

**In the Matter of the Interest Arbitration** \*

**Borough of New Milford** \*

**PBA Local No. 83** ★

## OPINION AND AWARD

Prior to the submission of briefs, I made some informal suggestions to counsel for their consideration. While these suggestions generated some discussion, in the end they did not

prove to be mutually acceptable and the parties agreed to submit their briefs. These were received by February 17, 2010 and this marked the close of the hearing. Consistent with the provisions of N.J.A.C. 19:16-5.9, the parties agreed to extend the time for the issuance of this award to March 31, 2010.

The Borough was represented by Mark S. Ruderman, Esq.; PBA Local 83 was represented by David J. DeFillippo, Esq. Ellen M. Horn, Esq. was on the Borough's brief.

The parties submitted large numbers of exhibits both at the hearing and in their supplemental submissions. The Borough's submission included a document entitled "Financial Summary in Support of the Borough of New Milford's Ability to Pay Argument" prepared by Steven Glickman, Esq. The PBA's supplemental submission included an accounting and financial analysis prepared by Joseph Petrucelli, CPA, PP&D Accounting Services. At the hearing, Officer Francis Haggerty testified in support of the PBA's position and Christine Demiris, Administrator and Borough Clerk, testified on behalf of the Borough.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act. P.L. 1995, c. 45, effective January 10, 2005, as amended by P.L. 2007, c. 62. The parties did not agree upon an alternative terminal procedure. Therefore, in accordance with N.J.S.A. 34:13A-16d, this is a conventional arbitration proceeding. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section."<sup>1</sup>

### **Statutory Criteria**

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of

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<sup>1</sup> The statute as amended now lists nine criteria.

the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and 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). (N.J.S.A. 34:13A-16(g))

### **Final Offers**

**PBA Local No. 83** The final offer of the PBA, as presented at the June 11, 2009 hearing, was as follows:

- 1) Duration. January 1, 2008 through December 31, 2011.
- 2) Article 8 – Salaries. The salaries shall be increased, retroactive to January 1, 2008, as follows:

2008 – 4.75%

2009 – 4.75%

2010 – 4.75%

2011 – 4.75%

Additionally, any patrol officer required to supervise a shift for any reason shall be compensated at the sergeant's rate of pay.

- 3) Article 15 – Uniforms. The annual clothing allowance shall be increased from \$600 to \$1,000, retroactive to January 1, 2008. Additionally, said allowance shall be rolled into base pay for pension purposes.
- 4) Article 17 – Vacations. Paragraph B shall be revised so as to permit officers to carry over up to six (6) unused vacation days from one year to the next.
- 5) Article 20 - Sick Leave. PBA members shall be entitled to participate in the sick leave sell back program as presently outlined in the Borough's Personnel Policies and Procedures.
- 6) Article 23 – Medical Contract. Paragraph B's reference to "twenty-five years of service" shall be replaced with "twenty-five years of pension service credit and at least twenty years of actual service with the Borough." Also, the Borough shall be obligated to provide coverage for the surviving spouse – and eligible dependents – of any active or retired officer until said surviving spouse reaches the age of 65.
- 7) All other provisions of the 2005-2007 collective bargaining agreement shall remain in full force and effect.

**Borough of New Milford** The final offer of the Borough as submitted as the hearing was as follows:

- 1) Article VIII – Salaries

January 1, 2008	2%
January 1, 2009	2%
January 1, 1010	1%
- 2) Add three steps to the salary guide and freeze starting salary with equal distant steps.
- 3) Article IX – Work Day Work Week and Overtime. Effective January 1, 2010 employees may accumulate up to 50 hours of compensatory time. All time after 50 hours shall be paid. Those employees above 50 hours shall be grandfathered and will be required to use their available days at a rate of 2 days per month until they are at 50 hours.

- 4) Article XIV – Longevity. All employees hired after July 1, 2010 shall not receive longevity payments.
- 5) Article XVII – Vacations. During the last year of an employee's service, vacation shall be prorated for services during that last year.
- 6) Article XVIII – Personal Leave. Effective January 1, 2010, personal days will either be used by the end of the year or lost.
- 7) Article XX – Sick Leave
  - a) Establish a sick leave maximum payout of \$15,000.00 for all employees. Effective January 1, 2010 sick days shall be paid out at the rate they were earned. For example, if a sick day was worth \$300.00 in 2010 and \$600.00 in 2020 the days will ~~be paid at \$300.00 for those days accumulated in 2010.~~
  - b) Effective upon the signing of this agreement if an employee leaves work early, he will be charge hour for hour for all sick time taken.
- 8) Article XXIV – Insurance. Effective January 1, 2010 all employees shall pay 1.5% of gross wages towards health insurance premiums. Effective January 1, 2010 prescription co-pays will go from \$5/\$10 to \$25/\$35.<sup>2</sup>

### **Position of the Parties**

**Borough of New Milford** The Borough compared the costs of the parties' final offers including compounding costs and the costs of increments. It also noted that a number of the proposals of the PBA would increase costs but that those costs were too speculative to calculate. This applies to proposed changes regarding vacation carry-over, sick leave buyback and retiree health benefits. Having said that, the Borough determined that the cost of the PBA's

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<sup>2</sup> The numbers appear to be a mistake. The parties' 2005 to 2007 agreement at Article Twenty-Three, Section G reads, "Effective January 1, 2006, the prescription plan co-payment shall be Ten Dollar (\$10.00) for generic drugs and Fifteen Dollars (\$15.00) for brand name."

salary and uniform demands in 2008 would be 7.26%, in 2009 they would be 6.66%, in 2010 they would be 5.8%, and in 2011 they would be 5.8%.

Similarly, the savings associated with a number of the Borough's proposals could not be calculated. This was true for freezing the starting salary, adding steps to the salary schedule, changes in compensatory time, elimination of longevity for new hires, pro-rating vacation in an employee's last year of service, requiring the use of personal days in the year earned, limiting sick leave payout and changes in the prescription co-payments. The Borough places the cost of its proposed package of wage increases and insurance contributions at 3.76% in 2009, 3.58% in 2009 and .22% in 2010.

These differences are very large. In the first three years, the PBA's salary proposal alone would cost \$504,665 or 17.15% more than the Borough's salary proposal over 2007 base salaries. The difference is \$76,743 in 2008, \$155,557 in 2009 and \$272,365 in 2010. The difference is even larger if a four-year agreement were to be awarded. These extra costs would impose a significant burden on the Borough during the term of the agreement and forever thereafter.

The Borough argues that the 1996 amendments to the interest arbitration statute, the Police and Fire Interest Arbitration Reform Act, implemented significant changes. Not only did they establish conventional arbitration as the default procedure but they required the arbitrator to determine the reasonableness of the total net annual economic changes for each year of the agreement. The criteria to be applied provide three underlying themes: the public interest, comparability and financial ramifications. The amendments were adopted in the aftermath of two cases decided by the New Jersey Supreme Court with had a major impact on the process. Hillsdale PBA Local 207 v. Borough of Hillsdale, 134 N.J. 71 (1994) and Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994). The Court emphasized that all statutory factors must be considered, weighed and explained.

The Borough analyzed the statutory criteria under the facts of this case, beginning with the interest and welfare of the public. The arbitrator must consider the interests and welfare of the public in determining a reasonable award and this includes the limitations imposed by the Cap Law. The effect of public employee wages and benefits must be viewed within the framework of the employer's budget and plans. There must be a balance between the satisfaction of the employees and the concomitant avoidance of labor strife while maintaining a stable level of governmental services, all within the framework and limitations of the available budget. As recognized by the court in Hillsdale, the public is a "silent party" to these proceedings. It is the taxpayers who feel the ultimate effect. (at 82)

Two of the statutory criteria require a consideration of comparability and overall compensation. ~~Several comparisons must be made: private employment in general, public employment in general, and public employment in the same or comparable jurisdictions.~~ Overall compensation also must be considered. There cannot be an overreliance on comparability with other police departments. The weight to be given to the various comparisons was changed with the Reform Act so that now comparability with private employment in general has become the first factor, clearly indicating a legislative intent that comparability with other police departments not be overemphasized.

Starting with private sector wages and benefits, the Borough cites the Employment Cost Index ("ECI") published by the U.S. Department of Labor Bureau of Labor Statistics ("BLS"). There was an increase nationally in wages and benefits of only 1.5% in 2009 and this was down from the 2.7% figure in 2008. The 2009 figure for the private sector alone, without state and local government, was only 1.2%. Private sector wages in New Jersey increased by 2.5% from 2007 to 2008, as set forth in the New Jersey Report of Private Sector Wage Changes. This followed an increase of 4.3% in private sector wages from 2006 to 2007. Clearly the figures are going down. In Bergen County, the increase was 1.8% from 2007 to 2008, a figure below the national average. It is clear that the PBA is seeking wage increases well in excess of the



increases in the private sector nationally, in New Jersey, and in Bergen County. The Borough's offer is more reasonable and in line with private sector increases. These figures are really said to overstate the increases because the current recession is only beginning to show up in the statistics. The Borough notes that there have been many wage freezes, reductions in bonuses, and reduced hours.

Turning to public sector wages and benefits, the Borough again notes the lag in the data. The ECI shows that wages and benefits in the public sector increased by 2.4% in 2009 and this was down from the 3% figure in 2008. The New Jersey report showed an increase of 3.4% from 2007 to 2008. The Bureau of National Affairs in its Labor Relations Reporter of November 3, 2008 reported a 3.2% increase in state and local government collective bargaining agreements in the prior year. More recently the deep recession has forced a reconsideration of public sector compensation packages. There is talk of givebacks, furloughs, wage freezes, layoffs, contributions to health insurance premiums, pay cuts, etc.

The BLS reports that public sector wages and benefits now exceed those in the private sector and that the difference between the two is increasing. The public sector no longer lags the private sector in these areas. The Borough notes that there have been large cutbacks in the private sector with salary reductions and increases in insurance contributions.

Recent public sector settlements have better reflected the current economic times. The Borough cited a three-year contract in Flemington which provides for a 2.5% increase in 2009 with a holiday being put into base, a 2.5% increase in 2010 with two holidays being put into base, and a 3% increase in 2011 with three holidays being put into base. Montclair reached a settlement in April 2009 with its FMBA which provided for increases of 1% in 2009, 1.5% in 2010 and 3.5% in 2011. Also, longevity for new hires was eliminated. Nutley settled with its FMBA for 0% in 2009, 2.5% in 2010, 3% in 2011 and 3.5% in 2012. Linden's FMBA agreed to a two-year wage freeze to avoid layoffs. The five year agreement has average annual wage increases of 2.37%. There was a similar settlement with the Linden Employees Association.

Middlesex settled a four year contract with AFSCME, in a unit with 800 employees, with raises of 0% in 2009, 2% in 2010, 3% in 2011 and 3.75% in 2012. These average 2.19% annually.

These examples show that the PBA is seeking far more than recent settlements and that the data cited by the PBA is based on settlements entered into prior to the economic downturn.

New Milford is in Bergen County. One of the bordering municipalities is Bergenfield. Arbitrator Pierson issued an award on November 13, 2009 in which he provided increases of 2.5% for each of four years. This was **less** than the municipality had offered but the municipality also was seeking a number of givebacks which the arbitrator did not award. He noted that police salaries constituted almost half of the municipal budget and stressed the need to consider the economic impact of the award. He also noted that many of the settlements and ~~awards cited by the PBA in that proceeding were obtained in stronger economic times.~~

The Borough notes that while the PBA has compared salaries with other Bergen County municipalities, it must be considered that many of those municipalities, unlike New Milford, have rolled holidays into base. Thirteen paid holidays is worth \$4,722.97 for a top patrolman in New Milford. Officers can bank their holidays without limit. While the Borough is opposed to rolling holidays into base pay because of the impact this would have on pension contributions, the fact that holidays are not in the New Milford salary must be considered when comparing salaries in Bergen County.

