

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

XX

In the Matter of the Arbitration Between )

BOROUGH OF BELMAR, )

**EMPLOYER** )

AND )

BRADLEY BEACH PBA LOCAL NO. 50, )  
(BELMAR UNIT), )

**UNION** )

XX)

**INTEREST ARBITRATION  
OPINION AND  
AWARD**

DOCKET NO. IA-2008-085

**BEFORE  
GERARD G. RESTAINO  
INTEREST ARBITRATOR**

**APPEARANCES:**

FOR THE BOROUGH OF BELMAR  
JAMES PLOSIA, ESQ.  
ROBBIN KIRK

COUNTY LABOR COUNSEL  
BUSINESS ADMINISTRATOR

FOR THE PBA  
CHARLES SCHLAGER, ESQ.  
MARK WALSIFER

UNION COUNSEL  
PBA STATE DELEGATE

## **PROCEDURAL BACKGROUND**

The parties in this dispute, the Borough of Belmar and Bradley Beach PBA, Local 50 (Belmar Unit), are signatories to a collective negotiations agreement that expired on December 31, 2007. The parties notified the New Jersey Public Employment Relations Commission (PERC) that they had selected the undersigned to be the Interest Arbitrator in the instant dispute. On July 29, 2008, I received formal notification from PERC that I was appointed the Interest Arbitrator.

I held informal mediation sessions with the parties on September 12, 2008, October 29, 2008, May 14, 2009, and June 22, 2009. At the May 14, 2009, meeting the parties had reached a tentative agreement, and a Memorandum of Agreement was developed. Unfortunately, the Mayor and Council rejected the settlement.

The June 22, 2009, meeting was an attempt to mediate a settlement. That attempt was unsuccessful and formal hearings were scheduled for September 23 and 24, 2009. During the hearings, substantial testimony and documentary evidence were received into the record. Borough testimony was provided by Robbin Kirk, Business Administrator. The PBA offered testimony from Detective Mark Walsifer, elected NJ State delegate for the nine (9) town amalgamated union, Bradley Beach PBA Local 50.

At the September 23, 2009, hearing the parties agreed upon a briefing schedule. The Borough reserved its right to submit a reply brief. Briefs were submitted on January 21, 2010.

On January 28, 2010, the Borough sent a letter to me and PBA counsel stating that they were going to submit a reply brief.

On February 3, 2010, the Borough filed an objection to the PBA's brief as follows:

1. *Throughout the brief, the PBA inexplicably refers to Vince Foti as an expert accepted by the parties. The Borough is mystified as to this claim – not only did the PBA fail to qualify Mr. Foti as an expert, but Mr. Foti was not even offered as a witness in this matter. Nor did he ever produce a report. Thus, it is impossible for Mr. Foti to offer any “statements” in this matter, whether as an expert or otherwise, in the absence of any testimony or written report.*

*Accordingly, the Borough requests that the Arbitrator disregard each and every statement attributed to Mr. Foti in the PBA's post-hearing brief. Alternatively, if the Arbitrator decides to consider Mr. Foti's “statements”, despite his not being a witness much less an expert in this matter, the Borough requests that the PBA be required to immediately provide a copy of Mr. Foti's written report concerning this matter (a report from which these “statements” were presumably gleaned).*

2. *Second, the PBA has inexplicably altered its Final Offer in its brief. The PBA's revised Final Offer (revised at the end of the Interest Arbitration hearing), provided for an increase of 3.75% as of January 1, 2010. The Final Offer set forth in the PBA's brief now states that the PBA is seeking to receive a 3.9% increase effective July 1, 2010. Because the PBA's Final Offer may not be altered after the close of the hearing, the Borough requests that the Arbitrator not only ignore the PBA's impermissible attempt to revise its Final Offer, but also ignore all of the calculations contained in the PBA's post-hearing brief based upon this impermissible change in its Final Offer.*

On February 8, 2010, I sent a letter to Mr. Schlager asking for his comments concerning the Borough's February 3, 2010, letter. I also asked him if he was going to submit a reply brief.

On February 10, 2010, Mr. Schlager responded to the Borough's February 3, 2010, letter, wherein he stated:

*Please accept this correspondence on behalf of my clients, Bradley Beach PBA Local No. 50 – Belmar Unit, as it pertains to the above-referenced matter.*

On February 3, 2010, we were in receipt of the Borough's reply brief. In this reply brief, the Borough raised two (2) issues:

- (1) The Borough raises the qualification of Mr. Foti as a "financial expert" in this matter and requests that the Arbitrator "disregard each and every statement attributed to Mr. Foti in the PBA's post-hearing brief."
- (2) The Borough argues that the "3.9% wage increase for 2010" does not comport with the revised wage proposal allegedly entered by the PBA at the close of the hearing and requests that the Arbitrator "not only ignore the PBA's impermissible attempt to revise its Final Offer, but also ignore all of the calculations contained in the PBA's post-hearing brief based upon this impermissible change in its Final Offer."

As to the issue of Mr. Foti, N.J.S.A. 34:13A-16(g)(6) says the arbitrator shall consider the:

*The Financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or in the case of a county, the county purposes element required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.*

*The statute does not mandate testimony by financial experts, but merely to take into account "the extent that evidence (financial documents) is introduced." At the hearing, the Arbitrator swore in all potential witnesses that were going to testify. The PBA presented that Mr. Vincent Foti may be called as a potential rebuttal witness. Borough Administrator, Robbin Kirk and Mr. Foti, were accepted as experts in municipal finance.*

*As with most of the statutory criteria to be considered by the Interest Arbitrator, it primarily lies upon the parties' interpretation in their respective post-hearing briefs based upon the legitimate exhibits entered at hearing. By way of*

*example, neither party provided testimony at the hearing pertaining to the comparison of wages and benefits of other municipal law enforcement contracts or the consumer price index. Yet, both parties provided their own analysis of the exhibits entered at hearing in their post-hearing briefs.*

*The PBA maintains that its reliance upon Mr. Foti's expert opinion in his analysis of the "complete" financial documents submitted at hearing is not only proper but the known and accepted practice in interest arbitration proceedings throughout this State. We assert that this objection by the Borough is nothing more than another attempt by the Borough to taint these proceedings. Furthermore, the Borough brings this issue without clean hands as the Borough relies on testimony provided by Ms. Kirk, as well as summary exhibits that are not supported or based upon any documents entered at hearing. Based on the above, the PBA maintains that it is totally proper to rely upon the findings and analysis of their financial expert and that the Borough's request to "disregard each and every statement attributed to Mr. Foti in the PBA's post-hearing brief" should be denied.*

*As to the issue of the PBA's "modified" wage offer made at the closing of hearing, the PBA acknowledges that there was inadvertent error in stating the PBA's modified wage proposal. However, the Borough did not accurately identify the PBA's modified position. The PBA asserts that its position was as follows:*

<i>3.90% - January 1, 2008</i>	<i>3.90% - December 31, 2009</i>
<i>3.75% - July 1, 2010</i>	<i>3.90% - April 1, 2011</i>
<i>3.90% - January 1, 2012</i>	

*Thus, the Borough's argument is inaccurate. While the Borough is correct that the PBA is willing to defer a wage increase from January 1, 2009 to December 31, 2009, the Borough is amiss in saying that the PBA modified its proposal as an admission to the Borough's position. Although it is accurate to say that the PBA's modified proposal is in recognition to the general downturn in interest arbitration awards across the State. Additionally, the Borough was incorrect as to its portrayal of the PBA's modified proposal, as well as its economic analysis as the PBA also revised its proposal to defer its 2010 wage increase from January 1<sup>st</sup> to July 1<sup>st</sup> and its proposed 2011 wage increase from January 1<sup>st</sup> to April 1<sup>st</sup>. As to the Borough's ludicrous request that the Arbitrator "not only ignore the PBA's impermissible attempt to revise its Final Offer, but also ignore all of the calculations contained in the PBA's post-hearing brief based upon this impermissible change in its Final Offer," we request that the Arbitrator take note that the all calculations set forth by the PBA in its brief refer to the PBA's unmodified position. Thus, the PBA's calculations in their post-hearing brief are clearly shown at a cost which is greater than their modified wage position. Therefore, it is appropriate that the Arbitrator consider the calculations established in the PBA's post-hearing brief and extrapolate downward the economic impact of the PBA's modified wage proposal.*

On February 12, 2010, the Borough submitted its reply brief. On February 21, 2010, Mr. Schlager responded to said brief as follows:

*Please accept this correspondence on behalf of my clients, Bradley Beach PBA Local No. 50 – Belmar Unit, as it pertains to the above-referenced matter. We were in receipt of the Borough's second reply brief. Frankly, we take the position that this was not agreed to by the parties, nor directed by the Arbitrator. In fact, the PBA asserts that at hearing they objected to either party submitting any reply brief. The Arbitrator agreed to permit the parties to submit one reply within specified time period. The Borough did so and the PBA responded. As such, the Borough's second response violates the directive of the Arbitrator in this proceeding and as such, cannot be considered.*

*Without deterring from the aforementioned position, the PBA asserts that the Borough's second reply brief is only a restatement of their position, but in the negative to the PBA's submission. As such, we chose to make no additional comment. Further, we are frankly in disbelief that the Borough, claiming to have limited funds, continues to spend for frivolous legal fees. Prior to hearing, the Borough spent thousands of dollars to challenge as to how the proceedings were going to be recorded and in the end chose not to record the proceedings. Now, in clear violation of the Arbitrator's instructions, the Borough submits a nearly sixty (60) page brief that cannot be considered. While this is not argument, the actions of the Borough sure do mystify the PBA.*

*Thank you for your understanding, attention and professional assistance in this matter.*

On February 25, 2010, Mr. Plosia submitted a response to Mr. Schlager's February 21, 2010, letter in which he stated:

*We are in receipt of Mr. Schlager's February 21, 2010, letter. Frankly, we are mystified by its contents. Enclosed please find a January 28, 2010, letter which this office submitted to you, saying that we intended to file a reply brief by February 12, 2010. That letter was copied to Mr. Schlager's office. In response, the Arbitrator sent a letter dated February 8, 2010 to Mr. Schlager's office (copied to our office, copy enclosed), informing Mr. Schlager that we would be submitting reply brief on behalf of the Borough and asking Mr. Schlager if he intended "to do the same". The PBA did not respond to that letter.*

*In light of this undisputed information, the Borough is perplexed by the PBA's February 21<sup>st</sup> letter. In addition, the Borough does not understand why the PBA is calling the Borough's reply brief a "second" reply brief. The first brief submitted by the parties to the Arbitrator is the post-hearing brief (otherwise*

*known as the "initial" brief). There is only one reply brief, which is submitted by the parties, if at all, in response to the initial brief. This is exactly what the Borough did.*

*Finally, the Borough will briefly reply to the PBA's expending "frivolous legal fees" point. As an initial matter, the legal fees paid by the Borough to this law firm is public information, and thus available to the PBA for review. If the PBA would like to compare the legal fees it has expended in this matter with those expended by the Borough for our law firm, the Borough would be more than happy to do so. In any event, a major reason why the Borough had to even file a reply brief is that the PBA saw it fit to introduce page after page of an alleged "report" (never produced by the PBA) from an expert witness who never testified at the Interest Arbitration hearing. In addition, the financial significance of the Arbitrator "doing the right thing" in this matter and awarding the Borough's Final offer is so essential that the expenditure of legal fees for a reply brief is relatively innocuous by comparison. Please contact me if you have any questions or require further information.*

The record reflects that on January 25, 2010, Mr. Schlager withdrew Exhibits P-3, P-4 and P-19.

There was no transcript taken of the hearings. The hearing was officially closed on March 1, 2010, which gave the parties time to review documents and determine if anything was unclear or would be challenged.

At the hearings, each party had a full and complete opportunity to present evidence and testimony on their behalf, to examine and cross-examine witnesses under oath, and to argue their respective positions.

The parties did not agree upon an alternative terminal procedure. Accordingly, the procedure in the instant matter will be covered by conventional arbitration. Conventional arbitration is a much more flexible process that allows the Arbitrator to review all of the facts and documents submitted, as well as to review the testimony in the record and make a determination away from the requirement of selecting any component of a final offer by either party.

I am required by N.J.S.A. 34:13(a)-16(g) to separately determine whether the total net annual economic changes for each year of the Agreement are reasonable under the non-statutory criteria set forth in subsection (g) of this section. These factors, which are commonly referred to as the statutory criteria, are set forth below:

- (g) The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence of each relevant factor:
  - (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40aA:4-45.1, et. seq.).
  - (2) Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with 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 jurisdiction, as determined in accordance with section 5 of P.L. 1995, c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.



- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976, c. 68 (C.40A:4-45.1, et. seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or 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 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; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs, and services which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when

considering this factor are the limitations imposed upon the employer by Section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

During the course of an interest arbitration hearing (formal or informal) various terms were used by the parties to offer guidance to the arbitrator to assist the parties in reaching a settlement or in writing a formal award. In order for a reader to follow my Award, it is appropriate to list and define those terms normally used in an interest arbitration proceeding. Listed below are the terms utilized in this proceeding:

**CAP:**

The CAP historically referred to the total amount that certain appropriations could be raised without either (1) a special ordinance or (2) state approval. Appropriations (expenses) fall into one of two categories... within CAPS or outside CAPS... Often appropriations outside CAPS have separate funding beyond property tax (grants, or a very different type) interlocal agreements. The appropriation CAP is adjusted annually by the State using an approximator or the increase in the CPI... the most recent CAPS for appropriations have been 2.5%, although municipalities (Counties) can go to 3.5% with an ordinance indicating the desire to do so...

