

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between:

BOROUGH OF RUTHERFORD

"Public Employer,"

- and -

RUTHERFORD PBA LOCAL 300

"Union."

Docket No. IA-2008-035

**INTEREST ARBITRATION
DECISION AND
AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Borough:

Lane J. Biviano, Esq.

For the PBA:

Richard D. Loccke, Esq.

Loccke & Correia

This decision arises from an interest arbitration proceeding involving the Borough of Rutherford [the "Borough"] and the Rutherford PBA Local 300 [the "PBA" or "Union"]. The terms of their collective bargaining agreement [the "Agreement"] expired on December 31, 2007 and has remained in full force and effect. Direct negotiations between the parties towards reaching a new agreement resulted in an impasse. A petition seeking the invocation of interest arbitration was filed by the PBA and I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425.

I conducted a pre-interest arbitration mediation sessions on March 28, May 22 and May 29, 2008. The impasse remained despite the good faith efforts of the parties. This required the scheduling of interest arbitration proceedings on January 5, 2009. The hearings concluded on January 6, 2009. At the interest arbitration hearing, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Testimony was received from Sgt. John Russo, Joseph Nichols, Borough Tax Assessor, and Chief Financial Officer Edward Cortright. Each party filed post-hearing briefs, the last of which was received on or about March 3, 2009.

As required by law, the Borough and the PBA submitted last offers on the disputed issues for consideration by the arbitrator. They are as follows:

FINAL OFFERS OF THE PARTIES

The PBA

1. The PBA has proposed a five (5) year contract term with a five (5%) percent annual increase effective on each successive January 1 at each rank, step and position on the guide.

The Borough

1. Duration – 4 year contract from January 1, 2009 through December 31, 2011.
2. Health Insurance – Contribution

Monthly deductible of 25% of annual premium effective July 1, 2009
3. Health Insurance Traditional Premium – The remaining unit members to transfer out of the traditional plan no later than January 1, 2010

Effective July 1, 2009 traditional plan will no longer be available to current or new employees.
4. Prescription drug co-pay

Effective July 1, 2009 \$10 co-pay generic \$20 co-pay brand name

Effective July 1, 2010 \$10 co-pay generic \$25 co-pay brand name
5. Opt out provision

Effective January 1, 2010 25% payment of annual insurance premium paid for that employee
6. Salaries

Non-Supervisory Police Officers

First 2 steps
0-6 months -- 0% increase over life of successor CBA

7 months – 1 Year -- 0% increase over life of successor
CBA

Effective January 1, 2008 0%
Effective July 1, 2009 2.75%
Effective January 1, 2010 2.75%
Effective January 1, 2011 2.75%

Supervisory Employees – Sergeants

Effective July 1, 2008 0%
Effective July 1, 2009 2.00%
Effective January 1, 2010 2.75%
Effective January 1, 2011 2.75%

Supervisory Employees – Lieutenants

Effective July 1, 2008 0%
Effective July 1, 2009 2.00%
Effective January 1, 2010 2.50%
Effective January 1, 2011 2.50%

7. Terminal Leave Payout

Effective upon execution of successor CBA or July 1, 2009,
whichever date is sooner.

5 year payout of terminal leave.

BACKGROUND

The Borough of Rutherford's Police Department consists of thirty-eight (38) sworn officers as well as a civilian Police Administrator. The bargaining unit includes twenty-six (26) Police Officers, eight (8) Sergeants and four (4) Lieutenants. The Department performs law enforcement work in this 2.9 square mile middle class suburban community in southern Bergen County. Rutherford is bounded by the Passaic River bordering Passaic to the west and the Erie Railroad bordering east Rutherford to the north and east and the Hackensack

River bordering Secaucus to the southeast and bordering Lindenhurst to the south and southwest. The Borough has a population of approximately 18,110. Rutherford is located at the intersection of Routes 3 and 17 and between the New Jersey Turnpike and the Garden State Parkway. In addition, the Borough has a commuter rail station with direct service to New York City and is considered commuter friendly. Rutherford is the home to local hotels and theaters and is within the area adjacent to the New Jersey State Sports Complex including Giant Stadium and the racetrack and the Xanadu project.

Rutherford recently became the home of Felician College on the site once occupied by Fairleigh Dickinson College which now serves approximately 1600 students including 500 residential students. In addition to college students, Rutherford's schools include almost 2500 elementary and secondary school students, over 500 parochial school students as well as eleven day care centers.

Sgt. John Russo testified that the Rutherford police have been involved in recent investigations of two murders, in addition to vehicular homicides, stabbings, robberies, weapons violations, attempted kidnapping, larceny, both armed and minor, prostitution and auto theft. Over the past four years, the requests for police services have increased by 3.5%, adult arrests by 17%, larceny by 38%, petty larceny by 51% and domestic violence by 50.9%. Summons for moving violations increased by 23.3% during this four year period.

New equipment and police services provided to the public within the last four years include, among others, first responder certification for all sworn officers and EMT certified officers, equipping cars with life vests for immediate response to emergencies along the river, MVRs and MVTs in patrol cars. Rutherford officers have been assigned to the Bergen County Narcotics Task Force, the Bergen County Rapid Deployment Force, the Bergen County fatal accident unit, Bergen County auto theft task force, and the GPS Theft Task Force.

The issues in dispute are entirely economic. Chief among the disputed economic issues are salary, health insurance and terminal leave.

The Borough and the PBA have submitted substantial evidence and argument concerning the application of the statutory criteria to their respective positions. The presentations are comprehensive and fully comply with their respective obligations to support their positions with evidence relating to the nine (9) statutory criteria. A reasonable determination of the issues is required after giving due regard to the criteria deemed relevant for the resolution of the dispute. Each party has submitted charts that accurately flow from foundational documents that include collective bargaining agreements, official budgets and annual financial statements, budget audits, county equalization tables and sources that deal with cost of living data, socio-economic profiles and health insurance documents.

I next proceed to generally summarize the parties' positions on the disputed issues and the record evidence.

The PBA's last offer is limited to the single issue of base wage increases over a five year term. The PBA contends that a contract that is five (5) years in duration is an appropriate term as the parties are currently in the second year of a new contract term. If a three (3) year term were awarded, the parties would begin negotiations again in the next year. Additionally, the PBA points out that the longer duration serves the public by reducing the cost of dispute resolution for an additional year.

The PBA maintains that base wages for Rutherford police officers is in the mid-range for southern Bergen County and substantially lower if the entire County is considered. The PBA maintains that the current benefits package is average at best and the number of days off such as sick days and holidays is below average. When considering clothing allowance, the PBA asserts that Rutherford is last among other departments.

