBA Local 310 represents all Patrolmen, Sergeants and Lieutenants of the Borough's Police Department. The Chief is excluded from the bargaining unit. At the time of the interest arbitration hearing, there were twelve (12) bargaining unit members, including five (5) Sergeants and seven (7) Patrolmen. As of 2010, each Sergeant earned a base salary of \$102,250 and six (6) of the seven (7) Patrolmen earned a base salary of \$90,011 at the six-year top step of the salary schedule. One (1) Patrolman earned a base salary of \$44,265 on the first step for thirteen (13) pay periods and \$51,890 on the second step for eleven (11) pay periods. The current staffing level represents a decrease of one (1) officer since the beginning of 2009 due to the retirement of a Sergeant in April 2009 and a Lieutenant in August 2009, and the hire of a Patrolman in July 2009. The parties' prior Agreement was effective from January 1, 2007 through December 31, 2010.¹

¹ This Award is not subject to the 2% base salary cap imposed by P.L. 2010, c. 105 because the contract expired on December 31, 2010.

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 contends that its final offer of a five (5) year Agreement at three percent (3%) per year is "both fair and reasonable". The position of a police officer is recognized to be unique in nature, inherently dangerous, and life-threatening. The Borough does not argue that the PBA's offer is financially impossible or that the relevant cap law places "any limitation on the finding in favor of final offer of the PBA." It therefore follows that the interests and welfare of the public will be served by providing a level of compensation that does not "risk damaging the morale of this highly-motivated police force." The PBA emphasizes that the Borough's offer of a one percent (1%) salary increase is unreasonable given that its officers will, at a minimum, contribute one and one-half percent (1.5%) of their salaries towards health insurance. In addition, the record shows that Senate Bill 2937 was signed into law creating deeper levels of contribution.

With respect to comparisons and overall compensation, the PBA points out there are no private sector jobs comparable to that of a police officer who

works in a paramilitary structure on a 24/7 basis, carries a weapons, issues summonses, and detects and apprehends criminals. But to the extent a comparison will be made, the private sector average annual wages for jobs covered by unemployment insurance in Morris County in 2009 was \$68,770, the second highest in the State. Further, private sector average annual wages in 2009 increased by 2.2% in Morris County compared to the State average that decreased by 0.7%.

Shifting its focus to the public sector, the PBA emphasizes that there are no significant internal comparisons with the Borough because none of the other employees are represented for the purposes of collective bargaining. It indicates that the average annual wages for federal government, state government and local government each increased by 2.2% in 2009. It also cites a study conducted by Jeffrey H. Keefe, an Associate Professor of Labor and Employment Relations at The School of Management and Labor Relations at Rutgers University, in which he concluded that "full time State and Local employees are 'under compensated by 5.88% in New Jersey in comparison to otherwise similar private sector workers'."

As to the comparison of other police officers, the PBA selected six (6) surrounding communities as its comparative group: Denville, Montville,

Parsippany Troy Hills, Boonton Township, Rockaway and the Town of Boonton. It presents a comparison of base salaries for 2010, 2011 and 2012:

2010	Base Salaries
Denville	95,767 (assumes a 2% increase)
Montville	94,523
Parsippany TroyHills	92,584
Boonton Township	90,315
Mountain Lakes	90,011
Rockaway	87,844
Town of Boonton	81,615
Average w/o Mountain Lakes	90,441

2011	Base Salaries
Montville	98,303
Denville	97,682 (assumes a 2% increase)
Parsippany TroyHills	94,899
Boonton Township	93,702
Mountain Lakes (PBA offer)	92,711
Rockaway	91,138
Mountain Lakes (Employer Offer)	90,911
Town of Boonton	83,247
Average w/o Mountain Lakes	93,162

2012	Base Salaries
Montville	102,236
Denville	99,636 (assumes a 2% increase)
Parsippany TroyHills	97,271
Boonton township	95,576
Mountain Lakes (PBA Offer)	95,492
Rockaway	94,647
Mountain Lakes (Employer Offer of 2010)	90,911
Town of Boonton	84,912
Average w/o Mountain Lakes	95,701

The PBA indicates that its proposal will leave it below but near the comparable average. On the other hand, the Borough's proposal, if awarded, will place the bargaining unit average approximately \$5,000 below the comparable average. This must be considered with the fact that Borough officers hired in or after 1995 are not entitled to longevity benefits. The PBA presents a comparison of longevity benefits in 2010:

2010 Longevity

Municipality	Longevity	Base Salary plus Longevity
Denville	3,487	102,254
Montville	6,617	101,140
Parsippany Troy Hills	9,258	101,842
Boonton Township	3,613 (If hired before 1988) or 750/year from retirement to age 65 (If hired after 1988)	90,315
Town of Boonton	5,713 or 1,500 (If hired after 1997)	87,328
Rockaway	5,271	93,115
Average	5,660 or 4,480 (If using the lower amount for both Boontons)	95,999
Mountain Lakes	6,300 (If hired before 1995) (only 2 of 12 police officers receive longevity)	90,011

The PBA indicates that even with its offer it will remain \$5,000 behind the comparable average in 2011 when longevity is taken into consideration. This gap increases to \$7,000 under the Borough's offer.