In addition to the appropriation CAP, the state has also introduced a TAX LEVY INCREASE CAP...with is 4%. So, the CAP is the amount, based upon two separate criteria, that local and county governments can increase costs and/or raise taxes. If governments do not "hit" their CAP they can bank them (like a savings account) for use in a subsequent year. Governments not at CAP have the ability to easily increase costs or raised taxes as they are below their statutory CAP or limit.

**PROPERTY VALUE:**

Property value is typically used to refer to the value of property in a municipality (or county) based upon the value of the individual line items at the time of comprehensive revaluation. This is the same as market value ONLY in the immediate short term after completion of the comprehensive evaluation since community values vary in the speed and extent of appreciation in value from neighborhood to

neighborhood and from town to town. So, as an example, two neighboring communities could have a revaluation in the same year, and have fairly identical property values.

The totality of property value in each of these communities is the Ratable Base, or the common base across which tax revenue requirements is distributed. So, in the example just given, the two municipalities have equal ratio bases. But, as an example further developed, the first, Town "A" experiences market gains of 105, while the second, Town "B", experiences market gains of 20%. These gains are identified and monitored through a process at the Division of Taxation, which, through local tax assessors, considers every real estate sale in each year to determine if the sale was one between a true buyer and a true seller (e.g. familial transfers or sales to corporate subsidiaries are not considered bona fide arms length sales) and determine the average ratio for each town of the now current market sales compared to the assessed value as determined at the last revaluation. So, for a property in both Towns, originally valued at \$25,000.00, the property in Town "A" has appreciated 10% to \$27,500, while that in Town "B" has appreciated 20% to \$30,000. The ratio of sales in "A" are the original appraised value divided by the market value or ratio = Assessed/Sales Price or 250/275 or .9091, while "B", it is 250/300=.8333.

The ratio is the EQUALIZATION RATIO. When the PROPERTY VALUE (value at some time in the past) is divided by the EQUALIZATION RATIO, the result is the EQUALIZED VALUATION of property in communities (Note: the actual process is much more complicated with exceptions and limitations, but this is the basic concept). The EQUALIZED VALUATION of property for all communities in a county or regional school district allow for equalizing changes that have occurred since the last revaluation at market value.

#### SURPLUS:

Surplus is essentially the fund balance of a municipality....Sort of a savings account available for emergencies as a result of over taxation/unused appropriations, and that also can be used to offset the need for revenue from taxes. The ability to replenish surplus if surplus is used for anticipated revenue is essentially the government operating at a profit during the time period. (i.e. revenue-expenses is positive, i.e. a profit).

#### UNUSED APPROPRIATION(S):

Budgeting and the budget process are essentially a plan for achieving goals and priorities, which in turn are achieved through expenditures (appropriations). A common practice throughout NJ municipalities since the inception of the CAP law is to be appropriate more in the base budget than what might actually be expended. This has the benefit of establishing a higher expenditure base for the CAP, providing future flexibility to respond to economic or political needs. Since the budget is a "plan", its execution is never precise and where municipalities slightly inflate expenditure estimates, there are unused appropriations that remain in the base, but the revenue projected to cover these unused appropriations are "returned" to surplus... i.e. it can generate an operational profit.

#### EXCESS TAXATION:

When appropriations have a tendency – a clear trend – to exceed expenses, this simply results in the need to raise revenue to cover these appropriations. For County government, this is through the property tax. The typical cancellation of current and prior appropriations could, largely but not totally, been handled through smaller appropriations and raising fewer taxes...thus the term, excess taxation.

AFS:

Annual Financial Statement.

#### **FINAL OFFERS OF THE PARTIES:**

##### **For the Borough**

1. Terms of Contract: January 1, 2008 through December 31, 2010.

2. Wages:

A. 3% wage increase for calendar year 2008. Zero percent increase for calendar year 2009 (with, however, guide advancement). 3% wage increase for calendar year 2010.

B. Effective January 1, 2010, there shall be a ten step guide for all employees hired on or after that date. The first step will be \$24,000.00 with each of the next steps taken from the existing guide (i.e. step 1 to become step 2, etc.)

3. Health Insurance: Effective January 1, 2009, all PBA members will contribute annually to the Borough of Belmar an amount equal to 15% of the cost of dependent health insurance coverage.

4. Article XXIX, Fully Bargained Provisions: The Borough proposed to eliminate subparagraph A of that section of the Agreement.

### **For the PBA**

These proposals were presented at hearing [Exhibits P-1 and B-1]. The PBA proffered the following proposals (**Bold** represents additions, ~~Strikeouts~~ represent deletions, and all other language is currently existing in the contract:

1. Wages<sup>1</sup>

The PBA proposes an across the board wage increase to all steps of the wage guide of:

3.9%	-	January 1, 2008	3.9%	-	January 1, 2009
3.9%	-	January 1, 2010	3.9%	-	January 1, 2011
3.9%	-	January 1, 2012			

2. Article XVII – Educational Compensation and Incentive Pay

2. Incentive Program

All members not on duty will be compensated four (4) hours of compensatory time for firearm qualification.

3. Article VI – Bereavement Leave

F. Bereavement Leave

1. Employees shall be granted up to three (3) days of leave without loss of pay in the event of a death in the employee's immediate

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<sup>1</sup> It is important to note that prior to the close of the hearing, the PBA, in conformance with reservation at the commencement of the hearing, modified its wage proposal to delay the start of the 2009 wage increase to December 31, 2009, the 2010 increase to July 1, 2010 and the 2011 increase to April 1, 2011. Therefore, the PBA's FINAL proposal across the board wage increase to all steps of the wage guide would reflect the following:

3.9%	-	January 1, 2008	3.9%	-	December 31, 2009
3.9%	-	July 1, 2010	3.9%	-	April 1, 2011
3.9%	-	January 1, 2012			

family. For purposes of this section, immediate family shall include brother, sister, father, mother, grandmother, grandfather, father-in-law, mother-in-law, son-in-law, daughter-in-law, **grandmother-in-law, grandfather-in-law** and step relatives of the same degree. Such leave shall be limited to three (3) consecutive work days, of which one of the days will be the day of internment, unless it is mutually agreed to otherwise in writing by the Chief of Police and the employee. Should a death occur prior to an employee's scheduled vacation, and the Department is so notified of said death in family by the employee, the employee may opt to substitute bereavement leave, as described above, for vacation leave, thereby allowing the employee to reschedule vacation leave.

*(This **bolded** language is a clarification of the parties' prior practice)*

4. Article X – Clothing

- A. Effective **January 1, 2008** clothing allowance will be ~~\$880~~ **\$880.00 in 2008, \$950.00 in 2009, \$1,000.00 in 2010, \$1,050.00 in 2011 and \$1,100.00 in 2012.** Officers will be requested to use a voucher system with the designation of two vendors. The officers will be required to spend **sixty (60%) percent of the allowance** each year ~~five hundred (\$500)~~ and will be permitted to carry forward ~~\$380~~ **forty (40%) percent of the allowance** to the next year. Officers permanently detailed to the Detective Bureau will be permitted to purchase civilian clothes.

The parties agree that employees assigned to the Detective Bureau and/or required to go to court may use ~~\$150~~ **fifty (50%) percent** of the remaining ~~\$380~~ **forty (40%) percent** towards the purchase of civilian clothes.

5. Term of Agreement

**January 1, 2008 through December 31, 2012.**

6. Article XIX – PBA Rights

Delete and Replace:

**PBA Leave Time –**

1. **Effective January 1, 2010, up to two (2) employees designated by the Union as representatives of the PBA, other than the PBA President and the PBA State Delegate, if from this Unit, shall be granted leave from duty with full pay to attend the Collective Bargaining Seminar, the Mini-Convention, the State Convention of the New Jersey State Policemen's Benevolent Association and State of New Jersey League of Municipalities.**

2. **The PBA's designated Unit Representative, President and/or PBA Delegate, if from this Unit, shall be entitled to one hundred (100) hours annually to conduct legitimate union business during his/her regular tour of duty, without loss of pay.**
3. **State Delegate**
  - a. **Notwithstanding the above, the PBA's State Delegate, if from this Unit, will be granted reasonable and sufficient time off with pay to attend the conferences, conventions and monthly meetings of the State Policemen's Benevolent Association, without loss of pay or benefits. Immediately, upon completion of this union business, the PBA's State Delegate shall notify his/her immediate supervisor and if possible, return to work.**
7. **Article – Overtime** (Revise as follows)
  - B. **Overtime shall be compensated at time and one-half the employee's rate of pay for all time in excess of the employee's regularly scheduled work hours. The employee shall have the option of being compensated in cash or compensatory time. If the compensatory time option is elected, the employee shall be credited with one and one-half hours of compensatory time each hour of overtime worked.**
    1. **Should the Employer require regular law enforcement officers to fill a vacancy for an "anticipated event", the Employer shall seek to fill the vacancy from regular law enforcement officers assigned to the shift prior (4 hrs.) and the shift after (4 hrs.) the shift in which the officers are needed. Any law enforcement officer directed by the Employer to be held over from their shift of report early to their shift shall receive one and one-half (1½) times their regular rate of pay.**
    2. **If the Employer directs an employee to report to work for an "anticipated event" during their regularly scheduled time off, even if it is to fill a vacancy created by another officer taking leave time, the officer shall receive two (2) times their regular rate of pay.**
    3. **Should a law enforcement officer volunteer to work for an "anticipated event" during their regularly scheduled time off, they shall be entitled to receive only one and one-half (1½) times their regular rate of pay.**

4. **Should the Employer be required to fill a vacancy for an “unanticipated event (bona-fide emergency)”, the Employer may fill the vacancy with regular law enforcement officers assigned to either the shift prior or the shift after the shift in which the officers are needed, or with regular officers who are on their regular day off and in such an emergent situation law enforcement officers shall receive one and one-half (1½) times their regular rate of pay.**
8. Article XXIX – Fully Bargained Provisions  
NEW PROVISION  
**D. Severance Pay**  
**If the Employer determines to merge with another law enforcement entity, disband, or its equivalent, they shall pay each police officer a severance pay of the officer’s current base salary, including longevity and other stipends, if any. This shall be paid in monthly payments over a period of twelve months to begin immediately upon said action above. The aforementioned obligation shall be null and void if the Employer negotiates terms with a PBA which would provide employment for all officers at their same rate and rank with the new employer.**

#### **POSITIONS OF THE PARTIES:**

##### **For the Borough**

The Borough contends that at the local level governments are struggling to maintain services without layoffs while holding the line on property taxes which already are the highest in the Nation.

For many municipalities in New Jersey, this financial picture is gloomy in itself and does not bode well for the future. However, unfortunately, the Borough is facing that bleak economic future now. *“The Borough was faced with a massive loss of revenue for 2009 which resulted in a three cent increase for that year if the municipal budget had been frozen at the 2008 level - the Borough had to make some hard economic choices for 2009.”* In order to avoid an unacceptable increase in the municipal tax rate, which, in the opinion of the



Belmar Mayor and Council, would have devastated and already overburdened local tax base, the Borough opted to hold the line on spending. In fact, the Belmar Mayor and Council, by unanimous resolution, have declined to accept compensation to serve in their elected positions. That compensation was \$4,000 for the Mayor and \$3,500 for the Council. Additionally, those elected officials have long since ended the prior practice of receiving health insurance paid for by the Borough.

Employee expenses constitute 53% of the overall Belmar municipal budget; thus, it was in this area that the Borough had to make significant changes in order to adopt the municipal budget which would not exceed the levy CAP and unduly burden local taxpayers. The Borough was not successful in negotiating wage freezes for blue collar employees under an existing collective bargaining agreement that expired at the end of 2009. Therefore, the Borough *“was compelled to furlough those employees for ten (10) work days in 2009 in order to de-facto and achieve the same wage freeze which had been put in place for all Borough employees save the police.”*

In support of the position advanced by the Borough, labor counsel for the Borough argues that the testimony of Borough Administrator, Robbin Kirk, clearly establishes that the Borough has not only been putting off building and infrastructure repairs but has spent down its surplus to almost nothing.

The Borough argues that despite reducing its number of full-time staff from 67 in 2009 to 63 in 2010, they are again faced with a fiscal dilemma for 2010, due to a 20% increase in health insurance costs, an 11% increase in pension

contribution costs and a 3% increase in employee salaries. The Borough emphatically states that there is no way they can pay the PBA's proposed police salary increases of 7.65% in 2010. If that were to occur, the Borough's 2000 budget would exceed the State's 4% Levy CAP. Any levy in excess of that 4% CAP would require the Borough to apply for a Levy CAP with the local Finance Board. The Belmar Mayor and Council have concluded that it will not increase the local tax levy by more than 4% in 2010 and more importantly, the PBA has offered no evidence which would justify the Local Finance Board finding that Belmar police officers getting a retroactive increase in 2009 is an extraordinary cost justifying the CAP waiver.

Belmar has a population of some 6,010 as per the 2000 Census. However, the Borough's year round population as of 2008 has actually declined to 5,908.

Belmar is a resort community catering to summer tourists, rentals, and seasonal home owners. There are 21 full-time police officers in Belmar (all but the Chief is represented by Local No. 50) and 75 special police officers work for the Borough during the resort months (May through September). *"These special police officers perform the majority of law enforcement work during the four "vacation" months."*

The Borough argues that its senior population (those over 65 years of age) was 15.7% as of the 2000 Census, which is higher than the National average. Moreover, the median income in Belmar as of 1999 was \$44,895, lower than all but 6 of the 53 Monmouth County municipalities and second lowest

ahead of only Bradley Beach among the 14 comparable resort communities in the County. Moreover, the Borough argues that there has been little growth in its rateables in terms of new buildings. (See Exh. B-9).

In 2007 there were 3.5 full-time police officers per thousand population. This put Belmar in the middle of the pack vis-à-vis the comparable towns. The Borough contends that Exhibits B-14 and B-15 clearly establish that the majority of the arrests, instances, summonses and ordinance violations occurred during the summer resort months, and the majority of this work is done by the special police officers.