Base Rate Changes Based on PBA Exhibits in Evidence

	2008	2009	2010	2011	2012
Allendale	4				
Alpine	4				
Bergenfield	4.75 (2.75/2)				
East Rutherford	5 (2/3)	5 (2/3)			
Edgewater	4	4			
Elmwood	3.95	3.95	3.95	3.92	

Park					
Emerson	4.25				
Englewood	4	4	3.8		
Fair Lawn	4.25				
Fairview	4.43	4	4		
Harrington Park	4				
Hasbrouck Heights	4	4			
Haworth	4.4	4.4	4.4	4.4	
Lyndhurst	3.9				
Mahwah	5.6	6	6		
Maywood	4				
Montvale	4	4.25	4.25		
North Arlington	4 (2/2)	3.75	4 (2/2)		
Northvale	4	4	4	4	
Norwood	4				
Oakland	5.2	4.2	4.2		
Old Tappan	4.25	4.25			
Ridgewood	4.2(2.1/2.1)	4.2(2.1/2.1)	4.2(2.1/2.1)	4.2(2.1/2.1)	4.2(2.1/2.1)
River Edge	4.25	4.25			
Saddle Brook	4	4	4	4	
South Hackensack	4	4.25			
Tenafly	4				
Waldwick	4.5 (2.5/2)	4.25			
Wood-Ridge	4 (2/2)	4 (2/2)	4 (2/2)	4.5(2.25/2.25)	4.5(2.25/2.25)
Ridgefield		3.75	3.75	3.75	3.75
Averages	4.239%	4.225%	4.196%	4.11%	4.15%

The PBA asserts that comparison of Rutherford with other Bergen County municipalities as detailed in the above chart demonstrates that the wage increases proposed by the Borough are well below average and unsupported. The PBA emphasizes that some of the municipalities where officers have received higher increases earn more than the top pay of \$99,639 in Rutherford. Specifically, the PBA cites Elmwood Park (\$104,776), South Hackensack (\$103,770), Ridgefield (\$103,077), Bergenfield (\$107,149), Hasbrouck Heights (\$103,459), Saddle Brook (\$102,214), and East Rutherford (\$101,639).

The PBA asks that little weight be given to private sector comparisons for many reasons. One claim is that there is no comparable private sector job citing physical qualifications, training and the unique responsibilities that a police officer discharges. These distinctions are detailed in the PBA's post-hearing submission and need not be set forth here in detail. The PBA cites the obligation of a police officer to act as a law enforcement officer regardless of whether he or she is on or off duty as well as an officer's ability to carry a weapon and respond to providing for the safety and protection of the public at all times on a 24/7 basis.

Additionally, the PBA points out that unlike private sector employees, a police officer must be prepared to act and may be armed at all times anywhere in the State of New Jersey. Additionally, the PBA points out that a police officer's pension is not portable in the law enforcement community after the age of 35. So, police officers are unable to take their skills and market them in other locales. The PBA cites several laws controlling the relationship between police officers to their employers and thus distinguishing them from private sector employees, including the Fair Labor Standards Act 29 USCA § 201 et seq., and New Jersey Wage and Hour Law N.J.S.A. 34:11-56a et seq.

The PBA notes that there are no relevant stipulations to be considered in this case.

The PBA contends that its proposals are more consistent with furthering the interests and welfare of the public than the offers made by the Borough. The PBA emphasizes that the Department is highly productive as evidenced by the approximately 11,000 calls for service that it handles each year. Testimony as to the work of the department was offered by Sgt. John Russo. Sgt. Russo testified to numerous activities performed and services provided by the Department, some of which have been implemented recently that, in total, have increased the Department's workload and productivity. The PBA takes strong note that there has been a decrease in staffing levels over recent years. Although full staffing levels are 45 sworn staff officers based upon the Department's website and that this number has now dropped to 38. The PBA emphasizes that in January of 2009 there were only twenty-three (23) police officers working.

The PBA disputes the degree to which the "EnCap" project has caused financial difficulties for the Borough. The PBA notes that the result of this failed project in the Meadowlands has resulted in unpaid taxes and unpaid PILOT obligations. The PBA places blame for this failed project on municipal mismanagement noting that Borough-elected representatives who supported this project were turned out of office in favor of new officials who are correcting past mistakes. However, the PBA also emphasizes that much of this money is not lost and is not unrecoverable. The PBA cites the testimony of the Borough's Chief Financial Officer Edward Cortright that the Borough is actively making

efforts to collect money owed through various legal avenues.¹ The PBA maintains that public employees should not be held accountable for the avarice of public officials who did not perform their duties effectively. The PBA points out that in 2009, Rutherford is to receive \$400,000 from the New Jersey Meadowlands Commission thus protecting Rutherford residents from tax increases due to the fallout of EnCap Golf Holdings. However, the PBA points out further that "EnCap is currently delinquent in the amount of \$1,022,464.00 in unpaid 2007 and 2008 property taxes and interest assessed on delinquent taxes." The PBA maintains this money is not lost but merely deferred.

Based upon a bargaining unit of 38 active sworn personnel, the PBA calculates that 1% of bargaining unit pay is equivalent of \$39,055.00. Assuming all officers are at top step. The PBA would place this amount in the context of a strong tax base with a net valuation of \$2,855,867,111.00 in 2008. According to the PBA, this tax base places Rutherford in the top quarter of all municipalities in all of Bergen County based upon the County's final equalization table. The PBA notes that the real property ratio of aggregate assessed value to aggregate true value in Rutherford is 102.15% (p. 22, sheet 5). Based upon the financial statement for the Borough for 2007, the most recent revaluation was completed in 2006 and the audit reflects a growing ratable base in every year with cash collections for the six years prior to 2007 in excess of 98%.

¹ At the time the record was closed, the status of this attempt to recover money was undetermined.

During this period, the municipal portion of the Borough's tax levy has remained consistent at approximately 32% through 2008. Based upon the Employer's calculations, the PBA points out that the average property tax bill in Rutherford is \$7,838 per year, of which approximately 32%, or \$2,508, is devoted to the municipal government. Of this portion, police base pay for the entire bargaining unit is approximately 6%. The PBA emphasizes that the portion of the tax levy devoted to education is approximately 60%. Nonetheless, the PBA points out that only 13.1% of registered voters voted on the school budget covering 60% of the tax bill, and that budget passed. The PBA calculates that its proposed 5% increase per year would have an impact of approximately \$21 per home which the PBA characterizes as a minimal impact upon the taxpayers.

The PBA excepts to the Borough's argument that certain increases in pension expenses are a legitimate reason to offer the PBA less than average increases. The PBA points out that the Borough, pursuant to statute, deferred pension contributions for several years and then began incremental phased in contributions until it ultimately was again paying 100%. The PBA calculates that these deferrals saved the Borough \$119,283 per year.

Review of the Borough's 2008 budget shows that it was under cap by \$834,660.29. Based upon this budget, the PBA maintains that its proposal will have a very small impact on the Borough's budget. While the Borough's tax rate increased by only a few pennies. The PBA maintains that the Borough is not in

fiscal distress and that the police department brings in funds which offset the cost of its operations. The annual municipal court fees received by the Borough, mostly due to police action, was \$436,000. Additionally, the PBA cites grants in the budget from the Drunk Driving Enforcement Fund, the New Jersey State Police Emergency Management Assistance (\$5,000), New Jersey Division of Justice Body Armor Grant (\$4,371), the New Jersey Division of Highway Safety Grant (\$3,942), and many others.

