

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

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In the Matter of Interest Arbitration Between :  
: **BOROUGH OF MADISON** : **INTEREST ARBITRATION**  
**"the Borough or Employer"** : **DECISION**  
: **AND**  
and : **AWARD**  
:  
**PBA LOCAL 92 & PBA LOCAL 92 SOA** : Docket No: IA-2010-109  
**"the PBA, SOA or Union"** : IA-2010-110  
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**Before: Robert M. Glasson, Arbitrator**

**APPEARANCES**

**FOR THE BOROUGH:**

Of Counsel and on the Briefs:  
Matthew J. Giacobbe, Esq.  
Ronald Kavanagh, Esq.  
Cleary, Giacobbe, Alfieri & Jacobs, LLC  
On the Brief:  
Ron Kavanagh, Esq.

On the Supplemental Brief  
Adam S. Abramson-Schneider, Esq.

**FOR THE PBA/SOA:**

Of Counsel and on the Brief:  
Donald B. Ross, Jr., Esq.  
Lindabury, McCormick, Estabrook & Cooper

### **Procedural History**

The Borough of Madison (the “Borough”) and PBA Local 92 (the “PBA” and “SOA”) are parties to collective negotiations agreements (the “CNA”) which expired on December 31, 2009. (J-1 & J-2).

Negotiations for a successor agreement reached an impasse, and the PBA and SOA filed petitions with the New Jersey Public Employment Relations Commission (“PERC”) on May 20, 2010, requesting the initiation of compulsory interest arbitration. (J-3 & J-5). On May 26, 2010, the Borough filed its response to the Petition with PERC. (J- 7) The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on August 11 and 12, 2010 from its Special Panel of Arbitrators. (J-4 & J-6).

I conducted several mediation sessions which proved unsuccessful. Formal interest arbitration proceedings were invoked and a hearing was conducted on March 30, 2011, when the parties presented documentary evidence in support of their positions. At the hearing, I granted the parties’ request to supplement the record with financial certifications. Both parties filed financial certifications by May 6, 2011 and reply certifications by May 31, 2011. The filing of briefs was delayed as I was recuperating from major surgery from August 15, 2011 to November 15, 2011. Both parties filed post-hearing briefs by February 14, 2012.

The Borough revised its last offer in its brief without prior notification to either the arbitrator or the PBA/SOA. In a teleconference held on March 28, 2012, with Borough Counsel and PBA Counsel, I advised the Borough that pursuant to *N.J.A.C. 19:16-5.7* (f) of the PERC Rules and Regulations, the Borough is not permitted to revise its final offer in its Brief. I confirmed that the Borough’s Final Offer is detailed in both Employer Exhibit 3 submitted at the hearing on March 30, 2011 and in a letter submitted by Borough Labor

Counsel on April 5, 2011. I gave the Borough the opportunity to supplement its brief with additional argument in support of its last offer submitted in E-3 and the April 5, 2011-letter and also gave the PBA the opportunity to file a reply brief to the Borough's Supplemental Brief.

On May 15, 2012, the Borough submitted its Supplemental Brief in which the Borough reaffirmed its original final offer submitted at the hearing on March 30, 2011 and submitted additional argument in support of its final offer submitted on March 30, 2011. In addition, the Borough requested that I reopen the record to "introduce a long standing . . . settlement pattern between the PBA and the FMBA" and to amend its final offer. The PBA did not submit a reply brief. On June 11, 2012, the Borough asked that I issue my decision on its request to reopen the record and amend its final offer.

On June 13, 2012, I advised the Borough and the PBA as follows:

I am in receipt of the Borough's Supplemental Brief in the above matter. The opportunity to submit a Supplemental Brief was provided because the Borough submitted a revised final offer in its Brief filed on February 14, 2012. In the teleconference held on March 28, 2012, I advised the Borough that pursuant to *N.J.A.C.* 19:16-5.7 (f) of the PERC Rules and Regulations, the Borough is not permitted to revise its final offer in its Brief. The Borough, in its Supplemental Brief, reaffirmed its original final offer submitted at the hearing on March 30, 2011 and submitted additional argument in support of its final offer submitted on March 30, 2011.

In its May 4, 2012-letter submitted with its Supplemental Brief, the Borough requests that I reopen the record to "introduce a long standing . . . settlement pattern between the PBA and the FMBA" and to amend its final offer. (The May 4, 2012 letter and Supplemental Brief was received on May 15, 2012.)

I note that the Borough has already submitted evidence to support its argument regarding the claimed pattern. Borough Exhibit 143, submitted with the Brief on February 14, 2012, includes all of the FMBA and PBA CNAs from 1992 to the present. I further note that the Borough put forth its pattern argument in both the initial Brief and the Supplemental Brief. Therefore, there is no reason to reopen the record on the pattern argument.

The Borough further requests that I re-open the record to allow the Borough to amend its final offer. As I advised the Borough on March 28, 2012, the Commission's Rules and Regulations do not allow a party to revise

its final offer in its Brief without prior notice to the arbitrator. The Borough argues that I allowed the PBA to revise its final offer. I note that the PBA advised the Borough of its revised final offer on October 11, 2011. The Borough never objected to this revision. Further, the Borough acknowledged the PBA's revised final offer in its February 14, 2012 Brief and argued that the PBA's revised final offer was not as reasonable as the Borough's. The PBA was not aware that the Borough had revised its final offer when the PBA submitted its Brief. Finally, the Borough and PBA submitted Financial Certifications and Reply Certifications in May of 2011 based on the Borough and PBA final offers in the record as of May 2011.

Accordingly, for the reasons stated above and noting that this matter is now more than two years old, the Borough's request to amend its last offer is denied. Also, the PBA's final offer is the final offer in the record at the time the Financial Certifications and Reply Financial Certifications were filed in May of 2011. Please be advised that I expect to issue the interest arbitration award as soon as possible.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria in subsection g. of this section."

#### **Statutory Criteria**

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each factor.

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

(2) Comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 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:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 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 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)

#### **PBA/SOA's Last Offer**

1. **Term of Agreement:** January 1, 2010 to December 31, 2013.

2. **Salary:**

Effective May 1, 2010 - 1.50% across-the-board

Effective January 1, 2011 - 2.50% across-the-board

Effective January 1, 2012 - 2.60% across-the-board

Effective January 1, 2013 - 2.70% across-the-board

3. **Standby Time:**

Effective January 1, 2010 - Increase to \$3,000

Effective January 1, 2012 - Increase to \$4,000

4. **Overtime:**

Overtime to be paid from beginning of overtime worked.

### **Borough's Last Offer**

1. **Term of Agreement:** January 1, 2010 to December 31, 2012.
2. **Salary:**  
  
January 1, 2010 - 0.0%  
  
January 1, 2011 - 2.0% (Effective upon all Borough employees entering the New Jersey State Health Benefits Plan)  
  
January 1, 2012 - 2.0%
3. **Salary Guide:**  
  
Add five additional steps to the Patrol Officer salary guide for all new hires as of January 1, 2010 and equalize the steps.
4. **Health Insurance:**  
  
The Borough shall change health insurance carriers to the State Health Benefits Plan to be the same as the FMBA and all non-aligned employees.  
  
All employees shall contribute to health benefits pursuant to State law.

### **PBA POSITION**

The PBA notes that it seeks a compensation adjustment that is the “going rate” which is entirely justified by the evidence and the statutory criteria. The Borough demands (and has already received, in some cases, by agreement of the PBA or by the New Jersey legislature) dramatic changes in insurance benefits for both current and future hires together with an insignificant wage adjustment and a salary freeze in the first year of the contract. Accordingly, one of the fundamental issues to be decided is whether the PBA should be required by the arbitrator to accept a minimal wage adjustment in addition to the insurance concession which it has already given herein and that which it gave voluntarily during the last round of negotiations.

