

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

IN THE MATTER OF THE INTEREST ::
 ARBITRATION :: DOCKET NO. IA-2012-007

 between ::

BOROUGH OF OAKLAND, ::

 Public Employer, :: **DECISION**

 -and- :: **AND**

PBA LOCAL 164, :: **AWARD**

 Employee Organization ::

BEFORE: MICHAEL J. PECKLERS, ESQ. INTEREST ARBITRATOR

DATE OF HEARING: January 13, 2012

POST-HEARING BRIEFS: January 20, 2012

DATE OF AWARD: February 3, 2012

APPEARANCES:

For the PBA

Richard D. Loccke, Esq., LOCCKE CORREA LIMSKY & BUKOWSKY

For the Employer

Matthew J. Giacobbe, Esq. CLEARY GIACOBBE ALFIERI JACOBS, LLC
Adam S. Abrahamson, Esq. "

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I. BACKGROUND OF THE CASE

Oakland is a Borough of Bergen County, New Jersey, which is the most populous county of the State. See, Borough Exhibit 2. The Borough encompasses a total area of 8.728 square miles. As of the 2010 United States Census, the Borough had a population of 12,754 residents. There are 3 fire houses and 1 police station; 3 K-5 elementary schools and the Valley Middle School, which serves the grade 6-8 population. Thereafter, Oakland students attend the Ramapo Indian Hills Regional High School District, with the option of going to either Indian Hills High School or Ramapo High School. Private schools include the Barnstable Academy, the New Jersey Japanese School, and the Gerrard Berman Day School. The major roadways through Oakland include Interstate 287, Route 208, and U.S. Route 202. While there is no commuter rail service, bus service to the Port Authority Bus Terminal in New York City is available. New Jersey Transit Bus Operations offers service to Hackensack via Ridgewood on a limited basis. The New York, Susquehanna and Western Railway freight line also runs through the borough. See, Borough Exhibit 1.

Oakland has a downtown shopping area along Route 202, with the Copper Tree Mall the Borough's largest single retail establishment. Numerous restaurants and bars are found within its borders. Industrial parks are also present, the largest of which is near the Franklin Lakes border. Recreational

facilities include "Rec Field", which houses 9 baseball and softball fields, 6 tennis courts, a roller hockey rink, basketball courts, and other facilities. Rec Field is additionally home to an annual carnival and fireworks, which take place during the summer each year as well as a 6-week summer camp. Ramapo Mountain State Forest is likewise within the Borough's borders. See, Borough Exhibit 2.

The Borough and PBA Local No.164 are signatories to a Collective Bargaining Agreement, which covered the period of January 1, 2007 through December 31, 2010. The unit definition clause at Article I Section A identifies an "officer" as including Patrolman, Sergeant, Lieutenant, and Captain, while the recognition clause of Article III reiterates that Local 164 is the majority and exclusive representative for the same. The existing Table of Organization reflects that there are currently 17 Police Officers/Detectives, 5 Sergeants and 2 Lieutenants. The department is led by a Chief of Police, who is excluded from the bargaining unit. The PBA has represented that based on the most recent available statistics for 2011, the Oakland Police Department responded to 15,000 service calls. This figure does not include Officer initiations based upon patrol stops and observations.

Following numerous bargaining sessions over a successor agreement during 2010 and 2011, as contemplated by N.J.S.A. 34:13A-16.a 1, on December 20, 2011, the PBA filed a PETITION TO INITIATE COMPULSORY

INTEREST ARBITRATION with the State of New Jersey Public Employment Relations Commission, pursuant to N.J.S.A. 34:13A-16.b (2). This enumerated the economic and non-economic issues in dispute as required by statute. The Borough filed its response to the petition in timely fashion per N.J.A.C. 19:16-5.5, which also listed all issues in dispute. By correspondence dated December 22, 2011 and sent by facsimile and Regular Mail, P.E.R.C. notified me that I had been chosen by random selection to be the Interest Arbitrator under the provisions of N.J.S.A. 34:13A-16e (1).

On notice to the parties, a hearing was convened at the Borough offices on January 13, 2012. The initial several hours were utilized to mediate the open economic and non-economic issues. Because Oakland had emphasized that the acceptance of a proposed health benefits modification to the Direct 10 "Look-alike" or "Mirror" plan was a condition precedent to any other discussions, this was the main area of focus. The PBA expressed concerns and numerous clarifications of the Borough's proposal were necessary, by virtue of the fact that Oakland was moving from its prior traditional plan to the B-MED plan on February 1, 2012. The latter is a self-insurance pool with the County of Bergen, which matched existing benefits. My notes reflect the following regarding the Q + A between the PBA and Borough Administrator Richard Kunze:

- THE NEW DIRECT 10 LOOK-ALIKE PLAN IS A NON-GRANDFATHERED PLAN. THERE ARE NO CO-PAYS IN-NETWORK, AND INSTEAD A \$10

FEE IS PAID FOR AN OFFICE VISIT.

- PBA AREAS OF CONCERN & RESPONSE BY BOROUGH

Q. WHAT IS THE MAXIMUM OUT OF POCKET LIMIT FOR IN-NETWORK AS WELL AS OUT-OF-NETWORK CLAIMS?

A. \$400 PER PERSON PLUS THE DEDUCTIBLE OF \$100.00 FOR IN-NETWORK. ANYTHING OVER \$500 TOTAL OUT OF POCKET WILL BE REIMBURSED BY THE BOROUGH VIA PURCHASE ORDER UPON THE SUBMISSION OF THE E.O.B. ON A MONTHLY OR QUARTERLY BASIS TO BE DETERMINED. THE FAMILY LIMIT FOR IN-NETWORK IS \$1,000.00. THE OUT OF POCKET OUT-OF-NETWORK MAX IS \$2,000.00 PER PERSON AND \$5,000 PER FAMILY.

Q. HOME HEALTH CARE - A LIMIT IS INDICATED IN THE B-MED POS SUMMARY (60 DAYS). NO LIMIT IS INDICATED IN THE SHBP DIRECT 10.

A. CORRECT THERE IS NO LIMIT ON HOME HEALTH CARE

Q. TREATMENT FOR INFERTILITY - THE SUMMARY STATES THIS IS NOT A COVERED EXPENSE.

A. THIS WILL BE COVERED

Q. WELL CARE - ACCORDING TO THE PPACA LEGISLATION, IN-NETWORK WELL CARE SHOULD BE COVERED AT 100% AND NOT SUBJECT TO A CO-PAY (UNLESS THE PLAN IS GRANDFATHERED.)

A. THERE IS NO IN-NETWORK CO-PAY.

- PRESCRIPTIONS WITH THE DIRECT 10 LOOK-ALIKE HAVE A \$10, \$25, AND \$40 CO-PAY, WHICH IS BASED ON A 30 DAY SUPPLY. A 90 DAY PRESCRIPTION WOULD THEREFORE HAVE 3 CO-PAYS, WHILE MAIL ORDER PRESCRIPTIONS FOR THE SAME PERIOD WOULD INCUR 2 CO-PAYS.

- THE PARTIES AGREED THAT THE PBA ACCEPTANCE OF THE DIRECT 10 MIRROR PLAN WOULD BE INCORPORATED INTO THE INTEREST ARBITRATION AWARD, AND THAT I WOULD RETAIN JURISDICTION AS ARBITRATOR, IN THE EVENT THAT A DISPUTE AROSE WITH RESPECT TO THE SAME.

See also, Joint Exhibit 3, September 28, 2011 Letter From Matthew J. Giacobbe, Esq. to Richard D. Loccke, Esq.

When further mediation was unable to resolve the open issues, the parties proceeded to hearing. At that time, counsel were provided with a full opportunity to engage in oral argument; to introduce documentary evidence; and to examine and cross-examine evidence. Abundant binders of evidence were submitted for my consideration, with the respective arguments related to the Final Offers more fully developed in the post-hearing briefs that were received on January 20, 2012, at which point the record was declared closed. This AWARD is rendered in timely fashion, pursuant to the 45 day period following my assignment, as prescribed by N.J.S.A. 34:13A-16f (5).

II. FINAL OFFERS AND POSITIONS OF THE PARTIES

PBA LOCAL 164

This is an Interest Arbitration proceeding which was commenced by the filing of a Petition by the employee organization. Prior to the filing of the Petition the parties had engaged in what was almost one and one-half (1 ½)

years of collective bargaining and numerous negotiation meetings. Pursuant to the rules of the Public Employment Relations Commission Arbitrator Michael J. Pecklers, Esq., was appointed to serve as Interest Arbitrator. An initial effort was made to settle the case through mediation. Mediation was successful to the extent that it narrowed the number of issues between the parties and further narrowed the gap between the parties in those remaining unresolved issues. All issues were not resolved through mediation and therefore formal Interest Arbitration proceedings were conducted on January 13, 2012. Both parties introduced significant evidentiary presentations as well as offering a large amount of oral information from insurance and other experts.

Perhaps most significant among the issues mediated was the subject of health care insurance, an Employer issue which it deemed a threshold matter to be resolved before anything else could be done. Through effective mediation by Interest Arbitrator Pecklers, the mediated insurance result was acknowledged by both parties to be ultimately a part of any Interest Arbitration Award. It was specifically requested of Arbitrator Pecklers that his notes and various agreements between the parties with respect to the medical insurance issue implementation would be included in the ultimate Interest Arbitration Award. Further, due to the issue of medical insurance, its complexity and implementation, both parties specifically requested that as

a part of the Interest Arbitration Award, Arbitrator Pecklers would retain jurisdiction over the implementation of the medical program. It is expected that the Award will so contain a retention of jurisdiction over the implementation and related issues regarding the changed medical insurance program.

The PBA, in addition to the acknowledgment of the medical insurance change noted above, submitted the following issues for the Arbitrator's consideration:

1. Wage Increase - The PBA proposed a three percent (3%) across-the-board wage increase effective on each successive January 1 over a four (4) year contract term. (January 1, 2011 through December 31, 2014).
2. The PBA proposed a modification of the current Detective Differential affecting Article XII, page 22, Paragraph B of the contract (*J-1*). This proposal change would modify the current Two Thousand Five Hundred Dollar (\$2,500) Detective differential to a 2.5% differential calculated on the Detective's base rate. This issue appeared as **Item 1B** on the PBA's Proposal Sheet (*P-1* in evidence).
3. Article X, Insurance - The PBA proposed a modification of Paragraph **D1** of this Article by modifying the provision at line 7 on page 21 by deleting the words "if the Officer dies prior to becoming eligible for Medicare..." and replacing it with "Until the spouse of a deceased eligible member qualifies for Medicare." This issue appeared as **Item 4** on *P-1*.
4. Article XI, Hours of Work and Overtime - The PBA proposed a modification of Paragraph **C6** of this Article by permitting day-for-day shifts between members. This

issue appeared as **Item 5C** on the Original PBA Proposal (P-1).

5. Article XX, Fully Bargained Provisions - The PBA proposed a deletion of Paragraph A of this Article as it is in direct conflict with the PERC statute at N.J.S.A. 34:13A-5.3 which provides in pertinent part that changes affecting working conditions "shall" be negotiated with the majority representative before they are established. The current language forecloses such mandatory requirements and is therefore in direct conflict with the statute.

The Employer's Position was set forth in its bound volume and essentially represents a dismantling of longstanding benefits and unreasonable differentiation in compensation and benefits for existing Employees and all those who may be hired in future years. Such proposals would create two (2) tiers of compensation and essentially two (2) "flavors" of Police Officer, which is completely incompatible with the *esprit de corps* and working team type relationship essential to delivery of important public service. Pursuant to the revised PERC statute, the Arbitrator has conventional authority to resolve the differences between the parties in this matter. The revised statutory criteria include:

INTEREST AND WELFARE OF THE PUBLIC

The Borough of Oakland Police Department is a full service law enforcement agency providing a variety of law enforcement services to

Borough residents and all who pass through the Borough. The Borough itself is approximately 9.1 square miles and has a nighttime population of approximately twelve thousand five hundred (12,500). The significance of the phrase "nighttime population" is borne out by the statistics which show Oakland to be one of the busiest municipalities in this entire area of the County and one of the busiest thoroughfares of any Borough in Northeast New Jersey. The high volume of persons passing through the Borough on a daily basis is largely due to its geographic location and many major thoroughfares passing through the Borough.

Major thoroughfares include Interstate Highway Route 287, New Jersey State Highway Route 208 and New Jersey State Highway 202. In addition, there are numerous roads used on a regular basis by commuters and commercial traffic passing between Oakland and bordering Passaic County. The morning and evening rush hour traffic flow, as well as daily commercial traffic through the Borough is significant. At one intersection, Ramapo Valley Road and Yawpo Avenue the daily DOT traffic count shows over twenty-seven thousand ($\geq 27,000$) vehicles. Many other intersections in the Borough, often thought of as secondary roadways have three to five thousand (3,000 to 5,000) cars per day per the DOT figures.

Calls for service have been significantly increasing in recent years with the most recent full year's figures (2011) being over fifteen thousand

(≥15,000) calls through the Police Desk for service. It should be noted that this volume does not address Officer initiated calls which begin with patrol observations and investigative initiatives. This is an extremely busy Police Department. The Borough has numerous commercial establishments, shopping centers and retail/restaurant attractions that bring people into the Borough on a regular basis. One may note that having eight (8) banks in a relatively small town, if one uses only nighttime population, is a clear indicator of commercial activity and retail traffic. The industrial parks within the Borough are substantial.

The Ramapo State Forest is also partly within the Borough bringing many tourists into the facility to enjoy its many amenities such as hiking, fishing, *etc.* While there is a State Park Police, there are very few sworn Officers in that agency and most emergency, for example first aid, calls are the subject of first response by the Oakland Police Department. Numerous health facilities in the Borough present a unique obligation to the Police Department in their specific types of response and frequent first aid calls as well as calls related to the nature of their client basis. Homeland Security issues include Town Waterworks and a major gas pipeline passing through the Borough. The large school system, both public and private, presents challenges to the Police Department Juvenile Initiatives as well as traffic and drug issues. This is clearly a very busy Police Department which has a

substantial and growing workload.

The Oakland Police Department is made up of twenty-four (24) sworn personnel with the following current Table of Organization:

Rank	Number of Officers
Chief of Police	1
Lieutenant of Police	2
Sergeant of Police	5
Police Officer/Detective	17

Clearly a work force of this size with a workload, increasing on an annual basis, and serving the greater number of persons passing through the Borough as well as living in the Borough establishes a highly efficient and professional Police Department.

COMPARISON OF WAGES AND TERMS AND CONDITIONS OF EMPLOYMENT

A review of this case and the submitted evidence based upon criteria *g2* and *g3* under the Act, established that the compensation program for the Oakland Police Officers is, at best, near average and in many cases well below.

No Municipal Police Department in the entire County of Bergen, considering all contracts submitted by both parties, works more annual hours per year than are scheduled for the Officers at the Oakland Police Depart-

ment (two thousand eighty (2,080)). Many contracts have the four-two (4-2) schedule, five/two - five/three (5/2-5/3) schedule, or the six-three (6-3) schedule. All of these generate over sixteen (16) days less scheduled service per year less than is worked in Oakland. It, of course, does not end there. Many of the Oakland benefits are below average and some barely hit average. Examples of below average benefit programs include such issues as minimum or overtime on recall, an issue in this case (Issue 5B on *P-1*). Even the Employer's own chart identified as *Exhibit 68* shows the average in the County to be 2.6 hours whereas the benefit in Oakland is only two (2) hours. The same is true with the Court time minimum which the Employer's own chart (*Exhibit 65*) shows the County average to be 2.63 hours and there is only a provision for two (2) hours in Oakland.

