

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

BOROUGH OF POINT PLEASANT BEACH

"Public Employer,"

- and -

**INTEREST ARBITRATION
DECISION AND
AWARD**

**POINT PLEASANT BEACH
PBA LOCAL 106**

"Union."

Docket No. IA-2016-018

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the Borough:

Armando V. Riccio, Esq.
Armando V. Riccio, LLC

For the PBA:

Richard D. Loccke, Esq.
Loccke & Correia

This Award arises out of an impasse between the Point Pleasant Beach PBA Local 106 [the "PBA" or "Union"] and the Borough of Point Pleasant Beach [the "Employer" or "Borough"]. The impasse is to be resolved by an interest arbitration proceeding and award. On June 26, 2016, I was randomly selected by the New Jersey Public Employment Relations Commission ["PERC"] to serve as interest arbitrator in accordance with N.J.S.A. 34:13A-16e(1). Prior to formal interest arbitration, I conducted mediation sessions with the parties on August 10 and 22, 2016. The parties were unable to reach an agreement at these sessions. The legal requirements for this case are those set forth in N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9 as amended on June 24, 2014 by P.L. 2014, c. 11. The amended provisions took effect immediately and were retroactive to April 2, 2014. The statute requires the use of conventional arbitration and sets strict limits on the amount of base salary increases that can be awarded.

I requested and received final offers from each party on August 24, 2016. A formal interest arbitration hearing was held on August 31, 2016. An additional attempt to mediate the impasse after the hearing was not successful. At hearing, substantial documentary evidence was submitted into the record on all aspects of the statutory criteria, as well as on salary cap calculations. Testimony was received from Police Officer Christopher Mosca, President of PBA Local 106, Christine Riehl, Borough Administrator, Chief Financial Officer and Tax Collector, and Captain Robert Dikun. A transcript of the proceeding was taken. Post-

hearing briefs were due and filed on September 13, 2016. Pursuant to P.L. 2014, c. 11, the arbitrator has 90 days from appointment, or by September 26, 2016, in which to render an award.

In accordance with the statute, each party submitted a last and final offer.¹

These offers are as follows:

FINAL OFFERS OF THE PARTIES

The PBA

1. DURATION

Three (3) Year Contract Term (January 1, 2015 through December 31, 2017).

2. WAGES

The PBA proposes an across-the-board wage increase at each rank and step of 1.5% effective July 1, 2015, 1.5% effective July 1, 2016, and 2% effective July 1, 2017.

3. HOLIDAY PAY

The PBA proposes a clarification of the holiday fold-in language at Article XI to conform to current practice (non-economic proposal).

4. PBA TIME

The PBA proposes that the PBA time allocated in the contract at Article XXI be clarified to be used by the Delegate or a designee consistent with current practice (non-economic).

5. CLOTHING ALLOWANCE

The PBA proposes a Fifty Dollar (\$50.00) increase in each calendar year of the contract on the Clothing Allowance Article XVIII.

¹ The PBA revised its final offer at hearing to change the effective dates of its proposed salary increases from January 1 to July 1 in each of the three contract years.

The Borough

1. ARTICLE IV – SALARY

The proposal for a three (3) year term made by PBA Local No. 106 ("PBA") is accepted by the Borough of Point Pleasant Beach ("Borough"). Accordingly, the Borough proposes the following increases effective January 1 of each year:

2015: 1.5% of base salary as defined by N.J.S.A. §34:13A-16.7

2016: 1.5% of base salary as defined by N.J.S.A. §34:13A-16.7

2017: 1.5% of base salary as defined by N.J.S.A. §34:13A-16.7

The Borough's wage proposal is in the aggregate and includes the costs for step movement and longevity. The Borough's proposal also seeks credit for sums already paid in step movement.

The Borough proposes a new starting salary for all hires on or after January 1, 2017, of \$40,000 for their first year of employment with the Borough's Police Department.

2. ARTICLE VIII – OVERTIME

The Borough proposes the following: in the event the Borough adopts a 12 hour work schedule, the terms of the attached Flex Time memo shall apply under 207(k) of the Fair Labor Standards Act, based on 84 working hours within a 14 day cycle.

3. ARTICLE XVI – LONGEVITY

Longevity shall be amended to provide that officers hired on or after January 1, 2017, shall not receive a longevity payment pursuant to this Article.

4. ARTICLE XI – HOLIDAYS

The Borough proposes revising the Holiday provision as follows: Replace Section C with the following: The salary schedule reflects the value of the holidays recognized within Section A.

5. ARTICLE XX – RETIREMENT OR SEPARATION

The Borough proposes adding the following language to Section D: Provided, however, that the total maximum payment amount shall

be reduced by the actual value of sick leave used by that employee, at the daily rate paid to the employee, during the 12 month period preceding the employee's effective retirement date except that it will not affect the employee's ability to remain absent from work subject to medical documentation required by the Borough and, if requested by the Borough, a final binding independent medical review paid for by the Borough. If determined to be legitimately sick by that medical review, the employee's sick leave payout shall not be reduced under this provision.

6. **ARTICLE II – MANAGEMENT RIGHTS**

The Borough proposes the addition of the following language:

All leave time, whether paid or unpaid, that is used or allowed in connection with an event that is also covered under federal and/or state leave laws shall run contemporaneously with leave under federal and/or state leave laws including but not limited to its FMLA, NJFLA and NJ-SAFE policies. All discretionary or permissive language contained within the Family Medical Leave Act ("FMLA"), the New Jersey Family Leave Act ("NJFLA"), the NJ-SAFE Act, as well as other leave entitlement laws and regulations, shall be set by Borough policy.

7. **ARTICLE XV – SICK LEAVE**

The Borough proposes revising Section C to read "up to a maximum of six (6) months".

8. **ARTICLE XIX – HEALTHCARE**

The Borough proposes changing specific reference to "NJ Direct-10" with "the New Jersey State Health Benefits Plan".

The Borough proposes changing Section A by replacing "equal or better" to "substantially similar to."

BACKGROUND

The Borough of Pt. Pleasant Beach is a seaside community located in northern Ocean County. PBA President Christopher Mosca provided a profile of a community in his testimony reflecting that it is a vibrant, year round community

but with substantial impacts caused by vacationers. Although the Borough has a year round population between 4,500 and 5,000 residents, Officer Mosca testified that a summer day population could approximate 100,000, including people who visit on day trips, longer-term renters, and those who occupy area motels. Officer Mosca's description of the Borough was supplemented by the testimony of Borough Administrator Christine Riehl who also serves as the Borough's Chief Financial Officer and Tax Collector. Their testimony, as well as the record's documentary evidence, depicts a municipality that is community oriented, financial health and prudent in its expenditures and well protected by an effective and productive police department.

The Borough has survived the adverse impacts it suffered from the effects of Superstorm sandy. These impacts occurred toward the end of 2012. A detailed narrative of challenges that the Borough faced and have since overcome were described by Business Administrator Riehl whose testimony often referred to official budget documents. Among the challenges has been the restoration of homes and the loss of homes due to the storm. Some 200 homes have not been restored and remain off of the property tax ledger. Due to the rapid accumulation of unanticipated expenses, the Borough was forced to pass a series of energizing budget appropriations and bond ordinances. In December 2012, a special emergency note of \$3,150,000 was required. Storm impacts included a growth in tax appeals and property reevaluations that decreased tax ratables, increases in the municipal tax rate and slowdowns in the growth of new

construction ratables. The Borough was forced to use a substantial amount of surplus in its 2013 budget. Yet, through expert financial administration and management, as reflected in the testimony from Business Administrator Riehl, the Borough has recovered dramatically. This is evidenced by the collection of a higher percentage of taxes than were forecast, the receipt of grants and loans, rapid reconstruction of infrastructure to attract vacationers. The overall positive efforts to maintain financial health have resulted in improvements in the Borough's surplus balance, space in its appropriations cap and tax levy bank and tax collections. The storm also required extraordinary efforts from the police department to handle service calls associated with the storm and its aftermath.

The Borough is a Civil Service municipality. It employs approximately 94 full-time employees. The Borough has bargained three collective negotiations agreements. In addition to PBA Local 106, there are labor agreements with Teamsters Local 469 and Transport Workers Union Local 225. The PBA bargaining unit consists of one (1) Captain, one (1) Lieutenant, four (4) Sergeants and fifteen (15) Patrol Officers.² In addition to these twenty-one (21) officers, the Department employs a Chief of Police. One of the police officers is Officer Peter Andreyev who, since October 2014, has been on loan to the New Jersey State PBA. The loan arrangement is set forth in a contract between the Borough and the State PBA. Officer Andreyev is paid by the Borough and but his

² Article I – Recognition also includes the rank of Deputy Chief. At time of hearing, no one occupied this position.

costs while on loan are fully reimbursed by the State PBA. According to Officer Mosca, Officer Andreyev is subject at any time to recall by the Borough.

Officer Mosca offered testimony and authenticated a document submitted into evidence [PBA Ex. #8] reflecting police activity and calls for service assistance by category and by police officer. The Borough made some preliminary objections to this document which I admitted into evidence based upon Officer Mosca's testimony that he received the document from a secretary in the office of the Police Chief who compiles this documentation in the ordinary course of business. The document depicts the types of calls for service and the numbers in each category. Although the document does not serve as a substitute for officially reported data such as Uniform Crime Statistics, it is reflective of a department that performs substantial work. The Borough does not contend otherwise nor does it contend that its police officers provide services that are not effective, productive, competent or professional in nature.

The issues in dispute are both economic and non-economic. The parties' presentations were comprehensive and show careful attention to the statutory criteria. Each issue in dispute will be described individually in the Discussion section of this decision and will include an analysis of the issue and an award resolving the issue. The totality of each issue that has been awarded is set forth in a separate Award section.

DISCUSSION

The statute requires the arbitrator to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that are relevant to the resolution of the issues. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

My review of the criteria must be accomplished based upon the evidence presented as well as the application of well established standards in collective negotiations and interest arbitration. The party seeking to modify existing terms and conditions of employment has a burden to prove that there is a valid basis for the contractual change that it seeks. This burden must be met at a level that has sufficient evidentiary support. No proposed issue can be deemed presumptively valid in the absence of justification that is supported by credible evidence. I also observe that a proposal may not always be considered in isolation to other elements of the award. Instead, a decision to award or deny an individual issue will include consideration as to the reasonableness of awarding that issue in relation to the overall terms of the award. In certain circumstances, there may be merit to an award or a denial of a single issue if it were to stand alone, but a different conclusion may be reached after assessing its merits within the context of the entire award.