Turning to longevity, the Borough notes that two Bergen County municipalities – Franklin Lakes and Midland Park – have no longevity. Hackensack, Rochelle Park and Wallington have eliminated it for new hires. At least nine others have a two-tiered system. Thus, the Borough argues, its proposal to eliminate longevity for new hires should be awarded.

The Borough compared the PBA with its other two bargaining units. The New Milford Public Works Employees Benevolent Association (“PWEBA”) represents the Department of Public Works employees. Local 108, RWDSU represents the Borough’s white collar employees. Members of the PBA receive much higher salaries than do the employees in the

other two units and they receive more lucrative benefits. The PWEBA clothing allowance is half the size of the PBA allowance. There is a two-tiered longevity system for the other two units. Those units both contribute toward health insurance premiums. Neither receives out-of-title compensation as sought by the PBA. The terminal leave benefits for the two units are less generous than are those enjoyed by the PBA.

The records show that police officers have amassed \$688,439 in accrued but unused holiday time. Accrued vacation time has a value of \$95,258. Accrued personal days have a value of \$43,971. New Milford seems to be unique in permitting employees to accrue personal days.<sup>3</sup> Accrued compensatory time resulting from the 5-2 schedule, sometimes called "Kelly Days," has a value \$93,569. The Borough owes members of the PBA an additional \$280,001 in compensatory time. The compensatory time owed is this high even though the Borough has been making efforts to pay down this obligation in order to comply with the FLSA cap of 480 hours. The amount of compensatory time due to Lt. Kiene exceeds \$50,000 and Sgt. Ramaci is owed almost as much for Kelly Days. This shows the need for acceptance of the Borough's proposal to limit the accrual of compensatory time to 50 hours and to require the use of that time until it is reduced to that level.

The problem goes beyond vacations, personal days, holidays, Kelly Days and compensatory time, however. Sick leave is the largest liability. Payment for 75% of unused sick leave would total over \$1,000,000 excluding the additional days that officers receive if they complete 20 years of service. The total amount of accrued payments due to the employees in this unit is \$2,295,679. This is an average of almost \$75,000 per officer.

Recent terminal leave payments to officers who have retired demonstrate the need for limits in this area. The last ten officers who retired received \$1,725,353. Capt. Gerity retired on July 1, 2007 and received \$424,995. Lt. Boccher retired on December 31, 2007 and received \$242,344. Lt. McGrath retired on March 31, 2008 and received \$229,763. Lt. Burns retired on

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<sup>3</sup> Testimony of Borough Administrator Christine Demiris, Tr. 105.

December 31, 2008 and received \$218,905. Terminal leave payments to police officers cost the Borough \$795,409 in 2007 and \$448,668 in 2008. These payments alone represented approximately nine tax points in 2007 and five tax points in 2008. Thus, terminal leave benefits impose a huge burden on this municipality with its limited financial resources.

The Borough is seeking to limit sick leave payouts to \$15,000 and to pay sick days at the rate earned and not at the rate in effect when the officer retires. It notes that Arbitrator Hammer issued a decision in Paramus in which he called for payment for accumulated sick leave at the rate at which it was earned. Thus, this is said to provide precedent for the Borough's proposal.

The Borough notes that the PBA is seeking to be covered by the Borough's sick leave buyback program but it failed to address the sick leave incentive program which is included in ~~the PBA agreement but not in the Local 108 or PWEBA agreements.~~

It is said to be reasonable to charge officers on an hour for hour basis for all sick leave time taken. Currently, an officer is not charged with sick time if he or she leaves work after reporting for duty. This sometimes results in overtime costs for the Borough and also increases the amount of sick leave which is accumulated, adding to the cost of terminal leave.

The Borough is opposed to the PBA proposals to expand the Medical Contract provision to cover employees with a total of 25 years of pension credit and twenty years of service with the Borough. This would be a costly additional obligation for the Borough and not a benefit enjoyed by either of the other two unions. This should not be changed. Also, to provide coverage for a surviving spouse and dependents would be costly and deviate from the contracts with Local 108 and PWEBA. Those agreements actually limit retiree health benefits to the employee-retiree for those hired after January 1, 1996. Thus, the Borough has been reducing coverage and not expanding it because of the costs associated with health insurance.

The PBA cited the agreement between the New Milford Board of Education and the Education Association but that is a separate employer. This is not an apt comparison.

The Borough devoted considerable time to health insurance, in part because the costs of health insurance are such a significant and increasing part of the compensation package. The costs of health insurance have increased much more than have salary increases, as cited evidence demonstrates. Smaller employers especially have been requiring their employees to pay ever-larger shares of these costs.

One study shows that the average cost of single coverage in early 2008 was \$4,704 annually and that employees contributed an average of \$721 or 15.3% of that cost. For family coverage, the cost was \$12,680 and employees contributed \$3,354 or 26.5% of that cost. The Borough is asking only that employees pay 1.5% of gross wages toward health insurance, a much smaller amount than is typical in the private sector.

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The Borough cited three interest arbitration decisions issued by Arbitrator Glasson.

There involved Lakewood and the PBA, Docket No. IA-2009-049 (Jan. 7, 2010), North Plainfield and the PBA, Docket No. IA-2008-36 and 37 (July 25, 2009), and Point Pleasant Beach and the PBA, Docket No. IA-2007-088 (May 30, 2008). In all three, the arbitrator awarded contributions toward health insurance. In Lakewood, he required payments of \$20 per pay period. In North Plainfield, he required bi-weekly contributions in 2009 of \$15 for single coverage, \$25 for parent and child coverage and \$35 for family coverage. These figures were increased to \$20, \$30 and \$40 for 2010. In Point Pleasant Beach, he required payments of \$20 per month for those with single coverage and \$40 per month for those with dual or family coverage. In the decisions, he noted that salary and health benefits are linked in bargaining and the costs of settlements to employers include not only the negotiated salary increases but also the increased costs of health insurance. He also noted that health insurance costs have been increasing at a rate which exceeds both inflation and salary increases.

Arbitrator Glasson identified 29 settlements or awards which provided for health insurance contributions in his May 30, 2008 Point Pleasant Beach award; he identified 63 such settlements or awards in his July 29, 2009 North Plainfield award; he identified 78 settlements

or awards in his January 7, 2010 Lakewood award. The awards cited and discussed a number of the other municipalities in New Jersey in which employees contribute to their health insurance.

This has been happening in Bergen County as well as throughout the State and for the same reasons: the rising cost of health insurance. Arbitrator Mastriani issued an award covering North Arlington and the PBA on September 19, 2008 (Docket No. IA-2007-050) in which he required monthly contributions of \$20 for single coverage, \$30 for husband and wife coverage, and \$40 for family coverage. He stated that such contributions were becoming more common. He also limited new hires to an HMO plan and increased the deductible and prescription co-pay.

~~Arbitrator Mastriani also awarded contributions in Ramsey~~ and the PBA in a July 31, 2008 award (Docket No. IA-2007-081) based on the plan selected by the employee. These payments could be as much as \$137 per pay period for family coverage, \$87.50 per pay period for parent/child coverage and \$47.50 for single coverage.

Other towns in Bergen County also require employee contributions. In Mahwah, officers contributed \$20 bi-weekly as of January 1, 2008, \$25 bi-weekly effective January 1, 2009 and \$40 bi-weekly as of January 1, 2010. Officers in River Edge have contributed \$20 bi-weekly since January 1, 2008 and those in Bergenfield have contributed \$10 bi-weekly since January 1, 2008. In Leonia, the officers contribute 10% of the cost of dependent coverage.

In Hillsdale, officers contributed \$33 bi-weekly as of January 1, 2010 and this rises to \$36 and \$39 bi-weekly on January 1, 2011 and January 1, 2012. Officers in Park Ridge contribute \$20 per month for single coverage, \$30 per month for husband/wife or parent/child coverage and \$40 per month for family coverage effective December 31, 2009. Officers in Teaneck contribute \$20 per pay period effective January 1, 2010 and those in Demarest will contribute \$25 bi-weekly as of January 1, 2011.

A number of municipalities in the County have taken steps to reduce costs by requiring higher deductibles and co-pays. Edgewater and Saddle are cited as two examples.

Other recent interest arbitration awards have provided for employee contributions. The Borough cited the May 5, 2009 award of Arbitration Mastriani involving the State and its corrections officers in which the arbitrator required contributions of \$20 per pay toward single coverage, \$30 per pay toward parent/child coverage and \$40 per pay toward family and employee/spouse coverage. Doctor visit and prescription co-pays also were increased. Arbitrator Pierson required payments of the Trenton PBA effective January 1, 2009 of \$19 per pay period for single coverage and \$23 for all other coverage and these amounts were increased to \$21 and \$25 per pay as of January 1, 2010. Arbitrator Weisblatt required employees represented by PBA Local 304 at New Jersey Transit to contribute \$40 per month toward the cost of health insurance. Arbitrator Hundley increased the amount of employee contributions in Morris County. Many other examples from throughout the State of various cost-saving steps were reviewed by the Borough as well.

All of this is said to indicate a prevailing trend toward implementing contributions toward health insurance premiums by employees throughout the State and Bergen County. This is said to show the reasonableness of the Borough's proposal that employees contribute 1.5% of gross wages.

As a final point, the Borough points out that the PBA is the only unit in the Borough which does not contribute to health insurance costs. Employees represented by PWEBA who were hired after January 1, 2000 contribute the lesser of 20% or \$1800 toward dependent coverage. Those employees hired after July 1, 2001 who are represented by Local 108 pay the lesser of 25% or \$1800 toward dependent coverage. The Borough's proposal of 1.5% to the PBA would amount to less than the amounts paid by employees in the lower paid bargaining units.

Acceptance of the Borough's proposal will bring it into line with the growing number of municipalities in New Jersey and Bergen County which require such payments. The deep recession compels acceptance of the proposal as reasonable as does the dramatic increase in the cost of health insurance. The Borough urges acceptance of its proposal.

An important factor is the lawful authority of the employer and specifically the limitations imposed by the Cap Law, N.J.S.A. 40A:4-45.1 et seq. In this section as well as in others relating to financial data, the Borough relied upon the "Financial Summary in Support of the Borough of New Milford's Ability to Pay Argument" prepared by Steven Glickman, Esq.

The law restrains the authority of employers by limiting overall budget increases. Its purpose was to control the spiraling cost of local government, although not to such an extent ~~that necessary services could not be provided. In 2007, a property tax levy cap was added to~~ the earlier expenditure cap, Chapter 62 of the Laws of 2007. This cap generally limits municipalities to a 4% increase over the amount raised the previous year by taxation. The tax levy had the effect of significantly reducing the flexibility available to municipalities because it placed a strict limit on the increase in the amount to be raised by taxation which is a major revenue source for municipalities. The expenditure cap now limits current expense items to a 2.5% increase although this can be raised to 3.5% with the approval of the municipality.

There are basically five sources of municipal revenue: surplus, local revenues, State aid, non-recurring revenue and taxes. As of December 31, 2009, the Borough had reserved \$185,475 from the current expense portion of the 2008 budget. However, the Borough had to make an emergency appropriation of \$225,000 because the current expense portion of the budget was over expended due to a shortfall in police salaries. That means that there is no surplus available to fund appropriations in 2010. The Borough also emphasizes that there are no funds in the 2008 reserve account to pay for retroactive salary increases for police officers in 2008.



