

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest *
Arbitration between *
*
* DECISION
* AND AWARD
CITY OF JERSEY CITY *
*
*
-and- *
* Docket No.
* IA-2009-070
JERSEY CITY POLICE SUPERIOR *
OFFICERS ASSOCIATION *
*
*
- - - - - *

Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the City
Schwartz, Simon, Edelstein, Celso & Zitomer
By: Martin R. Pachman, Esquire
Anthony M. Orlando, Esquire

For the PSOA
Loccke, Correia, Schlager, Limsky & Bukosky
By: Richard D. Loccke, Esquire

D E C I S I O N

The City of Jersey City (the "Employer" or the "City") and the Jersey City Police Superior Officers Association (the "Union" or the "PSOA") are parties to a collective bargaining agreement which had a duration through December 31, 2008. Negotiations for a successor agreement reached an impasse and a Petition to Initiate Compulsory Interest Arbitration was filed. Pursuant to the Rules and Regulations of the Public Employment Relations Commission ("PERC"), the undersigned Arbitrator was duly appointed to serve in this matter.

The Arbitrator met with the parties on July 20, 2009, September 2, 2009, and November 4, 2009, in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse persisted. Evidentiary hearings were scheduled and held on December 11, 2009, December 15, 2009, and January 4, 2010. An additional meeting was held on March 29, 2010 to renew discussions designed to reach a voluntary

resolution of the dispute. Despite considerable effort, the parties were unable to achieve a settlement at that time. It was understood that the evidentiary phase of the record was closed as of January 4, 2010 and that the submission of post-hearing briefs would complete the record.

The parties were provided with the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was created over the course of the multiple days of hearing. Numerous witnesses were examined including several called to present expert testimony.

On June 2, 2010, the City made a formal request to reopen the record, in a limited instance, for the admission of some documents not yet in existence when the evidentiary hearing was completed. The PSOA emphatically objected, opposing the reopening of the record. The Arbitrator exercised his discretion to grant the request to reopen the record, finding that the request met appropriate standards:

The information is new, narrow, uniquely relevant to the case at hand and reopening the record will not unduly delay the process.

Certain procedural protections were provided to the Union and it too was allowed to add responsive documentation to the record.

The entire record has been carefully considered. The evidence has been evaluated in light of the nine statutory criteria set forth in *N.J.S.A. 34:13A-16(g)*.

The parties failed to mutually agree to a terminal procedure. Therefore, under *N.J.S.A. 34:13A-(d)(2)*, the dispute shall be resolved through a determination by conventional arbitration. This resolution shall be reached through application of all of the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute.

Statutory Criteria

N.J.S.A. 34:13A-16(g) provides as follows:

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why others are not relevant, and provide an analysis of the evidence on each relevant factor:

(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 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 P.L.1976, c. 68(C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of 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 other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determinations 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).

Final Offers

Final Offer of the PSOA

1. Wage Increase: The PSOA proposes a four (4) year contract with a 4.5% wage increase effective on each successive January 1.

2. Optical: The PSOA proposes that the present seventy-five dollar (\$75.00) allowance be increased to two hundred dollars (\$200.00) per annum for all optical related services.

3. Article 14, Section 11: The PSOA proposes a modification of Article 14, Section 11 to change the words "Desk Officer" to "an Officer".

4. Article 15: The PSOA proposes that the six hundred six dollar (\$606.00) sum referenced in line seven of Section 1 be removed and added in like sum to base pay as an equity adjustment prior to the

across-the-board wage increases being applicable on January 1, 2009. *Arbitrator's Note:* The PSOA stipulated at hearing that this proposal would not be implemented until the first full year following the date of the issuance of the Interest Arbitration Award.

5. Article 37: The PSOA proposes a modification of this Article so as to include the .45 Caliber option. *Arbitrator's Note:* This proposal was tentatively agreed upon at hearing, December 11, 2009.

PSOA proposals numbered 1, 2, and 4 are economic in nature and proposals 3 and 5 are non-economic.

Final Offer of the City

As noted earlier, the Employer presented its formal final offer at the hearing on December 11, 2009. Although that remains its formal final offer, it has presented an informal revision in the form of argument set forth in the post-hearing brief. While the Arbitrator cannot accept this "revision" as a formal

change of position, there is no procedural prohibition to the Employer expressing argument favoring a resolution on a compromise position. The formal final offer is set forth initially with each item in this section. Where substantive modifications of position have been presented through argument the item is followed with a notation in bold type of the modified proposals expressed by the City.

A. ECONOMIC ISSUES

1. Article 41, Duration of the Agreement: The dates contained in Article 41 shall be modified to reflect a three (3) year agreement from January 1, 2009 through December 31, 2011. **Note: position modified through argument in brief to four years, from January 1, 2009 through December 31, 2012.**

2. Wages, Article 21: Delete "Service Differential" from the Title of the Article. All Police Superiors will receive an increase in base salary of 2.0% effective January 1, 2009, 2.0% effective January 1, 2010, 2.25% effective January 1,

2011, subject to modification if all the City's economic proposals are accepted. **Note: position modified through argument in brief to: All Police Superiors will receive an increase in base salary as follows: January 1, 2009 - 2.75%**

January 1, 2010 - 2.75%

January 1, 2011 - 2.75%

January 1, 2012 - 2.75%

3. Health Benefits, Article 10: The City's formal final offer presented two "Alternates":

ALTERNATE 1

Article 10 Insurance, Health & Welfare

New Section 1 - The City shall provide insurance coverage for its employees as set forth below:

1) Commencing on the effective date of the Agreement, all new hires shall be entitled to Direct access health insurance coverage paid for by the City. Previously employed members of the bargaining unit shall be entitled to continued Traditional coverage if they were enrolled in such on the month preceding the effective date of this Agreement. Superior Officers will not, at any time, be permitted to transfer from the Direct Access Plan to the Traditional Plan. All

employees shall be transferred to Direct access no later than December 31, 2010.

2) Employees in the Bargaining Unit shall receive a payment of two thousand dollars (\$2,000.00). The first one thousand dollars (\$1,000.00) shall be paid on June 17, 2010. The second one thousand dollars (\$1,000.00) shall be paid on December 16, 2010.

Current Section 1 shall be renumbered as Section 2 and modified as follows: The City reserves its right to change the carrier with whom it contracts to provide these services for its employees. The level of benefits will be substantially equivalent to those provided on the date immediately preceding the effective date of any change.

Current Section 2 shall be renumbered as Section 3.

Current Section 3 shall be renumbered as Section 4.
Paragraph A shall be deleted.

Paragraph B shall be relettered as A, Dental and shall be modified as follows: The City will continue to provide the currently effective dental benefit program, both open and closed. The dental benefit CAP for the open plan is Two Thousand Dollars (\$2,000).

Paragraph C Prescription shall be relettered as B, and shall be modified to read as follows: Effective July 1, 2010, the City will provide a prescription drug plan with the following co-pays:

	RETAIL	MAIL ORDER
Generic Drugs	\$2.00 co-pay retail for prescription up to thirty (30) days supply.	\$1.50 mail order co-pay per thirty day supply prescription. (Total ninety (90) day mail order would amount to \$4.50 in co-pay.
Brand Drugs	\$20.00 co-pay retail for prescriptions up to thirty (30) days supply.	\$13.00 mail order co-pay per thirty day supply prescription. (Total ninety (90) day mail order would amount to \$39.00 in co-pay.
Effective January 1, 2011 prescriptions that cost over \$1,000.00	\$100.00 co-pay on retail prescriptions up to thirty (30) days supply that cost over \$1,000.00	\$50.00 mail order co-pay per thirty day supply prescriptions on prescriptions that cost over \$1000.00. (Total ninety (90) day mail order would amount to \$150.00 in co-pay.

It will be mandatory for all drugs that are defined as "maintenance drugs" to be bought through mail order (when available). A maintenance drug is defined as a drug which is prescribed to treat a chronic condition over a prolonged period of time. However, the co-pay on the first two prescriptions filled on any maintenance drug, whether that drug is over \$1000.00 in cost or not, will be at the retail

co-pay rate for either a generic or brand drug following which the employee will be responsible for the mail order co-pays set forth above depending on the cost of the particular drug.

Current Section 4 shall be renumbered as Section 5.

Current Section 5 shall be renumbered as Section 6.

Current Section 6 shall be renumbered as Section 7.

Current Section 7 shall be renumbered as Section 8.

Current Section 8 shall be renumbered as Section 9.

Current Section 9 shall be renumbered as Section 10.

Current Section 10 shall be renumbered as Section 11.

Add new Section 12, Retirement as follows:

"Employees who retire subsequent to February 1, 2011, who are eligible to receive medical and prescription benefits in retirement under this article shall contribute the same amount in deductibles, contributions and prescription co-pays as they did on the date immediately preceding the date of their retirement. Thereafter, when increases in deductibles, contributions and prescription co-pays are negotiated for active employees during any future contract negotiations, retirees who retired subsequent to February 1, 2011 shall be responsible for their then current payment on deductibles, contributions and prescription co-pays plus 54% of any increases that may be negotiated for active employees in the future."

Add new Section 13 as follows:

"Retirees shall have an annual maximum out-of-pocket Cap of \$1,082.00 per person for prescription drug co-payments. Once a retiree or dependent has paid \$1082.00 in co-payments in a calendar year, that person is no longer

required to pay any prescription drug co-payments for the remainder of that calendar year. Nothing in this section shall preclude the City from negotiating a change in the cap on prescription drug co-payments, subject to the language set forth in Section 12 for retirees."

Add new Section 14 as follows:

The City will pay the cost of health coverage, which includes health insurance and the prescription drug plan as set forth in Section G above, for all retirees and their eligible dependents so long as the retiree has retired on a disability pension or has retired after twenty-five (25) or more years service credit in the Police and Fire Retirement System and had worked a period of up to twenty-five (25) years with the City. The City and the Union may agree to permit a retiree who does not meet the above requirements to participate in the City's health insurance and prescription drug plan at his/her own cost.

Add new Section 15 as follows:

Each employee or retiree is responsible to notify the Office of Health Benefits immediately of any qualifying events regarding the group medical and dental plans.

A qualifying event is defined as the following:

1. Marriage
2. Divorce
3. Birth
4. Death
5. Emancipation of Dependent
6. Adoption
7. 65th Birthday

ALTERNATE 2**Article 10 Insurance, Health & Welfare**

New Section 1 - The City shall provide insurance coverage for its employees as set forth below:

3) All new hires and their families shall be entitled to Direct Access of POS health insurance coverage paid by the City. Previously employed members of the bargaining unit shall be entitled to continued Traditional coverage if the were enrolled in such on the month preceding the effective date of this Agreement. Superior Officers will not, at any time, be permitted to transfer from the Direct Access Plan or the POS plan to the Traditional Plan.