DURATION

Each party has proposed a three (3) year contract commencing January 1, 2015 through December 31, 2017. Given the parties' common positions on contract duration, I accept their agreement as a stipulation pursuant to N.J.S.A. 34:13A-16g(4) and award a new contract duration with effective dates of January 1, 2015 through December 31, 2017.

ARTICLE II - MANAGEMENT RIGHTS

Article II of the Agreement provides a management rights clause. The provision reads as follows:

The PBA recognizes that there are certain functions, responsibilities and management rights exclusively reserved to the Employer. All the rights, power and authority possessed by the Borough prior to the signing of the Agreement are retained exclusively by the Employer subject only to such limitations as are provided in this Agreement.

The management functions are vested in the Mayor and Council and their designees. Specifically, the Mayor and Council and their designees reserve the right, subject to the limitations herein, to establish and administer policies and procedures related to personnel matters, work activities, work programs, police training, operational functions, manpower utilization, productivity and efficiency matters.

The Mayor and Council and their designees retain the right to reprimand, suspend, discharge or otherwise discipline Police personnel for just cause and to hire, promote, transfer, assign, demote or lay off personnel for legitimate reasons.

The Mayor and Council and their designees retain the right to determine the number of personnel and the duties to be performed; to maintain the efficiency of personnel; to determine staffing patterns, to determine, implement and revise schedules; to control and regulate the use of facilities; and otherwise generally to manage the affairs of the Borough and direct the work force of the Police Department except as modified or restricted by a provision of this Agreement.

The Borough proposes to add a new section to the above management rights provision. It proposes:

The Borough proposes the addition of the following language: All leave time, whether paid or unpaid, that is used or allowed in connection with an event that is also covered under federal and/or

state leave laws shall run contemporaneously with leave under federal and/or state leave laws including but not limited to its FMLA, NJFLA and NJ-SAFE policies. All discretionary or permissive language contained within the Family Medical Leave Act ("FMLA"), the New Jersey Family Leave Act ("NJFLA"), the NJ-SAFE Act, as well as other leave entitlement laws and regulations, shall be set by Borough policy.

In its post-hearing submission, the Borough provides the following arguments in support of its proposal:

The Borough's proposal to amend the Management Rights section of the contract to include a provision allowing for uniform application of its leave policy applicable to the Federal Family Medical Leave Act ("FMLA"), the New Jersey Family Leave Act ("NJ-FLA"), the NJ SAFE law and comparable job protection leave laws. Notably, the focal point is to run such leaves, to the extent permitted by law, at the same time as other forms of time off (such as paid sick leave or worker's compensation) when an absence fits both.

As explained by the BA/CFO, the Borough typically runs FMLA and NJ-FLA time at the same time as other forms of time off, where applicable, for all Borough employees. (T: 161-14 to 162-16). The Borough's standard policy is part of the record as Exhibit B-36. That policy has been uniformly applied to all non-PBA employees. (Id.) Among other things, the policy provides that the Borough will run unpaid FMLA and/or NJFLA leave time at the same time as paid time off. (Exhibit B-36, §309, ¶3) There is no reason to require the Borough to maintain an independent process from that applied to all other employees. Notably, the PBA enjoys numerous protections including leaves of absence for up to a year at full pay in connection with an on-the-job injury. That's four (4) times longer than the amount of time available under the FMLA or NJFLA.

It is axiomatic that the interplay among workers compensation, the FMLA, NJFLA and Civil Service regulations is a confusing web for even the most skilled professional; requiring a different system for roughly a ¼ of the Borough's work force only serves to unnecessarily complicate matters adding to the administrative burdens in a manner that makes no sense.

The requested provision will not negatively impact the PBA given the lucrative time off benefits and paid leave protection already enjoyed by the unit. ...

The PBA rejects the Borough's proposal as unnecessary and not directly applicable to its membership. Notwithstanding its objection, the Borough has established a basis for consistency in its administration of its leave policies applicable to statutory leave laws. The interest and welfare of the public is promoted by relieving the Borough of the administrative burden of maintaining different processes for the accounting of leave time. While uniformity of treatment may not be warranted, the Borough has met its burden by establishing a reasonable basis for consistency of treatment on this issue. Moreover, the fact that law enforcement officers maintain statutory protections in connection with on the job injuries is an additional basis to award the Borough's proposal. The proposal is awarded.

ARTICLE XI - HOLIDAYS

Article XI provides a list of paid holidays and references pay practices. The entire article is as follows:

- A. The following holidays shall be recognized: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday, Easter Sunday, Memorial Day, Independence Day, Labor Day, Columbus Day, General Election Day, Veteran's Day, Thanksgiving, Christmas and Martin Luther King Jr. Day.
- B. The Borough shall pay to all Officers affected by the assignment two and one-half (2 1/2) time pay for officers assigned to work on Thanksgiving and Christmas. This shall

only affect Officers actually working on that calendar day. (Example - 12:00 midnight to 8:00 am, Christmas morning shall be paid in accordance)

- C. Current pay practices with reference to holidays shall be continued for the lifetime of Agreement, including payment of holiday pay on the second pay in November, except that the Employees may elect to receive compensatory time off in lieu of said paid holidays, subject to prior approval of the Chief of Police.

At some time in the recent past, the value of paid holidays, as enumerated in Section A, was placed into the salary schedule. However, Article XI contains no language that reflects this. The PBA proposed language to reduce this agreement to writing. The Borough proposes the same. Thus, both parties agree to incorporate language in Article XI to reflect this pay practice. Given the parties' common positions, I accept their agreement as a stipulation pursuant to N.J.S.A. 34:13A-16g(4). I do not award specific contract language but award the inclusion of language in Article XI that shows that the monetary value of paid holidays is incorporated and reflected in the salary schedules.

ARTICLE XXI - PBA TIME OFF

Article XXI provides a procedure for release time to attend to Association business. It states as follows:

- A. The PBA President and Delegate shall be eligible for release time to attend to Association business. An annual bank of one hundred twenty (120) hours of release time shall be established to be shared by the PBA President and Delegate. The Chief of Police, in the exercise of reasonable discretion, shall grant such release time if adequate notice is

provided and the granting of such release time will not affect operational needs nor will it cause overtime costs.

- B. Effective July 1, 2008, an additional sixty (60) hours of leave time for the Delegate to use for meetings that require his attendance as Vice-President of the PBA. This additional sixty (60) hours of leave time will continue during the period that the Delegate serves as Vice-President of the State PBA and will cease upon the end of his term as Vice-President. This shall be prorated in 2008 at thirty (30) additional hours.

The PBA proposes to add language stating that the PBA time off provision be clarified to allow for existing time to be used by a designee consistent with what current practice allows. The proposal would add Designee in addition to the currently stated Offices of PBA President and Delegate. PBA President Christopher Mosca represented in his testimony that the PBA's proposal is consistent with current practice. No opposition to the proposal was presented. Accordingly, I amend Article XXI – PBA Time Off as follows:

- A. The PBA President and Delegate, or an officer designated by the PBA President, shall be eligible for release time to attend to Association business. An annual bank of one hundred twenty (120) hours of release time shall be established to be shared by the PBA President and Delegate. The Chief of Police, in the exercise of reasonable discretion, shall grant such release time if adequate notice is provided and the granting of such release time will not affect operational needs nor will it cause overtime costs.
- B. Effective July 1, 2008, an additional sixty (60) hours of leave time for the Delegate to use for meetings that require his attendance as Vice-President of the PBA. This additional sixty (60) hours of leave time will continue during the period that the Delegate serves as Vice-President of the State PBA and will cease upon the end of his term as Vice-President. This shall be prorated in 2008 at thirty (30) additional hours.

ARTICLE XV - SICK LEAVE

Article XV – Sick leave consists of a comprehensive set of terms concerning the earning and taking of sick leave. One such provision in Article XV is Section C. Section C states as follows:

Whenever any Employee entitled to sick leave under the Article is absent from work as the result of injury incurred in the course of his employment, the Borough shall pay such Employee his full salary for the period of such absence up to a maximum of one (1) year without having such absence charged to the Employee's annual sick leave. Any amount of salary paid to the Employee shall be reduced by the amount of any Workman's Compensation payments made, but not including awards made for permanent disability.

The Borough has proposed to revise Section C to provide for a maximum of six (6) months leave with full salary when an officer is absent from work as the result of a work related injury instead of the current level of benefits that allows for full salary up to a maximum of one (1) year. In either instance, this type of absence is not charged to the officer's annual sick leave. Also in either instance, the amount of salary the employee receives is reduced by the amount of any workman's compensation payments made not including awards made for permanent disability.

Testimony as to the existing benefit and the Borough's ordinance on this issue was offered by Borough Administrator/Chief Financial Officer Christine Riehl. In its post-hearing submission, the Borough summarizes her testimony and documents that were submitted in support of the Borough's proposal:

As explained by the Borough's BA/CFO, by Ordinance the Borough limits full pay for worker's compensation related injuries to six (6) months. (T: 162-17 to -20) Completion of the State's Best Practices Worksheet ("Worksheet") determines the amount of State aid received by a municipality. (T: 162-23 to 163-10) Through it, the State seeks to guide municipal policy reform. Pertinent to the Borough's proposal is a question that asks whether the Borough limits payments under worker's compensation to the statutorily provided maximum. (*Id.*) Failure to meet the State's requirements limits, and can even reduce, the amount of State aide received by a municipality. The Borough's state aid has remained stagnate for numerous years.

A comparison to the TWU contract revels that the PBA is assured a leave with full pay for one (1) full year, whereas the TWU contract contains a provision comparable to the Borough's Ordinance: full pay for six (6) months which may be extended at the Borough's discretion for an additional six (6) months. (Compare Exhibit J-1, Article XV, §C, p. 22, to Exhibit B-17, Article 11, § A.3). Likewise, a virtually identical provision is contained within the Teamsters contract. (Exhibit B-18, Article 11, §11.3, p. 7).

The PBA urges rejection of the Borough's proposal. The PBA contends that no weight should be given to the Borough's reliance on its negotiated agreements with its non-law enforcement units. It cites many differences that exist among the three contracts. For example, it notes that the agreement with TWU Local 225 provides for a 32 ½ hour workweek and that Teamsters Local 469 agreement provides for a 35 hour workweek in contrast to the PBA's work schedule that requires substantially more annual hours of work.

While consistency among internal labor agreements is generally a desirable goal, it is not required, especially in the absence of credible evidence that supports the need for a contractual change seeking conformity. Here, there

is insufficient evidence that the change the Borough seeks is one that corrects an existing problem or one that is necessary to remedy an abuse of leave time for injuries incurred during the course of an employee's employment. Accordingly, the Borough's proposal is denied.

