

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

CITY OF MILLVILLE

"Public Employer"

and

PBA LOCAL 213

"Union"

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2008-074

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Borough:

Lawrence A. Pepper, Jr., Esq.
Gruccio, Pepper, DeSanto & Ruth

For the PBA:

Stuart Alterman, Esq.
Alterman & Associates

The City of Millville [the "City"] and PBA Local 213 [the "PBA"] reached an impasse in negotiations resulting in the PBA's filing of a petition to initiate compulsory interest arbitration. I was designated to serve as interest arbitrator and conducted informal mediation sessions with the parties on May 7 and June 12, 2008. Despite the good faith efforts of the parties, a voluntary agreement could not be reached. Thereafter, interest arbitration hearings were held on December 4, 2008 and April 21, 2009. Testimony was received from Chief Financial Officer Maureen Mitchell, City Administrator Louis N. Thompson, Police Officers Anthony Loteck, Luther McDonald and Chris Groff and Lt. Dan Baer. Post-hearing briefs were filed by both parties and received and transmitted to the parties on or about July 15, 2009. Absent an agreement to utilize an alternative terminal procedure, the procedure of conventional arbitration was utilized.

As required by statute, each party submitted a last offer on the disputed issues. The respective offers are as follows:

FINAL OFFERS OF THE PARTIES

PBA Local 213

1. The same health care as Administrators' in expired contract. That is, no increase in co-pays, deductibles, or payment toward premium. Included, of course, would be the thirteen years of retired health care.
2. Increased longevity in each category as follows:
 - 5 years – 3.75%
 - 10 years – 4.75%

5 years – 3.75%
10 years – 4.75%
15 years – 5.75%
20 – 6.75%
25 – 7.75%

3. Deletion of holiday, clothing and court pay.
4. Inclusion of holiday, clothing and court pay into base salary less \$300.00 on total.
5. PBA Local 213 proposes the following compensation changes:

Step 1 through 5 – 2.5% increase per step per contract years.

Steps 6 – 2007: 4.75%
2008: 4.75%
2009: 5% split – 2.5% on 1/1/09 and 2.5% on 7/1/09
2010: 5% split – 2.5% on 1/1/10 and 2.5% on 7/1/10
2011: 5% split – 2.5% on 1/1/11 and 2.5% on 7/1/11

6. Detective allowance and canine stipend as follows:

2007: \$600.00
2008: \$700.00
2009: \$800.00
2010: \$900.00
2011: \$1000.00

The increment of stipends affects seven total employees – four detectives and three canine handlers.

7. Opt out of insurance shall be 50% of the City's total cost.

City of Millville

1. Article III – No Strike should be revised as attached:

Section 1. The Association covenants and agrees that during the term of this Agreement, neither the Association nor any member or person acting in its behalf will cause, authorize or support any strike (e.g., the concerted failure to report for duty, or willful absence of any employees from their positions, or stoppage of work or abstinence in whole or in part from the full, faithful and proper performance of the employee's duties of employment), work stoppage,

slowdown, walkout, or other job action against the City. The Association agrees that such action would constitute a material breach of this Agreement.

Section 2. In the event of a strike, slowdown, walkout or other job action, it is covenanted and agreed that participation in any such activity by an employee covered under the terms of this Agreement shall be deemed grounds for termination of employment of such employee or employees.

Section 3. The Association will actively discourage and will take whatever affirmative steps are necessary to prevent or terminate any strike, work stoppage, slowdown, walkout or other job action against the City.

Section 4. Nothing contained in this Agreement shall be construed to limit or restrict the City in its rights to seek and obtain such judicial relief as it may be entitled to have in law or in equity for injunction or damages or both in the event of such breach by the Association or its members.

2. Article V – Salaries shall be adjusted as follows:

January 1, 2007 – 3%

January 1, 2008 – 3%

January 1, 2009 – 3%

January 1, 2010 – 3%

Add: “The City may elect in its discretion to pay employees weekly or bi-weekly on the applicable Friday. Should the pay day occur on a holiday, pay checks will be issued on the day preceding the holiday.”

3. Article VII – Work Week and Overtime shall be modified as follows:

Section 4. Minimum call-in pay shall be one (1) hour.

4. Article X – Discrimination or Coercion should be revised to read as attached.

“There shall be no discrimination, interference or coercion by the City or any of its agents against the Employees by the Association because of membership or activity in the

Association. The Association or any of its agents shall not intimidate or coerce employees into membership.

The City and the Association agree that each provision of this Agreement shall equally apply to all covered employees and that there shall be no harassment or intimidation of, interference with, or illegal discrimination against any employee because of: age, sex, race, creed, skin color, national origin, nationality, ancestry, marital or civil union status, disability, handicap, genetic information, affectional or sexual orientation, blood trait, political activity, United States or State Armed Services Activity. Harassment shall also include sexual harassment. All references to employees in this Agreement refer to both sexes and wherever the male gender is used, it shall be construed to include both male and female employees.

5. Article XIV – Holidays

Section 6 delete “D” days which are no longer applicable.

6. Article XIII – Medical and Dental Benefits shall be revised to read as attached.

7. Article XV – Schooling shall be revised including modification that “Effective for new employees hired after January 1, 2007, only college credits earned after being employed by the City of Millville will be eligible for payment.”

8. Article XIV – Sick Leave and Injury Leave

Section 2. Amount of sick leave payable at retirement under Section C (i) shall be revised to read as follows:

C. (i) Employees shall receive compensation for accrued unused sick hour upon retirement at the rate of fifty percent (50%) of the total accrued unused sick hours up to a maximum payment of Twelve Thousand Dollars (\$12,000.00).

9. Article XVIII – Court Appearances shall be modified to delete the \$250 annual adjustment to salary to compensate for off-duty preparation for court appearances.

10. Article XXI – Proration of Benefits

Section 2 shall be revised to read as follows:

2. Death, Retirement, Resignation or Removal

During the last calendar year of employment with the City, Employees, upon death, retirement, resignation or removal shall earn sick leave, vacation leave and annual clothing maintenance allowance prorated on the basis of the number of full months employed. Administrative leave shall not accrue and be paid after the death, retirement, resignation or removal of an employee. However, an employee who has already used administrative leave shall not be required to reimburse the City for the days already used.

11. Article XXIII – Duration shall be revised to read as follows:

- A. This Agreement shall be in full force and effect as of January 1, 2007 and shall remain in effect to and including December 31, 2010.
- B. The parties agree that negotiations for a successor agreement modifying, amending or altering the terms and provisions of this Agreement shall commence no later than one hundred twenty (120) days prior to the date on which this collective bargaining Agreement is to expire. At least three (3) negotiation sessions must take place before either party can file for Interest Arbitration with the Public Employee Relations Commission (P.E.R.C.). The term for this Agreement and all practices shall remain in full force and effect until said successor agreement is reached.

BACKGROUND

The City of Millville is located in Cumberland County and has a population of approximately 28,000 residents who live within its 42 square miles. Routes 47, 49 and 55 pass through the City. In reasonable proximity to Millville are the cities of Vineland and Bridgeton, the County seat. The parties have presented

substantial evidence and argument on the extent to which comparisons should be drawn among these three Cumberland County cities.

At time of hearing, the bargaining unit consisted of 69 police officers. Sergeants, Lieutenants and Captains are represented in a superior officer unit and are not part of this proceeding. The police officers work in a challenging environment as shown by evidence concerning the crime rate in the City and in Cumberland County generally. The record shows that the City has expanded its business and residential community during the last several years although unemployment remains significantly higher than the state and national averages. The City and the PBA devote much attention to the City's budgetary posture and sharply disagree on the state of the City's finances.

In support of their respective last offer positions, the parties' have submitted comprehensive presentations. I will summarize their main points as follows.

PBA LOCAL 213

The PBA asserts that the two statutory criteria deserving most attention are the interests and welfare of the public, and the continuity and stability of employment, each of which it believes supports its last offer. It disagrees with the City's financial analysis and asserts that the City is on sound financial footing and can afford to fund the PBA's proposal. The PBA contends that it deserves a

wage increase that is greater than the City's alleged pattern of settlement. At the time of hearing, the PBA notes that 41 officers had left the Department since 2003 for positions in law enforcement elsewhere. These officers are said to have left to work at locations for better compensation and improved working conditions. As a result, over 68% of the Department's remaining police officers have 5 years of experience or less and 71% have 10 years or less. The PBA claims that the high turnover has resulted in an acute lack of officers with experience, supervisory skill and knowledge and is severely detrimental to the public interest and the continuity and stability of employment at the Department. The PBA argues that its proposal is designed to assist the City in making its police department a more attractive and desirable place to work and remain throughout a career. It believes that the constant drain of experienced officers impacts upon the security of the City's residents and businesses. The PBA urges the City to "invest" in the Department.