The PBA maintains that a review of the following discussion of the evidence should be resolved in its favor. According to the PBA, the Borough seeks unjustifiable raises (especially when combined with the state-imposed insurance mandates) which represent a total percentage of 4.0% over three years. The Borough also asks this arbitrator to penalize the PBA for the delays in this process by demanding that there is no increase for 2010 even though it has had the benefit of the 1.5% health care contribution which became effective on May 21, 2010 and now the new 35% rule under Chapter 78. Without any support in the record, the Borough also demands five additional steps on the salary guide for patrolmen, despite the strikingly low top step salaries. Finally, the Borough asks that the Arbitrator render a decision will result in a return to the bargaining table within a few months. That would be simply unfair to both parties. The PBA proposed a 4-year contract ending in 2013; however, given the timing of this matter, we suggest that the Arbitrator utilize the authority vested in him by the statute and award a 5<sup>th</sup> year, which would take this contract through the end of 2014.

The PBA asserts that the Borough's last offer is not warranted. This is especially so when considering the fact that the PBA agreed well more than a year ago to implement the New Jersey State Health Benefits program with a substantial savings to the Borough, even before the second round of mandated insurance premium contributions became effective. The PBA submits that the Borough has failed to demonstrate why it should be awarded this package, which will be very detrimental to the highly productive and dedicated members of the Madison Borough Police Department. That the Borough extracted certain concessions from others in Madison (both unionized and not) is not relevant. Moreover, the unilateral action of the Borough in simply taking insurance benefits formerly provided to certain non-



union employees (many of whom earn extraordinary amounts of compensation) does not buttress the Borough's position. It serves only to demonstrate why the Borough's demands should be rejected herein because the action was arbitrary and capricious.

Finally, as noted, there can be no understatement of the fact that the State of New Jersey has in effect become a party to the contract by unilaterally (and obviously not by negotiations) extracting statutorily from the PBA dramatic and draconian contributions to health insurance, despite what the PBA contributed and otherwise agreed to before the 1.5% legislation and now under the staggered (and staggering) 35% statutory mandate under Chapter 78. In the context of this dispute, it must be remembered that this local had already agreed to substantial modifications to the insurance benefit levels during the last round of negotiations and, as is well documented, agreed voluntarily to reduce benefit levels to those provided under the New Jersey State Health Benefits Program during the mediation phase of this process. Indeed, that change has already been implemented. That agreement will achieve enormous savings to the Borough, in addition to the statutory mandates.

### **Statement of Facts**

The PBA submits that the following significant facts should be underscored before putting forth its argument on the merits:

1. The PBA submits that its comparability argument is compelling. Indeed, nearly every piece of evidence produced by both parties supports the PBA's position. Moreover, despite the recent evolutionary changes in the New Jersey negotiations environment, the percentage increases and other minor improvements in benefits proposed by the PBA are substantially closer to (if not below) the "going rate" for the Morris County area during the relevant time periods, including the private sector. The PBA submits that

failure to award its proposals will result in even more retrenchment from wages and benefits levels received by comparable police departments when there is absolutely no financial justification in the record for doing so. Stated another way, just because the Borough “wants” something, does not mean that it deserves that change or concession.

2. The Borough enjoys a low overall tax rate, a low municipal purposes tax rate, and a strong ratable base measured on a per capita basis. The Borough also has a strong cash position, a strong surplus position and a relatively low level of municipal debt. The PBA cites the financial reports of the PBA’s expert, Dr. Raphael Caprio. The highlights of Caprio’s persuasive reports are as follows, each of which is supported by an applicable exhibit:

- a. The Borough has much higher than average home values and, based upon its equalized tax rate, Madison’s tax burden is ranked 484<sup>th</sup> lowest in New Jersey (among 566 municipalities) and 32<sup>nd</sup> lowest of Morris County’s 39 municipalities.
- b. The total tax levy increased by only 1.34% from 2009 to 2010 and 1.13% from 2008 to 2009.
- c. The average tax bill from 2007 to 2010 is ranked 20<sup>th</sup> in the county and “unremarkable” and the equalized tax rate is among the lowest in Morris County. The average residential home sales price ranks 6<sup>th</sup> in the county.
- d. The tax increase in 2011 was not even at the 2% levy cap, despite the claims of the Borough that it is in some sort of “crisis” mode.
- e. Tax collection rates are around 99%.
- f. State aid has stabilized and is not likely to decrease.
- g. Miscellaneous revenues were likely to increase by \$300,000 in 2011, while cancellations of current and prior appropriations should provide an additional \$1.3 million in 2011.
- h. Madison should collect \$250,000 from non-budgeted revenue sources in 2011. It will have been likely that the Borough replenished fully its surplus as in 2011 with an excess from operations of \$4.1 million.

i. Despite its claims to the contrary, other departments in the Borough have average salaries for professionals higher than those of the police, including firefighters.

j. The cost difference between the parties is less than \$80,000 in the first year and about \$30,000 in the later years (based upon the initial PBA proposal).

k. Whatever electrical utility financial problems may have existed in prior years, the utility which has historically provided huge revenue to the Borough, has improved.

2. Very significantly, the Borough had approximately \$115,000 in the tax levy bank for 2012 that can be used for retroactive pay for the calendar year 2011.

3. In summary, fundamental indicators of strong fiscal performance are uniformly positive, as typified by consistently high rates of current property tax collections, strong delinquent property tax collections, overall revenue collection rates that are substantially in excess of budget anticipations, no over-expenditures, and no evidence of emergency appropriations. The Borough has lived within the CAP limitations without difficulty, and has been able to retain significant appropriation reserves at the conclusion of every budget year. More importantly, when the municipal tax bill is analyzed in the context of property values, the effective tax rate in Madison is impressively low. Dr. Caprio concluded that not only did the Borough make a deliberate decision to appropriate less than the maximum permitted under the levy cap, but as he stated “the Borough is clearly capable of funding the PBA request without undue hardship to the community.” It is vital at this juncture to emphasize that the Borough’s financial reports do absolutely nothing to defeat these conclusions.

4. Significantly, the Borough's household and per capita personal income is among the upper echelons in all of New Jersey. Tax rates have been either minimally increased or kept relatively steady for the past several years and compare favorably with the other 38 Morris County municipalities. And as we have demonstrated and the Arbitrator

well knows, Morris County is among the top 10 counties in the entire United States in terms of per capita income.

5. The Borough has offered no persuasive documentary or testimonial evidence that it faces any sort of imminent cap challenge. The facts are (i) the Borough of Madison has the ability to pay for the amazingly modest increases sought by the PBA and (ii) it has reaped the benefit of a huge windfall in terms of the state-mandated insurance contributions and attrition (discussed in greater detail below)—neither of which was negotiated with the PBA. The Borough's own wage proposals, especially in the context of its other demands and a lack of retroactivity for 2010 support this conclusion.

6. The PBA receives low compensation when compared with the other police departments with which both the Borough and the PBA have measured such compensation for many, many years. The record is replete with evidence on this issue.