ARTICLE XVI - LONGEVITY

The collective negotiations agreement provides a comprehensive scheme for the payment of longevity. The provision is as follows:

- A. For the duration of this contract there shall be added to the Salary Schedule the following increments based upon the Officer's salary for services on and after completion of four (4) years of service with the Borough Police Department.

Beginning 5 through 7 Years	2% of Salary
Beginning 8 through 11 Years	4% of Salary
Beginning 12 through 15 Years	6% of Salary
Beginning 16 through 19 Years	8% of Salary
Beginning 20 through 24 Years	10% of Salary
Beginning 25 Years	12% of Salary

- B. Longevity pay adjustments will be made the first pay period subsequent to the anniversary date and become part of the regular pay from that date forward.
- C. The longevity payment of twelve percent (12%) in the twenty-fifth (25th) year shall be in effect as of 1/1/90.
- D. The longevity schedule for Police Officers hired on or after September 22, 2011 shall be as follows:

Beginning 5 through 7 Years	1% of Salary
Beginning 8 through 11 Years	2% of Salary
Beginning 12 through 15 Years	3% of Salary
Beginning 16 through 19 Years	4% of Salary
Beginning 20 through 24 Years	5% of Salary
Beginning 25 Years	6% of Salary

The Borough has proposed to amend Article XVI by the elimination of longevity payments for officers hired on or after January 1, 2017. The Borough offers rationale in support of its proposal, the Borough cites testimony from Borough Administrator Christine Riehl that the Borough has never had a shortage of qualified candidates when it seeks to hire new police officers and that longevity for new hires was eliminated in 2006 and 2007 for other Union and non-Union, non-uniform employees. The Borough also cites several other collective negotiations agreements for municipalities in the general operating area. These include municipalities such as Bayhead, South Toms River, Surf City and Brielle, all of whom ended longevity for new hires during the past several years. In addition, the Borough cites the Long Beach agreement that does not provide for longevity and Plumstead, who only pays longevity to employees who were receiving it as of December 31, 2013.

The PBA urges rejection of the Borough's proposal. It refers to the proposal as taking a "free shot" at a longstanding contract term. It further observes that the proposal cannot be costed out as it operates "in futuro" and does not take into consideration many relevant proofs such as the number of officers to be hired, the possible dates of hire and the placement of the officers on the salary schedule, all of which affect future personnel costs.

I do not award the Borough's proposal. There has not been a pattern of consistency on this issue among the Borough's three bargaining units. The longevity benefit was reduced by 50% in a September 22, 2011 interest arbitration award. Further, compensation increases for the PBA is strictly limited by statutory salary caps that do not apply to the Borough's other units whose contracts remain unresolved. The denial of the Borough's proposal for the 2015-2017 is not intended to limit its ability to seek contractual modifications to the longevity benefit in future negotiations and to that extent, the denial is without prejudice.

ARTICLE XVIII – CLOTHING ALLOWANCE

The PBA proposes a Fifty Dollar (\$50.00) increase in each calendar year of the contract in the Clothing Allowance Article XVIII. Article XVIII reads as follows:

The Borough shall pay to each officer a cleaning allowance of Two Hundred Dollars (\$200.00) on or about October 1st of each year.

The PBA contends that virtually all law enforcement department agreements that were introduced into evidence have allowances that exceed what is provided in the PBA Local 106 Agreement. Based upon these exhibits, the PBA provides a chart reflecting the clothing allowances. The chart reflects:

CLOTHING ALLOWANCES BASED ON EXHIBITS IN EVIDENCE

TOWN	EXHIBIT	CLOTHING ALLOWANCE
Bay Head	P-5	\$1,200
Mantoloking	P-4	\$1,200
Manasquan	P-3	\$725
Point Pleasant Borough	P-2	\$675
Beach Haven	B-9	\$1,000
Ship Bottom	B-8	\$1,000
Long Beach	B-13	100% Purchase and Maintenance Paid
Surf City	B-12	\$1,450
Lakehurst	B-11	\$800
Plumstead	B-15	\$500
Lawalette	B-14	\$550
South Toms River	B-16	\$1,250
Wall	B-20	\$1,150
Hardyston	B-21	\$1,000
AVERAGE		\$962 Annual Clothing Allowance

In its post-hearing submission, the PBA submits argument in support of its proposal:

Chart No. 2 is significant to this case as it illustrates an issue in dispute in this Interest Arbitration proceeding. The PBA has proposed an additional Fifty Dollars (\$50.00) per contract year as part of its Last Offer Package Position. That would bring the total clothing allocation to Three Hundred Fifty Dollars (\$350/yr.) *per annum*. The average for contracts in evidence by both parties is nearly triple that figure. **Chart No. 2** clearly supports the position of the PBA in this case.

There is no doubt the Employer will argue, as it did at hearing, that the clothing allowance was "rolled into base" many years ago. While it is true that base was enhanced at that point, clothing allowance at that time was forfeited down to a very low number. In effect there was a tradeoff of giving up a benefit, the clothing allowance amount in exchange for a wage increase. Clearly, based on **Chart No. 1** above the asserted enhancement of base did not do much good. The 2014 pay rates for Point Pleasant Beach Police Officers are among the lowest in the area. The Employer cannot have both ends of the argument. If the Employer seeks to identify part of the existing Point Pleasant Beach Police Officer base pay as clothing allowance then the base net pay for those Point Pleasant Beach Officer falls even further behind said Officer's peers in the area. Those Officers, it must be stressed, are all receiving not only a higher base pay than the Point Pleasant Beach Police Officer but in addition are receiving a significantly higher clothing allocation. The Employer cannot have both ends of the deal. A trade off occurred where part of a benefit, a significant part of the clothing allowance, was given up, forfeited, in exchange for a modest pay increase. That modest pay increase must be acknowledged as it obviously only resulted in a near last place position of the base pay of the Point Pleasant Beach Police Officer. Officer Mosca testified as to the existing needs for clothing purchase and maintenance at hearing. His testimony clearly supports the facts that the current allocation is insufficient to meet the purchase and maintenance needs as exist. No one would challenge the high standards maintained for Officer appearance and attire as elements of professionalism in public service.

The Borough objects to any increase in the clothing allowance. The Borough supports its request for denial based upon record testimony and labor agreements the parties have submitted into evidence within various Ocean County law enforcement departments. It also offers formal argument in its post-hearing submission.

... the union did not meet its burden of persuasion to justify an increase to the clothing allowance, Exhibit J-1, the expired contract between the parties, at Article XVIII, entitled "Clothing Allowance," simply states, "The Borough shall pay to each officer a cleaning allowance of Two Hundred Dollars (\$200.00) on or about October

1st of each year." Officer Mosca, at T:22-10 to T:23-21, did not produce candid testimony when the union attempted to have the arbitrator believe that a \$200 allowance was expected to cover the costs of replacing a pair of "just a shirt and pants is roughly a hundred and fifty dollars" and "for those that dry clean...yes" the cost of dry cleaning. It wasn't until cross-examination that the truth of the matter surfaced:

Q: Okay, but you do know that there was an aspect of the clothing allowance that was rolled into the base pay of all officers. Right?

A: I know the clothing allowance was rolled in. Yes. I do know that.

Q: How much was that?

A: That, I don't know the amount.

(T:42-7 to -13)

Just prior to this exchange, Officer Mosca testified as to having served as PBA President for the past five years, and perhaps another "one to two" as vice president. (T:41-5 to -19). Despite having served in these leadership roles for the union, when it came time to actually understanding the impact of the prior clothing allowance roll-in, President Mosca feigned ignorance:

Q: Now you would agree by rolling that number into the base pay that that number got added to going on, for the entirety, since roll-in, that added to the amount of pensionable salary, correct, because it increased wages?

A: *I wouldn't know.*

Q: You wouldn't know? How about your overtime calculations?

A: If it increases base, then it increases overtime and it would increase.

Q: You would agree that it increased your OT rate as well, by rolling it in?

A: It increased. Yes. Yes.

Q: And you would agree that it grows, since roll-in, it grows exponentially with every contract raise that comes along. Is that right?

A: Yes.

(T:434 to 43:20) [Emphasis added].

The Borough goes on to argue:

The cross-examination of Officer Mosca revealed other deficiencies in, the union's proposal. He couldn't recall the value of the amount rolled, though he estimated it to be in the range of \$800 - \$1,200, nor could he recall approximately how long ago the amount was rolled in, nor did he produce any evidence regarding the number of officers that use the clothing allowance to pay for the costs of cleaning uniforms, nor did he produce any receipts or other documentation to show the cost of a single shirt and pants being cleaned. Yet, despite the fact that an \$800 - \$1,200 clothing allowance was rolled into base pay, despite the fact that it gets compounded every time an across-the-board raise is added to base pay and impacts the Borough's pension liabilities, despite the Borough's obligation to pay \$200 additional every year for cleaning, the PBA clarified that it wasn't simply seeking a \$50 increase on the basis of this incredulous testimony, it was seeking a \$50 increase for each contractual year. (T:45-3 to -8).

Comparatively speaking, the amount rolled into base pay roughly twelve (12) years ago (T:168-9 to -14) combined with the \$200 clothing maintenance total between \$1,000 to \$1,400 per year. Again, that range does not take into account twelve (12) years of across-the-board increases to base pay! That places the PBA's proposal on the high side compared to many of the Ocean County jurisdictions submitted for consideration, examples of which are contained below within Chart 1.

CHART 1: OCEAN COUNTY CLOTHING MAINTENANCE/ALLOWANCE

<u>Town</u>	<u>Clothing Maintenance/Allowance</u>
Lakehurst.	\$600 (cleaning), Exhibit I3-1 1, p. 18'
Lavallette	\$400 (maint.), \$500 (allowance), Exhibit P-14, pp.6-7
Long Beach	\$1,215.51, Exhibit 3-13, p. 21
Plumsted	\$500 (both), Exhibit B-I 5 p.32
Point Pleasant	\$673, Exhibit P-2, p17

After consideration of all of the above, I award an increase in the clothing allowance limited to a \$50 increase effective October 1, 2017. I note that although Article XVIII is entitled "Clothing Allowance," the contract language that refers to the \$200 payment on or about October 1 of each year is to Cleaning Allowance. The Borough correctly observes that the overall costs for a clothing allowance and a cleaning allowance must be considered, including the prior amounts that were rolled in. This weighs heavily against the awarding of the PBA's proposal for a \$150 increase over the three years. However, I am persuaded that the PBA has established that the \$200 payment for cleaning allowance should be modestly adjusted but within a level consistent with the Borough's financial abilities. Accordingly, I award a modification of the cleaning allowance to \$250 effective October 1, 2017.