The Employer's chart on the subject of personal days (*Exhibit 63*) again shows the Oakland allocation of three (3) days to be below the County average of 3.25 days. Sick leave, a common benefit, is established as being exactly average in the County (*Exhibit 72*). The question of course arises as to where the compensation falls with respect to these Police Officers who work the longest number of hours and have a modest/average benefit package.

The base wages for Oakland Police Officers are well below the area average and it would take a significant increase in the year 2011 alone just

to catch average. **Chart No. 1** below sets forth the base pay rates for area municipalities that have settled for 2011, 2012, 2013 and in one case 2014.

CHART NO. 1

**AVERAGE BASE OFFICER WAGES IN NORTHERN
TIER POLICE DEPARTMENTS BASED ON PBA
EXHIBITS**

	2011	2012	2013	2014
Mahwah	\$124,638	\$127,796		
Ringwood	\$109,697			
Glen Rock	\$109,183	\$111,367		
Midland Park	\$110,010	\$113,402		
Allendale	\$111,572			
Ridgewood	\$120,980	\$126,114		
Closter	\$117,441	\$120,083	\$122,785	\$125,548
Waldwick	\$118,097	\$120,459	\$122,868	
Saddle River	\$135,875	\$141,242	\$146,538	
Bergen Prosecutor	\$124,192	\$128,228	\$132,076	
Paramus	\$122,547	\$126,223	\$130,010	
AVERAGES	\$118,575	\$123,879	\$130,855	

The base pay rate in Oakland for the Top Step Police Officer in 2010 was One Hundred Nine Thousand Two Hundred Twenty-Seven Dollars (\$109,227) (*J-1*, p.45). The area average for 2011, per the above **Chart No. 1**, is One Hundred Eighteen Thousand Five Hundred Seventy-Five Dollars

(\$118,575). The Oakland Top Step Base Pay Rate is therefore Nine Thousand Three Hundred Forty-Eight Dollars (\$9,348) below the average 2011 rate. For the Oakland Police Officer to catch the average in 2011 would require a 2011 increase of 8.6%. In this case the Oakland PBA is only seeking a three percent (3%) across-the-board increase. It is therefore acknowledged that even an award of the full PBA position for 2011 would guarantee a continuing shortfall from average.

The wage shortfall is not static. Many of the area towns have completed their negotiations for the year 2011 and beyond. **Chart No. 2** on the following page reflects the base rate changes in Bergen contracts based upon PBA exhibits.

CHART NO. 2
BASE WAGE INCREASES BASED ON PBA EXHIBITS

* * *

	2011	2012	2013/ 2014	
Ridgewood	4(2/2)	4.2(2.1/2.1)		
Mahwah	2.5	2.5		
Ringwood	3.25			
Glen Rock		2	2	
Midland Park	2.9	3.1		
Allendale	4			
Edgewater	3.75	3.75	3.75	
South Hackensack	2	2		
Wallington	3.8	3.9		
Closter		2.25	2.25	2.25
East Rutherford	1350 + 4%(2/2)	4(2/2)	5(2/3)	
Wood Ridge	4.5(2.25/2.25)	4.5(2.25/2.25)	4.5(2.25/2.25)	4.5(2.25/2
Tenafly	3.75	3.75		
Bloomingtondale	2.5	2.25	2	1.75
Haworth	4.4	2	2	2
Hawthorne		1	2.5	2.5
Hasbrouck Heights	2	2		
Waldwick	2	2	2	
Elmwood Park	3.95			
Saddle River	3.95	3.95	3.75	
West Milford	4			
Saddle Brook		2	2	2
Bergen Cty. Prosecutor	3	3.25	3	
Paramus	3	3	3	
Franklin Lakes	3.9			
AVERAGES	3.39%	2.87%	2.90%	2.17%

The averages at the bottom of the respective year columns reflect the rates of increase in each year at issue in this proceeding. One may take initial note of the average for 2011 of 3.39%. The PBA is seeking a three percent (3%) increase for the year 2011 and therefore is acknowledging a shortfall from the average already established. Coupling this shortfall with the earlier identified (See **Chart No. 1**) shortfall of 8.6%, there will be no gain in relative positioning in this case. A loss of relative position with respect to 2011 is guaranteed. If one combines the average for the years 2011, 2012, 2013 and 2014 there is an increase, non-compounded, of 11.33% or an average over term of 2.833%. This is almost exactly what the PBA is seeking with a three percent (3%) annual increase across-the-board. If one were to add the shortfall of 8.6% to achieve average for 2011 (See **Chart No. 1, supra.**), the total amount required to attain average in 2011 and maintain average throughout the term would be 19.93%. Clearly this is well beyond what the PBA is seeking in this case. There can be no doubt however that the data in evidence fully and completely supports an award of the PBA position on base wages in this case.

The Employer's position is not supported by even the new law, were it effective in this case. The new "Hard Cap" law has resulted in several area settlements which are noted at **Chart No. 3**.

CHART NO. 3**AVERAGE SETTLEMENTS COMMENCING WITH 2012 AS THE FIRST YEAR**

	2012	2013	2014
Closter (T-11)	2.25	2.25	2.25
Haworth	2	2	2
Hawthorne	1	2.5	2.5
Saddle Brook	2	2	2
AVERAGES	1.94%	2.19%	2.19%

These settlements on **Chart No. 3** above are all under the new "Hard Cap" law and still do not support the Employer's position of this case which precedes the effective of the "Hard Cap" and are therefore without said restrictions. In other words, the Employer's position does not stand the test of the old law, here applicable, or even the new law.

The Employer in its attempt to significantly revise longstanding benefits has also attempted to add a significant number of steps. There is no basis in evidence for such a unilateral taking. The current Step System provides for eight (8) steps to Patrol Officer Maximum Pay. This is close to the area average. **Chart No. 4** on the following page establishes the average based exhibits placed into evidence by the PBA.

CHART NO. 4**NUMBER OF STEPS TO REACH MAXIMUM OFFICER RATE**

Mahwah	6
Ringwood	6
Ridgewood	8
Saddle River	9
Glen Rock	9
Midland Park	9
Allendale	10
Edgewater	7
Wallington	7.5
Closter	8
East Rutherford	7
Wood Ridge	7
Tenafly	8
Hasbrouck Heights	7
Waldwick	10
Bergen County Prosecutor's	7
Paramus	10
AVERAGE	7.97 Steps

Again, the Employer's position is not supported by the evidence in the record.

The Arbitrator's attention is specifically requested to be focused on

the very substantial modification of terms and conditions which this PBA agreed to during the mediation phase. The change referenced is the modified health care program. The public employer acknowledged that it would save approximately Three Hundred Thousand Dollars (\$300,000) in the first full year of implementation alone to the Borough. This is another form of reduction in benefit as it was described during the Interest Arbitration proceedings and the information received from the two (2) insurance experts, one from management and one from labor who discussed the changes at length. The PBA is getting a lesser insurance plan and the Borough is saving a very substantial amount of money.

In its proofs the Employer appears to be drawing or attempting to draw some sort of comparisons with private sector employment. It is the position of the PBA that the best comparisons are made with public employees, and specifically law enforcement personnel. Due to the unique statutory obligation and treatment of Police Officers under New Jersey Law, any comparison of said law as it applies to private sector employees as compared to Police Officers must result in a strong justification for significantly higher compensation to be paid to Police Officers. In an arbitration decision, well known Interest Arbitrator Carl Kurtzman considered this subject of private sector comparisons and wrote as follows:

As other arbitrators have noted, it is difficult to compare the working conditions of public sector

police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight. (*Borough of River Edge and PBA Local 201*, PERC IA-97-20, pg. 30)

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a Police Officer. A Police Officer has obligations both on and off duty. This is most unusual in the private sector. A Police Officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. There is no portability of pension in the law enforcement community after age thirty-five (35). Police Officers may not take their skills and market them in other states as one may market one's own personal skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market his/her skills. The nature of police work is inherently one of hazard and risk. This is not

frequently seen in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of Police Officers to their employers. Specifically distinguished is the private sector employee from said employee's employer.

1. The Federal Fair Labor Standards Act, 29 U.S.C.A. §201, *et seq.* applies different standards to private sector employees and police officers.
2. The New Jersey State Wage & Hour Law, N.J.S.A. 34:11-56a, *et seq.* does not apply to the employment relationship between a police officer and the officer's Public Employer. Private sector employees are covered under New Jersey Wage and Hour Laws.
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. N.J.S.A. 40A:14-118.
4. N.J.S.A. 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as U.S. Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, N.J.S.A. 40A:14-122.
6. Statutorily controlled promotional examinations exist for classes of police officers in New Jersey under Title 11

and other specific statutory provisions exist under N.J.S.A. 40A:14-122.2. There are no such private sector limitations on promotion.

7. A police officer in New Jersey must be resident of the State of New Jersey, N.J.S.A. 40A:14-122.8.
8. Hiring criteria and order of preference is set by statute N.J.S.A. 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire and rehiring as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, N.J.S.A. 40A:14-127.3. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage N.J.S.A. 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work.
11. N.J.S.A. 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector.
12. The maximum age of employment of a police officer is 65 years. No such 65 year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. N.J.S.A. 40A:14-147 to 40A:14-

151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures.

A Police Officer is specifically exempted from the firearms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector. Police Officers are trained in the basic Police Academy and regularly retrain in such specialties as firearms qualifications. This basic and follow up training schedule is a matter of New Jersey Statutory law and is controlled by the Police Training Commission, a New Jersey Statutorily created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of Police Officer certification and the Police Officer's job. This is rarely found in the private sector.

These types of issues were considered in the recent decision issued by the well known Arbitrator William Weinberg in the Village of Ridgewood case:

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is

apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data. Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g.(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct Employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such a contiguous towns, a county, an obvious geographic area such as the shore or a

metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

For the reasons noted above it is respectfully argued that any time there is a comparison made between a Police Officer and a private employee generally, the Police Officer's position must gain weight and be given greater support by such comparisons. Private employment generally is an overly generalized category that includes virtually every type of employment. The majority, however, must by definition be more generalized and less demanding. The Police Officer should accordingly be considered on a higher wage plane than private employment generally.

STIPULATIONS OF THE PARTIES

The parties to this case have stipulated to a significant modification of terms and conditions of employment by the PBA. In an effort to achieve resolution of this long open dispute, the PBA acknowledged the inclusion of a significant change in health care benefits and acceded to Employer requests. This acceptance, akin to a stipulation, is a change that will lessen the benefit for the Employees and save the Employer over Three Hundred Thousand Dollars ($\geq \$300,000$) for the first full year of implementation. The actual savings will be in part during calendar year 2012 and in part during calendar year 2013. Suffice it to say that the Employer has achieved

a major savings due to this significant modification in health care provider. It is respectfully requested that the Arbitrator take particular note of this change as part of the ultimate Award and Decision.

**LAWFUL AUTHORITY OF THE EMPLOYER AND
IMPACT ON THE CITIZENS AND TAXPAYERS**

There is absolutely no prohibition to an award of the PBA's Final Offer Package. When one considers this case under criteria *g5*, *g6* and *g9*. The cited criteria are essentially the Cap Laws which, in this case apply as to the Appropriation Cap and Levy Cap. The "Hard Cap" on Police wages does not apply in this case. Prior to considering the economic impact, such as it is, it is important to define the value of a percentage point. **Chart No. 5** below analyzes the current bargaining unit census and provides calculations.

CHART NO. 5

BARGAINING UNIT BASE WAGE

(A) Rank	(B) Census	(C) Base Per (<i>J-1</i>)	(D) Col. (B) x Col. (C)
Captain	0	\$130,376	- -
Lieutenant	2	\$123,046	\$246,092
Sergeant	5	\$116,557	\$582,785
Patrolman	17	\$109,227	\$1,856,859
TOTAL	24		\$2,685,736
			1% = \$26,857

The cost of a single percentage point is Twenty-Six Thousand Eight Hundred Fifty-Seven Dollars (\$26,857). The cost of the PBA package as to base rate increase in the first year is therefore three percent (3%) for a total of Eighty Thousand Five Hundred Seventy-One Dollars (\$80,571). In the second year with another three percent (3%) increase the cost is Eighty-Two Thousand Nine Hundred Eighty-Eight Dollars (\$82,988). The third year, again with a three percent (3%) increase, is Eighty-Five Thousand Four Hundred Seventy-Seven Dollars (\$85,477) and the fourth year, assuming another three percent (3%) increase, is Eighty-Eight Thousand Forty-One Dollars (\$88,041). As one will see from a review of the proofs in this case, these are amounts well within the budgetary authority of this public employer.

A threshold consideration is that the stipulation as to change in health care provides a Three Hundred Thousand Dollar (\$300,000) annual savings to the municipality. These savings are not static. One may fairly assume that health care costs will increase and therefore the reduced expense plan will have an increasingly positive effect from the Employer's standpoint. In other words, the savings will increase annually. The PBA is the largest bargaining unit in the Borough of Oakland therefore may reasonably lay claim to a significant part of the savings as to the Three Hundred Thousand Dollar (\$300,000) cost reduction. Even if the PBA is only allocated one-third (1/3) of the annual savings, it is more than enough to meet the entire PBA

package on an annual basis going further. One need not go further in the analysis of cost and ability to pay than the simple arithmetic involving health care savings by virtue of the stipulation.

In addition to the significant savings achieved by the public employer as a result of the Police agreement on health care, two (2) other statutory changes have occurred during the month of June, 2011, the signing into law of Chapter 78 and the laws of 2011. This Omnibus Benefit Modification Bill makes two (2) significant changes that impact this Employee-Employer relationship. First, the Employees are required to pay 8.75% of the health care premium cost incurred by the Employer in the first year and an additional 8.75% of the premium in each of four (4) years so that at the end of the four (4) year term there will be a thirty-five percent (35%) contribution rate by the Employees. Using the current cost of coverage, approximately Twenty-One Thousand Dollars (\$21,000) for a family plan, and assuming some slight increase in each year of the four (4) year fold-in period, this will result in a significant Employee increase up to an Eight Thousand Dollar (\$8,000) *per annum* contribution in the fourth year. In a bargaining unit of twenty-four (24) persons as exists here, this means One Hundred Ninety-Two Thousand Dollars (\$192,000) of additional monies inuring directly to the Borough of Oakland from the PBA. This contribution is not unique to the Borough Oakland but it does have impact on this specific case. All of the

contribution as to the fractional cost of health care contribution of the premium goes directly to the public employer, here the Borough of Oakland. This will result in cost being diverted from the Employees over the next four (4) years on an even increase *per annum* of 8.75% of the premium.

In addition to the monies saved by the Employees agreeing to the lesser health care plan and further in addition to the substantial amounts which will inure to the benefit of the Borough of Oakland from the PBA contribution to health care, there has also been a decision at the State level to redirect some of the monies received under Chapter 78 to reduce local Employer contributions. Joint Exhibit 6 in evidence is a copy of a report from the New Jersey Department of Community Affairs identifying the original 2012 billing amounts for PFRS Employer obligations and in the column to the left indicating the "Revised 2012 Billing Amounts Post Chapter 78". The amount of money which is reduced on the Employer contribution by the Borough of Oakland for Police pensions is a reduction of One Hundred Fifty-Five Thousand Four Hundred Thirty-Two Dollars (\$155,432). As there is no paid Fire Department in the Borough of Oakland, all of this PFRS reduction is attributable directly to the Oakland Police, here the PBA in this case. All Police Officers except the Chief are in the bargaining unit.