The economic downturn resulted in decreased local revenues. The anticipated revenues decreased by \$112,000 from 2008 to 2009. Thus, local revenues are not a source of additional funding for 2009 salary increases or for other purposes. Additionally, the Borough has learned that it will experience a decrease of \$75,000 in revenue from recycling.

The Department of Community Affairs advised municipalities to anticipate a decrease in State aid of at least 10% to 15%. The Borough experienced a drop in State aid from 2008 to 2009 of \$400,000. While the Borough applied for extraordinary aid in the amount of \$350,000, which is what it received in 2008, it did not receive this aid. Accordingly, the Borough finds itself down by \$400,000 as a result of the reduction in State aid.

The Borough has increased non-recurring revenue as much as possible but the increase was less than \$50,000 over the 2008 figure in 2009. Thus, this is not a significant source of revenue.

The only remaining revenue source is property taxes. The tax levy limited this increase in 2009 to \$534,000. The Borough initially anticipated receiving \$75,000 less than the total permissible (\$13,338,225) but amended the budget to anticipate the full amount when it realized that its recycling revenue would decrease by \$75,000.

Overall, the Borough had approximately \$200,000 in anticipated surplus, \$50,000 from non-recurring revenues, and \$534,000 in tax revenues or a total of \$784,000. This amount must be reduced by the \$187,000 decrease in local revenues and \$400,000 in State aid, leaving an additional \$197,000 for appropriations in 2009.

When 2008 ended, there was no reserve from which to pay retroactive salary increases to PBA members for that year. According to Glickman's "Financial Summary," the Borough did appropriate a total of 4% in 2009 for police salary increases for 2008 and 2009. In 2008, in order to pay a portion of the terminal leave which was due to retiring officers, the Borough obtained a waiver to exceed the cap by \$429,436.

There were expenses in 2009 over which the Borough had no control. The Borough projected PFRS contributions of \$371,740, PERS contributions of \$148,056, workers' compensation costs of \$80,000, liability insurance costs of \$60,791, and Employee Group Insurance of \$372,862. This totals over \$1,000,000 and does not include police salary increases and terminal leave payouts.

The Borough's budget in 2009 anticipated revenues and expenditures of \$17,521,740. The only way that police salaries can be increased beyond the amount appropriated would be to reduce other appropriations. Increases of 4.75% in 2008, 2009, and beyond are totally unrealistic.

The Borough rejects the PBA's analysis of the Borough's budget provided by its ~~accountants. That analysis said that the budget in 2009 was cap compliant without waivers.~~ That is not correct. There was a cash surplus cap waiver of \$429,436.28 for police wages and salaries. Thus, contrary to the claim in the PBA's report, the Borough both sought and obtained approval from the Local Finance Board for a waiver. The budget was not cap compliant.

As stated, the amended budget increased taxes by \$75,000 because of the shortage in recycling revenue. The Borough did not receive extraordinary aid so the \$350,000 which the Borough hoped to obtain was not received and this put the budget over the levy cap. While the Borough can seek a waiver from the State, few of these have been granted. The Borough utilized the maximum amount of surplus which is permitted under the law. It did not use \$382,544 because that is non-cash surplus and cannot be used as revenue in the budget.

In future years, the Borough expects, based on advice from the State League of Municipalities, that its pension contributions will increase. These costs as well as increased health insurance costs must be taken into account as salaries are increased.

A careful analysis of the lawful authority of the employer shows that the proposals of the Borough are reasonable whereas those are the PBA are not. Otherwise, the Borough will face a wholesale reduction in municipal employees and/or services.

The statute requires a consideration of the financial impact of the award on the governing unit, its residents and taxpayers. This is not to be equated with the ability to pay, as the Supreme Court noted in Hillsdale at 85. The economy affects the ability of the Borough to raise revenue. The economy is facing very large challenges. Unemployment is at or close to 10% and the number of unemployed continues to rise. New Jersey's rate of unemployment slightly exceeds the national rate. The Dow Jones Industrial Average has plummeted. Foreclosures are on the rise. There have been large numbers of layoffs throughout the State. All of these factors contribute to the ability of the Borough to pay for salary increases.

The consumer price index ("CPI") must be considered by the arbitrator as part of his analysis in determining the reasonableness of the two offers. That index actually declined between July 2009 and July 2008. As reported by The New York Times, the decline was 2.1%. Prices have been increasing at their lowest level in decades. Inflation was 4.1% in 2007 and it dropped to .1% in 2008. The Borough compared the salary of a top patrolman over the years between 1990 when it was \$39,274.88 and 2007 when the salary was \$88,374. Based on average increases in the cost of living during that period of 2.69%, the salary would have been \$61,631 if it had matched increases in the cost of living. The actual salary of \$88,374 exceeds that figure by \$26,742, well in excess of increases in the cost of living. Thus, the officers have realized a dramatic increase in purchasing power over those years. There is no justification for 4.75% increases under these circumstances. The Borough's proposal much more closely reflects increases in the CPI than does that of the PBA.

Another statutory factor is continuity and stability of employment. The Borough asserts that its proposal will best allow it to maintain and continue a stable work force not only in the Police Department but throughout the Borough. The Borough's package will more reasonably protect the stability and continuity of employment of the officers.

Accordingly, the Borough asserts its proposals are reasonable and reflective of the statutory criteria whereas those of the PBA are neither reasonable nor consistent with the

criteria. The Borough has considered the interests and welfare of the public as well as the overall compensation of the officers in comparison to the private sector, the public sector, other Borough employees and officers in comparable municipalities. The proposals consider the impact of the Cap Law and the Borough's ability to grant wage increases. The financial impact on the governing unit, its residents and taxpayers has been considered as has continuity and stability of employment. The Borough asks the arbitrator to award its proposals and to reject the proposals of the PBA.

**PBA Local 83** The PBA makes a number of arguments, backed by evidence set forth in the substantial documentation which was submitted, to support its contention that the terms of its final offer should be embraced by the arbitrator and those proposed by the Borough should be rejected.

The PBA, citing the first criterion regarding the interests and welfare of the public (N.J.S.A. 34:13A-16g(1)), asserts that the Borough is a vibrant and growing community. It has approximately 15,000 residents who are highly educated with over 30% having a bachelors degree or higher. Almost 60% of its residents are married which is said to show that the Borough is a desirable community in which to raise a family.

The 2007 median household income was \$73,000 which is \$3,000 above the State average. The median resale value of homes and condos far exceeds the State average. In 2007, the median value of a home or condo in New Milford was \$454,999 whereas the average in the States was only \$372,300. New Milford's average doubled from the 2000 level of \$222,600. The school system is excellent and the high school regularly ranks among the top 100 in the State.

The Borough is in Bergen County which has the third highest per capita income in the State. The median family income ranked sixth of the 14 municipalities in Central Bergen

County. At the same time, New Milford is said to enjoy one of the lower general tax rates. This rate in 2008 was 2.096.<sup>4</sup>

The PBA submitted photographic evidence showing that there is new construction in New Milford which is said to prove that it will continue to maintain its lofty status as a desirable place to live and raise a family. There also is evidence of business growth with several restaurants and a proposed Shoprite among the additions.

Thus, with rising property values, an excellent school system, and continued business growth, it is said to be essential that the Borough continue to be able to attract and retain the most professional and competent police officers. This requires that they be fairly compensated at levels which are comparable to other municipal law enforcement officers in Bergen County and the State of New Jersey.

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The PBA emphasizes that police officers have a dangerous and demanding job. Their work is one of the county's most dangerous occupations. Three police officers in New Jersey were killed while on the job in 2008. In 2006, over 3,000 of New Jersey's police officers or over 1 of every 12 officers were assaulted and 25% of these resulted in injury to the officer.

The work is unpredictable which contributes to the potential for emotional disorder and stress. This is among the most stressful jobs in the United States. The demands of the job increase the risks of heart disease and other health factors and account for the very low life expectancy of officers.

The PBA argues that the officers are overworked and underpaid and subject to extremely dangerous working conditions which increases the risk of injury and even death and reduces their life expectancy. Thus, they deserve and require reasonable and fair wages and benefits. It is asserted that the economic proposals of the PBA must be awarded so that the officers can continue to be successful and effective in combating crime and maintaining a peaceful and safe community for the residents and businesses of the Borough.

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<sup>4</sup> The PBA's exhibit shows that 32 of the 70 listed municipalities had higher rates. (G-1 and 2)

The PBA asserts that private sector wages have increased by 4% in the last several years. The arbitrator is required to consider these increases. N.J.S.A. 34:13A-16g(2) mandates a comparison of wages, hours, salaries, hours and conditions of employment for employees in the public and private sectors.

Citing the Biennial Report on the Police and Fire Interest Arbitration Reform Act issued by PERC, the PBA cites average awards between 2001 and 2008 of 3.86%, slightly below the average voluntary settlement of 3.97% in that same period. The PBA cited the settlement of police officers in Plainsboro. The salary increases were 4% in 2008, 2009 and 2010.

In the wage survey conducted by the New Jersey Department of Labor and Workforce Development, the increase from 2005 to 2006 was 4.6% in the private sector. Among federal ~~government employees in New Jersey, the increase was 6.6%. It was 3.3% among local~~ government employees. The following year, private sector wages increased by an average of 4.3%. In the federal government, the increase was 5.2%; it was 5.0% in State government; it was 3.5% in local government. The average government increase was 4.1%.

Personal income rose by 3.6% in New Jersey and by 4.3% across the country in 2008, thereby dispelling the gloom painted by the Borough. Household income in New Jersey remains well about the national average and is the second highest in the U.S. The State's median family income in 2007 approached \$82,000, a figure \$20,000 above the national average. Personal income rose by 5.4% in New Jersey in 2007, again showing that New Jersey is doing well.

This is said to show that the officers in New Milford need to be provided adequate pay raises to keep pace with the cost of living in New Jersey and with the salary increases which are being received by employees in both the public and private sectors. The Borough must be competitive to assure that it retains qualified and experienced law enforcement officers who can efficiently serve the residents and the community.

The PBA cited N.J.S.A. 34:13A-16g(1), (5) and (9) regarding the lawful authority of the employer. It cites and relies upon the analysis of its financial consultant, Joseph Petrucelli, CPA and FCPA. He analyzed both the spending and tax levy caps and concluded that the PBA's proposals will not present problems complying with either of these caps. There is said to be no cap problem in New Milford.

More specifically, the PBA noted that the Borough's 2009 budget complied with the spending cap and did not require waivers. The analysis notes that the spending cap permits increases in spending of 2.5% with an additional 1% permitted if an ordinance is enacted. The Borough budget in 2009 is at the level permitted with a 3.5% increase. Thus, it is cap compliant. This is said to be particularly significant because that budget included provision for \$564,899 in retiree buyouts in the police salary and wage line item. In the view of the analyst, the Borough would have qualified for a waiver for this purpose but the Borough was able to balance its budget within the spending limit and still provide for these buyout payments.

That budget also complied with the tax levy cap and again did not require waivers. The amount budgeted was actually below the amount which the Borough was allowed to raise through taxation. There have been permitted add-ons in 2008 and 2009 of approximately \$75,000 each year because of added assessments. Again, it is noted that the Borough was able to do this without a waiver and still make the buyout payments. Glickman claimed in his Financial Summary that there would be a downward adjustment to the levy cap because of a decline in local revenues but that is not correct.

The analysis also notes that there are other revenue opportunities for the Borough. These include fees for outside duty by police officers as well as fines, tickets, permits, etc. These can be increased to increase revenue. The PBA points out that there was a surplus of over \$1,000,000 in 2008 and the Borough's 2009 budget used only \$650,000 of that amount. This surplus can be used as revenue. By not using all of the surplus in 2009, there is a surplus balance of almost \$400,000.