ARTICLE XIX - MEDICAL COVERAGE

Health Insurance coverage for unit employees is set forth in Article XIX. The Borough proposes to modify Article XIX(A) in two specific areas. Section A currently reads as follows:

- A. All members of the bargaining unit shall remain in the State Health Benefits Plan Direct 10 as of January 1, 2011 in accordance with the terms and conditions as set forth in the State Health Benefits Plan. The level of Employee contribution towards the medical benefits shall be as established in Chapter 78, Public Law 2011 with a minimum contribution of not less than 1.5% of the annual salary. If the Borough sees fit to change the source of coverage then the

new coverage shall be equivalent to or better than present coverage.

- B. The Borough shall implement an IRS 125 Plan to permit pre-tax health care contributions.
- C. If a permanent full time Employee becomes totally disabled or retires after ten (10) years of service, the Employee can remain in the Group Health Benefit Plan with full dependent coverage as long as the Employee pay the premium cost of the plan, up to a maximum of eighteen (18) months.

The first part of the Borough proposal is to change the specific reference to "NJ Direct-10" and replace it with language stating "New Jersey State Health Benefits Plan." NJ Direct-10 is one of the plans included and offered by the New Jersey State Health Benefits Plan. The second part of the Borough's proposal is to replace the language "equal or better" to "substantially similar to" when and if the Borough changes to a new source of coverage.

The Borough's post-hearing submission refers to testimony and exhibits presented at hearing. It submits the following argument on behalf of its proposals:

Presently, the PBA contract at issue specifies that "[a]ll members of the bargaining unit: shall remain in the: State Health Benefits Plan Direct 10," (Exhibit J4, p. 27 § A) It is important to note that the Borough's proposal to modify that portion of the existing contract reference from "NJ Direct-10" to "the, New Jersey State Health Benefits Plan" is not intended to result in, nor will it require, any change in the level of benefits currently enjoyed by the PBA. Instead, the Borough's proposal is intended to align the PBA's contract with comparable provisions of other Borough collective, bargaining agreements and other police contracts while eliminating the obvious, very troubling problem occasioned by specifying a specific plan offered by a provider. The Borough also proposes

changing Section A by replacing "equal or better" with "substantially similar to" should it decide to change benefit providers.

As testified to by the BA/CFO, the Borough's proposal to modify the reference within the contract to the State Health Benefits Plan reflects the same language contained within the TWU and Teamsters contracts. (T. 167-4 to -12; Exhibits B-17 and B-18). Article XII of the TWU contract only contains a generalized reference to the benefits provider: "NJ State Health Benefits Program." (T. 167-4 to -12: Exhibit 17, Article XII, §3, p. 14) It does not identify a specific benefit package or plan offered by that provider. Likewise, the Teamster's contract also contains no such reference. (T. 167-4 to -12; Exhibit B-18, Article XII, P. 8)

The Borough's proposal is further supported by its inability to obtain meaningful, competitive insurance quotes. The BA/CFO testified that, in late 2014 (for application in 2015), the Borough was unable to obtain any level meaningful insurance quotes: three out of five companies declined to provide a quote. (T. 165-12 to 166-6) The other two providers could not offer the same plan (Direct 10) at a reasonable cost. (*Id.*) Indeed, the PBA contract language has proven to be the cause of a recent grievance arbitration as well. (T. 167-13 to -22) Notably, the State Health Benefits Plan requires enrollment of all current employees of a municipality. (T. 166-19 to 167-3) As a result, a successful challenge by the PBA that requires the Borough to provide coverage through a source other than the State Health Benefits Plan in order to maintain equal or greater coverage ultimately results in removal of all employees – including employees under contracts that will not create the same requirement.

Requiring a municipality, to be significantly hamstrung in its ability to change medical plans, to the point of near impossibility, is clearly not what Chapter 78 intended when it created the State Health Benefits Plan Design Committee. N.J.S.A. 52:14-17.27. "The committee shall have the responsibility for and authority over the various plans and components of those plans, including for medical benefits, prescription benefits, dental, vision, and any other health care benefits, offered and administered by the program. **The committee shall have the authority to create, modify, or terminate any plan or component, at its sole discretion.** Any reference in law to the State Health Benefits Commission in the context of the creation, modification, or termination of a plan or plan component shall be deemed to apply to the Committee." N.J.S.A. 52:14-17.27 [Emphasis added]. If not for the continually changing

nature of health care and health care costs, such a committee would not be necessary.

Against this backdrop, the Borough directs attention to contract provisions from several other Ocean County jurisdictions that contain provisions comparable to the terms sought by the Borough.

CHART 4: HEALTH BENEFITS PROVISIONS (EXHIBIT B-31)

	<u>General Reference to Plan</u>	<u>Change in Plan</u>
Lakehurst		"substantially similar," § D, p. 12
Lavallette	State Health Benefits Plan, p. 9	State Health Benefits Plan as standard for comparison, p. 9
Long Beach	State Health Benefits Plan, p. 22	"substantially similar," p. 27
Plumsted	General reference, p. 23	
South Toms River	State Health Benefits Plan, p. 15	
Surf City	Same as all other employees, p. 31	"in the aggregate substantially equivalent," p. 32

Several other Ocean County, contracts entered as exhibits also contain general reference to the overall health plan including Plumsted, Beach Haven, and Manasquan. The Plumsted contract simply refers to medical and prescription benefits and generally references an HMO, EPO or PPO. (Exhibit 13-15, § 18.1, p. 23) Notably, that contract does not impose any limitation or qualification on changes in benefit plans or providers. (*Id.* at pp. 23-25). The Beach Haven, agreement refers to Blue Cross/Blue Shield and major medical coverage. (Exhibit B9, § A, p. 12). In Seaside Heights, the agreement generally refers to a benefits plan without specifying a particular benefits package: "Employer's hospitalization and medical/surgical plan in effect as of January 1, 2007." (Exhibit 10, p. 35, § A).

PBA Exhibit P-3 provides that the Borough of Manasquan shall provide the benefits specified "or similar," (Exhibit P-3, p. 32, §3.A) Likewise, Wall Township's contract does not require a specific benefit package (Exhibit B-20 (complete copies provided to PBA and Arbitrator), p. 63-671) In Clinton, the contract generally references the "New Jersey State Health Benefits Plan." (Exhibit B-19 (complete copies provided to PBA and Arbitrator), p. 14, § A) That contract also does not impose any limitation or qualification on changes in benefit plans or providers. (*Id.* at pp. 14-15).

The PBA seeks rejection of the Borough's proposal. In its presentation notes that its members carry a substantial financial burden required by contribution levels pursuant to Chapter 78. It does not want to subject its members to the uncertainties created by having only a general reference to the New Jersey State Health Benefits Plan. It also seeks to maintain the strength of the existing "equivalent to or better" language that allows for change in source of coverage and benefit levels.

The PBA's rejection of the Borough's proposal has been forcefully articulated. The membership is making substantial contributions toward health insurance coverage and sees the potential for change as an additional aggravating factor. However, its concerns must be weighed and balanced against the merits of the Borough's proposal. The Direct-10 plan is one of many plans offered by the New Jersey State Health Benefits Plan. The Borough's proposal allows an employee to select from any of the several plans, including Direct-10. Thus, the Borough's proposal, if awarded, would have no direct impact on employees as long as the Direct-10 plan continues to be offered by the New Jersey State Health Benefits Plan. The Borough's other bargaining units and non-union employees now have access to Direct-10 or any other plan offered by the New Jersey State Health Benefits Plan. The Borough's proposal would conform the PBA with the remainder of the Borough. This evidence of internal comparability is a relevant but not an exclusive consideration when evaluating the merits of the Borough's proposal. The application of this

subsection of the statutory criteria, N.J.S.A. 34:13A-16(g)(2)(c) is well accepted. [See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008)].

Despite the PBA's opposition, I conclude it has not advanced sufficient justifications that would warrant a finding that Article XIX should remain in non-adherence with everyone else employed by the Borough on the health insurance issue. The Borough seeks to provide common treatment with respect to providing a policy affording health insurance benefit to all of its employees. Any distinctions in employment conditions that may distinguish police officers from non-law enforcement employees and non-unionized employees are not valid considerations for denying the Borough's proposal. Moreover, the Borough does not have control over the plans that the New Jersey State Health Benefits Plan offers to thousands of State, county, municipal and school board employees. The existing contract provision could be read to require the Borough to maintain the precise elements of a health insurance plan that is no longer offered and require it to self-insure or to go outside of the New Jersey State Health Benefits Plan. This could create substantial administrative and cost burdens on the burden that would not serve the interests and welfare of the public, even if it were lawful to provide the New Jersey State Health Benefits Plan to some but not all of its employees. I credit the testimony of Borough Administrator Christine Riehl

that outside providers could not offer competitive insurance quotes or provide any quotes for offering the same plan.

Accordingly, I find the Borough has sustained its burden with respect to its deletion of specific reference to NJ Direct-10 and its replacement with language allowing for unit employees to select coverage within the New Jersey State Health Benefits Plan.

I do not award the Borough's proposal to remove the "equivalent or better than present coverage" language and replace it with "substantially similar" in relation to changing the source of coverage. The existing standard is the same as that in the Teamsters Local 69 contract. By allowing employees to select from any of the plans offered by the New Jersey State Health Benefits Plan, there is little or no likelihood that the Borough would now go outside of this Plan or that the Plan, with all of its choices, would no longer be offered by the State of New Jersey. This contract ends on December 31, 2017 and allows for renewal of proposal on this issue based upon circumstances presented at that time.

ARTICLE XX - RETIREMENT OR SEPARATION

The Borough proposes an amendment to Article XX – Retirement or Separation. The relevant language in the current agreement is set forth in Section A through Section D as follows:

- A. Upon retirement or separation from employment from the Borough, Police Officers shall be entitled to receive compensation for accumulated sick leave earned while in the employ of the Borough.
- B. The payments under this clause shall not exceed four (4) years. In addition, no payment to the Employee shall be less than Three Thousand Dollars (\$3,000.00) in any one (1) year.
- C. The first payment shall be made within thirty (30) days after retirement or separation and all subsequent payments shall be made during the month of January.
- D. The maximum payment for accumulated sick leave, which shall be paid to any member of the unit, as defined under the unit's recognition clause, shall be Twenty Thousand Dollars (\$20,000.00).