If one identifies the accuracy of a single percentage point to be

Twenty-Six Thousand Eight Hundred Fifty-Seven Dollars (\$26,857) (See *Chart No. 5, supra.*), then the hypothetical one-third (1/3) of the Three Hundred Thousand Dollar (\$300,000) savings on the medical plan has a value of 3.72 bargaining unit base wage percentage points. If one considers the value of the contribution under Chapter 78's obligation of the Employee to pay toward the medical premium then the cost of the Employer contribution will drop by at least One Hundred Ninety-Two Thousand Dollars (\$192,000) as is calculated above. The Employee bargaining unit value of a percentage point as compared to this Employer cost reduction is 7.28%. If one considers the value of the windfall by virtue of the Employer billing reduction as a result of the passage of Chapter 78 (See *J-6*) of One Hundred Fifty-Five Thousand Four Hundred Thirty-Two Dollars (\$155,432), this amount has an equivalent value of 5.79 bargaining unit percentage points.

While it may not be a certainty that the cost reductions on pension bills will continue, it is a certainty that the Employee contributions toward health care premiums will be in place and will be increasing for the four (4) year term at least. As noted above, the significant savings on the lesser health care plan will also be a recurring savings which will go on for years to come. There can be no question that the ability to pay is more than met on these few items alone.

Oakland is not a poor town. Its aggregate true value exceeds \$2.6

Billion Dollars (See Equalization Table for the County of Bergen for 2011). Its effective tax rate, based on information in the same form, is only One Dollar and Eighty-Eight Cents (\$1.88). This is a stable town with mixed commercial, retail and residential land use. It has a very substantial ratable base and a low tax rate. One barometer of tax pressure on the citizens is the percentage of current tax collections. In Oakland the percentage of cash collections was 99.55%, a near perfect collection rate (See Annual Financial Statement, Borough Exhibit, p.22, Line 13). The total levy exceeds Fifty-Three Million Dollars (\$53,000,000) (See Line 5 same page). The levy breakdown shows that only twenty-six percent (26%) of taxes run the Borough and all municipal services (Annual Financial Statement, Borough Exhibit 17, Sheet 17).

The percentage value of the entire PBA bargaining unit base wage is Two Million Six Hundred Eighty-Five Thousand Seven Hundred Thirty-Six Dollars (\$2,685,736 per **Chart No. 5**) as compared to the total levy is only 4.9%. So a person who had a hypothetical Eight Thousand Dollar (\$8,000) tax bill on their home would be paying Three Hundred Ninety-Two Dollars (\$392/year) a year for the entire bargaining unit's base pay. This is Thirty-Two Dollars and Sixty-Six Cents (\$32.66/month) a month and approximately One Dollar and Five Cents (\$1.05/day) per day. Clearly, the Police Officers in this town are a bargain. The per citizen and per tax dollar impact is

nominal. The impact of a percentage point is about a penny a day (\$0.01/day). No one can make an argument for any significant tax pressure as a result of any reasonable settlement of this case.

An additional barometer of fiscal health is a review of the Annual Debt Statement. The most recent Debt Statement placed in evidence (*Exhibit 14*) shows a Municipal Debt of 0.63%. The Debt Limit under New Jersey Law for municipalities is 3.5%. While no one is suggesting that the Borough borrow to pay Employees, it does assert that a debt less than one-fifth (1/5) of the statutory limit does indicate fiscal strength and stability. Even the candidates for office who were successfully elected stated in their campaign literature that the "Oakland average tax bill is \$400 lower than the Bergen County average" and "Oakland has reduced debt 4 million dollars in the last 4 years." Finally, the Republican candidates stated that "Oakland has over 2.2 million dollars in trusts and reserves" and "Oakland has near 0% increase in operating budget 2007-2011". This was the strength of the successful candidates and is consistent with the analysis presented.

Certain other points must be noted in a review of the fiscal documents.

RESULTS OF OPERATIONS (AFS Sheet 19) (Borough Exhibit 17)

YEAR	AMOUNT
2010	\$939,134

The Results of Operations is an extremely important chart as it clearly indicates the ability to re-generate surplus. The Borough without a doubt has this ability. This is the equivalent of the "bottom line" in the private sector.

● **BUDGET REVENUE** (AFS Sheet 17) *(Exhibit 17)*

YEAR	ANTICIPATED	REALIZED	EXCESS/(DEFICIT)
2010	\$18,195,011	\$18,740,705	\$545,694

The Budget Revenues are a component of the Results of Operations and a significant part of the Re-Generation of Surplus as indicated above in the Results of Operations.

The CFO's Certification fails to mention the Borough's ability to generate revenue as indicated in the above Chart.

UNEXPENDED BALANCE OF APPROPRIATION RESERVES
(AFS Sheet 19) *(Exhibit 17)*

YEAR CANCELLED	FROM/YEAR	AMOUNT
2010	2009	\$183,009

The Borough continues to generate excess budget appropriations. This affords them budget flexibility. Any agency would have negative numbers if they had serious financial problems. They have excess budgeted funds.

FUND BALANCE (2010 Report of Audit) *(PBA Exhibit)*

YEAR	BALANCE 12/31
2010	\$2,229,288
2009	\$2,181,030
2008	\$1,382,530
2007	\$690,824
2006	\$619,017

The Fund Balance has tripled since 2006 which is a clear indication of financial strength. **The CFO fails to point this out in his Certification.**

TAX RATES (2010 Report of Audit)

YEAR	MUNICIPAL	COUNTY	SCHOOL	TOTAL
2010	0.547	0.207	1.344	2.10
2009	0.531	0.210	1.311	2.05
2008	0.510	0.195	1.278	1.98
2007	0.474	0.186	1.250	1.91
2006	0.437	0.178	1.185	1.80

The Tax Rate had modest increases in each year, which is recommended by the credit rating agencies in order to maintain stability in the normal increases that every entity experiences on a yearly basis. The municipal tax rate has had the normal recommended increases.

The CFO in his Certification references tax increases, however he does not mention that this is recommended by the credit rating agencies, Moodys, Standard & Poors in keeping with increased costs.

TAX COLLECTION RATES (2010 Report of Audit)

YEAR	ACTUAL RATE
2010	99.55%
2009	98.62%
2008	99.10%
2007	99.21%
2006	99.07%

The Tax Collection Rate is excellent. It is almost perfect. If there were economic stress as the CFO is attempting to elude to, the Collection Rate would suffer.

TAX LEVY (2010 Report of Audit)

YEAR	AMOUNT
2010	\$53,550,515
2009	\$52,231,471
2008	\$50,362,212
2007	\$48,406,730
2006	\$45,556,641

Although the dollar amount of the Tax Levy increases, the percentage for municipal purposes averages 26.5%. The smallest portion of the Tax Levy is always the municipal portion.

DEBT SERVICE (2010 Report of Audit)

EQUALIZED VALUATION BASIS	DECEMBER 31	\$2,659,372,180
EQUALIZED VALUE	3.5%	\$93,078,026
NET DEBT	0.62%	\$16,722,790
REMAINING BORROWING POWER		\$76,355,236

The Borough is well below the statutory debt limit and has more than sufficient borrowing power remaining. This is a clear indication of a sound financial condition.

CAP CALCULATION

The Borough is well below the CAP limit as indicated by the Budget Sheet 11. **The amount to be Raised for Municipal Purposes is below the Statutory 2%.**

MUNICIPAL BUDGET (Sheet 14) *(Exhibit 12)*

The appropriation for Police Salaries and Wages has a Reserve Balance as of December 31, 2009 of \$82,803.16; Total Reserve for Salary and Wages (Sheet 17) is \$152,148. This clearly shows Budget flexibility.

ANNUAL FINANCIAL STATEMENT 2010

Sheet 6a lists certain reserve balances that should be noted:

Open Space \$1,253,371.37 this is raised from the taxpayers and is available for Parks.

Health Benefits Trust \$732,643.68

Accumulated Sick Leave Trust \$248,844.91

These are just a few of the areas that the Borough has made provision for.

There is no mention in the CFO's Certification.

The entire Certification is an attempt to create the perception of a negative economic picture when the facts taken from the Borough's financial documents indicate the contrary.

There is no question that the Borough of Oakland has the ability to pay the entire Last Offer Position as presented by the PBA.

THE COST OF LIVING

The PBA has presented evidence on this criteria as Joint Exhibit 5, the United States Department of Labor Bureau of Labor Statistics Report dated December 16, 2011. Established in the Report is a most recent month increase of 3.5% with various segments identified such as food going up at a rate of 4.6%. Energy also reached a high increase and all items less food and energy continue to rise reaching 2.2% in November of 2011. They are significant increases as they exceed the amount sought by the PBA in this case. Not only is the PBA in a situation of retrograde bargaining where there will be less net dollars paid on a bi-weekly payroll but in addition the value of those dollars will be decreasing. The Borough's position takes no account of these realities.

**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**

A review of criteria *g8* would import private sector comparisons such as "area standards" and "prevailing rate". Both of these concepts have been addressed in the PBA's proofs with respect to average pay rates, total

compensation packages and rates of change. All of these concepts support an award of the PBA position.

The PBA has, in addition to the wage issue, proposed four (4) other issues for the Arbitrator's consideration. They are all essentially non-economic in nature and have, if any, minimal economic impact. The first of these was to modify the Detective Differential (*J-1*, Article XII, p. 22, Paragraph B) from the current Two Thousand Five Hundred Dollars (\$2,500.00) to 2.5%. The increase is nominal at present and would grow slightly annually. There are three (3) persons impacted by this Proposal, two (2) Patrol Officers and one (1) Sergeant. It is an equity type of proposal which matches other area towns.

The second point referenced is Issue No. 4 on *P-1* reference Article X, Insurance (*J-1*, p.18). The PBA is proposing a modification of Paragraph D1 of this Article to provide at the seventh line a deletion of the words "If the Officer dies prior to becoming eligible for Medicare..." and replacing same with "Until the spouse of the deceased eligible member qualifies for Medicare." While this is not a common occurrence, it has happened in the Oakland Police Department and affects three (3) PBA members. An untimely death left an underage widow who was without coverage. This minor adjustment is an equity adjustment which would ensure fairness in coverage to a surviving spouse who would have no options otherwise. As noted, this

is a very rare occasion, that should be funded by the Employer. The cost exposure is extremely small and the likely time frame of coverage is also brief in nature.

The PBA has proposed a modification of Paragraph C6 of Article XI, Hours of Work and Overtime (*J-1*, p.22) so as to permit day-for-day shift switches between members. This is a non-economic point and is clearly an equitable request. The public employer cannot be harmed by this request as it will not result in overtime and it will result in like coverage from a Police Officer substituting for another Police Officer. One might presume that in some cases a Sergeant might cover a Patrol Officer but clearly that would result in an additional benefit to the Borough. The issue of switching between Police Officer is of paramount importance to the members of a Police Department. It permits time with family, special events and meeting short notice needs as may occur. It will have no economic impact on the Employer whatsoever. The last issue submitted was a modification of Article XX, Fully Bargained Provision (*J-1*, p.38) wherein it is proposed that Paragraph A of the Article be deleted. The PERC statute at *N.J.S.A.* 34:13A-5.3 provides in pertinent part that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated before they are established." The use of the directory word "shall" is clear. The challenged language in this non-economic proposal is in

direct conflict with the statutory mandate as it forecloses negotiations at any time during the course of the contract. This may be adjusted by simply referencing the statutory mandate as a qualification.

The Borough of Oakland

This matter is an interest arbitration involving the Borough of Oakland ("Borough" or "Oakland") and PBA Local No. 164 ("PBA" or "Union"), the Employee Representative. The Borough is a public employer and both parties are subject to the New Jersey Employer-Employee Relations Act, N.J. S.A. 34:13A-1 et seq. and are specifically subject to the New Jersey Police and Fire Compulsory Interest Arbitration Act, N.J.S.A. 34:13A-14 et seq., ("The Interest Arbitration Act"). The Interest Arbitration Act requires unresolved negotiation disputes involving police and/or fire employees to be resolved through binding interest arbitration. The arbitrator is required pursuant to the Interest Arbitration Act to decide the dispute by providing weight to nine (9) specifically enumerated criteria. See N.J.S.A. 34:13A-16(g).

The Borough and the Union are parties to a collective negotiations agreement ("Agreement") which was in effect from January 1, 2007 through December 31, 2010. See, Borough Exhibit 4. The parties engaged in negotiations in an effort to mutually agree upon the terms and conditions for a successor agreement. However, after many negotiation sessions, the

parties could not agree to new terms and/or conditions for a successor agreement. As such, on December 13, 2011, the Union filed the instant Interest Arbitration Petition.

The Public Employment Relations Commission (“Commission”) appointed Arbitrator Michael J. Pecklers, Esq. to serve as the arbitrator in this matter. Arbitrator Pecklers conducted a hearing on January 13, 2012. Prior to the hearing, Arbitrator Pecklers held mediation between the Borough and the PBA. During this mediation, the PBA voluntarily agreed to the Borough’s health benefit plan changes. See Joint Exhibits 2 & 3. Moreover, during the hearing, the Borough provided a financial certification from the Borough CFO James A. Mangin. The Borough also submitted myriad documentary evidence. See, Borough Exhibits 1 through 97.

THE ARBITRAL STANDARD

Pursuant to N.J.S.A. 34:13A-16(g) of the Interest Arbitration Act, the statutory mandate of the Arbitrator is to determine whether the total net economic changes for each year of the Agreement are reasonable under the nine (9) statutory criteria and shall adhere to the limitations set forth in section 2 of P.L. 2010, c. 105 (C:34:A-16.7). See N.J.S.A. 34:13A-16(d). The Arbitrator, in making his decision, must weigh the evidence submitted with respect to the nine (9) statutory criteria, but must also consider every

aspect of the two (2) competing final offers. The New Jersey Supreme Court has held that each of the nine (9) criteria enumerated in N.J.S.A. 34:13A-16(g) must be addressed in every interest arbitration. PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994); Washington Township v. New Jersey PBA, Local 206, 137 N.J. 88 (1994). An arbitrator must set forth an explanation of reasons for the arbitration award. See, Washington Township at 84. Of the nine (9) criteria, it is clear that the first factor-the “interests and welfare of the public” – is the most important. See PBA Local 207 v. Borough of Hillsdale, 263 N.J.Super. 163, 189 (App. Div. 1993) *aff’d in part, rev’d in part on other grounds*, 137 N.J. 71 (1994)(“The importance of this factor to the overall legitimacy of the award has given rise to the suggestion that arbitrators have an obligation, when weighing the public’s interests and welfare, to justify the choice ultimately made.”)

The evidence presented in this matter, both the Borough’s certification and exhibits, demonstrates that each element of the statutory criteria supports the Borough’s final offer as reasonable, and, as such, the Borough’s offer should be awarded. The Union did not present evidence at the hearing other than copies of Bergen County municipalities’ collective negotiation agreements. Moreover, the Union did not present any financial certification or testimony justifying its final offer as reasonable and therefore, its final offer should be rejected.

THE FINAL OFFERS OF THE PARTIES

The final offers of the parties are set forth below:

BOROUGH OF OAKLAND

1. Term of Contract: 3 Years (2011-2013)
2. Clarify Step Progression (i.e. when officers advance to next step based on date of hire - January 1st or July 1st).
3. Vacation and Holidays – Article 6
 - A. Vacation:
 1. Make consistent with Blue Collar contract schedule for new hires:

1 through 5 years	12 days
6 through 10 years	15 days
11 through 15 years	17 days
16 through 20 years	20 days
21 + years	22 days
 2. Add that the number of days shall be prorated in the Officer's final year of employment, in addition to proration in the first year of employment.
 3. Unused vacation time to be carried forward into the next succeeding year with a maximum one (1) year allotment of days that can be carried forward.
 4. Payment for unused days is to be eliminated for new hires. Payments shall be capped at a total of \$1,000 per officer per year for existing personnel.
 - B. Holidays:
 1. Delete and remove Columbus Day and Election Day.
 2. Sec. 3, p.12 -This section shall be amended so that it explicitly does not apply to instances where Borough offices are closed due to inclement weather or other reason beyond the control of the Borough.