4) October 1, 2010, every member of the bargaining unit who is in the Traditional Plan will contribute toward the cost of the Traditional Plan. The contribution shall be based upon the employee's salary as follows:

PSOA TRADITIONAL CONTRIBUTIONS

SALARY RANGE	FAMILY 100% (PER MONTH)	H/W 86%	P/C 57%	S 40%
195000+	\$166	\$143	\$95	\$66
185,000 - 194,999	\$158	\$136	\$90	\$63
175,000 - 184,999	\$150	\$129	\$86	\$60

165,000 - 174,999	\$141	\$121	\$80	\$56
155,000 - 164,999	\$133	\$114	\$76	\$53
145,000 - 154,999	\$125	\$108	\$71	\$50
135,000 - 144,999	\$116	\$100	\$66	\$46
125,000 - 134,999	\$108	\$93	\$62	\$43
115,000 - 124,999	\$100	\$86	\$57	\$40
105,000 - 114,999	\$92	\$79	\$52	\$37
95,000 - 104,999	\$83	\$71	\$47	\$33
85,000 - 94,999	\$75	\$65	\$43	\$30
75,000 - 84,999	\$66	\$57	\$38	\$26
65,000 - 74,999	\$58	\$50	\$33	\$23
55,000 - 64,999	\$50	\$43	\$29	\$20
45,000 - 54,999	\$41	\$35	\$23	\$16
35,000 - 44,999	\$33	\$28	\$19	\$13
0 - 34,999	\$25	\$22	\$14	\$10

5) All employees who are either currently in the Direct Access or POS plans, or who transfer from the Traditional plan into the Direct Access or POS plans during the duration of this contract will receive a monthly stipend as follows:

SALARY RANGE	H/W 86%	FAMILY 100% (PER MONTH)	P/C 57%	S 40%
195000+	\$87	\$102	\$58	\$41
185,000 - 194,999	\$85	\$99	\$56	\$40
175,000 - 184,999	\$81	\$94	\$54	\$38
165,000 - 174,999	\$76	\$89	\$50	\$35
155,000 - 164,999	\$72	\$84	\$48	\$33
145,000 - 154,999	\$64	\$78	\$44	\$31
135,000 - 144,999	\$63	\$73	\$42	\$29
125,000 - 134,999	\$58	\$68	\$38	\$27
115,000 - 124,999	\$54	\$63	\$36	\$25
105,000 - 114,999	\$49	\$58	\$33	\$23
95,000 - 104,999	\$45	\$52	\$30	\$21
85,000 - 94,999	\$40	\$47	\$27	\$19
75,000 - 84,999	\$36	\$42	\$24	\$17
65,000 - 74,999	\$31	\$37	\$21	\$15
55,000 - 64,999	\$27	\$32	\$18	\$13
45,000 - 54,999	\$22	\$26	\$15	\$10
35,000 - 44,999	\$18	\$21	\$12	\$8
0 - 34,999	\$13	\$16	\$9	\$6

The monthly stipend paid to employees in the Direct Access and POS plans will end on the last day of the term of this Agreement.

Current Section 1 shall be renumbered as Section 2 and modified as follows: The City reserves its right to change the carrier with whom it contracts to provide these services for its employees. The level of benefits will be substantially equivalent to those provided on the date immediately preceding the effective date of any change.

Current Section 2 shall be renumbered as Section 3.

Current Section 3 shall be renumbered as Section 4.

Paragraph A shall be deleted.

Paragraph B shall be relettered as A, Dental and shall be modified as follows: The City will continue to provide the currently effective dental benefit program, both open and closed. The dental benefit CAP for the plan is Two Thousand Dollars (\$2000).

Paragraph C Prescription shall be relettered as B, and shall be modified to read as follows:

Effective July 1, 2010, the City will provide a prescription drug plan with the following co-pays:

	RETAIL	MAIL ORDER
Generic Drugs	\$2.00 co-pay retail for prescription up to thirty (30) days supply.	\$1.50 mail order co-pay per thirty day supply prescription. (Total ninety (90) day mail order would amount to \$4.50 in co-pay.

Brand Drugs	\$20.00 co-pay retail for prescriptions up to thirty (30) days supply.	\$13.00 mail order co-pay per thirty day supply prescription. (Total ninety (90) day mail order would amount to \$39.00 in co-pay.
Effective January 1, 2011 prescriptions that cost over \$1,000.00	\$100.00 co-pay on retail prescriptions up to thirty (30) days supply that cost over \$1,000.00	\$50.00 mail order co-pay per thirty day supply prescriptions on prescriptions that cost over \$1000.00. (Total ninety (90) day mail order would amount to \$150.00 in co-pay.

It will be mandatory for all drugs that are defined as "maintenance drugs" to be bought through mail order (when available). A maintenance drug is defined as a drug which is prescribed to treat a chronic condition over a prolonged period of time. However, the co-pay on the first two prescriptions filled on any maintenance drug, whether that drug is over \$1000.00 in cost or not, will be at the retail co-pay rate for either a generic or brand drug following which the employee will be responsible for the mail order co-pays set forth above depending on the cost of the particular drug.

Current Section 4 shall be renumbered as Section 5.

Current Section 5 shall be renumbered as Section 6.

Current Section 6 shall be renumbered as Section 7.

Current Section 7 shall be renumbered as Section 8.

Current Section 8 shall be renumbered as Section 9.

Current Section 9 shall be renumbered as Section 10.

Current Section 10 shall be renumbered as Section 11.

Add new Section 12, Retirement as follows:

"Employees who retire subsequent to February 1, 2011, who are eligible to receive medical and prescription benefits in retirement under this article shall contribute the same amount in deductibles, contributions and prescription co-pays as they did on the date immediately preceding the date of their retirement. Thereafter, when increases in deductibles, contributions and prescription co-pays are negotiated for active employees during any future contract negotiations, retirees who retired subsequent to February 1, 2011 shall be responsible for their then current payment on deductibles, contributions and prescription co-pays plus 54% of any increases that may be negotiated for active employees in the future."

Add new Section 13 as follows:

"Retirees shall have an annual maximum out-of-pocket Cap of \$1,082.00 per person for prescription drug co-payments. Once a retiree or dependent has paid \$1082.00 in co-payments in a calendar year, that person is no longer required to pay any prescription drug co-payments for the remainder of that calendar year. Nothing in this section shall preclude the City from negotiating a change in the cap on prescription drug co-payments, subject to the language set forth in Section 12 for retirees."

Add new Section 14 as follows:

The City will pay the cost of health coverage, which includes health insurance and the prescription drug plan as set forth in

Section G above, for all retirees and their eligible dependents so long as the retiree has retired on a disability pension or has retired after twenty-five (25) or more years service credit in the Police and Fire Retirement System and had worked a period of up to twenty-five (25) years with the City. The City and the Union may agree to permit a retiree who does not meet the above requirements to participate in the City's health insurance and prescription drug plan at his/her own cost.

Add new Section 15 as follows:

Each employee or retiree is responsible to notify the Office of Health Benefits immediately of any qualifying events regarding the group medical and dental plans.

A qualifying event is defined as the following:

1. Marriage
2. Divorce
3. Birth
4. Death
5. Emancipation of Dependent
6. Adoption
7. 65th Birthday

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Note: The Health Benefits position of the City was informally modified through argument in its brief to as follows, particularly noting the elimination of its Alternate 2 Proposal, given the elimination of continued Traditional coverage from its position:

* * * * *

City's Informally Revised Health Benefits Position

3. Health Benefits: Article 10 - Modified as follows:

Section 1. The City shall provide and maintain insurance coverage as follows:

A. Commencing on the effective date of this Agreement, all new hires shall be entitled to the Direct Access Blue Cross/Blue Shield Plan, or one of the HMO Plans offered at the time of the effective date of this Agreement at the employees choosing, paid for by the City. All active employees shall be transferred to the currently offered Direct Access Blue Cross/Blue Shield Plan, or one of the HMO plans offered at the time of the effective date of this Agreement, at the employee's choosing, no later than July 1, 2010.

B. The City reserves its right to change the carrier with whom it contracts to provide these services for its employees. The level of benefits will be substantially equivalent to those provided on the date immediately preceding the effective date of any change.

Section 2. No Change.

Section 3.

A. The City will continue to provide the currently effective dental benefit program, both open and closed dental plans. The dental benefit Cap for the open plan is Two Thousand Dollars (\$2,000).

B. Effective July 1, 2010, the City will provide a prescription drug plan with the following co-pays that apply on a per prescription basis:

	RETAIL	MAIL ORDER
Generic Drugs	\$2.00 co-pay retail for prescription up to thirty (30) days supply.	\$1.50 mail order co-pay per thirty day supply prescription. (Total ninety (90) day mail order would amount to \$4.50 in co-pay.
Brand Drugs	\$20.00 co-pay retail for prescriptions up to thirty (30) days supply.	\$13.00 mail order co-pay per thirty day supply prescription. (Total ninety (90) day mail order would amount to \$39.00 in co-pay.
Effective January 1, 2011 prescriptions that cost over \$1,000.00	\$100.00 co-pay on retail prescriptions up to thirty (30) days supply that cost over \$1,000.00	\$50.00 mail order co-pay per thirty day supply prescriptions on prescriptions that cost over \$1000.00. (Total ninety (90) day mail order would amount to \$150.00 in co-pay.

It will be mandatory for all drugs that are defined as maintenance drugs by the United States Food and Drug Administration (FDA) to be bought through mail order (when available). However, the co-pay on the first two prescriptions filled on any maintenance drug, whether

that drug is over \$1,000 in cost or not, will be at the retail co-pay rate for either a generic or brand drug following which the employee will be responsible for the mail order co-pays set forth above depending on the cost of the particular drug.

C. Retirees shall have an annual maximum out-of-pocket Cap of \$1082.00 per person for prescription drug co-payments. Once a retiree or dependent has paid \$1082.00 in co-payments in a calendar year, that person is no longer required to pay any prescription drug co-payments for the remainder of that calendar year.

Section 4. No Change

Section 5. Effective July 1, 2010, each member of the bargaining unit and his or her dependents shall be reimbursed up to \$100.00 per year, per family member, for any optical related expenses consistent with the existing City of Jersey City optical plan. For purposes of this payment, dependent children shall be covered only up to age twenty-three (23).

Section 6 through 10. No Change.

Section 11. (New) The City will pay the cost of health coverage, which includes health insurance and the prescription drug plan as set forth in Section G above, for all retirees and their eligible dependents so long as the retiree has retired from the City on a disability pension or has retired from the City after twenty-five (25) or more years service credit in the Police and Fire Retirement System. The City and the Union may agree to permit a retiree who does not meet the above requirements to participate in the City's health insurance and prescription drug plan at his/her own cost.

Section 12. (New) Each employee or retiree is responsible to notify the Office of Health

Benefits immediately of any qualifying events regarding the group medical and dental plans. A qualifying event is defined as one of the following:

1. Marriage
2. Divorce
3. Birth
4. Death
5. Emancipation of Dependent
6. Adoption
7. 65th Birthday

Failure to immediately notify the Office of Health Benefits will subject the employee or retiree to loss of coverage and/or liability for costs incurred.