The equalized municipal tax rate leaves Belmar in the middle of the pack with respect to the comparable towns. (See Exh. B-18). That municipal tax as a percent of the household in Belmar is 5.06% which is as high as any of the comparable municipalities except Sea Girt. (See Exh. B-16).

The Borough argues that the growth in police salaries for the Belmar municipal budget is evident from several Borough exhibits. Business Administrator, Robbin Kirk, testified that appropriations have been increasing in Belmar every year, even in 2009 with the wage freeze. (See Exh. B-41). This results in operating budget expenses per household increasing and that figure for 2009 is a staggering \$4,428.00 per each household in Belmar. (See Exh. B-42). Moreover, the revenue stream has been shrinking since 2004 with a significant decrease from 2007 to 2008 and a precipitous decline from 2008 to 2009. (See Exh. B-43/B-61).

Ms. Kirk testified (see Exh. B-49) that there was an almost 1% drop in the tax collection rate from 2007 to 2010. A 1% drop in the tax collection rate results in a loss of revenue to the Borough of approximately \$180,000.00. Ms. Kirk testified that she had to increase the “reserve for uncollected taxes” in the Belmar budget by approximately \$120,000.00 from 2008 to 2009. (See Exh. B-53).

Ms. Kirk also identified (see Exh. B-54) that the police department costs in Belmar have doubled since 1966, a span of only 13 years. The impact of those increases is evident in Exh. B-56. Exhibit B-55 and related charts show the effect of the trend calculated into the next 15 years, demonstrate why the trend must be stopped if the Borough is to have any chance of continuing to offer its residents the same level of police safety services as currently exists in Belmar.

The Borough argues that a careful analysis of Exh. B-61 clearly establishes why the Borough is in the financial shape it is in and paramount among the reasons is the loss of revenue. Important to consider is the fact that the Borough’s fiscal crisis is not attributable to overstaffing because the Borough has actually reduced its workforce from 94 to 63 in the last 16 years. However, the cost for those employees continues to rise and outstrip the Borough’s “smart staffing” changes.

In 2009, the Borough’s tax Levy CAP was \$266,377. Adding this CAP growth figure with the non-CAP increases, the Borough’s tax levy grew by 6% in 2009 over 2008. In other words, Belmar spent within a scant \$2,000 of the total Levy CAP and had over \$100,000.00 in non-CAP increases in a budget in which no salary increases were included. The Borough contends that this fact is not

only startling, but demonstrates two essential points with respect to the Borough's 2009 finances: The Borough's budgetary woes for 2009 are real given the fact that the Borough spent its tax levy CAP without budgeting for any salary increases, and secondly, Belmar taxpayers have been and will continue to be burdened by large tax bills, which means that they will receive the maximum municipal tax bill permitted in 2009 under the State's Levy CAP laws.

The Borough argues that this is likely to continue in 2010 even with the Borough's budget of a 3% increase for its employees.

The Borough contends that the most significant cost increases for employee benefits in both Belmar and the larger world is in the area of health insurance. Health insurance costs to the Borough have tripled in the last fifteen years, and the Borough will be spending \$1,768,500.00 – a 20% increase – for health insurance for 63 employees, plus 43 retirees. In support of this position, the Borough estimated an increase in health insurance costs of 15% for 2010, but has now determined the increase is actually 20% for 2010.

The Borough argues that because police officers retire at a younger age than non-police employees, the Borough's share of retiree health insurance for police officers is disproportionate and growing more so each year. The current agreement between the parties obligates the Borough to pay 100% of health insurance costs for single police officers and 90% of health insurance costs for employees with dependent health insurance coverage. The employee contribution for dependent health insurance coverage is less than \$100 a month or \$1,000 per year. Exhibit B-79 shows that the average for employees' health

insurance contributions for 2008 in the northeast region is around \$250 per month or \$3,000 per year. The Borough argues that neither the 10% contribution nor the Borough's proposed increase in the contribution rate to 15% will cover the 20% increase the Borough will be obligated to pay for health insurance in 2010. Stated another way, it means that it will cost the Borough at least \$3,500 per employee with dependent coverage and added premium costs while the increase to the employee from 10% to 15% contributions will result in an additional payment for dependent coverage of \$500.00 per year.

The Borough strongly argues that if the Arbitrator awards the Borough's final offer, it will in no way stop or even slow down the exponential growth in health insurance costs for its employees. It will simply provide a small one-year offset against such health insurance growth. The Borough contends that police officers are very well compensated for their work. (See Exh. B-83). The top salary of police officers after nine years of service in 2007 is \$84,000 per year which does not include longevity, holiday pay, overtime reimbursement for unused sick leave, health insurance (worth some \$20,000.00) and retiree health insurance. The Borough argues that retiree health insurance is not provided to all police officers in the area.

The Borough argues that for 2009 the cost of police officers salaries was \$2,482,542.00. (See Exh. B-64). Rounding that figure up to \$2,500,000.00, means that 1% of new salary money for a police officer in Belmar is \$25,000.00. The Borough argues that same one point figure can also be used for 2008 because the cost of police salaries for that year was only \$10,000 less than

2009. (See Exh. B-69). The health insurance costs for the Borough for the 21 PBA members was \$293,390 for 2007 and in 2010 was \$330,972.00. The difference of \$37,582.00 (a 13% increase) represents approximately 1.5% of the total police salaries. In other words, for health insurance alone, the Borough has effectively given its police officers a 1.5% salary increase for 2010. When you add to that figure the cost of the 2009 health insurance increase of \$6,000.00, which would equal \$44,000 in increased health insurance costs that represents approximately a 2% increase in a police officer's salary.

The Borough argues that the \$1,000 per year contribution for dependent coverage increased by \$500 effective 1/1/10 (10% to 15%), results in a reduced expense to the Borough of \$9,000 a year in the third year of the Agreement only. That still leaves the Borough paying the same \$35,000 more for health insurance over the three year term of the proposed Agreement with those numbers guaranteed to increase exponentially in 2011 and beyond.

The Borough is opposed to an Award in excess of three years. Given what is happening at the federal, state and local fiscal and governmental levels, as well as taking into account the uncertainty of health insurance and pension contributions, the Borough is not comfortable with any Award based upon a fiscal forecast and assumes that the Arbitrator is no more comfortable making a long-term Award based upon such an economic prognostication. The Borough agrees that police officers will continue to annually contribute 8.5% of their salaries to PFRS.

The Borough argues that beside the health insurance costs, the second fixed cost to consider is the cost of guide movement. That cost to the Borough is as follows:

2008 -	\$56,000
2009 -	\$62,000
2010 -	\$51,000

Accordingly, the Borough contends that there is an automatic 2% on the salary guide per year cost to the Borough and the cumulative cost of these guide step increases are \$343,000 or 12% on the police salary guide for the period between 2007 and 2010.

The Borough also argues that the pension contributions increase need to be factored into the equation for resolution. The Borough has been forced (and will be forced in 2010) to absorb the entire cost of increased pension contributions for its police officers or \$123,463 for 2008, \$51,172 for 2009 and \$39,332 for 2010. The Borough argues that because they must assume the full cost of pension contributions, this falls completely onto the backs of the Borough's taxpayers. The accumulated increased pension cost would amount to a three year increase of \$512,000 or approximately 20.5% salary increase for police. The Borough argues that when you add the accumulated pension cost to the health insurance cost and guide movement cost over a three year period, which totals 34%. The Borough argues that even if police officers were to receive no salary increase for 2008, 2009 and 2010, it will cost the Borough 34%



more in terms of base salary cost to employ those officers for that three year period.

The Borough argues that their offer of 3% for 2008, 0% for 2009, and 3% for 2010 works out to 12% (3% for each of the three years from 2008 to 2010 and 3% for 2010) which when added to the base figures results in a total increase of 44% for the three year period. The Borough argues that this will definitely allow the Belmar police to maintain and even increase the already very competitive salaries, but in no way alter their excellent medical plan or other economic benefits such as clothing allowance, longevity, terminal leave, (reimbursement of unused sick leave), and retiree medical benefits.

The Borough argues that the PBA's salary request of 3.9% for 2008, 3.9% for 2009 (deferred to 1/1/10) and 3.75% for 2010 works out to 19.3% or \$449,000 over three years. Accordingly, that offer constitutes a 61% increase in salary above the Borough's final offer.

#### **STATUTORY CRITERIA** (PRESENTED IN BOLD)

1 Concerning the statutory criteria, the Borough argues that the **welfare of the public** is best served if its final offer is awarded. The Borough contends that there is no possible public interest to be served by the Arbitrator granting salary increases to the Belmar police officers for 2009 when all other Borough employees had their wages frozen for that year. The Borough argues that police officers in Belmar did better in 2009 than they did in 2008 because the Borough assumed 100% of the cost of health insurance and pension increases for that

year for police officers. Moreover, police officers not at the top step of the salary guide moved on that guide.

The Borough argues that police officers who will earn \$95,000, exclusive of health benefits, after nine (9) years of employment is not something to laugh at, but it is in fact something that public clamor concerning high salaries, and in particular the excessive cost of health benefits and pensions for public employees, keeps increasing constantly.

More importantly, no proof has been offered that the public's interest in having an effective and hard-working police force will be hindered or inhibited if the Arbitrator awards the Borough's final offer. The Borough contends that one of the major factors for this is the fact that during the busy resort season police work is performed by special police officers who are not part of the PBA Local No. 50 bargaining unit. The Borough acknowledges the work that the 21 full-time regular police officers do, but they just simply acknowledge the reality of how much of the heavy police work in the Borough of Belmar occurs during the summer months and that much of this work is performed by special police officers.

The Borough argues that police officers being placed on the same footing as all other Belmar employees would not lead to police officers being discontented with their position such that their work serving the public would somehow suffer. There was nothing offered in the hearings to support any type of assertion like that. More importantly, it is not in the public's interests to treat one group of employees differently than another. In support of that argument,

the Borough references Arbitrator Joel Weisblatt's determination on disparate treatment in the matter of the Interest Arbitration between Township of Holmdel and PBA Local 239, Docket No.: IA-93-163. (Arb. Weisblatt 1995). Arbitrator Weisblatt determined "*unreasonably favorable treatment of police units could likely cause the morale of other public employees in the municipality to wane.*" Belmar contends that their argument is as compelling as that presented in Holmdel and the Borough offers this as one of the reasons why they could not offer salary increases for 2009.

**2 Concerning employment** in general, the median household income in Belmar as of 1999 was \$44,000. If that had increased to \$50,000 as of 2008, that number pales in comparison to the \$80,000 per year that Belmar police officers make after only nine years of service in the municipality. The Borough argues that if you add holiday pay and longevity (both pensionable sources of income for Belmar police officers) the base salary is about \$95,000. That \$95,000 is more than double what the household median is for Borough resident and it does include the terrific health insurance benefit package provided for the Belmar police officers.

The Borough argues that the economic package for its police officers exists for employees who are not required to have more than a high school diploma to be hired, and who can retire after 20 years of service at 50% of full salary (with retiree health insurance) for the rest of their lives and who are all but guaranteed employment until said early retirement.

The Borough argues that the PBA will probably assert that police work is inherently more dangerous than other employment. The Borough argues while that might be true insofar as suburban police officers occasionally deal with violent crimes and themselves carry weapons, no evidence was presented to the Arbitrator that working as a police officer in the Borough of Belmar is more physically dangerous than other types of work. In fact, a person working a physically demanding blue collar job is, on a daily basis, much more likely to be injured in the line of duty than a police officer.

The Borough also argues that any PBA argument that working as a police officer is a stressful job must be looked at very carefully. While the Borough agrees that there may be some truth to that, there is no proof offered that anyone in Belmar or anyone else in the State of New Jersey for that matter, leaves police work for any other type of work, coupled with the fact that there are literally hundreds of applicants to fill every police officer vacancy in Belmar.

The Borough argues that the salary increases the Belmar police officers have consistently outstripped employees in the private sector. (See Exh. B-21). The Borough argues that even though these are tough economic times, police officers receive salary increases, health insurance benefits, pension contributions where in other areas such as the private sector that is not always true.

The Borough asserts that over the past ten (10) years Belmar police officers have received cumulative salary increases which are 8% higher than state and local government median wage increases. (See Exh. B-29). The Borough argues that this is a drastic disparate amount, given the fact that most

Belmar police officers make \$80,000 or more, which is at least double the median salaries of public employees in general. The Borough argues that Exhs. B-31 through B-40 generally highlight some of the trends in the public sector.

Moreover, Exh. B-88 sets forth percentage salary increases for the Borough's police officers, blue collar employees, white collar employees and supervisory employees. The Borough argues that these percentages are misleading insofar as the Belmar police officers frequently make double what their non-public safety Borough employees earn. For example, a Belmar police officer receiving an \$80,000 salary with a 4% salary increase equates to a \$3,200 increase. Conversely, that same 4% increase for a Borough employee making \$40,000 per year results in a \$1,600 increase. The Borough argues that the Belmar police officers are doing much better financially than their blue and white counterparts. The disparity applies not only to base salaries, but to benefits such as clothing allowance, holiday pay and longevity which are either not received at all by white and blue collar workers, or provided at a much lower dollar amount than for Belmar police officers.

3 The Borough argues that a review of **comparable municipalities** (see Exhs. B-82 through B-88) demonstrates that the Belmar police officers also do well economically when compared to comparable municipalities. The Borough asks that the Arbitrator note that these comparables are different than the shore community comparables. *"This is significant because two of the added comparables, Neptune Township and Wall Township are two of the highest paid*

*police departments in Monmouth County. Thus, the fact that Belmar police officers compare favorably even on this elite comparable list is significant.”*

The Borough argues that the base pay for police officers in Belmar does not include holiday pay, which consists of \$4,200 at maximum pay. Add that to the \$84,964 maximum salary takes Belmar's base salary at max to \$89,164, which is roughly comparable to maximum base salaries for police officers in Wall Township.