It is pointed out that the Borough could have increased the amount raised by taxation in 2008 by an additional \$272,000. This money then would have been available for use. The Borough has deliberately limited the amount of money available for salary increases by not fully utilizing the cap laws. This led to the need for an emergency appropriation of \$200,000 in 2008 for police salaries and this money had to be raised in 2009, thereby eating up a significant portion of the levy cap in that year.

On the other hand, after not providing for any increase in police salaries in 2008, the Borough proposed an increase in the line item for police wages and salaries in 2009 of \$544,428 or 15.6% in 2009 over the amount budgeted in 2008. This is an amount that would permit the Borough to meet the PBA's salary proposal. This is particularly important because the Borough will not be required to pay the \$564,899 in retiree buyouts in future years.

The decline in the budget in 2009 is attributed to the fact that the Borough did not receive extraordinary aid in the amount of \$350,000 as it did in 2008. It is noted that Glickman's report indicates that the Borough requested to exceed the cap by \$429,436 to pay for termination pay to retired police officers. This, too, supports the conclusion that Borough can meet the PBA's salary proposals.

It is suggested that there will be additional industrial and residential projects in future years which will lead to increased revenues and which the Borough has failed to consider or acknowledge. Federal stimulus funds may be received which would increase revenues.

The analyst provided a cost comparison and concluded that the difference between the Borough's proposal and that of the PBA is \$80,656 in 2008, \$75,822 in 2009, \$114,650 in 2010 and \$119,338 in 2011. The Borough can meet the costs of the PBA's proposals within its budget.

For these reasons, the PBA asserts that the Borough is in fine financial shape and that neither the spending cap nor the tax levy cap are impediments to the ability of the arbitrator to award the PBA's reasonable proposals.



N.J.S.A. 34:13A-16g(2)(a), (b) and (c) require comparisons with other public employees in the same or similar communities and with other employees in public and private employment in general. This mandates comparisons with other employees in New Milford and with other law enforcement agencies in Bergen County.

The PBA notes that the Borough has offered increases of only 2% in 2008 and 2009 and then just 1% in 2010. It also has asked to add three steps to the schedule and to freeze the starting salary with equal steps. These proposals are totally unreasonable in light of the significantly larger salary increases received by other employees in New Milford.

The PBA cited the three-year contract between the Borough and Police Chief Frank Papapietro. This agreement covers the years 2008, 2009 and 2010, the same years proposed by the Borough for the PBA contract.<sup>5</sup> The agreement provides for annual 4% salary increases, surviving spouse benefits, no insurance premium sharing, a \$750 clothing allowance and a sick leave cap of 336 days which is twice the 183 day cap enjoyed by the officers.

The Borough's blue collar employees, represented by New Milford Public Works Employees Benevolent Association, are to receive salary increases of 3.75% in 2009, 4.0% in 2010 and 4.25% in 2011, average increases of 4.0%.

The white collar employees, represented by Local 108, RWDSU, received the same salary increases.

The teachers in New Milford received increases of 4.3% in July 2008, 4.75% in July 2009 and are to receive increases of 4.75% in July 2010. The District's administrators received 4.0% in 2007-2008, 4.5% in 2008-2009 and 4.5% in 2009-2010.

The Borough's proposal to the PBA is far below all of these increases. This is said to be even worse because its police officers already are among the lowest paid in the entire County at all ranks.

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<sup>5</sup> According to Officer Haggerty, this agreement was negotiated in or around February 2009.

The PBA compared its salaries with those of other Bergen County police officers and contrasted the effect of an award of the amounts proposed by the Borough and the PBA.

In 2006, the top patrolman in New Milford earned \$84,975, the sixth lowest of the 56 reported salaries that year. At that time, Paramus, the leader, paid a top base salary of \$105,771. Thirty-six of the 56 paid top patrolmen at least \$90,000 in 2006 and the average in the County was \$91,777. This exceeded the rate in New Milford by \$6,802.

In 2007, the top patrolman base salary was \$88,374, the fifth lowest of the 47 salaries reported and below the County average of \$96,080 by \$7,706.

It was no better in 2008 when the top patrolman in the County received a base salary of \$109,616 in Saddle River. Thirty-three of the 41 municipalities with contracts for that year paid top patrolmen over \$95,000 in base salary and the County average was \$99,682. With a 2% increase, as proposed by the Borough, the salary in New Milford would be \$90,141, the third lowest in the County and almost \$10,000 below the County average. On the other hand, with a 4.75% increase, as proposed by the PBA, the top patrolman would earn \$92,572, still the sixth lowest in the County and over \$7,000 below the County average.

It gets worse in 2009 and 2010 under the Borough's proposal. With increases of 2% and 1% in those two years, a top patrolman would earn in \$91,944 in 2009 and \$92,863 in 2010. These figures are approximately \$12,000 behind the County average in 2009 and \$14,000 behind the average in 2010. Significantly, they are the lowest top patrolman base salaries in the entire County. Even if the 4.75% increases proposed by the PBA were awarded, the officers in New Milford would have the fourth lowest salary in the County in 2009 and be almost \$7,000 below the average. In 2010, they would be about \$5,000 below the average. Thus, even with the increases proposed by the PBA, the officers would not gain significantly in their relative ranking whereas they would drop to the absolute bottom under the Borough's proposal.

The PBA also represents the sergeants and lieutenants (and it used to represent the captains but there currently are no captains or deputy chiefs). Sergeants and lieutenants fare no better than the patrolmen.

Sergeants in 2006 in New Milford earned \$91,135 and ranked 47<sup>th</sup> of 52 municipalities listed for the County. The County average was \$97,718 or \$6,000 above what the sergeants in New Milford earned. In 2007, they earned \$94,781 in New Milford but the County average was \$102,151 or about \$8,000 more than in New Milford.

In 2008, 2009 and 2010 the picture only gets worse under the Borough's proposed increases of 2%, 2% and 1%. Salaries for sergeants in those years would be \$96,677, \$98,610 and \$99,596 compared with County averages of \$105,607, \$109,962 and \$112,767. New Milford's sergeants would be behind the average in those years by almost \$9,000 in 2008 (third lowest in the County), \$11,000 (lowest in the County) and \$13,000 (again the lowest in the County).

The results would be slightly better under the PBA proposal of 4.75% increases in the three years. Sergeants would earn \$99,283 or some \$6,000 below the County average (17<sup>th</sup> of 20), \$103,999 or over \$6,000 below the County average, and \$108,939 or \$4,000 below the county average.

The same analysis can be done for lieutenants. They ranked 37<sup>th</sup> of 46 municipalities in the County in 2006 with a salary of \$97,515 and they ranked 31<sup>st</sup> of 39 municipalities in 2007 with a salary of \$101,416. Just like the patrolmen and sergeants, they would fall to the very bottom of the County and be the worst paid under the Borough's salary proposal. They were over \$6,000 below the County average in 2006 (37<sup>th</sup> of 46) and almost \$7,000 below the County average in 2007 (31<sup>st</sup> of 39). They would remain among the lowest paid even under the PBA's proposal but at least they would not be at the very bottom.

The PBA asserts that the Borough's proposal to eliminate longevity for new hires must be soundly rejected by the arbitrator. This is compelling because, as demonstrated above, the

officers already are among the very lowest paid in the County and would be even worse if the Borough's salary increases were to be awarded. To eliminate longevity for new hires would only compound the problem and inequity. The PBA ranked 50<sup>th</sup> of 56 municipalities in 2006 when top salary and longevity after ten years are added together. The same point can be made in 2007 when New Milford ranked 46<sup>th</sup> of 51 by this measure. This would be far worse, if possible, if longevity were eliminated.

The same points can be made for sergeants and lieutenants. Sergeants ranked 46<sup>th</sup> of 52 in 2006 and 40<sup>th</sup> of 45 in 2007. Lieutenants ranked 38<sup>th</sup> of 46 in 2006 and 32<sup>nd</sup> of 39 municipalities in 2007.

The data confirms, therefore, that even with the inclusion of longevity, all ranks of ~~officers in New Milford are among the lowest in the County. This situation, which will become~~ even worse if the Borough's salary increases were to be awarded, would be further exacerbated if the proposal of the Borough to eliminate longevity for new hires were to be awarded.

Additionally, the PBA notes that the longevity received by its officers with ten years of service in 2006 and 2007 was very close to the average paid in the County. Thus, it cannot be argued that this benefit is out of line in New Milford. The same basic picture continues in 2008, 2009 and 2010 under the proposals of the two parties when longevity is considered alone. The longevity falls below the County average under the Borough's very low salary proposal and remains in line with the County average under the PBA proposal.

Furthermore, the PBA notes that in the entire County, only two municipalities – Franklin Lakes and Wallington – do not provide officers with longevity.

The PBA next turned to continuity and stability of employment, N.J.S.A. 34:13A-16g(8). In this connection, it reviewed many of the proposals of the two parties, concluding that an award of the PBA's proposals would enhance the continuity and stability of employment and that, conversely, an award of the Borough's proposals would have a significant and adverse effect on continuity and stability of employment.

The PBA views this factor as related to the interests and welfare of the public because it recognizes that senior officers are more valuable to the Borough than are more junior officers. Thus, it is critically important for the Borough to retain its senior officers.

Among the many reasons that senior officers are more valuable are the following: they know the residents, business owners and other members of the community; they know the trouble spots and high-volume areas; they know the facilities and layout of the Borough; they can do things more quickly and efficiently than can a junior officer; they can detect traffic and crime patterns based on their experience; then can train the junior officers in these areas.

Thus, this factor is said to be as important as any of the other eight factors and must be given significant weight by the arbitrator.

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This consideration indicates that the arbitrator should award the PBA proposal to modestly increase the clothing allowance. Under the prior agreement, officers received \$600. The PBA is seeking an increase to \$1,000 retroactive to 2008. As Officer Haggerty testified, the officers are required to maintain several types of uniforms for use at different times of the year and must have several of each type. Clothing gets torn, worn and damaged in the normal course of work activities for a police officer. The current allowance is simply not sufficient.

The \$600 rate has been in effect since 1999. Thus, there has been no increase in the allowance for years. The cost of clothing has increased in that period and the allowance also must be increased.

Not only is the allowance in New Milford the 48<sup>th</sup> lowest in the County – below the County average of \$747 – but many of the departments provide maintenance allowances in addition to clothing allowances. There is no such maintenance allowance in New Milford. The average maintenance allowance is \$342. Thus, adding clothing and maintenance together, the average in the County is \$1,089, a figure still above the amount proposed by the PBA.

The PBA pointed out that the Chief receives a clothing allowance of \$750.

The PBA also is seeking to roll the clothing allowance into base pay for pension purposes. This would boost morale and help the officers in at least a small way, given the very low compensation package received by these officers.

The PBA seeks to participate in the Borough's sick leave reimbursement program as set forth in the Borough's Personnel Policies and Procedures Manual dated March 22, 2004. The other municipal employees do participate in this program and the PBA is asking only to be able to do so as well. Under this program, employees who do not use sick leave are given extra compensation at their daily rate for one-half of the unused annual fifteen-day allotment. This will save money for the Borough by reducing the accumulation of unused sick leave days, thereby reducing the Borough's liability when officers retire.

~~The PBA also asked that its vacation carryover proposal be awarded.~~ There was a grievance regarding vacation carryover and the conversion of unused vacation and personal days into compensatory time. It is not always easy for an officer to use vacation time at the end of the year because of the needs of the Police Department and this time should not be lost. The parties reached an agreement, endorsed by the Chief, under which officers were permitted to carry over up to six unused vacation days with a maximum carryover of six days into each subsequent year. This is set forth in a memo to the Chief from the Police Association dated November 23, 2008 and in the Chief's response entitled "Grievance Resolution" dated November 24, 2008.