The PBA next compares vacation leave, clothing allowance, personal leave, education stipends, sick leave and holidays and asserts that it ranks near the middle or below the benefits within the comparison group:

VACATION LEAVE

1.	Montville	15 years/25 days
2.	Town of Boonton	15 years/25 days
3.	Parsippany Troy Hills	15 years/22 days
		25 years/32 days
4.	Boonton Township	15 years/20 days
		25 years/25 days
5.	Mountain Lakes	15 years/20 days
		20 years/25 days
6.	Rockaway	15 years/18 days
		26 years/25 days
7.	Denville	15 years/13 days
		19 years/25 days
		24 years/30 days

CLOTHING ALLOWANCE

1.	Rockaway	\$1,675
2.	Montville	\$1,300
3.	Mountain Lakes	\$1,100
4.	Town of Boonton	\$975
5.	Denville	\$675
6.	Boonton Township	N/A
7.	Parsippany Troy Hills	N/A

PERSONAL LEAVE

1.	Montville	4 days
2.	Boonton Township	3 days
3.	Parsippany Troy Hills	3 days
4.	Denville	3 days
5.	Mountain Lakes	1 day
6.	Rockaway	1 day
7.	Town of Boonton	None

EDUCATION - BACHELOR OF ARTS STIPEND

1.	Denville	\$2,170
2.	Parsippany Troy Hills	\$2,640
3.	Montville	\$1,920
4.	Boonton Township	\$1,750
5.	Rockaway	\$1,050
6.	Town of Boonton	None
7.	Mountain Lakes	None

SICK LEAVE

1.	Montville	15 days
2.	Boonton Township	15 days
3.	Parsippany Troy Hills	15 days
4.	Town of Boonton	15 days
5.	Denville	15 days
6.	Rockaway	12 days
7.	Mountain Lakes	10 days

HOLIDAYS

1.	Parsippany Troy Hills	14 days
2.	Montville	13 days
3.	Boonton Township	13 days
4.	Town of Boonton	13 days
5.	Rockaway	13 days
6.	Mountain Lakes	13 days
7.	Denville	12 days

The PBA submits that the benefits listed above do not offset the lack of longevity for most of the bargaining unit. The PBA recognizes that it has a severance pay benefit that most comparables do not possess. But for the reasons that follow, the severance pay must not be eliminated:

Anticipating that the Borough will argue that the severance pay is an unusual benefit (as compared to other collective bargaining agreements), it should be noted that the Township of Boonton eliminated longevity and provided that a retiring police officer shall receive \$750.00 per year until age sixty-five (65). Pursuant to Section XVIII-Severance Pay of the PBA 310 and Mountain Lakes agreement, a police officer retiring with twenty-five (25) years of service is entitled to \$200.00 per year or \$5,000.00 upon retirement. A retired police officer in the Township of Boonton must retire seven (7) years prior to his 65th birthday to get the same benefit as a Mountain Lakes police officer. (7 years at \$750.00 per year = 5250). It is more likely that a Boonton police officer will retire at age 55, and collect \$7,500.00 compared to the \$5,000.00 in Mountain Lakes.

The severance pay benefit in Boonton is in lieu of longevity per that contract. In this arbitration, the severance pay benefit should be left intact for the same rational as a trade-off for the lack of longevity as in the Boonton PBA contract.

With respect to criteria number 4, the stipulation of the parties, the PBA indicates that the parties did not enter into any stipulations.

The PBA next addresses the lawful authority of the employer, the financial impact, and the statutory criteria imposed on the Borough. The PBA maintains that these factors weigh in its favor because its proposals, if awarded, will have no financial impact on the Borough, its residents or taxpayers. The PBA indicates that the Borough's 2011 budget is \$157,939 under the tax levy cap (the equivalent of a 10% salary increase for the bargaining unit). Further, the Borough's budget is more than \$450,000 below the expenditure cap. The PBA provides additional support for its position:

The ultimate conclusion can be found in the Borough Exhibits. It indicates that for the period of 2007 through 2010, it had a decline in State aid, interest on investments and court revenues. It also indicated it had a corresponding increase in contributions to the Police and Fire Retirement System. (See Borough Exhibit 105) From the 4-year history, it would seem to dictate the need for a tax increase in 2011. In 2011, there is no tax increase.

According to the Tax Levy Cap calculation, there is no change in the amount of revenue to be raised by taxation in 2011 as compared to 2010. Despite a difficult 4 years, the Borough has managed its finances incredibly well and has benefitted from the 2 police officers' retirements. Such dramatic changes in revenue would appear to dictate severe tax increases. The records fail to reveal that. The tax levy in 2007 was in excess of approximately \$4.1 million (See Borough Exhibit 106). In 2011, the tax levy was approximately \$4.8 million. That represents a seventeen (17%) percent increase or approximately a 4.25% increase per year. While obviously not a zero- tax increase, most New Jersey taxpayers would applaud a 4-year history of an increase equivalent to 4.25% per year.

The same is true for the average homeowner tax increase (See Borough Exhibit 107). In 2007, the amount was \$17,038.00. In 2010, the amount was \$18,158.00. That is a 6.5% increase for those same years or the average of a 1.6% increase. Again, this is a number most taxpayers in New Jersey would applaud.

The PBA emphasizes that the Borough did not present evidence to show that its programs will be reduced or eliminated, that taxes must be raised, or that layoffs will be required if the PBA's proposal for 3% increases were to be awarded.