The PBA cites the Borough's ability to regenerate surplus, pointing out that its Results of Operations in 2007 were \$255,053 and in 2006, \$751,721. The PBA also cites the Borough's excess appropriations, noting that the unexpended balance of unexpended reserves from 2005 were \$376,688 in 2006 and from 2006 \$324,054 in 2007. According to the PBA, the Borough continues to maintain a fund balance and is using over 90% in the budget to reduce the tax levy. After a revaluation in 2006, the municipal tax rate was 0.555 and that increased in 2007 to 0.642 and to 0.672 in 2008. The total tax levy has increased from \$46,817,576 in 2005 to \$56,748,158 in 2007. At the same time, according to the PBA, tax collection rates remain high at 98.46% in 2005, 98.64% in 2006, and 97.79% in 2007. The PBA also points out that property values have increased substantially from \$1,232,478,502 in 2002 to \$2,879,526,388 in 2006 and to \$2,881,009,587 in 2007. The PBA also points out that the Borough remains well below its statutory debt limit and has plenty of borrowing power remaining. The PBA asserts that the Borough maintains

adequate cash balances and has taken in \$113,670 in unanticipated miscellaneous revenue in 2006 and \$79,572 in unanticipated revenue in 2007. Based on these figures, the PBA contends that the Borough is in a strong fiscal situation. Examining the Borough's budget for 2008, the PBA maintains that the Borough budgeted \$484,825 more than it spent in the preceding year which, expressed as police salaries would equate to a 9.6% increase. The PBA also points to the amount "reserved" from the prior year operations of \$170,000, leaving approximately \$654,825 to fund the police salary increase for 2008, which is well in excess of the amount necessary to fund its proposal. Additionally, the PBA points out that there are fewer officers working than in 2006. Based upon these calculations, the PBA maintains that the Borough is well able to pay the cost of its salary proposal.

Addressing the cost of living, the PBA notes that based upon the Department of Labor statistics provided by the Public Employment Relations Commission, the total private sector wage increases statewide is 4.3% and the average annual wage change for Bergen County is 4.9%.

Addressing the continuity and stability of employment, the PBA asserts that the Employer's position with respect to a percentage of future health insurance premiums that it proposes be paid by the employee, would harm the continuity and stability of employment. To that end, the PBA cites Borough of Pompton Lakes and Pompton Lakes PBA Local 161, P.E.R.C. No. 2008-58 (April

24, 2008) where the Commission held that a health insurance proposal that cannot be calculated cannot be awarded.

The Borough's submission focuses on its financial situation and places emphasis on the statutory criteria dealing with the financial impact on the governing unit,² its residents and taxpayer [N.J.S.A. 34:13A-16(g)(6)], Cap Law criteria and a comparison of the wages, salaries, hours and conditions of employment of this particular bargaining unit to other comparable jurisdictions [N.J.S.A. 34:13A-16(g)(2)].

The Borough argues strenuously that it, like the rest of the nation, is undergoing a difficult financial period. The Borough has recently gone through a 33% property tax increase over 2006 and 2007 followed by a more modest property tax increase in 2008. In the 2008 budget, the Borough increased its expenditures by 3.5% as allowed by the Cap Law or \$638,426.29. However, the Borough points out that at the end of 2008, it had a budget deficit of \$652,661. The 2009 budget calculation permits a 2.5% or \$465,915.48 increase in expenditures. If the Borough adopted a 3.5% expenditure increase, the increase would be \$652,281.67. Although the Borough was below cap in 2006 and 2007, during that period the municipal property tax increased by 33%. During this period, the Borough places in context the budget items that resulted in the largest

² In a post hearing submission, the Borough submits a letter indicating that Moody's downgraded the Borough's general obligation rating to A3 from A, thus affecting \$8.5 of the Borough's general obligation, unlimited tax pledge. Although this submission was received after the record was closed, I have taken notice of this fact which is in the public record.

appropriation increases in 2008. Those items were group health insurance, the police retirement system, the public employees' retirement system, dumping fees and sewage treatment. The proposed increase for 2008 for group health insurance for the municipality was \$433,051 and the increase devoted to the police retirement system was \$345,490 while the increase devoted to the public employees' retirement system was \$180,000. The Borough asserts that the projected budget increases for 2009 include an additional \$317,949 for group health insurance, an additional \$103,220 for the police retirement system and \$79,148 for the public employees' retirement system. Additionally, according to the Borough, a 2008 deficit of \$652,661 must be considered.

The Borough asserts that the dramatically stepped up increases in Police Retirement System contributions must also be taken into consideration. According to the Borough, it contributed \$353,385 in 2006, \$501,210 in 2007, \$845,800 in 2008 and \$949,020 in 2009 to the police retirement system. At the same time, the Borough points out that the reserve for uncollected taxes will rise sharply due to the cash flow deficit in 2008. According to the Borough, Rutherford is over the 2009 cap by \$379.33 without addressing expenditure increases including salaries. The Borough notes that some pension costs may be deferred to another fiscal year with an annual 8% interest rate but the Borough emphasizes that the prior deferral of pension costs has added to Rutherford's present financial problem. For this reason, the Borough maintains that deferring pension expenses may not be fiscally prudent. The Borough notes that there is a

Cap bank in 2007 and 2008, but any increase in this amount must be balanced against a State imposed tax levy increase of 4%.

The Borough points out that in 2008, for the first time, it received less State aid than in prior years with a \$3,000 shortfall. The Borough also received \$300,000 less in extraordinary aid and its investment income has declined from \$312,044 in 2006 to \$135,126 in 2008 with a projected estimated income of \$70,000. Likewise, the Borough has historically maintained a surplus with \$1,458,427 in surplus at the end of 2003 and \$252,413 in surplus at the end of 2007, but a \$700,000 deficit at the end of 2008. The Borough maintains that the total property tax levy on a \$500,000 home in Rutherford has increased from \$8,850 in 2006 to \$9,800 in 2007 and to \$10,205 in 2008. The municipal portion of that tax bill has increased from \$2,775 in 2006 to \$3,210 in 2007 and \$3,365 in 2008.

The Borough maintains that there has been a decline in revenue over the last several years from \$1,946,216 in 2006 to \$1,785,156 in 2008 and at the same time, a decrease in extraordinary aid from \$500,000 in 2006 and 2006 to \$200,000 in 2008.

The Borough asserts that it has a high property tax rate. Relying upon the testimony of Joseph Nichols, Esq., the Borough's tax collector, the Borough points out that, based on the market value of \$400,000, the tax rate in Rutherford

was 14 out of 70 Bergen County municipalities compared to neighboring Lyndhurst at 42, East Rutherford at 51 and Carlstadt at 55. The Borough points out that only North Arlington ranked higher at 12.