4. Clothing Allowance, Article 15:

Shall be modified as follows: "All members of the bargaining unit shall be provided with a sum of One Thousand Two Hundred and Twelve Dollars (\$1,212.00) for clothing allowance and maintenance of clothing. The sum of \$606.00 will be paid on the first regularly scheduled payroll day following the Council meeting in January, and the additional \$606.00 will be paid on the first regularly scheduled payroll day following the regular council meeting in July. All Police Superiors will be required to supply their dress uniforms."

Note: The City informally modified its position through argument presented in its post-hearing brief as follows:

A. Effective January 1, 2010, all members of the bargaining unit shall be provided with a sum of One Thousand Three Hundred Dollars (\$1,300.00) clothing allowance.

The sum of \$650.00 will be paid on the first regularly scheduled payroll day following the Council meeting in January, and the additional \$650.00 will be paid on the first regularly scheduled payroll day following the regular Council meeting in July.

B. Effective January 1, 2012, all members of the bargaining unit shall be provided with a sum of One Thousand Three Hundred Fifty Dollars (\$1,350.00) clothing allowance. The sum of \$675.00 will be paid on the first regularly scheduled payroll day following the Council meeting in January, and the additional \$675.00 will be paid on the first regularly scheduled payroll day following the regular Council meeting in July.

5. Vacations, Article 9:

Jersey City proposes revising the entire vacation article, other than the vacation allowances, to reflect that on any given tour no more than 20% of the Division will be on vacation and no more than 7 1/2% of the Division will be using compensatory time. Additionally compensatory time shall not be allowed to be used on Fridays, Saturdays, Sundays, on holidays or the day before a holiday.

Add new Section 6 as follows, "Any Superior Officer on unpaid leave for more than thirty days in a calendar year shall have his vacation allotment pro-rated for that year at an amount equal to the percentage of time which he has been on leave."

Note: The City withdrew this Vacations proposal through its post-hearing brief.

B. NON-ECONOMIC ISSUES

1. Article 3 Association Privileges

Section 3. The number of negotiating committee members shall be reduced from five (5) to two (2).

Section 5. Add new sentences as follows: Any employee attending such meeting or Legislative session shall provide written proof of attendance upon his/her return to work.

Note: the City informally revised its position with respect to Association Privileges through argument in its post-hearing brief as follows:

Section 3. The number of negotiating committee members shall be reduced from five (5) to three (3).

Section 5. Add new sentence as follows: "Any employee attending such meeting or Legislative session shall provide written proof of attendance upon his/her return to work."

2. Compensatory Time, Article 13:

Section 1(c) shall be modified to delete the phrase "through the use of overtime lists"

Delete Section 1(F)

3. Military Leave, Article 17:

Delete in its entirety and insert:

Section 1. The City hereby agrees to grant military leave for field training to employees in accordance with N.J.S.A. 38A:4-4 or as otherwise provided for under state law.

Section 2. All members of the National Guard or Reserves will be granted time off with full pay to attend required drills. Such time off will be in addition to vacation, sick and administrative leave. [The Director will, however, reschedule an employee's hours and days of work in order to enable the employee to attend drills and still fulfill all employment responsibilities without need for additional time off.]

Section 3. In the event an employee is called to active duty, the employee shall receive the difference in pay between his military pay and his regular pay for up to one hundred eighty (180) days. The City may, at its option, extend the one hundred eighty (180) day limit.

Note: The bracketed language in Sect. 2 of the original proposal does not appear in the informal revisions in the City's brief, nor in the settlements with other public safety units.

4. Discipline and Discharge, Article 35:

Section 1 shall be modified to read: "No Superior Officer will be disciplined or discharged except for just cause. The question of just cause will specifically be subject to the grievance procedure of

this Agreement. This paragraph shall apply to a disciplinary action which is not appealable to the Civil Service Commission Merit System Board.

Section 2 shall be modified to read: "No Superior Officer will be called to a disciplinary meeting without an Association representative present."

Section 5 shall be deleted.

5. Bill of Rights. Article 39:

Delete Section 2(D).

6. Department of Personnel Classification and Promotion, Article 40:

Delete in its entirety.

Note: The City withdrew this proposal through its post-hearing brief.

Positions of the Parties

Position of the PSOA

The arguments presented by the Union contend that its final offer is the more reasonable and should be selected by the Arbitrator forming the basis for the resolution of all the issues in dispute. They also seek to the rejection of the Employer's proposals.

The PSOA addresses the various statutory criteria in the presentation of its position. With respect to the *Public Interest* criterion, the Union emphasizes the size and diversity of the City, pointing out that law enforcement services are provided for far more than the 234,000 residents of the municipality. It describes the City as "one of the major crossroads for all commercial and interstate travel in northern New Jersey." Of course this activity places demands upon law enforcement personnel to provide the services needed for residents, commuters and those who come from elsewhere to work in Jersey City.

The PSOA asserts that the Department is recognized as an "exemplary law enforcement agency", noting that its high level of productivity is established on the record. The Union stresses that the high level of productivity has been accomplished by an ever decreasing supervisory force, reduced from 204 members in 2006 to 177 at the time of the hearing [with significant further reductions since]. It maintains that the Department has a high morale despite the increasing load upon fewer members. The Union believes that its members serve the public well.

The PSOA argues that consideration of the *Comparability* criterion reveals that "the terms and conditions of employment of the Officers in this bargaining unit rank well below average among their peers." The specific comparison is drawn with a select group of law enforcement agencies including: Secaucus; Elizabeth; Kearny; Port Authority; NJ State Police; Newark; Bayonne; North Bergen; Union City; Weehawken; West New York; Passaic; Linden; Garfield; and Englewood. The Union charts base pay rates for each rank, sergeants, lieutenants and captains. It also

argues that other benefits making up the compensation package are greater in other jurisdictions.

The comparison year of 2008 was used by the Union because it was the last in which there is an established pay rate for unit members. The PSOA position is also examined in comparison to the percentage increases in salaries for 2009 through 2012, again in a selected comparison group. The array of increased charted reveal a range of between 3.0% and 4.5% with annual average increases of: 3.86% for 2009; 3.91% for 2010; 3.73% for 2011; and 3.75% for 2012. The Union insists that its proposed increases are needed in order to make up for the below-average wage rates in the current contract.

The PSOA argues that its position stresses consistency and notes, for example, that the proposed change to the optical benefit would provide unit members with the same level of benefit received by other bargaining units in Jersey City. It also points out that the proposed change in Article 14, Section 11,

is designed to "match the result in a recent Grievance Arbitration Award."

The Union takes issue with the Employer's emphasis on private sector wages. It argues that private employment should not be given great weight because there is no comparable employment in the private sector. It stresses that police officers have obligations both on and off duty and must be prepared to act in a law enforcement capacity as circumstances might demand. It also asserts that the nature of the work "is inherently one of hazard and risk." The Union maintains that this element truly separates the law enforcement work performed by unit members from those in the private sector.

The PSOA discusses the 5th, 6th and 9th criteria together, as *Lawful Authority* and *Financial Impact* matters. Its initial point in this area is to assail the City for failing to even introduce a budget more than three months past the lawful deadline, without achieving any time extension from State government. It claims that it is difficult to analyze the financial

impact on the taxpayers when the budget is delayed as it is herein.

Examining the prior budget year, the Union maintains that the City is able to "support its own obligations" and to provide "a reasonable wage increase for this bargaining unit." It asserts that the City is millions of dollars below both the appropriations and levy caps and that neither of these items presents a lawful authority impediment to the PSOA proposals.

The Union identifies the ratable base in the City as representing 53% of all the ratables in Hudson County, citing the 2009 equalization table for the County. Additionally, it claims that the City has maintained a program of attracting new ratables through the use of payments in lieu of taxes. It argues that these payments provide the Employer with revenues that do not have to be shared with the school district or other entities. The PSOA contends that "City taxes actually dropped in 2009." It cites an increase in the budget surplus to \$14 million. Further the Union

insists that the City has shown an ability to regenerate surplus and maintain a stable tax rate.

The PSOA emphasizes that the total cost of the bargaining unit is only 4.2% of the City's budget. It suggests that the impact on the tax payers of the proposals presented are minimal and reasonable. It also stresses the impact of a reduction in bargaining unit size due to the failure to replace retiring members. It claims that the reduction in total base salary as a result of personnel changes over the last contract is in excess of \$1.4 million. It further points out that this is an annual savings, repeated as the workforce census remains lower or reduces even more. The Union calculates this reduction in cost at 7.73% of the unit-wide base salary.

The PSOA argues that the *Continuity and Stability of Employment* criterion embodies such ordinary considerations as "area standards" and "going rate" as important in determining proper terms and conditions of employment. The Union assails the Employer's presentation as "not supported by any proofs with

probative value." It specifically identifies the scheduling issue as "confusing at best." The PSOA claims that the low levels of overtime establish that there is no problem and that no change is warranted with respect to the scheduling proposal of the City.

The PSOA concludes that it has "met its burden of proof with clear and convincing evidence" in support of its proposals. It insists that the Employer has failed to properly provide evidence to support its position. The Union seeks an Award ruling in its favor and providing for the PSOA's final offer as the resolution of all issues in dispute herein.

Position of the City

The Employer contends that its proposals are supported by the evidence and are the more reasonable result when resolving the issues in dispute in this interest arbitration. It maintains that this is true of both the economic and the non-economic items in dispute. The City's position is presented in relation to the revised proposals, set forth as argument points in its post-hearing brief, rather than the initial set

of formal proposals set forth in Exhibit C-1 on December 11, 2009. The City does note that it stipulated at hearing to the acceptability of the PSOA proposal relating to the .45 caliber ammunition.

At the outset, the City "acknowledges that the members of the PSOA provide an essential function that helps to ensure the safety of the people who live and work in Jersey City." It further notes that the job is performed in "a unique and challenging environment for law enforcement." The Employer recognizes the importance of attracting, retaining and promoting well-qualified personnel. It expresses the belief that a "robust police force with high morale" is in the best interest of the public.

The City stresses that the impact of the national financial crisis starting in the fall of 2008 has had a dramatic effect upon the City and also on the negotiations for successor contracts with all its unions. The Employer specifically notes the substantial drop in revenues at the State level causing a ripple effect on all municipalities. It describes

the fiscal impact on the City as severe, with expectation of continued difficulty.

The Employer insists that it found it necessary to seek cost savings through changes in the health insurance and prescription plans to "reduce its budget deficit and achieve some long-term cost containment." It emphasizes that every single union with a contract with the City, except for the PSOA, negotiated terms with more affordable wage increases and cost-saving health insurance provisions in recognition of the difficult financial situation. Of specific note is the agreement to remove the option of Traditional health insurance coverage.

The City notes that it now concurs with the Union that duration of the agreement should be from January 1, 2009 through December 31, 2012. It recognizes that this would make the term of the agreement the same as that negotiated with the three other uniformed services bargaining units.

The Employer asserts that it has established on the record the nature of the City's "precarious fiscal condition." It places significant emphasis on that and on a comparison with what it characterizes as "an 'intern pattern of settlement', particularly among its public safety units."