The proposal is in reference to the accumulated sick leave benefit upon retirement or separation from employment. The Borough proposes to add the following language to Section D:

Provided, however, that the total maximum payment amount shall be reduced by the actual value of sick leave used by that employee, at the daily rate paid to the employee, during the 12 month period preceding the employee's effective retirement date except that it will not affect the employee's ability to remain absent from work subject to medical documentation required by the Borough and, if requested by the Borough, a final binding independent medical review paid for by the Borough. If determined to be legitimately sick by that medical review, the employee's sick leave payout shall not be reduced under this provision.

The Borough explains its rationale for the inclusion of the new language it proposes to add to Section D:

The Borough also requests that the award include a meaningful alternative to controlling sick leave burn off in anticipation of

retirement. Simply, without the proposed alternative, the Borough will continue to face a Hobson's choice: pursue costly legal action associated with an employee who plans to retire or forego the benefit of its bargain, a sick leave payment cap of \$20,000 upon retirement. (See, Exhibit J-1, Article XX, D; T. 150-6 to -12).

In addition to the \$20,000 payout upon retirement, PBA members can also substitute sick days for vacation days for up to an additional ten (10) vacation days at a conversion rate of two (2) sick days for one (1) vacation day. (Id, at Article XV, §F, p. 23) This benefits the PBA and the Borough in a financially obvious way unless, of course, the terms are not adhered to. At this point it's important to note the limitations of the Borough's proposal: it does not seek to eliminate the valid use of sick time prior to retirement. Instead, it merely seeks a meaningful alternative to obtain that which it is entitled to receive: the benefit of its bargain without overly complicated and costly proceedings. Further, it does not seek a complete forfeiture but simply a reduction of sick leave payout based on burn-off.

Significantly, the Borough's proposal includes a mechanism that assures against unilateral application or abuse: "it will not affect the employee's ability to remain absent from work subject to medical documentation required by the Borough and, if requested by the Borough, a final binding independent medical review paid for by the Borough. *If determined to be legitimately sick by that medical review, the employee's sick leave payout shall not be reduced under this provision.*" [Emphasis added]

Presently, the Borough is relegated to legal action in some form or another. Ironically, if the Borough proceeds with disciplinary action, it delays processing the retirement application of an employee who no longer wishes to remain employed by the Borough. A municipality is required to notify the Division of Pensions and Benefits whenever a public employer takes formal disciplinary action to remove a member from public office or employment. N.J.S.A. 43:1-5 Retirement applications are not processed until outstanding disciplinary matters have been completely resolved to the satisfaction of the Board of Trustee, N.J.A.C. 17:1-6.1; Fact Sheet No. 76, "Honorable Service", New Jersey Division of Pensions and Benefits, p. 1 (Sept. 2009). It is not in the interest of the Borough, the public or the taxpayers to delay the retirement of an officer who no longer wishes to remain in the job.

The BA/CFO attested to instances where employees who retired had used greater sick leave use just prior to their final day of

employment. (T. 152-13 to 153-18) Equally important, as a practical matter, the Borough is prevented from hiring a replacement until it actually has a vacancy. This results in several problems:

- an employee who is in the process of retiring is not reporting to work while receiving full sick leave pay and the Borough is paying more than the employee is entitled to receive in sick leave pay out.
- the employee can always change their retirement date. In fact, the Borough has one employee who has repeatedly done so. (T. 151-17 to 152-12)

The PBA urges rejection of the Borough's proposal. It explains its opposition in its post-hearing submission:

The Employer sought a change at Article XX regarding certain formula limitation on retirement or separation. The Employer has no proofs on the subject. When pressed on the subject the Borough Administrator could only come up with one example of someone who she thought was "burning down" available sick time. The example provided, and notably the only example asserted by the Employer, was with respect to Captain Dikun. The PBA called Captain Dikun to testify. He has not filed a Petition for Retirement. He has not filed any retirement papers. He stated that he had no intention of retiring at this time. He has not made any future plans to retire. With respect to utilization of sick time in recent years he described three (3) specific examples. First, he had a broken leg which required surgeries. Secondly, his daughter suffered a severe injury which also required multiple surgeries. Finally, he has also been a care provided for his father who needs special attention. In fact, there are no proofs for any change whatsoever in this matter. One adds almost parenthetically that the proposal as made cannot be costed out as it requires many facts in order to do any form of arithmetic analysis. Who will retire? When will they retire? How many sick days will they have at the point of retirement? Will an illness, even under the Employer's standards, be a valid illness during the last year of service? Could a disabling illness, such as cancer, not predicate retirement and therefore obviate the entire proposal? No change in this area is appropriate.

The PBA has adhered to the statutory requirement and presented proofs in each of the requisite areas to support its position. The Employer has not done so.

The Borough's proposal is aimed at employees who it believes have abused the benefit in Article XX. However, at hearing, the specific examples cited were employees employed outside of the police department. The only instance where it asserted a potential abuse of what it terms sick leave burn off was reflected in an email inquiry sent to the Borough by Captain Dikun. The email does contain an inquiry into Borough policy but does not reflect an intent to abuse the current system. Captain Dikun has not retired and did use sick leave in connection with circumstances in which, at hearing, he offered credible explanations.

I decline to award the Borough's proposal for two reasons. First, there is no evidence of abuse in the police department. The Borough may legitimately pursue change with respect to employees employed outside the police department. Second, the Borough has an inherent managerial prerogative under PERC case law to require verification of the proper use of sick leave and adopt such a policy. An employee who the Borough concludes does not meet the verification policy is subject to the withdrawal of the benefit. Although the employee may challenge the merits of such withdrawal, an unsuccessful challenge could result in non-payment for the days with negative impact on pension benefits.

Based upon the above, I decline to award the Borough's proposal.

ARTICLE VIII - OVERTIME

The Borough proposes to add the following language to Article VIII:

In the event the Borough adopts a 12 hour work schedule, the terms of the attached Flex Time memo shall apply under 207(k) of the Fair Labor Standards Act, based on 84 working hours within a 14 day cycle.

The Borough makes the following argument in support of its proposal:

The Borough's overtime proposal merely seeks to address the narrow issue of overtime and the compensation system involving flex-time while recognizing that the Borough has the prerogative to adhere to an eight (8) hour schedule or adopt a twelve (12) hour schedule as previously determined by PERC. Regardless of the mechanism, the Borough only seeks to memorialize existing, agreed upon overtime/compensation terms reflected within the current flex-time memo (Exhibit B-22) in a manner that does not incur overtime before eighty (84) working hours in a fourteen (14) day period.

Notably, Exhibit B-22 begins "With the schedule change for regular officers, assigned patrol duties, to a twelve (12) hour shift there is a need **to compensate ...**" [Emphasis added] The remainder of that memo details a compensation system agreed upon and implemented by the parties:

- Flex time is an hour for hour reimbursement for the additional scheduled hours.
- Each Patrol officer shall receive a "Flex Time" bank of 104 hours for the calendar year.
- Each Detective, who works a 9 hour schedule shift, shall receive 5 hours per week in Flex time, (260 hours per year).
- Flex time cannot be converted to cash and has no monetary value.

- Flex time must be used by the end of the calendar year and cannot be carried over into the next year.
- Flex time can be used by officers at the discretion of the shift OIC and police administration.
- Flex time cannot be used if the shift will fall short on manpower.
- Flex time cannot be used in any instance that will create overtime.
- Officers using Flex time, previously approved by their OIC, shall contact the PD dispatch desk one hour prior to the start of the shift to make sure that their use of Flex time does not leave the shift short or create overtime.
- If the officer's use of Flex time somehow creates overtime that officer will be charged for their use of time as Comp time at a rate equivalent to the overtime created, (time and a half).
- Additional Flex time may be awarded to officers, at the discretion of the police administration, in lieu of time spent for non mandatory training that would enhance the operations of the department by providing additional information to officers upon their request to participate in that training.
- A Flex time log, (Spread sheet), shall be maintained and posted by the Police Administration to aid officers in tracking their time usage. It is the sole responsibility of each officer to make sure they use their time wisely.

(Exhibit B-22)

The testimony of PBA President Mosca supports an award of the Borough's proposal: Mosca testified that the memo reflects the practice at the department, no grievance has been filed in connection with it, that the PBA is satisfied with maintaining it and it has been in place since January 2015. (T. 55-20 to 56-3; T. 56-12 to 56-15; T. 61-24 to 62-1) Mosca agreed that Exhibit B-22 is accurate save two general items. (T. 60-22 to 61-4).

As noted during the proceeding, there is no contention that overtime or paid overtime is required as a result of the present schedule. (T. 4-6 to 64-11) Counsel for the PBA represented that it has not made a claim for additional compensation nor has the PI3A filed a pending grievance or unfair practice charge. (T. 64-23 to 64-25) It was noted, without objection or contradiction, that PBA "President Mosca did not indicate that the PBA is seeking anything with respect to paid overtime, other than how that issue has been resolved in accordance with B-22." (T. 67-17 to T. 67-20) Mosca agreed with that description of the PBA's position. (T. 68-21 to 68-25) The trade-off for the compensation system is easily surmised: a twelve (12) hour work schedule limits PBA unit members to working

approximately fifteen (15) days per month or 182 days per year; and PBA members enjoy a three (3) day weekend every other week and expanded vacation time: to realize seven (7) days off only necessitates the use of two (2) vacation days.

The Pitman schedule is commonly used in law enforcement in connection with twelve (12) hour shifts. (See, Exhibit B-19, Section A, introductory paragraph; Exhibit B-20, Section D, p. 40 introductory paragraph, p. 41 §2 and 3) The typical Pitman schedule will result in eighty-four (84) hours during the fourteen (14) day period. Id. Section 207(k) of the Fair Labor Standard Act provides the means to the parties' desired result: a compensation system when twelve (12) hour shifts are implemented by the Borough which does not result in overtime compensation. This type of schedule for law enforcement squarely fits within 29 U.S.C. §207(k) which enables officers to work seven (7) 12-hour shifts during a two (2) week pay period without requiring overtime pay. "The exemption operated mainly "to soften the impact of the FLSA's overtime provisions." Rosano v. Township of Teaneck, 754 F.3d 177, 185 (June 10, 2014) [Citations Omitted]. Under the Fair Labor Standards Act ("FLSA"), employers are generally required to pay employees at overtime rates for work in excess of forty hours per work week. 29 U.S.C. §207(a)(1). The 207(k) exemption allows for a partial exemption provided the public agency establishes a work period within a range from 7 days to 28 days for employees working in law enforcement. Rosano, 754 F.3d at 185. The applicable ratio provides for 86 hours during a 14-day work period. Under this exemption "no public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in law enforcement activities if [certain scheduling requirements are met]." In fact, the Third Circuit in Rosano, unequivocally held that "we will therefore decline to adopt a rule that requires employers to clear a hurdle not provided for in the statutory text. Accordingly, we hold that employers seeking to qualify for the 207(k) exemption need not express an intent to qualify for or operate under the exemption. Employers must only meet the [two] factual criteria set forth in Section 207(k) as outlined below and no demonstration of notice or declaration of intent is required." Id. at 185-186. The two criteria for this exemption are: (1) the employees at issue are engaged in law enforcement and (2) the employer established a work period of at least 7 days but less than 28 days. Id. Clearly, both criteria are met in this case based upon the facts and the record. Accordingly, the foregoing warrants memorializing this aspect of the Borough's proposal.