The 1999 median household income for Belmar was \$44,896 and in Wall Township it was \$73,969, which is almost a \$30,000 difference in the median household income. In 1999 8.6% of Belmar's population was below the poverty level, while in Wall the figure is 2.25%. The 2008 unemployment rate in Belmar was 5.8% and the unemployment rate in Wall was 3.5%. Wall's municipal tax rate is 5.68 and Belmar's is .665. The Borough also argues that there are 3.5% police officers per 1000 population in Belmar, while in Wall the number is 2.7%. The Borough argues that Belmar is competitive with the pay received by police officers in Wall Township which, along with Neptune Township, pays its police at the highest salary level in Monmouth County and Belmar does this despite the fact that it is considerably poorer by almost every objective measurement.

The Borough argues that when comparing Belmar to Neptune Township the true disparity is not in wealth but in crime rate. The total crimes for 1000 population in Belmar and Neptune were roughly commensurate. (See Exh. B-12). However, Exh. B-13 shows that Neptune Township has a violent crime rate which is more than two times that in the Borough of Belmar. Based upon that

statistic, police work in Neptune Township is likely to be more dangerous than that in the Borough of Belmar. In addition, given the fact that Belmar employs almost 100 law enforcement officers (21 regular officer and 75 Class II special officers) during the resort months, when the vast majority of events in the Borough are committed, the number of officers Belmar has to handle crimes actually exceeds in pure numbers the number of police officers in Neptune Township.

The Borough also argues that several of the comparable municipalities do not offer retiree health insurance. (Lake Cuomo, Manasquan, Spring Lake, and Spring Lakes Heights). This retirement benefit is worth tens of thousands of dollars to each currently employed police officer.

More importantly, nothing was presented to the Arbitrator by PBA Local No. 50 that any of the comparable municipalities or that matter any municipality in Monmouth County, are in the distress which is being experienced by the Borough of Belmar. Since there is no indication in the record that any Monmouth County municipality is in the same distress which characterized the current budgetary situation in Belmar, mere salary comparisons or even equalized tax comparisons from municipality to municipality are of little relevance with respect to this particular interest arbitration.

4 The Borough argues **that the overall compensation received** by Belmar police officers is excellent with a base salary that includes holiday pay and longevity in 2007 at \$95,000. The Borough's offer would move that number to \$100,000 in 2010. Additionally, Borough police officers receive health insurance

coverage, prescription drug coverage, dental coverage and even vision coverage. The yearly cost to the Borough for family health insurance per police officer is \$25,000 and a police officer pays only \$1000 for dependent coverage. A fully funded pension system coupled with 25 vacation days or five full weeks of vacation each year, as well as 15 sick days after the first year of employment and every year thereafter (which accumulate without limit), establish that Borough police officers are afforded excellent overall compensation.

Beside the above, police officers receive three fully paid bereavement days, a clothing maintenance allowance, uniform allowance, educational stipend, out-of-rank pay, three personal days per year, overtime work and a guaranteed minimum of four hours pay for each time an officer appears in County Court or Superior Court.

The Borough strongly argues that even though police officers are scheduled to work 2080 hours per year, they actually work considerably fewer hours when the 13 paid holidays, five weeks of paid vacation and three personal days are taken into account. Accordingly, police officers in Belmar work 1752 hours per year, which means the hourly rate for a 20 year Belmar police officer is \$57 per hour. The Borough argues that if you factor in the cost of the health insurance, pension contributions and total compensation received by a 20 year Belmar police officer, the PBA's final offer would have a significant negative financial impact on the governing unit, its residents, and its taxpayers.

**5      The Borough argues that the Arbitrator is required to review the CAP limitations imposed on municipalities by N.J.S.A. 40A:4-45, et seq.**



Additionally, the legislature has codified the CAP consideration requirement at 34:13A-16g(9) which requires the Arbitrator to consider the financial impact of the parties' offers on the governing unit, its residents and taxpayers.

The Borough argues that they have actually demonstrated that to award the PBA's final offer would have an adverse financial impact upon the Borough's taxpayers and that the Borough cannot afford to pay the wage increases sought by the PBA. Most importantly, there is little doubt that the Borough taxpayers are among the poorest in Monmouth County, and they cannot afford to pay the PBA's exorbitant salary increases. It is important to note that Belmar police officers salaries are already more than twice the median household income of the residents of Belmar.

The Borough argues that the 4% Levy CAP, has been established by the State of New Jersey, which actually means that it is not in the interest of the public to increase the local tax levy by more than 4%. The Borough argues that if the PBA's final offer is awarded by the Arbitrator, the Borough will be required to seek a Levy CAP waiver for 2010. The only other alternative would be to require the Borough to lay off employees to pay for police salary increases.

The Borough is not sure that the Arbitrator has the authority to compel the Borough to obtain a waiver of the 4% Levy CAP. The Borough emphatically states, *"The Mayor and Council have no intention of voluntarily seeking such a Levy CAP waiver for 2010."*

6 The Borough argues that the **cost of living** militates against the PBA's final offer and clearly establishes that the Borough's final offer is proper and

appropriate and must be awarded. The Borough argues that the cost of living for 2008 was 3.8% and Belmar is proposing a 3% increase for 2008. The difference between the two is nominal and should not inhibit the Arbitrator's ability to award the Borough's final offer. For 2009, the CPI-U has decreased by .4%. The Borough argues if you add that to the 3.8% for 2008 means that the CPI-U has increased by 3.4% for the 23 month period as compared to the 3% increase the Borough is proposing for 2008 and 2009. The Borough argues that this .4% disparity between the historical CPI and salary increase proposed by the Borough shows that the Belmar police officers salary increase for the period between 1997 and 2009 outstrip the CPI increase by more than 14%.

The Borough also argues that, *"For several years the CPI, along with a comparison of police officers' salaries to the private sector employment equivalents and stability and continuing of employment in interest arbitration factors have been largely ignored by Interest Arbitrators. It would be particularly ironic if, in this matter, the interest arbitration decision actually relied on the CPIs as a means of granting a higher salary increase to police officers in part because of the CPI factor. The cost of living factor must be considered in conjunction with the other factors, particularly, in this matter, the Borough's ability to pay or lack thereof. Insofar as the Borough of Belmar has demonstrated beyond cavio that its Final Offer must be accepted because of its inability to pay for a deferred salary increase for its police officers in the calendar year 2009, the fact that, for that one year, there will be a disparity in the Borough's favor, for the first time in*

*memory between the 2009 wage freeze and the CPI for 2009 should in no way tip the scales in favor of the PBA's Final Offer in this matter."*

The Borough argues the only way to legitimately determine a cost of living increase is to look at the employee's total compensation package and Belmar police officers have received an increase in their total compensation as gauged by salary guide increases, the cost of employees' health insurance and the increased pension contribution made on behalf of employees by the Borough have exceeded the CPI increases for those two years. The Borough argues that through no fault of the police officers themselves, the cost of employing a police officer in the Borough of Belmar has skyrocketed and these fixed cost increases have been more than three times the cumulative CPI increases for the three year period in question.

7 The Borough contends the **continuity and stability of employment** enjoyed by the PBA is far better than what other public or private employees enjoy. This factor of the nine statutory criteria weighs heavily in favor of the Borough's Final Offer. Police officers are well paid and are so contented in their position that they never leave short of retirement.

The Borough argues that the job security point bears particular notice. In that regard, the Borough contends a 24 year Belmar resident could start his or her own computer software consulting company, and in a relatively short period of time if he or she were both lucky and very talented might be able to earn \$50,000 or \$100,000. However, that employee would have no paid sick time, no paid vacation time, would have to buy his or her own health insurance, thereby

reducing the earnings of \$100,000 by tens of thousands of dollars. The Borough argues in contrast, a Belmar police officer has the surety of continued employment, the guarantee of family medical insurance, dental insurance, and vision insurance for the life of his or her employment and thereafter into retirement, an automatic employer-made contribution to an excellent pension system, guaranteed time off each year, a guaranteed increase in one's salary from year to year, guaranteed longevity and holiday pay, and the ability to retire, collect a pension and obtain lifetime medical benefits after only 20 years on the job.

The Borough argues that for a single year and due to financial exigency, which is not the fault of either the Borough as police officers, one of those favorable continuity and stability factors – the guaranteed annual increase – not be given to its police officers. The Borough argues that there is no doubt that this Interest Arbitration criterion strongly favors an award of the Borough's Final Offer.

The Borough argues that the Arbitrator should award the other components of its Final Offer and reject each and every component of the PBA's Final Offer.

The Borough argues that an agreement in excess of three years is detrimental to the Borough and one that they are unalterably opposed to. The Borough contends that the proposals of the PBA, which seek the expansion of the scope of bereavement leave is not necessary, especially due to the amount of time the officers already have off. However, the Borough's financial situation clearly establishes that they cannot afford it. The same can be true about the

PBA's proposal concerning clothing allowance. There was no comparable information presented to the Arbitrator with respect to this and Officer Walsifer acknowledged that he had not made any such comparison. More importantly, any uniform, clothing or equipment damaged in the line of duty is replaced at the Borough's cost.

The Borough does not object to the PBA's carry forward language concerning the clothing allowance or, for that matter, to the ability of the employees assigned to the Detective Bureau to spend half of the carry over clothing allowance on civilian clothes. However, there is no justification for increasing the current clothing allowance either with respect to the experience of the individual officers or given the Borough's financial situation.

The Borough argues that the PBA proposal to revamp PBA rights is impossible for the Borough to even comment upon what this proposal will cost because the Borough has no idea how many hours per year the conferences, conventions and monthly meetings of the PBA would be attended. *"The Borough argues with a small collective bargaining unit this proposal is not only unjustified but startling inappropriate. This proposal would result in the equivalent of several months per year off with pay for a single police officer, all for "union business" and for a unit of 21 police officers."*

The Borough contends that if a PBA Local No. 50 member wants to attend, for example, the New Jersey Legal Municipalities Convention, he can do so by using his accrued time, or by switching shifts. Concerning the 100 hours of Union business, the Borough argues that there is not likely to be 100 hours of

Union business a year in Belmar's small Local 50 unit. The Borough contends, there may, however, be 100 hours of Union business for the Local 50 regional bargaining unit; nevertheless, as the Borough points out in its cross-examination of Officer Walsifer, there is no reason why the Belmar citizenry should be subsidizing the work of the PBA 50 President representing police officers from outside Belmar's environment.

The Borough argues that they have been in serious substantive negotiations with respect to potential mergers of the police department. The Borough also understands that it will be practically and physically difficult if not impossible to maintain small police departments in New Jersey and, thus, is actively exploring the possibility of merge and consolidation of some if not all services. The Borough understands the PBA's proposal with respect to this issue. However, the payment of one year's pay is in the Borough's opinion simply excessive. The Borough would agree to severance pay equivalent to two weeks of pay for each year of service that the employee has been employed in Belmar. This is a severance pay provision which has been negotiated with the supervisory and white collar bargaining units in the Borough. Since other Belmar employees have agreed to this severance language, there is no reason why the Belmar police, who are already in a better financial position given their benefit packets, then the non-public safety employees in Belmar, should receive severance pay while in excess of that received by other employees.

Moreover, the Borough contends that it is illogical if not ridiculous for someone working three years to receive 12 months pay. Any reasonable

severance pay provision, whether in the public or private sector is experience based.

The Borough submitted a reply brief. At the interest arbitration hearing, the Borough reserved its right to submit a reply brief. The reply brief challenges all of the assertions put forth by the PBA in its brief and reaches the same conclusion reached in the initial brief that the PBA proposals should be rejected and the Final Offer from the PBA should be rejected and the Borough's Final Offer should be awarded by the Arbitrator.

#### **For the PBA**

The PBA argues that the Borough will probably attempt to show that of the 6,045 residents of the Borough of Belmar, only 5,108 are employed. They will further show and argue that the 6,045 residents comprise 1,342 families that have a median income of \$61,250.00 (see Exh. B-2). The PBA contends that while the figures are accurate and credible, they are from the 2000 US Census which is based on 1999 statistics. That is a ten year period that is removed from this arbitration.

Using the formula of the U.S. Bureau of Statistics, the median income of \$61,250.00 in 1999 is comparable to \$79,152.00 in 2008. The PBA argues that reviewing the Borough's exhibits and in particular Exh. B-5 (New Jersey Municipal Data Book) shows a median income of \$44,896.00 does not agree with the median income of the same year shown in Exh. B-2 of \$61,250.00. Accordingly, the PBA questioned the accuracy of the information presented, as

well as the sources of the documents, but clearly a discrepancy of the data is a major concern as it is applicable to this matter.

The PBA argues that while regular police officers adequately perform their duties, the Borough's argument that a majority of the arrests between June and August, at least in 2009, were made by special police officers is not correct. Detective Walsifer was able to discredit the impact of this testimony by testifying that all arrests made by special police officers in the Borough of Belmar are done with the approval and supervision of regular police officers.

The PBA strongly objects to the Borough's submission of Exhs. B-17, B-18, B-19 and B-20 as the charge purported to show absolute fact(s) for the purpose of proving a negative comparison(s) to the Borough of Belmar without establishing a foundation or source for the information or the underlying documents. The PBA makes a similar objection to the Borough's submission of Exhs. B-41 through B-58. These charts purport to show the ten year history of financial facts in the Borough of Belmar. The PBA makes its objection based upon the fact that (1) the Borough has failed to provide the back up documents to support these facts and (2) the Borough has attempted to submit information that is outside the period of review as a successor contract commences on January 1, 2008, and the prior contract had a term from January 1, 2004, through December 31, 2004.