7. For example, when Madison Borough police officers are compared with other Morris municipalities, they fare very poorly. Book I of the PBA's submission (not rebutted by the Borough's exhibits in any way) contains many pages of exhibits which prove why the PBA should not be saddled with the Draconian state imposed insurance and other contributions (including an increase in pension payments!) *together with* the dramatically below average wage adjustments proposed by the Borough. Of particular relevance and, we submit, extremely persuasive in adding context to the dialogue, is PBA Book I, Exhibit 3. In just three short pages, the unacceptable compensation circumstances of Madison Borough officers emerge with great clarity. Among the highlights are the following comparisons in Morris County for 2008:

- a. Total pay with added compensation—29<sup>th</sup> out of 37 in the survey
- b. Longevity—among the lowest in the County
- c. Holiday pay—tied for last at zero
- d. Sick leave—although it is difficult to compare all programs with absolute precision, the PBA’s sick leave entitlement is in the bottom third and below the average. (U-28).
- e. Clothing and Maintenance Allowance--\$650, only \$50 higher than the lowest provided in the County, with the exception of eight departments which receive no such allowance but likely have it “rolled in” to base pay. The \$650 is nearly 25% less than the average of \$864 provided across the County. (See U-34 and the contract for each of the PBA and SOA bargaining units at Article XVI.)

8. Finally, and perhaps most significant in terms of demonstrating the dismal comparison of Madison officers to others in Morris County is Health Insurance for Retirees. Not a penny’s worth of health insurance is provided by the Borough after retirement. Indeed, the Borough is one of only a handful of municipalities which does not continue such coverage in retirement. See PBA and SOA contracts at Article XV, together with Borough Exhibit 117. In any event, the value of this benefit cannot in any way be understated—depending upon the various demographics in terms of age at retirement, dependents etc., this benefit could have a lifetime value to the officer (and cost to the Borough) in the hundreds of thousands of dollars. This fact, we submit, must be taken into consideration in the context of the comparability statutory criterion, let alone the financial circumstances of the Borough.

9. One of the most frequent criticisms of the two recent statutory insurance mandates which, in our view were imposed unconscionably by the legislature, is that they ignore other health insurance concessions which may have otherwise been agreed to by public sector unions. That is also the case in Madison. Nearly every one of the co-pays and deductibles

contained in the current PBA and SOA contracts was increased during the last round of negotiations by voluntary agreement. (See the PBA contract.) Again, as noted, during this mediation process, the PBA agreed voluntarily to change benefit levels to the State Health Benefits program, with concomitant substantial dollar savings to the Borough.

10. In short, despite what we anticipate will be an attempt by the Borough to ignore this fact, the significance of the concessions made by the PBA during recent bargaining (and during this process) can simply not be ignored or minimized by the Borough in this proceeding.

11. The PBA submits that U-4 and U-5 are among the most important documents in this proceeding in terms of costs for police services and the financial impact of the Madison Police Department on the Borough taxpayers. Briefly summarized, since 2008 the Borough has decimated the police department by reducing its complement of officers by four out of a total of 34 positions to a total of 30 sworn policemen. (U-4). One officer at each rank has not been replaced from 2009 through the early part of 2011. Because of the vital importance of attrition to the “bottom line” in this arbitration, we have attached a current roster of police officers and dispatchers to this brief—prepared by the department.

Since our Book I exhibits were prepared many weeks before the hearing in early 2011, the police department has suffered even more drastic declines in its force. The police department is now comprised of a total of 26 police officers. For the convenience of the Arbitrator, we note that police officers in the department are all identified on the Roster as Chief, Lieutenant, Sergeant, Officer or Detective. As demonstrated so graphically, the Madison Police Department has thus been reduced from 34 police officers in 2008 to 26 as we write this brief—a nearly unbelievable 25%. When considered together with the

insurance contributions imposed on the remaining officers by law, these attrition statistics and the concomitant savings achieved thereby are staggering. Those savings absolutely dwarf any actual net costs of the PBA's proposals and serve further to prove why the Borough has failed to demonstrate a need for minimal (or no) wage increases and dramatic cost concessions on the backs of PBA members. Indeed, the savings from attrition cumulatively are estimated to be more than \$1.6 million from 2009 through 2011. (U-4). We now know that the savings were and will be dramatically more than that number. These statistics must of necessity be analyzed in the context of the undeniable facts concerning taxes, revenues, ability to pay and other factors set forth above. Moreover, and equally important is the inexorable conclusion which follows from this reduction in force that the officers who remain to protect the people and businesses of Madison are compelled to do much more with much less. An award in favor of the PBA will only address this tragic situation in a partial way; however, the officers must receive a fair and equitable contract.

#### **Statutory Criteria**

The following are the PBA's arguments and contentions in support of the statutory criteria:

Among the more fundamental precepts of the PERC decisions is that which requires that the party proposing a change must justify the same. The Borough should be keenly aware of that requirement as it relates to its demands for painfully low wage increases, the waiver of retroactivity, a major schedule change and a second tier of benefit levels for future hires. In our view, the Borough has failed to meet its burden to justify further concessions. Stated simply, these bargaining units have already given enough—both through prior negotiations, an agreement by the PBA in the course of this proceeding regarding the State Health Benefits

Plan, and the statutory insurance contributions which were unjustly imposed on the members of the Madison Police Department. In short, just because the Borough *wants* more concessions does not mean that it should receive them.

The New Jersey Supreme Court's decision in the case of Hillsdale PBA Local 287 v. Borough of Hillsdale, while it predated the amendments to the Act, represents a definitive statement of the arbitrator's role in analyzing the statutory factors. As the Supreme Court observed, the Appellate Division had imposed a rather broad requirement that all of the statutory criteria be addressed in detail and considered in detail in the interest arbitration proceeding. That burdensome requirement no longer exists. The Hillsdale Court observed:

In concluding that an arbitrator must consider all eight factors, we need not go so far as the Appellate Division, which presumed each factor to be relevant to every dispute. 263 N.J. Super. at 186. A requirement that an arbitrator find facts on each factor, even those deemed irrelevant, would undermine the purpose of arbitration as an expeditious means of resolving contract negotiations. We believe we come closer to satisfying the legislative intent by requiring arbitrators to identify and weigh the relevant factors and to explain why the remaining factors are irrelevant. A reasoned explanation along those lines should satisfy the requirement for a decision based on "those factors" that are "judged relevant." Also, such an explanation should satisfy the requirement that the arbitrator "give due weight" to each factor. Anything less could contravene the Act's provision for vacating an award "for failure to apply the factors specified in subsection g... "N.J.S.A. 34:13A-16f(5). In sum, an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant.

The Reform Act contains similar requirements in providing, at N.J.S.A. 34:13A-16g, that "the arbitrator . . . shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed above that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant and provide an analysis of evidence on each relevant factor."



The standards for review by the Commission have been repeated many times and are abundantly clear. In the event of an appeal, the Borough bears the heavy burden of establishing that (1) the arbitrator failed to give “due weight” to the statutory criteria judged relevant to the resolution of the dispute; (2) the arbitrator violated the standards contained in N.J.S.A. 2A:24-8 and 9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Twp. v Teaneck FMBA, Local No. 42, 353 N.J. Super 298, 299 (App. Div., 2002); County of Essex, P.E.R.C. NO. 2011-92 (2011). As the Commission stated in both Essex and Borough of Ramsey, P.E.R.C. NO. 2010-26 (2009), “because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator’s exercise of discretion unless the appellant demonstrates that the arbitrator did not adhere to these standards”, citing Teaneck 353 N.J. Super. at 308-309 and Cherry Hill.

In both Essex and Ramsey, the Commission made the following important observations:

“Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only “correct” one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (§29214 1998). Some of the evidence may be conflicting and an arbitrator’s award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, within the parameters of our review standard, we will defer to the arbitrator’s judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (§30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi.”