- C. Personal Days:
1. Pro-Rate for first and last years of service.
 2. Eliminate payment for unused days.
 3. New Schedule for new hires:
 - 1 day-1st calendar year of service
 - 2 days-start of second calendar year of service
 - 3 days-start of third calendar year of service
4. Sick Leave Article 7
1. Pro-rate days for first and last year of service
 2. Eliminate incentive program for new hires
 3. Terminal payment: Cap at \$15,000 for new employees
 Cap at \$15,000 or the value of the time as of 12/31/11, whichever is greater, for existing employees. If the accrued leave time value decreases in the future the maximum cap shall be reduced by the time value used. Once the accrued time value decreases below \$15,000, the new maximum accrued time value will be capped at \$15,000.
5. Insurance Article 10
1. Eliminate the traditional plan as an option and enroll all employees in SHBP-Direct 10 equivalent plan.
 2. Active Employees Co-Pay: \$10/\$25/\$40 co-pay per 30 day supply; Mail order would be up to 90 day supply for 2 co-pays.
 3. Retirement Benefits: New employees hired on or after 1/1/12 are not eligible to receive retiree health benefits. For existing employees that retire benefits and cost sharing shall be the same for retirees as for active employees.
6. Compensation – P. 26
1. Section C- O/T Pay: Make the 'base' rate for O/T purposes their salaries as shown in Appendix (i.e.-no inclusion for holiday pay, etc...). Amend contract so that leave time does not count as hours worked toward O/T.

2. Section F- Longevity will not be offered for officers hired on or after 1/1/12. Amounts earned by current employees shall be frozen at the amount they were earning as of 12/31/11.
3. Step Guide: Add five (5) additional steps so that the amount of increase between steps is reduced and equalized and not greater than \$5,000, for new employees hired on or after 1/1/12.
4. Wage Offer:
 - 2011 – 0%
 - 2012 – 1.5%
 - 2013 – 1.5%

OAKLAND PBA LOCAL NO. 164¹

1. Term of Contract: 4 Years (2011-2014)
2. Wage Offer²:
 - 2011 – 3% 2014 – 3%
 - 2012 – 3%
 - 2013 – 3%

¹ PBA Local No. 164 never submitted a formal final offer at the January 13, 2012 hearing. This is based on the statements of PBA Counsel, Richard Loccke and his discussion of the PBA's requested changes and referencing of exhibit P-1.

² The PBA may argue that its unit members are bearing the brunt of legislative changes concerning health care contributions, it must be noted, that neither the health care legislation nor the interest arbitration statute automatically entitles employees to salary adjustments that balance out the new contributions. Chapter 2 and Chapter 78 will ultimately affect all public employees statewide.

Moreover, the Arbitrator should not reason that the cost of the award is reduced by the cost containment savings generated by the premium sharing contributions mandated by the enactment of P.L. 2010, c.2 and P.L. 2011, c.78. The statutory premium sharing contributions were intended to offset the cost of healthcare not fund salary increases for the PBA members.

- The PBA proposes a modification of the current Detective Differential. This affects Article XII, page 22, Paragraph B of the contract. The proposal is to change the current twenty-five hundred dollar (\$2,500) differential to a 2.5% differential. Said differential would be calculated on the Detective's base rate.
3. Article X, Insurance (Page 18): The PBA proposes a modification of Paragraph D, 1 of this Article by modifying the provision at line seven on page 21 by deleting the words "If the Officer dies prior to becoming eligible for Medicare..." and replacing it with "until the spouse of a deceased eligible member qualifies for Medicare."
 4. Article XI, Hours of Work and Overtime (Page 22): The PBA proposes a modification of Paragraph C.6 of this Article by permitting day-for-day shift switches between members.
 5. Article XX, Fully Bargained Provisions (Page 38): The PBA proposes a deletion of Paragraph A of this Article.

POINT I

A REVIEW OF THE COMPETING FINAL OFFERS DEMONSTRATES THAT THE BOROUGH'S FINAL OFFER IS MORE REASONABLE UNDER THE STATUTORY CRITERIA OF THE INTEREST ARBITRATION ACT.

As previously noted, an interest arbitrator's task is to take the competing final offers of the parties and craft an appropriate award based upon the statutorily enumerated factors in the Interest Arbitration Act. While some of these factors may receive greater weight than others or upon review of the evidence, no weight at all, the arbitrator must at least consider each factor in his or her award.

A. The Borough's Final Offer is More Reasonable When Compared with the Wages, Salaries and Conditions of Employment of the Employees Involved in the Arbitration Proceedings and the Wages, Salaries, Hours and Conditions of Employment of the Other Employees Performing the Same or Similar Services and with Other Employees Generally.

This factor requires the Arbitrator to make a comparison of the wages, salaries and conditions of employment of the Borough of Oakland Police Officers with the other employees of the Borough and other police officers in comparable jurisdictions. The evidence presented shows that the Borough's offer is more reasonable when compared to what Bergen County police officers in other municipalities are receiving. Further, the Borough's offer is also more reasonable when compared to the current pattern within the Borough and recent settlements between the non-police units and non-bargaining unit employees. Moreover, the Borough's offer will achieve economic and fiscal stability for the Borough in light of the 2.0% Hard Tax Cap Levy imposed in 2011, the fiscal/economic crisis of the State of New Jersey, increases to medical benefits, increases to pension contributions, increases to salaries and wages, increases in tax appeals, decreases in State Aid and decreases in other miscellaneous revenues. See, B-17 and B-18.

1. The Borough's Offer is More Reasonable When Compared to Public Employment in General.

In comparison to other police employees, Borough of Oakland Police Officers are extremely well-compensated. In addition, it is not uncommon for interest arbitration awards to contain wage freezes as requested by the

Borough in its final offer. For example:

- In the Matter of Interest Arbitration between Township of East Orange and East Orange FOP Lodge No. 111, IA-2001-51 (Arbitrator James W. Mastriani), the arbitrator's award included **a wage freeze in the first and third years** of the seven (7) year agreement.
- In the Matter of Compulsory Interest Arbitration between the Borough of North Arlington and Police Benevolent Association Local 95, IA-2011-050 (Arbitrator Frank A. Mason), the arbitrator's award included a **wage freeze in 2011**, and an increase of 2.5% in 2012 and 2.5% in 2013. See, B-92.
- In the Matter of Compulsory Interest Arbitration between the Borough of Spotswood and Police Benevolent Association Local 225, IA-2011-0048 (Arbitrator Frank Mason). In Spotswood, Arbitrator Mason awarded **0% in 2011**, 2% in 2012 (beginning July 1, 2012 which is equal to 1% increase), and 2% for 2013. See, B-91.
- In the Matter of Interest Arbitration between the Township of Springfield and PBA Local 76, IA-2012-003 (Arbitrator Robert Gifford). In Springfield, Arbitrator Gifford awarded **0% in 2011**, 1.75% in 2012, 1.75% in 2013, and 1.75% in 2014. See, B-88.
- In the Matter of Interest Arbitration between the Borough of Point Pleasant Beach and PBA Local 106, IA-2012-001 (Arbitrator James Mastriani). In Point Pleasant, Arbitrator Mastriani awarded **0% in 2011**, 2% in 2012, 2.25% in 2013, and 2.5% in 2014. See, B-89.
- In the Matter of Interest Arbitration between the State of New Jersey and State Troopers Fraternal Association and State Troopers NCO Association of New Jersey and State Troopers Superior Officers Association of New Jersey, IA-2010-39/40/41

(Arbitrator James Mastriani). In State of New Jersey, Arbitrator Mastriani awarded **0% increase across the board for year 2011**. See, B-90.

These awards show clear proof that in response to the economic climate of the State, the 2.0% Hard Tax Cap Levy, and increases in healthcare, pensions and reductions in municipalities miscellaneous revenues, arbitrators are awarding wage freezes in order for municipalities to maintain their economic and fiscal stability. Moreover, In the Matter of Interest Arbitration between the Township of Fairfield and West Essex PBA Local 81, IA-2010-090, Arbitrator Robert M. Glasson details the economic issues that New Jersey municipalities are facing. Arbitrator Glasson notes that the current state of the economy must be taken into consideration when issuing an arbitration opinion. Arbitrator Glasson provides:

It is undisputed that a public employer's ability to maintain revenue level's in 2010 and beyond has been severely diminished. The Tax Levy Cap in 2011 is 2%. Also, the Appropriations Cap has been reduced from 3.5% annually to 2.5% annually. This will severely limit the ability of a public employer to maintain the current level of services if salary increases continue to exceed increases in the CPI by up to 2% annually. Salary increases at 2008 and 2009 levels will only further reduce a public employer's ability to maintain the current level of services and will result in layoffs and/or furloughs. It is well established that many police and fire departments throughout the State have experienced massive layoffs, demotions and furloughs. We have also seen the parties working together to avoid layoffs and/or demotions by

agreeing to postpone or modify certain economic benefits.

In prior years, the economy was much stronger than it is currently. We have experienced one of the worst recessions since the 1930's with high unemployment; a massive deficit in the State budget; hundreds of millions of dollars in reduced State Aid to municipalities; and tens of thousands of municipal, county and state employees being laid off or furloughed... Municipalities are experiencing a record number of tax appeals with significant potential loss of tax revenues and increased costs to defend such appeals, thereby undermining the tax base. Moreover, pension costs are at an all-time high with many municipalities contributing 25% or more of a police officer's salary to PFRS. The above events must be factored into the analysis of what weight to give the statutory criteria.

See, Pages 48-49.

As noted by Arbitrator Glasson above, the economy is still emerging from a deep recession and continues to be marked by high unemployment, low inflation, a depressed housing market and reduced non-tax revenues. This coincides with the fact that the taxpayers are financially stressed and more concerned with the Borough's spending and delivering public services at a reasonable cost.

The Borough of Oakland police officers continue to receive higher salaries than many police officers throughout the State and Bergen County. Particularly, the Borough of Oakland police officers' maximum step salary is thousands of dollars more than all maximum step salaries for Union and

Morris County police officers. See, B-85 and B-87. In addition, the Borough of Oakland police officers' maximum step salary is greater than the majority of maximum step salaries for police officers in Essex County. See, B-86.

The PBA did not produce any evidence to justify its requested salary increases of 3.0% in 2011, 3.0% in 2012, 3.0% in 2013, and 3.0% in 2014. This is not inclusive of the fact that all PBA members in the Borough of Oakland have their longevity, holiday pay and uniform allowance rolled into their base pay. Thus, based on the Borough's final offer of a wage freeze in 2011, the average Borough Police Officer's annual salary without any addition payments for overtime, outside pay, etc, is \$116,940.76. See, B-20. **Undoubtedly, the effect of the 2011 wage freeze still affords the Borough of Oakland Police Officers with exceptionally competitive salaries.** However, the Union is seeking every possible monetary benefit to their own pecuniary advantage without offering a single concession to benefit either the Borough or its taxpayers.

In contrast, the Borough is affording increases which will continue providing each police officer a competitive salary while also trying to minimize the effect of such increases upon the taxpayers, the Borough and further the Borough's long term tax stabilization plan. See, CERTIFICATION of James A Mangin, Paragraphs 4, 5, 7, 8.

By review of the Union's salary increase request within its Final

Offer, the Union is requesting a 3% increase across the board along with an additional percentage increase for detective differential. See, P-1. The request of the PBA for a 2.5% differential for detective differential should be denied by the Arbitrator. The considerably high differential currently provided is \$2500 per annum. The PBA is looking to add a percentage differential that will increase each year as it is based on the employee's base rate pay. The Union has provided no evidence in support of this request.

The Union is requesting these salary increases and detective differential while the State, the Borough of Oakland, and the Borough of Oakland taxpayers are enduring one of the worst economic times in the history of America. Moreover, the PBA is seeking such increases even though the Borough is facing significant losses in State Aid, increases in health care and pension contributions, decreases in non-tax revenues and the statutory 2.0% Hard Tax Cap Levy. Accordingly, the Borough's proposals are far more reasonable and should be adopted by the Arbitrator.

2. The Borough's Offer is More Reasonable When Compared to Public Employment in the Same or Similar Jurisdictions.

There have been vast changes to the comparability factor in interest arbitration. **An arbitrator can no longer assume that a police officer is per se entitled to a higher percentage increase than non-uniformed employees.**

Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994).

The arbitrator must compare the benefits received by Borough of Oakland Police Officers to those in comparable jurisdictions. In comparing all fringe benefits, Borough of Oakland affords benefits which exceed and/or are similar to the Bergen County average. Borough of Oakland Police Officers receive three (3) personal days per year which is equivalent to the Bergen County average. See, B-64. The call in time minimum payment for police officers in the Borough is also equivalent to the County average. See, B-68. The uniform allowance received by the PBA members is \$1200 per year compared to the county average of \$799 per year. See, B-70. The Borough affords the PBA members 14 holidays (holiday pay rolled into the base rate) which is comparable to the 13.5 holidays afforded in the County. See, B-4 and B-81. In addition, the Borough affords its officers higher longevity percentages than all of the Bergen municipalities cited in the Borough's exhibits. For example, the Borough's longevity policy affords PBA members 8% of base salary for 13 to 17 years of service compared to the averages of 4 to 6% in all other Bergen County municipalities. See, B-4 and B-82. Additionally, the Borough's longevity policy affords PBA members 10% of base salary for 18 to 22 years of service compared to the averages of 6 to 8% in all other Bergen County municipalities. See, B-4 and B-82.

A common benchmark measure of comparing police officers is by

review of the salaries. Upon comparison of the Bergen County municipalities' patrol officers, the salaries for patrol officers in the Borough of Oakland are comparable to the county averages within any roll in. However, it must be considered that the police officers have their longevity, holiday pay and uniform allowance rolled into their base pay each year.

	2010	2011	2012	2013
Step 1 County Average	\$37,014	\$37,927	\$38,688	\$38,983
Step 1 County Low	\$23,532	\$24,709	\$25,079	\$25,456
Oakland Step 1	\$35,332 Hired Before 2007 \$35,841 Hired After 2007	\$35,332 ³ Hired Before 2007 \$35,841 Hired After 2007	\$35,861 ⁴ Hired Before 2007 \$36,378 Hired After 2007	\$36,399 ⁵ Hired Before 2007 \$36,924 Hired After 2007
Maximum Patrol County Average	\$108,645	\$111,592	\$114,796	\$115,108
Maximum Patrol County Low	\$98,689	\$98,493	\$102,539	\$104,539
Oakland Maximum Step	\$109,227	\$109,227 ⁶	\$110,865 ⁷	\$112,528 ⁸
Sergeant County Average	\$115,020	\$118,793	\$122,962	\$125,455
Sergeant County Low	\$105,906	\$105,674	\$111,688	\$115,507
Oakland Sgt.	\$115,557	\$116,557 ⁹	\$118,305 ¹⁰	\$120,078 ¹¹

3-11 Based on the Borough's Final Offer

Lieutenant County Average	\$121,657	\$125,526	\$129,622	\$132,357
Lieutenant County Low	\$113,082	\$111,357	\$117,993	\$122,123
Oakland Lieutenant	\$123,046	\$123,046 ¹²	\$124,892 ¹³	\$126,765 ¹⁴

See B-74, B-76, B-78, B-80.