The PBA strenuously argues that the Arbitrator should deny the submission of the stated exhibits, or severely limit the weight given to those exhibits.



The PBA argues that the **interest and the welfare** of the public is a statutory requirement and Exhs. P-96, P-97 and P-98 demonstrate the total crime index in the State, the County and Belmar, the total violent crimes for the State, County and Belmar and the total of non-violent crime for the State, County and Belmar. Those exhibits show that Monmouth County reported 3,312 arrests in 2006, 3,373 arrests in 2007, and 3,682 arrests in 2008. The State reported that unfortunately there are far too many law enforcement officials assaulted in this State and reported the following statistics for police officers assaulted in the line of duty: 3,092 in 2006, 3,006 in 2007 and 2,572 in 2008.

The PBA argues that the Employer may attempt to dispute these statistics by arguing that the residents that form the basis for these percentages are based on a skewed population. Exh. B-12 shows that the total population by the U.S. Census for the year 2000 in the Borough of Belmar was 6,045. The Borough contends that during the summer months the Borough's population blooms to nearly 40,000 people. The PBA does not necessarily dispute this fact. The PBA argues that Exhs. P-96, P-97 and P-98 show a crime statistics comparable to the Borough of Belmar to Monmouth County and the State of New Jersey. The comparison shows that for reported years 2006, 2007 and 2008, the Borough of Belmar police department far exceeded the County and State total crime index and reported criminal offenses per 1000 residents.

While the violent crime indices for the Borough of Belmar are comparative to those of Monmouth County and the State of New Jersey, Belmar far exceeds

the indices of Monmouth County and the State of New Jersey for non-violent crimes.

The PBA argues that several of its proposals must be addressed in the context of this criterion. Detective Walsifer testified that the modification of Article 17, Educational Compensation and Incentive Pay by compensating all members not on duty four hours of compensatory time for firearm qualification was necessary because law enforcement officers are statutorily required to qualify in firearms twice per year. That requirement has now been expanded to require qualification for both day and night conditions, and more importantly, for every firearm that the officer uses or could be required to use.

The PBA seeks to enhance the current allotment of two hours of compensatory time to four hours based upon the statutory requirement which was established to protect the interest and welfare of the public.

The PBA contends that the modification of bereavement leave is in the best interests and welfare of the public and to permit law enforcement officers time to mourn the passing of their family. Law enforcement officers are witnesses to many tragic scenes involving serious injury and death and this occupational peril causes a more profound emotional effect on law enforcement officers when members of their family pass. Given the unparalleled nature of law enforcement work, it best serves the interests of the public and the employer and officer a mourning period for family and relatives.

The PBA asserts that *"It is well established by the policy and procedures of law enforcement departments across the State that the stature and respective*

*law enforcement officers are enhanced by having and maintaining a well-kept professional uniform. As such, the PBA's proposal to increase the clothing allowance even in difficult economic times is rational and appropriate over the requested five year contract."*

Awarding the Borough's proposal for a three year contract would have the Agreement expire in December of 2010, which would place the parties back at the bargaining table in September of this next year and most likely back in interest arbitration by 2011.

The PBA argues this is foolhardy and against the interests and welfare of the public. Not only is there a cost of litigation, there is an unseen cost due to the labor unrest. As such, the PBA argues that its proposal to extend the contract for a five year period is more prudent.

The PBA's proposal concerning PBA rights is a major factor for the PBA in the instant matter. The PBA asserts that their proposal is permitted by State statute, N.J.S.A. 11A:6-10. The PBA's proposal seeks to provide a member of this unit, if elected to the position of President with Bradley Beach PBA Local No. 50, leave time while on duty to address labor issues of the Union. Normally, the elected PBA President or State Delegate also acts as the Union representative and, as such, he/she is responsible for managing and disposing of all labor related issues, including grievances, disciplinary actions, interaction with the department administration and the appointing authority.

The PBA contends that strong and effective labor relations have been shown to be beneficial to the interest and welfare of the public and that costly

litigation may be avoided with well-informed and involved discussions. For this very reason, the PBA is seeking 100 hours annually for the Unit representative, President, and/or a PBA Delegate from this Unit to conduct legitimate Union business during his/her regular tour of duty, without loss of pay. The PBA has also included language codifying the current understanding of the parties as it pertains to the annual and monthly duties of the State PBA Delegate.

The PBA contends that its most controversial proposal is the proposal involving overtime, and the PBA seeks to revise current contractual language to provide an overtime proposal which was created to protect officers' schedule for regular days off. Detective Walsifer also provided undisputed testimony that due to the current work schedule and limited manpower; police officers of this unit only get every third weekend off. To date, when manpower is required, the police administration has called in those officers, in effect limiting and disrupting the officer's ability to have some manner of a normal personal life. The PBA also argues that they endeavored to show the Employer that the police administration could fill vacancies for anticipated events with regular law enforcement officers who are scheduled to work both immediately prior to and after the shift requiring the overtime. The PBA argues that if law enforcement personnel were needed, police administration could fill the assignment by holding over an officer from the prior shift and calling in an officer from the subsequent shift for a period of four hours each. This will not impact or has minimal impact on those officers that had already scheduled to work and less likely have made alternate or less flexible plans.

The PBA argues that its provision for severance pay, if the Employer determines to merge with another law enforcement entity, is necessary and vitally important to the instant welfare of the public.

The PBA argues that it is difficult to argue against the Borough's proposal seeking employees to contribute 15% of the cost of dependent health coverage. However, that proposal is unfairly skewed to affect employees and/or households where dependents have independent access to health benefit coverage. The PBA references the fact that under cross-examination of Borough Administrator Kirk, the Borough was not in favor of a plan that would require all employees to contribute. The PBA contends it would seem that the Borough's proposal is more for political reasons to show that its employees are making contributions rather than their stated pretense of needing the contribution to lessen the cost of health care.

The PBA also contends that the Borough's proposal to eliminate all the practices and established policies of the police department is unconscionable and will lead to labor unrest and increased litigation or a demand to place all such practices and policies into the contract to ensure that there is no diminution of benefits.

The PBA argues that Exhs. P-64 through P-70 establishes the positive and progressive action of the Borough in an attempt to provide a better quality of life for its residents. The PBA recognizes Borough Administrator Kirk to be an expert witness as it pertains to municipal finance, but no credentials were ever introduced to show that she possessed a broad expertise in economic trending.

The PBA argues that the review of the various exhibits and the charts in its post-hearing brief clearly establish a significant shortfall within the area of wages that the PBA members are experiencing. Chart #1, which shows 22 municipalities, reveals that the average top pay in 2006 was \$84,189.00, while Belmar's top pay for that same time period was \$81,287.00. This top step is of paramount importance because most police personnel spend most of their careers at the top step. The PBA contends that for 2006 alone, there would need to be a wage adjustment of at least \$2,902.00 just to achieve the average.

Chart #2 shows, for 2007 of the same communities, the average to be \$87,528.00, and Belmar's top step is \$84,529.00. The similar argument as made with Chart #1 would mean that to be at average in 2007, a Belmar police officer would have to receive a \$2,989.00 increase.

Chart #3 is an analysis of the top step of the same municipalities for 2008, 2009, and 2010. That chart shows the following:

<b>2008</b>	\$90,578.09
<b>2009</b>	\$92,783.00
<b>2010</b>	\$98,648.00

The PBA contends that a review of Chart #4 is a comprehensive demonstration of how the top step pay of police officers in the Borough of Belmar equate to the base pay of top step police officers in other municipalities. This chart incorporates the data which was previously used in Charts 1, 2 and 3 and seeks to more fully analyze and compare that data to the PBA's wage proposal. A review of that chart shows the following:

	<b>AVERAGE</b>	<b>BELMAR</b>
2006	\$84,189.00	\$81,287.00 (minus \$2,902.00)
2007*	\$87,528.00	\$84,539.00 (minus \$2,989.00)***
2008*	\$90,578.00	\$87,836.00 (minus \$2,742.00)***
2009**	\$92,783.00	\$91,262.00 (minus \$1,521.00)***
2010	\$98,648.00	\$94,828.00 (minus \$3,827.00)***

*\* This average is derived from 16 of the 21 contracts in evidence arranged from a low of 3.5% in Sea Bright to a 4.5% wage increase in Tinton Falls, which resulted in an average of 4.03%.*

*\*\* This average is derived from 11 of 21 contracts in evidence arranged from a low of 3.5% in Sea Bright to a 4.5% wage increase in Tinton Falls, Bradley Beach and Aberdeen that resulted in an average percentage wage increase of 4.16% for those two years.*

*\*\*\* This was computed from the 3.9% proposal of the PBA.*

The PBA argues that even if the Arbitrator were to award the PBA's entire unmodified wage position, the top step wage for a Belmar police officer would increase to \$98,519.00 in 2011 and \$102,361.00 in 2012. Comparatively, if the other municipal contracts would increase by only 2% annually for 2011 and 2012, Belmar would still lag behind the police officers of the other municipalities.

The PBA contends that compounding this disparity is the Borough's proposed wage increase of 3% in 2008, a 0% increase in 2009 and a 3% increase in 2010. That would severely impact the comparability of police officers to those police officers of the evident municipalities. Based upon the Borough's

proposal, top step police officers in 2008 and 2009 would receive a base wage of \$87,075.00 and for 2010 would receive \$89,687.00 base wage.

The PBA did the same analysis and used Chart #5 for Superior Officers. They recognize that not every comparative police department has Lieutenants and Captains and they were somewhat limited in their comparative analysis to the rank of Sergeant. However, using that type of analysis which appears in Charts #1 through #4 shows that:

	<b>AVERAGE</b>	<b>BELMAR</b>
2006	\$88,613.00	\$86,902.00
2007*	\$92,648.00	\$90,379.00
2008*	\$96,028.00	\$93,904.00***
2009**	\$99,529.00	\$97,566.00***
2010	\$103,226.00	\$101,371.00***

*\* This average is derived from 16 of the 21 contracts in evidence arranged from a low of 3.5% in Sea Bright to a 4.5% wage increase in Tinton Falls, which resulted in an average of 4.02%.*

*\*\* This average is derived from 11 of 21 contracts in evidence arranged from a low of 3.5% in Sea Bright to a 4.5% wage increase in Tinton Falls, Bradley Beach and Aberdeen that resulted in an average percentage wage increase of 3.96% for those two years.*

*\*\*\* This was computed from the 3.9% proposal of the PBA.*



The PBA raises the same argument for the sergeants as it did with the rank and file officers concerning the wage increases and how the wages compare to the other departments.

The PBA contends that there was no testimony presented as to why the Borough wants to add an additional step to the existing wage guide. The PBA contends that one can only assume that by the historical design of wage steps, it was meant to slow or spread out the payment of monies to employees.

Chart #6 shows the average number of steps in the comparable communities and the average is 7.95 steps and Belmar is 9. That means that Belmar police officers already spend 1.5 more years in the wage guide before reaching top grades than their counterparts do.

The PBA argues that an analysis of the clothing allowance shows that the \$880 in Belmar is slightly above the average of the allowance received by law enforcement officers in comparative communities. However, PBA members receive nothing for clothing maintenance.

Chart #7 tracks clothing allowance, clothing maintenance and holidays. The average for holidays is 13.7 and Belmar receives 13 so the PBA contends law enforcements of the Borough of Belmar are on par with comparative law enforcement officers of the other municipalities.

The PBA argues that even though the Borough's exhibit shows that other municipal employees are paying 15% dependent contribution for health insurance, the PBA argues that Chart #8 shows that of the twenty-one comparative municipalities whose contracts were submitted into evidence, seven

require some type of employee contribution for health insurance, fourteen do not.

The PBA argues that Chart #9 shows that where police officers contribute toward health insurance, they are more favorably compensated than law enforcement officers who do not contribute toward health care. The PBA argues that this substantiates that Belmar police officers are significantly underpaid as compared with those top step police officers in the municipalities the parties have entered into evidence and as such the Arbitrator should be persuaded by the fact that other employees of the Borough of Belmar contribute 15% of the premium for dependent care coverage.

The PBA contends that the parties had the opportunity to enter into contracts that they deem to represent the comparative requirement established by statute. Twenty-one contracts were entered by the parties into evidence to show top step police officers compared in other Monmouth County municipalities to police officers employed by the Borough of Belmar. The PBA contends that of the 21 contracts, the PBA submitted 20, leaving the Borough to have submitted only 1 (the Borough of Manasquan). For the Superior Officers comparison, the PBA offered 10 of the 13 contracts, with the Borough entering the other three contracts. Accordingly, the PBA strongly objects to any consideration or weight that the Arbitrator would give to Exhs. B-82 through B-87, except as supported by exhibits presented by the PBA.

The PBA asserts that there is little, if any, connection between Corrections Officers for the State of New Jersey and law enforcement officers over all and, specifically, within the Borough of Belmar. Therefore, the PBA questions Exh. B-

39. The PBA objects to the Borough's submission of this document as it is incomplete. The Borough only entered the Award portion of the decision and not the 74 prior pages of discussion and reasoning discharged by Arbitrator Mastriani. This discussion and analysis are imperative to decipher the understanding and intent of Arbitrator Mastrani in issuing this Award. The terms of the Award are clear and an Interest Arbitrator must consider any such Award. However, the weight given any such Award, must be based upon the understanding and reasoning of an Arbitrator, not merely his or her decision.

Therefore, the PBA contends that while the Award of State PBA 105 must be considered, its potency and effect upon this proceeding are compromised.

The PBA argues that there is no **comparable private sector job** that can be compared to that of a law enforcement officer. The PBA submits two pages outlining statutory requirements for police officers. Moreover, the PBA states that the greatest differentiation between law enforcement officers, firefighters and private employers generally as the obligation to act as law enforcement at all times of the day, without regard to whether one is on duty status within the state or not.