Given the circumstances of the instant case, those words are particularly appropriate. As will be seen below, some of these criteria simply do not apply to this matter and thus may be judged irrelevant. The net effect of all of this is to render the decision-making process in this case significantly less cumbersome than it might be in a different factual scenario.

At this juncture, a few additional observations are relevant in the context of the current negotiations environment in the State of New Jersey. No one, including the Madison Borough PBA, can deny that the climate has evolved since 2007. However, the fundamentals of the law have *not changed*. The Arbitrator must continue to apply the statutory criteria in rendering the decision. That precept remains as important today as it did a decade ago. We believe that we have established, under the statutory criteria, that a decision can and must be in the PBA's favor. Moreover, it cannot be overstated that for the years to be covered by the Award, under consideration here, although they followed the so-called "financial meltdown" on Wall Street and what we contend is an immensely contrived "crisis" in New Jersey, recent settlements and awards have continued a trend of reasonable wage increases throughout Morris County and the State of New Jersey generally. (See generally Book I of the PBA's submission).

### **Interests and Welfare of the Public**

While N.J.S.A. 34:13A-14(b) states that the interest arbitration process should give due weight to the interests of the taxpaying public, the Reform Act does not require that the arbitrator award the amount the employer has budgeted for wage increases, automatically equate the employer's offer with the public interest, or specify a formula for arriving at an award. Middlesex Cty., 23 NJPER 595 (1997). Indeed, PERC has approved an arbitrator's view of the public interest as a broad criterion that encompasses considerations of both fiscal responsibility and the

compensation package required to maintain a “high productivity and high morale” department. See Teaneck, supra at 459.

What makes this case different from most others is the Borough's near obsession with its unsubstantiated demand for zero and minimal wage increases, together with a huge increase in the number of steps for patrolmen, which are plainly inconsistent with the interests and welfare of the public. The PBA contends that the best method of ensuring that the public interest is served is by granting the PBA's modest wage and benefit proposals and rejecting the Borough's demand for more concessions that are unjustified and unwarranted. To do otherwise could have serious consequences for the future and morale of this police department. An essential ingredient in this formula is to award the PBA's contract term to preclude a return to the bargaining table sooner than reasonably necessary, especially given the procedural history of this case.

Furthermore, as demonstrated by Dr. Caprio's reports and discussed elsewhere in this brief, an award in favor of the PBA will have an unnoticable effect on the taxpayers of the Borough of Madison. Given the attrition and the New Jersey legislative changes applicable herein, the Borough will clearly have experienced a reduction in its costs for police services.

**Comparisons to Public Employment in the Same or Similar  
Comparable Jurisdictions and with other Employees Generally**

As noted above, the PBA is well aware of the rapidly changing interest arbitration environment in New Jersey. The entire arbitration process is indeed a dynamic one which has obviously not seen the end of its current transformation. With that in mind, the PBA has fashioned a proposal which was not put together in a vacuum. Rather, the PBA seeks a contract term, percentage increases and benefit improvements which are undeniably justified by the circumstances of this case in order to effect the obvious -- it wanted its proposal to be more fair and reasonable than that made by the Borough.

On the issue of comparability, there can be no question but that the PBA's proposals are more acceptable than those advanced by the Borough. Implicit even in the Borough's offer is an acknowledgment that these officers are entitled to wage increases (at least in the second and third years of its offer); the proposals are simply not enough—in comparison to both public and private employment and especially in view of the inequities which exist with respect to the most "comparable" groups--the sworn police officers in Morris County. At the risk of hyperbole and as noted earlier, we think it is fair to say that this case presents a truly compelling fact pattern on the issue of comparability in the context of Morris County Police Departments.

Given the lengthy delay in resolving this dispute, a vital question must be asked at this juncture—how can the Borough possibly justify its proposal for a contract which would expire just a few months after the issuance of an award in this case which would in effect end the contract in a few short months? There is absolutely no factual predicate for this position and there can be no dispute that this contract must extend at least through 2013 as proposed by the PBA. As noted above, we respectfully urge the Arbitrator in all fairness to both parties to render a decision for a contract through the end of 2014.

On the private employment side, it is and perhaps always will be police officers' argument that there is no "comparable" private employment, which may fairly be compared to the dangers and importance of law enforcement work. This is especially so where, as here, the officers represented by the PBA provide such a vast array of services and bring such an impressive set of skills to their jobs. Although we might be otherwise inclined to indulge in a lengthy exposition of that position, suffice it to say that the overwhelming majority of employees who work in the private sector (i) do not perform a job which, as the Arbitrator

well knows (and a fact of which you make take Arbitrator's notice) is generally considered among the most dangerous careers in America; (ii) do not carry a weapon; (iii) are not obligated to perform their duties 24 hours a day and are subject to call-in around the clock; (iv) do not wear a bullet proof vest to work; (v) do not wear a uniform which identifies them as representatives of law and order in our society; and (vi) do not subject themselves to being maimed or killed every time they come to work. Any further argument on these points does nothing more than "carry coal to Newcastle."

That said, it must be emphasized that a substantial amount of data is before the Arbitrator concerning the public and private sector, including the important private sector surveys required by the statute. Even a cursory review of the data reveals a moderately positive trend in public and private non-police salaries and wages despite differing views on the strength of our economy. Much of the evidence supports wage adjustments equal to (if not greater) than the PBA's proposal. In short, the private sector wage environment is improving slightly, wages are increasing generally notwithstanding the low consumer price increases and these officers (together with the people they serve) work in an area which has one of the highest standards of living in the entire country and the one of the highest per capita incomes in the State of New Jersey.

### **Overall Compensation**

Much of the argument contained above applies with equal and perhaps more persuasive validity to this criterion. Even a cursory review of the submissions of the parties demonstrates that the overall compensation received by PBA members is dramatically substandard by any measure in the most relevant area--Morris County communities. As set forth in our statement of facts, in what is perhaps the single most important comparison,

Madison Borough police officers rank 29<sup>th</sup> out of 37 municipalities in the survey (there are 39 municipalities in the County). This is absolutely unacceptable, unjustified and must be addressed head on by the Arbitrator.

Book I of the PBA's submission (indeed buttressed by the Borough's own exhibits) contains many pages of exhibits which prove why the PBA should not be saddled with the Draconian state imposed insurance and other contributions (including an increase in pension payments!) *together with* the unconscionably low adjustments proposed by the Borough. (See comparisons a-e on page 13 on Statement of Facts).

Finally, and perhaps most important of all in terms of demonstrating the dismal comparison of Madison officers to others in Morris County, is Health Insurance for Retirees. Not a penny's worth of health insurance is provided after retirement. Indeed, the Borough is one of only a handful of municipalities which does not continue such coverage in retirement. See PBA and SOA contracts at Article XV, together with the Borough's Exhibit 117 (note that Madison is not mentioned on that Exhibit—although in fairness the omission is probably inadvertent). In any event, the value of this benefit cannot in any way be understated—depending upon the various demographics in terms of age at retirement, dependents etc., this benefit could have a lifetime value to the officer (and cost to the Borough) in the hundreds and hundreds of thousands of dollars *per family*. This fact, we submit, must be given great weight in applying the overall compensation criterion, especially considering its impact (or lack thereof) on the finances of the Borough.