Clearly, the Borough of Oakland provides a competitive salary for Police Officers. The officers' salaries without any roll in of longevity, uniform allowance or holiday pay is comparable to the County averages and thousands of dollars more than the County low. Moreover, the estimated gross average salaries for the police officers based on the Borough's final offer are as follows:

- 15
- 2011- 0% Increase- Estimated Gross Average Salary \$135,098**
- 16
- 2012- 1.5% Increase- Estimated Gross Average Salary \$138,612**
- 17
- 2013- 1.5% Increase- Estimated Gross Average Salary \$143,107**

If the Borough's proposed increases are implemented, it is clear that the Borough's offer keeps the salaries at a comparable level within the entire County, even though it faces bleak economic times, continued reductions in

¹²⁻¹⁴ Based on the Borough's Final Offer.

¹⁵ See Exhibit B-19; B-20.

¹⁶ See Exhibit B-19; B-22.

¹⁷ See Exhibit B-19; B-24.

State Aid and a reduction in miscellaneous revenues.

While offering a competitive salary, the Borough requires the need to implement additional salary steps in order to stabilize the Borough's finances and avoid future crisis, while still affording a competitive salary for new hires. Previously, as evidenced by Borough Exhibit 18 and the Certification of James Mangin, the Borough was using its surplus as revenue in the budget to provide tax relief to its taxpayers. This practice created a financial crisis. In 2006, the Borough depleted its surplus and there was no reserve to offset the tax relief. The Borough had to dramatically increase taxes by 14% in 2006 and continue to increase taxes through 2011. Since the 2006 surplus crisis, the Borough has implemented a long standing practice of creating reserves in order to ensure long term tax stabilization. Thus, the reserves are used for tax appeals, accumulated leave payments, and unforeseen emergencies. See, CERTIFICATION of James A. Mangin and Exhibit B-18.

In order to continue the Borough's long standing practice of tax stabilization, the Borough is seeking the implementation of a new salary guide with five (5) additional steps for new hires and the removal of longevity payments for new hires. See, B-3. The additional steps and removal of longevity payments will ensure future fiscal stability and tax stabilization while still providing each new hire a competitive salary. Moreover, the additional step movements and removal of longevity will not

affect any current Police Officers' salaries, only new hires. Additionally, the implementation of additional steps and removal of longevity has become a common trend within the State and Bergen County.

Borough of River Edge:

Added 13 additional steps for new hires and removed longevity.

Township of Lyndhurst:

Added 2 additional steps for new hires.

Borough of Edgewater:

Added 1 additional step for new hires.

Borough of Saddle River:

Beginning January 1, 2010, the Borough removed longevity.

Borough of Haworth:

Added 2 additional steps for new hires.

Borough of Park Ridge:

Added 1 additional step for new hires.

Borough of Fair Lawn:

Added 2 additional steps for new hires.

Borough of Midland Park:

Added 4 additional steps for new hires.

Borough of Woodcliff Lake:

Reduced the longevity amounts for new hires.

Borough of Norwood:

Added 14 additional steps for new hires and removed longevity.

Borough of Wallington:

Added 1 additional step for new hires and removed longevity.

Borough of Emerson:

Added 2 additional steps for new hires and reduced the longevity payments for new hires.

Township of Wyckoff:

Added 2 additional steps for new hires and reduced the longevity payments for new hires.

Borough of Lodi:

Added 2 additional steps for new hires.

Borough of Old Tappan:

Added 3 additional steps for new hires.

Borough of Little Ferry:

Added 2 additional steps for new hires.

Borough of Dumont:

Reduced longevity payments for new hires.

City of Hackensack:

Removed longevity for new hires.

Village of Ridgewood:

Added 1 additional step for new hires.

Borough of Maywood:

Added 1 additional step for new hires and reduced the longevity payments for new hires.

Borough of Elmwood Park:

Added 3 additional steps for new hires and reduced the longevity payments for new hires.

Borough of Franklin Lakes:

Added 7 additional steps for new hires.

Borough of Cresskill:

Added 1 additional step for new hires.

Borough of Ramsey:

Reduced longevity payments for new hires.

Borough of Tenafly:

Added 2 additional steps for new hires.

Borough of Upper Saddle River:

Reduced longevity payments for new hires.

Borough of Allendale:

Added 1 additional step for new hires.

Borough of Glen Rock:

Added 1 additional step for new hires.

See B-96.

Based upon a review of the above, the Borough of Oakland provides its officers with better salaries and benefits than most of the municipalities within Bergen County, Morris County, Essex County and Union County. Thus, by applying the Borough's Final Offer, the salaries of the Borough of Oakland Police Officers will stay comparable with the Bergen County averages, even in these difficult economic times while the PBA's offer is unreasonable and does not even consider the impact of such award on the Borough's taxpayers. As such, the Arbitrator should award the Borough's Final Offer.

3. The Borough has established a pattern of wage freezes within its non-police union bargaining units and for its non-union employees.

In the Matter of Interest Arbitration between the County of Union and FOP Lodge 103, IA-2010-118, Arbitrator Hundley noted that PERC issued a directive that arbitrators must consider evidence of settlements between the employer and other negotiations units, as well as claims that those settlements constitute a pattern. See, *Union Cty.*, P.E.R.C. No. 2003-33, 28 NJPER 459, (¶33169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29

NJPER 250 (¶75 2003). Further, arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern. *Union Cty.*, P.E.R.C. No. 2003-33; *Union Cty.*, P.E.R.C. No. 2003-87. The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. *Id.*

The Borough of Oakland has an established internal wage freeze pattern. Specifically, the non-police bargaining units and non-union employees all agreed to a wage freeze in 2010. See, B-6 and B-7. Both the white and blue collar unions received a 0% increase in 2010. Thus, based on the principle of patterns, it is essential for the Arbitrator to implement the Borough's final offer requesting a wage freeze in 2011. Not only will all Borough employees be treated uniformly but it will also ensure no labor discord within the non-police bargaining units in the future.

Accordingly, any award issued by the Arbitrator granting the PBA's final offer will be in contravention of the Borough's wage freeze pattern. Thus, the Arbitrator should award the Borough's Final Offer regarding salary to maintain the established wage freeze patterns and harmonious labor relations between the Borough, all the unions, and Borough employees.

POINT II**THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF FINANCIAL IMPACT ON THE GOVERNING UNIT, ITS RESIDENTS AND ITS TAXPAYERS.****A. The "Financial Impact" Criterion.**

The "financial impact" criteria, N.J.S.A. 34:13A-16(g)(6), requires the arbitrator to "consider the financial impact of his award on the municipality, its residents and its taxpayers, whether wealthy or poor." Hillsdale, 263 N.J.Super. at 194. The considerations under this factor "do not equate with a municipality's ability to pay." Hillsdale, 137 N.J. at 86. This criterion encompasses a far more searching and critical analysis than simply whether a local government has the ability to pay an award. It does not require the local government to prove that it would suffer financial difficulties as a result of an award. Id. Put differently, a local government "should not have to demonstrate it would be financially crippled before its arguments could be found to be sufficient." Id. at 194.

The New Jersey Supreme Court emphasized that "it is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of the public interest arbitration award." Id. (quoting Hillsdale, 263 N.J. Super. at 188). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union's final offer. Id. In addition, the correct application of this criteria does not require an

employer to provide that it would suffer a “substantially detrimental result,” or that the financial difficulties would be created or worsened. Hillsdale, 263 N.J. Super. at 194. Rather, the effect that the Award will have on other employees and the employer’s overall budget must be considered. Hillsdale, 137 N.J. at 86. It should be noted that the Borough is subject to a 2% Hard Tax Cap Levy pursuant to N.J.S.A. 40A:4-45.45 et seq.

The Borough’s offer represents a fair balance between reasonable salary increases in the face of an unstable economy in the State, the ever increasing health benefits and pension costs, decreases in State Aid, the salary increases provided to and agreed upon with the Borough’s other unions, and ensures the financial stability of the Borough without overwhelming already strapped taxpayers.

B. The Fiscal Problems Facing the Borough.

As summarized below, the exhibits presented at the hearing and financial certification of the Borough’s CFO, James A. Mangin demonstrate that the Borough is confronting a number of difficult fiscal problems and financial challenges:

(1). Reduction in State Aid:

The Borough of Oakland’s fiscal stability has suffered from the continual reduction in State aid. The Borough’s State aid has been reduced by over \$500,000 since 2004. See, CERTIFICATION of James A. Mangin,

Paragraph 6 and B-18. In 2004, the State Aid was \$1,824,519 and in 2011 the State Aid was \$1,312,169. Id.

(2). Increase to Pension Contributions:

The costs related to pension contributions are also continually increasing. The Borough's pension contributions have increased from \$45,000 in 2004 to \$1,123,700, in 2011; which is an increase of \$1,078,700. See, CERTIFICATION of James A. Mangin, paragraph 10 and B-17, B-30. Additionally, the New Jersey League of Municipalities provided correspondence which stated that the costs associated with increased pension payments should be part of the collective bargaining process. Therefore, any increases in the salary will further increase the costs of pension beyond the figures stated above.

(3). Increase in Health Care Costs:

The costs related to employee health care continue to rise at excessive rates. The health care cost for the Borough's employees increased 79.02% between 2004 and 2011. See, B-17. Specifically, the health insurance increasing from \$1,279,120 in 2004 to \$2,289,851 in 2011. See, B-17.

The increases in costs and shortfalls in revenues as outlined in the CERTIFICATION of James A. Mangin and Borough Exhibit 17 and 18 are due

to the economic climate of the State and Nation. The increased costs of health care and pension contributions are wholly outside the control of the Borough and its Governing Body. The Borough is attempting to continue to stabilize its finances by seeking reasonable salary increases, keeping the Police Officers' salaries competitive with other Bergen County municipalities and creating additional steps in a new salary guide in order to develop greater fiscal stability and long term tax stabilization for the Borough. The Union's proposal can only be construed as harmful to the taxpayers of the Borough by simply ignoring the current economic crisis, increases in Borough expenses, reduction in State aid and a reduction in non-tax revenues.

The Union fails to take notice that the cost of the employees' salaries for the Borough since 2004 has increased by 35.33%. See, B-17. In 2004, the salaries and wages for the Borough were \$5,051,922 and increased to \$6,836,805 in 2011. See, B-17. Further, the Borough is currently facing losses in tax appeals equal to \$487,867 in 2011, \$497,625 in 2012, and \$507,577 in 2013. See, B-33 and CERTIFICATION of James A. Mangin, Paragraph 8.

Unemployment in the State of New Jersey has reached an all-time high; in July 2000 the State unemployment rate was 3.6% and in May 2010 the unemployment rate reached 9.7%. See, B-50, B-53. The taxpayers of the Borough are simply suffering from the economic crisis while the Union

members continue to enjoy job security from their employment with the Borough.

Meanwhile, the Borough's offer takes into consideration the financial crisis experienced by its residents and taxpayers. The taxpayers of the Borough have been forced to pay a continual increase in taxes since 2006.

Percentage Increase in Municipal Taxes over the Previous Year

2011 - 1.20%
2010 - 3.57%
2009 - 4.83%
2008 - 8.40%
2007 - 9.69%
2006 - 13.95%

See CERTIFICATION of James A. Mangin, Paragraphs 7 and B-18.

These increases in taxes are due to the use of surplus as revenue in the budget to provide relief to its taxpayers and provide the Borough with the ability to fund the salary and wages of its employees and other Borough costs. However, this continual use has caused the Borough to deplete its surplus, leaving it with no reserve to offset the 2006 tax burden. See, CERTIFICATION of James A. Mangin, Paragraph 7. Thus, the taxpayers were subject to a huge increase in taxes. See, B-18. After the depletion of the surplus in 2006, the Borough established the practice of limiting the use of

its surplus for tax relief to a sustainable level only. See CERTIFICATION of James A. Mangin, Paragraph 7. Through this practice, the Borough has been able to create a reserve to ensure long term tax stabilization and utilize its surplus for tax appeals, accumulated leave payments, and unforeseen emergencies. Id. The Borough is currently facing thousands of dollars in tax appeals, \$914,000 for employees' accumulated absences, and most recently, the Borough appropriated \$120,000 in order to pay for the damages to the Borough by Hurricane Irene over the summer of 2011. See, CERTIFICATION of James A. Mangin, Paragraphs 7, 8 and B-31 and B-33.

Adopting the PBA's proposal would be unreasonable in light of the dire condition of the economy, the Borough's long term economic stability and practice, and the fiscal health of its taxpayers. Despite its financial challenges, the Borough presented a final offer which contained a reasonable wage increase that also ensures fiscal stability and a competitive edge with other Bergen County municipalities. As such, the Borough's final offer is reasonable and should be adopted by the Arbitrator.

POINT III

THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF COST OF LIVING

The Arbitrator is required to consider the cost of living in rendering his award. N.J.S.A. 34:13A-16(g)(7). In Hillsdale, the Appellate Division faulted the Hillsdale Arbitrator for failing to "consider or discuss the disparity

between policy salary increases and the consumer price index.” Hillsdale, supra., 263 N.J.Super. at 195. In addition, N.J.S.A. 34:13A-16(g)(8) requires the arbitrator to consider “other factors...ordinarily or traditionally considered in the determination of wages.” Certainly, the cost of living must be considered one of those factors.

The Cost of Living statistics are promulgated by the United States Bureau of Labor Statistics and are measured using a measurement system known as the Consumer Price Index (“CPI”). The interest arbitrator must consider the CPI in determining whether the Borough or the PBA has proposed the more reasonable economic package. The Consumer Price Index (“CPI”) tracks the cost of goods and services in various geographic areas and labor markets and measures a wage earners purchasing power.

The CPI currently utilizes the period between 1982 and 1984 as the base year. Therefore, the cost of goods and services during those years is given a value of 100. The cost of the same goods and services is then calculated for each following year, establishing an “index” for easy comparisons of purchasing power. The index shows a minor increase in the costs of goods and services.

The foregoing CPI demonstrates that the PBA will not suffer any detriment to their standard of living. The Borough’s reasonable offer will still continue to increase the disparity in purchasing power between the PBA and

the average Bergen County consumer. Moreover, the Oakland police officers are highly compensated compared to their counterparts. Accordingly, the Borough's wage offer is reasonable and should be implemented.

POINT IV

THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF THE INTERESTS AND WELFARE OF THE PUBLIC

A. The "Interests and Welfare of the Public" Element.

The arbitrator must consider the "interests and welfare of the public" in determining his award. N.J.S.A. 34:13A-16(g)(1); Hillsdale PBA, 137 N.J. at 83. In the Appellate Division's decision in the Hillsdale matter, the Court found that the public interest factor "focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality's budget and plans." Hillsdale, 263 N.J. Super. at 188. "It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow." Id.

The New Jersey Supreme Court emphasized that "the public is a silent party" to the interest arbitration process, and that "an award runs the risk of being found deficient if it does not expressly consider" the public interest. Hillsdale, 137 N.J. at 82-83. "Indeed, the Arbitration Act expressly requires the arbitrator to consider the public interest and public welfare." Id.

Arbitrators historically understood this criterion as requiring that public safety employees be well compensated. However, the Appellate Division directed that this criterion be interpreted differently, holding that it “focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer’s budget and plans.” Hillsdale, 263 N.J. Super. at 188. In other words, an interest arbitrator is required to balance the expense borne by the taxpaying public with the need to ensure that the necessary services are provided. Thus, the Borough’s offer should be considered reasonable and accepted.