Turning to the cost of living, the PBA points out that there is no evidence to support that the cost of living has ever been the prevailing factor in its

negotiations. But it notes that a significant portion of the salary increases awarded in this case will go back to the Borough as part of the bargaining unit members' obligation to contribute toward health insurance.

Lastly, with respect to the continuity and stability of employment, the PBA submits that "neither side has introduced any evidence which would tend to indicate that the continuity and stability of employment is a significant factor in the Borough." Given the loss of one (1) officer, the work load for each bargaining unit member has become more demanding. The Borough's salary proposal will make the department a less desirable place to work, the bargaining unit will fall behind its comparables, and it is contrary to the goal of attracting and retaining employees. The PBA supports its position with a comparison based upon the Borough's budgeted amount for the bargaining unit in 2009. The PBA indicates that the Borough budgeted \$1,311,616 for the unit in 2009. But the Borough incurred a savings of over \$178,000 due to the retirement of two (2) officers in 2009. Thus, it only spent \$1,186,048 for police salaries in 2009. Turning to 2010, the Borough spent \$145,777 less than budgeted in 2010 (\$1,311,616 compared to \$1,186,048). The PBA presents a summary of police salaries for 2011 under each party's proposal:

Year	Budget/Proposed	Spent
2009	1,311,616 (PBA Exhibit 2B)	1,133,513 (Borough Exhibit 59)
2010	1,165,806 (PBA Exhibit 2B)	1,165,806 (PBA Exhibit 2B)
2011	1,186,048 (Borough Offer) Borough Exhibit 59	N/A
2011	1,209,076 (PBA Offer)	N/A

Differences in Police Salaries

2009 Budget compared to 2009 Paid	178,103
2009 Paid compared to 2010 Paid	32,293
2010 Paid compared to 2010 Borough Proposal	20,242
2010 Paid compared to 2011 PBA Proposal	43,270
2011 Health Care Payment at 1.5% (Borough Proposal)	17,791
2011 Health Care Payment at 1.5% (Borough Proposal)	18,136
2009 Budget compared to 2011 Borough Proposal	(134,190)
2009 Budget compared to 2011 PBA Proposal	(102,540)

Based upon the above, the PBA calculates that its proposal will cost the Borough \$102,540 less than was budgeted for 2009.

The PBA then considers under this criterion the impact of the legislative changes to employee contribution to health care and pension contribution. It assumes the cost of family coverage to be \$20,000 in 2011 and that the

premium will increase 15% annually through 2015. The PBA calculates the net raise for a senior police officer currently earning \$94,512 at its 3% proposal to be:²

Year	Salary Increase	New Health & Pension Contribution	Net
2011	\$2,835.00	\$2,405.00	\$430.00
2012	\$2,920.00	\$2,655.00	\$265.00
2013	\$3,008.00	\$2,243.00	\$765.00
2014	\$3,098.00	\$2,876.00	\$222.00
2015	\$3,191.00	\$3,650.00	(\$459.00)

Based upon the above, the PBA indicates the average take home increase will average \$723 per year which is less than one percent (1%) of the senior police officer salary for 2010. The PBA performed the same calculation using the same health care assumptions and a one percent (1%) salary increase over the same time period:

2011	negative \$1,405.00
2012	negative \$735.00
2013	negative \$1,243.00
2014	negative \$1,876.00
2015	negative \$2,650.00

² The PBA points out that "under the new law, police officers earning \$95,000 will pay 29% of the health care cost and police officers earning \$100,000 will pay 32% of the health care cost." The PBA used a blended rate of 30% as the employee contribution to the cost of health insurance for 2012-2015.

The PBA submits that when the salary calculations above are considered along with the Borough's other proposals for economic concessions that the Borough's proposals must be rejected as being unreasonable.

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

Summary of the Borough's Position

The Borough presents a cost out of the parties' final offers. It calculates the cost of bargaining unit salaries for 2010 to be \$1,165,839. [Exs. B-59 & B-103]. The Borough rounds this figure to \$1.2 million for the purposes of determining that a one percent (1%) increase in salary for the unit to be \$12,000.

The Borough then calculates the fixed costs associated with the bargaining unit. Although the Borough proposes a one (1) year agreement, it presents the following analysis for illustration purposes. With respect to health insurance, the Borough indicates that the increased cost in health insurance between 2010 and 2011 represents a 0.48% salary increase for 2011 (a total increase of \$5,716.03 - \$178,446.79 less \$172,730.76). The Borough then calculates the increased cost for health insurance in 2012 and 2013:

Assuming a 20% increase to health insurance costs for the PBA members in 2012 and 2013, the total cost to the Borough in 2012 is an additional \$39,160; in 2013, the number increases another \$46,993. If police officers pay 10% of the premium increase in 2012, as the Borough has proposed, the Borough will defray \$3,916 of the increase, but still be paying \$35,244, or the equivalent of a 2.9% salary increase. In 2013 with officers paying 10% of the premium increase, the Borough will be paying \$42,294 (\$46,993 less \$4,699 defrayed from police contributions), or a 3.5% increase above the 2010 salary.

The Borough then turns to the cost of movement on the salary guide. It calculates the incremental cost to be "0.64% on the salary guide" per year for 2011 through 2013 – a cumulative cost of 1.9% over the three (3) year period.