Although the experience level in the Police Department has decreased over recent years, the City's crime rate has remained high in comparison to other towns in New Jersey and Cumberland County. Citing VCR statistics, the PBA asserts from January through November of 2008, nearly 2,000 violent crimes were reported in the City, including homicides, rape, assaults, burglaries, vehicle theft and arson. The PBA submits that, in the interest of the public's safety and security, it is essential to maintain a Department that can attract and retain qualified and experienced police officers.

The PBA currently contributes to health care and proposes to continue doing so. It objects, however, to the City's proposal that would eliminate the cap on employee contributions and would force new officers to pay more than 2% of their salaries. This claimed "tax" on salaries would deter new officers from choosing Millville as a place to work, and would further encourage senior officers to seek employment elsewhere. The PBA has no objection to the City's proposed increases on health insurance co-pays and deductibles. It seeks to expand health coverage offered to retirees in a manner that matches the coverage the City provides to Administrators. This would provide 5 years of retiree health coverage to officers leaving service after 15 years, and 9 years of coverage to officers leaving service after 20 years. The PBA also proposes an increase in the opt-out provision from \$1500 to 50% of the premium annually.

The PBA seeks a .5% increase across the board at each step of the longevity schedule. This would create the following longevity schedule:

5 years – 3.75%
10 years – 4.75%
15 years – 5.75%
20 years – 6.75%
25 years – 7.75%

The PBA contends that, because the average length of service in the Department is so low, the cost of this proposal is minimal but would create an incentive for officers to remain in the service.

The PBA also proposes to roll holiday, clothing and court pay into base salary effective January 1, 2010. The roll-in would increase pensionable compensation and augment salaries that the PBA claims are comparatively low. It would also serve as an inducement to recruit and retain officers and contribute to the continuity and stability of employment. Recognizing that the roll-in will create additional related costs, the PBA has proposed a reduction of \$300 from the roll-in amount.

The PBA proposes the following salary increases:

Step 1 through 5 – increase 2.5% each January 1 of the Agreement

Step 6 - 2007 – 4.75%

2008 – 4.75%

2009 – 5% split: 2.5% on 1/1/09 and 2.5% on 7/1/09

2010 – 5% split: 2.5% on 1/1/10 and 2.5% on 7/1/10

2011 – split: 2.5% on 1/1/11 and 2.5% on 7/1/11

The top-heavy format of the wage proposal is designed to provide larger raises for more experienced officers to alleviate the problem of attrition. The proposal is said to create top-step salaries that are more in line with those at

Vineland, the State Department of Corrections, the City's Fire Department, and the Cumberland County Prosecutor's Office.

The PBA has proposed the following stipends for Detectives and Canine Handlers:

2007 – \$600
2008 – \$700
2009 – \$800
2010 – \$900
2011 – \$1000

The cost of this proposal is said to be minimal because it affects only four Detectives and three Canine Handlers. According to the PBA, these stipends have not been increased in many years and have not kept pace with cost-of-living increases. The proposed increases would also raise the stipends to levels that are said to be more in line with comparable jurisdictions in the State.

The PBA believes that its proposals are designed to attract and retain experienced officers and end the turnover that plagues the Department. This is in sharp contrast to the City's proposals, which, according to the PBA, would only worsen the attrition problem. The PBA asserts that the City's salary proposal is substandard and would force police salaries to lose ground to the salaries the City pays its own fire fighters and to those of officers in comparable jurisdictions.

The PBA claims that the City has failed to demonstrate a need to change the No-Strike language in Article III, to reduce call-in pay or change its practice under Article XII – Holidays. In addition, the City will only exacerbate the problem of attrition by its proposals to reduce the economic benefits provided in Article XV – Scheduling, Article XIV – Sick Leave and Injury Leave, Article XVIII – Court Appearances, and Article XXI – Proration of Benefits.

The PBA argues that its proposals on wages and health benefits are consistent with those of departments in similarly situated municipalities. In addition to the departments and agencies of Cumberland County cited by the PBA as a basis for comparison, it also looks to communities within the State with similar rateables. The PBA contends that the base salaries of its police officers have not kept pace with those of Vineland, the New Jersey Department of Corrections, and the Cumberland County Prosecutor's Office. The PBA offers comparisons to law enforcement organizations to which City officers are likely to seek employment. The PBA has prepared the following chart showing total compensation for jurisdictions that would most appeal to candidates coming from Millville.

	Base Salary	Longevity	Education	Clothing	Total
Millville	\$61,683.00	6.25%	\$1,680	\$675	\$67,893.18
Vineland	\$73,800.00	xx	\$2,000	\$800	\$76,600.00
NJSP	\$81,732.00	xx	\$1,000	\$900	\$83,632.00
Bridgeton	\$58,690.00	5.50%	\$2,400	Det. gets \$250	\$64,567.95
NJDOC	\$74,583.00	xx	xx	\$1,485	\$76,068.00

The PBA has also assembled data from collective negotiations agreements from several other municipalities which it believes demonstrate that levels of wages and economic benefits elsewhere are superior to those provided by the City. Those communities include Maplewood, Glassboro, Cranford, Carteret, Rahway, West Milford, South Plainfield, Bergenfield, North Plainfield, and Scotch Plains. The PBA submits a chart reflecting comparisons among various municipalities:

Rateable Breakdowns of Comparable Cities for Sergeant Salaries

City	Net Value Taxable	Sgt. Salary
Millville	\$1,427,591,878**	\$70,615
Bridgeton	\$356,572,800**	\$79,708
Vineland	\$1,923,647,828**	\$88,322
Bergenfield	\$2,399,382,735	\$106,180
Carteret	\$978,370,983**	\$84,317
Cranford	\$1,647,063,669	\$88,821
Glassboro	\$670,666,018**	\$93,007
Maplewood	\$2,055,054,000	\$82,502
N. Plainfield	\$837,790,034**	\$95,152
Rahway	\$1,507,545,894**	\$94,152
Scotch Plains	\$994,137,196**	\$94,254
S. Plainfield	\$1,418,770,363**	\$100,145
Westfield	\$1,864,139,453	\$80,659
West Milford	\$1,515,840,182**	\$94,732

** Closest Ratable Matches

The PBA argues that the increases negotiated by comparable jurisdictions both within and without Cumberland County for the contract term in question all exceed the City's proposals. Citing collective bargaining agreements in evidence, the PBA argues that the overall compensation of police officers in these jurisdictions has outpaced the overall compensation of the City's police officers. The PBA disagrees with the City's argument that Millville police officers compare favorably with those employed by the cities of Vineland and Bridgeton. It notes that the most recent agreement in Vineland for contract years 2007-2010 contain 3.5% wage increases resulting in a salary maximum of \$85,700 at Step Nine (after 20 years) and requires the City of Vineland to assume the full cost of health insurance who have been employed by the City on or before January 1, 2003. In Bridgeton the PBA notes that employees with Basic HMO Horizon receive insurance coverage at no cost while providing wage increases through 2010 that are higher than what the City of Millville has proposed.

The PBA contends that it is within the lawful authority of the City to accept the PBA's last offer. According to the PBA, the City is in good financial standing and the financial documents show that the City is not in danger of exceeding its CAPs. It points out that the City receives substantial federal and state funding for its Housing Authority and for its schools. It has also received an Urban Enterprise Grant. While it receives substantial revenues from taxes, the City, at the same time, has reduced the tax rate. The PBA cites evidence that the City

has experienced redevelopment causing an uptick in business, an increase in rateables and has added new retail establishments that are creating new jobs.

Relating both to the City's lawful authority and to the financial impact on the governing unit, its residents and taxpayers, the PBA contends that the City has not accurately calculated the cost of the PBA's proposal. It claims that the City's calculation of base salary has included several officers who are no longer employed in the Department. These officers were to receive senior pay and were replaced with new officers at much lower salaries. Pointing to official budget documents, the City's 2009 budget anticipated a \$2.75 million surplus while its 2008 revenues exceeded expectations by \$1,661,892. The PBA asserts that the City continues to maintain a fund balance and uses over 80% of it to reduce the tax levy. The PBA also asserts that the tax rate in the City has been stable and has actually decreased for municipal use. In addition, the City's tax collection rate remains above the State average while property values have increased.