B. The Interests of the Public Require the Adoption of the Borough’s Final Offer.

In the present matter, the Borough’s offer is clearly more supportive of the public’s interest and welfare than the PBA proposal. The final offer of the Borough will accomplish several important public policy goals while still affording the PBA a respectable wage increase. First, it will enable the Borough to maintain its fiscal stability, while managing the risk and volatility of the current economy. The offer will also ensure that the Borough’s police officers, who are statutorily entitled to the interest arbitration process, do not receive far superior wages and benefits than civilian employees, who don’t enjoy such benefits. Most importantly, the Borough’s final offer ensures continuation of the internal wage freeze pattern.

POINT V**THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF THE LAWFUL AUTHORITY OF THE EMPLOYER.**

The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed, stating, "[g]iven the existence of financial constraints and budget caps... an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget." Hillsdale, 137 N.J. at 86. In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J. Super. at 194. When applying the lawful authority of the employer criterion, the Arbitrator must address the Borough's budget cap situation, as well as the statutory requirement that the Borough prepare a balanced budget each year.

In the present matter, the Borough provided evidence to support its position that its Final Offer is more reasonable in light of the lawful authority of the employer. As noted previously, the Borough is facing increases to insurance costs, cuts in State Aid, increased pension contributions, and the failing economy. The Borough's offer is both fair and equitable. The Borough is clearly trying to sustain its fiscal stability and long term tax stabilization whereas most municipalities are resorting to layoffs, furloughs, and salary

freezes.

A. The Lawful Authority of the Employer and the Statutory Restrictions Imposed Upon the Borough Require Its Final Offer to be Awarded.

N.J.S.A. 34:13A-16(g)(5) requires the arbitrator to consider the “lawful authority of the employer,” and specifically references P.L. 1976, c. 68, which is codified at N.J.S.A. 40A:4-45.1 et seq. The aforementioned statute is commonly known as the “Local Government Cap Law,” and states, “it is hereby declared to be the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads.” N.J.S.A. 40A:4-45.1. The New Jersey Legislature established a second tax levy cap established by section 10 of P.L. 2007, c. 62, which is now codified at N.J.S.A. 4-45.45. As part of this legislation, the Interest Arbitration Act was also amended to include a ninth and final criteria for the arbitrator’s consideration, “the statutory restrictions imposed upon the employer,” which specifically includes “the limitations imposed upon the employer by section 10 of P.L. 2007, c.62.” N.J.S.A. 34:13A-16(g)(9).

Section 10 of P.L. 2007, c.62 originally established a Tax Levy Cap of 4% above the previous year’s tax levy. However, on July 13, 2010, Governor Christie signed into law P.L. 2010, c. 44 in order to cut the allowable tax levy increase to 2%. Moreover, the Borough will have a very

difficult time generating the necessary money without taking drastic measures to comply with the 2.0% hard tax levy if the Union's final offer is accepted. In sum, the PBA's offer is neither fair, equitable nor realistic under the statutory restrictions imposed by the Local Budget Law, and must be rejected in favor of the Borough's proposal.

POINT VI

THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF THE OVERALL COMPENSATION AND ALL OTHER ECONOMIC BENEFITS RECEIVED.

The Arbitrator must consider the overall compensation received by the Borough of Oakland Police Officers. See, N.J.S.A. 34:14A-6(g)(3). Along with their base salary, the Borough of Oakland police officers are afforded, inter alia, the following benefits: court appearances paid at overtime rates; vacation leave; sick days; comprehensive medical insurance benefits; call in pay; holiday pay; longevity, and personal leave. Moreover, each police officer of the Borough of Oakland is enrolled in the Police and Fireman's Retirement System, which permits a police officer to retire after twenty (20) years of service at 50% of final compensation or twenty-five (25) years of service at 65% of final compensation. See, N.J.S.A. 43:16A-11.1. The Police Officers of the Borough of Oakland are more adequately compensated than the majority of the State's private sector employees and the public sector.

Therefore, only minimal increases should be required to maintain the PBA's strong overall compensation and benefits compared to other workers. The Borough's offer is more reasonable and should be awarded.

POINT VII

THE BOROUGH'S FINAL OFFER IS REASONABLE IN TERMS OF THE CONTINUITY AND STABILITY OF EMPLOYMENT

The "stability and continuity of employment" criteria relates to employment issues such as layoffs, give backs, and salary freezes. Hillsdale, 263 N.J.Super. at 195. Specifically, the Appellate Division stated that arbitrators are required to consider facts such as salary structure, unemployment rates, employee turnover and the "virtual absence of unemployment among police." Fox, 266 N.J.Super at 519.

Borough of Oakland Police Officers have never been laid off or put on furlough. The absence of any layoffs, furloughs, and downsizing is in complete and utter contrast to the current economic climate in the nation and in many municipalities within the State of New Jersey. Municipal employees and State employees have been experiencing mass layoffs, job cuts, furloughs, and salary freezes. New Jersey has the 17th highest unemployment rate in the country. See, B-38, B-39, B-41, B-43, B-50, B-53, B-54. Large scale job cuts have been taking place in both public employment and the private sector. Private employers have instituted large scale job cuts

which make headlines frequently, while the Borough of Oakland Police Officers enjoy job security without any threat to job loss, furlough, or downsizing.

The New Jersey Appellate Division noted that there is a “virtual absence of unemployment among police.” Fox, 266 N.J.Super. at 519. Likewise, police officers are not affected by the trend towards downsizing or furloughs. Additionally, police services are not subject to privatization like other public sector services. Simply put, Borough of Oakland Police Officers are secure in their employment without any concern for layoffs or downsizing even during such dire economic times.

Moreover, the exhibits provided by the Borough, specifically B-26, shows that the continuity and stability of employment in the unit is strong. There is no evidence of turnover and, based on the annual salaries of the police officers in 2010, twenty (20) of the twenty-four (24) police officers on the force are receiving salaries in excess of \$100,000 per year, as reflected by the chart on the following page:

* * *

2010 Annual Pay

Christian Eldridge	\$140,018
Douglas Eldridge	\$142,611
Brian Coghlan	\$137,546
Robert DeBoer	\$140,496
Paul O'Keefe	\$135,090
Robert O'Keefe	\$137,546
Keith Sanzari	\$127,721
Stephen Broek	\$35,004
Michael Catenacci	\$119,689
Keith Docwra	\$110,089
Frank Fiore	\$124,293
Gary Fiore	\$119,689
Gary Gusterson	\$126,595
Donald Harvey	\$59,051
Timothy Keenan	\$119,689
Daniel Kern	\$59,587
Edward McDermott	\$119,689
Joseph Noury	\$53,837
Ryan O'Keefe	\$119,689
Michael O'Neill	\$119,788
Bart Pagerie	\$124,293
Thomas Pianettini	\$126,595
Mark Piercy	\$124,783
Bryan Rowin	\$124,293

See, Borough Exhibit 26.

Thus, based on the above, it appears that most if not all unit members are receiving top pay, thereby indicating they have been with the Borough of Oakland for many years. Further, the 2010 annual salary for Police Officers demonstrates that the unit members are well compensated and there is no evidence of turnover. The Borough of Oakland Police Officers are well paid compared to New Jersey's private sector workers, where the average 2010

salary was \$55,742. See, B-97. The private sector annual wages reflect those wages received by the tax payers of the Borough of Oakland. As such, the Borough of Oakland police officers remain and will continue to enjoy continuity and stability of employment. Thus, the Borough's offer is more reasonable.

[emphasis supplied in originals],

III. STATEMENT OF THE CASE

Effective January 1, 2011, the processing and adjudication of interest arbitration petitions was modified by the enactment of P.L. 2010, c. 105, as referenced in N.J.S.A. 34:13A-16 (2011). Pursuant to subsection d: "[t]he resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria as set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L. 2010, c. 104 (C.34:13A-16.7)." See also, Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994); Township of Washington v. New Jersey State Policeman's Benevolent Association, Inc., 137 N.J. 88, 644 A.2d 573 (1994).

At the outset of this analysis, a critical factor to be identified is that

since the subject C.B.A. expired on December 31, 2010, while this interest arbitration is subject to the procedural elements of the new law, the AWARD does not fall under the 2.0% "Hard Cap" with respect to economic issues. See, P.L. 2010, Ch. 105, §2b; see also, *April 2011 Report of the Police and Fire Public Interest Arbitration Task Force; March 14, 2011 P.E.R.C. Frequently Asked Questions Interest Arbitration Procedures* at # 16. The limitation placed upon the Employer with respect to its overall cap limits does apply, The statutory criteria with a discussion of the appropriate weight to be given each and the parties' Final Offers includes:

N.J. Stat. § 34:13A-16 (2011):

* * *

g. The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of the subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award:

(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-45.1 et seq.),

The record evidence confirms that the 12,754 residents and taxpayers of Oakland are well-served by the myriad operations undertaken by its Police Department. The demographics have been previously discussed in Point I, and the PBA has utilized the term "nighttime population" in describing the same. This is based upon the high volume of persons passing through the Borough on a daily basis, largely due to its geographic location and many intersecting major thoroughfares. Numerous shopping centers, industrial parks, retail food establishments and other businesses and banks are also contributing factors, along with the public and private school systems. While the cost of Police salaries and wages has grown by 35.33% during the period from 2004 – 2011, this is somewhat modest when compared with other budgeted appropriations within the Borough, and is in fact the second smallest increase, eclipsed only by the Library which increased at 31.65% during the period. See, Borough Exhibit 17.

Significantly, under the within statutory criteria, I believe that neither of the Economic Final Offers is reasonable under existing law. The PBA has proposed wage increases of 3% per year, which based on the external comparability data is closer to the pattern than the Borough's which requests that I award 0%; 1.5%; & 1.5%. Nevertheless, this must be balanced against the restrictions imposed on the Borough by C. 40-4-45.45, coupled with the financial impact of packages on the C.B.A. and most critically, on

the Borough, and its residents and taxpayers. I therefore find that a 3 year contract with annual increases of 1%; 2/1%; 2.5% more fully comports with the statutory scheme, as discussed in greater detail later.

(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.*

The PBA's brief has comprehensively set out why the application of private sector wage and conditions of employment comparisons are imprecise in police interest arbitration cases. Arbitrator Carl Kurtzman succinctly captured these concerns in Borough of River Edge and PBA Local

201, PERC IA-97-20 at page 20, where he opined in part that: "[t]he standards for recruiting public sector police officers, the requisite qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight." The PBA further cites the lack of portability in law enforcement over the age of 35; the inability to market and relocate based on skill sets; and certain statutory and precedential laws such as the Federal Fair Labor Standards Act, 29. U.S.C.A. § 201 *et seq.*, as well as the New Jersey State Wage & Hour Law, N.J.S.A. 34:11-56a. *et seq.* as further examples of the critical distinctions between private sector workers and police officers.

The Employer has elected not to specifically set forth arguments related to the private sector. Borough Exhibit 97 is a September 6, 2011 periodical published by the New Jersey Department of Labor and Workforce Development, *NJ Labor Market Views*. This advises that "[f]ollowing an historic decline of 0.2 percent from 2008 to 2009 to an average of \$55,173, the 2010 annual average wage in New Jersey rose to \$56,385. That change represents an increase in the average of \$1,212 or 2.2 percent." Further, 8 of the State's 21 counties had private sector average

wages during 2010 which were above the statewide average: Bergen, Essex, Hudson, Mercer, Middlesex, Morris, Somerset and Union. Ibid. Notwithstanding the fact that this component of the g(2) statutory criteria should be afforded minimal weight, I do note that the PBA's Final Offer on wages for 2011 of 3 percent is more consonant with the average private sector increase for that year, than the Borough's, which was 0 % or a wage freeze.

The Employer has lodged a muscular argument which contends that in order for its internal pattern of settlement to be satisfied and financial stability maintained, a wage freeze must be awarded for 2011. I endorse the Borough's general proposition and share the view of Arbitrator Hundley that an internal pattern within a municipality is a critical component of statutory analysis in any interest arbitration case. See, In the Matter of the Interest Arbitration between the County of Union and FOP Lodge 103, PERC Docket No. No. IA-2010-118 (Hundley 2010). That said, based on the meager evidence presented to buttress this position, I do not find that a pattern is present. Moreover, while the Oakland White and Blue Collar unions executed memoranda of understanding which agreed to wage freezes in 2010, no guidance was provided as to what the pattern would be for a multi-year agreement, in this case 2011 the first year of the instant C.B.A. See, Borough Exhibits 5-6; but see, In the Matter of the Interest Arbitration

Between the Township of Springfield and PBA Local 76, PERC Docket No. 1A-2012-003 (Gifford, 2011, at pages 32-33) (citing "lockstep" annual percentage increases for the PBA and the FMBA within the Township during the period of 1997 – 2006, with an exact 3.65% increase from 1997 through 2010.).

Nor do I believe that the fact other police units within the State had a wage freeze arbitrarily imposed should be a controlling factor, as those cases are unique and pertain to factually distinguishable financial conditions. See, In the Matter of the Interest Arbitration Between the Borough of Spotswood and PBA Local 225, PERC Docket No. IA-2011-0048 (Mason, 2011); In the Matter of the Interest Arbitration Between the Township of Springfield and PBA Local 76, PERC Docket No. IA-2012-003, supra; In the Matter of the Interest Arbitration Between Borough of Point Pleasant Beach and PBA Local 106, PERC Docket No. IA-2012-001 (Mastriani, 2011); In the Matter of the Interest Arbitration Between the Borough of North Arlington and PBA Local 95, PERC Docket No. IA-2011-050 (Mason, 2011); In the Matter of the Interest Arbitration Between State of New Jersey (Division of State Police) and State Troopers Fraternal Association and State Troopers Superior Officers Association of New Jersey, PERC Docket Nos. IA-2010-39; IA-2010-040; IA-2010-041 (Mastriani, 2011); In the Matter of the Interest Arbitration Between South Orange Village and South Orange PBA Local 12

and PBA Local 12A, PERC Docket No. IA-2008-044; IA-2008-045 (Mastriani, 2011).

Section g.2. (b) requires the comparison of the Oakland Police Officers' wages, salaries, hours and conditions of employment with those of other public sector employees in general, and again the best evidence will relate to law enforcement personnel. Because the census reveals that 20 of the 24 unit members are at maximum with the balance superior officers, APPENDIX A (Employees Hired before July 1, 2007) demonstrating a January 1, 2010 salary of \$109,227.00 has been utilized for comparison purposes. In furtherance of the argument that the Borough of Oakland Police Officers continue to receive higher salaries than many police officers throughout the State, the Employer relies in part upon data related to the maximum step on the salary guide for Union, Essex and Morris County officers. See, Borough Exhibits 85 – 87.

These confirm the Borough's stated posture that Oakland's top step is thousands of dollars higher than these counties, which has historically been the case. There was little to no disparity regarding a comparison of other benefits, as all cited contracts had provisions for: education incentives; uniform allowance; sick days; personal days; holidays; vacation days; percentage longevity; court time minimum. Oakland generally placed either in the middle or the top tier for these benefits. However, a comparison with

these other counties is inapposite, as the Employer's data in most instances failed to account for the total hours worked by the police unit, despite the fact that a variety of schedule configurations were worked: 4-3; 4-4; 5-2. As the PBA has argued herein, these result in less hours than the 40 hours per week schedule of 2,080 hours worked on an annual basis by the Oakland Police Department.