Despite the revaluation that was conducted during the housing peak of 2005, Mr. Nichols testified that Rutherford has a declining tax base. With the aggregate value of taxable real property in 2006 at \$2,866,225,500 and in 2009 the aggregate value is \$2,842,843,700.

The Borough explains that its budgetary and economic problems and outlook are tied to the past and continuing impact of EnCap. According to the Borough, during 2005 and 2006, it relied on \$2 million annual contributions from EnCap to offset its budget expenditures. The 33% property tax increase over two years is a result of EnCap's termination of its annual contribution. In 2005 and 2006, EnCap made \$2 million contributions and in 2007, the Borough anticipated a \$200,000 contribution but no money was received. Likewise in 2008 and 2009, no monies were received from EnCap. The Borough explains further that in 2008, EnCap declared bankruptcy, thus placing a stay on the sale of the tax lien. According to the Borough, it has engaged counsel to negotiate a consent order with the involved parties to permit a tax lien sale. That sale had been scheduled for October of 2008 but the economic downturn dried up credit and the tax lien sale failed to attract any bidders. The tax sale was rescheduled repeatedly and advertised in 2008 still with no bidders. According to the

Borough, it has yet to resolve the EnCap tax liens. According to the Borough, for 2007 the taxes due were \$510,000; for 2008, \$531,000 and, as of February 12, 2009, the interest due from EnCap was \$215,000 for the total amount of outstanding taxes and interest due Rutherford from EnCap as of February 12, 2009 at \$1,356,000.

The Borough asserts that it has yet to collect any of the monies owed to it by EnCap. The Borough points to the difficulties arising out of the EnCap bankruptcy, resulting dismissal from Bankruptcy Court, and the myriad of environmental and other financial claims on the project. It acknowledges that it has initiated legal proceedings in an attempt to recoup these funds but stresses that there is no guarantee of success.

Turning to the state of the economy, the Borough notes that the economy is not likely to show signs of recovery until 2010. The Borough points out that the first quarter of 2009 was dismal economically and a "fairly lackluster recovery" is expected for 2010. The Borough points to the dramatic drops in the Dow Industrial's during the first quarter of 2009 and cites Warren Buffet's statement that his firm Berkshire Hathaway inc. had its worst result in 2008. According to the Borough, the State has endured three years of lower than average growth in employment and only 3700 new jobs were created private sector growth in 2007. The Borough points to the expectation of considerable job losses in 2009 with a downward cycle projected to end sometime between March of 2010 and

February of 2011. The Borough also points to that report showing that Bergen County had a sluggish third quarter in 2008 with a total office market vacancy rate of 17.6%, the highest in the last decade.

Addressing the Consumer Price Index, the Borough points out that as of December 16, 2008, the CPI-U decreased 2.0% in October on a non-seasonally adjusted basis. The Borough also points out that for the 12 month period ending in November 2008 the CPI was up 1.1% compared to 5.6% for the 12 months ending in July of 2008.

The Borough, as well as the PBA, has submitted evidence concerning broader countywide comparison. But, the Borough does not agree with the PBA's assertion that the broader comparisons are relevant. Instead, it submits that the appropriate municipalities for such comparison are its neighbors in southern Bergen County; Carlstadt, East Rutherford, Lyndhurst and North Arlington. The Borough would use these communities for comparison because they are in the Meadowlands region and are effected by issues concerning the Hackensack and Passaic Rivers and Berry's Creek and State highways 3, 17 and 21, Superfund sites the Xanadu project and EnCap. Additionally, these municipalities all fall within State Legislative District 36 and share mutual aid for firefighting.

In contrast, the Borough maintains that the PBA's suggested comparisons include the entire County including communities such as Paramus, which is the retail capital of Bergen County, and is 10 miles from Rutherford, and Mahwah, which is a 25 square mile community bordering Rockland County, New York and is 30 miles from Rutherford. Additionally, the Borough maintains that the agreements relied upon by the PBA, with few exceptions, were settled well before the October 2008 economic downturn.

The Borough proposes to freeze first year salaries of patrol officers over the length of the agreement. The Borough maintains that, in good economic times, there are 200 applicants for each position. Thus, the Borough is not concerned that it will be difficult to attract new patrol officers. Noting that new patrol officers spend the first six months of their employ at the police academy, the Borough asserts that it's proposal would provide slightly larger raises when new patrol officers are patrolling its streets. The Borough indicates that it is unlikely to be hiring new police officers even if eligible police officers retire under present economic circumstances. The Borough also proposes a slightly smaller pay differential between patrol officers and patrol officers and lieutenants which would amount to approximately \$300, in 2009 and \$3,000 in 2009 through 2011. According to the Borough, the 2009 police budget appropriation will be increased by four (4) officers who were returned to duty through a negotiated settlement after each had been terminated from employment several years ago. The Borough estimates that the unit members' annual salary is \$4.4 million. The

Borough estimates that the PBA's proposed 5% annual increase represents approximately \$220,000 or approximately 45% of the State limited 2.5% cap increase or 32.5% if an ordinance approves a 3.5% cap increase.

The Borough argues strenuously that continuation of the status quo of annual police salary increases in the range of 4.0% must be reevaluated in light of both the economic climate and Rutherford's financial woes. Additionally, the Borough argues that a more modest salary differential between ranks is necessary because superior officers have more tenure and increased percentage rates of longevity. The Borough also points out that salary increases escalate the salaries of top ranked officers as well because a police department cannot have its non-unit Captains, who are top ranked officers, earning less than do lower ranked employees.

Rutherford emphasizes that it presently has a civilian police director who is a retired Captain formerly with the Rutherford police department who is presently earning a salary of \$82,000 per year with no benefits or approximately one-third of the outgoing Police Chief. In comparison, the Borough points to the top pay for a police officer for the south Bergen communities which shows Rutherford should be ranked first in 2007 and the 2007 top pay remains higher than 2008 top salaries of North Arlington and within 143 of Carlstadt's top 2008 pay. Based upon this comparison and its present deficit, the Borough proposes

no increases for 2008. The Borough maintains that Rutherford can begin anew in 2009 and remain competitive with its neighboring communities.