The PBA urges acceptance of its proposal for out-of-title pay. The Department has no captain and one less lieutenant than it had. There is a shortage of supervisory manpower. This has resulted in the use of the senior patrolman as tour supervisors with much greater frequency. In September 2008, 34% of the tours were supervised by the senior patrolman. While this was the highest month, other months also saw significant numbers of tours supervised by senior officers.

According to the PBA, it is fair to compensate the senior officer when he serves as a tour commander. He has added responsibility and is subject to discipline if he fails to perform properly. This would have a positive effect on the morale of a force which is at or near the very bottom of the County in salary ranking. This is a common sense proposal which should be granted.

Additionally, the PBA's proposals regarding post-retirement medical benefits should be awarded. This Borough does not continue health benefits for the surviving spouse of officers, whether retired or deceased. This is a benefit enjoyed by Chief Papapietro and the PBA requests the same benefit for its members.

It also is asking that retiree health benefits be given to officers after 25 years of pension service credit with a minimum of 20 years of actual service in the Borough. This is said to be consistent with current practice and would not adversely impact the Borough. A number of members of the PBA began their careers with other municipalities or law enforcement agencies and therefore brought that experience to the Borough but will not have 25 years of service in the Borough when eligible to retire. These officers should receive retiree health benefits, it is argued.

Unlike the proposals discussed above, which are efforts by the PBA to promote the continuity and stability of employment in the Borough and improve morale among the officers, the Borough has submitted proposals which will have the opposite effect. One of the most adverse of these is the Borough's proposal to require PBA members to contribute 1.5% of their gross wages to health insurance. The Borough also proposed radical changes in the prescription drug co-payment. Both of these proposals must be rejected.

According to the PBA, the Borough has not provided adequate support in the record for its proposals. The PBA submitted a chart which lists premium sharing in Bergen County. Only four of the 45 municipalities on the chart report premium sharing. Two of these – Bergenfield and River Edge – require contributions of only \$260 and \$520 annually, respectively.

The Chief's contract requires the Borough to pay the full cost of the Chief's health benefits (in addition to providing a surviving spouse benefit and not requiring any number of years of service for retiree health benefits). Thus, even with his high salary, the Chief is not required to contribute to the cost of his health benefits. The New Milford Education Association's members do not contribute to their health insurance premiums.

The real impact of this proposal can only be appreciated when viewed in relation to the Borough's salary proposal. It proposed increases of 2%, 2% and 1% in 2008, 2009 and 2010. In 2010, a top patrolman would earn \$92,863 which would be the lowest in the County, some \$14,000 below the county average. From this, under the Borough's proposal, would be deducted 1.5% per year. This would reduce earnings by \$1,393, a figure five times larger than in Bergenfield and two and one-half times larger than in River Edge. It would even exceed the \$40 bi-weekly contribution by officers in Mahwah.

The PBA notes that interest arbitrators have rejected similar premium-sharing proposals in other municipalities. It provided numerous examples, including my own decision in the Borough of Raritan. In that February 2008 decision, the PBA notes that I accepted that cost-sharing was wide-spread in the private sector but not in New Jersey. I stated that this was more likely to be accepted if the employer were offering an outsize salary increase, something which the Borough of New Milford obviously is not doing. I also noted that the officers in Raritan were the lowest paid in their county, a position shared by their counterparts in New Milford. For the same reasons, the PBA urges that this proposal be rejected.

The Borough has proposed that three steps be added to the salary guide, that steps be made equal, and that the starting salary be frozen. There is said to be no support for any of these changes. The number of steps for a patrolman to reach the top is now eight, counting the probationary step. The average in the County is just under seven. Thus, the Borough already exceeds the County average even with the low salary schedule. No basis was provided for freezing the hiring step or equalizing steps throughout the schedule.



To make any of these changes would have a significant and adverse impact on the morale of the officers. It would damage the Borough's ability to attract and retain the most highly qualified officers, especially in light of the low salaries and fringe benefits compared with their counterparts in Bergen County. The PBA asks that these three changes all be rejected.

The Borough proposed a cap of \$15,000 on sick leave and that unused sick leave be paid at the rate in effect when the days were earned and not at the rate in effect when the officer retires. These proposals are said to be unfair and unreasonable for a number of reasons.

While the Borough cited large payouts to several retired officers, the PBA contends that at least part of the cause of those payments was the refusal of the Borough to permit PBA members to participate in the Borough sick leave sell back program. Had they been permitted to do so, they would have accumulated many fewer sick leave days to be paid at retirement.

Also, the Chief's new contract provides a very generous terminal leave provision. He is permitted to accumulate 336 sick days, double the number permitted for police officers. Additionally, he is given unused holidays, personal days, vacation days, schedule adjustment days and compensatory days. It is totally unreasonable for the Borough to propose a drastic reduction for the PBA while at the same time providing such a generous benefit for the Chief.

Furthermore, both the blue collar employee and white collar employee contracts provide for sick leave banks of up to 203 days to be paid at 75%. These employees also are compensated for unused vacation days and holidays and personal days at retirement. There is no justification for subjecting the PBA to a cap of \$15,000 and making payment for unused sick leave days at the rate earned rather than the rate at retirement. No other Borough employees have such an arrangement. These draconian proposals must be rejected.

Finally, the PBA argues that the proposal of the Borough to cap compensatory time at 50 hours and to force officers to use that time is both unworkable and unwise. Officers have had the choice of receiving overtime worked in cash or compensatory time at their option. The only

limit is the statutory limit of 480 under the Fair Labor Standards Act.<sup>6</sup> The Borough is seeking to compel officers to utilize compensatory days in excess of 50 hours at the rate of two days per month until they get back to the 50 hour limit proposed by the Borough. Neither the Chief nor any superior officer provided testimony to support this proposal or to explain how it would work in practice. This Department is vastly understaffed, as the Chief has acknowledged. There are not enough police supervisors. That is why so many tours are supervised by the senior patrol officer. To limit the number of compensatory hours to 50 would result in the Borough being compelled to pay officers for many hours of overtime. A vicious cycle would be created. The PBA contends that the Borough has the right under the FLSA to cash out some or all of an officer's compensatory time. Thus, the unreasonable restrictions it is seeking are unworkable, expensive and unnecessary.

Therefore, consistent with the above, the PBA urges the arbitrator to award the proposals of the PBA and to reject those of the Borough.

#### **Statutory Framework and Terms of the Award**

As stated above, N.J.S.A. 34:13A-16d(2) requires the arbitrator to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria..." The arbitrator must give "due weight" to those factors which are deemed to be relevant. Each one must be considered. Those deemed relevant must be explained and there must be an explanation as to why any criterion is deemed not to be relevant.

I subscribe to the widely held view of interest arbitrators that a party seeking a change to an existing contract provision bears the affirmative burden of justifying that change with supporting evidence, a principle which has been endorsed by PERC as well. See, for example, *County of Union*, P.E.R.C. No. 2003-33, 28 NJPER 459, 460 (2002).

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<sup>6</sup> Only relatively recently did the Borough become aware of this limit. Some officers accumulated more than the statutory limit.

I have carefully considered the evidence which has been presented as well as the arguments of the parties. As discussed below, I have considered the evidence and arguments in light of the nine statutory criteria. I have considered each criterion and found each to be relevant although, as discussed, I also have determined that the weight to be given to the factors varies. I also have determined the total net annual economic changes for each year of the agreement in order to conclude that those changes are reasonable under the criteria.

To make my analysis of the evidence and the parties' arguments more meaningful, I shall set forth the terms of the Award at this point. In this conventional arbitration proceeding, it is the terms of the Award rather than the final offer of one party or the other which must be reasonable and whose costs must be determined and analyzed. It is, of course, the arbitrator who fashions the terms of the Award.

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The terms of the award shall be as follows:

- 1) The award will cover four years, January 1, 2008 through December 31, 2011.
- 2) Salaries shall be increased across-the-board as follows, retroactive to January 1, 2008:

January 1, 2008	2%
January 1, 2009	2%
January 1, 2010	3.5%
January 1, 2011	3.5%
- 3) No new steps will be added to the salary guide.
- 4) The starting salary will not be frozen.
- 5) Article Nineteen, Holidays, shall be eliminated and the thirteen holidays will be converted into base pay effective January 1, 2011 following the 3.5% across-the-board increase in 2011. The amount shall be calculated by determining the value of each holiday and multiplying that daily value by 13 holidays and then by subtracting

25% which is an approximation of the amount the Borough will or would pay if it made a full pension contribution on that amount.

- 6) Patrol officers who are required to supervise a shift will not be compensated at the sergeant's rate of pay.
- 7) Effective January 1, 2010, employees will be limited to an accumulation of 50 hours of compensatory time with all time above 50 hours to be paid.
- 8) Employees who have accumulated over 50 hours of compensatory time will be required, to the extent permitted by law, to use their available days at the rate of up to two per month at the option of the Borough until they reach the 50-hour limit.
- 9) Longevity shall not be eliminated for employees hired after July 1, 2010.
- ~~10) The annual clothing allowance shall be increased by \$50 in 2010 and by an~~  
additional \$50 in 2011.
- 11) The clothing allowance will not be rolled into base pay for pension purposes.
- 12) Vacations shall be prorated during the last year of an employee's service for vacation earned that last year.
- 13) Employees will be permitted to carry over up to six unused vacation days from one year to the next (non-cumulative).
- 14) Effective January 1, 2010, personal days will either be used by the end of the year or lost.
- 15) Employees shall be entitled to participate in the sick leave sell back program as presently outlined in the Borough's Personnel Policies and Procedures Manual and the current bonus payments for unused sick leave shall be eliminated.
- 16) An employee who leaves work due to illness or otherwise takes sick leave shall be charged one-half a sick day if the employee reports for work but leaves before the midpoint of the shift.

- 17) Unused sick leave earned from January 1, 2010 forward shall be paid at the rate earned and not at the rate in effect at the time of retirement.
- 18) There shall not be a maximum sick leave payout of \$15,000 for all employees.
- 19) There shall be no change in the existing requirement regarding the Family Health Care Plan for employees who retire after 25 years of service.
- 20) The Borough shall not be obligated to provide coverage for the surviving spouse and any eligible dependents of any active or retired officer until the spouse reaches the age of 65.
- 21) Effective January 1, 2010, all employees shall be required to make a co-payment of the lesser of 25% or \$1,800.00 toward dependent coverage by payroll deduction.
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- 22) Prescription co-pays shall not be changed from the rate effective January 1, 2006 of \$10.00 for generic drugs and \$15.00 for brand name.
- 23) Article Fifty, Terminal Leave, has been changed by several of the above provisions. First, holidays have been eliminated effective January 1, 2011 and they have been converted into base pay. That change will eliminate the accumulation of unused holidays toward terminal leave beginning in 2011. Second, vacations will be pro-rated in the employee's final year of service. This will reduce the amount of unused vacation days that can become part of terminal leave. Third, employees will be permitted to carry over a maximum of six unused vacation days (non-cumulative). This, too, will reduce the number of unused vacation days that can become part of terminal leave. Fourth, personal days will have to be used in the year in which they are received. This will eliminate the accumulation of personal days that can become part of terminal leave. Fifth, effective January 1, 2010, unused sick leave will be paid at the rate in effect when the time was accumulated and not at the rate in effect when the officer retires. This will reduce the cost of the accumulated sick leave to the Borough for new hires. Sixth, participation in the payment for unused sick leave

program will result in the accrual of fewer sick leave days for payment as terminal leave. Seventh, although not currently referred to in the Terminal Leave article, compensatory time has been added to terminal leave. By limiting the accumulation of compensatory time to 50 hours, this will place a relatively modest limit on the amount of compensatory time which can be added to terminal leave. Eighth, by requiring the use of compensatory time in excess of 50 hours, the amount of such time available as terminal leave will be reduced.