The PBA submits argument as to why the City's non-salary proposals should be rejected. It contends that the City has not demonstrated a need for additional language to the no strike provision contained in Article III, especially in light of existing language stating that there be no strikes, work stoppages or slowdowns by police officers. The PBA also believes that the City has not presented any support for reducing the minimum call-in pay from 3 hours to 1 hour. The PBA further opposes the City's proposal to delete "D days" from

Article XII.¹ The PBA emphasizes that the City's proposal would remove the quid pro quo in the existing Agreement that allows the City the benefit of using a rotating schedule while providing for use of designated or D Days to the officer affected by working the rotating schedule. The PBA objects to the City's proposal to remove education stipends for officers who have obtained a degree prior to working with the City. In the PBA's view, an award of this proposal will make the City a less attractive place for prospective employees who have college educations. The PBA urges denial of the City's proposal to reduce the value of sick time an officer receives upon retirement. It views the current benefit of 75% of the value of sick time up to a maximum benefit of \$12,000 as being modest and the City's proposal to change 75% to 50% up to the maximum of \$12,000 as an unwarranted slash in the benefit and one that would work against employees who do not now use their sick time.

The PBA offers additional objections to the City's proposal to remove a \$250 annual payment that each officer receives to cover preparation for court. According to the PBA:

One of the major duties of the police officers is to appear in court and testify against the defendants they have arrested. In preparing for the testimony when not scheduled to work, officers often have to review reports, notes, videos and other documentation pertaining to the arrest of the individual. The City did not want to pay overtime to the officers for the time they spent preparing to appear in Court. It was negotiated in lieu of seeking overtime, each officer receive a \$250.00 payment to cover all of the court preparation time for the entire year.

¹ The PBA notes that the City's proposal contained a typographical error by referring to this proposal as an attempt to modify Article XIV rather than Article XII.

The PBA seeks the denial of the City's proposal to prorate sick and vacation time. The PBA terms this proposal as an evisceration of benefits. it notes that it would require deceased families and retired officers to have to pay the City back if an officer were to use time before it was earned prior to separation.

THE CITY

In support of its overall last offer, the City's main emphasis is on its finances and economic conditions. The City urges the Arbitrator to place the most weight on the following three factors of N.J.S.A. 34:13A-6(g): the interest and welfare of the public, including its caps; internal comparability with the City's other bargaining units; and the financial impact of the award on the governing unit, its residents and taxpayers.

The City cites the State's huge budget deficits in recent years, declining revenues, and unemployment rates Millville that hover well above the national average. It points to Cumberland County's unemployment rate as being the highest in the State and the City's, at 14.7%, as being the fourth highest of New Jersey cities with populations greater than 25,000. The City submits that it suffers from store closings, housing foreclosures, and bankruptcies. Additional burdens are successful tax appeals, declining rateables and smaller interest on investments that are said to be causing revenues to fall short of projections.

The City asserts that the PBA's proposal does not recognize the state of the City's finances and would diminish the City's ability to allocate resources among the competing operational interests of city government, including fire protection, maintaining safe and clean streets, sanitation services, zoning and construction control services. The City calculates that an acceptance of the PBA's proposal would require the allocation of nearly one-half of the City's allowable appropriation CAP increase to 65 police officers, representing 27% of its work force while leaving the other half of the appropriation for the balance of its operations and 241 employees.

Citing N.J.S.A. 40A: 4-45.1, the City points to the legislative statement that "... the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads. At the same time, the Legislature recognizes that local government cannot be constrained to the point that it is impossible to provide necessary services to its residents." The City insists that the PBA's proposal would interfere with the interests and welfare of the public by preventing the City from providing necessary services to its residents: "if the excessive increases requested by the PBA are granted, the City will be forced to sacrifice the quality of other services." Quoting Local 207 v. Borough of Hillsdale 263 NJ Super 163,194 (App. Div. 1993), the City asserts that, "a municipality should not have to demonstrate it would be financially crippled before its arguments could

be found to be sufficient.” Awarding the PBA’s proposal would have a significant long-term adverse impact on the City and its tax payers.

The City contends that it currently faces rising costs that challenge its ability to provide services. The cost of providing Horizon Health Plans to its employees increased by \$576,382, or 21.37%, from contract year 2008 to 2009. The cost for prescription coverage increased by \$143,865, or 14.5%, over the same period. The City’s pension contribution increased from \$241,318 in 2005 to \$1,391,686 in 2009.

The City portrays the contrasting results realized between its salary proposal and that of the PBA. If awarded, the City’s wage proposal would incur the following costs:

ANNUAL INCREASE IN BASE SALARY

Year	Annual Increase	Previous Year Total Salary	Percent Increase (Inclusive of Step Increases)
2007	\$287,775.17	\$2,923,007.00	9.85%
2008	\$296,036.59	\$3,210,782.17	9.22%
2009	\$291,867.19	\$3,506,818.76	8.32%
2010	\$318,795.38	\$3,798,685.95	8.39%

In contrast, it calculates the PBA’s proposal to yield the following costs:

WITH PBA PROPOSAL

Year	Annual Increase	Previous Year Total Salary	Percent Increase (Inclusive of Step Increases)
2007	\$518,454.00	\$2,976,663.00	17.42%
2008	\$402,085.00	\$3,495,117.00	11.50%
2009	\$483,532.00	\$3,897,202.00	12.41%
2010	\$419,024.00	\$4,380,834.00	9.57%

The City insists that its proposal is more reasonable than the PBA's under N.J.S.A. 34:13A-16(g)(2) – Comparison of Wages, Hours and Conditions of Employment of Other Employees – both in relation to bargaining units within the City and also to public employees, including law enforcement, in similar jurisdictions.

The City expresses concern that the PBA has ignored evidence concerning its finances and the contracts it negotiated with its other bargaining units including health benefits and wages. The City's proposed Health Benefit Language to the PBA is similar to that found in the City's contract with FMBA Local 63 (covering January 1, 2007 through December 31, 2011), its contracts with the Millville Administrators' Unit (January 1, 2008 through December 31, 2012), and with Civil Service Association Cumberland Council No. 18 (January 1, 2008 through December 31, 2010). The City claims that the only difference is that the City's agreements with these other units all contain a cap on annual employee contributions. The City's proposal to the PBA for Article III, Section 1 F. – Cost Contribution – contains no such cap. It reads as follows:

- F. Cost Contribution. Increases in premiums for health insurance premiums for all coverages shall, except for individual single person, be shared by the City and the employee on a 50/50 basis subject to a maximum contribution by each employee of \$500 per year. The base premium cost shall be the cost for coverage for the calendar year 2004.

Effective January 1, 2008, the City agrees to pay 100% of the costs of the Millville Health Benefit Program insurance coverages for the individual employee only (i.e. Single Person Coverage). Employees may elect to secure Millville Health Benefit Program insurance coverage for an Eligible Spouse and/or Dependents (i.e., Husband/Wife, Parent/Child or Family Coverage) but shall be responsible to pay Six Hundred (\$600) Dollars plus ten (10%) percent of the annual increase in the health insurance premium for the selected coverage over the annual premium cost for the selected coverage paid by the City for the preceding year, commencing with year 2007 as the base year and then each year thereafter. For the purpose of this Agreement, the 2007 base year shall mean the premium cost for premiums paid by the City using the health benefits contract period ending February 28, 2008. No maximum contribution limitation shall apply. Future increases shall be based on the premium increases in future health benefit contract periods. An Employee's payments for his/her cost shall or providing the health insurance plans which covers the employee's eligible spouse and/or dependent(s) (i.e., Husband/Wife, Parent/Child or Family Coverage) will be in the form of weekly, equal payroll deductions.

The City describes its wage settlements with the FMBA, Council 18, and the Administrators' Unit as showing a declining trend that has been influenced by a deteriorating economy that now reflects its wage offer is reasonable, if not generous. The City reached a mediated settlement in arbitration with the FMBA in April 2008 which provided the following increases:

January 1, 2007	3.6%
January 1, 2008	3.8%
January 1, 2009	3.8%
January 1, 2010	3.8%
January 1, 2011	3.8%

In November 2008, the City and Council 18 entered into the following mediated settlement on wages:

January 1, 2008	3.6%
January 1, 2009	3.6%
January 1, 2010	3.6%

The Administrator's Unit reached a voluntary settlement with the City in early 2009, which provided the following increases:

January 1, 2008	3.4%
January 1, 2009	3.4%
January 1, 2010	3.4%
January 1, 2011	3.4%
January 1, 2012	3.4%

The City contends that its proposal to increase wages by 3% in each year of a 2007-2010 agreement is far more consistent with its settlements with other

City bargaining units compared to the PBA's proposal to increase step 6 by 4.75% in 2007 and 2008, and 5% in 2009, 2010 and 2011.