Municipality	Salary 2007	Salary 2008	Salary 2009	Salary 2010
Rutherford *5	\$99,639			
North Arlington	\$94,483*	\$98,300	\$101,986***	\$106,107****
East Rutherford*5	\$96,744	\$101,639	\$106,782	
Carlstadt	\$96,175	\$99,782	\$103,524	
Lyndhurst	\$94,994	\$98,698		

* Effective 7/1/07

** Effective 10/1/08

*** Effective 4/1/09

**** Effective 10/1/10

*5 Splits 1/1 and 7/1 figures reflect effective salary on 7/1 Exhibit B-B-1

SERGEANT SALARIES

Municipality	Salary 2007	Salary 2008	Salary 2009	Salary 2010
Rutherford *5	\$106,557			
North Arlington	\$105,045*	\$107,146**	\$111,164***	\$115,655****
East Rutherford*5	\$102,036	\$107,198	\$112,623	
Carlstadt	\$103,452	\$107,331	\$111,356	
Lyndhurst	\$103,992	\$108,048		

* Effective 7/1/07

** Effective 10/1/08

*** Effective 4/1/09

**** Effective 10/1/10

*5 Splits 1/1 and 7/1 figures reflect effective salary on 7/1

LIEUTENANT SALARIES

Municipality	Salary 2007	Salary 2008	Salary 2009	Salary 2010
Rutherford *5	\$115,613			
North Arlington	\$112,254*	\$116,789**	\$112,169***	\$126,064****
East Rutherford*5	\$103,125	\$108,343	\$113,825	
Carlstadt	\$112,118	\$116,392	\$120,684	
Lyndhurst	\$112,992	\$117,398		

- * Effective 7/1/07
- ** Effective 10/1/08
- *** Effective 4/1/09
- **** Effective 10/1/10
- *5 Splits 1/1 and 7/1 figures reflect effective salary on 7/1 Exhibit B-B-1

The Borough asserts that when other benefits are compared, Rutherford's police officers receive average benefits with respect to maximum longevity payout and vacation leave time and receive the highest amount of holiday pay.

Miscellaneous Benefits

Municipality	Longevity Max	Vacation Max	Holidays
Rutherford	10%	24***	15
North Arlington	12*	30	14
East Rutherford**	12	26	15
Carlstadt	8	24	13
Lyndhurst	6	30	13

- * New employees max at 8%
- ** Hired prior to 1995 no limit
- *** Sgt 26 days, Lt 28 days

Noting that Rutherford remains a "dry" town, the Borough points out that it has the lowest crime rate among its south Bergen neighbors as reflected by the overall crime per thousand population in 2006.

	2006	2005
Lyndhurst	17.28	16.3
Rutherford	15.31	14.7
East Rutherford	45.42	50.00
Carlstadt	28.08	34.70
North Arlington	17.52	17.60

The Borough asserts that it must address its escalating medical insurance premiums by following the private sector example of meaningful employee contributions towards health costs. According to the Borough, based upon a \$30,000 annual premium for a family plan in 2009 when annual premiums increase at approximately 10% per year, the premium will be \$39,930 in 2012 or a \$420,000 increase in three years assuming a 10% premium increase. The Borough proposed a 25% contribution and explains that the parties "are satisfied with the quality and coverage of the healthcare plan." The Borough suggests that a monetary cap together with an employee contribution would permit it to budget more effectively in the future. To that end, the Borough points out that it may increase its budget by only 2.5% per year or by ordinance may increase the cap to 3.5% per year. The Borough also seeks to encourage the use of generic drugs whenever feasible. The Borough explains that it currently offers two plans, the Traditional (Patriot Plan) and the Open Access Plan. Under the Traditional Plan, the unit member is on an 80%/20% plan with the unit member paying 20% of the cost up to a maximum of \$2,000 per family. The Open Access Plan is a 70%/30% plan where the unit member would pay out a maximum of \$6,000 per family with an out of network health care provider. However, according to the Borough, the co-pay for each doctor visits is \$10 under the Traditional Plan and \$5 under the Open Access Plan. The Borough emphasizes that the only difference in cost is when a unit member in the Open Access Plan uses an out of network doctor. Otherwise, under the Open Access Plan, the unit member and his or her family pay \$5 less per doctor's visit. If unit member switched from the

Traditional Plan to the Open Access Plan, the Borough estimates that it would save \$16,000 per year.

Noting the trend in interest arbitration awards for unit members to contribute to the cost of health insurance, the Borough suggests that because insurance premiums are increasing by double-digit percentages, a percentage of premium costs is the more effective approach. The Borough cites interest arbitration awards in Mountainside (IA-2007-044), Borough of Pt. Pleasant Beach (IA-2007-088), North Arlington (IA-2007-050), New Jersey Transit Corporation (IA-2007-029), Morris County and Morris County Sheriff's Officers (IA-2007-19) and North Wildwood and FMBA Local 56 (IA-2006-042), all of which provided some level of employee contribution. Its insurance premium costs are as follows:

**2009 Health Benefits vs. 2008
Borough of Rutherford
Per Month**

2009 Medical Rates

	S	H/W	P/C	FAM
Open Access				
Aetna	\$500.00	\$1,230.00	\$865.00	\$1,465.00
UHC	\$552.00	\$1,359.00	\$956.00	\$1,619.00
Traditional				
Patriot X	\$597.00	\$1,437.00	\$1,019.00	\$1,724.00
RX	\$182.00	\$402.00	\$284.00	\$495.00
Dental	\$13.30	\$26.59		\$44.86

2008 Medical Rates

	S	H/W	P/C	FAM
Open Access United Health	\$509.00	\$1,252.00	\$797.00	\$1,492.00
Traditional Patriot X	\$550.00	\$1,324.00		\$1,588.00
RX	\$168.00	\$379.00	\$244.00	\$457.00
Dental	\$12.64	\$25.29		\$42.61

2009 Health Benefits vs. 2008 Patrolman through Lieutenant Per Month

	Health Insurance	Rx	Dental	Total
2008	\$539,358	\$162,708	\$15,331	\$717,397
2009	\$608,568	\$182,352	\$15,775	\$806,695
2009 Increase	\$69,210	\$19,644	\$444	\$89,298
% Increase	12.84%	12.08%	2.90%	12.54%

The Borough points to the new governing body's efforts to reduce costs. These include approximately 15 separate actions where it has taken steps to initiate both short and long-term savings, including revisions in solid waste collection and recycling, increasing use of shared and contracted services such as 911 regional services and sharing equipment with other municipalities.

The Borough proposes to extend the time for terminal leave payout to five (5) years. At present, the agreement leaves the length of payout in terms of

years to the discretion of the bargaining unit member. However, in December of 2007, the Borough explains, it committed to payout \$500,000.00 in terminal leave. Although these members were not in the bargaining unit, the Borough acknowledges that the public reaction was broad and impacted on these negotiations. The Borough acknowledges that the State Commission of Investigation (SCI) has subpoenaed terminal leave agreements from Rutherford and 6 other municipalities from 2004 forward. The Borough points out that ultimately it negotiated a five year payout with the police chief and captain as well as with a retired police sergeant. It urges, as a matter of budget necessity, that the collective bargaining agreement must require a five year payout for all future retirees. The Borough emphasizes that it has not demanded a cut or a cap to terminal leave but asserts that a change to the current terminal leave provision to permit a five year payout plan would assist the retiree with income taxes and would assist the Borough with its budgeting and thus would be in the public interest.

The Borough also proposes to provide an opt out provision for employees whose spouses receive medical benefits from another public entity. The Borough proposes to pay a 25% bonus on the annual premium for any employee who opts out. The Borough does not believe the PBA objects to this proposal.