### **Total Net Annual Economic Changes**

The statute requires the arbitrator to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight [nine] statutory criteria..."

The award has numerous elements. A number of them are not susceptible to quantification or calculation in terms of their effect on costs, although many will have significant long-term implications.

Three of the items can be calculated: salary increase, clothing allowance increase, and the health insurance contribution.

The cost of salaries in 2007 for 34 unit members was \$2,942,206. That figure will change to \$2,846,479<sup>7</sup> in 2008, to \$2,846,505,<sup>8</sup> in 2009, to \$2,969,194 in 2010 and to \$3,097,005 in 2011. The increase in the clothing allowance of \$50 per officer in 2010 and 2011 will cost an additional \$1,550 each of those years. The parties did not provide a census showing how many of the officers have dependent coverage. I have assumed that all have dependent coverage. Based on that assumption and attributing a cost of \$1,800 to each of the 31 officers, the Borough will save \$55,800 in 2010 from this change.

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<sup>7</sup> This number, which comes from Exhibit 1 in the Borough's Brief, reflects two fewer lieutenants than there were in 2007.

<sup>8</sup> This number also comes from Exhibit 1 in the Borough's Brief and reflects one less lieutenant in the unit in 2009 compared to 2008.

The net annual economic change from 2007 to 2008 will be a **decrease** of \$95,727 (because of the retirement of two lieutenants), from 2008 to 2009, the increase will be \$26 (because of the retirement of one lieutenant), from 2009 to 2010 the net increase will be \$68,439 (because of the insurance contribution), and from 2010 to 2011 the net increase will be \$183,611.

### **Discussion and Analysis**

I set forth the terms of the award above. In this section, I shall do three things. First, I shall provide an overview of what I believe are the three major issues in this proceeding: salary increases, health insurance and terminal leave. I will provide a general summary of my disposition of the those issues. Second, I shall discuss my reasoning for each component of the award in the same order listed above. Third, I shall apply the statutory criteria to the economic items in the award.

**Overview** First, as stated, there are three major issues in this proceeding: salary increases, health insurance, and terminal leave. The salary increases of 2%, 2%, 3.5% and 3.5% over the four years of the Award are clearly below the average salary increase in the County and in the State, but they are not out of line with recent awards. I believe that this result is dictated by the financial situation in which the Borough finds itself. This is a relatively moderate income community which fewer resources than are enjoyed by many municipalities in Bergen County. These comparatively low salary increases, however, are offset to some extent by the conversion of holidays into base pay. That certainly increases pensions for retiring officers and raises the relative pay of all officers.

Second, the importance of health insurance is obvious. This is an area which has been a major issue in private sector negotiations for a number of years and in which there have been significant changes. These changes have been slow to come to the public sector and particularly to police officers. That, however, has been changing recently, as reflected in the

Borough's extensive analysis of this issue as summarized above. Also, the newly hired employees in the Borough of New Milford have contributed to dependent coverage since 2000 for the white collar employees represented by Local 262 of the RWDSU and since 2001 for the blue collar employees represented by the PWEBA. Although these employees earn considerably less than do the Borough's police officers, they have contributed 20% and 25%, respectively, toward the cost of dependent health insurance coverage, up to a maximum of \$1,800, for close to a decade. Given the changes which are taking place in law enforcement units and given the fact that the Borough's other employees have been making such contributions for almost ten years, there is no further justification for failing to require the Borough's police officers to make a similar contribution. This is not limited to newly hired officers but will apply to all officers.

Finally, terminal leave is an extremely large issue in New Milford. The Borough has been compelled to make very large payments to several individuals in the past several years which by themselves have had a significant impact on the Borough's budget and tax rate. The Borough is using a disproportionate amount of its resources on a small number of retiring officers as well as other Borough employees. This situation needs to be addressed to make more resources available for municipal employees and for other municipal purposes and to reduce the pressure on the tax rate.

The Borough has paid over \$200,000 to four of the last five officers who have retired. These occurred between February 1, 2007 with McGovern and his payment of \$128,070 and continued with Gerity (July 1, 2007 retirement) and his payment of \$424,995.25, Boccher's payment of \$242,344.26 (December 31, 2007 retirement), McGrath's payment of \$229,763.27 (March 31, 2008 retirement) and Burns' payment of \$218,905.10 (December 31, 2008 retirement). The records indicate that in spite of the Borough's efforts to reduce this liability, a number of officers still have large numbers of Kelly days and/or compensatory time, accrued vacation days, personal days, holidays and sick leave.



I have addressed this problem without taking away any benefit which has been accrued by any officers although, in the case of compensatory time, I have mandated the use of accumulated hours in excess of 50 hours to the extent that this is permitted by law. Still, the officers will not lose any time worked. They will, to the extent permitted by law, simply be required to take that time as time rather than as monetary compensation.

In addition to compensatory time, there are four other elements of terminal leave and I have addressed each of them. First, I have made accrued sick leave payable at the rate in effect when the time was accrued. It is difficult to justify payment of unused sick leave at the rate in effect at the time of retirement which can be many years after the time was initially earned and accrued. This will be prospective beginning January 1, 2010. Sick leave accrued prior to that date will be frozen at the officer's 2010 rate of pay and the most recently earned time will be deemed to be taken first when sick leave is used. Second, personal leave must be used in the year in which it is earned. The purpose of personal leave is to permit officers to deal with situations which must be done when they are scheduled to be on duty or for other extraordinary purposes. There is no reason to permit the accrual of personal leave. Third, holidays occur each year and are an annual benefit. It is not reasonable to permit employees to accumulate them and to cash them in years later at the rate in effect when the officer retires. By rolling holidays into base pay, no additional holidays will be eligible for terminal leave. Fourth, vacation also is a current benefit and not intended to be saved and cashed in later. These four measures, plus the 50-hour ceiling on compensatory, will greatly reduce the amount of terminal leave for which the Borough is liable.

The remaining sick leave component of terminal leave is still a very significant benefit for the officers and a potentially huge expense for the Borough. Officers and all municipal employees are permitted to accumulate up to 183 sick days and, if they remain for 20 years, as most police officers do, they receive an additional 20 days. Because this is a Borough-wide

benefit, and because I have made substantial changes in the terminal leave benefit, I am not prepared to impose this change on the police officers alone.

**Elements of the Award** Second, I turn to an explanation of the individual elements of the award.

First, I shall award a four-year contract. The Borough proposed three years and the PBA proposed four years. Given the passage of time and the protracted nature of these negotiations, it makes sense for both parties to have a four-year agreement which will run through 2011. If the agreement were for three years, the parties would have to commence negotiations on a successor agreement almost immediately with the costs and time and frustration associated with that process. A four-year agreement will provide at least a brief ~~respite from negotiations and will spare the parties the immediate expense of negotiations and, potentially, arbitration.~~

Second, I shall award across-the-board salary increases of 2% retroactive to January 1, 2008, 2% retroactive to January 1, 2009, 3.5% retroactive to January 1, 2010 and 3.5% on January 1, 2011. These increases total 11% (11.45% with compounding) and average 2.75% without compounding per year over the term of the agreement. That is a reasonable increase, particularly in this current economic environment.

Third, I shall deny the Borough's request to add three additional steps to the salary guide. The current guide has seven steps plus a probationary rate. The PBA provided a chart which covered 46 municipalities in Bergen County. (PBA Ex. X) One of those municipalities had ten steps, two had nine steps, 12 had eight steps, 15, including New Milford, had seven steps, 11 had six steps, four had five steps and one had four steps. The average is 6.93 steps. The seven steps in New Milford is right at the average in the County and it is within the largest group of municipalities with seven steps. The Borough has provided no compelling reason for adding to the number of steps on the salary guide.

Fourth, I shall not freeze the starting salary as urged by the Borough. The Borough provided no evidence that starting salaries in New Milford are above the average or out of line with other starting salaries. It did not make a case for this change.

Fifth, in 2011 I have added holiday pay into base pay minus the cost to the Borough of its contribution to PFRS on this added salary which I have approximated at 25%. This addresses one major concern of each party. For the PBA, it addresses the relatively low salaries received by these officers compared to others in Bergen County by adding thirteen paid days, less the pension contribution, to their salaries.<sup>9</sup> This will improve the relative position of these officers in relation to others in Bergen County. For the Borough, this change eliminates one of the contributing factors to the massive terminal leave payments which it has been compelled to make. Employees will not receive holidays so will not be able to accumulate holidays as a means of increasing their terminal leave. This also assures that holidays are paid at the rate at which they are earned rather than the higher rate they would be paid if they were accumulated and paid as part of terminal leave.

Sixth, I shall not award sergeant's pay to any patrol officer who is required to supervise a shift for any reason. The PBA submitted a document which showed the number of times per month in 2008 that a patrolman supervised a tour. The three lowest months were 6% of the tours in November and 14% of the tours in March and December. It occurred on 34% of the tours in September with 27% in July and 26% in August. (PBA Ex. C 9-11)

Officer Haggerty testified the number of officers is insufficient to assure that a superior officer is supervising all tours. He noted the decrease in the size of the department and the absence of promotions. The result is that patrolmen are frequently required to act as supervisors on tours. The senior patrolman is required to assume this role. The PBA cited a letter from Chief Frank Papapietro to the PBA regarding out of title assignments in which the Chief expressed his dissatisfaction with the current status. He noted that there were five officers

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<sup>9</sup> This will add almost \$4,000 to the top patrolman's salary in 2011.

short in patrol and they were short one captain and two patrol lieutenants as well as a lieutenant in the Detective Bureau. He said that until he had additional personnel and promotions he had to rely on temporary assignments. (PBA Ex.-C-4) The PBA argues that payment for assuming the added responsibility of supervising a tour was reasonable.

The Borough disputes that the senior patrolman has the same and full responsibilities of a superior officer and thus denies that added compensation is appropriate. Additionally, this would be a costly change.

Given the likely cost of this proposal and the absence of evidence that this is a widespread benefit among police departments in the County or the State, I do not believe that the limited resources of the Borough should be used in this fashion.

~~Seventh, I shall limit the accumulation of compensatory time to 50 hours and require that~~  
any hours in excess of 50 be compensated. This is one of the significant factors in the very large terminal leave payments which the Borough has been forced to pay and this change will significantly reduce the amount of compensatory time which can be accumulated and converted to terminal leave, again at the rate in effect when the officer retires rather than the rate in effect when it was earned.

Eighth, officers who have accumulated more than 50 hours of compensatory will be required, to the extent permitted by law, to use up that accumulated time at the rate of up to two days per month at the option of the Borough. This, too, addresses the terminal leave problem faced by the Borough by reducing the amount of time that officers will be able to convert to terminal leave when they retire. At the same time, the officers will not lose the time.

Ninth, I shall not eliminate longevity for new hires as proposed by the Borough. The Borough failed to provide justification for eliminating this widespread benefit.

Tenth, the clothing allowance will be increased by \$50 in 2010 and by an additional \$50 in 2011. The PBA provided data from Bergen County which listed clothing allowance in 56 municipalities. The average was \$747. Some municipalities provide a clothing maintenance

allowance in addition to a clothing allowance. (PBA Ex. X-2) Additionally, the Chief receives a clothing allowance of \$750. (PBA Ex. B) A \$100 increase over two years will bring these officers close to the County average on this benefit.