On the other hand, the Borough has offered little justification in the context of this criterion to award its proposal. Quite the contrary, to do so would be in direct contravention of the precepts which are implicit in this legislative pronouncement. As discussed earlier,

each of the other proposals of the PBA is justified on their own merit, including but also irrespective of comparability factors. For example, the PBA seeks a change in the method of paying overtime for work performed at the end of an officer's shift. Under the current contracts, overtime is paid in compensatory time off for the first hour of excess time following a regular shift. See PBA and SOA contracts at Article IV, subsection B, found in PBA's Book III at Exhibits 8 and 9. This is unusual, and we submit, irrational in comparison to other police departments. Moreover, it is of questionable validity under the Fair Labor Standards Act. In any event, the time has come to end this practice and we urge the Arbitrator to award cash payment of overtime for the first hour. The same may be said for the detectives. They receive a flat rate of \$2,000 per year under each contract and compensatory time for all overtime worked beyond the normal work day. See PBA and SOA contracts cited earlier in this paragraph at Section 2 respectively. The PBA seeks modest increases in this flat rate, rather than overtime in cash for all work after the normal work day. There is absolutely no reason not to award this request.

In summary, the PBA respectfully submits that the overall compensation factor supports its position and militates against the inadequate proposals of the Borough that the contract have a limited term and that the wage increases be substandard.

#### **Stipulations of the Parties.**

It is respectfully submitted that the arbitrator should determine this criterion to be inapplicable to consideration of this matter, with the notable exception that the PBA agreed to a change to the level of benefits provided under the State Health Benefits Program long before the record was closed. The savings to be achieved as a result of that concession are massive, nearly \$147,000 per year by the Borough's own admission. (PBA-7, Bk. III). Frustratingly, even if the PBA's final proposal is adopted entirely, the officers will likely

receive very little, if any, in net increases over the term of the contract. This is so because of the additional health contributions and pension contributions mandated by law. These factors must be contrasted with the extraordinary savings to be realized by the Borough as a result of the change to the insurance carrier, attrition and the mandatory health contributions.

### **Lawful Authority of the Employer**

The PBA contends that the positions of both the Borough and the PBA may be adopted by the Borough within its lawful authority. Indeed, the PBA is unable to conceive of any different effect on the lawful authority of the Borough by awarding one proposal in lieu of the other. The Borough has not suggested that the Cap Law presents any difficulty — because it cannot do so. Indeed, as Dr. Caprio has demonstrated, the Borough has come in under the Cap despite its claims of financial crisis. Accordingly, while this criterion might be relevant in certain circumstances, it is irrelevant to the instant proceeding.

Again, as the record reflects, the Borough has lived with and continues to live well within its "Cap" means and the proposal advanced by the PBA will have no adverse effect on that pattern. Moreover, and significantly, it must be remembered that the total tax levy increased by only 1.13% from 2008 to 2009 and 1.34% from 2009 to 2010. In 2011, according to the Borough's own financial submission, the Borough did not even choose to utilize the entire funds available under the Tax Levy Cap. (See rebuttal of Robert Kalafut dated May 31, 2011). The Borough left \$89,000 on the proverbial "table" forever. That fact speaks volumes about the true financial picture in Madison. The PBA notes that the savings from the legislative changes in insurance contributions and attrition alone will far outweigh the cost of the PBA's proposals.



**Financial Impact on the Governing Unit,  
its Residents and Taxpayers**

It follows from all of the foregoing with near syllogistic precision that the PBA's offer is closer to reality according to this and all of the other statutory criteria. The Borough may very well spend page after page arguing to the contrary, but it cannot change a fundamental fact—the Borough can well afford the proposals offered by the PBA and the Borough has failed to prove why the Arbitrator should not issue an award in favor of the PBA's position.

Moreover, the Borough has also failed to demonstrate why the Arbitrator should award what appears to be another insurance change in its favor. Evidence on that point is conspicuous in its absence. The bottom line is that the Borough can pay for, and its citizens will be well served, by the PBA's proposals. The evidence demonstrates why the Arbitrator should award each of the PBA's modest proposals. It may be fairly said that the Borough enjoys an impressive financial posture, a truly modest tax rate (especially in the context of *tax ratables and the more important equalized tax rate*), a reasonable and well-controlled level of spending, a strong and stable ratable base and an impressive per capita income. The key indicators of fiscal performance are uniformly positive. The Borough has lived within the CAP limitations without difficulty, and has been able to maintain a politically attractive taxing and spending pattern.

Perhaps most significantly, it is abundantly clear that the Borough can readily accommodate the PBA's proposals without unduly burdening its taxpayers or requiring *any* reduction in the delivery of services. In this context, the Arbitrator's attention is again respectfully directed to our Statement of Facts set forth above and the various certifications filed by both Dr. Caprio and Mr. Robert Kalafut.

Given the current climate for interest arbitration, however, we are constrained to devote additional time and effort to this statutory criterion. Initially, we offer the following summary of Dr. Caprio's first report dated March 28, 2011:

- a. The Borough has higher than average home values and, based upon its equalized tax rate, Madison's tax burden is ranked 484<sup>th</sup> lowest in New Jersey (among 566 municipalities) and 32<sup>nd</sup> lowest of Morris County's 39 municipalities.
- b. The total tax levy increased by only 1.34% from 2009 to 2010 and 1.13% from 2008 to 2009.
- c. The total average tax bill increase from 2007 to 2010 is ranked 20<sup>th</sup> in the county and "unremarkable" and the equalized tax rate is among the lowest in Morris County. The average home sales price ranks 6<sup>th</sup> in the county.
- d. The tax increase for 2011 was not even at the 2% levy cap, despite the claims of the Borough that the town is in some sort of financial crisis.
- e. Tax collection rates are around 99%.
- f. State aid has stabilized and is not likely to decrease.
- g. Miscellaneous revenues were likely to increase by \$300,000 in 2011, while cancellations of current and prior appropriations should provide an additional \$1.3 million in 2011.
- h. Madison should collect \$250,000 from non-budgeted revenue sources in 2011. It will have been likely that the Borough replenished fully its surplus as in 2011 with an excess from operations of \$4.1 million.
- i. Despite its claims to the contrary, other departments in the Borough have average salaries for professionals higher than those of the police, including firefighters.
- j. The cost difference between the parties is less than \$80,000 in the first year and about \$30,000 in the later years under the original PBA proposal.
- k. Whatever electrical utility financial challenges may have existed in prior years, utility revenues which provided huge (and one might argue "windfall" revenue to the Borough), have improved.
- l. Very significantly, the Borough had approximately \$115,000 in the tax levy bank for 2012 that can be used for retroactive pay to PBA members for the calendar year 2011.

- m. Madison is likely to have replenished its surplus in 2011 as Dr. Caprio anticipated a \$4.1 million surplus for last year.
- n. Other departments in the Borough have average salaries (including the firefighters) for professionals that are higher than those of the police.
- o. The average Borough funded total salaries for police officers, excluding outside duty which is paid from outside sources, are more than \$10,000 less than the average firefighter salary and wage cost to the Borough.
- p. The final highlight of Dr. Caprio's first report must be quoted as follows: "The Borough is clearly capable of funding the PBA request without undue hardship to the community."

The Arbitrator's attention is respectfully directed to the various Exhibits which are attached to Dr. Caprio's report. The significance of these Exhibits is that each and every one of his conclusions is amply supported by reliable and hard data, logic and reason. Among the many assertions we challenge about Mr. Kalafut's arguments is his continued claim that Madison's tax rate is so high. That claim is made, essentially, in a vacuum. Tax rates can *only* be compared and contrasted in New Jersey by utilizing the equalized values based upon the ratio of assessments to true property values. Using that extremely common and well-accepted methodology, it is obvious that the comparable rate is not high. Relative to other municipalities, as Dr. Caprio said in both of his certifications, Madison is a low-tax municipality and the tax bills appear high because of higher than average home values, not because of excessive taxation. This fact cannot be understated. Additionally, as Dr. Caprio points out in his second certification, "Mr. Kalafut's assertion that the fund balance is only a small portion of what it once was is a reflection of prior expectations of off-setting user fees from the utility surplus and accumulating large surpluses, which beyond a certain point is nothing more than excess taxes and fees collected from residents and taxpayers."