The Borough notes that it has proposed a four year successor and the PBA has proposed a five year agreement. The Borough points out that unless

two or more years have passed since an expired agreement, the normal successor agreement is three or four years and thus it objects to the proposed five year successor agreement. If a fifth year is included in the agreement, the Borough expects that the economy will have improved by 2012 and given its present financial situation, an offer of a fifth year can be made only with the anticipation of contributions towards medical benefits, at least a \$15 co-pay differential between generic and brand name prescription drugs, a continued freeze for the first year patrol officer salaries and under those conditions the Borough would propose an annual across-the-board increase of 3% in 2012.

DISCUSSION

The Borough and the PBA have submitted substantial documentary evidence and have offered extensive arguments, oral and written, in support of their last offers. The statute requires that I make a reasonable determination of the disputed issues after giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of this impasse. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the

same or similar services and with other employees generally:

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

award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

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

In my effort to resolve the disputed issues in reasonable fashion, I will apply the principle that the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change consistent with the statutory requirements. This burden must be met at a level that goes beyond merely seeking a change without sufficient evidentiary support. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. In other words, any decision to award or deny any

single issue will include consideration of the merits of that issue within the context of the overall award.

The Borough and the PBA have each addressed the statutory criteria in support of their respective positions. The award must represent a reasonable determination of the issues in dispute. The statute requires that all factors be considered to allow for a weighing and balancing of all of the relevant criteria when making a reasonable determination of the disputed issues. In my evaluation of the evidence on the disputed issues in this proceeding, I find that all of the criteria are relevant but that the most significant weight must be given to the factors that deal with the interests and welfare of the public³, external comparability between the PBA and other comparable law enforcement units and the financial impact of the terms of the Award on the governing body, its residents and taxpayers.

Duration

The Borough and the PBA have not agreed upon contract duration. The Borough has proposed a term of January 1, 2008 through December 31, 2011. The PBA has proposed a five (5) year contract duration extending through December 31, 2012. Although the Borough has not stipulated to a contract through 2012, it has indicated a willingness to do so if certain concessionary

³ Subsumed within the public interest criterion are subsections (g)(5) and (g)(9). Statutory spending limitations and caps on tax levy require adherence by the Borough to these laws. The terms of any Award cannot require the Borough to exceed its spending and taxing limitations.

issues are addressed in the award. Given the fact that a five (5) year contract will only extend two full years beyond the date of the award, I award a contract term of January 1, 2008 through December 31, 2012.

Terminal Leave

The Borough has proposed to extend the period for the payout of terminal leave to five (5) years due in large part to repercussions from recent payments of \$500,000.00 in terminal leave to retiring non-bargaining unit employees. The Borough has proven that these payments have placed strain on its budget and that it only prevented further negative impact by negotiating five (5) year payouts with certain retiring employees. The Borough has not proposed to reduce terminal leave, but rather to extend the period for payment of terminal leave to allow for the leave to be paid over a period of five (5) years. The PBA has not offered a specific objection to this proposal and it is awarded subject to language that would allow the Borough and the retiring employee to voluntarily mutually agree to a shorter time period for payout.

Salaries & Health Insurance

The remaining issues are those of substantial economic impact including salary and health insurance. They must be considered individually and collectively. They include salary and a health insurance package that includes an opt out provision, increased prescription co-pays, a narrower choice of plans

for new and existing employees and the introduction of health insurance premium sharing. The Borough and the PBA each approach these issues with contrasting emphasis. The Borough's position relies heavily on financial impact while the PBA's relies heavily on law enforcement comparability. The interests and welfare of the public are best served by an award that considers, weighs and balances these factors. The interests and welfare of the public are paramount in making these determinations. New conditions of employment must be reasonable, must not cause adverse financial impact on the Borough but also must factor in the comparability evidence that each party has submitted into the record. These criteria are clearly entitled to the most weight, although I find all of the criteria to be relevant in the disposition of these issues.

The Borough currently provides broad and comprehensive medical benefits. This includes a fully funded prescription plan with a \$5 co-pay for generic drugs and a \$10 co-pay for brand name drugs; a full family dental plan fully funded by the Borough; and health benefits through a Traditional (Patriot X) Plan and Open Access Plans through Aetna and UHC. The Borough's costs under these plans are substantial. Family coverage under the Traditional Plan costs \$20,688 in 2009 with the Open Access Plans costing either \$17,580 or \$19,428 annually, depending upon which plan is selected. The cost of providing prescription coverage was \$5,940 for family coverage in 2009. The dental plan is provided at an annual cost of \$538 for family coverage. For unit employees, the

plans cost the Borough \$717,397 in 2008 and \$806,695 in 2009. This represents an increase of \$89,298 or 12.5%.

The Borough's proposals are directed primarily at providing cost savings through employee contributions rather than seeking a change to the medical benefit carriers. It cites the high costs of maintaining coverage, recent increases in the cost of coverage and the policy argument that employees should have some level of participation in the costs of maintaining coverage. It submits that it can do this by requiring a monthly deductible of 25% of annual premium, by requiring unit members to transfer out of the Traditional Plan, to increase prescription drug co-pays and by providing an opt-out provision. In addition to the cost savings the Borough seeks to achieve, it points to the many labor agreements in evidence and more recent arbitration awards reflecting health care contributions by employees in law enforcement units.

The PBA opposes these proposals asserting that they cannot be calculated because a percentage of future premiums to be paid by the employee is said to be unlawful for this reason citing Borough of Pompton Lakes and Pompton Lakes PBA Local 161, PERC No. 2008-58 (April 24, 2008).

After thorough review of the record, I find that the Borough has met its burden to establish a basis for employee participation in the costs of providing healthcare coverage. The existing benefits are broad in scope and costly. The

PBA's objections go to the uncertainty of the costs of premium sharing due to the nature of the Borough's proposal for a percentage of premium cost, but the PBA objects to any premium sharing approach. I find that the appropriate methodology for employee participation in this instance is a method set by dollar amount as in North Arlington and in many other law enforcement units. The precise dollar amount can be determined through negotiations based upon current facts. This percentage applies to both prescription and health insurance.

The Borough has justified changes to the prescription drug co-payments. These modifications will enable continued coverage and ease current levels of premium cost. I award an increase in the prescription drug co-payments to \$10 co-pay generic and \$20 co-pay brand name to commence no earlier than July 1, 2010. Effective January 1, 2012, the co-pay for generic drugs shall remain at \$10 and the co-payment for brand name drugs shall be \$25. The Borough accurately notes that a larger spread between generic and name brand drugs is an efficient method to yield cost savings. As is currently provided in the Agreement, these new rates of co-payment shall include mail order prescriptions.