Examples of other jurisdictions which recognize the application of the exemption within the contract were provided as Exhibits B-19 to B-21. Each references a comparable provision sought by the Borough in connection with overtime:

- "The work period for officers working twelve (12) hour shifts shall be 14 days, as permitted by 207(k) of the FLSA and each officer shall work eight four (84) hours within the 14 day period at the regular rate. . . . Employees will be credited 96 compensatory hours per year as compensation for the 4 extra hours worked each 14 day work period." (Exhibit B-21, § B(3), p. 6).
- "Additionally, for purposes of Section 207(k) of the Fair Labor Standards Act, the Town has adopted a working period or cycle of fourteen (14) days as defined in Article 19, Section C, known as a Pitman Cycle which shall apply to all members assigned to the Patrol Division." (Exhibit B-20, Section D, end of introductory paragraph, p. 40) Comparable to the Borough's proposal, Wall Township officers receive four (4) "Kelly Hours" for the additional time worked within a fourteen (14) day period. (*Id.* at p. 41 § D.2)
- "Additionally, for purposes of Section 207(k) of the Fair Labor Standards Act, the Town has adopted a working period of fourteen (14) days." (Exhibit B-19, Article VII, Section A, p. 4, end of If 1) Notably, Clinton contract requires an annual work year of 2,194 working hours.

Contrary to the PBA's contention, PERC did not foreclose the Borough's proposal to incorporate the overtime/compensation system detailed within Exhibit B-22; the flextime memo. Notably, the PBA did not file a scope of negotiations petition to exclude the Borough's overtime/compensation proposal nor did PERC address it in any way. In fact, Exhibit B-22 was not submitted as part of the scope of negotiations petition, nor was it mentioned or raised by either party. The focal point of the arguments advanced by the parties, PERC's analysis and the decision clearly address the **hours of work**, not the compensation system raised within Exhibit B-22 or the Borough's pending proposal. Moreover, as aptly pointed out by the PBA's attorney, Exhibit B-22 does not address the Borough's proposed 207(k) exemption or the scheduling of twelve (12) hour shifts. (T. 58-3 to 58-4; 59-11 to 59-18)

PERC's written decision establishes a record replete with references to **hours of work** within the arguments advanced by both parties. That decision verifies the Borough asserted its authority to establish a **work schedule** pursuant to N.J.S.A.

40A:14-132, through an ordinance setting the maximum number of shift hours. Borough of Point Pleasant Beach and PBA Local No. 106, SN-2016-082, *3-4 (P.E.R.C. NO. 2017-1) ("The Borough asserts. . . the authority to establish **a work schedule**. . . pursuant to N.J.S.A. 40A:14-132 [by way of] a previously adopted ordinance **setting the maximum number of hours**...") [Emphasis added] It also verifies that "**[t]he PBA responds** that the **hours of work** are, in general, mandatorily negotiable. The PBA maintains that the Borough's ordinance does not sufficiently fix a term and condition of employment with respect to **the number of hours an employee must work.**" Id. at *4 [Emphasis added]

Reaching its decision, PERC noted that Borough Ordinance 2-10, Section f, entitled "**Hours of Employment**," addresses, *inter alia*, "**[t]he hours of employment** of uniformed members of the police department." Id. at *5 [Emphasis added] Ultimately, PERC concluded "[w]e find that the PBA's **12-hour shift proposal** is preempted. . . [t]he statute specifically fixes the maximum daily and weekly hours of employment. . ." Id. at *6 [Emphasis added] Notably, nothing in the decision addresses or forecloses the compensation system detailed within Exhibit B-22 or the Borough's proposal.

In fact, standing PERC case law militates in favor of the Borough's position and, accordingly, its overtime compensation proposal: "Compensation, including overtime compensation, is a mandatorily negotiable term and condition of employment." Township of Middletown and PBA Local 124, 2006 NJ PERC LEXIS 245, *11-13 (citing, State Troopers, P.E.R.C. No. 86-139,12 NJPER 484 (P17185 1986); City of Newark and Fraternal Order of Police, Newark Lodge No. 12, P.E.R.C. No. 86-150,12 NJPER 542 (P17202 1986)).

Ironically, the PBA refuses to include a standing practice within the contract and, yet, insists upon including a proposed term which it represents as memorializing a standing practice: a revision to Article XXI allowing the time to be used by the Delegate or a designee.

Based upon the foregoing, the Borough respectfully submits that its overtime proposal should be awarded to reflect the standing compensation practice agreed upon by the parties within Exhibit B-22 and applied since January 1, 2015, as well as the statutory exemption since it only requires the Borough establish two factors that are clearly met in this case.

The PBA objects to the Borough's proposal. It submits the following argument in opposition to the proposal:

The Employer seeks the modification of Article VIII involving Overtime. The specifics of the language set forth in its Last Offer Position reference a twelve (12) hour work scheduling system which the Employer has previously maintained was not mandatorily negotiable and therefore not mandatorily arbitrable. The Scope of Negotiations challenge to an earlier PBA proposal in this dispute resolution process (*Dkt. No. SN-2016-012, issued July 14, 2016*) considered the PBA position regarding continuation of a twelve (12) hour work schedule. The exact lead sentence of the PBA Proposal was "The current schedule system shall continue." and there followed other specifics with respect to scheduling. No change was sought. The specific proposed language which was challenged is set forth on p. 3 of the PERC Scope of Negotiations Decision. That specific proposal made by the PBA during negotiations, including the sentence "The current schedule system shall continue." was ruled not mandatorily negotiable by PERC in its Decision. Here the Employer is attempting to revisit in a limited way that which it challenged earlier in the process. There is no support for any change in this part of Article VIII. The work system and method of definition of overtime as over twelve (12) hours in a day or on a regularly scheduled day off has been the practice for years and should not be the subject of unilateral and unsupported attack in this proceeding. The Employer has not met the burden of any change nor explained why it is now trying to re-adopt that which has earlier challenged.

It is important to note that there is a backdrop to the parties' perspectives relating to the above issue that has promoted disagreement on the Borough's proposal. At the time of contract expiration (December 31, 2014), the police department operated on a twelve (12) hour shift schedule. The Agreement was silent on the issue of shift or work schedules. The PBA proposed the following:

The current schedule system shall continue. The current twelve (12) hour shift schedule (6 A.M. – 6 P.M., 6 P.M. – 6 A.M.) shall continue. Shifts will continue to be chosen by each Officer on a seniority basis for each calendar year.

The Borough challenged the negotiability of the proposal, although it did not and does not now seek to implement a change to the twelve (12) hour shift schedule that has operated for many years except for a brief change that resulted in reverting back to the twelve (12) hour shift schedule. Although not so indicated in a PERC decision that ruled on the Borough challenge,³ at hearing it appeared that the Borough's main objection to the PBA's proposal was the setting of the start and end times for the twelve (12) hour shift. PERC held that the PBA's twelve (12) hour shift proposal was preempted by N.J.S.A. 40A:14-132 because the Borough had adopted an enabling ordinance that pursuant to statute fixed the maximum daily and weekly hours of employment for police officers.

In early 2015, the parties reached an agreement on what they define as "flex time". As indicated in the flex time memo, its purpose was to compensate officers for extra hours scheduled and worked due to the twelve (12) hour work schedule in the form of flex time. The entire flex time memo is set forth below:

FLEX TIME

With the schedule change for regular officers, assigned to patrol duties, to a 12 hour shift there is the need to compensate officers back for scheduled time worked in excess of 2080 hours per year. Under the verbal agreement between PBA 106 members and the Police Administration officers will get "Flex Time" in lieu of the extra hours scheduled and worked.

The 12 hour shift requires shift schedules for officers to be set at 2184 hours of on duty time per year. The members of PBA 106 are aware of this and have agreed verbally to the following use of "Flex Time", as a condition of this schedule change to the 12 hour shifts.

³ Borough of Point Pleasant Beach and PBA Local 106, Dkt. No. SN-2016-082, decided July 14, 2016.

- Flex time is an hour for hour reimbursement for the additional scheduled hours.
- Each Patrol officer shall receive a "Flex Time" bank of 104 hours for the calendar year.
- Each Detective, who works a 9 hour scheduled shift, shall receive 5 hours per week in Flex time, (260 hours per year).
- Flex time cannot be converted to cash and has no monetary value.
- Flex time must be used by the end of the calendar year and cannot be carried over into the next year.
- Flex time can be used by officers at the discretion of the shift OIC and police administration.
- Flex time cannot be used if the shift will fall short on manpower.
- Flex time cannot be used in any instance that will create overtime.
- Officers using Flex time, previously approved by their OIC, shall contact the PD dispatch desk one hour prior to the start of the shift to make sure that their use of Flex time does not leave the shift short or create overtime.
- If the officer's use of Flex time somehow creates overtime that officer will be charged for their use of time as Comp time at a rate equivalent to the overtime created, (time and a half).
- Additional Flex time may be awarded to officers, at the discretion of the police administration, in lieu of time spent for non mandatory training that would enhance the operations of the department by providing additional information to officers upon their request to participate in that training.
- A Flex time log, (Spread sheet), shall be maintained and posted by the Police Administration to aid officers in tracking their time usage. It is the sole responsibility of each officer to make sure they use their time wisely.

The PBA does not disagree with the terms of the flex time memo.

President Mosca's testimony supports this conclusion. However, the PBA maintains that the PERC decision found the PBA's proposal non-negotiable and that the Borough should not be permitted to propose language on an issue that it had successfully challenged before PERC.

There is no scope petition pending on any issue that relates to the work schedule. There is no dispute as to the parties' mutual acknowledgement of the terms of the flex time memo which is only operative during the time that the department operates on the twelve (12) hour shift schedule. The flex time memo predominantly concerns procedure and consideration to be given to police officers for "excess" work hours. I agree with the PBA that the incorporation of the terms of the flex time memo in Article VIII in the absence of language that recognizes the negotiability of the twelve (12) hour work schedule should not be awarded. However, because the terms of the flex time memo relate to compensation and overtime, I conclude that there should be reference to its terms in the collective negotiations agreement as an appendix for the purposes of serving notice to employees that a mutual understanding exists as to how "excess" hours will be compensated. Accordingly, I award the inclusion of the terms of the flex time memo as an appendix to the Agreement as Appendix A.