Dr. Caprio makes other very salient points in his rebuttal. He notes that apparently the Borough would like to return to the days of “excessive \$15 million surpluses, which represent over-taxation to the community.” It is our view that local government should not be in the business of knowingly taking in millions and millions more than it needs, any more than the federal government should be spending billions more than it has. Finally, his observation about the Borough being “obsessed” with the total pay of police officers is right on target. It is absolutely inappropriate to add to the “cost” of an officer outside duty pay from private, not public, third parties which represent no additional expense to the community. Incidentally, to the extent that the Borough will argue about department-paid overtime, one must not forget that manpower is down significantly—8 officers out of a total of 34 before 2008. It is absolutely reasonable to conclude that when manpower is reduced in the world of law enforcement, there usually follows a fairly significant increase in departmental overtime. This is especially so where nearly one quarter of the force is eliminated over a few short years. Importantly, we submit respectfully that Mr. Kalafut’s rebuttal added nothing substantial to the probative value of Dr. Caprio’s first report. Without belaboring the point, Dr. Caprio provided supporting data for all of his conclusions. If the Borough had data which contradicted that information, it should have provided same.

### **Cost of Living**

The legislature has determined that the arbitrator is required to make a reasonable determination as to whether the cost of living criterion, like the others, is relevant to the resolution of this dispute. The Courts, PERC and the Legislature have directed the arbitrators

and the parties to adequately address the cost of living and the interplay between increases in salaries and increases in the cost of living. The PBA recognizes that cost of living considerations have traditionally been an integral part of the collective bargaining process. The Borough has offered no reason why the arbitrator should not continue the trend of past increases, which have been equal to or higher than the CPI index. That is as it should be. However, the Arbitrator can and should take arbitratl notice of the current economic trends, which in our view present multiple indicators of a trend toward substantial upward movement in the cost of living. In short, the CPI does not support any argument in favor of embarrassingly low wage adjustments.

In general, it is fair to say that employers have resisted the inclusion of automatic salary adjustments in labor contracts, which are tied into any increases in consumer price indices. During the periodic rampant inflation periods over the past several decades, public employers have denied increases which were tied to the cost of living. Predictably, when the increases in the consumer price indices begin to abate, public employers cheerfully pointed to those reductions in support of the meager salary increases that were being advanced. We do not believe that a cost of living analysis can be done in a vacuum. Rather, general trends, historical increases and other economic realities must be considered in any analysis involving a comparison of salaries with increases in consumer price indices.

### **Continuity and Stability of Employment**

It does not appear that there are "other factors" present in this proceeding which should be "considered in the determination of wages, hours, etc.", but certainly an award of

the proposals of the PBA will have a positive effect on the continuity and stability of employment. There can be little doubt that these proposals will provide an added ability for the Borough to hire and retain additional personnel. In this regard, the Arbitrator's attention is again directed to the PBA's Exhibits 5 and 6, Book I. There has been and continues to be a relative exodus of police officers who have not been replaced.

However, in large part, there is no language in this criterion which is directly apposite in this matter. Rather, the legislature has conveyed a sense that the arbitrator consider both packages on an overall basis, attempting to pierce through the literal aspects of the packages in an effort to make a determination as to which would better enhance the employment relationship. For all of the reasons expressed above, the PBA contends that its package most effectively addresses these needs. There can be no doubt that positive morale is a major determining factor in continuity and stability of employment. As we have demonstrated above, an equitable adjustment in salary is absolutely necessary and the contract term proposed by the PBA is plainly justified. It follows inexorably that the Borough gains nothing but negative morale if the arbitrator accepts its proposal, especially its limited contract term and low or zero wage increases which are not supported by any demonstrable evidence. Certainly this cannot have been contemplated by the legislature when it enacted this or any other of the statutory provisions. Stated another way, the Borough must do more than simply want something; it must prove why its position should be awarded.

### **Statutory Restrictions Imposed on the Employer**

This is yet another of the criteria as to which the Borough has failed to introduce any persuasive evidence in support of its position. Furthermore, nothing in the entire record suggests that an award in favor of the PBA will even remotely affect the limitations on the Borough imposed by N.J.S.A. 40A:45.45 or any other aspects of the statutory limitations imposed on the Borough.

### **Conclusion**

It has long been widely accepted by arbitrators and advocates alike that significant changes in the collective bargaining relationship should not be imposed unilaterally by the arbitrator. Given the egregious actions of the New Jersey legislature, those significant changes came through legislation, not in the crucible of collective bargaining. Throughout this brief the PBA has freely acknowledged the changing interest arbitration environment. Indeed, the PBA's modest proposals were made in recognition of those changes.

We believe that the PBA has demonstrated beyond dispute that the Borough's claims of impending doom are not grounded in reality. Whatever problems it experienced years ago regarding the electric utility are behind it. The alleged storm has passed. All of the statutory criteria support the PBA's realistic position.

For all the foregoing reasons, it is respectfully submitted that the Arbitrator issue an award which endorses the PBA's position and rejects the Borough's offer. The PBA's initial proposal was made even before the New Jersey governor and legislature gave the Borough even more than it sought at the bargaining table. Given the demographics of the Borough of Madison, its low equalized tax rate, the comparability data and all of the other factors which are extant in this proceeding, it is abundantly clear that an award in favor of the PBA is consistent with the sound principles of labor relations as embodied in the Act.

### **BOROUGH POSITION**

The following are the Borough's arguments and contentions in support of the statutory criteria:

#### **Interests and Welfare of the Public**

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

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

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



The Borough maintains that its offer is clearly more supportive of the interests and welfare of the public. The final offer of the Borough will accomplish several important public policy goals. First, it will enable the Borough to maintain its fiscal stability, while managing the risk and volatility of the current economy. Additionally, the offer will ensure that the Borough's police officers, who are statutorily entitled to the interest arbitration process, do not receive far superior wages and benefits than civilian employees, who do not enjoy such benefits.

The Borough submits that the PBA will continue to enjoy its competitive edge with the Borough's final offer. The Borough's final offer clearly takes the best interests and welfare of the public into account, while the PBA's offer blindly ignores the failing economy, increases in health care costs, pension contribution increases, decreases in State aid, lack of surplus, the taxpayers, and a remarkably high unemployment rate that has not been seen in years.

**Comparisons to Public Employment in the Same  
or Similar Comparable Jurisdictions**

This factor requires the Arbitrator to make a comparison of the wages, salaries and conditions of employment of Madison Borough police officers with the civilian employees of the Borough and other police officers in comparable jurisdictions. The evidence presented shows that the Borough's offer is more reasonable when compared to what Morris County police officers in other municipalities are receiving. Moreover, the Borough's offer will achieve economic and fiscal stability for the Borough in light of the 2.0% hard tax cap levy imposed in 2011, the fiscal/economic crisis of the State of New Jersey, increases to medical benefits and pension contributions on behalf of the Borough's police officers, decreases in State Aid, and a reduction of surplus for the Borough to rely upon.