The City has proposed revised No Strike language for Article III. According to the City, current language does not adequately cover a concerted failure to report for duty, or willful absence of any employees from their positions, nor does it require the PBA to actively discourage such conduct. The city submits that the language it has proposed mirrors the No Strike pledge in the FMBA Local 63 Agreement. It would state as follows:

Article III – No Strike

Section 1. The Association covenants and agrees that during the term of this Agreement, neither the Association nor any member or person acting in its behalf will cause, authorize or support any strike (e.g., the concerted failure to report for duty, or willful absence of any employees from their positions, or stoppage of work or abstinence in whole or in part from the full, faithful and proper performance of the employee's duties of employment), work stoppage, slowdown, walkout, or other job action against the City. The Association agrees that such action would constitute a material breach of this Agreement.

Section 2. In the event of a strike, slowdown, walkout or other job action, it is covenanted and agreed that participation in any such activity by an employee covered under the terms of this Agreement shall be deemed grounds for termination of employment of such employee or employees.

Section 3. The Association will actively discourage and will take whatever affirmative steps are necessary to prevent or terminate any strike, work stoppage, slowdown, walkout or other job action against the City.

Section 4. Nothing contained in this Agreement shall be construed to limit or restrict the City in its rights to seek and obtain such judicial relief as it may be entitled to have in law or in equity for injunction or damages or both in the event of such breach by the Association or its members.

The City has also proposed new language for Article V – Salaries. The language would give it the discretion to pay employees on a weekly or bi-weekly basis. The City asserts that the same language is currently included in the Agreements with Council 18 and the Administrators, although it does not exist in the FMBA Local 63 agreement.

The City has proposed a revision to language in Article X – Discrimination or Coercion. This proposal has been accepted by the PBA.

The City contends that, for the purpose of comparing wages, hours and terms and conditions of employment with similar jurisdictions, it is essential to look to the Cumberland County cities of Bridgeton and Vineland and, to a lesser extent, the County of Cumberland Sheriff's Officers. The City asserts that its approach is consistent with the method of drawing comparable jurisdictions from similar bordering and surrounding communities. This approach is claimed to be more relevant than the PBA's submission of contracts from municipalities within Central and Northern New Jersey communities. It points to the PBA's presentation of contracts from Bergen, Cumberland, Essex, Gloucester, Middlesex, Somerset, and Union Counties. With the exception of Cumberland and Gloucester, the City complains that each of these Counties is in the "NY-

Northern NJ, Long Island, NY-NJ-PA Metro Area” for purposes of statistical analysis by the U.S. Census Bureau.

The City submits that it is unrealistic for the PBA to compare the City of Millville to any of the out of county municipalities submitted by the PBA. The City points out that among these counties the PBA has submitted, Cumberland ranks at or near the bottom in median household income, per capita income, and housing units. It rates the highest for the percentage of people who are below the poverty level.

The City rejects the PBA’s argument that it does not provide comparable wages and benefits. The City provides an extensive comparability analysis comparing its police officers with the cities of Bridgeton and Vineland and with Sheriff’s Officers employed by Cumberland County.

Among the main points noted by the City that concern comparison with the City of Bridgeton include a more favorable longevity schedule in Millville ending in 7.25% compared with 5.50%. Another is holiday pay equivalent to 6.15% of base salary not reflected in the Millville salary schedule while such pay is already rolled-in to the Bridgeton salary schedule. A similar point is made with respect to clothing allowance. Another is the receipt of court preparation time of \$250 while none is received in Bridgeton. The City takes major note that it provides each officer with 12 years of retiree health benefits while no such benefit is provided in Bridgeton.

Among the main points noted by the City that concern comparison with the City of Vineland include the absence of longevity pay in Vineland, the absence of a retiree health benefit (except for prescription) and the fact that the Vineland salary schedule includes the roll-in of holiday pay while the equivalent of 6.15% of holiday pay in Millville is not now included in the salary schedule. The City also notes that the City of Vineland and the PBA negotiated a second tier salary schedule that provides a maximum salary step for new officers almost \$4,000 less than the salary schedule for employees employed as of 2010.

The City distinguishes its compensation program from that for Cumberland County Sheriff's Officers. It compares a maximum 7.25% longevity at 25 years in Millville with \$600 at 25 years for the County. The City emphasizes that there is no clothing allowance, court preparation time or retiree health benefits at the County compared with the benefits (\$675, \$250 and 12 years of retiree health) received in Millville. While comparing its last offer through 2010 that includes the roll-in of longevity, clothing and court preparation time, the City concludes that 25 year compensation would be \$75,382 compared to \$56,754.

Given the number of police officers who are moving through steps on the salary guide, the City submits that the costs of increments cost under its proposal is substantial even if it had not offered an across-the-board wage increase. Under the City's proposal of 3% annual increases, an officer moving from step 2 (\$36,243) to step 6 (\$66,610) on the January 1, 2010 guide would receive an

increase of \$30,376. Based on the City's cost analysis, the PBA's final offer would result in the following wage guide:

WAGE GUIDE UNDER THE PBA'S FINAL OFFER

	Current	1/1/07	1/1/08	Holiday Pay	Court Pay & Clothing Less 300	Adjusted Pay	1/11/09	7/1/09	1/1/10	7/1/10
Step 1	\$30,081	\$30,833	\$31,609	\$1,943	\$625	\$34,177	\$35,031		\$35,906	
Step 2	\$36,243	\$37,149	\$37,149	\$2,285	\$625	\$40,059	\$41,060		\$42,086	
Step 3	\$45,260	\$46,291	\$47,550	\$2,924	\$625	\$51,099	\$52,376		\$53,685	
Step 4	\$51,421	\$52,706	\$54,024	\$3,322	\$625	\$57,971	\$59,420		\$60,905	
Step 5	\$53,477	\$54,813	\$56,183	\$3,455	\$625	\$60,263	\$61,769		\$63,313	
Step 6	\$59,183	\$64,994	\$64,938	\$3,993	\$625	\$69,556	\$71,295	\$73,077	\$74,903	\$76,775
Senior Officer 20 Yrs	\$61,683	\$64,494	\$67,438	\$4,147	\$625	\$72,210	\$73,795	\$75,577	\$77,403	\$79,275

Senior Officer pay, at 20 years, would increase from \$61,683 in 2006 to \$79,275 in 2010. The actual out of pocket increases to the City from the PBA's proposal are calculated to be 17.8% in 2007, 13.65% in 2008, 9.54% in 2009, and 9.57% in 2010. In the City's view, the PBA's proposal would cause adverse financial impact on the City and its citizens and jeopardize the City's ability to allocate funds to its non-police operations. The City insists that its proposal more reasonably and equitably balances the financial interests of its police officers with the interests and welfare of the public.

The City acknowledges that N.J.S.A. 34:13A-16(g)(3) requires an analysis of the overall compensation and benefits presently received by the City's police officers. The City contends that its police officers enjoy generous benefits including hospitalization, prescription, dental and vision plans, competitive salaries as well as other contractual economic benefits provided by the City that compare favorably to those that are provided in similar jurisdictions.

The City also submits that when considering the lawful authority of the employer [(N.J.S.A. 34:13A-16(g)(5))], the arbitrator must be guided by the Appropriations CAP Law and the Tax Levy Cap. The City contends that the application of this criterion weighs heavily in the City's favor because it is obligated to limit its budget increases within these CAP guidelines. The PBA's proposal is claimed to require a disproportionate amount of monies allowable under the caps to a minority of its employees.

The City further contends that an application of the cost of living factor [(N.J.S.A.34:13A-16(g)(7))] weighs heavily in favor of the its position. As is understood, the Consumer Price Index is commonly used to measure inflationary pressure and to calculate changes in purchasing power. From 2002 through 2007 the average CPI increase was 2.67% and this figure has decreased going forward.

Annual CPI	
<u>Year</u>	<u>Increase</u>
2002	1.6%
2003	2.3%
2004	2.7%
2005	3.4%
2006	3.2%
2007	<u>2.8%</u>
16.0% - Total (average=2.67%)	

The City additionally argues that the continuity and stability of employment for its police officers will be favorably impacted by approving its, rather than the PBA's, position. The City foresees that the PBA's proposal might provide a "morale boost" to police officers but it would also cause low employee morale and discord among other City employees who received disproportionately lower increases, as well as its police officers who could be laid off due to the costs of the PBA proposal.