The City asserts that the evidence of the fiscal constraints relate to several statutory criteria: the *Public Interest*; the *Lawful Authority*; and the *Financial Impact* components. It maintains that there is considerable overlap among these criteria. It also argues that there must be consideration given to the existing tax rates, the income of its residents and the City's ability to maintain and initiate service programs.

Particular attention was drawn to testimony detailing "dwindling reserves, escalating costs and hefty tax increases." The Employer points to an average tax increase of \$897 for FY 2010 and the assertion that the City was only \$776 below the tax levy CAP. Health benefit costs are given particular

attention, claiming that they rose over \$2.4 million in Fiscal Year 2010.

The Employer maintains that its clothing allowance proposal is more reasonable than that of the Union. It stresses the fact that, like the other three public safety units, it would provide a meaningful increase in the existing benefit. However, it insists that the cost would be much more manageable than the impact of rolling a portion of the clothing into base salary, given the pension and other implications of that adjustment.

The City asks the Arbitrator to discount the effect of the reduction in the unit work force. It claims that there is no savings in 2009 retroactive pay and that potential future savings are "highly speculative" since the bargaining unit membership does fluctuate over time.

The Employer draws attention to the recent revisions in the CAP Law, i.e. the reduction of the levy CAP from 4.0% to 2.0%. The City expresses an

anticipation of difficulty meeting that CAP with the implementation of the 2.75% increases that it urges the Arbitrator to award. However it characterizes the Union's 4.5% proposal as "unworkable" under the new CAP structure.

The City stresses the significance of the concept of a "pattern of settlement" in the labor relations process. It argues that two of the statutory criteria directly address the importance of this factor, *Comparability* and the *Continuity and Stability of Employment*. It points out that the PERC has accepted the analysis in its review of arbitration awards that the pattern of settlement is embodied in the statutory criteria. The City further notes that:

The Appellate Division has held that PERC's conclusions regarding pattern of settlement reflect "a rational policy determination and (are) consistent with the general equitable principle that employee who perform similar job duties should receive comparable wages."

citing In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, 34 NJPER 8 (App. Div. 2008).

The Employer insists that the pattern of settlement is particularly important in the matter at hand because: the settlements are recent; the same terms were offered to the PSOA; and the terms are consistent with other, non-uniformed bargaining units. Additionally, it points out that there is some history that all the uniformed bargaining units have reached contract resolution with a consistent set of wage increases among them. The City argues that a result at odds with that pattern of settlement would be an "injustice" to the members of the other six unions who reached a voluntary resolution of their negotiations.

In addition to wages, the City stresses that the health benefit components are consistent among all the other union contracts. It specifies that all agreed to have employees "migrate" from Traditional insurance to a PPO plan. Further, they all agreed to a modification of the prescription insurance plan. The changes also included an increase to \$100 per year, per family member for the optical benefit. The City maintains that the Traditional plan is 50% more expensive than

the Direct Access plan and that moving to the PPO would have saved \$1.6 million in 2009.

The City has drawn two universes for comparison under the *Comparability* criterion, all other Hudson County municipalities and the Big Six Cities (Jersey City, Newark, Paterson, Elizabeth, Camden and Trenton.) It urges a finding that these comparisons are more relevant and meaningful than those drawn by the PSOA. It maintains that, in Hudson County, "PSOA members are compensated well above average." It suggests that the PSOA figures are even better when compared to those employees in the Big Six Cities performing the same functions.

With respect to comparisons with the private sector, generally, the Employer cites the September 2009 NJ department of Labor report that average private sector wages in New Jersey rose by 2.5% from 2007 to 2008. It contends that updated data will reveal a much lower trend. The City suggests that the *Cost of Living* criterion supports its position, with the Consumer Price Index for the New York - Northern New Jersey

region rising only 1.5% during the 12-month period through June 2010.

With respect to the non-economic issues, the City asserts that the PSOA has not presented sufficient evidence to meet its burden of proof for the one Union proposal to modify Article 14, Section 11. On the other hand, the City argues that the a comparison with Locals 1064 and 1066 (citing "pattern of settlement") supports its non-economic proposals to reduce the number of PSOA bargaining team members from five to three. Also, it urges that the pattern of settlement supports the proposed changes in Article 17, Military Leave. It further suggests that there are reasonable operational bases for the changes sought in Article 13, Compensatory Time; Article 35, Discharge and Discipline; Article 39, Bill of Rights.

The City concludes that the final offer of the City, as modified in its post-hearing brief, is more reasonable under the statute. It seeks an Award ordering implementation of that position.

Discussion and Analysis

The parties have both made a considerable effort to negotiate a settlement of the issues in dispute. The timing of the negotiations and several external factors seem to have affected the process, having a negative impact on the ability to find consensus. In the end, it is somewhat confounding that they have not been able to reach a voluntary resolution of the issues in dispute. The voluntary settlement of contract negotiations is always the preferred method of reaching resolution. Consistent with the purpose and intent of the interest arbitration statute, the Arbitrator worked with the parties to assist them in reaching a voluntary resolution.

The Arbitrator explained to the parties that they are well-served by extending their efforts toward a voluntary resolution because that process resolves disputes more swiftly, less expensively and without creating any perception of winners and losers. Further, it is through a voluntary resolution that the

parties to an interest arbitration can maintain control over the terms and conditions of employment without the need to have them fixed by a neutral, third party. For reasons that are not entirely apparent to the Arbitrator, the parties were unable to achieve a resolution of their differences through direct or mediated negotiations. The impasse left no option under the statute than to have a final and binding determination made herein.

The issues in dispute are substantial, important items relating to the very core of the terms and conditions of employment. The economic issues in dispute include: Duration; Wages; Health Insurance; Optical Benefit; Clothing Allowance (Article 15); and Association Privileges, negotiation team, (Article 3). The non-economic issues remaining in dispute include: Article 14, Section 11, Compensatory Time; Military Leave (Article 17); Discharge and Discipline (Article 35); and Bill of Rights (Article 39).

The **Interest and Welfare of the Public** is always a relevant criterion in resolving an interest arbitration dispute. There are numerous elements to the public interest factor but the Arbitrator believes that this initial criterion is always worthy of substantial weight in determining the most reasonable resolution of the parties' dispute. It is significant to recognize that the services rendered by the employees at issue are a particularly important aspect of providing for the public safety. The City's ability to attract, retain and promote qualified Police Superior Officers has an impact on the quality of life of its residents and the enormous number of other citizens that frequent Jersey City, measured in terms of safety and the effectiveness of the Police Department.

Fiscal responsibility is another component of the public interest that is directly relevant to the considerations in this interest arbitration. The public interest elements of the CAP Law must also be examined. Additionally, the morale of employees and the impact of this contract in the context of the overall labor relations process in the City of Jersey

City are especially important considerations with respect to the public interest.

Jersey City, with a population of about 234,000 residents is the largest community in Hudson County and one of the six large cities in New Jersey frequently referred to as the "Big Six." The record reveals that the municipality is quite diverse both racially and ethnically. Further, the City is a major point in the commuter lines between New Jersey and New York City as it has PATH stations and the Holland Tunnel. Further, the activity levels in the City grow with the daily influx of workers to the more than 146 employers with an excess of 100 employees each. The City also has a number of attractions for visitors including the Liberty Science Center and the ferry embarkment point for Ellis and Liberty Islands. The City has significant marine activity as well. Jersey City is the Hudson County Seat, home to the courts and administrative offices for the County.

The Jersey City Police Department protects and serves the public in a very complex context for police

work. There is quite a high level of activity for the members of the department, involving many varied settings, some requiring unique training and skills. The jobs involve activity not only of a local nature but also that related to extensive through traffic, both vehicular and by public transportation. There are multiple rail lines, ferry terminals and port facilities as well as office buildings, colleges and hospitals. The Department interacts with numerous other agencies, especially with the Port Authority Police due to the number of Port Authority facilities and operations in Jersey City. Additional agencies of interaction include the State Police, the Waterfront Commission, neighboring communities' police departments and other task force operations. The police force is professional and efficient and, as acknowledged by the Employer, provides essential services helping to ensure the safety of the those living in, traveling through, and working in the community.

It is in the public interest for the City to provide sufficient wages and benefits as to maintain a well-trained and effective supervisory force in its

Police Department. This includes the ability to attract, promote and retain qualified and motivated police officers at all ranks. The supervisory ranks provide direction to the staff but also represent the career path for patrol officers and new recruits in the long term interest of maintaining a highly effective department. Having such a structure reduces turnover and the training costs that are brought about from high turnover. There is nothing in the record to suggest that the Jersey City Police Department has had difficulty with turnover, therefore the focus is to retain that stability and efficiency.

The impact of this arbitration upon the overall structure of collective bargaining within City employment is clearly an element of the public interest. Patterns of internal consistency that maintain and adjust reasonable levels of compensation and other terms and conditions of employment serve to provide a solid foundation for labor relations in a large municipal setting. The consistency with which the process establishes and reinforces the relative relationships between units and the overall package of

terms and conditions of employment serves the public well. It allows for predictability in the negotiation of contracts across numerous bargaining units and different periods of duration. Predictability in bargaining aids the budgetary process as it provides for longer range understanding of probable costs. The consideration of the overall bargaining structure and its consistency must be given substantial weight in determining the public interest.

This concept of internal consistency is especially significant among uniformed services bargaining units. Such patterns are common and historic; they represent expected relative bases of compensation and frequently reflect established and meaningful career paths through promotion. The career path expectations have developed over time and may reflect accepted balance between compensation and responsibilities. Where patterns exist, they are to be given substantial consideration as providing a framework that is rational and purposeful. Their maintenance is almost always in the public interest in preserving the existing balance and framework in public safety services. The settlement

pattern among the other uniformed safety service bargaining units has been given meaningful weight herein, under the public interest criterion.

As noted earlier, one element of the public interest criterion is that the resolution of this dispute reflect a significant degree of fiscal responsibility. The evidence establishes that a substantial area of financial concern relates to the dramatic increase in health benefit costs. The containment of these costs is a reasonable goal in the public interest, especially if this can be accomplished with the retention of a very good health benefit plan.

The package awarded herein weighs upon a recognition of the need for the fiscally responsible steps toward health care benefit cost containment. Those steps appear particularly reasonable in light of the voluntary agreement to implement those changes in contracts between the City and three other uniformed safety service bargaining units. Specifically, those agreements were reached between the City and: the POBA, representing the Police Officers rank and file unit;

I.A.F.F., Local 1066, representing the Firefighters rank and file; and I.A.F.F., Local 1064, representing the Fire Superior Officers.

The voluntary nature of the agreement to the containment of health care costs evidences a certain measure of reason on a stand-alone basis. The acceptability of the terms to three established uniformed services groups reflects a certain stamp of approval that the changes are reasonable. The changes embody the elimination of the traditional plan coverage, replaced by an established and acceptable PPO. The changes also reflect moderate changes in the prescription benefit plan. These are changes that are commonly found in the mainstream of negotiations in public sector negotiations, including police contracts. The modifications agreed to by the other three public safety units in Jersey City are found to be quite reasonable under the fiscal responsibility element of the public interest criterion as they will provide an substantial measure of cost containment without unduly affecting the level of benefits.