In comparison to other police employees, Borough police officers are extremely well-compensated. In addition, it is common for interest arbitration awards to contain wage freezes as requested by the Township in its final offer. For example, in Township of East Orange and East Orange FOP Lodge 111, Arbitrator Mastriani's award included a wage freeze in the first and third years of the seven-year agreement. Further, in Matter of Borough of North Arlington and PBA Local 95, Arbitrator Mason's award included a wage freeze in 2011, and an increase of 2.5% in 2012 and 2.5% in 2013. Another recent award in which Arbitrator Mason included a wage freeze was Borough of Spotswood and PBA Local 225. In Spotswood, Arbitrator Mason awarded 0% in 2011, 2% in 2012 (effective July 1, 2012) and 2% in 2013. In Township of Springfield and PBA Local 76, IA-2012-003, Arbitrator Gifford awarded 0.0% in 2011, 1.75% in 2012, 1.75% in 2013, and 1.75% in 2014. In Borough of Point Pleasant Beach and PBA Local 106, IA-2012-001, Arbitrator Mastriani awarded 0.0% in 2011, 2% in 2012, 2.25% in 2013, and 2.5% in 2014. In State of New Jersey and State Troopers Fraternal Association and State Troopers NCO Association of New Jersey and State Troopers Superior Officers Association of New Jersey, IA-2010-39/40/41, Arbitrator Mastriani awarded a 0.0 salary increase for calendar year 2011. (B-142).

The Borough asserts that these awards show clear proof that in response to the economic climate of the State, the 2.0% hard tax cap levy, and increases in healthcare, pensions and reductions in municipalities miscellaneous revenues, arbitrators are awarding wage freezes in order for municipalities to maintain their economic and fiscal stability. Moreover, in Township of Fairfield and West Essex PBA Local 81, IA-2010-090, Arbitrator Robert M. Glasson detailed the economic issues that New Jersey municipalities are facing. Arbitrator Glasson noted that the current state of the economy must be taken into consideration when issuing an arbitration opinion. Arbitrator Glasson provides:

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

In prior years, the economy was much stronger than it is currently. We have experienced one of the worst recessions since the 1930's with high unemployment; a massive deficit in the State budget; hundreds of millions of dollars in reduced State Aid to municipalities; and tens of thousands of municipal, county and state employees being laid off or furloughed. . .Municipalities are experiencing a record number of tax appeals with significant potential loss of tax revenues and increased costs to defend such appeals, thereby undermining the tax base. Moreover, pension costs are at an all-time high with many municipalities contributing 25% or more of a police officer's salary to PFRS. The above events must be factored into the analysis of what weight to give the statutory criteria. (See 48-49).

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

According to the Borough, its police officers continue to receive higher salaries than many police officers throughout the State and Morris County. The Borough contends that the PBA did not produce sufficient evidence to justify its requested salary increases of 1.5% in 2010, 2.5% in 2011, 2.6% in 2012, and 2.7% in 2013. These increases represent a 9.3% wage increase during the term of the Agreement. The Arbitrator should not reason that the cost of the award is reduced by the cost containment savings generated by the premium

sharing contributions mandated by the enactment of P.L. 2010, c. 2 and P.L. 2011, c. 78 or the savings generated by the changes in health benefits provider. The statutory premium sharing contributions and change in health benefit provider are intended to offset the cost of health care, not fund salary increases for the PBA bargaining unit members.

Accordingly, the Borough submits that its proposals are more reasonable than the PBA's under this sub-factor.

### **Public Employment in the Same or Similar Jurisdiction**

The Borough maintains that there have been vast changes to the comparability factor in interest arbitration. Specifically the law has progressed where the "going rate" and "parity" arguments are no longer blindly accepted. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994). An arbitrator can no longer assume that a police officer is per se entitled to a higher percentage increase than non-uniformed employees. Id.

The arbitrator must compare the benefits received by Madison Borough police officers to those in comparable jurisdictions. In comparing all fringe benefits, Madison Borough offers benefits which exceed or are similar to the Morris County average. Madison Borough police officers assigned to the Detective Bureau receive an additional \$2,000 per year in pay, which far exceeds the County average of \$947. (B-113).

Further, Madison Borough police officers are afforded generous leave benefits compared to others in Morris County, the majority of which either exceed or are on par with County averages. For example, the County average amount of bereavement leave is three days whereas Borough police officers receive five days. (B-100). Additionally, Madison's vacation benefit exceeds the County average for employees with up to ten years of service. (B-102). The Borough's uniform allowance is \$650, on par with the County average of \$649. (B-92). Further, the Borough provides 104 hours of sick time per year, which is

comparable to the County. Borough police officers get 24 hours of personal time annually which is comparable with the County average of three days. Borough police officers are also entitled to twelve holidays, the same as the County average. Further, the court time minimum number of hours for Madison Borough police officers is two hours, the same as the average for the County. (B-106). Madison police officers are also paid time and ½ for court-time hours, while a number of municipalities in the County pay only straight time. (B-105).

A common benchmark measure of comparing police officers is by review of the minimum and maximum salaries. Upon comparison of the Morris County municipalities' patrol officers' minimum salaries, the starting salary for patrol officers in Madison Borough in 2008 is more than the Morris County average starting salary in 2009, 2010, 2011, 2012 and 2013. (B-108).

<b>Salary Step</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Step 1 County Average	\$46,809	\$50,380	\$48,899	\$48,880	\$48,004	\$51,291
Step 1 County Low	\$33,388	\$33,638	\$27,411	\$27,661	\$27,911	\$40,261
Madison Step 1	\$52,920	\$55,713	-----	-----	-----	-----

The Borough points out that it has an extremely high starting salary. The Borough has not proposed to decrease same, but the proposed wage freeze for 2010, as well as the additional salary steps for new hires is necessary in order to stabilize the Borough's finances and avoid future crisis, while still affording a highly competitive salary to new hires. By implementing the new salary guide, which includes five additional steps for new hires, the Borough is ensuring future fiscal stability while still providing each new hire with a starting salary that is thousands above the County average.

Additionally, a comparison must be made with regard to maximum salaries. The maximum salary in Madison Borough in 2009 was \$93,929. This maximum salary is higher

than the Morris County average maximum salary in 2009 of \$90,113. In fact, the Borough's maximum salary in 2009 was greater than the 2010 County average maximum salary of \$93,199 and comparable to the County average maximum salary for 2011 of \$95,983. (B-112). Thus, it is clear that the Borough's offer keeps the salaries at a comparable level within the entire County, even though the Borough faces bleak economic times, lack of State Aid and a reduction in surplus.

<b>Salary Step</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Maximum County Average	\$86,018	\$90,113	\$93,119	\$95,983
Maximum County Low	\$75,050	\$75,309	\$82,040	\$83,247
Madison Maximum	\$89,666	\$93,929	\$93,929 (0%)	\$95,808 (2%)

Lastly, each officer who is not currently receiving the maximum base salary receives a step movement salary increase each year. In 2010, without any salary increases, the average patrol officer who was not at the maximum step received an average step increase of \$8,526 which cost the Borough \$51,161 in step movement in 2010. (B-42).

Based on the above, the Borough submits that it provides its officers with benefits that are comparable to or better than most of the municipalities in the Morris County. Furthermore, the 2009 maximum salary for patrol officers in Madison was more than the County average in 2010 and comparable to the County average in 2011. Thus, by applying the Borough's final offer, the salaries of the Madison police officers will stay on par or exceed the County averages, even in these difficult economic times.

The Borough contends that the comparability and overall compensation exhibits demonstrate the reasonableness of its position. The Borough submitted evidence showing that the overall compensation and benefits provided to its police officers are comparable to or greater than the averages provided throughout Morris County. Thus, in many respects, Madison police officers receive benefits far superior to many of their County counterparts.