The PBA asserts that law enforcement officers are trained in basic police academy and regularly trained in specialties such as firearm qualifications. Failure to maintain that training can lead to loss of law enforcement officer's certification and potentially the law enforcement officer's job. This is rarely found in the private sector. Within the private sector as companies and employees are able to move from one state to another, a more global competition must be

considered. A New Jersey private sector employee must consider the possibility that his industrial employer might move that plant to another state or even another country. This creates a depressing factor on wages that is not possible in the public sector.

The PBA contends that **local comparisons** are more relevant with law enforcement wages and these types of issues were considered in the recent decision issued by the well know arbitrator, William Weinberg, in the Village of Ridgewood case (Ridgewood Arbitration Award, Docket No.: IA-94-194, pages 29-31), wherein he stated, *“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 a comparison to be made without forcing the data.”*

The PBA contends that Borough Exhs. B-21, B-29 and B-30 are presented in a ten (10) year summary format without any supporting documents. While Exh. B-30 does speak to New Jersey government employees, the Exhibit fails to denote the title and nature of the work of the employees subject to these wage increases, including but not limited to whether these employees are subject to collective bargaining agreements.

The PBA argues that without any specific details, it is difficult if not impossible to attach any weight to these exhibits or the facts the Borough is attempting to suggest about these exhibits. The PBA argues that if there is a comparison made between a law enforcement officer and a private employee generally, the public safety employee's position must gain weight and be given

greater support by such comparisons. The PBA strongly contends that the levels of scrutiny, accountability and authority imposed by law enforcement officers are unparalleled in employment generally.

Concerning **the lawful authority of the Employer**, the PBA contends that an arbitrator must consider the financial evidence and explain how he or she weighed the financial impact and lawful authority criteria along with the other factors deemed relevant. However, the format does not require the arbitrator to award the amount the employer has budgeted.

The Union contends that with respect to the **financial impact** on the governing unit, its residents and taxpayers, the parties have mutually agreed that the employee has accepted that they have an ability to pay, at least as the increase to base wages equates to the PBA's revised wage proposal. Most importantly, the Employer has failed to show by a preponderance of the evidence that the financial condition of the Employer can only support a 3% wage increase in 2008, a 0% in 2009 and a 3% wage increase in 2010.

The PBA relies on the findings and analysis of their financial expert, Vincent J. Foti of Foti & Associates, LLC of Livingston, New Jersey. At the request of the PBA, Mr. Foti reviewed the financial documents submitted by the parties at the hearing. Mr. Foti has been recognized and accepted by both parties and the Arbitrator as an expert witness in municipal finance and as a certified public accountant. Mr. Foti concluded that the Borough of Belmar, *"Is in a very sound financial condition and is not experiencing any financial stress and has the ability to pay a salary increment as proposed by the PBA."* This was

based upon his expert position on his review and analysis of the financial documents placed into evidence by the parties.

In support of Mr. Foti's analysis, the PBA submits a variety of different charts to show that the Borough has the financial ability to pay, as well as regenerate surplus. Mr. Foti's report analyzed the following areas of the Borough's budget: Results of Operation (AFS – Sheet 19); Budget Revenues (AFS – Sheet 17); Unexpended Balance of Appropriation Reserves (AFS – Sheet 19); Current Fund Balance (2008 Report of Audit, page 32); Water/Sewer Utility Operating Fund; Beach Utility Operating Fund (2008 Report of Audit, page 32); Parking Utility Operating Fund; Tax Rates (2008 Report of Audit).

Mr. Foti also indicated, *"The tax rate as for all practical purposes remain flat, and nominal increases are recommended by rating agencies and are considered sound financing. As indicated in the attached Chart, Belmar has one of the lowest per capita tax in Monmouth County, number 39 out of 53 and the Tax Rate chart shows Belmar to be number 37 out of 53 municipalities, again one of the lower tax rates in the County."* The source for this is the 2009 Municipal Data Book.

Mr. Foti also determined that the tax levy (2008 Report of Audit) has increased and this goes back to the fact that the tax rate has remained very stable and approximately a little over 35% of the levy is for municipal purposes. Additionally, the tax collection rate is almost perfect. In 2008 the tax rate was 96.57% and the State average was 97.0%. Property values have increased by over \$600,000,000 and this will continue to produce revenue on an on-going

basis for many years to come. (2008 Report of Audit). The chart of property values shows that Belmar is 33 out of 53 municipalities and that source also was from the 2009 Municipal Data Book. According to Mr. Foti, the Belmar Borough is well below the statutory debt limit and has more than sufficient borrowing power remaining. This is clear indication of a sound financial condition.

With respect to **CAP calculation**, the Borough has not experienced any CAP problems as indicated in the attached Official State of New Jersey CAP Calculation for 2008 and 2007. A review of this case consistent with statutory criteria (g)(9) presents absolutely no prohibition on an awarding of the entire PBA position. The analysis on this criterion shown on the attached documents to this brief is they could not be scanned into a format to be imported into this brief.

Mr. Foti concluded that, *"It is clearly evident that the Borough of Belmar is in a very sound financial condition and has not experienced any financial stress and has the ability to pay a salary increment."*

Mr. Foti also determined that based on the tax levy for 2008 (\$18,423,857.00), one tax point (1.0%) equals \$184,423.00. The PBA has projected a cost for its proposal as shown in Chart #9 below, which shows the following amount of money needed to fund the settlement:

January 1, 2008	\$136,152.00
December 31, 2009	\$190,650.00
January 1, 2010	\$103,593.00
January 1, 2011	\$109,508.00
January 1, 2012	\$92,265.00

Mr. Foti and the PBA argue that the Chart shows that based upon the PBA's revised wage proposal, the new wage (which includes wages, longevity, and step movement, dollar costs for the five year proposal is only \$126,043.00 per year on average, less than one tax point and this is before considering the PBA's revised proposal. The PBA contends that it is extremely important to note the economic relief provided to the Borough by the PBA's revised proposal as results in only \$136,152.00 in new wage dollars for 2008 and 2009 are approximately \$68,076.00 per year. While the Borough will be carrying the \$136,152.00 retroactive payment on January 1, 2008 and the \$190,650.00 December 31, 2009 payment till 2010, the PBA has, by its revised proposal, deferred the 2010 wage increase to July 1<sup>st</sup>, thereby reducing the Borough's 2010 cost of \$103,593.00 in half.

The PBA contends that B-103 from the New Jersey League of Municipalities is biased. The PBA argues that the Borough Exh. B-108 from the League of Municipalities and pertaining to 2010 pension obligations is biased. The PBA submitted an exhibit obtained from the State of New Jersey, Department of Treasury, to show what they believe to be the accurate pension contribution rates. The PBA argues that the chart is significant because it does not merely show a snapshot of 2009, but shows that the higher percentage contribution required from the Employer in 2008 and 2009 is in large part due to the artificially contrived legislative action that occurred from 1998 through 2000 negating the Employer's contribution. During this entire period while the public



employers were paying 0% or a severely reduced contribution rate, the members of the PFRS continue their full contribution.

The PBA contends that the **cost of living** must be considered as an indicator only. This criterion is not controlling. Years ago when the cost of living was or at near double digit levels employees did not receive increases of like magnitude. The Union strongly contends that any employer's reliance of cost of living data is purely situational. The CPI is merely a measure of the average changes in prices over time in a fixed market basket of good and services bought by consumer for day-to-day living. The PBA contends that with putting too much weight on the CPI does not necessarily portray an accurate reflection of the cost of individual in a specific area.

The PBA argues that Exh. P-29 accurately reflects the CPI for all urban consumers in the specified years. In 2007, the first half was 2.7% and the second half was 2.9%. In 2008, first half was 3.8% and the second half was 3.9%. The PBA contends that the Borough attempted to introduce summary evidence without the proper documentary support. Borough Exhs. B-89 and B-90 are unclear but they appear to represent the national indices and as such have no bearing on this proceeding. The PBA admits that for calendar year 2009 the CPI for this region in both categories is increasing at a slower rate, but not nearly at the 0% increase that the Borough is proposing. The PBA argues that a closer look at Borough Exh. B-91 shows a significant discrepancy in the unsupported summary information the Borough has entered into evidence.

The PBA contends that the criteria concerning **continuity and stability of employment** in those referenced private sector concepts strongly support an award of the Union position. The Union comes to the proceeding seeking an equitable wage increase consistent with that shown in the evidence presented and submitted at hearing and pursuant to reasonable application of statutory criteria.

In summary, the PBA asserts that they have carefully analyzed their proposals according to the nine criteria established by statute and believe that their proposals must be awarded and the Borough's proposals must be rejected.

### **DISCUSSION AND OPINION**

The Arbitrator by statute is required to separately determine whether the total annual economic changes for each year of the Agreement are reasonable under the nine statutory criterion set forth on pages 7, 8 and 9 of this Award. Each criterion must be considered and those deemed relevant must be explained. The Arbitrator is also required to provide explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence that has been presented, as well as the argument of the parties. I have considered the evidence and arguments in light of the statutory criterion as discussed below. I have considered each criterion and have found each to be relevant, although the weight to be given to their factors varies as discussed. I have determined the total net economic

annual change for each of the Agreement in concluding that those changes are reasonable under the criteria.

It is appropriate to set forth the terms of the Award at this time, which will allow anyone reviewing this Award to follow the analysis which led to the Award.

The parties, by necessity, based their arguments upon and correlated the evidence they presented to the offers of the other party. I have the authority and responsibility to fashion the terms of the Award in this conventional arbitration proceeding. Conventional arbitration is a much more pliant process which grants the arbitrator a more comprehensive authority to fashion the terms of an award based upon the facts and evidence and without the limitation of addressing any component of a final offer submitted by the parties.

It is axiomatic in Interest Arbitration and/or in collective bargaining/negotiations that in consideration of wages, hours and conditions of employment, that the parties seeking to change any existing term and condition of employment bear the burden of showing the need for such a change. That guiding principal has been followed throughout this Award.

Before I issued this Award, I notified the parties that I was not given a copy of the current scattergram. On May 17, 2010, I received a letter from James Plosia, labor counsel for the Employer, indicating that the educational stipend and longevity are included in base pay. Attached to that letter was a copy of the scattergram as of December 31, 2007. The scattergram with the longevity and the base pay equaled \$1,661,986.00. For the purposes of my

Award, I did not include longevity and/or the educational stipend. Therefore, the base I was utilizing as of December 31, 2007, was \$1,585,305.00.

The terms of the Award shall be as follows:

1. The Award will cover five (5) years commencing January 1, 2008, through December 31, 2012.

2. Salaries shall be increased across-the-board as follows retroactive to January 1, 2008:

- a. January 1, 2008 - 3.5% effective July 1, 2008
- b. January 1, 2009 - 3% effective July 1, 2009
- c. January 1, 2010 - 3% effective December 31, 2010
- d. January 1, 2011 - 1.25% effective July 1, 2011  
1.25% effective December 31, 2011
- e. January 1, 2012 - 2.25% effective January 1, 2012

3. Effective January 1, 2010, add an academy step and a probationary step.

Those dollar amounts should be at least \$2,000.00 less than what the guide calls for. I will leave it to the parties to determine what the particular dollar amount will be. An individual who completes academy training is then placed on the probationary step. The next calendar year that individual is placed on step 1 of the salary guide.

4. All employees shall pay a maximum of 1.5% of their base salary as a contribution toward health insurance in accordance with the recently enacted statute.

5. Remove the provision from the Agreement which requires those that have dependent coverage to pay 10% for that coverage.

6. Release time for PBA representatives.

N.J.S.A. 40A:14-177 and N.J.S.A. 11A:6-10 are statutes that determine convention leave for the PBA. The latter statute is for civil service jurisdictions. Both statutes require that no more than 10% of the employee organizations' membership shall be permitted to such a leave of absence with pay, except that no less than two and no more than ten authorized representatives shall be entitled to such leave.

a. I will grant leave of absence to attend the annual convention and the mini convention. I will deny leave of absence for the collective bargaining seminar and the League of Municipalities convention.

b. The past practice concerning the State Delegates will remain in effect.

c. I will grant 100 hours annually for a PBA representative to be away from duty to conduct PBA business. However, such leave time must have the approval of the Chief of Police.

#### COST OF SALARY PROPOSALS:

The current base of \$1,585,305.00, excluding longevity and educational benefits, is for 20 officers. I have attached to the Award the December 31, 2007, scattergram provided by the Borough. The salary cost-out shall be calculated on that base. Historically, incremental costs have not been factored in by the parties, and Interest Arbitration Awards are across-the-board raises without addressing incremental increases. One of the things that must be looked at by

an Interest Arbitrator is the fluctuation of incremental costs which is dependent upon the amount of turnover in a particular bargaining unit. A high turnover, which most police departments are not desirous of, tends to keep that average salary down as senior officers are replaced by entry level officers. Those entry level officers are making significantly less money than the senior officers.

### **2008**

The Borough proposed a 3% increase which would have increased the base to \$1,632,864.00. The PBA proposed a 3.9% increase which would have increased the base to \$1,647,131.00. I award a 3.5% increase, which increased the base by \$55,846.00 for a new base of \$1,640,791.00 with an effective date of July 1, 2008, or 1.75. The chart below shows the base increase for each year of my Award, as well as the effective date for each year, the actual percentage per year and the cost per year for the Employer. It should be noted that overall my Award is less than the Borough's offer and less than the PBA's offer.

### **2009**

The Borough proposed a zero increase, but continued paying the increments which are \$62,000.00 (page 39 from the Borough's initial brief). The PBA proposed a 3.9% increase which is \$64,238.00 for a base of \$1,711,369.00. I awarded a 3% increase in the base or \$50,000.00 for a new base of \$1,690,014.00 with an effective date of July 1, 2009, and a 1.5% payout increase over 2008. Again, my Award with the effective date and the actual percentage

increase and cost to the Employer is less than the PBA's offer and less overall than the Borough's three year proposal. The 2009 base increase effective July 1, 2009, remains in effect for 18 months until December 31, 2010.