There is an enormously ironic component to the health care issues at hand. In 2008 the City, on advice of its health care consultants, moved out of the State Health Benefits Plan. Had it remained in the State Health Benefits Plan (as urged by the unions), traditional coverage would have ceased as a function of the Plan's own change. The City cites estimates that, in 2009, it would have saved in excess of \$1.6 million had all the employees been in Direct Access coverage rather than Traditional Plan coverage. That savings was lost because of the switch out of the State Health Benefits Plan.

The package awarded herein reflects the Employer's conclusion that it will not adversely affect the municipality's ability to continue to provide services to the community. In reaching a voluntary resolution with other bargaining units the City has evidenced its belief that the terms are reasonable and within its capacity to provide necessary services to the community. Other evidence further supports this conclusion and the Arbitrator confidently finds that the terms and conditions of employment set forth herein

will serve the public interest and enable the Employer to provide necessary services. Indeed, the package will provide some very real cost savings and it will be within the statutory (CAP) limitations imposed upon the Employer [see Lawful Authority Criterion discussion for detailed analysis of this point].

The Arbitrator finds that the salary increases awarded herein, combined with the reasonable health insurance cost containment measures, will leave the unit with a strong and competitive set of terms and conditions of employment. The Employer will continue to have the ability to hire and retain qualified and skilled law enforcement officers from the rank and file level through the promotional ranks. The overall package should support continued high morale and maintain established career paths that should motivate police personnel to seek to achieve at the highest levels.

The Arbitrator notes that supplemental evidence of increased retirement rates will provide significant cost savings and will also enable the Department to

advance qualified candidates through the ranks. This serves to enhance the productivity of the staff and provide incentive to perform. Further, the promotional opportunities serve to drive high levels of morale. The public interest is clearly served through the implementation of the contract resolution awarded herein.

The evidence presented includes a broad spectrum of data relating to the **Comparability** criterion. This evidence relates to comparisons with the private sector, in general [note that there are no employees who perform the same or similar functions in private employment]; with the public sector, in general; with employees performing the same or similar functions with comparable employers; and with other employees of the City of Jersey City.

The most commonly used tool for comparing private sector wages in New Jersey for the purpose of interest arbitration is New Jersey Average Annual Wages survey, compiled by the Department of Labor and Workforce

Development and published by the Public Employment Relation Commission for use in interest arbitration proceedings. Indeed this survey is specifically referenced in the statute at *N.J.S.A. 34:13A-16.6*.

The survey data for the last two years available, 2008 and 2009 reveals a downturn in private sector wages in the State. The total private sector change from 2007 to 2008 was calculated at +2.5% compared with the 2008 to 2009 total change for private sector wages calculated at a decrease of 0.7%. The data broken out for Hudson County is somewhat more pointed. The change in private sector wages from 2007 to 2008 in Hudson County produced a rather robust 5.0% increase in private sector wages while the same calculation for the period of 2008 to 2009 established a 1.8% decrease in private sector wages. While the figures themselves may be open to some questions when it comes to variations and direct application to the issues at hand, the downward trend is clear and unmistakable. This trend is worthy of consideration in the formulation of the overall package herein but it must be viewed in the

context of a general factor, rather than as a specific factor.

The New Jersey Average Annual Wages survey, compiled by the Department of Labor and Workforce Development and published by the Public Employment Relation Commission also provides data as to wage increases in the public sector, generally. The September 2010 report provides information from 2008 and 2009 revealing that government wage increases from 2008 to 2009 averaged 2.2% overall. That same 2.2% figure was also applicable to each category of the public sector, Federal, State and Local government in New Jersey. By contrast, the 2009 report showed that the wage increase in government work from 2007 to 2008 averaged 3.4%, overall and also 3.4% specifically for local government employees. To complete a trend analysis, government employees, generally, experienced an average increase in wages of 4.1% from 2006 to 2007, according to the 2008 report. There is a pronounced and measurable downward trend among wage increases in the public sector, generally. This deserves some measured weight in considering the entire record, but

once again, its general context must be acknowledged when attributing weight to this sub-factor.

The most meaningful comparisons under the second statutory criteria are those among employees performing the same or similar functions for the same or comparable employers. This is of greatest import because it reflects the labor marketplace in which the Employer operates. It is the most practical measure of the value of the job. The record has very specific and detailed documentation of such comparisons. Both parties have provided extensive evidence relating to this component of the second statutory criterion. Each has presented comparison groups for applying this criterion.

The various groups have been considered; examine the following charts which reflect a number of factors. The first reveals the *2008 base pay comparison* (last year with data for all) in the Big Six Cities, which the Arbitrator credits as a most significant comparison group:

Municipality	Sergeant	Lieutenant	Captain
Elizabeth	99,589	109,914	121,826
Jersey City	98,249	108,468	118,440
Paterson	95,383	105,525	118,006
Newark	91,612	101,278	112,428
Trenton	87,085	100,151	115,171
Camden	86,588	94,176	104,557

A comparison group drawn by the PSOA is broader and has a variety of jurisdictions, most geographically proximate, and reveals a similar comparison of 2008 base wage rates:

<u>Municipality</u>	<u>Sergeant</u>	<u>Lieutenant</u>	<u>Captain</u>
Englewood	112,408	120,703	129,383
Secaucus	106,897	117,494	128,080
Elizabeth	99,589	109,914	121,826
Kearny	95,948	107,942	121,435
Port Authority	119,325	142,712	
NJ State Police	115,264	127,155	
Newark	91,612	101,277	112,428
Bayonne	95,870	110,251	126,788
North Bergen	85,070	98,680	114,470
Union City	95,784	110,151	126,450
Weehawken	91,495	105,222	121,002
West New York	78,197	91,492	107,048
Passaic	96,817	106,111	115,458
Linden	97,018	108,413	
Garfield	102,315	106,148	114,066

Note that these represent the maximum rate in each rank achieved during calendar year 2008, not necessarily as of January 1, 2008.

The City presents a County-wide comparison of compensation among police superior officers in Hudson County jurisdictions. The data for *2008 base salary*, similar to figures used above, can be charted as follows:

	HUDSON	COUNTY	
Municipality	Sergeant	Lieutenant	Captain
Union City	95,784	110,151	126,450
Secaucus	106,897	117,494	128,080
Jersey City	98,249	108,468	118,440
Kearny	95,948	107,942	121,435
Bayonne	95,870	110,251	126,788
Hoboken	93,429	106,315	128,867
Weehawken	91,495	105,222	121,002
Harrison	92,965	97,792	106,373
North Bergen	85,070	98,680	114,470
Guttenberg	85,435	98,247	112,988
West New York	78,197	91,492	107,048
East Newark	75,033	79,133	87,186
Hudson County	78,054	84,112	88,511

The base wage rates in Jersey City are highly competitive among all comparison groups. Further, bargaining unit employees enjoy highly competitive additional compensation including longevity, uniform allowance and holiday pay. These are compensation factors commonly and consistently provided throughout the comparison group of employees performing the same or similar functions in comparable jurisdictions. The base salary charts are just one element of the comparison. The Arbitrator has also considered the highly competitive nature of the other compensation factors set forth in the Jersey City - PSOA contract. A broader consideration of the other compensation components will be addressed under the *Overall Compensation* criterion.

There can be no doubt that the economic package awarded herein will maintain a highly competitive compensation level for bargaining unit members among outside comparison groups. The City will be able to maintain its ability to attract, retain and promote highly qualified applicants to the Police Department. The compensation rates are clearly sufficient to

support a high level of morale among bargaining unit employees.

The PSOA has presented data as to salary rate increases among police superior officers in other jurisdictions as a comparison for consideration under the second statutory criterion. This data compares the movement of salary rates rather than the raw level of pay. It is traditionally a significant consideration in all contract negotiations, whether in the public or private sectors. Since in place wage rates frequently already reflect various factors in the marketplace, they often move from year to year in parallel, normally on a percentage basis, to maintain the relative standing among comparable units. Sometimes intervening factors affect this relationship. Consider the following:

Average Base Rate Increases Based on PSOA Exhibits

Municipality	2009	2010	2011	2012
Newark	4			
Elizabeth	3			
Hudson Co.	4	4		

No Bergen	4	4	4	
Secaucus	3.8	3.8	3.5	
Trenton	3.75	3.75	3.5	3.5
Union City	4	4	4	4
Weehawken	4	4		
West NY	4			
Harrison	3.5	3.25	3.25	
East Newark	4			
NJ State Pol	4			
Passaic	4	4	4	
Garfield	3.85	4.5	3.85	
Englewood	4	3.8		

The above chart presents a fairly wide-reaching comparison group with varying attributable qualities for direct comparison to the bargaining unit at hand. However, the big picture reflects a common grouping of salary rate increases for the time period during which those contracts were negotiated. Normally this comparison would have more significant weight, reflecting a clear trend, on the case at hand. However, there has been a substantial shift in experiences tied to the timing of the negotiations of the contract. This obviously represents some very dramatic influences from economic factors outweighing the standard outside comparability factors. The timing

of comparison contracts has become a major indicator of the substance of the new agreements. The timing of the settlements reached with the other three uniformed services bargaining units in Jersey City are particularly reflective of that fact.

The most compelling comparison group in the case at hand is certainly the comparison with the three other uniformed public safety bargaining units in Jersey City. These employees perform the same or relatively similar public safety functions in the same jurisdiction and under the same economic conditions as the PSOA bargaining unit. These contracts were reached voluntarily and they are the most recent evidence of collective bargaining on the record. Indeed, the Arbitrator granted a motion to reopen the record for their inclusion because, although they were reached after the close of the evidentiary phase of the hearing, they were of marked relevance to the issues herein. These units operate in the same labor marketplace as the PSOA and there are traditional relationships among these contracts that warrant consideration. In all, as urged by the City, these

comparisons are worthy of very substantial weight in applying the *Comparability* criterion.

The record reveals some history of the timing of the internal comparison evidence that is worth noting. The City reached a Memorandum of agreement with the POBA (representing rank and file Police Officers), dated January 27, 2010, which included many of the provisions of its position expressed in its post-hearing brief herein. Similarly, a Memorandum of Agreement was reached with IAFF Local 1066 (representing rank and file Firefighters), dated March 1, 2010. Those two memoranda were amended on April 28, 2010, where the changes focused on reduced salary increase provisions from the originals. The record also includes a Memorandum of Agreement between the City and IAFF Local 1064 (representing Fire Superior Officers), dated April 30, 2010. That memorandum is consistent with the other two bargaining unit settlements reached on April 28, 2010.

The key features of the POBA Agreement, covering rank and file Police Officers, addresses many of the

issues in dispute in the matter at hand and can be summarized as follows:

Duration: January 1, 2009 through December 31, 2012.