Moving to pension contributions, the Borough assumes the cost of pensions will increase 10% in 2012 and 5% in 2013. Under this assumption the Borough calculates the increased pension costs to be \$158,684 – the equivalent of a 13.2% salary increase over three (3) years.

Based upon the above, the Borough indicates the fixed costs for health insurance, guide movement and pensions to be an increase of 22%.³

³ The Borough points out that "this calculation does not include increases in other insurance costs (workers' compensation, longevity costs, and general liability, etc.), not to mention other "fixed" costs incurred by the Borough not due to the Police Department but for the general costs of doing business – fuel costs; repairs and maintenance; equipment costs; replacement of equipment and supplies, etc."

In other words, even if Mountain Lakes Police Officers were to receive no salary increases for 2011 or 2012 or 2013, it will cost the Borough a minimum of 22% more, in terms of base salary costs, to employ our officers for a 3 year period of the contract. Since the Borough has offered a one percent (1%) increase to base salary, the total base salary cost would increase 23%. This percentage is arrived at by calculating the fixed costs of health insurance (\$87,953), plus the guide movement costs (\$22,872), plus the pension contribution increases (\$158,684), which equals a total of \$269,509 in fixed costs for the next three years. That number, when divided by the \$12,000 "point", equals a 22.5% increase to compensation to employ 12 Mountain Lakes police officers.

Having calculated the fixed costs discussed above, the Borough compares the parties' economic proposals:

The Borough has offered a 1% increase in 2011, which works out to an \$11,658.39 increase in base salaries, which, when added to the accumulated cost calculated above, results in a total increased cost of \$73,748.42 or the equivalent of a 6.15% raise for the 1 year period. This offer will not only allow the Mountain Lakes police to maintain and even increase their already very competitive salaries, but will in no way alter their excellent medical plan or their other economic benefits - clothing allowance; longevity; overtime pay, vacation and personal days, and off-duty employment income. And the Borough will continue to be able to provide quality public safety services.

The PBA's salary request is 3.0% for 2011, 3.0% for 2012, 3.0% for 2013, 3.0% for 2014 and 3.0% for 2015. [Footnote omitted]. On an accumulated basis, the PBA's offer works out to 20.77% or \$227,530 (3.0% increases over 5 years plus the guide costs) over 5 years. Thus, the PBA offer constitutes a 510% increase (or 5.1 times the increase) in salary above the Borough's Final Offer.

To compare apples and apples, the cost of the PBA's final offer over three years is a 10.3% increase in salaries, or \$123,676 in real dollars (3.0% increases over 3 years plus the guide costs) over 3 years. Adding that figure to the fixed or "base" costs of 22.5% for a

three year contract means that the compounded cost to the Borough of the PBA's Final Offer is 32.8% over 3 years. Given the state of economy as set out in the Borough's exhibits (see B-7 – B-37; and B-66 – B-96) submitted to the Arbitrator, it is simply impossible for the Arbitrator to even considering awarding a PBA Final Offer which would result in a 32.8% total increase to police salaries over a 3 year period.

As to the parties' other economic proposals, the Borough's proposal on health benefits contributions at a 10% level has already been calculated above. Regarding the switch of current officers to the NJDIRECT 15, Barry Lewis testified that such a switch would save roughly \$11,000 from the PBA. The elimination of vacation buy backs would save about \$21,600 per year (\$1,800 for the 5 days at top pay x 12 officers), and the elimination of the severance payment of \$5,000 per officer at retirement would save about \$60,000 over the work life of each current officer since it is a retirement benefit (\$5,000 per officer x 12).

Barry R. Lewis, Jr. is the Borough Manager and CFO. Through his testimony, the Borough submitted into evidence the tax levy cap calculation sheet for the 2011 budget that was adopted and introduced. [Ex. B-116]. The tax levy cap calculation sheet indicates that the Borough budgeted \$157,939.09 below the tax levy cap (\$4,839,274.38 compared to the maximum allowable amount to be raised by taxation of \$4,997,213.47). Lewis testified to the changes in the Borough's revenues and fund balance between 2007 and 2010. The chart below summarizes his testimony in this regard [Ex. B-105]:

REVENUE DECREASES

STATE AID	(\$210,984.00)
INTEREST ON INVESTMENTS	(\$84,211.80)
COURT REVENUE	(\$64,917.00)

TOTAL REVENUE DECREASE	(\$360,112.80)
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FUND BALANCE DECLINE	(\$517,142.00)
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PFRS INCREASE	\$201,291.00
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TAX LEVY INCREASE	\$700,543.96
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Lewis testified that the Borough did not increase taxes in 2011 as part of an effort to provide local taxpayers with some relief.

The Borough addresses the statutory criteria. The Borough contends the interests and welfare of the public weigh in its favor. The Borough makes the following points in support of its argument:

- Borough officers should not be awarded more than the 1% salary increase the Borough proposes because all other Borough employees did not receive increases for 2011.

There is no reason to treat the police officers differently from other Borough employees.