The Borough's proposal to phase out the Traditional Plan in favor of the Open Access Plans also has merit because continued comprehensive coverage will be provided at less cost. The Open Access Plans have equivalent benefits but differ mainly in the amount of co-payment for out-of-network physicians. For employees hired after the effective date of this award, newly hired employees

shall have coverage under the Open Access Plans. I decline to award that aspect of the Borough's proposal that eliminates the Traditional Plan for existing employees. Given the fact that new employees will not access the Traditional Plan and that one-half of current employees are currently members of the Open Access Plan, the Borough will accomplish its goal of phase out over a reasonable period of time. However, for employees who choose to remain in the Traditional Plan, as of January 1, 2012, they shall pay 50% of the premium difference between the Traditional Plan and the Open Access Plan with the higher premium cost. As of 2009, that monthly difference was \$105. Any such contribution shall not be inclusive of the monthly contributions applicable to everyone set forth below.

I also find merit in the Borough's proposal to require employee contributions towards health insurance premiums but with modifications to the method that the Borough has proposed. The initial method towards contribution shall be monthly dollar contributions as is in effect in the nearby community of North Arlington.

Effective July 1, 2010, the monthly contribution shall be in accordance with the following schedule:

Single -	\$20
H/W -	\$30
P/C -	\$40
Fam -	\$50

Effective January 1, 2011, the monthly contribution shall be:

Single -	\$25
H/W -	\$35
P/C -	\$45
Fam -	\$55

Effective January 1, 2012, the monthly contribution shall be:

Single -	\$30
H/W -	\$40
P/C -	\$50
Fam -	\$60

I also award the Borough's proposal to include an opt-out provision in the health insurance program. Such provision would provide substantial savings to the Borough by eliminating coverage for the opting out employee as well as rewarding an employee who can remove himself from Borough provided health insurance coverage based upon having dual coverage. This provision shall be effective July 1, 2010 or as soon after as is practicable.

I next turn to the salary issue. The PBA proposes 5% annually while the Borough has proposed 0% in 2008, 2.75% in 2009, 2010 and 2011 for all patrol officers except those in their first year who are on steps 0-6 months and 7 months to one year. The Borough proposes no increase for the life of the Agreement for new hires until they begin their second year of service. The Borough also proposes lesser increases for Sergeants and Lieutenants with both

receiving 0% in 2008 and 2.0% in 2009. The Borough proposes increases of 2.75% for Sergeants in 2010 and 2011 and 2.5% for Lieutenants in 2010 and 2011.

The cost differences between the parties' proposals are huge. The analysis of the salary issue begins with establishing the base for calculations. The Borough and the PBA submit charts and rosters showing similar costs. They reflect, going into 2008, a total payroll cost approximating \$3,905,522, thus showing 1% having a value of \$39,055. Applying the percentage to total payroll cost in each year of the contract, the PBA's proposal amounts to \$195,276 in 2008, \$205,040 in 2009, \$215,292 in 2010, \$225,056 in 2011 and \$237,359 in 2012 for a total of \$1,079,023 over the life of the Agreement. The Borough proposes no cost increase in 2008, \$97,491 in 2009, \$108,905 in 2010, \$111,870 in 2011 over the four year period. The PBA proposal costs over a four year period would be \$841,664 while the Borough's cost would be \$318,266. The costs differences would be far greater if the cost methodology were based on the cumulative costs of their respective proposals.

On the record before me, I conclude that neither final offer represents a reasonable determination of the salary issue. Neither proposal is consistent with balancing of all of the statutory criteria nor are they in harmony with the totality of the relevant evidence. The PBA seeks direct linkage with external law enforcement settlements and finds little merit in the Borough's financial

presentation. The Borough's proposals, on balance, are more in line with the criteria but, if adopted as proposed, would sharply lower the compensation levels of its police officers in relation to the municipalities offered for consideration for comparison purposes by both parties. An additional factor to be considered is the potential awarding of the Borough's proposed concessions, the value of which must be considered in the context of an overall award.

The PBA's proposals would, if awarded, severely impact upon the Borough's budget in a manner that would exhaust much of the surplus it can regenerate to offset future pressure on its tax rate and potentially place it in a precarious position that could jeopardize its spending and revenue caps. The Borough has had sharp increases in its 2006 and 2007 budgets, at 14.5% and 17.5% due to many factors beyond its control. A failed development in the Meadowlands, ENCAP, extended into Rutherford and, while providing large revenues to the Borough in 2005 and 2006, failed to pay these amounts in 2007 and 2008 and ENCAP became a tax delinquent in 2007. The record shows that the Borough does have the potential to recoup some of these lost monies but this is undetermined. The Borough also experienced increased utility costs and dumping fees and bore the brunt of substantial mandatory pension increases. The Borough has also had a decline in ratables in 2005, 2006 and 2007, some of which were caused by tax appeals. Because the Borough has little land to expand, there is little anticipation to expand its tax base. A new administration in 2008 has taken initiatives to cut costs as shown by the elimination of positions in

the DPW, replacing a full-time Assessor with a part-time Assessor, eliminating several clerk positions, and replacing a retired police chief with a civilian police director who, according to the Borough's calculations, earns one-third less than the previous chief in salary and benefits. The new administration has also attempted to use contracted services to reduce costs and engage in equipment sharing with other towns.

All of the above reflects that a salary award not place cost burdens upon the Borough that it cannot meet, especially in respect to having to pay large sums of retroactivity which would draw on its cash position. The Borough, despite its arguments on finance, has given little or no weight to base rate changes that have occurred during these contract years in the surrounding communities and in Bergen County in general. The department has been downsized, its productivity has increased and an award that focuses exclusively on cost without consideration to any other factor cannot represent a reasonable determination of the salary issue. The record reflects salary changes in comparable communities in substantial detail and they need not be restated here. I have factored all of the relevant evidence into my calculations as to what represents a reasonable determination of the salary issue.

I first address the Borough's proposal to freeze salary levels on the first two steps of the salary schedule that equates to the first full year of service. The Borough is the hiring entity and is confident that it can attract new hires even at

levels that are unchanged over the life of the contract. I defer to its judgment and award the Borough's proposal on this issue. In respect to the salary schedules, I award an increase of 2.25% effective October 1, 2008. This will require a minimal payout in 2008 of 0.56% with the remaining 1.69% paid out in the following year. The increases in both 2009 and 2010 shall be 2.75% with an effective date of these increases of July 1. This will cause a payout of 1.375% in each of these years with an additional 1.375% flowing into each succeeding year. These modifications shall be followed by increases of 1.5% on January 1, 2011, July 1, 2011, January 1, 2012 and July 1, 2012. This will require a payout of 2.25% each of these years with an additional 0.75% flowing into the succeeding year. The total net increase calculates to 13.75% over the contract duration of five years. The increases awarded shall apply to all steps regardless of rank. The existing differentials between rank are well below 10% and the Borough has not proven a basis for diminution of the differentials which are not excessive after evaluating differential levels in other municipalities.