Salary: Effective 1/1/09 - 2.75%
Effective 1/1/10 - 2.75%
Effective 1/1/09 - 2.75%
Effective 1/1/09 - 2.75%

Health: Effective 7/1/10, the Traditional Plan coverage is to be deleted.

Prescription: Effective 7/1/10, a new co-pay structure is to be implemented

Optical: Effective 7/1/10, the benefit increases to \$100 [from \$75].

Clothing Allowance:
Effective 1/1/10, increase to \$1300
Effective 1/1/12, increase to \$1350

These items are generally identical with those in the settlements reached with the Firefighters and Fire Superior Officers. There are additional items, some also presented in this dispute. Through its post-hearing brief, the City has attempted to present a position fully consistent with the "pattern" represented by its settlements with the other three uniformed public safety bargaining units.

The City's position is quite compelling with respect to its reliance on the comparison with the three other uniformed services. The logic behind placing great weight on this comparison is simple and clearly reasonable. ***The significance of these internal comparisons is inescapable.***

There are two factors that require some particular attention and must be reconciled with the concept of the "pattern" argument. All three of the April agreements include the following clause:

Both parties understand that this memorandum shall be null and void unless ratified by both sides on or before May 20, 2010.

The reason for this provision is absolutely clear, the impact of *Chapter 2, P.L. 2010*. That new statute requires employees to deduct 1.5% of their base salary as a contribution toward health insurance premiums. It became effective as of May 21, 2010. However, for employees covered by collective bargaining agreements in effect on that date, it does not become effective until the expiration of the existing contract. In

point of fact, the 1.5% contribution does not become effective for members of the three internal comparison bargaining units until January 1, 2013. For reasons that are not entirely apparent to the Arbitrator, the parties to this dispute were unable to resolve their impasse prior to the effective date in *Chapter 2, P.L. 2010*. Therefore, unit employees were subject to the 1.5% statutory contribution, effective in May of 2010. This creates a distinct difference between the Police Superior Officers and the other three public safety groups.

There is a second difference for the PSOA unit that must be acknowledged in comparison with the experience between the City and the other three public safety bargaining units. The City was able to negotiate settlements in which it achieved a substantial cost savings related to the end of traditional plan health insurance coverage, effective July 1, 2010. That negotiated savings has not been reached with the PSOA unit, preventing matched cost containment over the time frame since July 1, 2010.

This is a meaningful component of the City's position and of the settlements with the other three unions.

Thus, there are two elements of the claimed "pattern" that, like "Humpty Dumpty" cannot be put back together again. It is impossible to impose the health plan change retroactively and the statutory premium contribution factor is imposed by external law. They can however be partially balanced and perhaps reasonably reconciled through that balancing. The record clearly does not support the concept that it would be warranted to make the PSOA fully whole for the 1.5% contribution factor. One can at least surmise that the PSOA had, at the very least, some partial control over the timing of the impact of the new premium contribution statute. Further, as noted above, it is not realistic to consider any retroactive adjustment of health plan coverage.

The difference between these two variations from the "pattern" is that the 1.5% contribution will continue and will then be matched by the other units as of January 1, 2013, when the four units will again be

on equal footing as far as health care is concerned. The change with respect to the deletion of tradition coverage can be accomplished much sooner; and, under the statutory criteria and the evidence herein, it should. Therefore the award herein shall grant the health insurance changes sought by the City, to be consistent with the other three public safety units, effective January 1, 2011.

The challenge the is to address the imbalance created by the two variations from the pattern, one impacting as a deduction of salary on the employees and the other as a lost opportunity for savings for the Employer. The Arbitrator rejects the premise that the bargaining unit members be made whole for timing of the statutory contribution. Their opportunity was missed for reasons not in evidence herein. For calendar year 2010, the Arbitrator finds that there is balance, not mathematical but conceptual, in that the Employer gained the value of the contribution to offset the loss of cost containment. The PSOA members gained continued coverage in the Traditional Plan as they began contributions to health premiums. In the final two

years of the contract, the employee contributions continue and the City properly gains the cost containment benefits it negotiated with the other public safety unions. The Arbitrator finds that no adjustment to salary is warranted; base salary should remain parallel to the other uniformed services. However, in order to partially balance these, outside the "pattern", elements the Arbitrator finds that payment of a one-time amount, not to be added to base pay, is appropriate as a balancing reconciliation to the package. That one-time Reconciliation Payment shall be made on January 1, 2011 in the amount of \$750.00 per unit member. The timing of the payment is reflective of the City gaining the cost containment component effectively lost during calendar year 2010. The cost of this one-time payment is below the revenue generated by the statutory contribution imposed by *Chapter 2, P.L. 2010*.

The record includes documentation of the City's agreements with other, non-uniformed unions for the time frame at issue in the dispute at hand. These settlements are consistent with the City's informal

position herein and although they are worthy of less weight than the uniformed comparisons, they do provide added basis for the award set forth herein. The health and prescription insurance changes are of particular note with respect to these comparisons.

The **Overall Compensation** received by bargaining unit members is highly competitive and provides a very reasonable package of wages and benefits. The salary rates considered in the *Comparability* discussion were shown to be highly competitive without being out of line for the expectations among the comparison group. There certainly is no need for added adjustments, especially given the timing of these negotiations.

The current vacation benefits are quite generous for those hired prior to February 17, 2003 and remain very competitive for employees hired after that date. The Health Insurance package has been exceptionally strong and will remain an excellent plan even after the adjustments ordered herein. Those adjustments provide the Employer with some very significant cost

containment but the benefits levels will be fully consistent with other employees performing the same or similar functions. Changes in the Prescription Plan are also clearly in keeping with a highly competitive level of benefit and serve to maintain an excellent package. The optical coverage improvement is a moderate increase to a reasonable benefit level.

The Longevity benefit schedule is excellent and, as it reflects a percentage of salary, is enhanced as it is calculated based on the highly competitive salary rates. The Holiday provision is also highly competitive and the clothing allowance, as adjusted in the Award herein reflects an appropriate added measure of compensation.

The overall compensation levels of PSOA members are highly competitive and serve the needs of the Employer and the employees alike. The adjustments made herein are moderate and supported by the evidence. The result of the resolution of this impasse, adjusting various elements of the compensation package, including meaningful cost containment in health insurance, will

leave the remaining compensation structure in a most reasonable position.

The **Stipulations of the Parties** criterion affects only one of the issues of the original impasse. The parties have stipulated to the PSOA proposal to include the .45 caliber option under Article 37 of the contract. It shall be awarded herein in accordance with that stipulation.

The **Lawful Authority** criterion and the **Statutory Restrictions** criterion are centrally focused on the impact of the CAP Laws, which impose limits on a municipality with respect to how much it can increase appropriations from one year to the next and additionally with respect to how much it can increase the tax levy from year to year. The two criteria are discussed together in this Analysis, as they deal with nearly identical issues.

The City's financial expert witness, Dieter Lerch, presented evidence of some concern with respect to the

City's ability to deal with the tax levy CAP limitations in the future. Of particular concern was his testimony relating to the reliance on surplus as a revenue source which poses long-term issues if the municipality is unable to regenerate surplus at past rates. Increases in certain costs, for example, pension and debt service costs, at very high rates threatens to force additional pressures on the budget requiring increased revenues. The impact of tax appeals is another area for concern, however, the City has experienced significant ratable increases, offsetting those concerns.

On cross-examination, the City's expert acknowledged that, in Fiscal Year 2009, the City was \$26 million under the appropriation CAP restriction. With respect to the tax levy CAP he testified that the Employer was \$11.9 million under the limits. Finally, this witness admitted that the reduced personnel for this particular unit, down from 193 members in 2007 to 177 at the time of the hearing, reduced cost pressures. This reduced staffing serves to take pressure off the CAP implications, as they apply to this bargaining

unit. Further, the voluntary settlements between the City and the other unions provide evidence of the City's judgment that those salary increases can be accommodated within the CAP restrictions. Those settlements provide meaningful cost containment in health and prescription benefit plans, off-setting otherwise substantial rising costs in those areas.

The Arbitrator does take note that the CAP Law has been revised with respect to the last two years of the contract duration. The reduced staffing in the unit at hand will serve to provide substantial basis for maintaining budget line items for the unit well within the CAP limitations under either the appropriations limit or in accordance with the tax levy restrictions. The *Lawful Authority and Statutory Restrictions* criteria have been given careful consideration and due weight has been applied accordingly in formulating the contract resolution awarded herein.

The parties have presented a remarkable volume of evidence, both documentary and testimonial, as to the

Financial Impact criterion. The facts relate to items on both the revenue and expenditure side of the budget. Further, tax issues, including trends relating to net valuations, tax collection rates, tax rates and the total tax levy are all relevant. The Arbitrator has examined the experience of these fiscal factors over time to better understand trends and the long-term implications upon the governing body, the residents and the taxpayers.

The initial budgetary data presented by the Employer relates to the recent history of fund balances, their use as a revenue source for the following budget and the subsequent fund balance after the following year. Consider the following data presented by the City:

ANALYSIS OF UNAPPROPRIATED SURPLUS

SFY ending June 30th	Fund Balance	Amount Budgeted Subsequent Year	Remaining Fund Balance
2,005	\$ 8,629,951	\$ (7,050,825)	\$ 1,579,126
2,006	19,385,826	(19,355,903)	29,923
2,007	12,537,196	(10,320,500)	2,216,696

2,008	14,794,688	(14,019,500)	775,188
2,009	12,096,345	(12,000,000)*	96,345

* SFY Budget not yet approved at time of hearing

At first look, the above chart raises some concern over the reliance on surplus as a revenue source for the following year's budget. Further, an initial view might suggest that the remaining fund balance after appropriating surplus as revenue has dwindled at times to an unhealthy level, suggesting some issue as to its viability to address emergencies or as a future source of revenue. However, the City has proven that, as a result of operations, it has been able to regenerate its surplus annually to a comfortable level. Indeed, the chart strongly indicates the likelihood of some structural, repeating revenue sources which are not anticipated in the budget. The fund balance has been remarkably consistent; its use as revenue has been at varying levels over the years, at times virtually eliminating the balance on paper. Evidence of the regeneration of the City's fund balance establishes a clear trend in the record presented and this data addresses the concerns raised on initial examination.

The next area addressed is the that of the history of the total tax levies over a series of years, from 2006 through 2009 (unaudited). The City points out that the total levy, including municipal, school and county taxes, has increased by more than 20% in that short period of time. It is interesting to note that that trend has come to a moderate curve with the municipal levy virtually flat from 2008 to 2009 and the total levy rising by only about 2% over that same time frame.

The City's new ratables continue to grow at a rate of about 4.5% providing some positive news on the revenue side. Further, the City's tax collection rate is high and consistent. However, the City has experienced lost anticipated revenues in the form of major tax appeals and, especially, as expected reductions in State aid. The City also notes that its unemployment rate has seen a dramatic increase making the tax burden all the more difficult.