- Because of step movement, the Borough's proposal to increase salary by 1% will actually increase wages by approximately 1.75% over 2010.
- Given the high salaries that officers already have, the five (5) year term the PBA proposes would place an undue burden on the taxpayer.
- There is no evidence indicating that its officers will "do less than their best work if they are not provided with more than a 1% salary increase for 2011."
- 12 of 14 highest paid Borough employees are police officers. Most officers will continue to earn over \$100,000.
- Although the Borough did not increase taxes in 2011, the fact that it raised taxes 87% over the past 10 years demonstrates the need to provide relief to taxpayers.
- When other benefits such as medical and dental are considered, the Borough's proposal to increase salary by 1% results in an actual cost increase of 4.39%.
- If awarded, the PBA's offer "most assuredly guarantees that taxes on residents will be increased in future years to the tax levy cap maximum (since the PBA offer on wages alone is above the levy cap) and assures that Borough residents will no longer receive tax relief unless there are cuts in services."
- As to health insurance, other Borough employees now contribute 10% of the cost of premium. It therefore follows that Borough officers should do the same for 2011.

The Borough next presents a comparison of the terms and conditions of employment of its officers to other public and private sector employees. Addressing employment in general, the Borough refers to a PBA exhibit that lists

the median per capita income in town to be \$65,000. The Borough indicates that when overtime, off-duty employment, uniform and clothing allowance are added to the top pay salary of \$95,456 that an officer will earn a salary of \$120,000 – almost twice the median per capita income of Borough residents. This figure does not take into consideration health insurance or pension benefits.

The Borough acknowledges that police work is stressful and inherently dangerous. But it emphasizes that "the PBA has put no evidence to the Arbitrator to indicate that, based upon the rate of on-the-job injuries (for example, missed days of work due to such injuries, or the like) that working as a Police Officer in the Borough of Mountain Lakes is more physically dangerous than other types of work. In fact, a person working a physically demanding blue collar job is, on a daily basis, much more likely to be injured "in the line of duty" than a police officer." The Borough indicates that "supply and demand" demonstrates that the position of a Borough police officer is highly desirable as it receives hundreds of applications for each police office vacancy. It also points out that it has been many years since an officer left the Borough's employ prior to retirement.

The Borough compares the salary increases received by the bargaining unit to the percentage increases in nation-wide median wages and the New Jersey private sector [Exs. B-38 & B-39]:

	Median Nat'l Wage Increase (%)	PBA Local 310 Increase (%)
2004	3.00	4.00
2005	3.00	4.00
2006	3.00	4.00
2007	3.20	4.00
2008	3.30	4.00
2009	2.50	4.00
2010	1.70	3.95
Total	19.70	27.95

	NJ Private Sector Increase (%)	PBA Local 310 Increase (%)	Per Annum Change from NJ Private Sector
2004	3.60	4.00	0.40
2005	3.10	4.00	0.90
2006	4.60	4.00	-0.60
2007	4.30	4.00	-0.30
2008	2.50	4.00	1.50
2009	-0.70	4.00	4.70
Total	17.40	24.00	6.60

The Borough next compares the bargaining unit to other public employees [Ex. B-52]:

	NJ Local Government Increase (%)	PBA Local 310 Increase (%)
2004	3.20	4.00
2005	2.80	4.00
2006	3.30	4.00
2007	3.50	4.00
2008	3.40	4.00
2009	2.20	4.00
Total	18.40	24.00

The Borough indicates that its officers received cumulative salary increases that are 5.6% higher than the median wage increases for State and local government. The Borough submits "this 5.6% disparity is a drastic understatement given the fact that most Mountain Lakes Police Officers make \$100,000 in salary or more, which is at least double the median salaries of public employees in general."

Turning to Internal comparability, the Borough contends that the economic package of bargaining unit members is "far superior" to those enjoyed by other Borough employees. The Borough points to the following:

- 12 of 14 highest paid Borough employees are police officers. Only two (2) other full-time Borough employees earn more than \$70,000 a year.

- Borough police officers on average earn at least one-third more than the Borough's blue and white collar employees.
- Borough police officers enjoy benefits such a clothing allowance, overtime, and off-duty employment that the Borough's blue and white collar employees receive either at a lower dollar level or not at all.

Based upon the above, the Borough maintains that its offer to increase salary by 1% in 2011 is more than reasonable.

Shifting focus to the comparison with other police officers, the Borough presents a comparison of base salary without longevity for police officers in nine (9) other municipalities located within Morris County [Ex. B-58]:

	# of steps ¹	Salary
Harding	6	99,887 ²
Mendham	6	98,210 ²
Denville	8	96,706 ²
Mountain Lakes	6	94,511 ²
Kinnelon	7	93,446
Wharton	6	93,187
Chatham	4	92,263 ²
Rockaway	6	87,844
Chester	4	86,633
Boonton	9	84,912

¹Does not include Academy or Probation steps

²Includes holiday pay

The Borough submits that Mendham, Chester, Chatham, Boonton and Kinnelon are comparable to the Borough in size and demographics. Notwithstanding this comparison, the Borough emphasizes the following:

One other point with respect to the "external comparability" issue. There is no evidence that any other town has seen an 87% increase in taxes over the last ten years; there is no evidence that any other town has seen the loss of over \$800,000 in revenue in the last 4 years (B-105). Accordingly, mere salary comparisons, or even equalized tax rate comparisons, from municipality to municipality are of little relevance with respect to this particular Interest Arbitration. Rather, the focus of the arbitration must be more of the financial ability of Mountain Lakes, given its history of saddling taxpayers with huge tax increases, to afford its police officers while providing fiscal responsibility and good government to its residents, rather than trying to keep up with the "Joneses" in the County.