DISCUSSION

The record of this proceeding is substantial and comprehensive. The City and the PBA have submitted documentary evidence, testimony and oral and written arguments in support of their respective last offers. All submissions have been thoroughly reviewed and considered. I am required to make a reasonable determination of the above issues 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 these negotiations. 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 interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is an appropriate basis to award its proposed change. When both parties propose a change on an identical issue, the proposed change must be evaluated in light of the evidence presented and as to why there should be a modification to the status quo. I have applied these principles to my analysis of the issues in dispute. The burden to be met must go beyond merely seeking change in the absence of providing 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. This is so because the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there

may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award. These principles are in harmony with the statutory requirement that total net annual economic change be calculated with the obvious legislative intent that the overall economic impact of all terms of an award be consistent with making a reasonable determination of all issues.

When the statutory criteria are applied to the extensive record of this proceeding, it clearly reflects that all are relevant. The record also shows that there are individual criterion, standing alone, that may tend to support one party's position over the other. For example, the City's last offer on economic issues over the relevant time period is more in line with the cost of living data than the PBA's last offer [N.J.S.A. 34:13A-16g(7)]. This is so despite the fact that the City's health insurance proposal would, on the whole, diminish the overall net economic value of its overall proposal. The PBA's last offer, on balance, is more strongly supported by continuity and stability of employment considerations [N.J.S.A. 34:13A-16g(8)]. The record clearly reflects that there has been substantial turnover within the department which has caused the workforce to have less seniority and experience. The percentage costs of step increases is high due to this fact. While there is no absolute proof that the turnover is solely and directly linked to existing terms and conditions of employment for the City's police officers, a reasonable connection can be drawn that this is one of the influencing factors given the evidence that many of the officers who have left

received improved compensation elsewhere. The City points out, however, that the continuity and stability of its police officers would be adversely affected by an award that so negatively impacts upon its budget that it could be unable to preserve jobs within the department for those who have chosen to remain employed by the City. To the extent that weight is given to this factor in favor of the PBA, it must be balanced by the financial and economic evidence presented by the City.

There is substantial record evidence that concerns the criteria that deals with wage comparisons [N.J.S.A. 34:13A-16g(2)(a),(b),(c)]. Such comparisons require consideration with employees who perform the same or similar services and with other employees generally. Specifically, the statute refers to comparisons within private employment in general, within public employment in general and within public employment in the same or similar comparable jurisdictions. The PBA offers argument as to why private sector comparisons are either not relevant or must be given little weight. In essence, it submits that duties and responsibilities between the two substantially differ and that those performed by police officers are unique, such as 24/7 calls for duty, powers of arrest, the carrying and discharge of firearms and the inherent dangers and risks of protecting the public and property. The City does not disagree with the importance of law enforcement work but points out that its ability to fund labor agreements flows from the general socio-economic climate for the private sector that exists within Cumberland County which reflects 14.7% unemployment and,

among all counties, the lowest median household income, the lowest per capita income and highest percentage of individuals below the poverty level. The City, in its exhibits, also references the layoff of many employees who work in the Atlantic City casino industry and who may reside within Millville. The parties also focus on law enforcement comparability. The PBA emphasizes that its proposals are strongly supported by such data. The City does not deny that law enforcement comparability data is relevant but points out that it strongly disagrees with the field of comparisons that are most relevant. The PBA submits data concerning jurisdictions within Cumberland County but also direct many of its comparisons on jurisdictions that lie throughout the State of New Jersey, including some in Bergen County. The City, in contrast, emphasizes Vineland and Bridgeton, two nearby cities in Cumberland County with similar characteristics as well as to Cumberland County employees. Even if it were found that the law enforcement comparables should place the most weight on comparisons with Vineland and Bridgeton, the City and the PBA sharply disagree on the conclusions that should be drawn from such data. In respect to internal comparability, the PBA rejects the level of wage settlements the City has achieved with the FMBA, the Administrators and the CSA as being wholly inadequate to address the needs of police officers. This view is reflected in the PBA's final offer which is considerably higher than any of the internal settlements and also higher than previous settlements in Bridgeton and Vineland. The City complains that the PBA has ignored the internal settlements and also points out that the salary increases achieved with all three of its internal units decreased

over the time that they were negotiated because of rapid declines in the economy and in its own budget and that even those levels require moderation given the evolving financial and economic climate.

The comparability data inevitably requires consideration of another statutory criterion, namely the overall compensation, including benefits, presently received by the City's police officers [N.J.S.A. 34:13A-16g(3)]. There is no dispute that the overall compensation and benefits package, without enumerating them here, is comprehensive in scope, but the parties' emphasis on the relevance of this criterion mainly focuses on how such existing levels compare with the field of comparables each has submitted. The record reflects that in addition to salary, Millville police officers receive longevity pay in a range of between 3.25% and 7.25%, health insurance, 16 paid holidays annually, 24 working hours of personal time annually, vacation pay in a range of between 120 hours and 240 hours annually, 120 working hours of sick leave annually, a sick leave retirement payout capped at \$12,000, a sick leave sell back program of up to 40 hours of accumulated sick leave annually at full rate, a court preparation fee of \$250 annually, a clothing allowance of \$675 annually and City-paid retiree health benefits for up to 12 years.

The City and the PBA have also addressed the interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] as well as all of the "financial" criteria that includes the lawful authority of the employer (including the appropriations cap)

[N.J.S.A. 34:13A-16g(5)], the financial impact of an award on the governing unit, its residents and taxpayers [N.J.S.A. 34:13A-16g(6)] and the statutory restrictions imposed on the employer by virtue of the tax levy cap [N.J.S.A. 34:13A-16g(9)]. Neither party disputes the relevance of any of these criteria but each would have different conclusions drawn from the data. They disagree on the financial health of the City, how the record data should be applied to the statutory limitations and how the public interest standard should be applied to their respective offers. The arguments and evidence on these points are extensive and need not be summarized here, although all of the submissions have been reviewed and considered. With respect to the financial data, the PBA emphasizes the increasing financial health of the City from 2005 through 2008 while the City emphasizes that these indicators show rapid and substantial decline thereafter due to changes in the economy. Each party contends that its last offer would further the interests and welfare of the public while defining this criteria differently.

While I find that all of the criteria are relevant, some must be given greater weight than others. No single criterion is controlling or dispositive when rendering a reasonable determination of the issues in dispute due to the fact that there are some interrelationships between and among the relevant criteria. The interests and welfare of the public criterion is entitled to the greatest weight because of these interrelationships. It recognizes the public's need to have the City maintain the safety and security of the City's residents and its commercial

and industrial interests without which the City's tax base would deteriorate. The City does not disagree with the goal of providing safety and security and the need to offer improved wages. The PBA believes higher wages would accomplish this goal. But this factor also requires an award that is sensitive to the City's budget needs and to the taxpayer's ability to meet the costs required to fund an award. The public interest criterion also requires that an award not cause the City to either violate the spending cap on the appropriate side and the tax levy cap on the revenue side or cause such distortion in its spending on contract requirements that harm would be realized in its other financial commitments that it must meet within the cap. The public interest criterion also requires that comparability evidence be taken into consideration. On this point, I am persuaded that internal comparability evidence (labor agreements executed by the City with its other units) and the external comparability evidence in the law enforcement labor agreements in Bridgeton and Vineland to be the most relevant field of comparisons. There is no one jurisdiction that is identical to Millville but the municipalities that represent the most appropriate comparisons to Millville are clearly Bridgeton and Vineland. The geographical proximity and the socio-economic profiles of Bridgeton and Vineland strongly suggest that comparisons among the three are the most appropriate. Indeed, the City and the PBA have each submitted an analysis of comparisons among the three. This criteria is relevant, but to the extent that the comparability data is given weight, it must be balanced by the financial and economic evidence in the record.

A reasonable determination of the salary issue must take into consideration the labor agreements the City has reached with its other bargaining units. Though not necessarily dispositive, internal comparability or internal patterns of settlement are relevant when evaluating the merits of a party's proposals. The application of this subsection of the statutory criteria, N.J.S.A. 34:13A-16(g)(2)(c), is well established. [See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008)]. Prior case law requires that I make a finding as to whether a pattern exists and, if so, whether it should be adhered to after considering all of the evidence. [See County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33]. In Union, PERC remanded an award where an arbitrator failed to consider an internal settlement pattern consisting of a health insurance concession that the arbitrator failed to award to the unit that was subject to his award. PERC stated:

N.J.S.A. 34:13A-16g(2)(c) requires arbitrators to compare the wages, salaries, hours and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with "other employees generally" in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c)(5) (identifying a "pattern of salary and benefit changes" as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied upon by both labor and management.