On the expenditure side of the budget, the Employer's expert witness outlined the pressures created by dramatic rises in health benefit costs and in debt service costs. Specifically, he documented health benefit cost increases, City-wide, budgeted as \$10,337,199 for Fiscal Year 2009 and estimated at \$8,011,400 for FY 2010. Pension costs, which were reduced in FY 2009 through a deferral, are projected to rise dramatically (largely to off-set the deferral) in FY 2010. The witness documented an expectation that debt service costs for FY 2010 would rise for the City by nearly \$5.6 million. However, the debt service costs for the Municipal Utilities Authority decreased a little and the debt service costs for the school district have been flat for a 5 year period. All of these rising costs must be given consideration and due weight when viewing the financial impact of the resolution to the impasse at hand, especially with respect to the City's health care cost containment position.

The City urges that the Arbitrator accept its informal position and award a impasse resolution

parallel to the settlements with the other three public safety unions. This is indicative that the City has calculated that such a result would have a reasonable impact on the governing body, the residents and the taxpayers. The Arbitrator concludes that the economic package awarded herein is reasonable in its impact on the Employer and its taxpayers. It has been configured in careful consideration of the evidence presented relating to the fiscal issues faced by the City. Of particular note is the fact that the package addresses the steady, substantial cost increases in health insurance with very reasonable cost containment producing significant savings while maintaining very good benefits. The Arbitrator finds that the terms awarded herein shall be within the expectations of the current budget and will not cause any unreasonable impact on taxpayers or the tax rate. Further, there is no evidence to suggest that it will adversely affect any City program or services. The changes in personnel and staffing documented in this record provide additional evidence that the costs of the economic package will be moderate, at most.

The **Cost of Living** criterion requires an examination of the Consumer Price Index ("CPI") as the standard measure of that component. That data is compiled by the U.S. Department of Labor, Bureau of Labor Statistics, and the Arbitrator takes arbitrable notice of the figures published monthly by that governmental agency. This data is universally accepted as the best measure available of inflation and it is available in a regional configuration.

The averages for all urban consumers in the New York - Northern New Jersey region for the 12-month period ending June 30, 2010, reveal an increase of approximately 1.5% in the items measured. The regional figures were consistent, for the Northeast region the average increased by 1.6% from July 2009 to July 2010. The national data was a little lower, revealing average price increases of 1.2% for all urban consumers.

The package awarded herein, including the informally revised wage increases proposed by the City are fully supported by the Cost of Living criterion.

The CPI evidence provides additional weight in the selection of the economic package awarded herein.

The eighth statutory criterion, that commonly referred to as the **Continuity and Stability of Employment** criterion, has particular importance in the case at hand. It is worth revisiting the full wording of that criterion to emphasize its various components:

(8) The continuity and stability of employment including seniority rights and other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determinations of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

The statute identifies "factors which are ordinarily or traditionally considered" in making determinations involving the terms and conditions of employment. The "pattern of settlement" factor urged by the City to be a decisive element, is certainly a component of ordinary and traditional factors used to determine wages, benefits and working conditions. In addition to being a traditional factor, the concept of pattern of settlement also serves to promote the continuity and

stability of employment. The predictability feature, discussed under the *Public Interest* criterion, certainly acts to preserve the continuity and stability of employment for both employers and employees.

The fact there is a certain variation of impact involving the PSOA following the application of the "pattern", as discussed under the *Comparability* criterion, is significant under the eighth statutory criterion. Although matters of timing were the cause of the variations, some partial reconciliation is clearly warranted, as the ordinary and traditional factor might expect identical impact on all units, for at least the core elements of the pattern.

Of primary recognition is the core elements of the pattern need to remain fully intact. The salary and benefit components require identical treatment, it is only the impact that revealed variations in effect, not the core substance. To reiterate, the two variations are that, due to the timing, the Employer did not gain the full savings of the elimination of the Traditional Plan coverage of the medical insurance, nor of certain

elements of the changes in the Prescription Plan co-payments. Further, due to the timing and the operation of outside law, the PSOA members have begun contributing 1.5% of base salary and will continue to do so. Other public safety employees covered by contract with the City will not commence those contribution until January of 2013.

The record supports, especially in consideration of the ordinary and traditional factor component of the *Continuity and Stability of Employment* criterion, a reconciliation payment to partially off-set the variations in impact of the pattern on this unit. That concept is designed to reflect what is reasonable in consideration of the ordinary factor that patterns traditionally impact in virtually the same manner (at least for core items) on all units subject to the pattern. Note that if the components are not virtually the same, it is not a pattern. Here the components are identical, only the impact, as affected by timing, causes the variation. The Arbitrator is not prepared, under the evidence presented on this record, to determine the cause of the timing elements affecting

the impact variations. There is no evidence on the record to form the basis for such a determination. The fact of the impact variations is undeniable and has implications throughout the duration of the contract. The Arbitrator finds that a one-time reconciliation payment of \$750.00 per unit member on January 1, 2010, not to be added to base pay, is the appropriate partial off-set for the variations of impact. This reconciliation payment is warranted as a matter of balancing equities under the eighth criterion. It recognizes both the lost savings on the health benefit changes and the additional contribution to premiums by PSOA unit members as a result of the operation of external law.

The Arbitrator is called upon to calculate the net annual economic changes [N.J.S.A. 34:13A-16(g)(2)] in order to craft the most reasonable resolution of the impasse under the statutory criteria. There are several methods available to measure net annual economic change and the Arbitrator has chosen to use both a payroll dollar impact and a percentage impact analysis.

The agreed upon scattergram for the unit at the outset of these proceedings includes a base payroll total for the unit of \$18,335,033 for 177 employees. Those employees can be broken down by rank as follows: 116 Sergeants; 34 Lieutenants; 20 Captains; and 7 Inspectors. Note that there have been changes in personnel since that scattergram that will be given consideration further on, as they have reduced base costs.

The 2009 base salary cost impact of the package is 2.75% of the 2008 base salary, or \$504,213. That represents the net annual economic change for the initial year of the contract.

The new 2009 unit-wide salary base can be calculated as \$18,839,246 (using the static scattergram of unit members) on which the 2010 salary rates are to be computed. The increase of 2.75% on January 1, 2010 generates \$518,079 in new costs as a direct result of the contractual increase.

As pointed out earlier in this analysis, the timing of this process has caused the PSOA unit members to begin contributions to health insurance premiums at an annual rate of 1.5% of salary at approximately the mid-year point of 2010. It has also delayed the cost containment that the City derived in its settlements with three other public safety units from July 2010 until January of 2011.

The impact of the new 1.5% of base salary [note: the contribution is calculated on the 2010 base unit salary] contribution to health insurance premiums has presented the City with half of that percentage as a new savings in 2010 and the other half as new savings in 2011 [this due to the mid-year implementation date of the statute. Specifically, the City received, from PSOA unit members, about \$145,180 as a result of the contributions.

The net annual cost of the package herein for the year 2010 can be calculated as \$518,079 minus \$145,180 [salary increase minus new contribution to premiums (annualized)] or \$372,899 or 1.98% of the 2009 base.

To this must be added the \$88.00 increase to the clothing allowance on January 1, 2010, costing \$15,576 for 177 employees. The total net annual cost for 2010 of new contract components directly attributable to this interest arbitration is \$388,475, computing to a percentage increase of 2.06% on the 2009 unit-wide base salary.

The 2011 salary increase of 2.75% is computed on the new, 2010 total unit base salary of \$19,375,325 creating new direct salary costs of \$532,326. Additionally, the package awarded herein contains a one-time reconciliation payment [not added to base salary] to balance the equities, that will cost \$132,750 in 2011 only. This cost figure is to be reduced by the remainder [roll over] impact of \$145,180 from the new 2010 mid-year statutory deduction which was calculated at only 0.75% for 2010. The 2011 package also reflects the substantial savings generated by the elimination of the Traditional health plan as of January 1, 2011. The best data available on the record to compute the value of that change is found in Exhibit C-11, using older information. It can only be reasoned

that the savings will be at least as great, probably greater than those extrapolated from Exhibit C-11.

Exhibit C-11 presents comparisons of the Traditional plan under the State Health Benefits Plan and under Blue Cross/Blue Shield with the City's proposed Direct Access plan without the Traditional component. It presents the cost comparisons for the combination of the POBA [Police rank and file] and the PSOA, combined (1,404 employees). The agreed scattergram of the PSOA unit has 177 employees or 12.6% of the total group. The expert witnesses responsible for the exhibit testified that the of the Direct Access plan over the Traditional Plan in place would be \$6,916,542 for the entire group. The use of 12.6% as the basis to attribute the PSOA unit's portion of that savings is reasonable; it computes to \$871,484. One must be able to use this as an approximate value of the cost containment of the health insurance component, effective January 1, 2011, in the package herein. There will be additional savings attributable to the Prescription plan changes but even after careful examination of Exhibit C-15, C-16 and C17 and the

expert witness testimony, the Arbitrator cannot reach a reasonable basis for calculating the cost containment. It must be acknowledged on a conceptual rather than substantive basis.

The 2011 contract year experiences a new direct salary cost increase of \$532,326 based upon the standard assumption of a static work force [the reduction in costs from retirements have been considered and will be discussed further on] plus \$132,750 for the one-time payment. That salary and one-time payment cost increase is more than off-set by the cost containment realized by changes in the health insurance coverage and the remaining new value of the statutory premium contributions. Those cost savings, totaling in excess of \$1.016 million, establishing a net annual change for 2011 of reduced costs to the Employer of \$350,920, or about 1.81% of the 2010 total base salary for the bargaining unit. This cost reduction is further enhanced by personnel changes in the unit that have been documented and also by the uncalculated savings in the prescription plan costs.

Note that it is impossible to calculate, on this record, whether the savings were offset by further premium increases. While those increases almost certainly occurred, they would have also occurred with the plans previously in place and the net value of the savings may even be considerably greater in comparison with the event that no plan changes occurred.

In 2012, the cost of the 2.75% salary rate increase computes to \$546,965 when applied to the constant scattergram, recalculated to have a 2011 total base salary for the unit (still using 177 employees) of \$19,889,651. Additionally, the cost of increasing the clothing allowance by \$50 to \$1,350 per year can be assumed to be \$8,850 which increases the package percentage value to 2.79%.

It must be emphasized that there are structural cost reductions to the City based on long and short term trends with respect to staffing levels and the personnel makeup of the bargaining unit. The PSOA has documented recent past trends of retirements causing a reduction in staff (combined with increasing workload)

which has produced productivity improvements for the Department. This downturn in staffing and continued, right to the present, cost reduction due to retirements cannot be ignored and must be given consideration, especially with respect to the *Public Interest*, *Financial Impact*, and *Lawful Authority* (e.g. CAP Law) implications. The package awarded herein will not create undue stress on the budget and will not cause CAP Law issues even as the CAP Law narrows because the health care savings and the retirement savings are remarkably substantial. The contract terms awarded are most reasonable under the criteria.