With respect to the overall compensation received by Borough officers, the Borough lists their entitlement to salary and benefits earned after six (6) years of service [See Exs. B-58 & B-59]:

1. Base salary (including holiday pay) as of 2011 of \$95,456, under the Borough's offer of a 1% raise.
2. The finest health insurance coverage, prescription drug coverage, and dental coverage. These benefits, which cost the Borough more than \$17,000 per year, per officer are received by the employee for a payment of not more than \$1,900 per year if the Borough's offer is awarded.
3. A retirement pension fully funded (presently at exorbitant rates) by the Borough of Mountain Lakes, which in 2011 was a payment that cost \$30,160 per officer. See Exhibit B-113.

4. 15 vacation days or three full weeks off for vacation each year to a maximum of 25 days per year. 10 days of sick days after the first year of employment and every year thereafter.
5. For employees retiring from the Borough, up to \$5,000 in payment for severance, a benefit not enjoyed by any other Borough employee.
6. Life Insurance up to \$50,000 per officer.
7. Clothing allowance, uniform allowance, and clothing maintenance allowance. Replacement of uniforms and equipment damaged in the line of duty.
8. One paid personal day per year.
9. Overtime pay for any work shift in which the Police Officer works more than his scheduled hours during any 4 day work week.
10. The right to work "side jobs" through the Borough at an hourly rate of one and one-half times their hourly rate.

The Borough indicates that a six (6) year officer earns a total compensation package that exceeds \$165,000 a year (base salary of \$95,456 + \$19,954 in health care + \$2,040 in dental + \$12,000 in overtime + \$30,000 in pension + \$6,916 in clothing and vacation days). The Borough emphasizes that a six (6) year officer is scheduled to work 2,080 hours annually but given 120 hours of paid vacation and 12 hours of personal leave time the annual work year is reduced to 1,948 hours. And any hours worked in excess of the regular work year is compensated at the overtime rate. For the reasons above, the Borough

contends that this criterion weighs in its favor and supports its economic proposals.

The Borough then addresses criteria (5), (6) and (9) - the lawful authority of the Borough, the financial impact of the offers and the cap consideration. The Borough emphasizes that it is not required to prove that it cannot afford the PBA's offer. It maintains that the Borough's ability to pay does not control the outcome of the parties' impasse:

While true that the Borough did not raise taxes this year for the first time in at least the last 10, the PBA should not benefit from that fact. In order to provide tax relief in the form of no tax increase, the Borough used one-time revenues and surplus in order to balance its budget while still budgeting for a 1% increase to police wages, plus the .75% incremental cost. Residents who have absorbed an 87% increase in taxes over the past 10 years deserved some relief. The Borough is to be lauded for its fiscal responsibility not punished by forcing the Borough to increase taxes on an over taxed citizenry once again to give police officer raises on a very lucrative compensation package.

The Borough contends the PBA's proposal would have an adverse financial impact upon its taxpayers who, on average, currently earn \$30,000 less than its officers. The Borough recognizes that it can afford its proposal. But the PBA's proposal of 3.0% per year is not justified considering that all other Borough employees will not receive a raise in 2011, the proposal exceeds the increases provided throughout the State and the country, and "because the Borough is subject to a 2% tax levy cap for 2012 and in future years, the PBA cannot justify"

its proposal. The Borough indicates that the PBA's proposal, if awarded, would require reducing its services to the public. The Borough argues that the State "has established by statute that it is not 'in the interests of the public' to increase the local tax levy by more than 2%." It emphasizes that "the PBA's proposal guarantees that the police department line item will exceed the cap, requiring cuts elsewhere in 'in-cap' expenditures." In sum, the Borough does not intend "to be compelled in the next four years to seek a levy cap waiver in order to provide the Mountain Lakes Police the 20.77% accumulated salary increase they are seeking for the 5 years." [See Ex. B-104].

Moving to the cost of living, the Borough indicates that the arbitrators in the past have "largely ignored" this factor. Even so, it presents a comparison of the salary increases received by its officers to the Consumer Price Index from 2004 to 2010 [Ex. B-63]:

	CPI-U NY/ Northern NJ Increase (%)	PBA LOCAL 310 Increase (%)
2004	3.5	4.00
2005	3.9	4.00
2006	3.8	4.00
2007	2.8	4.00
2008	3.9	4.00
2009	0.4	4.00
2010	1.7	3.95
Total	20.0	27.95

1 The NY-Northern NJ-Long Island, NY-NJ-Conn-PA consolidated area comprises Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester counties in NY State; Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren Counties in NJ; Fairfield County and parts of Litchfield, Middlesex and New Haven Counties in Conn. and Pike County in PA. (not seasonally adjusted)

The Borough submits that the CPI figures for 2011 are similar to the figures for 2010. [See Exs. B-64 & B-65]. The Borough indicates that the fixed costs it absorbs on behalf of the PBA alone exceed the cost of living figures for 2011. In sum, the Borough indicates that this factor weighs in favor of its proposals.