In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. In that vein, interest arbitrators have

traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. Compare Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), cert. denied, 137 N.J. 311 (1994) (in applying N.J.S.A. 34:13A-16g(8), arbitrator should have considered the effect of an award on employees in other units); see also Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, 48.05[6], contained in Bornstein and Gosline Ed., Labor and Employment Arbitration (Matthew Bender 1999) (citing arbitrators' statement that their award, which took pattern into account, would prevent disruption of future employer-wide negotiations and also commenting that arbitrators are generally hesitant to award increases that would disturb a pre-arbitration settlement pattern absent a showing that a break in the pattern is required to address a specific problem).

The record clearly reflects the existence of a general voluntary settlement pattern between the City and three bargaining units, including the FMBA concerning salary and health insurance. All have agreed to health insurance modifications. All have also agreed to salary increases that are not identical, but at reasonably consistent though declining levels for each unit. The City contends that the declines relate to the passage of time and changing economic circumstances and there is no evidence that rebuts this assertion.

Turning first to the health insurance issue, the language proposed by the City reflects similar language that was agreed upon in the FMBA, Council #18 and Administrator units. But the City's proposal contains no cap on increased employee contributions. I find no merit or justification for this omission in the City's proposal to the PBA. The PBA has voiced strong opposition to the proposal mainly because the City's proposal seeks to eliminate the existence of a

cap that currently exists in the health insurance provision as well as the fact the labor agreements with the City's other units all contain a cap. The record reflects that the City's proposal is similar to the health benefit article contained in the other labor agreements with the exception of its omission of a \$1,100 cap. The PBA also contends that the proposal is unreasonable even with the cap. Notwithstanding how the parties have characterized the City's health insurance proposal, I award the City's proposal so long as it includes the cap and the amount contained in the FMBA agreement. General consistency within this benefit on a city-wide basis is justified because it precludes the administration of widely divergent benefit levels among all of its units and employees. The FMBA agreement made this benefit effective January 1, 2008. Given the lack of voluntary settlement here in the PBA negotiations, the health insurance proposal awarded shall be effective January 1, 2010. The arbitrator takes notice that effective May 21, 2010, unit employees are required to pay 1.5% of base salary towards health insurance contributions. Any such contributions that were made pursuant to the 1.5% contribution shall be included in the calculation of any costs payable by an officer as a result of the health insurance award. I also award language that would clarify that employee contributions shall be included in any calculation towards any statutory obligation rather than in addition to any statutory obligation.

I next turn to the salary issue. The City is obligated to negotiate salaries with all four of its major bargaining units and all but the PBA reached voluntary

agreements. The negotiations between the City and its three other bargaining units shows that the terms of the City's agreements with the FMBA (2007-2011) were 3.6%, 3.8%, 3.8%, 3.8%, 3.8%, with Council 18 (2008-2010) at 3.6% in each year, and with the Administrative Unit (2008-2012) for 3.4% in each year. All of these terms were agreed upon in a time framework of between early 2008 through early 2009. The City points out that the terms reached with the FMBA were higher than those reached later in the year with Council 18 and that those terms reached with Council 18 were higher than those reached in early 2009 with the Administrative Unit because "times changed, economic conditions collapsed, City budgetary plans worsened and the City reduced wage increases to bargaining units." For reasons that are linked to the City's financial presentation in this proceeding, the City contends that the 3% wage increases it has proposed to the PBA from 2007 through 2010 are fair and reasonable due to continuing financial deterioration and that these terms should be awarded without any roll-ins that would augment base salary. At the same time, the City characterizes the PBA wage proposals of 4.75% in 2007 and 2008 with "split" % increases in 2009, 2010 and 2011 as "outrageous considering the other contracts in Millville" and changing economic circumstances. The PBA disagrees and contends that law enforcement comparability evidence supports its economic proposals, that the City's finances allowing for funding the proposals without adverse financial impact and that the increases it seeks are necessary to maintain the continuity and stability of employment for the City's police officers in light of higher turnover levels.

In light of all of the foregoing, I am persuaded that the City's proposal for 3% annual increases to the existing salary schedule represents a reasonable determination of the salary issue but with certain modifications. A contract duration through 2011, as the PBA has proposed, would parallel the FMBA's contract duration and allow for the City and these unions to engage in future negotiations on a common ground basis, as was done in the past. The public interest and labor relations stability, as in the past, is served by these two units having agreements with common expiration dates. I therefore award a contract duration that extends through 2011. In respect to pattern, this salary award is not identical to those that were voluntarily agreed to in the other units. Strict adherence to any one of the units is not required given that all differ but fall within a reasonably consistent range. The declining levels of settlement terms is, more than likely, the result of the changing financial circumstances that the City has established in this proceeding that extended through 2009. Moreover, the respective salary levels between the FMBA and PBA were not identical going into 2007 and the PBA's claim to an entitlement of greater relative salaries between the two units cannot be supported on this record. The substantial costs of achieving that goal during this contract term would cause adverse financial impact and force the City to struggle to meet its spending and taxing limitations. However, I have awarded improvements to the PBA's salary schedule in 2011, in response to the internal and external comparability data, by eliminating certain benefits and awarding equivalent amounts to base pay in a manner that is similar

to what exists in the FMBA agreement, as discussed below. Given the salary award, the failure to convert these sums into base pay would result in too wide a disparity in base pay between the two departments.

In rendering this award, I have reviewed the cost impacts of the parties' proposals. The City and the PBA have each calculated the costs of their respective proposals, although the City has omitted a cost projection for 2011 because its proposal extends only through 2010. Their projected costs substantially differ due to the fact that the PBA's projections do not include the cost of several officers who are no longer employed by the City. It is acknowledged that no cost projection over a several year period can be entirely accurate. There must be a projection based upon a gross salary level at a particular point in time. For this reason, the number of officers who may be employed at any particular point in time has not been factored into my cost calculations. The most relevant consideration has been the adjustments to be made to the salary schedule regardless of the number of employees that may be employed at a specific point in time.

The annual increase in base salary pursuant to the City's proposal is, as the City has calculated, substantial when calculating both the cost of the across the board increases and the costs of step increases or increments. After doing so, the City calculates its proposal as costing an additional \$287,775.17 or 9.85% for 2007, an additional \$296,036.59 or 9.2% for 2008, an additional \$291,867.19

or 8.32% for 2009 and an additional \$318,795.38 or 8.39% for 2010. In a separate calculation, the City calculates its proposal as costing an additional \$262,339 or 8.81% for 2007, an additional \$298,048 or 9.2% for 2008, an additional \$274,069 or 7.75% for 2009 and an additional \$303,511 or 7.96% for 2010. These estimates are generally consistent with one another and are made off a base of employees that were employed during the negotiations process. In contrast, the City calculates the PBA's proposed salary increases, including step movement and roll-ins as costing an additional \$529,844 or 17.80% in 2007, an additional \$478,506 or 13.65% in 2008, an additional \$380,188 or 9.54% in 2009 and an additional \$417,725 or 9.57 in 2010. In terms of actual dollar cost, the City calculates the PBA's proposal as rising to a difference of \$1 million in year 2010. The PBA calculates the costs of the respective proposals in a dramatically different manner. Under its calculations, it contends that its proposal will cost the City \$334,937 less than the City's proposal between 2007 and 2010. This difference appears to be attributed to the PBA's removal of the costs to payroll for several officers who are no longer employed by the City. The PBA states that this would cause its salary proposal in 2007 to actually be \$137,000 less than the cost of the previous year's level even with its proposed increases. As stated, the actual costs will fluctuate based upon the number and seniority of the employees but, for the purposes of this decision, the City's projection of costs represent the appropriate basis for calculation because they are based upon the actual contractual improvements that are represented in the last offers.