For the purposes of a cost analysis, I will assume that each salary increase occurred on January 1 of each year, although there is a nine month deferral in 2008, six month deferrals in 2009 and 2010 and split raises in years 2011 and 2012, all of which will substantially reduce the levels of the actual payouts. The cost projections will also be substantially lower if staffing levels have been reduced after 2007, the year that serves as a base level for calculation.

Based upon this method, the rate changes, if annualized, represent new money of \$87,874 in 2008,⁴ \$109,818 in 2009, \$112,838 in 2010, \$126,481 in 2011 and \$130,275 in 2012. This represents a sum \$511,837 below the PBA's proposal and \$123,325 above the Borough's proposal, assuming a 3.0% cost for the Borough in 2012 that it projected in its post-hearing brief.

Presently the police officers are being compensated under the following salary schedule:

Patrolmen	2007
Academy Rate 0-6 Months	27,242
7-12 months	35,738
Begin 2 nd Year	45,392
Begin 3rd Year	51,747
Begin 4th Year	58,991
Begin 5th Year	67,249
Begin 6th Year	76,665
Begin 7th Year	87,397
Begin 8th Year	99,639
Sergeant	106,557
Lieutenant	115,613

Under the terms of the award, the salary schedules would be modified as follows:

⁴ The actual payout in 2008 is \$21,968.

Patrolmen	10/1/2008 2.25%	7/1/2009 2.75%	7/1/2010 2.75%	1/1/2011 1.50%	7/1/2011 1.50%	1/1/2012 1.50%	7/1/2012 1.50%
Academy rate 0-6 months	\$27,242	\$27,242	\$27,242	\$27,242	\$27,242	\$27,242	\$27,242
7-12 months	\$35,738	\$35,738	\$35,738	\$35,738	\$35,738	\$35,738	\$35,738
Begin 2 nd Year	\$46,413	\$47,690	\$49,001	\$49,736	\$50,482	\$51,239	\$52,008
Begin 3 rd Year	\$52,911	\$54,366	\$55,861	\$56,699	\$57,550	\$58,413	\$59,289
Begin 4 th Year	\$60,318	\$61,977	\$63,681	\$64,637	\$65,606	\$66,590	\$67,589
Begin 5 th Year	\$68,762	\$70,653	\$72,596	\$73,685	\$74,790	\$75,912	\$77,051
Begin 6 th Year	\$78,390	\$80,546	\$82,761	\$84,002	\$85,262	\$86,541	\$87,839
Begin 7 th Year	\$89,363	\$91,821	\$94,346	\$95,761	\$97,198	\$98,656	\$100,135
Begin 8 th Year	\$101,881	\$104,683	\$107,561	\$109,175	\$110,812	\$112,475	\$114,162
Sergeant	\$108,955	\$111,951	\$115,029	\$116,755	\$118,506	\$120,284	\$122,088
Lieutenant	\$118,214	\$121,465	\$124,805	\$126,678	\$128,578	\$130,506	\$132,464

The terms of the award are generally consistent with the cost of living data and will maintain the continuity and stability of employment in the police department. The record appears to show that the Borough has maintained reduced staffing levels in an effort to reduce payroll costs. There is no indication that this will change, but the adjusted salaries, while lower than the comparables in evidence, will remain sufficiently attractive in order to hire new employees and retain present officers. The terms of the salary award, in conjunction with the health insurance modifications, can be funded within the spending and taxing limitations of the Borough and without adverse financial impact on the governing body, the residents or the taxpayers. These factors, along with the comparability data in evidence, have been accorded the most weight among all of the criteria that I have deemed relevant for the resolution of the disputed issues.

Based upon all of the above, I respectfully enter the following terms of the award.

AWARD

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

2. **Duration**

There shall be a five-year agreement effective January 1, 2008 through December 31, 2012.

3. **Terminal Leave**

The period of payment for terminal leave shall be for a period of five (5) years unless the Borough and the employee agree to a payout of shorter duration.

4. **Prescription Drugs**

Commencing no earlier than July 1, 2010, the prescription drug co-payments shall be \$10 for generic drugs and \$20 for name brand drugs. Effective January 1, 2012, the co-pay shall be \$10 for generic drugs and \$25 for name brand drugs.

5. **Health Insurance**

New hires, after the date of this Award, shall have coverage under the Open Access Plans only. Employees who choose to remain in the Traditional Plan on or after January 1, 2012 shall pay 50% of the premium difference between the Traditional Plan and the Open Access Plan with the higher premium cost. Any such contribution shall not be inclusive of the monthly contributions towards premiums that are applicable to all officers.

6. **Contributions Towards Health Insurance Premiums**

Effective July 1, 2010, each unit employee shall make a monthly contribution towards health insurance in accordance with the following schedule:

Single -	\$20
H/W -	\$30
P/C -	\$40
Fam -	\$50

Effective January 1, 2011, the monthly contribution shall be:

Single -	\$25
H/W -	\$35
P/C -	\$45
Fam -	\$55

Effective January 1, 2012, the monthly contribution shall be:

Single -	\$30
H/W -	\$40
P/C -	\$50
Fam -	\$60

The Borough shall adopt a 125 Plan to allow for pre-tax contributions.

7. Salary

The existing salary schedule shall be adjusted by the following amounts effective and retroactive to their effective dates. The salary schedule shall be as follows:


Patrolmen	10/1/2008 2.25%	7/1/2009 2.75%	7/1/2010 2.75%	1/1/2011 1.50%	7/1/2011 1.50%	1/1/2012 1.50%	7/1/2012 1.50%
Academy rate 0-6 months	\$27,242	\$27,242	\$27,242	\$27,242	\$27,242	\$27,242	\$27,242
7-12 months	\$35,738	\$35,738	\$35,738	\$35,738	\$35,738	\$35,738	\$35,738
Begin 2 nd Year	\$46,413	\$47,690	\$49,001	\$49,736	\$50,482	\$51,239	\$52,008
Begin 3 rd Year	\$52,911	\$54,366	\$55,861	\$56,699	\$57,550	\$58,413	\$59,289
Begin 4 th Year	\$60,318	\$61,977	\$63,681	\$64,637	\$65,606	\$66,590	\$67,589
Begin 5 th Year	\$68,762	\$70,653	\$72,596	\$73,685	\$74,790	\$75,912	\$77,051
Begin 6 th Year	\$78,390	\$80,546	\$82,761	\$84,002	\$85,262	\$86,541	\$87,839
Begin 7 th Year	\$89,363	\$91,821	\$94,346	\$95,761	\$97,198	\$98,656	\$100,135
Begin 8 th Year	\$101,881	\$104,683	\$107,561	\$109,175	\$110,812	\$112,475	\$114,162
Sergeant	\$108,955	\$111,951	\$115,029	\$116,755	\$118,506	\$120,284	\$122,088
Lieutenant	\$118,214	\$121,465	\$124,805	\$126,678	\$128,578	\$130,506	\$132,464

Dated: May 19, 2010
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 19th day of May, 2010, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


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