With respect to the continuity and stability of employment, the Borough contends that "this factor weighs heavily in favor of the Borough's Final Offer". The basis for the Borough's position has been largely discussed above. To summarize, the Borough's officers are well paid, they receive an excellent benefits package and they have significant job security. This will continue to be the case if the Borough's proposals are awarded. The Borough provides support for its proposals to increase steps on the guide for new hires and to eliminate severance pay and vacation buy back for all of its officers:

[T]he Borough is seeking to revamp increase the salary guide to slow the progress of officers getting to top pay. This proposal does not impact current officers and, based on the analysis and argument above, is completely justified. The impact is on new officers who will now reach top step and the \$95,000 base salary in ten years versus six years. Top pay does not change; the proposal assists the Borough with future costs; and the stability and continuity of the unit is preserved with the continued guarantee of step increases, albeit at much more reasonable levels.

The same analysis holds true with regard to the severance pay proposal and vacation buy back proposal. Each has little impact on current officers' salaries. True, the Borough is eliminating a benefit that officers can take advantage of, but when weighted against the full value of their economic package, the impact is minimal. Officers who cannot use vacation can carry it forward to the next year. In contrast, the Borough can save almost 2% of additional salary cost to be able to maintain existing services and benefits at their current level. The severance proposal is even more justifiable since it does not impact on the "continuity and stability" factors for current police officers. Rather, it eliminates an unjustifiable payment at voluntary retirement to the tune of \$5,000 per officer. In today's economy, with residents overtaxed already, there is no justification to a retirement gift being paid from public funds for officers who will receive a benefit package of 65% of their final salary after 25 years with lifetime medical benefits paid mostly by the State, with funds provided by taxpayers in Mountain Lakes.

Lastly, the Borough addresses its proposals on the term of the agreement and health insurance. With respect to the term, the Borough argues that state of the economy at each level of government is "completely uncertain". As to health insurance, the Borough submits that its proposal to increase employee contribution from 1.5% of base salary to 2.0% for 2011 is minimal. The Borough further claims that its proposal to make the NJDIRECT 15 the base insurance plan is amply supported by the fact that the cost of health insurance continues to rise annually at double digit increases.

For all of the reasons above, the Borough 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).

I conclude that all of the statutory factors are relevant, but they are not necessarily entitled to equal weight. 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.

The parties' proposals are largely economic in nature. In a recently issued interest arbitration, the arbitrator spoke to how the statutory criteria was to be applied to the issues in dispute which were also economic in nature:

In rendering a reasonable determination of the salary issue, I have found all of the statutory criteria to be relevant, although not all are entitled to equal weight. As is commonly understood, no single factor can be isolated and be dispositive of the terms of an entire award. The interests and welfare of the public must be given the most weight because it is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. It requires consideration of the financial impact of an award on the governing body and taxpayers [see N.J.S.A. 34:13A-16g(6)] as well as the Borough's statutory limitations on appropriations and increases in the tax levy [see also N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]. It also recognizes the fact that the budgetary expense of operating a police department,

whose officers who perform essential and dangerous functions for the purpose of protecting the public, is a significant portion of any municipal budget. The public interest is furthered by productivity, efficiency and high morale as evidenced by the increasing number of summonses issued and the revenue derived from law enforcement work. The evidence on internal and external comparability is also relevant and must be considered but such evidence [see also N.J.S.A. 34:13A-16g(2)(a), (b), (c)] must be balanced by the financial evidence and the remaining criteria including cost of living, continuity and stability of employment and the overall terms and conditions of employment presently being received under the terms of the existing contract.⁴

I find this rationale to be applicable to the issues addressed herein.

1. **Term of Agreement.**

The parties could not agree to the term of the agreement. The PBA proposes a term of five (5) years beginning on January 1, 2011 and expiring on December 31, 2015. The Borough proposes a one (1) year term.

The Borough's police officers are the only employees employed by the Borough that are represented by a union. Thus, there are no other collective negotiations agreements within the Borough to utilize for comparison. Simply because the Borough has decided to review the wages of non-unionized employees on a one (1) year basis does not support its proposal to limit the PBA

⁴ Borough of Bloomingdale & PBA Local 354, P.E.R.C. Dkt. No. 1A-2011-045 (April 2011), affirmed by PERC, P.E.R.C. No. 2011-77 (May 2011).

contract to one (1) year. My review of recently issued interest arbitration awards reveals that, notwithstanding the economic uncertainty that municipalities may currently face, multi-year contracts are not uncommon. I conclude that a three (3) year agreement beginning January 1, 2011 and expiring on December 31, 2013 is a contract duration that is appropriate under the circumstances. It will provide the Borough with greater certainty as to its personnel costs for the bargaining unit for the next two (2) full years (2012 & 2013) and the record evidence shows that the Borough's finances have been sufficiently stable so as to support the budgetary needs of the department into the foreseeable future. Further, it will alleviate the need for both parties to expend the time, money and effort that would be required under the Borough's proposal if negotiations for a successor contract had to commence within the next few months for 2012 and beyond.