In my rendering of the salary determination, I have reviewed and analyzed the considerable evidence in the record that deals with the City's finances and find that the City's proposal to be more consistent with the financial impact and cap criteria. There is a dichotomy in the financial evidence between the more positive depiction of the City's finances from 2005 to 2008 as emphasized in the financial report of the PBA's financial expert Vincent J. Foti and the negative financial developments the City has established commencing in 2008 and going forward into 2009. The City did maintain a healthy fund balance of \$3,324,252 in 2008, but that figure declined by \$900,000 between 2007 and 2008. The City has been highly dependent upon its fund balance because it utilizes well over 80% in its budget to reduce the tax levy. While not shown in this record, the most likely trend into 2009 and beyond is towards a continued decline in the City's revenues compared to expenditures. The City has maintained a high tax collection rate of over 97% but the 38% figure for the municipal portion of the total tax levy is substantial and higher than average. The City has been operating dangerously close to its appropriation cap with only \$13,000 available for banking in 2007 and \$135,000 in 2008. The evidence that exists in 2008 and 2009 going forward shows negative trends that could impact upon the City's finances. By way of example, for fiscal year 2009, the City projected that interest on investments would be \$450,000, but during the first nine months of the fiscal year, the actual earned interest on investments was only \$75,000. The PBA has submitted many exhibits showing real estate expansion during the 2005-2008 time period but that evidence must be balanced by evidence that shows a

substantial amount of foreclosures, pre-foreclosures, and bankruptcies towards the end of 2008. The City has also suffered reductions in assessments through successful tax appeals amounting to reductions in assessments totaling over \$48 million in the four years preceding and including 2008 that resulted in a loss of approximately \$1.5 million in tax revenue. The record also reflects substantial pressure on the City's ability to fund required expenses such as pension contributions to the PFRS which have increased by more than \$1 million between 2005 and 2008 as well as the health insurance premiums which rose by over 20%, or more than a half-million dollars, between 2008 and 2009. Of further significance is the property tax levy cap which could prevent the City from raising substantial amounts of revenue through taxation evening assuming that it had the ability to do so. The City has accurately calculated that the costs of the PBA proposals would consume a substantial portion of the expenditures allowed by the spending cap.

Accordingly, I award increases to each step of the salary schedule by 3% annually, effective January 1 during each contract year from 2007 through 2010. This will create a salary schedule as follows:

	2007	2008	2009	2010
Step 1	\$30,983	\$31,912	\$32,870	\$33,856
Step 2	\$37,330	\$38,450	\$39,603	\$40,791
Step 3	\$46,617	\$48,016	\$49,456	\$50,940
Step 4	\$52,963	\$54,552	\$56,189	\$57,874
Step 5	\$55,081	\$56,733	\$58,435	\$60,188
Step 6	\$60,958	\$62,787	\$64,670	\$66,610
Senior Officer 20 Yrs Svc	\$63,533	\$65,439	\$67,402	\$69,424

The inevitable comparisons that the PBA reasonably makes with the FMBA unit, as a result of these increases, will cause a wider differential between the two units during the four years. In 2010, the sixth year step, or maximum step for the FMBA will be \$72,536 compared to \$66,610 for the similarly situated PBA member and \$69,424 for the twenty-year senior police officer. But these differences flow, in major part, from the past roll-ins of economic terms enjoyed by the FMBA that are absent in the PBA Agreement but have been proposed by the PBA in this proceeding. These PBA proposals are reasonable and are justified by the internal comparisons which require a narrowing of the gap by means that are far less costly than an across the board wage increase. By these inclusions, more accurate and equitable comparisons between the units can be drawn during future negotiations. The inclusions are also justified by the comparisons in Bridgeton and Vineland where similar types of payments have already been included in base pay. The City has recognized this when making comparisons among the three cities. The inclusions in large measure have contributed to the differences in base pay between Bridgeton and Vineland and the PBA unit.

For the above reasons, I award the elimination of the clothing allowance and court preparation pay resulting in the loss of \$925 in stipends and award the identical amount of \$925 to the salary schedules commencing January 1, 2011. I also award, as is the case in the FMBA unit and in Vineland and Bridgeton, the inclusion of holiday pay into the salary schedule effective January 1, 2011 at the

rates calculated by the City in its submissions. The inclusion of these amounts, in addition to a similar across the board increase effective July 1, 2011 to that awarded in the preceding years for the sixth year step and senior officer step will narrow the difference in base pay between the sixth year maximum step FMBA member, at \$75,292, with the sixth year maximum step PBA member at \$73,839, to \$1,453 while allowing the twenty-year senior step officer to reach \$76,916 in base pay. The 2011 salary schedule, effective January 1, 2011, pursuant to the inclusions into base pay will read as follows:

	2011
Step 1	\$36,920
Step 2	\$44,281
Step 3	\$55,054
Step 4	\$62,415
Step 5	\$64,932
Step 6	\$71,688
Senior Officer*	\$74,675

There are costs associated with the base pay improvements in 2011 of 1.78% due mainly to pension contributions, but such costs are required in order to maintain reasonable levels of salary consistency within Millville's public safety department and to grant consideration to a highly productive police department who, as the record shows, has been effective in the detection and apprehension of those who commit violent crimes within the City. It will also promote the continuity and stability of employment by providing more comparable base salary rates for police officers for the purpose of recruitment and retention. In order to accommodate conflicting criteria, the budgetary impact of all of these terms must be mitigated by the following measures. The salary steps from one through five

shall be frozen in 2011 thus yielding salary increases for those employees, after the base pay inclusions, limited to step movement with no across the board increase. Step 6 and the senior step shall, after the base pay inclusions, remain frozen from January 1 through June 30. The across the board increase for those steps will become effective on July 1, 2011, thereby rendering the costs for these two steps to be 1.5% in 2011 for those officers who occupy those two steps in 2011. The deferred costs into 2012 shall be an appropriate factor for future negotiation. This will reflect a salary guide effective July 1, 2011 to read as follows:

	2011
Step 1	\$36,920
Step 2	\$44,281
Step 3	\$55,054
Step 4	\$62,415
Step 5	\$64,932
Step 6	\$73,838
Senior Officer*	\$76,915

I next turn to the remaining issues proposed by the parties. I am compelled to include, after a review of the entire record of this proceeding, that the PBA has not met its burden to establish a basis for an increase in longevity pay, detective pay and canine stipend, nor has the City met its burden to establish a basis to modify the no strike provision, the minimum call in pay provision, the discrimination provision, the deletion of "D Days" from the holiday provision, the modification of educational credits, the calculation of sick leave payable at retirement which now contains a maximum of \$12,000, the deletion of the \$250 annual adjustment for court appearances, nor the requirement that

there be a proration of benefits in Article XXI. I recognize that each party has a firm belief that there is a basis for the revisions each has proposed. My denial of these proposals is primarily based upon the inability of either party to demonstrate the need to alter the status quo on these items for the remainder of the Agreement, although this shall not be construed to prejudice either party's ability to negotiate these proposals going forward during negotiations in 2011.

Accordingly, and based upon all of the above, I respectfully enter the terms of the Award as follows:

AWARD

1. All proposals by the City 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, 2007 through December 31, 2011.

3. **ARTICLE XIII - MEDICAL AND DENTAL BENEFITS**

Section 1. This provision shall be modified as follows, effective January 1, 2010

A. **Hospitalization and Medical Care.** The City shall provide a comprehensive Health Benefit Program including hospitalization, medical treatment, major medical coverage, surgical fees and all of the benefits which are currently included in the City of Millville Health Benefit Program at the date of this Agreement, for the employee and his family. An overview of the current Health Insurance Plan is described on Exhibit "B" of this Agreement.

Employees shall only be permitted to enroll in the type of coverage for which the employee is eligible.

All employees have the option of electing a specific health benefit plan from the Health Insurance Plans offered by the City. Except as provided in Section F below, the "primary plan" (Currently Plan A on Exhibit "B"), shall be provided to all eligible employees and eligible dependents without any premium cost paid by the employee. If an employee selects any of the other plans offered (Plans B and C on Exhibit "B"), the employee shall pay the premium cost differential between the primary plan and the plan the employee selected.

- B. Prescription Plan. The City shall provide a Co-Pay Prescription Plan for the individual and his family subject to the Co-Payments listed on Exhibit "B".
- C. Dental Plan. The City shall provide a Dental Insurance Program, which includes all of the benefits which are currently included in the Dental Insurance Program, at the date of this Agreement, for the employee and his family.
- D. Eye Care Plan. The City shall provide the Spectera Vision Plan Program for the employee and his/her eligible dependents. The employer reserves the right to substitute an optical plan with comparable or greater benefits.
- E. Change in Plans and Providers. The employer may, at its option, change any of the existing insurance providers or carriers providing such benefits so long as comparable benefits are provided to the employees and their dependents. The Employer further reserves the right, at its option, to self-insure any of the such plans or coverages so long as comparable benefits are provided to the employees and their dependents. The City will provide thirty (30) days prior notice to the PBA of the date the change will become effective for the purpose of review and comparison of all benefit and coverage levels, usual and customary rates and deductible charges. At the time of notice of change to the PBA, the City will provide the Master Plan documents for both the current plan and the proposed new plan.
- F. Cost Contribution. Increases in premiums for health insurance premiums for all coverages shall, except for individual single person coverage, be shared by the City and the employee on a 50/50 basis subject to a maximum contribution by each employee of \$500.00

per year. The base premium cost shall be the cost for coverage for the calendar year 2004.