### **2010**

The Borough proposed a 3% increase which was \$50,846.00 above the 2009 base of \$1,694,864.00. The Borough's base would be \$1,745,710.00. The PBA proposed a 3.9% increase, which is \$50,700.00 above the 2009 base for a new base of \$1,778,112.00. I awarded a 3% increase which is the same percent as the Borough's offer, for a new base of \$1,740,714.00. However, I deferred payment until December 31, 2010. The new base is less than the Borough's proposal and less than the PBA's proposal. The key factor in all of these salary increases is the effective date of the payout.

The Borough's 2008 to 2010 salary increase, including increments for 2009 is \$160,405.00 above the December 31, 2007, base for a 10.1% increase or 3.36% per year. The PBA's proposal for 2008 through 2010 is an increase of \$128,522.00 above the December 31, 2007, base for a 8.1%, or 2.7% per year. My Award for the same time period is 9.5% or 3.16% per year. However, the actual payout to the Board is 6.25% or 2.08% per year. My Award is less than the Borough's and less than the PBA's for the period of January 1, 2008, through December 31, 2010.

## **2011**

The Borough proposed a three year agreement (2008-2010). The PBA proposed a 3.9% increase which is \$66,743.00 for a new base of \$1,778,112.00. I awarded a 1.25% increase effective July 1, 2011, (\$21,759.00) and a 1.25% increase effective December 31, 2011 (\$22,031.00). The combined base increase for 2011 under my Award is \$43,790.00. The \$22,031.00 is added to the \$21,759.99 on December 31, 2011. The July base is \$1,762,473.00 and the December base is \$1,784, 504.00.

## **2012**

The Borough proposed a three year agreement (2008-2010). The PBA proposed a 3.9% increase for a \$72,051.00 increase over the 2011 base for a new base of \$1,919,509.00. I awarded 2.25% for an increase of \$40,151.00 for a new base of \$1,824,655.00 above the December 2011 base of \$1,784, 504.00.

YEAR	PERCENT	BASE	EFFECTIVE DATE	ACTUAL PERCENTAGE INCREASE	COST
2008	3.5%	\$1,640,791	7/1/08	1.75%	\$27,742.00
2009	3.0%	\$1,690,014	7/1/09	1.5%	\$24,611.00
2010	3.0%	\$1,740,714	12/31/10	3.0%	\$50,700.00*
2011	1.25%	\$1,762,473	7/1/11	1.25%	\$21,759.00
2011	1.25%	\$1,784,504	12/31/11	1.25%	\$22,301.00
2012	2.25%	\$1,824,655	1/1/12	2.25%	\$40,151.00

\* The 7/1/09 salary increase remains in effect for 18 months.

2008-2012 base increase = \$239,350.00, 15.08% or 3.01 % per year minus the health insurance contribution at 1.5% of base during that time frame of \$67,193.00. Deducting the \$67,193.00 from the \$239,350 creates an actual base increase cost to the Employer of \$172,155.00, 10.85% or 2.17% per year.



### 1.5% Health Insurance Contribution

YEAR	BASE	EFFECTIVE DATE	AMOUNT
2010	\$1,740,714	6/1/10	\$13,056
2011	\$1,762,473		
	\$1,784,504		\$26,767
2012	\$1,824,655		\$27,370

Total Cost:       \$67,193.00

## STATUTORY CRITERIA

### **Interest and Welfare of the Public**

The New Jersey Supreme Court determined in the Hillsdale matter (citations omitted) that the interest and welfare of the public must always be considered when rendering an Interest Arbitration Award. Moreover, the Court determined that an Award which failed to consider this criterion might be considered deficient.

There are numerous elements to the public's interest factor, but I believe and have determined that this initial criteria is always worthy of substantial weight in determining the most reasonable resolution of the parties' dispute. A major component of public interest is fiscal responsibility. The public interest elements of the CAP Law will be addressed below under the lawful authority criterion.

The interest and welfare of the public obviously require that an arbitrator balance many considerations such as, but not limited to, the Employer's desire to provide the most efficient and appropriate level of government services in a most cost-effective manner.

The Employer takes into account those costs on the tax rate. Moreover, the interest and welfare of the public certainly require fairness to employees in order to maintain high moral and harmony within the labor force. I believe that reasonable levels of compensation and good working conditions certainly contribute to a productive and efficient police force and that leads to labor stability.

No one can deny that the work of a police officer is sometimes traumatic and dangerous. There is no question that the public is well-served by providing a compensation level and benefits that keeps morale high and retains experienced officers, as well as attract new recruits at the caliber the Borough is seeking.

I believe that my Award did not create an undue financial burden upon the Borough. The Borough proposed a zero increase for 2009 but did in fact pay the increment cost of \$62,000.00 which they were obligated to do so within the structure of the current Salary Guide. Since the increments have already been paid for 2008 and 2009, my Award is an additional \$24,611.00 for the Borough to pay for an across-the-board increase of 1.5%. That does not take into account longevity and educational benefits. However the scattergram attached to this Award shows what that dollar amount would be.

**COMPARISON OF THE WAGES, SALARIES, HOURS AND CONDITIONS OF EMPLOYMENT:**

This criterion has three subsections dealing with (A) private employment in general; (B) public employment in general and (C) public employment in the same or similar comparable jurisdictions.

Both parties submitted extensive documentation in support of their arguments concerning comparability. Reviewing information on the PERC website and in particular Private Sector Wage Report of the New Jersey Department of Labor and Workforce Development (NJLWD) provided guidance to my deliberations. A NJLWD report in 2009 for the shows that between 2007 and 2008, the average private sector wages in New Jersey increased by 2.5% and in Monmouth County by 2.1%.

The information from the Bureau of Labor Statistics (BLS) in August of 2009 that earnings adjusted for inflation declined approximately 1.6% in 2009 shows that that is the largest decline since 1990. It is extremely difficult to draw a comparison and analogy between the private sector wage settlements and public sector wage settlements for a variety of reasons. A lot of private sector settlements have factors governing those settlements that are not part of evidence in the public sector. For example, goods and materials have very little, if anything, to do with a public sector settlement but have a lot to do with a private sector settlement. Most Interest Arbitrators, if not all, draw comparisons with the public sector in comparable jurisdictions and particularly in the same jurisdiction where the impasse exists.

Both parties submitted extensive documentation concerning public sector settlements in support of their positions. However, as I set forth in the cost of the salary proposal, my analysis is based upon the base salary and not anything else that the parties have addressed. The Borough submitted documentation to show that over the last ten (10) years Belmar police officers have received cumulative

salary increases which are 8% higher than the State and local government median wage increases (see Exh. B-29). Additionally, Exh. B-30 shows the increase in the national median for wages for state and local government from 1998 to 2000 (B-30). While Exh. B-31 shows comparison of percentage increases in New Jersey annual wages for local government jobs to Belmar PBA police salary increases at maximum for the period of 2003 to 2007.

The PBA also offered extensive documentation in support of other public employment wages. A review of the settlements that I have been involved with as a Mediator, Fact-Finder and Interest Arbitrator for the public sector in the State of New Jersey shows that my awarded salary increases are consistent with other public employment venues.

The hearings were held in the instant matter on September 23/24, 2009. At the hearings the Borough Administrator testified that all other municipal employees in Belmar for the calendar year 2009 receive zero salary increases. The focal point of the Borough's argument was that for one year they were asking for the PBA to have a zero salary increase based on their budgetary problems and the fact that other Borough employees had agreed to a zero salary increase.

The Borough's documentation and their testimony clearly establish that for 2009 all other municipal employees did not receive any salary increase. However, those were voluntary settlements and were not as a result of a fact-finding report and definitely not within the structure of an interest arbitration award. The hearings were held prior to the gubernatorial election and prior to the

statutory requirement (May 2010) that all public employees are to pay 1.5% of base salary for health insurance. The Borough proposed a 3% salary increase for 2008 and a 3% salary increase for 2010. My Award addresses the Borough's economic concerns by delaying the implementation of the 2008 salary increase until July of 2008, which increases the base by 1.75%. I did the same thing for 2009 by awarding a 3% salary increase but deferring it until July 1, 2009 which is a 1.5% increase for \$24,611.00. Additionally, the following chart, which is PERC's salary increase analysis for 2007 through 2010, supports my Award:

YEAR	NUMBER OF AWARDS	AVERAGE SALARY INCREASE OF AWARD	VOLUNTARY SETTLEMENTS	AVERAGE SALARY INCREASE OF SETTLEMENTS
2007	16	3.77%	46	3.97%
2008	15	3.73%	60	3.92%
2009	11	3.86%	27	3.68%
2010*	5	2.43%	23	2.80%

\* January 1, 2010 through June 30, 2010

The above offers credence and support for my Award because the percentages each year are less than the above chart shows. Additionally, there were two more settlements that I am aware of in Monmouth County since the hearings were closed. The first one was Rumson Borough and PBA Local 345 (July 24, 2010), decided by Arbitrator James Mastriani. The Rumson settlement was from 2007 through 2011 as follows:

2007	-	3.5%
2008	-	3.5%
2009	-	3.25%
2010	-	3.0%
2011	-	2.75%

The second settlement was with Sea Girt and PBA Local 50, IA-2010-048 (August 5, 2010) with a settlement as follows:

2010	-	2%
2011	-	2%
2012	-	2%
2013	-	2%

The above percentages include increment. I was the Interest Arbitrator in that case and am fully cognizant of the circumstances that led to that settlement, as well as the financial circumstances of Sea Girt.

Additionally, there were settlements in Colts Neck and Eatontown for 2011 and settlements in Highlands and Long Branch for 2011 and 2012. Those settlements were in the 4% range which indicates to me that they were done previously to any enactment of statutes limiting budgetary cap increases.

The above settlements show that my Award was consistent with those settlements.

The PBA offered (see Chart 2) various comparisons of municipalities in Monmouth County showing that the average top wage in the County for 2007 was \$87,528.00, and Belmar was \$84,539.00. For 2008, PBA Chart 3 shows that the average in the County was \$90,578.00, for 2009 it was \$92,783.00, and for 2010 it was \$98,648.00. The Borough objected to two of the police units referenced by the PBA. The Borough objected to the Monmouth County Prosecutor's Detectives and Monmouth County Sheriff's Officers. While they are part of law enforcement, they do not have the budgetary concerns that Belmar has; nevertheless, they are law enforcement, and I have analyzed these factors in reaching my determination. While the Borough objected to the use of

Monmouth County Prosecutor's Detectives and Monmouth County Sheriff's Officers, the Borough introduced Exh. B-39, which is the Award from Arbitrator James Mastriani in the State of New Jersey/PBA Local 105, IA-2008-014 (May 5, 2009). That Award is for Correction Officers, and Correction Officers are not local law enforcement officials. Even though they do law enforcement work, they are dealing with prisoners on a daily basis in a correctional facility, while Belmar police officers are not. Nevertheless, in fairness, I have reviewed Arbitrator Mastriani's Award in rendering my Award. I have not rejected the introduction of that Exhibit by the Borough.

Both parties presented documentation in support of their wage arguments but approached it from two different perspectives. The Borough looked at not just the wages but what is attached to the wages, such as holiday pay which increases the base pay. For example, Exh. B-83 shows that in 2007 Step 9 of the Belmar Police Guide, with a clothing and maintenance allowance included, was \$84,539.00. However, the Borough indicated that it does not include the \$4200.00 holiday pay into the base. By adding the \$4,200.00 to the \$84,964.00, Belmar's maximum salary is \$89,164.00, which is roughly comparable to the maximum base salary for police officers in Wall Township. Furthermore, the Borough indicates that, *"Belmar is competitive with the pay received by police officers in Wall Township, which, along with Neptune Township, pays its police at the highest salary level in Monmouth County. Belmar does so despite the fact that it is considerably poorer by almost every objective measurement."*

The PBA approaches the salary schedule differently than the Borough. The PBA does not include clothing allowance; it just includes the base salary guide. It is not a typical apples versus oranges argument; it is just an example to show that both parties are addressing what they believe are the best circumstances to support their positions in this Interest Arbitration.

Having reviewed all of the facts in evidence and the voluminous documentation submitted by the parties, I have concluded that my Award is again competitive and not out of line based upon the circumstances in Belmar.

**OVERALL COMPENSATION:**

Police Officers in Belmar receive health insurance and like all police officers in the State of New Jersey, they participate in PFRS. They also have holidays, vacation time, personal days, sick leave (as well as accumulative sick leave) and longevity which is part of base pay. Additionally, they have out-of-rank pay, three personal days per year, overtime pay for any work shift that is in excess of eight hours, a guaranteed minimum of four hours pay for each time a police officer appears in court.

None of these have been shown to be out of line with what is occurring throughout the State of New Jersey. Internally, all other municipal employees are into some type of State pension plan which is probably PERS. Municipal employees also have health insurance obviously depending upon the number of hours that they work, but I can't believe that Belmar is providing a health insurance plan for police officers separate and apart from the health insurance plan for other municipal employees.



I do not find that the overall compensation of Belmar police officers is out of sync with what is occurring with other municipal employees in Belmar, as well as police officers throughout the State of New Jersey.

I placed emphasis on this criterion after reviewing all of the information submitted to me. The overall compensation that is presently received by the Belmar Police Department which includes salary, vacations, insurance, pensions, medical and hospitalization benefits will remain at the existing levels, and my Award will not create problems for the Borough in implementing my Award. Moreover, as the Borough succinctly stated, the Police Department rankings place them at mid-level with the other police departments of comparable jurisdiction in Monmouth County. I have not increased the Police Department's rankings or decreased the Police Department rankings. Accordingly, I do not believe there will be any negative impact upon the Borough.