As a preface to Appendix A, the following language shall be included:

In the event of the continuation of the twelve (12) hour shift schedule, the terms of the flex time memo shall apply:

SALARY

The Agreement now includes two salary schedules, Schedule A and a Schedule A-1 for employees hired after September 16, 2011. They are as follows:

Schedule A
Annual Base Wage

	Effective 01/01/2011	Effective 01/01/2012	Effective 01/01/2013	Effective 01/01/2014
Step 1A	\$45,596	\$46,508	\$47,554	\$48,743
Step 1B	\$50,872	\$51,889	\$53,057	\$54,383
Step 2	\$55,073	\$56,174	\$57,438	\$58,874
Step 3	\$62,355	\$63,602	\$65,033	\$66,659
Step 4	\$70,904	\$72,322	\$73,949	\$75,798
Step 5	\$77,477	\$79,027	\$80,805	\$82,825
Step 6	\$85,757	\$87,472	\$89,440	\$91,676
Step 7	\$94,044	\$95,925	\$98,083	\$100,535

Schedule A-1
Annual Base Wage
(Employees Hired After 09/16/2011)

	Effective 09/16/2011	Effective 01/01/2012	Effective 01/01/2013	Effective 01/01/2014
Step 1	\$45,596	\$45,596	\$45,596	\$45,596
Step 2	\$50,979	\$51,999	\$53,169	\$54,498
Step 3	\$56,362	\$57,489	\$58,783	\$60,252
Step 4	\$61,745	\$62,980	\$64,397	\$66,007
Step 5	\$67,128	\$68,471	\$70,011	\$71,761
Step 6	\$72,511	\$73,961	\$75,625	\$77,516
Step 7	\$77,894	\$79,452	\$81,240	\$83,271
Step 8	\$83,277	\$84,943	\$86,854	\$89,025
Step 9	\$88,660	\$90,433	\$92,468	\$94,780
Step 10	\$94,044	\$95,925	\$98,083	\$100,535

The Borough proposes to add an amount of money equal to 1.5% of base salary as defined by N.J.S.A. 34:13A-16.7 effective January 1, 2015, January 1, 2016 and January 1, 2017. Its proposal is in the aggregate, inclusive of step movement and longevity. It also seeks to modify the current \$45,596 starting salary to \$40,000 for a new hire's salary during his or her first year of employment effective January 1, 2017. The PBA proposes an across the board increase at each rank and step of 1.5% effective July 1, 2015, 1.5% effective July

1, 2016 and 2% effective July 1, 2017. Testimony from President Mosca confirms that under the PBA's proposal, employees eligible for step increases would receive the step increases, longevity increases resulting from salary as well as the across the board increases.

Because this proceeding falls under P.L. 2014, c. 11, the arbitrator's authority to award wage increases is limited by law. The legal framework, and PERC's interpretation and application of the statute as to the methodology for calculating wage increases is as follows. In deciding how to calculate the amounts, I am bound by PERC case law as set forth in Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶ 116 2012) and Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶ 3 2012) and their progeny. A summary of arbitral authority was recently set forth in State of New Jersey and FOP Lodge 91, P.E.R.C. NO. 2016-11 (2016). In pertinent part, it stated the following:

P.L.2010, c.105 amended the interest arbitration law, imposing a 2% "Hard Cap" on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through April 1, 2014. P.L.2014, c.11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. N.J.S.A. 34:13A-16.7 provides:

Definitions relative to police and fire arbitration;
limitation on awards

a. As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount

provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we modified our review standard to include a determination of whether the arbitrator established that the award would not exceed the Hard Cap. ... [T]he Commission has consistently authorized the arbitrator's approach to calculating

increases in base salary items for those unit members remaining in the unit after the base year. In New Milford, the Commission endorsed the following method for "costing out" an interest arbitration award within the parameters of the 2% Hard Cap:

Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

[New Milford at 344, emphasis added]

In Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we rejected the union's assertion that the arbitrator should have taken into account a recent retirement and recent promotions when projecting salary costs in the award, finding:

In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority

representative to be debited for any increased costs
the public employer assumes for promotions or other
costs associated with maintaining its workforce.

[Ramsey at 20, emphasis added]

I am bound by the methodology set forth in the above case law and will apply it when fashioning a salary award that is not inconsistent with the statutory limitation on salary increases that can be awarded in interest arbitration.

I first address the Borough's proposal to reduce the starting salary to \$40,000 for new hires employed on or after January 1, 2017. The Borough supports its proposal by referencing and comparing starting salaries in nine municipalities whose labor agreements were submitted into evidence: Beach Haven, Brielle, Lakehurst, Manasquan, Point Pleasant Borough, Plumstead, Seaside Heights, Shop Bottom and South Toms River. All nine municipalities have starting salaries lower than Pt. Pleasant Beach and some have an Academy step and a Probationary step prior to an officer reaching Step 1. The Pt. Pleasant Beach agreement commences at Step 1. The Borough also points out that several of the municipalities have higher mean and median incomes than does the Borough yet have lower starting salaries.

I do not award the Borough's proposal for the following reasons. The starting salary of \$45,596 existed as adjusted to that level on January 1, 2010 when there was one salary schedule. An interest arbitrator's award in 2011 created a new additional salary schedule for employees hired after September

16, 2011. It created savings to the Borough by adding three new steps towards a new hire's reaching of the salary maximum. It also froze the \$45,596 starting salary for the duration of the four year contract that extended through December 31, 2014. The contract duration in this impasse extends through December 31, 2017. I award a continuation of the freeze on the starting salary for new hires through the expiration of the new agreement. This will have the effect of maintaining the starting salary of \$45,596 without any increase from the 2010 level through 2017. This method of treatment is responsive to the Borough's submission without reducing the starting salary to the level sought by the Borough that would create an almost \$15,000 gap or increment step between Step 1 and Step 2.

I next turn to the salary issue concerning adjustments to the salary schedule. I will apply the evidence of this case to the statutory criteria and the statutory salary cap. Initially, I note that the salary cap sets a limit on the amount of base salary to be awarded but does not automatically determine what the salary result should be. Its relevance and applicability in an arbitration proceeding is dependent on whether the evidence points to the possibility of a potential result that, in the absence of the cap, an amount of increase that could be justified that could exceed the cap. If this were not the case, there would be no need to apply the cap. The required calculation methods for the salary award do not necessarily go to across the board increases but to all expenditures for base salary amounts that are chargeable to the 2.0% cap. The costs for step

increases and advancement on the longevity schedule create chargeable expenditures that must be calculated in addition to any changes made to the salary schedule.

The most compelling criteria in this case, and the ones to be given the greatest weight in this proceeding, are the interests and welfare of the public (N.J.S.A. 34:13A-16g(1)), the lawful authority of the employer (N.J.S.A. 34:13A-16g(5)), the statutory restrictions on the employer (N.J.S.A. 34:13A-16g(9)) and wage comparisons in public employment in similar comparable jurisdictions (N.J.S.A. 34:13A-16g(2)(c)) who perform the same or similar services. The remaining criteria, overall compensation and benefits (N.J.S.A. 34:13A-16g(3)), the cost of living (N.J.S.A. 34:13A-16g(7)) and continuity and stability of employment (N.J.S.A. 34:13A-16g(8)) are also relevant but, based upon this record, must be accorded less weight. For the reasons below, the application of all of these criteria lead to the conclusion that salary increases are warranted at or approximate to the extent allowable by law.

The interests and welfare of the public include many considerations and factors that are interrelated, including those that are mandatory. For this reason, it must be given the most weight. General considerations include the financial impact of the awarded increases and the desirability of maintaining employee morale for the Borough's police officers who have been shown to discharge their work with efficiency and high productivity. Of particular note is the fact that the

officers capably handle the protection of residents and businesses on an all year round basis while attending to substantially greater demands during the swells of the vacation season. The interest and welfare of the public criterion also specifically includes the limitations that have been imposed upon the employer by law. These limitations are specifically referenced independently in other criteria as well including the law authority of the employer and statutory restrictions. While other general factors may influence the outcome of an award, such influences are relevant only to the extent that they do not require the employer to violate the statutory limitations imposed upon it. For example, the PBA's citation to a comparability chart (Chart No. 3) showing top step police officers base rate changes at an average of 1.85%, 2.25% and 1.88% for 2015, 2016 and 2017, support an award beyond what the Borough has proposed but this evidence cannot serve to support an award that exceeds the cap because of the requirement to render an award that is consistent with the statutory salary cap. In this matter, an award of top step increases at the above averages would exceed the salary cap due to the costs of step movement and longevity. Further, the comparability evidence reflects interest arbitration awards in the County that are at the level of, but not below, the statutory salary cap. Voluntary settlements in evidence that exceed the cap are of little evidentiary value given the requirement that the awarded salary increases cannot exceed the statutory salary cap.

Similar observations must be made as to the cost of living data and wage increases on the public sector generally and in the private sector. Recent private sector data reflects a 4% increase in wages in Ocean County but the increases are on wages that are well below the salaries earned by the Borough's police officers. The overall private sector wage changes from 2014 to 2015 were 3.1%. These figures support an award up to the statutory salary cap but cannot be given weight to the extent that the cap can be exceeded. The cost of living data supports an award that is generally consistent with this data but only in amounts of increase that are up to the salary cap. Even if such data exceeded the salary cap, the data would be irrelevant because it could not serve to support an award that exceeds the salary cap. The cost of living data and external public and private sector comparables support the awarding of adjustments to the salary schedules that are consistent with the salary cap.

The Borough does not contend, nor does the record reflect, that an award that expends funds up to the cap limitation would compel the Borough to exceed its spending appropriation cap, its appropriations and tax cap levy or create adverse financial impact on the Borough.

There are many budget documents in the record. Testimony as to the exhibits was offered by Borough Administrator Christine Riehl on direct and cross-examination. Her testimony reflects expert knowledge of the Borough's finances and the substantial efforts that were made to maintain the budgets

consistent with all legal requirements during the aftermath of Superstorm Sandy. Her testimony acknowledged that the Borough has achieved a consistent history of strong tax collections, healthy surplus balances and a budget well below the appropriations and tax levy caps. The amounts to be awarded for salary increases below are consistent with the Borough's statutory obligations in all respects and therefore consistent with the interests and welfare of the public, the Borough's lawful authority and its statutory restrictions.