Eleventh, I have not rolled the clothing allowance into base pay. The PBA provided no justification for this proposal. I have provided a significant increase in base pay by rolling holidays into base. That will boost the relative standing of these officers.

Twelfth, I have pro-rated vacation leave in the last year of an officer's employment. Vacation is an earned benefit based on time worked. It is difficult to justify the expenditure of public funds for a full year's worth of vacation to a person who retires on the first of the year.

Thirteenth, employees will be permitted to carry over six unused vacation days from one year to the next. These days are not cumulative. This change reflects an agreement between the parties which should be incorporated into their collective bargaining agreement. (Ex. C-12 to 14) It is not opposed by the Borough. This adds some flexibility so that if operational conditions do not permit officers to take all of their vacation during the year in which it is earned, they will still have an opportunity to take that leave without losing it.

Fourteenth, personal days must be used in the year in which they are earned. The purpose of this leave is to address more immediate needs of employees and to permit them to do things which might have to be done during their work hours. There is no evidence that this is treated as a benefit which can be accrued elsewhere in the County.

Fifteenth, the officers will be permitted to participate in the Borough's sick leave sell back program as described in its Personnel Policy and Procedures Manual as proposed by the PBA. This is the same policy which is applied to the Borough's white collar employees represented by Local 108, RWDSU, and Department of Public Works employees represented by the New Milford Public Works Employees Benevolent Association. Under the Policy, employees who maintain a balance of at least 50 days in their sick leave bank throughout the year are permitted to sell back one-half of their annual 15-day allotment at their daily rate. This not only permits

employees to increase their earnings in the year but also has the effect of reducing the accumulation of sick leave which the Borough will have to pay in the form of terminal leave so there are advantages to both parties. The current payment for unused sick leave at Article Twenty, Section B will be eliminated.

Sixteenth, employees who report for work and leave due to illness before the midpoint of their tour will be charged one-half of a sick day. This is a reasonable application of the sick leave provision which prevents potential abuse of avoiding the use of sick leave altogether by an employee who comes to work sick and leaves shortly thereafter.

Seventeenth, sick leave earned beginning in 2010 will be compensated at the rate in effect when it was earned and not the rate in the final year of the employee's service. Sick leave ~~accrued prior to 2010 will be frozen at the officer's 2010 salary rate for subsequent~~ compensation as terminal leave. This will reduce the liability for the Borough under Terminal Leave and is a reasonable provision.

Eighteenth, there will be no change in the current requirement that employees have 25 years of service in the Borough in order to receive health care upon retirement. I understand that a number of employees would be affected if this were to be changed but that also means that any change in this requirement would be costly for the Borough. The PBA has failed to justify this proposed change. There is no evidence that this is a widespread benefit in the County or the State.

Nineteenth, the PBA also is seeking to require the Borough to provide health care for the surviving spouse and any dependents until the surviving spouse reaches 65 years of age. Again, there is no evidence that that this a widespread benefit and it is potentially costly to the Borough.

Twentieth, the Borough has asked employees represented by the PBA to share in the cost of dependent health insurance coverage by paying 1.5% of their gross wages toward health insurance. While strongly resisted by the PBA, the evidence is clear that this is an

increasingly common cost imposed on employees. Furthermore, since January 1, 2000, newly hired employees of the Department of Public Works and since July 1, 2001 newly hired white collar employees of the Borough have been required to participate in these costs. The rate has been 20% up to a maximum of \$1,800 for DPW employees and 25% up to a maximum of \$1,800 for white collar employees. Heretofore, the PBA has succeeded in avoiding these payments. Given the facts that the municipalities' employees who have been hired since 2000 or 2001 and who are less well paid than are the police officers have been making contributions, that the Borough's financial condition is not good, and that the trend even for police officers has been to share in the costs of health insurance, it is reasonable to require all police officers to pay 25% of the cost of dependent coverage up to a maximum of \$1,800.

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Twenty-first, the Borough has asked that prescription co-pays be increased from \$5/\$10 to \$25/\$35. The Borough did not provide sufficient justification for this change, although I recognize that the current co-payments are low. The collective bargaining agreements for the other units do not specify the co-pays.

Twenty-second, terminal leave is affected by this award in several ways. First, Section A now provides that employees will receive 75% of accumulated sick leave not to exceed 183 working days. The change brought about by this award is that, beginning in 2010, payment of those days shall be at the rate in effect when the days were earned with the assumption being that days are used in the reverse order in which they are accumulated, *i.e.* most recently earned days used first. Also, making the Borough's unused sick leave payment program available to these officers will result in more sick days being converted to cash and not accrued for payment as terminal leave. Second, Section B is eliminated with the conversion of holidays into base salary (although holidays accumulated prior to 2010 remain in the officers' terminal leave accounts). Third, Section C is modified. Only six unused vacation days can be carried over each year so this limits to six the number of unused vacation days that can be added to terminal leave in an officer's last year of employment. Also, vacation in the last year is pro-rated.

Fourth, personal days must be used in the year earned or they are lost so personal days can no longer be added to terminal leave. (Again, as with holidays, previously accumulated unused vacation and personal days remain in the officers' terminal leave accounts.) Fifth, although not included in the Terminal Leave article, changes have been made in compensatory as discussed above.

**Application of Statutory Criteria** Third, I shall discuss the statutory criteria as they relate to the facts of this case.

**Interests and Welfare of the Public** This is an important factor which must be considered but which also is difficult to quantify and apply. I shall not specifically consider the Cap limitations at this time but will reserve that discussion for the section on lawful authority.

~~Suffice it to say that I have not issued an award which I believe creates burdens for the Borough which it cannot meet and still comply with Cap limitations.~~

This factor requires a balancing between interests: an adequate level of public services including very important law enforcement services on the one hand and reasonable and competitive wages and benefits for police officers on the other hand. The public interest and welfare requires that there be an effective, proficient professional law enforcement agency to protect the public. This is a fundamental governmental service. The public would like to receive this service at the lowest possible cost so that taxes and tax increases are minimized. The Borough is required to employ a police force which is sufficiently compensated – both salary and benefits – so that it can attract and retain a qualified, competent police force. This requires that wages and benefits be reasonably competitive. It also requires a force of sufficient size to provide the protection expected by and due to the citizens. The greater the compensation, the greater the cost and the fewer officers and other municipal employees and services can be supported. Other things being equal, the Borough would like to have as many police officers as it deems necessary while paying them the least amount required. There are necessary tradeoffs. The size of the Borough's police force is below prior levels and less than the Chief



believes is necessary or at least desirable. Thus, it is apparent, even without looking at specific financial factors, that the Borough is hard-pressed to provide the level of police services that it would like to provide even though, as discussed below, the wages and benefits which it provides to its officers are low compared to others in the County.

I note that in 2007, the median income in New Milford was approximately \$73,000. That same year, a top patrolman earned \$88,374. Thus, a patrolman earned over \$15,000 more than the municipality's median income (and that is the officer's income alone and does not consider spousal income). This suggests caution in awarding salary increases.

I have fashioned an award which I believe will permit the Borough to maintain a professional police force of adequate size to provide the basic police services which are required in this community which has fewer resources than most in Bergen County to pay for these services. This award also is consistent with the lawful authority of the Borough.

**Comparisons** Comparisons of several kinds are mandated. There are to be comparisons with private employment in general, with public employment in general, and with public employment in the same or similar comparable jurisdictions.

Private sector data published by the BLS called the Employment Cost Index show that nationally compensation increased in the private sector in 2008, the first year of this award, by 2.4%. The figure was 1.2% for 2009. These figures compare with the award's 2% increases for those same two years. According to the ECI, the wage increases alone in the private sector were 2.6% in 2008 and 1.4% in 2009 which happens to be exactly the amount of the salary increase awarded. Health insurance contributions in the private sector are pervasive so the fact that I have required an employee contribution starting in 2010 does not put this award outside of the private sector mainstream.

In New Jersey, the private sector increase from 2007 to 2008 was 2.5% and the figure in Bergen County was 1.8%. Again, the award is competitive with those figures.

Comparisons also are to be made with public employment in general. The ECI for 2009 showed an increase in compensation of 2.4% following an increase of 3% in 2008. The Borough cited numerous recent public sector settlements in New Jersey which fall with the parameters of this award. Thus, looking at public employment in general, the award is competitive.<sup>10</sup>

Comparisons are to be made with other public employees in the same or similar jurisdictions. The police officers in New Milford can be compared with the other two municipal unions, PWEBA and Local 198, RWDSU. Those two groups both reached agreements with the Borough which provide for salary increases of 3.75% on January 1, 2009, 4% on January 1, 2010 and 4.25% on January 1, 2011.<sup>11</sup> These figures exceed the 2%, 2% and 3.5% which I ~~have awarded for the corresponding years. The employees represented by these unions are~~ much less well compensated than are those represented by the PBA. In fact, the increase received by a top patrolman from 2008 to 2011, \$8,352, is very close to that received by the top paid non-supervisory employee, a Mechanic 5, in the DPW, \$8,412. Thus, the dollar differential between the groups will be maintained.

I do not believe that a comparison with the Chief is significant. No data was provided comparing his salary to other chiefs in the County. Comparisons with the Board of Education also have no relevance. The Board is a separate employer.

Finally, comparisons are to be made with other police officers in comparable jurisdictions. New Milford's officers are not well paid in relation to their counterparts in Bergen County. A top patrolman in the Borough earned \$84,975 after ten years in 2006 and this ranked 51<sup>st</sup> of 56 salaries listed by the PBA (PBA Ex. T-1) The figure in 2007 was \$88,374 and this ranked 46<sup>th</sup> of 51 communities listed. (PBA Ex. T-2)

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<sup>10</sup> The PBA provided some public and private sector wage data but it was generally older and not coincidental with the years of this agreement.

<sup>11</sup> The PWEBA agreement was signed on December 23, 2008 and the Local 108 agreement was signed on March 24, 2009. These dates precede the time when the depths of the current economic situation had been reached.

I am providing what is an admittedly below average salary increase because of the Borough's very difficult financial position. In order to compensate for the relatively low salary increase and to help the relative position of these officers in the County, I have put holiday pay into base salary in a way which does not increase the overall costs to the Borough but which significantly boosts the salaries of the officers. This has the added benefit for the Borough of eliminating one of the sources of the extremely high terminal leave payments which have been so difficult for the Borough to finance. Officers used to be able to accumulate holidays and then cash them in when they retired as part of their terminal leave. This will no longer be possible.

Bergenfield borders New Milford. Arbitrator Pierson in November 2009 awarded a four-year contract involving Bergenfield and the PBA with annual salary increases of 2.5%, a total of 10% over four years.<sup>12</sup> This is less than I have awarded, although he did not award other changes such as I have awarded. I also recognize that Bergenfield's officers have a much higher ranking in the County than do those in New Milford.

It is clear that this award is less than the "going rate" or "average" increase in recent years. The data from PERC indicate that the average award in 2009 was 3.75% with voluntary settlements averaging 3.6%.

It also is clear that the officers in New Milford are among the least well paid in Bergen County, as the salary data submitted by the PBA made clear. In part, of course, this is a reflection of the relative economic standing of New Milford in relation to many others. These officers will experience a decline in their relative position based on wage comparisons. I do not know if other communities have the kind of terminal leave plan that not only costs the Borough so much of its available funds but which, in effect, defers much income of the officers until they retire. As changes take effect in the terminal leave, the officers may be able to make a stronger case.

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<sup>12</sup> I am aware that the PBA has appealed this award and thus it cannot be considered to be final. Nevertheless, it does reflect Arbitrator's Pierson's view of what is reasonable in the neighboring municipality.