Effective January 1, 2008, the City agrees to pay 100% of the costs of the Millville Health Benefit Program insurance coverages for the individual employee only (i.e. Single Person Coverage). Employees may elect to secure Millville Health Benefit Program Insurance coverage for an Eligible Spouse and/or Dependents (i.e., Husband/Wife, Parent/Child or Family Coverage) but shall be responsible to pay Six Hundred (\$600.00) Dollars plus ten (10%) percent of the annual increase in the health insurance premium for the selected coverage over the annual premium cost for the selected coverage paid by the City for the preceding year, commencing with year 2007 as the base year and then each year thereafter, subject to a maximum contribution of Eleven Hundred (\$1,100.00) Dollars per annum. For the purposes of this Agreement, the 2007 base year shall mean the premium cost for premiums paid by the City using the health benefits contract period ending February 28, 2008. Future increases shall be based on the premium increases in future health benefit contract periods. An Employee's payments for his/her cost shall or providing the health insurance plans which covers the employee's eligible spouse and/or dependent(s) (i.e., Husband/Wife, Parent/Child, or Family Coverage) will be in the form of weekly, equal payroll deductions.

G. Opt-Out Payments

Employees who can certify other health care coverage through a spouse's employment may elect to opt-out of coverage and receive a payment of Three Thousand (\$3,000.00) Dollars per annum prorated for the period of time each year that coverage does not apply to the employee. Checks for opting out will be issued in four (4) quarterly installments. In the event the designated covered spouse dies, terminates employment, or should the marriage be dissolved by divorce, or should there be a marital separation, the non-designated spouse shall once again become covered and the Three Thousand (\$3,000.00) Dollar payment shall be prorated. Any employee who has elected to opt-out of coverage, may re-enroll in the health care plan by giving the City thirty (30) days prior written notice of his/her desire to re-enroll in the plan. The payment of Three Thousand (\$3,000.00) Dollars shall be prorated for the period the employee was not covered by the City Plan.

In the event a husband and wife are both employed by the City, Health Care Insurance Coverages provided hereunder shall be afforded to only one designated spouse with the other spouse

covered as a family member. The non-designated spouse shall receive a payment of \$3,000.00 per annum in lieu of coverage. Checks for this payment will be issued on or about December 1st of each calendar year. In the event the designated covered spouse dies, terminates employment, or should the marriage be dissolved by divorce, or upon written certification by an employee of marital separation, the non-designated spouse shall once again become covered and the \$3,000.00 payment shall be prorated.

- H. Re-Opener. In the event that deductible limits, co-insurance requirements or other cost containment provisions are negotiated with other employee groups, then in such event, the City can, upon thirty (30) days notice, re-open this agreement for negotiations regarding the benefits provided hereunder.

Section 2.

Any employee attending an assigned school within or outside the State of New Jersey or on duty outside the State of New Jersey shall be entitled to the same health benefit program or worker's compensation coverage in the normal course of duty. Any police officer responding to a call at any time, whether on duty or not at the time, shall be covered as if on duty for purposes of the health benefit program and worker's compensation, or any other benefits provided to those injured on duty.

Section 3.

Upon an employee's retirement (after he/she has had twenty-five (25) years of service in the Police Department of the City of Millville or who retired on a State approved disability pension based on fewer years of service credit) he or she and his/her spouse and dependents shall be entitled to receive all of the then health care benefits provided by the employer, at the expense of the employer, for the shorter of the following periods:

- (a) maximum of twelve (12) years;
- (b) when said retired employee obtains full time permanent employment having comparable health benefits (once the job is obtained, the benefits permanently terminate, even if the employment terminates within the twelve (12) years);
- (c) when the retired employee becomes eligible for Medicare (age 65).

The coverages that retirees receive are the same health care benefits being received by the active current employees of the City not the benefits

which were in effect when they retired and are subject to the deductibles and co-payments required of current employees.

The above coverages pertain to the employee and are provided so long as the employee remains eligible for extended coverage as provided above. In the event the employee dies, coverage shall continue for the retiree's spouse and dependents for the remainder of the twelve (12) year period unless the spouse re-marries or obtains employment with comparable health benefits in which event coverage shall terminate.

Employees employed prior to June 15, 1990 who purchase military time according to the provisions of the Police and Fireman's Retirement System of New Jersey or who have service credit for time employed as a law enforcement employee covered by the Police and Fireman's Retirement System of New Jersey shall be granted an exemption of up to two (2) years from the twenty-five (25) year requirement of service to the City of Millville. Employees employed after June 15, 1990 are not granted this exemption and all such employees employed after June 15, 1990 must have twenty-five (25) years of service with the City of Millville in order to be eligible for the continuation of coverage provided under this Section 5.

For the purposes of this Section, it is intended that retirees are to receive the same health care benefits being received by the active current employees of the City NOT the benefits which were in effect when the employee retired. The retirees shall continue to pay to the City the Cost Contribution which was in effect when the employee retired.

Exhibit B

Horizon Blue Cross Blue Shield

PLAN A Direct Access Plan (15, 16, 17)

In-Network:	Primary Office Visit Copay \$10 Specialist Office Visit Copay \$15 Lifetime Maximum Unlimited
Out-of-Network:	Deductible \$200 individual/\$400 family Coinsurance 80% Out-of-pocket \$2,000 individual/\$4,000 family Lifetime Maximum \$5,000,000

PLAN B Direct Access Plan (12, 13, 14)

In-Network:	Primary Office Visit Copay \$10 Specialist Office Visit Copay \$15
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Lifetime Maximum Unlimited

Out-of-Network: Deductible \$300 individual/\$900 family
Coinsurance 70%
Out-of-pocket \$5,000 individual/\$15,000 family
Lifetime Maximum \$5,000,000

PLAN C Direct Access Plan (09, 10, 11)

In-Network: Primary Office Visit Copay \$2
Specialist Office Visit Copay \$0
Lifetime Maximum Unlimited

Out-of-Network: Deductible \$1,000 individual/\$3,000 family
Coinsurance 70%
Out-of-pocket \$10,000 individual/\$30,000 family
Lifetime Maximum \$5,000,000

Prescription Program

Retail Copays: \$10 brand / \$0 generic
Mail Order Copays: \$5 brand / \$0 generic

New Prescription Program:

Prescription Co-
pays including mail
order to become: \$20 Brand/ \$10 Generic

Any contributions that an employee has made pursuant to the statutory requirement to pay 1.5% of base salary towards health insurance contributions shall be included or credited in the calculation of any costs payable by an officer as a result of the health insurance award. Further, any employee contributions required by the above shall be included in any calculation towards any statutory obligation rather than in addition to any statutory obligation.

4. **Salary**

1. Effective and retroactive to January 1 in 2007, 2008, 2009 and 2010, the salary schedule shall, pursuant to the City's proposal, read as follows:

	2007	2008	2009	2010
Step 1	\$30,983	\$31,912	\$32,870	\$33,856
Step 2	\$37,330	\$38,450	\$39,603	\$40,791
Step 3	\$46,617	\$48,016	\$49,456	\$50,940
Step 4	\$52,963	\$54,552	\$56,189	\$57,874
Step 5	\$55,081	\$56,733	\$58,435	\$60,188
Step 6	\$60,958	\$62,787	\$64,670	\$66,610
Senior Officer*	\$63,533	\$65,439	\$67,402	\$69,424

*Senior Officer Rate applies only to Patrolmen who have completed twenty (20) years of service with the Department.

2. 2011

- Effective January 1, 2011, the clothing allowance, court preparation pay and holiday pay shall be eliminated. The dollar amounts of the clothing allowance, court preparation pay and holidays, pursuant to the City's calculations, shall be incorporated into base pay.
- For the entire contract year 2011, salary steps one through five shall not receive an across the board increase. Employees eligible for step movement shall continue to receive an additional step pursuant to existing practice.
- Steps six and senior officer pay shall remain frozen from January 1 through June 30, 2011. On July 1, 2011, the salary schedule for these steps alone shall be increased by the same percentage as that awarded in 2007, 2008, 2009 and 2010. These changes shall produce the following schedule effective July 1, 2011:

	2011
Step 1	\$36,920
Step 2	\$44,281
Step 3	\$55,054
Step 4	\$62,415
Step 5	\$64,932
Step 6	\$73,838
Senior Officer*	\$76,915

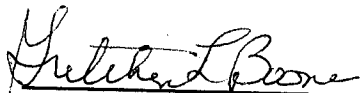
*Senior Officer Rate applies only to Patrolmen who have completed twenty (20) years of service with the Department.

Dated: December 21, 2010
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 21st day of December, 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 04/30/2014