Having determined that an increase equivalent to the statutory cap on wage increases represents a reasonable determination of the salary issue, I commence an analysis of costs and distribution of those monies. I first address the requirement to determine the aggregate amount expended by the Borough on base salary items for unit members during the twelve months immediately preceding contract expiration on December 31, 2014. That amount, as reflected in Borough Exhibit #23, is \$2,284,750. Borough Administrator Christine Riehl's representations as to the method for this calculation were credible and consistent with statutory requirements. The second step of the analysis is to calculate the amount that 2% of that aggregate amount yields after multiplying the base amount by the 2%. That figure for 2015 is \$45,695 and represents the cap amount for year 1. Because the statute allows for the 2% to be compounded during each of the succeeding contract years, the total amount of the cap when compounded for year 2 or 2016 is \$46,609. The total amount of the cap when compounded for year 3 or 2017 is \$47,541. The aggregate amount of increases

to base salary based upon the compounded value of a 2% increase per year of the aggregate amount expended by the Borough on base salary items in 2014 is \$139,845. This is in contrast with the Borough's proposal of an all inclusive 1.5% that costs approximately \$110,000.⁴ The statute permits the arbitrator to apportion amounts in unequal amounts over the life of the new agreement although I have chosen not to do so. The amounts to be awarded, consistent with case law referenced above must be applied to the December 31, 2014 scattergram submitted into evidence.

The next step in the analysis is to distribute the amount of funds to be awarded in each year. The definition of base salary includes the costs for employees who move on the steps of the salary schedule. These employees have moved. The costs of their movement is chargeable to the cap. In year 2015, there were three officers eligible for step movement. The appropriate methodology is to charge the amounts required by step movement on each anniversary date for that year through the end of that calendar year and for the costs for that step movement for the next calendar year up to the next step movement on the next anniversary date. That method is followed through for each calendar year.

Officer Gippetti was hired on December 16, 2014 at \$45,596. He was at this salary on December 31, 2014 and remained there until his December 16,

⁴ Given the methodology utilized to expend salary monies approximate to the salary cap, consistent with law, I need not determine the merits of the Borough's objection that the PBA's salary proposal exceeds the

2015 anniversary date when he moved to Step 2 at \$54,498. He remained at this salary until his December 16, 2016 anniversary date when he moved to Step 3 at \$60,252. He remained at this salary until his December 16, 2017 anniversary date when he moved to Step 4 at \$66,007. Based upon the cost of step movement for each year taking into consideration the timing of step movement on each anniversary date, I calculate the total costs of Officer Gippetti's step movement alone at \$15,397.

Officer Drew was at Step 5 and was hired on August 1, 2008. On December 31, 2014, his salary was \$82,825. He remained there until his August 1, 2015 anniversary date when he moved to Step 6 at \$91,676. He remained there until his August 1, 2016 anniversary date when he moved to Step 7, the top or maximum step at \$100,535. Based upon the cost of step movement for each year taking into consideration the timing of movement to the next step on his anniversary date, I calculate the costs of Officer Drew's step movement alone at \$12,534.

Officer Siculietano was hired on April 10, 2013 at \$45,596. On December 31, 2014, he was at \$54,498. He remained there until his April 10, 2015 anniversary date when he moved to Step 3 at \$60,252. He remained at this salary until his April 10, 2016 anniversary date when he moved to Step 4 at \$66,007. He remained at this salary until his April 10, 2017 anniversary date when he moved to Step 5 at \$71,761. Based upon the cost of step movement for

statutory cap.

each year taking into consideration the timing of movement to the next step on his anniversary date, I calculate the costs of Officer Siculietano's step movement alone at \$15,176.

Based upon the above, the total cost of step movement alone during the three contract years for the three officers eligible for step movement totals \$43,107.

In addition to the cost of step movement, the statute requires that the costs of longevity movement be calculated as part of the costs charged to the salary cap. The annual costs for increased longevity are based upon an employee's eligibility for longevity and the timing of any increases in the longevity percentages based upon years of service that are implemented on an employee's anniversary date. As of December 31, 2014, there were nineteen (19) employees eligible for longevity at various percentage amounts on the longevity schedule. Based upon employee movement on the longevity schedule, and as calculated by such movements on their anniversary dates, I calculate the amount of longevity increases to be \$8,283 in 2015, \$9,347 in 2016 and \$8,159 in 2017, for a total of \$25,789.

The total amount of costs for step and longevity movement is \$68,896. Based upon the total aggregate amount of money that represents the statutory salary cap over the three years, the remaining dollar amount available for across

the board increases after steps and longevity schedule movement is \$70,107. I have found that a reasonable determination of the wage issue is the application of across the board increases to each step and rank of the salary schedule of 1.0% in 2015, 1.0% in 2016 and 1.0% in 2017 effective on each January 1. The costs of the increases, based upon salaries that existed for each unit member as of December 31, 2014 is \$22,847 in 2016, \$23,075 in 2016 and \$23,305 in 2017, or a total of \$69,227 and such costs are consistent with the statutory requirement that an award not exceed the aggregate amount of costs that exceed 2.0% of base salary costs for each year of the Agreement as compounded in 2016 and 2017.

Based upon all of the above, I respectfully enter the terms of this Award.

AWARD

1. All proposals by the Borough and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.
2. **Duration** -- There shall be a three-year agreement effective January 1, 2015 through December 31, 2017.
3. **Article II – Management Rights**

The following language will be added to Article II:

All leave time, whether paid or unpaid, that is used or allowed in connection with an event that is also covered under federal and/or state leave laws shall run contemporaneously with leave under federal and/or state leave laws including but not limited to its FMLA, NJFLA and NJ-SAFE policies. All discretionary or permissive language contained within the Family Medical Leave Act ("FMLA"), the New Jersey Family Leave Act ("NJFLA"), the NJ-SAFE Act, as well as other leave entitlement laws and regulations, shall be set by Borough policy.

4. Article XI - Holidays

The parties shall include language in Article XI that shows that the monetary value of paid holidays is incorporated and reflected in the salary schedules.

5. Article XXI – PBA Time Off

Article XXI shall be modified as follows:

- A. The PBA President and Delegate, or an officer designated by the PBA President, shall be eligible for release time to attend to Association business. An annual bank of one hundred twenty (120) hours of release time shall be established to be shared by the PBA President and Delegate. The Chief of Police, in the exercise of reasonable discretion, shall grant such release time if adequate notice is provided and the granting of such release time will not affect operational needs nor will it cause overtime costs.
- B. Effective July 1, 2008, an additional sixty (60) hours of leave time for the Delegate to use for meetings that require his attendance as Vice-President of the PBA. This additional sixty (60) hours of leave time will continue during the period that the Delegate serves as Vice-President of the State PBA and will cease upon the end of his term as Vice-President. This shall be prorated in 2008 at thirty (30) additional hours.

6. Article XVIII – Clothing Allowance

The clothing allowance shall be increased by \$50 to the sum of \$250 effective October 1, 2017.

7. Article XIX – Medical Coverage

Section A shall be modified to reflect the following.

All members of the bargaining unit shall remain in the New Jersey State Health Benefits Plan as of January 1, 2014 in accordance with the terms and conditions as set forth in the New Jersey State Health Benefits Plan. The level of Employee contribution towards the medical benefits shall be as established in Chapter 7,8 Public Law 2011 with a minimum contribution of not less than 1.5% of the annual salary. If the Borough sees fit to change the source of coverage then the new coverage shall be equivalent to or better than present coverage.

8. **Article VIII – Overtime**

Article VIII shall continue as is without change. The Agreement shall attach and include an Appendix A setting forth the following:

APPENDIX A
Flex-Time

In the event of the continuation of the twelve (12) hour shift schedule, the terms of the flex time memo shall apply:

With the schedule change for regular officers, assigned to patrol duties, to a 12 hour shift there is the need to compensate officers back for scheduled time worked in excess of 2080 hours per year. Under the verbal agreement between PBA 106 members and the Police Administration officers will get "Flex Time" in lieu of the extra hours scheduled and worked.

The 12 hour shift requires shift schedules for officers to be set at 2184 hours of on duty time per year. The members of PBA 106 are aware of this and have agreed verbally to the following use of "Flex Time", as a condition of this schedule change to the 12 hour shifts.

- Flex time is an hour for hour reimbursement for the additional scheduled hours.
- Each Patrol officer shall receive a "Flex Time" bank of 104 hours for the calendar year.
- Each Detective, who works a 9 hour scheduled shift, shall receive 5 hours per week in Flex time, (260 hours per year).
- Flex time cannot be converted to cash and has no monetary value.
- Flex time must be used by the end of the calendar year and cannot be carried over into the next year.
- Flex time can be used by officers at the discretion of the shift OIC and police administration.
- Flex time cannot be used if the shift will fall short on manpower.
- Flex time cannot be used in any instance that will create overtime.
- Officers using Flex time, previously approved by their OIC, shall contact the PD dispatch desk one hour prior to the start of the shift to make sure that their use of Flex time does not leave the shift short or create overtime.
- If the officer's use of Flex time somehow creates overtime that officer will be charged for their use of time as Comp time

- If the officer's use of Flex time somehow creates overtime that officer will be charged for their use of time as Comp time at a rate equivalent to the overtime created, (time and a half).
- Additional Flex time may be awarded to officers, at the discretion of the police administration, in lieu of time spent for non mandatory training that would enhance the operations of the department by providing additional information to officers upon their request to participate in that training.
- A Flex time log, (Spread sheet), shall be maintained and posted by the Police Administration to aid officers in tracking their time usage. It is the sole responsibility of each officer to make sure they use their time wisely.

9. **Salary**

Each employee eligible for step movement shall move to the next step on the salary schedule on his or her anniversary date. Each step of the salary schedule shall be adjusted by 1.0% effective and retroactive to January 1, 2015, January 1, 2016 and January 1, 2017. The starting salary on Step 1 on Schedule A-1 of \$45,596 shall remain as is without the 1% salary adjustments.

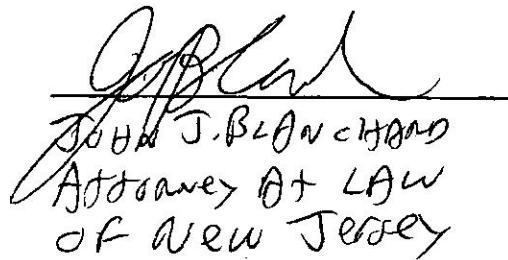
Dated: September 26, 2016
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 26th day of September, 2016, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



John J. Blanchard
Attorney At Law
of New Jersey