In my considered opinion, the most reliable evidence is accordingly provided by an analysis of the wages, salaries, hours, and conditions of employment of the Oakland PBA with the other Bergen County municipalities, which tilts toward the Union. The PBA has set forth a chart at page 14 of its brief, memorializing the average base wages for police officers in 10 Northern Tier Bergen County police departments. In 2011, these range from a low of \$109,183 for Glen Rock (slightly below Oakland) to \$135,875 for Saddle River. For 2012, Glen Rock and Saddle River have the honors again at \$111,367 and \$141,242, respectively. Limited settlements for 2013 include Closter with a max of \$122,785 and Saddle River with \$146,538. Overall, the averages for each year were \$118,575; \$123,879; \$130,855.

As a result of these figures, the PBA reasons that it would take a significant increase in 2011 just to catch average. As to the benefits, the argument follows that many of the Oakland benefits are below average and

some barely hit average. Examples of the former include the minimum over-time on recall, with the Employer's own chart at Borough Exhibit 68 showing the County average to be 2.6 hours, as compared with the 2 hour provision in Oakland. Borough Exhibit 63 goes on to illustrate that 3.25 personal days are the County average, while the PBA are allocated 3. Sick leave benefits fall exactly within the County average.

In conclusion, the PBA ponders where the compensation package actually falls in light of the 2,080 annual work hours versus the other 4-2, 5/2-5/3 schedules in some municipalities, resulting in over 16 days less of scheduled service. The Bergen County base wage increases recorded at page 16 of the PBA brief taken from the PBA exhibits yield the following results: 2011: 3.39%; 2012: 2.87%; 2013: 2.90%. On these bases, the PBA contends that in the event of a failure to award its 3% wage increases along with the 8.6 % shortfall to achieve average for 2011, there will be no gain in relative positioning and a loss of relative position in 2011 is guaranteed. According to the PBA, the Borough's Final Offer on wages does not pass muster, even under the "Hard Cap" for contracts commencing in 2012. Instead, the average for Closter, Haworth, Hawthorne and Saddle River was 1.94 % in 2012; 2.19% in 2013; 2.19 % in 2014.

In reply, the Employer insists that the Borough affords benefits which exceed and/or are similar to the Bergen County average. These include: 3

personal days as opposed to 3.25; the call-in time minimum payment of 2 hours; the uniform allowance of \$1,200 per year which is above the County average of \$799; 14 holidays, which is comparable to the average of 13.5. In particular longevity is 8% of base salary in Oakland with 13-17 years of service as compared to 4 to 6% in other Bergen County municipalities. And after 18 to 22 years in Oakland, it is 10%, rather than the average of 6 to 8%. See, Borough Exhibits 4; 64; 68; 70; 81; 82. The assertion is also made that the salaries for patrol officers in the Borough of Oakland are comparable to the entire County average with any roll-in. See, Borough Exhibits 74; 76; 78; 80. This position is reinforced with more complete County data, demonstrating the following low/high averages for each year: 2010: \$98,689 versus 130,712; 2011: \$98,493 versus \$135,875; 2012: \$102,489 versus \$141,242; 2013: \$104,549 versus \$146,538.

According to the Borough's figures, in 2010 Oakland Police Officers ranked 9th out of the 23 municipalities for which maximum step information was available. This included 3 of the Northern Tier municipalities cited by the PBA, Saddle River, Paramus and Ridgewood, which were higher. By virtue of the awarded wage increases of 1%; 2/1% and 2.5% for each year of the successor agreement, at the conclusion of this contract unit members will have preserved that relative standing within Bergen County. This conclusion is based on the following base salaries: (2011) \$110,319;

(2012) \$113,629, (2013) \$116,470. The same may be said for the superior officers. Sergeants will make: (2011) \$117,723; (2012) \$121,255; (2013) \$124,287. Lieutenants go to: (2011) \$124,277; (2012) \$128,005; (2013) \$131,205. Finally, the Captain's guide will have the following base wage rates: (2011) \$131,680; (2012) \$135,630; (2013) \$139,020. These salaries are of course exclusive of any other benefits, such as longevity, which are then rolled into the base.

The fringe benefits package also favorably compares with those of other County police officers, with no modification required. For this reason the PBA's additional economic proposal to increase the existing \$2,500 Detective Differential to 2.5% calculated at the base rate, is denied. This would automatically increase the benefit each time a new salary adjustment took place, and the Union has failed to convince me that the same is warranted on the evidence of record.

(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 other economic benefits received.

The expired 1/1/07 to 12/31/10 Collective Bargaining Agreement at Joint Exhibit 1 provides salary guides at Appendices A & A-1. The former pertains to employees hired before July 1, 2007 and contains 8 steps following the probationary period. Effective January 1, 2010, the range was from

\$35,322 to \$109,227 for an Officer, with Sergeants making \$116,557 and a Lieutenant \$123,046. No individual currently holds the rank of Captain, with an established salary of \$130,376. The latter applies to those unit members hired after July 1, 2007 and has 9 steps with a range of \$35,841 to \$109,227 for Officers; \$116,557 for Sergeant; \$123,046 for Lieutenant; and \$130,376 for the rank of Captain. The Employer points out that per Borough Exhibit 17, from 2004 the PBA salary expense has increased by 35.33 %.

In addition, the agreed upon comprehensive Direct 10 Look-alike health benefits plan is valued at a range of \$7,044 for single coverage to \$20,708 for full family coverage. See, Joint Exhibit 4. Under Article VI, Officers are entitled to earned vacation leave in the amount of 1 working day per each completed month during the first year to 24 days upon the 24th year and thereafter, with the option of a roll-over or payment for accumulated days at the end of the calendar year. Fourteen paid holidays are thereafter identified. Holiday pay is also provided for.

Article VII establishes that unit members enjoy 15 days of accumulated paid sick leave per year, with an incentive program for non-use during the period of January through July each year. The days may also be cashed in upon death or retirement at 50% of the current straight-time salary. Article VIII goes on to discuss other leave in the manner of military

and leave of absence (as required by law and New Jersey Civil Service Regulations), and funeral leave in the event of a death in the Officer's family as defined. Benefits for college tuition reimbursement and a \$1,200 uniform allowance are found in Article IX, with insurance benefits discussed in Article X. Two annual personal days are awarded per Article XI, as well as court time at the overtime rate. A Detective Differential of \$2,500 is required by Article XII, and longevity set forth in Appendix B, which provides for 4% of base salary from the start of the 8th through the 12th year of service, rising to 12% upon the start of the 23rd year and thereafter. Finally, unit members are enrolled in the PFRS, which allows retirement after 20 years of service at 50% of base pay, or at 25 years with 65%. See, N.J.S.A. 43:16A-11.1.

The PBA has loudly and persuasively argued that recent legislative enactments related to enhanced pension and health benefits contributions by police officers and other public employees have undercut what is an admittedly rich compensation and benefits package. PL 2011 c. 78, which had an effective date of June 28, 2011, contains a 4 year phase-in period with health benefits contribution based on salary range. As a practical matter, since the majority of the PBA bargaining unit is at or close to maximum, this will require increasing payroll deductions of 8.75%; 17.50%; 26.25%; and 35.00% of the premium according to coverage level. By way of example and in real dollars, under the new Direct 10 Look-alike Plan to be

implemented, an Officer receiving family coverage would have the following obligations:

Year 1	Year 2	Year 3	Year 4
\$1,812.00	\$3,624.00	\$5,436.00	\$7,248.00

Employee pension contributions under the law were also increased by 1.5% culminating in a total of 10%.

The Borough's argument is credited that neither the law nor the interest arbitration statute requires that these payments serve as an automatic credit or deduction toward base wage or other economic proposals. The instant statute, however, empowers and requires interest arbitrators to make an informed decision on the economic and non-economic issues before them by considering all relevant factors concerning a municipality's financial health *vis-a-vis* the relative standing of the employee unit, and the impact of the award upon the taxpayers of New Jersey. It is accordingly germane to my deliberations that for FY 2012, the Borough of Oakland realized a reduction in its PFRS contributions in the amount of \$155,432 as a direct result of the unit's payroll deductions. Therefore, by any measure, the pension and health benefits contributions borne by the Oakland Police Officers have resulted in an erosion of their benefits package in general, and a palpable diminution in their net take home pay during the

life of this successor agreement in particular. This reduces the full force and effect of this statutory criteria.

(4) Stipulations of the parties.

While no formal stipulations were submitted by the parties, I share the PBA's perspective that its acceptance of the Borough's health benefits proposal is akin to the same. This permitted the Employer to implement the SHBP Direct 10 Look-alike plan, as previously outlined in Section 1. The modification will provide significant cost savings during part of 2012 following its roll-out in perhaps May or June, and all of 2013 and thereafter. The Union has recognized that the cost savings to the Borough across all crafts would be in the vicinity of \$300,000. Based on available evidence and projections in the record at Joint Exhibit 4, this translates to global savings in the vicinity of \$150,000 to 200,000 for the 6 or 7 months of 2012. The PBA's figure is therefore not unreasonable. And since the PBA is the largest bargaining unit in Oakland, the anticipated savings for police health benefits costs is roughly \$90,000 per annum. In that regard, the chart at Joint Exhibit 4 reflects the following premium rates for 2012:

	Traditional	D-10 Look-alike	Difference
Medical and RX - Single	8,628.00	7,044.00	(1,584.00)
Medical and RX - P/C	12,084.00	9,864	(2,220.00)
Medical and RX - H/W	19,428.00	15,864.00	(3,564.00)
Medical and RX - Family	21,588.00	17,628.00	(3,960.00)
Dental Single	871.00	871.00	—
Dental P/C	1,694.00	1,694.00	—
Dental H/W	1,557.00	1,557.00	—
Vision Single	165.00	165.00	—
Vision H/W	363.00	363.00	—
Vision Family	439.00	439.00	—
TOTAL SINGLE	9,664.00	8,080.00	(1,584.00)
TOTAL P/C	14,019.00	11,799.00	(2,220.00)
TOTAL H/W	21,348.00	17,784.00	(3,564.00)
TOTAL FAMILY	24,668.00	20,708.00	(3,960.00)

[emphasis supplied in both original and added].

Notice is taken that while the Borough has confirmed this fact in its brief, any resultant cost savings were not acknowledged. Moreover, the Employer has instead focused on the escalating cost of health care costs between 2004 and 2011, when they increased 79.02% from \$1,279,120 to \$2,289,851. See, Borough Exhibit 17. This caused the Borough to abandon its self-insured hospitalization plan and join the B-MED, where insurance costs were pooled. Parenthetically, the CERTIFICATION of Oakland CFO James A. Mangin at Borough Exhibit 1 does not mention the anticipated

savings related to the new health benefits program.

Under these circumstances, the PBA is entitled to rely upon the same in support of its economic proposals. However, as the proponent of a change to existing contract language, the Union carries the burden of establishing its entitlement to the same by substantial and credible evidence and has failed to do so. In that respect, the PBA has proposed altering the language of Article X, Insurance by deleting the words *if the Officer dies prior to becoming eligible for Medicare ...* and replacing it with *until the spouse of a deceased eligible member qualifies for Medicare*. While I understand the intent of the proposal, which was based on the unfortunate experience of a bargaining team member's mother, there are potential cost and other long-term implications that are unclear. It will accordingly not be awarded.

(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.).

The original 1977 municipal appropriation and county levy cap, as amended, still remains in effect. The Local Government Cap Law is codified at N.J.S.A. 40A:4-45 et seq., and states that: "[i]t is hereby declared to be the policy of the legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads." Section 10 of the P.L. 2007 act originally

established a Tax Levy Cap of 4% above a municipality's prior year tax levy. The 2007 cap was subsequently amended to 2% under legislation signed into law by Governor Christie in July 2010, with exclusions also modified. See, PL 2010, c.44. While Chapter 44 changed the 2007 cap, there was no change to the 1977 cap. Municipalities are accordingly subject to both the 1977 Appropriations Cap of 2.5% and the 2010 Tax Levy Cap of 2%.

The Borough's Final Offer on wages is inconsistent with its underlying financial health, and at variance with the external pattern of settlement for police units within the County of Bergen. Moreover, the CERTIFICATION of Mr. Mangin at Borough Exhibit 1 paints an incomplete picture. Paragraph 4 underlines that the Borough is trying to recover financially from losses in non-tax revenue since 2004. This includes a continual reduction in State Aid, interest income, construction fees, and municipal revenue. The State Aid reductions amounted to \$500,000 (71.92%) during the period and included:

2004	2005	2006	2007	2008	2009	2010	2011
1824519	1823947	1823947	1858222	1758011	1651152	1313832	1313169

See, Borough Exhibit 18.

The amount to be raised by taxation during the same period was:

2004	2005	2006	2007	2008	2009	2010	2011
8400141	9325820	10626801	11657044	12635789	13245980	13710459	2011388
							964

See, Borough Exhibit 17.

In all, the resultant tax increases starting with 2006, when all surplus was depleted were:

2006	2007	2008	2009	2010	2011
13.95%	9.69%	8.40%	4.83%	3.57%	1.20%

Mr. Mangin advises at Paragraph 7 that after 2006, the Borough established a practice of limiting the use of the surplus for tax relief to a sustainable level only, leading to the creation of reserves to ensure long term tax stabilization. As such, the reserve is now dedicated to tax appeals, accumulated leave payments, and unforeseen emergencies. The CFO goes on to report that the Borough is currently facing potential losses in pending tax appeals equal to \$487,867 in 2011; \$497,625 in 2012; \$507,577 in 2013. See, Borough Exhibit 33. The accumulated surplus will therefore be used to offset these costs. In Paragraph 8, mention is made of unrecorded liabilities of approximately \$914,000 due to its employees for compensated absences. See, Borough Exhibit 31. The reserve surplus is also used to fund this liability.

Notably absent is any reference to the Borough's Health Benefit's Trust Fund in the amount of \$732,644, which would substantially cover the anticipated employee compensation. An Accumulated Absence Trust Fund of \$248,845 and an Open Space Reserve of \$1,253,372 for parks also appear, as the PBA has amplified. See, ANNUAL FINANCIAL STATEMENT

FOR THE YEAR 2010 (UNAUDITED), Borough Exhibit 16, at Sheet 6a. Paragraph 8 then references a \$120,000 appropriation during 2011, to pay for the damages attendant to Hurricane Irene. However, this would appear to constitute an exception to the 2010 2.0% Cap and therefore outside of it. See generally, PL 2010, c. 44.

Paragraph 9 of the CERTIFICATION complains that the Borough has been suffering from a decrease in non-tax revenue, while being subjected to increases in costs beyond the 2% tax cap. One such example is the salaries and wages for the Borough. In that regard, since 2004, the salaries and wages of employees have increased by over 5% per year:

2004	2005	2006	2007	2008	2009	2010	2011
5051922	5259615	5632252	5360496	5814476	6703190	6779055	6836805

This exemplified a change of 35.33% between 2004 and 2011. See, Borough Exhibit 17, supra. Paragraph 10 further cites dramatic increased pension costs of 2397.11% over the period:

2004	2005	2006	2007	2008	2009	2010	2011
45000	133824	301511	498420	809761	817097	828031	1123700

Notwithstanding these bleak economic considerations, the appropriation for Police Salaries and Wages had a reserve balance as of December 31, 2010 of \$82,803, with a total reserve for all employees of \$152,148. The PBA position that this affords budget flexibility is accordingly

credited. See, 2011 MUNICIPAL DATA SHEET (CURRENT FUND APPROPRIATIONS), Borough Exhibit 12, Sheet 14. Additional factors brought to light by the PBA's financial expert and not identified by the Borough must also be articulated:

- The Percentage of Net Debt of Equalized Valuation basis is .063%, which is far short of the municipal debt limit of 3.5% under State law. See, Borough Exhibit 14.
- The category Results of 2010 Operation reflects \$939,134. See, Borough Exhibit 16, AFS Sheet 19. This demonstrates an ability to regenerate surplus.
- For 2010, budget revenue in the amount of \$18,195,011 was anticipated by the Borough, with \$18,740,705 being realized. The net result was an excess of \$545,694. See, Exhibit 16, AFS Sheet 17.
- The Unexpended Balance of Appropriation Reserves in 2010 was \$183,009. See, Id. at AFS Sheet 19.
- The 2010 REPORT OF AUDIT indicates a Fund Balance on December 31, 2010 of \$2,229,288.