#### **STIPULATION OF THE PARTIES**

No stipulations were presented.

#### **LAWFUL AUTHORITY OF THE EMPLOYER**

There are two financial CAPS with which municipalities must comply. The expenditure CAP (C.40A:4-4.5.1, et. seq.) has been in effect since 1976. The tax levy CAP which became effective in 2007 (C.40A:4-4.5-45) generally restricts tax levy increases to 4%. That was reduced to 2% with the enactment of recent legislation.

The Borough proposed a 3% salary increase for 2008. They also proposed a 3% increase for 2010 and a zero increase for 2009. Page 30 of the Borough's initial brief states:

*"The 4% levy CAP amount was \$266,000.00 for 2009. Assuming that figure is \$288,000.00 for 2010 it will be impossible for the Borough to stay under a 4% tax levy if the PBA's offer is granted. Such an Award would leave the Borough with only \$100,000.00 of capital and for all other increases in the budget and/or making up for revenue shortfalls."*

The Borough also indicated at Page 38 of its reply brief:

*"Given that the 3% increase for police officers in the Borough's final offer will be difficult for the Borough to pay for, it goes without saying that it will be impossible for the Borough to pay the 7.8% increase the PBA is seeking for 2009 and 2010 (all of which will have to come out of the Borough's 2010 budget)."*

The Borough also indicated that the Arbitrator does not have the authority to ask them to apply for a CAP waiver from the local Finance Board. I am not so sure that the local Finance Board will look the same after legislative action is taken. In any event, the Borough is correct that I do not have the authority to require them to submit for a CAP waiver. However, I am not asking that they submit for a CAP waiver. Based upon what the Borough indicated as to where the funding would come from, my Award does in fact address the Borough's concerns. The money for 2008 has already been set aside within the budget. My Award grants the Borough a six month waiver of payment for 2009. The 2008 budget, which the Borough set aside 3% in salary increases, is not what I had awarded. I awarded a 1.75% actual payout with the base going up 3.5%. I was cognizant of the Borough's financial concerns, which is the reason why I addressed the implementation of the salary increases in 2008 and 2009 until July of each year.

The 1.5% salary increase of \$24,611.00 for 2009 carries forth until December 31, 2010. It is an 18 month salary increase which is similar to what Arbitrator Mastriani did in State of New Jersey and PBA Local 105, supra.

I believe the lawful authority of the Borough is not being violated by my Award and that my Award takes into account their financial circumstances. Moreover, the 2009 audit was not submitted into evidence and the 2010 budget had not been created when the hearings were closed. Since the 2010 budget was not submitted into evidence, I have no way of knowing what additional financial constraints the Borough might have. I did, however, address the concerns addressed by the Borough and rendered an Award that is in compliance with what they were looking for, as well as taking into account the cost of health insurance contributions for police officers. The 2010 budget was not submitted into evidence, therefore, it is difficult to determine what impact my Award would be upon that budget. Suffice it to say, my Award should not impact upon the budget because my Award is exactly what the Borough proposed, a 3% salary increase. However, that 3% salary increase in accordance with my Award is not effective until December 31, 2010. By awarding a salary increase on December 31, 2010, the Borough has the ability to utilize funding necessary to pay that amount of money. However, the Borough also referenced that any Award that the Arbitrator awards above zero for 2009 would have to be paid from the 2010 budget. Rounding that off, that is a \$75,000.00 increase over a two year period, for 2009 my Award is \$24,611.00 above the 2008 base. Bear in mind that the 2008 base is effective July 1, 2008. Moreover, the 1.5% that police

officers must pay for health insurance, which equates to approximately \$67,193.00 actually reduces the payout for the Borough for 2010, 2011 and 2012. Therefore, the 2010 cost of \$50,700.00 would be reduced by \$13,000.00 creating a cost to the Borough for 2010 of \$37,700.00. The lawful authority of the Borough has not been breached by my Award. I have awarded salary increases that are more realistic than the positions advanced by the PBA based upon the financial concerns of the Borough.

My Award terminates on December 31, 2012. I extended the Agreement out to 2012 because I believe the manner in which I developed the Award will not create a financial impact upon the Borough. Granted no one knows what will happen in 2011 and 2012 with respect to the economy and with respect to potential statutory changes for local finance. Nevertheless, a careful review of what I have awarded does not distort the realities of settlements in Monmouth County, and does not set aside and/or ignore the financial concerns of the Borough.

Exhibit B-52 shows that the tax collection rate anticipated in the 2009 budget was 96%. Exhibit B-3 shows that the reserve for uncollected taxes anticipated in the 2009 budget is \$762,056.00. Those Exhibits indicate that the Borough has the ability to fund my Award without encroaching upon its legal authority and more importantly without creating any financial hardship for Borough residents.

## **FINANCIAL IMPACT**

After reviewing all of the documentation in evidence, I have concluded that the financial impact is a factor I place high emphasis on with respect to the impact of my Award on the Borough. I do not believe that my Award will require the Borough to apply to the local Finance Board. Previously I discussed the fact that the local Finance Board might not be in the same configuration as presently exists after specific legislation is introduced. Nevertheless, as evidenced by Exh. 61, the Borough had some significant problems in 2009 that created a revenue problem for them. The revenue problem was based upon the fact that they did not have the surplus from previous years, municipal court fines were decreased, state aid was decreased and miscellaneous revenue was decreased. I can't use Exh. B-53 and specifically state that the Borough has \$762,000.00 to fund the settlement. That would be an inaccurate statement. That Exhibit shows the revenue for uncollected taxes that are anticipated in the budget. That money cannot be utilized to fund any specific settlement and/or any specific project the Borough may be contemplating. There is no question that the court fines were down because traveling to the shore communities has decreased because of the economic circumstances New Jersey and the rest of the nation faces.

The 2009 budget tax increase of \$381,993.64 equates to a 3.0% tax increase. However, my Award took into account concerns the Borough raised with respect to the 2009 budget, and I have shown by utilizing the Borough's own words that the 2009 and 2010 tax increase would have to come out of the Borough's 2010 budget. The Borough also indicated that if the PBA's position

was awarded by the Arbitrator, that would leave the Borough with only \$100,000.00 of CAP room. Since I did not award the PBA's final offer the Borough's dire prognostication will not be met.

Moreover, the new academy step and probationary step starting January 1, 2010, is a real savings to the Borough money for any police officer hired after that date. That police officer would reach the same maximum salary but take a longer period of time. The net effect of that is to save money for the Borough because their cost for wages for each succeeding year with new hires is decreased because of the length of time it takes an employee to reach the top step. Additionally, while there has been no evidence presented about retirements from the Belmar police department, as a police officer retires the Borough does save money with the replacement officer. I have not found many places where newly hired police officers are placed on the top step of the salary guide. Therefore, I do not believe that my Award will create a financial impact upon the Borough that in turn will create a severe financial problem for the taxpayers of the Borough of Belmar.

### **COST OF LIVING**

The CPI-U data from the Bureau of Labor Statistics indicates the following percentage changes:

2007	-	4.1%
2008	-	0.1%
2009	-	2.7%

The record clearly reflects that my Award in conjunction with the Borough's final offer is in compliance with the cost of living information from the Bureau of Labor

Statistics. Even though 2008 is .1%, the Borough had committed itself to a 3% salary increase which I reduced to 1.75% because the payout for that increase did not begin until July 1, 2008. Accordingly, as my Award is reviewed, I am in compliance with the cost of living, and I do not believe my Award will create a financial problem for the Borough. Reviewing the cost of living information, the BLS information and the PERC salary analysis clearly establishes that my Award is in sync with Awards in Monmouth County.

### **CONTINUITY AND STABILITY OF EMPLOYMENT**

I placed emphasis on this criterion because my Award was to maintain the current levels of employment. The determination as to how many police officers the Borough will employ is a managerial prerogative not subject to an interest arbitrator's determination. However, the Award was drafted to continue employment while providing what I consider to be reasonable wage increases to the police officers. The PBA's 3.9% increase for each year for a five year period was categorically rejected by me. There was no reason to even begin to approach those types of numbers because they are not being awarded in the current economic situation. My Award will maintain a salary that is competitive in the marketplace and will allow the Borough the opportunity to recruit and retain qualified police officers.

### **STATUTORY RESTRICTIONS IMPOSED ON THE EMPLOYER**

I am aware of the statutory budget CAP levy which was recently enacted. However, when my Award is reviewed and the health insurance contributions are deducted from the salary increases, I am below the 2% which is effective in June

of 2010. Therefore, the 2010, 2011 and 2012 salary increases in my Award, after the health insurance contributions are factored in, show that the percentage increase is less than the 2% budget CAP levy. Accordingly, I find that my Award meets the nine criterion set forth by statute for interest arbitrators. Moreover, my Award carefully analyzed the budgetary constraints that the Borough has, especially for 2009, and my Award is in compliance with the standards necessary for interest arbitration awards.

### **AWARD**

1. The Award will cover five (5) years commencing January 1, 2008, through December 31, 2012.

2. Salaries shall be increased across-the-board as follows retroactive to January 1, 2008:

- a. January 1, 2008 - 3.5% effective July 1, 2008
- b. January 1, 2009 - 3% effective July 1, 2009
- c. January 1, 2010 - 3% effective December 31, 2010
- d. January 1, 2011 - 1.25% effective July 1, 2011  
1.25% effective December 31, 2011
- e. January 1, 2012 - 2.25% effective January 1, 2012

3. Effective January 1, 2010, add an academy step and a probationary step.

Those dollar amounts should be at least \$2,000.00 less than what the guide calls for. I will leave it to the parties to determine what the particular dollar amount will be. An individual who goes to the academy and then on to the probationary step in 2010 is placed on Step 1 in 2011.



4. All employees shall pay a maximum of 1.5% of their base salary as a contribution toward health insurance in accordance with the recently enacted statute.

5. Remove the provision from the Agreement which requires those that have dependent coverage to pay 10% for that coverage.

6. Release time for PBA representatives.

N.J.S.A. 40A:14-177 and N.J.S.A. 11A:6-10 are statutes that determine convention leave for the PBA. The latter statute is for civil service jurisdictions. Both statutes require that no more than 10% of the employee organizations' membership shall be permitted such a leave of absence with pay, except that no less than two and no more than ten authorized representatives shall be entitled to such leave.

a. I will grant a leave of absence to attend the annual convention and the mini convention. I will deny a leave of absence for the collective bargaining seminar and the League of Municipalities convention.

b. The past practice concerning released time for the State Delegate will remain in effect.

c. I will grant 100 hours annually for a PBA representative to be away from duty to conduct legitimate PBA business. However, such leave must have the approval of the Chief of Police. (2010, \$46.97 per hour = \$4697.00, 2011, \$48.15 = \$4815.00, 2012, \$49.23 = \$4923.00. The % cost is approximately 0.27 each year, but pro-rated for 2010).

Dated: September 13, 2010

*Gerard G. Restaino*  
Gerard G. Restaino, Arbitrator

State of Pennsylvania )

County of Wayne ) ss:

On this 13<sup>th</sup> day of September, 2010, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.

*Judith K. Restaino*

My Commission expires November 10, 2013

\*SCATTERGRAM OF BELMAR POLICE SALARIES  
AS OF DECEMBER 31, 2007

<u>NAME</u>	<u>TITLE</u>	<u>STEP</u>	<u>BASE</u>
PALMISANO THOMAS	Captain Detective	9 <sup>th</sup> after 20 years	\$106,981.00
HUISMAN, ANDREW	Lieutenant Detective	9 <sup>th</sup> after 10 years	\$ 99,983.00
MAGOVERN, PATRICK	Sergeant	9 <sup>th</sup> after 24 years	\$ 90,457.00
AKER, WILLIAM	Sergeant	9 <sup>th</sup> after 20 years	\$ 90,457.00
HARSIN, HARRY	Sergeant	9 <sup>th</sup> after 20 years	\$ 90,457.00
COX, THOMAS	Sergeant	9 <sup>th</sup> after 15 years	\$ 90,457.00
WALSIFER, MARK	Patrolman Detective	9 <sup>th</sup> after 15 years	\$ 87,329.00
PRINGLE, SEAN	Patrolman Detective	9 <sup>th</sup> after 10 years	\$ 87,329.00
WALSIFER, NICHOLAS	Patrolman	9 <sup>th</sup> after 15 years	\$ 84,539.00
AKER, CLIFFORD	Patrolman	9 <sup>th</sup> after 15 years	\$ 84,539.00
GARRECHT, JOHN	Patrolman	9 <sup>th</sup> after 10 years	\$ 84,539.00
LYNCH, CHRISTOPHER	Patrolman	9 <sup>th</sup> after 10 years	\$ 84,539.00
LYNCH, DANIEL	Patrolman	8 <sup>th</sup> after 5 years	\$ 77,443.00
SCOTT, TINA	Patrolman	7 <sup>th</sup> after 5 years	\$ 70,628.00
DESSERICH, GREG	Patrolman	7 <sup>th</sup> after 5 years	\$ 70,628.00
LEE, TODD	Patrolman	7 <sup>th</sup> after 5 years	\$ 70,628.00
VITELLO, DARIAN	Patrolman	5 <sup>th</sup>	\$ 57,000.00
CAMPBELL, MICHAEL	Patrolman	5 <sup>th</sup>	\$ 57,000.00
NOLAN, RYAN	Patrolman	5 <sup>th</sup>	\$ 57,000.00
WEIR, ERIC	Patrolman	3 <sup>rd</sup>	\$ 43,372.00

THE BASE TOTAL IS \$1,585,305.

- This scattergram was developed by Robbin Kirk, Borough Administrator. While she also included longevity and educational benefits, I used only base salary as referenced on pages 61-68 of this Award.