The net annual cost increases of the package are clearly reasonable under the nine statutory criteria. There is a balanced combination of highly competitive salary increases and substantial, reasonable and long-term health care cost containment components. The impact of the statutory requirement to contribute 1.5% of base salary from mid-year of 2010 through the life of the contract provides many times more savings than the added cost of the one-time \$750 payment ordered for January 1, 2011. The combination of those features,

even when considering the lost cost containment from July 1, 2010 through January 1, 2011, account for much more than the cost of the equity-balancing reconciliation payment.

The central issues to this impasse have been resolved herein consistent with a pattern of settlement established between the City and three unions representing public safety bargaining units. The wage increases and health benefit changes are identical herein to those found in the three settlements. This result is particularly warranted giving very substantial weight to the *Public Interest*, *Comparability*, *Financial Impact*, and *Continuity and Stability of Employment* criteria. These criteria are also given determinative weight with respect to every element of the settlement "pattern" awarded as components of the package herein. Further, meaningful weight was also given to the *Lawful Authority*, *Statutory Restriction*, and *Cost of Living* criteria, each of which had some bearing on the result.

The one-time payment of \$750.00 per unit member awarded, effective January 1, 2011, is significantly tied to the traditional and ordinary elements of the *Continuity and Stability of Employment* criterion. It is also warranted as a partial reconciliation of the variations in impact of the pattern terms caused by the timing of the implementation of the resolution of this impasse under the *Comparability* and *Public Interest* criteria. The circumstances also proved that this component presented no meaningful negative impact in consideration of the *Financial Impact* criterion or the criteria applying the CAP Law.

The four-year duration, originally proposed by the PSOA is not opposed by the City, which now seeks the same contract term. The City also stipulated to accepting the PSOA proposal to modify Article 37 to include the .45 caliber option.

The Optical plan proposal of the PSOA is addressed by the City's comprehensive health plan proposals which provide an increase in the current \$75.00 benefit raising it to \$100.00. This is consistent with the

pattern package provided by the settlement with the other public safety unions.

The PSOA presented testimonial evidence that their proposal #3 was nothing more than a clarification of the contract to make the language consistent with the settlement of a grievance. This testimony is in the record with no contradiction and is sufficient to support the proposal. Similarly, the Chief presented uncontradicted testimony that Article 39, Section 2(D), was in conflict with the Attorney General guidelines and needs to be corrected. Both of these items are found reasonable and warranted under the limited evidence presented. They both qualify under the ordinary and tradition component of the eighth criterion.

The City's proposal to revise Article 3, reducing the number of bargaining team members relieved from duty from five to three is reasonable in light of parallel changes negotiated with the two fire bargaining units. While there is no matching change in the POBA settlement, the fire unit changes are

sufficient to support the proposal. Similarly the changes sought in the Military Leave provision are identical to others negotiated and reasonably included herein.

The record falls short of establishing that the City's non-economic proposals relating to Compensatory Time and Discipline and Discharge are warranted. The facts do not sufficiently establish identical changes in the pattern nor do they independently prove a rationale for these changes under the statutory criteria. These changes are not to be awarded herein.

In conclusion, the resolution of the impasse presented in this proceeding has been constructed through the application of the statutory criteria to the evidence presented. Each criterion has been carefully considered and due weight has been attributed as indicated in the Discussion and Analysis set forth. The most reasonable set of terms and conditions of employment has been determined, balancing the various components and understanding that there is no single, absolute method to resolving an impasse such as this.

The result herein reflects some very clear concepts standard to the collective bargaining process, as recognized by the statute, and it also reflects the balancing of competing interests that each have some basis for support. In the end, the voluntary settlement with three other public safety bargaining units was the most compelling evidence in the record and it was a most relevant factor under application of a number of the statutory criteria.

A W A R D

For the foregoing reasons IT IS HEREBY ORDERED that all the issues in dispute in the impasse presented in Interest Arbitration, Docket No. IA-2009-070, shall be resolved as follows, those issues not addressed are not awarded herein:

1. Article 41, Duration of the Agreement: The dates contained in Article 41 shall be modified to reflect a four (4) year agreement from January 1, 2009 through December 31, 2012.

2. Salary, Article 41: All Police Superiors' salary rates will receive an increase in base salary as follows: January 1, 2009 - 2.75%

January 1, 2010 - 2.75%

January 1, 2011 - 2.75%

January 1, 2012 - 2.75%

Effective January 1, 2011, a one-time payment of \$750.00, not added to base salary, shall be paid to

each bargaining unit member, reflecting an equitable balancing, partially reconciling the variation in impact of the "pattern" due to timing.

3. Health Benefits: Article 10 - Modify as follows:

Section 1. The City shall provide and maintain insurance coverage as follows:

A. Commencing on the effective date of this Agreement, all new hires shall be entitled to the Direct Access Blue Cross/Blue Shield Plan, or one of the HMO Plans offered at the time of the effective date of this Agreement at the employees choosing, paid for by the City. All active employees shall be transferred to the currently offered Direct Access Blue Cross/Blue Shield Plan, or one of the HMO plans offered at the time of the effective date of this Agreement, at the employee's choosing, no later than January 1, 2011.

B. The City reserves its right to change the carrier with whom it contracts to provide these services for its employees. The level of benefits will be substantially equivalent to those provided on the date immediately preceding the effective date of any change.

Section 2. No Change.

Section 3.

A. The City will continue to provide the currently effective dental benefit program, both open and closed dental plans. The dental benefit Cap for the open plan is Two Thousand Dollars (\$2,000).

B. Effective January 1, 2011, the City will provide a prescription drug plan with the

following co-pays that apply on a per prescription basis:

	RETAIL	MAIL ORDER
Generic Drugs	\$2.00 co-pay retail for prescription up to thirty (30) days supply.	\$1.50 mail order co-pay per thirty day supply prescription. (Total ninety (90) day mail order would amount to \$4.50 in co-pay.
Brand Drugs	\$20.00 co-pay retail for prescriptions up to thirty (30) days supply.	\$13.00 mail order co-pay per thirty day supply prescription. (Total ninety (90) day mail order would amount to \$39.00 in co-pay.
Effective January 1, 2011 prescriptions that cost over \$1,000.00	\$100.00 co-pay on retail prescriptions up to thirty (30) days supply that cost over \$1,000.00	\$50.00 mail order co-pay per thirty day supply prescriptions on prescriptions that cost over \$1000.00. (Total ninety (90) day mail order would amount to \$150.00 in co-pay.

It will be mandatory for all drugs that are defined as maintenance drugs by the United States Food and Drug Administration (FDA) to be bought through mail order (when available). However, the co-pay on the first two prescriptions filled on any maintenance drug,

whether that drug is over \$1,000 in cost or not, will be at the retail co-pay rate for either a generic or brand drug following which the employee will be responsible for the mail order co-pays set forth above depending on the cost of the particular drug.

C. Retirees shall have an annual maximum out-of-pocket Cap of \$1082.00 per person for prescription drug co-payments. Once a retiree or dependent has paid \$1082.00 in co-payments in a calendar year, that person is no longer required to pay any prescription drug co-payments for the remainder of that calendar year.

Section 4. No Change

Section 5. Effective January 1, 2011, each member of the bargaining unit and his or her dependents shall be reimbursed up to \$100.00 per year, per family member, for any optical related expenses consistent with the existing City of Jersey City optical plan. For purposes of this payment, dependent children shall be covered only up to age twenty-three (23).

Section 6 through 10. No Change.

Section 11. (New) The City will pay the cost of health coverage, which includes health insurance and the prescription drug plan as set forth in Section G above, for all retirees and their eligible dependents so long as the retiree has retired from the City on a disability pension or has retired from the City after twenty-five (25) or more years service credit in the Police and Fire Retirement System. The City and the Union may agree to permit a retiree who does not meet the above requirements to participate in the City's health insurance and prescription drug plan at his/her own cost.

Section 12. (New) Each employee or retiree is responsible to notify the Office of Health Benefits immediately of any qualifying events regarding the group medical and dental plans. A qualifying event is defined as one of the following:

1. Marriage
2. Divorce
3. Birth
4. Death
5. Emancipation of Dependent
6. Adoption
7. 65th Birthday

Failure to immediately notify the Office of Health Benefits will subject the employee or retiree to loss of coverage and/or liability for costs incurred.

Note: This Award recognizes and applies the statutory requirement that bargaining unit members have with respect to premium contributions under *Chapter 2, P.L. 2010*.

4. Clothing Allowance, Article 15:

A. Effective January 1, 2010, all members of the bargaining unit shall be provided with a sum of One Thousand Three Hundred Dollars (\$1,300.00) clothing allowance.

The sum of \$650.00 will be paid on the first regularly scheduled payroll day following the Council meeting in January, and the additional \$650.00 will be paid on the first regularly scheduled payroll day following the regular Council meeting in July.

B. Effective January 1, 2012, all members of the bargaining unit shall be provided with a sum of One Thousand Three Hundred Fifty Dollars (\$1,350.00) clothing allowance. The sum of \$675.00 will be paid on the first regularly scheduled payroll day following the Council meeting in January, and the additional \$675.00 will be paid on the first regularly scheduled payroll day following the regular Council meeting in July.

5. Optical: Effective January 1, 2011, the present seventy-five dollar (\$75.00) allowance be increased to one hundred dollars (\$100.00) per annum for all optical related services. [see also Health Benefits provision above Section 5].

6. Article 14, Section 11: Modify Article 14, Section 11 to change the words "Desk Officer" to "an Officer", consistent with grievance settlement.

7. Article 37: Modify Article 37 so as to include the .45 Caliber option.

8. Association Privileges, Article 3:

Section 3. The number of negotiating committee members shall be reduced from five (5) to three (3).

Section 5. Add new sentence as follows: "Any employee attending such meeting or Legislative session shall provide written proof of attendance upon his/her return to work."

9. Military Leave, Article 17:

Delete in its entirety and insert:

Section 1. The City hereby agrees to grant military leave for field training to employees in accordance with N.J.S.A. 38A:4-4 or as otherwise provided for under Federal or State law.

Section 2. All members of the National Guard or Reserves will be granted time off with full pay to attend required drills. Such time off will be in addition to vacation, sick and administrative leave.

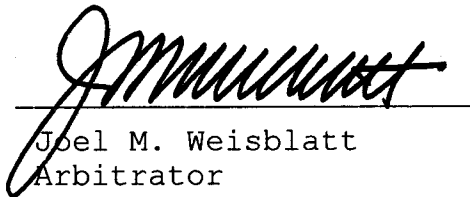
Section 3. In the event an employee is called to active duty, the employee shall receive the difference in pay between his military pay and his regular pay for

up to one hundred eighty (180) days. The City may, at its option, extend the one hundred eighty (180) day limit.

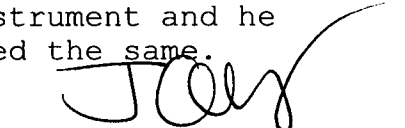
10. Bill of Rights. Article 39:

Delete Section 2(D).

Dated: November 13, 2010
Skillman, N.J.


Joel M. Weisblatt
Arbitrator

On this 13th day of November, 2010, before me personally came and appeared Joel M. Weisblatt, 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 the same.


Attorney-at-law