Under these circumstances, the Borough has sufficient flexibility within the cap in 2011 to award the PBA a reasonable salary increase without exceeding its lawful authority. That is to say nothing of the cost savings that will be realized in 2012 due to decreased PFRS pension contributions and from mid-2012 forward under the Direct 10 Look-alike Health Benefits Program.

One of the open issues is the duration of the contract. The Borough has

proposed a 3 year agreement, while the PBA seeks a 4 year deal. There are several considerations which militate against the adoption of the PBA proposal in this regard and mandate that the Borough's position be awarded. Arbitrator Glasson chronicled the acute financial situation faced by the State of New Jersey, counties and municipalities in recent memory. See, In the Matter of the Interest Arbitration between the Township of Fairfield and West Essex PBA Local 81, PERC Docket No. IA-2010-090 (Glasson, 2011).

The proximate result has been that formula aid has at best remained flat and in most instances been sharply reduced, as is the case in Oakland. See, e.g., New Jersey Municipal Aid Cuts Revealed, Shock Towns, March 19, 2010 Article NJ.com at Borough Exhibit 46 (\$275,000,000 in State Aid sliced). As a practical matter, therefore, other sources of revenue or savings must be identified within a budget to fund a union's economic proposals, within the confines of the Tax Levy Cap. And while the financial outlook for our economy has improved marginally, there is still significant uncertainty ahead for the Borough of Oakland.

Further, as Arbitrator Mason correctly concluded in The Borough of North Arlington and Police Benevolent Association Local 95, PERC Docket No. IA-2011-050 (Mason, 2011) at pages 10-11: "[m]oreover, there is the State law which was intended to govern the economic limitations of a Negotiated Agreement. To extend the term of this award to four years would

clearly deny the Employer of whatever protection that law might otherwise provide. It is clear that the four year agreement suggested by the PBA is essentially aimed at the avoidance of that but there is no good reason to extend the Agreement and it is the public policy and intent of the Legislature that the law be observed. Therefore the term of this Agreement will be from January 1, 2011 through December 31, 2013."

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers 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 monies 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.

In addition to the Borough's demonstrated budgetary flexibility, its economic health has measurably improved since the 2006 surplus crisis. As previously detailed, tax increases have been reduced each year since the catastrophic 13.95% increase, culminating in a 1.20% increase for 2011. The PBA counsels that the same is recommended by the credit rating

agencies, Moodys and Standard & Poors. The 2010 tax levy of \$53,550,515 is a direct result of an impressive 99.55% tax collection rate. And while the dollar amount of each ensuing tax levy has increased, the percentage for municipal purposes averages roughly 26.5%. Debt service, which was previously touched upon, had a net of 0.62 in the amount of \$16,722,790, amounting to remaining borrowing power of \$76,355,236 in order to reach the State equalized value limit of 3.5%. The Borough is also well below the statutory 2% cap for the amount to be raised for municipal purposes. The foregoing when read in tandem with the other factors discussed in statutorily criteria g(5) temper the dire forecast provided by Mr. Mangin.

The census for the Oakland Police Department establishes that there are 17 Patrolman all at maximum earning a base salary of \$109,227 for a total of \$1,856,859. There are 5 Sergeants @ \$116,557 equal to \$582,785, 2 Lieutenants making \$123,046, which adds \$246,092. The aggregate payroll is then \$2,685,736, with 1% worth \$26,857 by virtue of the 24 unit members. The PBA maintains that the percentage value of the entire bargaining unit as compared to the total levy is 4.9%. A person with a hypothetical tax bill of \$8,000 per year would accordingly be paying \$392 per year for the Police Department (excluding the Chief's salary and benefits). The impact of a percentage point is about a penny a day.

Costing the PBA proposal of 3% each year yields the following figures: 2011 — \$80,571; 2012 — \$82,988; 2013 — \$85,477. This equates to a total cost for the duration of the C.B.A. of \$249,036, which I find is not in keeping with the statutory criteria. The same may be said of the Borough's Final Offer, which is artificially low. This would award a 0% increase in 2011, followed by 1.5% in 2012 and 2013. In whole numbers, this would cost \$80,571 for years 2 and 3, and according to the Borough reflect total costs of \$2,883,818 for 2012 and \$2,981,599 for 2013. It is not clear based on the CERTIFICATION of Mr. Mangin how the anticipated tax increases of \$11.26, \$14.50 and \$18.36 for each year were arrived at, but in any event these are not supported by the available record evidence.

In contrast, the salary package of 1% for 2011, 2/1% for 2012; and 2.5% for 2013 as awarded, totals \$174,570. Most importantly, it provides the Borough with needed flexibility based on existing financial resources in 2011, and with a year 2 split, recognizes the phased-in impact of the new Direct 10 Look-alike health benefits plan in 2012, as well as the savings realized by the Borough from reduced pension contributions to the tune of \$155,432. Since there is no Fire Department in Oakland, this amount is all police-related. Then in year 3 even if the pension savings are not recurring, the cost of the 2.5% increase coupled with the .5% rollover can be fully funded based upon the health benefits savings alone. Under this scenario,

there will be little if any financial impact upon the governing unit, the residents of Oakland, or the limitations imposed upon the local unit's property tax levy pursuant to section 10 of PL 2007, c.62 (C.40A:4-45.45), and this statutory criteria is satisfied.

(7) The cost of living.

The cost of living is tracked by the Consumer Price Index (CPI), which is a measure of the average change in prices over time for goods and services purchased by households. Currently, the index utilizes the period between 1982 and 1984 as the base year, with a value of 100 established. The cost of the same goods and services is then calculated for each following year, establishing an "index" for easy comparisons of purchasing power.

The Bureau of Labor Statistics publishes the CPI for 2 population groups: (1) the CPI for Urban Wage Earners and Clerical Workers (CPI-W), which covers households of wage earners and clerical workers that comprise approximately 32 percent of the total population; and (2) the CPI for All Urban Consumers (CPI-U) and the Chained CPI for All Urban Consumers (C-CPI-U), which cover approximately 87 percent of the total population and include in addition to wage earners and clerical worker households, groups such as professional, managerial and technical workers, the self-employed,

short-term workers, the unemployed, and retirees and others not in the labor force. See generally, Joint Exhibit 5, USDOL Bureau of Labor Statistics *NEWS RELEASE USDL-11-1748*, December 16, 2011. According to the same, the All Urban Consumers (CPI-U) was unchanged in November on a seasonally adjusted basis. Over the last 12 months, the all items index increased 3.4 percent before seasonal adjustment, which was slightly below the 3.5 percent figure for the previous month.

Additionally, the food index declined slightly from 4.7 percent to 4.6 percent, and energy declined from 14.2 percent to 12.4 percent. However, the 12 month change in the index for all items less food and energy continued to rise, reaching 2.2 percent in November of 2011. Ibid. These statistics underpin the PBA's position that they are significant increases as they exceed the amount sought by the Union, with the value of those dollars decreasing and of which the Borough takes no account of. For its part, the Employer insists that the CPI must be a critical component of my statutory analysis, but reads the same in isolation without resort to the actual numbers. These factors lead to the conclusion that while not dispositive, the PBA's economic offer is more harmonious with the current CPI than the Borough's.

(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.

Even a cursory glance at a newspaper or television/internet news account bears stark testimony to the dire financial plight of many municipalities in the State of New Jersey, with the concomitant adverse effect upon public safety personnel. Most notably, there were layoffs in Camden and Trenton, with furloughs and job cuts imposed upon State and other public employees. Fortunately, such has not been the case in Oakland. Rather, as the Borough has properly argued, their absence is in complete and utter contrast to the current economic climate in the nation and in many municipalities within the State of New Jersey.

The further argument is accurately made that as of May 2010, New Jersey had an unemployment rate of 9.7%, with large scale job cuts taking place in both public employment and the private sector. See, Borough Exhibits 38; 39; 41; 43; 50; 53; 54. To date, Oakland Police Officers have therefore enjoyed job security. The stability of the bargaining unit is perhaps best demonstrated by the fact that 20 of the 24 bargaining unit members are at the top step of the salary guide. I agree with the Borough that there is no evidence of turnover, and by all accounts this is a professional and cohesive

police department.

The Employer has proposed numerous modifications to the salary and benefits package currently received. These include: clarification of the step progression; a modification of the vacation schedule in Article VI to be consistent with the Blue Collar contract; proration of the number of vacation days in the final year of employment; rollover of unused vacation time for a maximum of 1 year; elimination of the payment for unused vacation days for new hires, with payments capped at a total of \$1,000 per Officer per year for existing personnel; the deletion and removal of Columbus and Election Day as enumerated holidays; the amendment of B.2, section 3, to explicitly state that it does not apply to instances where Borough offices are closed due to inclement weather or other reason beyond the control of the Borough; the proration of personal days for the first and last years of service; under Article VII, the proration of sick leave for the first and last years of service; the elimination of payment for unused days; the elimination of the incentive program for new hires; terminal sick leave payment capped at \$15,000; for existing employees who retire, benefits and cost sharing shall be the same for retirees as for active employees, under Compensation, make the "base" rate for OT purposes the salaries as shown in the appendix, with the contract amended to reflect that leave time does not count as hours worked towards OT; discontinuance of longevity for Officers hired on or after

January 1, 2012, with the amounts earned by current employees frozen at the amount they were earning as of December 31, 2011.

The PBA has emphatically opposed this application, maintaining that this position represents a dismantling of longstanding benefits and an unreasonable differentiation in compensation and benefits for existing employees and those who may be hired in future years. Describing these proposals as 2 "flavors" of Police Officer, the PBA counters that this is completely incompatible with the *esprit de corps* and working team type relationship essential to the delivery of this essential public service. Based on the evidence of record, the Borough has not sustained its burden in providing credible and substantial evidence to support these sweeping contractual modifications. And while common sense dictates that significant current and future savings may be assumed if these were awarded, the same may not overcome the disruption they will visit upon the unit in this instance.

Concerning the requested addition of the 5 guide steps for the purpose of equalization, this is also denied. In support of this position, the Borough has provided numerous examples of other Bergen County municipalities that have added 1 or several steps to their salary guides during recent negotiations, as discussed on pages 27-29 of its brief. I have carefully reviewed each cited labor contract on the enclosed CD. It is true that the

Borough of River Edge added 13 additional steps, while the Borough of Norwood added 14. However, in the vast majority of cases the additional steps brought that unit up to or near the number currently in the Oakland PBA guide: 8 (following the 6 month Academy Step), *e.g.*: Edgewater (8); Haworth (9); Emerson (8); Old Tappan (7); Cresskill (8); Allendale (8); Little Ferry (8); Lodi (8). The PBA has also persuasively submitted that based on the exhibits in evidence, the overall average number of steps in Bergen County to reach maximum is 7.2, while the area average is 7.97. See, PBA Brief at p. 20.

The PBA has likewise proposed a contractual modification to the FULLY BARGAINED PROVISIONS language of Article XX. This seeks the deletion of Paragraph A, which states: "[t]his Agreement represents and incorporates the complete and final understanding and settlement by the parties of all negotiable issues whether or not discussed. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter whether or not within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement." As written, this zipper clause fosters the continuity and stability of the bargaining relationship, within the contemplation of this statutory criteria. Because the PBA has not navigated its burden in this regard, this proposal is also denied.

(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).

This criteria has previously been addressed at great length in the discussion of g(1), g(5) and g(6). Suffice it to say that based upon the totality of the foregoing circumstances, the Borough of Oakland has sufficient flexibility within its budget and under the 2% cap, to finance the awarded economic package. The same is consistent with the articulated statutory criteria and awarded pursuant to my conventional authority. In so concluding, I have carefully considered the Borough's argument that it would have a very difficult time generating the necessary money in the event the PBA wage proposal was awarded, without taking drastic measures to comply with the 2.0% Hard Cap Levy, coupled with the PBA's entreaty that it was engaged in retrograde bargaining due to the increased health and pension contributions. This AWARD instead reconciles these competing interests and is rendered pursuant to my statutory authority.

[emphasis supplied]

IV. CONCLUSION

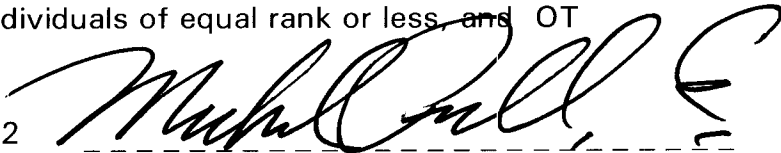
In rendering this AWARD, I have carefully and fully considered and deemed relevant each of the statutory criteria. However, greater weight has been afforded to the interest and welfare of the public; the external comparability of the Oakland Police Department with other law enforcement personnel within the State of New Jersey and the County of Bergen; the lawful authority of the Employer; the financial impact on the governing unit, its residents; and the statutory restrictions imposed upon the Borough by the Tax Levy Cap. Based upon the foregoing considerations, I find that in accordance with N.J.S.A. 34:13A-16.d, the total net annual economic changes for each year of the agreement as well as the non-economic changes are reasonable under the 9 statutory criteria set forth in subsection g., and certify that pursuant to subsection 5.f the statutory limitations imposed on the Local Levy Cap were taken into account.

V. AWARD

1. All proposals submitted by the PBA and the Borough that are not awarded herein are denied. All provisions of the existing Collective Bargaining Agreement shall be carried forward except for those that have been modified by the terms of the instant AWARD.

- 2. Duration — The new C.B.A. shall be for a 3 year term, encompassing the duration of January 1, 2011 through December 31, 2013.
- 3. Wages — 2011 — 1 % (Retroactive to 1/1/11);
2012 — 2/1%; (Retroactive to 1/1/12);
2013 — 2.5 %.
- 3. Health Benefits — During mediation the PBA acceded to the Borough's request that it be permitted to change the existing plan and enroll employees in the Direct 10 Look-alike plan, with the coverages as clarified by the Borough Administrator at the hearing. A request was made by the parties that this agreement be memorialized in the AWARD, and that jurisdiction over this issue be retained by the Arbitrator to address any disputes in an expedited fashion in the event they occur. My notes taken at the Executive Session are also incorporated by reference herein.
- 4. Shift Switches — ARTICLE XI, HOURS OF WORK AND OVERTIME, PARAGRAPH C.6 shall be modified to permit day-for-day shift switches between unit members, provided they are between individuals of equal rank or less, and OT is not impacted.

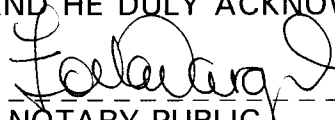
Dated: February 3, 2012
NORTH BERGEN, N.J
STATE OF NEW JERSEY



MICHAEL J. PECKLERS, ESQ., ARBITRATOR

SS:
COUNTY OF HUDSON

ON THIS 3rd DAY OF FEBRUARY, 2012, BEFORE ME PERSONALLY CAME AND APPEARED **MICHAEL J. PECKLERS, ESQ.**, TO BE KNOWN TO ME AS THE INDIVIDUAL DESCRIBED HEREIN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND HE DULY ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.



NOTARY PUBLIC