2. Wages/Salary Steps.

The parties presented an abundance of evidence on these issues. I take notice of the fact that the Borough imposed a one (1) year wage freeze on its non-unionized employees. This fact does weigh heavily against the awarding of the PBA's wage proposal. But the Borough's decision for unrepresented employees must be balanced by the requirement that the statutory criteria must be applied to determine the wage issue for law enforcement employees. This

requires consideration of many other factors including the weight to be given to the salary increases received by other law enforcement bargaining units that have been presented for comparison by the Borough and the PBA as well as the financial impact of salary terms on the Borough, its residents and taxpayers. I also take into consideration the recent trend in salary increases and changes to the salary guides in recent interest arbitration awards. As to the tax levy cap law, which limits the amount the Borough can raise through taxation, the Borough submitted its tax levy cap calculation sheet that shows the Borough is under the tax levy cap in 2011 by \$157,939.09 (\$4,839,274.38 compared to the maximum allowable amount to be raised by taxation of \$4,997,213.47).

Having considered all of the above, I conclude that the salary increases and the modifications to the salary guide for new hires 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 Borough to provide reasonable increases that it can fund without adverse financial impact while receiving significant future cost savings.

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 January 1, 2011, 2.00% effective January 1, 2012 and 2.25% effective January 1, 2013. Based upon my calculations using \$1,165,839 as the figure for 2010, I estimate that the

total gross annual salaries for the bargaining unit (base pay, holiday pay, longevity (if any), and stipends) will increase by \$32,016 effective January 1, 2011 (total cost of \$1,197,855), \$32,205 effective January 1, 2012 (total cost of \$1,230,060), and \$36,105 effective January 1, 2013 (total cost of \$1,266,165). For 2011, this is an amount that is approximately \$8,800 more than was proposed by the Borough and almost \$14,700 less than was proposed by the PBA with somewhat higher, but similar, calculation for 2012 and 2013 assuming that the Borough were to make the similar offer to the PBA for those years.

In addition to the above, I award the addition of two (2) new salary steps for police officers hired after July 28, 2011. By doing so, a new hire will not reach the Maximum Salary for two (2) additional years and thus the new steps provide the Borough with significant cost savings for new hires. The Academy Step, Step One and the Maximum Salary for new hires will mirror those provided in the patrolman step guide for police officers hired after January 1, 2008. The new steps will be added between Step One and the Maximum Salary at steps of equal dollar amount in 2011. The new steps will significantly and effectively reduce the incremental cost of the salary guide while continuing to provide competitive salaries to new hires.

3. Medical Benefits.

As stated above, Senate Bill 2937 has increased the levels that police officers will contribute towards health insurance. The changes are substantial, and they have been documented in this record. Given the salary increases I have awarded, I decline to award the Borough's proposal that could create an additional cost burden on existing employees for those who may choose to keep their existing coverage levels. However, I award an amendment to Section IX of the Agreement to reflect that officers hired after July 28, 2011 who select a different plan other than NJDIRECT 15 will pay the difference in cost between NJDIRECT 15 and the plan selected if the plan selected has higher premiums than NJDIRECT 15. This, in addition to the substantially higher employee contributions paid by existing employees, will assist the Borough in its desire to offset health insurance costs in the future.

4. Vacation.

The Borough proposes to eliminate the buy back of vacation time. There is insufficient evidence in the record to support the elimination of this existing benefit. Thus, I do not award the Borough's proposal.

5. Severance Pay.

Most of the public employers for the comparables provided by the Borough and the PBA continue to provide longevity pay for their officers. The Borough effectively eliminated longevity pay for its officers hired in or after 1995. Only two (2) of its officers continue to receive that benefit. The evidence shows that the bargaining unit's severance pay benefit is below the comparable average for longevity. I find insufficient justification to award the Borough's entire proposal to totally eliminate the severance pay benefit. However, I find merit for eliminating this benefit for any police officer that is terminated for cause as the Borough has proposed.

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 comparison of wages, salaries, hours, and conditions of employment for law enforcement employees in comparable jurisdictions, the lawful authority of the employer, and the financial impact on the governing unit, its residents, the limitations imposed by the tax levy cap, and taxpayers. 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 Borough'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: Three (3) years – January 1, 2011 through December 31, 2013.

2. Salary & Salary Guide:

Effective and retroactive to January 1, 2011 – an across-the-board increase to each step of 1.75%;

Effective January 1, 2012 – an across-the-board increase to each step of 2.00%;

Effective January 1, 2013 – an across-the-board increase to each step of 2.25%.

Add two (2) steps for employees hired on or after July 28, 2011. The Academy Step, Step One and the Maximum Salary for new hires will mirror those provided in the patrolman step guide for police officers hired after January 1, 2008. The new steps will be added between Step One and the Maximum Salary at steps of equal dollar amount in 2011.

3. Severance Pay.


Amend Section XVIII to reflect that any officer terminated for cause shall not be entitled to severance pay.

4. Medical Benefits:

Amend Section IX of the Agreement to reflect that officers hired after July 28, 2011, who select a different plan other than NJDIRECT 15 will pay the difference in cost between NJDIRECT 15 and the plan selected if the plan selected has higher premiums than NJDIRECT 15.

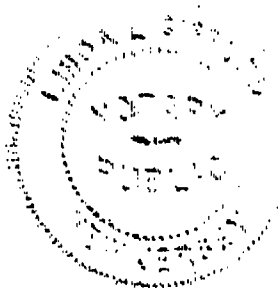
Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken "the statutory limitation imposed on the local tax levy cap into account in making the award." My Award also explains how the statutory criteria factored into my final determination.

Dated: July 28, 2011
Sea Girt, New Jersey


Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this 28th day of July, 2011, 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.



Linda L. Gifford

Notary Expires
1-10-16