I am influenced by the fact that the more recent awards and settlements have been trending downward, presumably reflecting the current economic realities nationally and in New Jersey. As the evidence presented by the Borough confirmed, and as discussed above, there have been numerous recent settlements which have been below the amounts which I have awarded. The most recently published decision involves the Township of Lakewood and PBA Local 71, Docket No. IA-2009-049 (Jan. 7, 2010), in which Arbitrator Glasson awarded salary increases of 3.5% effective January 1, 2009, 3.5% effective January 1, 2010, 3% effective January 1, 2011 and 3% effective January 1, 2012. He provided a new salary schedule for new hires with additional steps. He required employee contributions to health insurance. He also increased prescription co-payments.

~~If this decision were based solely on comparisons with other police officers in Bergen County – both absolute salaries and salary increases – and no other factors, the award would be higher. I do not regard those comparisons as controlling or dominant in this proceeding.~~

Thus, the award is reasonable based on private employment and public employment in general. It is below the increases received by the Borough's other two unions and it is below the average increases received by police officers in the State and the County.

**Overall Compensation** The officers in New Milford generally enjoy competitive and usual fringe benefits. Heretofore they have received health insurance without making any contributions. They, like all police officers in the State, participate in the PFRS. The officers have holidays, vacation, personal days, sick leave, longevity, court time, training pay, recall pay, uniform allowance, bereavement leave, and other benefits. None of these has been shown to be unusually high or low. I have mentioned terminal leave as a major issue. This is a benefit which has stood out for these officers. While I have attempted to curtail this prospectively, officers will not lose any of their accrued benefits so those currently employed will enjoy, to a greater or lesser extent depending on their length of service and use of time, the benefits of a

very liberal terminal leave program. This program has been so liberal that it distorts the compensation picture in this municipality.

**Stipulations** The only stipulation of the parties was the agreement of the Borough to continue the settlement which was reached by the PBA and the Chief regarding vacation carryover. Six days can be carried over from one year to the next.

**Lawful Authority** The arbitrator is required to issue an award which is consistent with the lawful authority of public employer. This obligation was made explicit, although perhaps unnecessary, with the amendment effective April 3, 2007 which added the "ninth criterion" regarding "statutory restrictions imposed on the employer." N.J.S.A. 34:13A-16g(9). Thus, three of the nine statutory criteria refer to "limitations imposed upon the employer" (N.J.S.A. 34:13A-16g(1)), "the lawful authority of the employer" (N.J.S.A. 34:13A-16g(5)), and "statutory restrictions imposed on the employer" (N.J.S.A. 34:13A-16g(9)). It is clear that arbitrators must recognize and respect the statutory limits placed on employers and this includes statutory cap restrictions.

There now are two financial caps with which municipalities must comply. There is the expenditure cap which has been in effect since 1976 (C.40A:4-45.1 et seq.). To that has been added a tax levy cap, Chapter 62 of the Laws of 2007, C.40A:4-45-45). The former generally restricts expenditure increases to 2.5% or, with municipal approval, 3.5% (although there are exceptions and items which are not considered to be within the cap limitations), and the latter generally restricts tax levy increases to 4%. It is the latter which has served to constrict significantly the discretion of public employers in the last several years.

The first two years covered by this award are complete.<sup>13</sup> The Borough has acknowledged that, although it had no reserve in 2008 for police salary increases, it did reserve 4% in 2009 for that purpose. That is the basis of the Borough's offer of 2% in 2008 and 2% in 2009. I have incorporated salary increases of that amount as part of this award. There are no

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<sup>13</sup> The timing of this proceeding permitted reliance on the 2008 and 2009 budgets but not on the 2010 budget.

other changes in 2008 or 2009. Thus, it is apparent that the Borough is able to meet the terms of the award those two years without difficulty or without encroaching on the 2010 budget.

The award in 2010 provides for a 3.5% salary increase and a nominal increase in the clothing allowance which is partially offset by the employee insurance contributions. The added cost in 2010 is only \$68,439 above the 2009 figure and, because of the decrease in the number of lieutenants, this is still **below** the Borough's 2007 salary cost by \$27,000. That figure is consistent with the expenditure cap and below the tax levy cap. The increase in 2011 will be \$183,611 above the 2010 cost and \$156,349 above the 2007 cost.

The Borough has submitted no evidence which suggests that it will not be in a position to meet the terms of this award in 2010 or 2011. It will not have to exceed its lawful authority in order to do so.

**Financial Impact** The arbitrator must issue an award which is reasonable in light not only of the lawful authority of the public employer, including cap limitations, but also one which takes into an account the financial impact of that award on the governing unit, its residents and taxpayers. This financial impact must be assessed.

To some extent, this factor has been superseded by the tax levy cap. That cap limits the amounts that municipalities can raise by taxation, thereby protecting the public and limiting the financial impact of awards. Because other costs, including prominently health insurance costs, over which the Borough has little or no control are increasing more than the 4% levy cap and because State aid has not been increasing and seems likely to decrease, employers have little room to maneuver. The evidence is that other revenue sources in New Milford have not increased and in fact most are decreasing. It is for that reason that I have awarded salary increases which reflect the realities of the budget in New Milford at the end of 2009 and increases for 2010 and 2011 which are below the levy cap.

I must again refer to the outsize impact that terminal leave has on the budget and finances in New Milford. As the Borough noted, the cost of these payment in 2008 accounted

for approximately 5 tax points and in 2007 they accounted for approximately 9 tax points. It is for that reason that I have made a number of changes in terminal leave which will significantly reduce these payments in the future while not depriving officers of accrued benefits.

**Cost of Living** The Consumer Price Index actually declined very slightly in 2008. Thus, a salary increase of 2% provides an increase in living standards for the officers, particularly when it is recalled that they did not contribute any amount to their health insurance. The CPI increase in 2009 was only 2.7%, slightly above the 2% salary increase but again the officers did not have to pay the increased cost of health insurance which exceeded increases in the CPI. Inflation remains limited and salary increases of 3.5% and 3.5% in the next two years are likely to provide increases in real income in both of those years.

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As the Borough noted, since 1990, these officers have realized salary increases which has far outstripped increases in the cost of living so their position in relation to the CPI has improved substantially.

**Continuity and Stability of Employment** The overriding consideration under this factor is the ability of the Borough to maintain current levels of employment. The police force is already well below limits which the Chief believes are desirable. Greater pressure on costs would only increase the likelihood that the Borough would not replace retiring officers or otherwise reduce manpower. This threat is spread across the Borough and is not limited to the police department. Thus, the award is intended to preserve employment while still providing reasonable wage increases to the officers.

### **Summary**

As should be clear, I have considered each of the statutory criteria as I have examined the evidence submitted and the arguments of the parties. As is always the case, the criteria are not all pointed in the same direction. The public interests, lawful authority, financial impact, private employment in general, public employment in general, cost of living, and continuity and stability of employment factors all support the award which I have rendered. Those are the

factors which I have deemed to be the most relevant. As I read the evidence and as I understand my obligations under the statute, these factors impose significant constraints on the arbitrator in this proceeding. Comparisons with comparable public employees and overall compensation would support a higher award. Those factors, however, are superseded by the other factors.

Accordingly, I hereby issue the following:

**AWARD**

- 1) The award shall cover four years, January 1, 2008 through December 31, 2011.
- 2) Salaries shall be increased across-the-board as follows, retroactive to January 1, 2008:

January 1, 2008	2%
January 1, 2009	2%
January 1, 2010	3.5%
January 1, 2011	3.5%

- 3) No new steps will be added to the salary guide.
- 4) The starting salary will not be frozen.
- 5) Article Nineteen, Holidays, shall be eliminated and the thirteen holidays will be converted into base pay effective January 1, 2011 following the 3.5% across-the-board increase in 2011. The amount shall be calculated by determining the value of each holiday and multiplying that daily value by 13 holidays and then by subtracting 25% which is an approximation of the amount the Borough will or would pay if it made a full pension contribution on that amount.
- 6) Patrol officers who are required to supervise a shift will not be compensated at the sergeant's rate of pay.



- 7) Effective January 1, 2010, employees will be limited to an accumulation of 50 hours of compensatory time with all time above 50 hours to be paid.
- 8) Employees who have accumulated over 50 hours of compensatory time will be required, to the extent permitted by law, to use their available days at the rate of up to two per month at the option of the Borough until they reach the 50-hour limit.
- 9) Longevity shall not be eliminated for employees hired after July 1, 2010.
- 10) The annual clothing allowance shall be increased by \$50 in 2010 and by an additional \$50 in 2011.
- 11) The clothing allowance will not be rolled into base pay for pension purposes.
- 12) Vacations shall be prorated during the last year of an employee's service for vacation earned that last year.
- 13) Employees will be permitted to carry over up to six unused vacation days from one year to the next (non-cumulative).
- 14) Effective January 1, 2010, personal days will either be used by the end of the year or lost.
- 15) Employees shall be entitled to participate in the sick leave sell back program as presently outlined in the Borough's Personnel Policies and Procedures Manual and the current bonus payments for unused sick leave shall be eliminated.
- 16) An employee who leaves work due to illness or otherwise takes sick leave shall be charged one-half a sick day if the employee reports for work but leaves before the midpoint of the shift.
- 17) Unused sick leave earned from January 1, 2010 forward shall be paid at the rate earned and not at the rate in effect at the time of retirement. The most recently earned sick leave shall be deemed to be used first.
- 18) There shall be no change in the existing requirement regarding the Family Health Care Plan for employees who retire after 25 years of service.

19) The Borough shall not be obligated to provide coverage for the surviving spouse and any eligible dependents of any active or retired officer until the spouse reaches the age of 65.

20) Effective January 1, 2010, all employees shall be required to make a co-payment of the lesser of 25% or \$1,800.00 toward dependent coverage by payroll deduction.

21) Prescription co-pays shall not be changed from the rate effective January 1, 2006 of \$10.00 for generic drugs and \$15.00 for brand name.


22) Article Fifty, Terminal Leave, has been changed by several of the above provisions.

First, holidays have been eliminated effective January 1, 2011 and they have been converted into base pay. That change eliminates the accumulation of unused holidays toward terminal leave beginning in 2011. Second, vacations will be pro-rated in the employee's final year of service. This will reduce the amount of unused vacation days that can become part of terminal leave. Third, employees will be permitted to carry over a maximum of six unused vacation days (non-cumulative). This, too, will reduce the number of unused vacation days that can become part of terminal leave. Fourth, personal days will have to be used in the year in which they are received. This will eliminate the accumulation of personal days that can become part of terminal leave. Fifth, sick leave will be paid at the rate in effect when the time was accumulated. This will reduce the cost of the accumulated sick leave to the Borough for new hires. Also, the sick leave sell back program will result in a reduction of the accumulation of sick leave. Sixth, although not currently referred to in the Terminal Leave article, compensatory time has been added to terminal leave. Limiting the accumulation of compensatory time to 50 hours and requiring the use of time in excess of that limit will place a relatively modest limit on the amount of compensatory time which can be added to terminal leave.

23) All items which were not specifically awarded as proposed by the Borough and the PBA are denied.

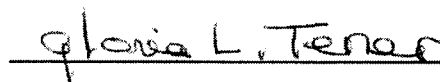
24) Except as the parties otherwise mutually agree, the provisions and terms and conditions of the prior agreement shall continue in the new agreement unchanged.

Dated: March 15, 2010  
Princeton, NJ

  
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Jeffrey B. Tener  
Arbitrator

State of New Jersey)  
County of Mercer) ss.:

On this 15<sup>th</sup> day of March, 2010, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

  
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Gloria L. Tener  
Notary Public of New Jersey  
My Commission Expires Oct. 19, 2014