The Borough contends that the PBA's last offer should not be granted since it is unreasonable in terms of comparability with other Morris County municipalities and public employment interest arbitration awards in general.

### **Pattern Argument**

The Borough asserts that it has a continued long-standing practice of pattern between the firefighters and police officers. Since 1992, the firefighters and the police have been treated the same in terms of their respective contracts. Both bargaining units have received the identical salary percentage increases over the last 17 years as shown by a review of the prior CNAs in B-143).

<b>Year</b>	<b>PBA Local 92</b>	<b>FMBA Local 74</b>
1/1992	4%	4%
7/1992	2%	2%
1/1993	4%	4%
7/1993	2%	2%
1/1994	4%	4%
7/1994	2%	2%
1995	4%	4%
1996	4%	4%
1997	4%	4%
1998	4%	4%
1999	3.5%	3.5%
2000	3.5%	3.5%
2001	3.5%	3.5%
2002	3.5%	3.5%
2003	4.25%	4.25%
2004	4.25%	4.25%
2005	4%	4%
2006	3.9%	3.9%
2007	4.0%	4.0%
2008	4.0%	4.0%
2009	4.0%	4.0%
2010	-----	0%
2011	-----	0%
2012	-----	1.5%

A review of the past 17 years of CNAs for the PBA and FMBA demonstrates that the bargaining units have received identical economic benefits; an established internal wage pattern. This pattern should be entitled to significant weight by the arbitrator.

The Borough asserts that it is well established that “pattern” bargaining is a factor which is traditionally applied in many collective negotiations settings...” In City of Asbury Park and Asbury Park Sheriff’s Officers Association, PBA Local No. 6, Docket No. IA-88-92, Arbitrator Joel Weisblatt noted:

The concept that a pattern of bargaining is a major consideration under the statutory criteria is well accepted as part of the interest arbitration process. This concept has regularly been given considerable (even controlling) weight by arbitrators and its validity has been noted by the courts. Thus a proven pattern of bargaining must be given great weight in an interest arbitration. *Id.* at 16.

In Township of Springfield and PBA Local 76, Docket No. IA-2012-003, Arbitrator Gifford noted an annual similar and often identical economic salary increase benefit afforded to the PBA Local 97 and FMBA Local 57. Specifically, Arbitrator Gifford noted that this pattern has been shown to be similar and often identical from 1997 until 2010 thus entitling it significant weight; writing:

It undermines the awarding of the PBA’s wage proposal notwithstanding the fact that other law enforcement units in Union County may have received higher percentage increases over the same period and that the Township could legally afford to provide more. I conclude that the Union has not demonstrated a need to deviate from the long established pattern of settlements the PBA and the FMBA have had with the Township. To do otherwise would foster instability in the collective bargaining relationships and potentially affect the continuity and stability of employment between the two (2) units, all of which would not be in the public interest.

In County of Camden Sheriff’s Office and PBA Local 277, IA-99-40 (December 3, 2001) and Township of Union and PBA Local 69, IA-91-103 (1991), Arbitrator Tener noted that “the burden shifts to the PBA to provide that a different settlement should be awarded



when a bargaining pattern such as the one which exists in the County has been established.” In County of Union and FOP Lodge 103, Docket No. IA-2010-118, Arbitrator Hundley noted that PERC issued a directive that arbitrators must consider evidence of settlements between the employer and other negotiations units, as well as claims that those settlements constitute a pattern. See *Union Cty.*, P.E.R.C. No. 2003-33, 28 NJPER 459, (¶33169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003). Further, arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern. *Union Cty.*, P.E.R.C. No. 2003-33; *Union Cty.*, P.E.R.C. No. 2003-87. The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. *Id.*

In its Supplemental Brief, the Borough submitted the following additional argument in support of its last offer:

Although the Borough of Madison maintains its original final offer submission, the Borough asserts that the PBA should not be awarded any salary increases above the Borough’s March 30, 2011 final offer. It is important for the Arbitrator to take judicial notice of FMBA Local No. 74’s salary increases between the period of 2010-2012. The salary increases are demonstrated within the CNAs between the Borough and the FMBA, which were submitted at the Interest Arbitration hearing. See exhibits B-139 and B-140. B-139 shows that the FMBA received a 0% salary increase in 2010 and a 0% salary increase in 2011. B-140 shows that the FMBA received a 1.5% salary increase in 2012. Thus, the Borough’s final offer of 0% in 2010, 2% in 2011 (upon enrollment in the SHBP), and 2% in 2012 is far more reasonable in comparison to the Union’s requested salary increase of 1.5% in 2010, 2.5% in 2011, 2.6% in 2012, and 2.7% in 2013.

As previously discussed in the Borough's initial post hearing submission, a common benchmark measure of comparing police officers is by review of the minimum and maximum salaries. Upon comparison of the Morris County municipalities' patrol officers' minimum salaries, the starting salary for patrol officers in Madison Borough in 2008 is more than the Morris County average starting salary in 2009, 2010, 2011, 2012, 2013. (B-108). Further, with the Borough's final offer salary increase of 0% in 2010, 2% in 2011, and 2% in 2012, the starting salary for the Borough of Madison patrol officers will be thousands of dollars more than the majority of comparable jurisdictions starting salaries.

<b>Salary Step</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Step 1 County Average	\$46,809	\$50,380	\$48,899	\$48,880	\$48,004	\$51,291
Step 1 County Low	\$33,388	\$33,638	\$27,411	\$27,661	\$27,911	\$40,261
Madison Step 1	\$52,920	\$55,713	\$55,713	\$56,827	\$57,963	-----

Additionally, a comparison must be made to maximum salaries. The maximum salary for a Madison patrol officer in 2009 was \$93,929. This maximum salary is more than the Morris County average maximum salary in 2009, greater than the County maximum average in 2010 and comparable to the County Average maximum salary for 2011. (B-112).

<b>Salary Step</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Maximum County Average	\$86,018	\$90,113	\$93,119	\$95,983
Maximum County Low	\$75,050	\$75,309	\$82,040	\$83,247
Madison Maximum	\$89,666	\$93,929	\$93,929	\$95,807

The Borough's March 30, 2011 proposed salary increases will afford each police officer a competitive salary while also trying to minimize the effect of such increases upon the taxpayers. In addition, the Borough's March 30, 2011 final offer is affording the PBA members a salary increase benefit which was not afforded to any other Borough employee,

including the FMBA. (B-139 & B-140. Thus, it is clear that the Borough's offer keeps the salaries at a comparable level within the entire County, and provides its officers with benefits that are comparable to or better than most of the municipalities in Morris County. Therefore, to maintain equality among all the employees within the Borough, the Borough's final offer must be awarded.

### **Comparisons to Other Borough Employees**

The maximum base salary for a patrol officer in 2010 is \$93,929. 17 of the 23 police officers in the bargaining unit are at maximum. In addition, five SOA officers receive a base salary of \$103,619 and two SOA officers receive a salary of \$114,496. With longevity, overtime, court pay, outside duty pay and uniform allowance, the superior officers have an average salary of \$136,789 in 2011. See Certification of Robert Kalafut dated May 4, 2011. Moreover, the average 2010 total compensation of all sworn police officers in the Borough was \$109,953, the second highest of all the professional departments in Madison.

The PBA is proposing a 9.3% wage increase over a four-year contract term. This is an average annual increase of 2.33%. Not only would such an increase be unreasonable given the difficult financial circumstances facing the Borough, it would also exceed the 2.0% arbitration cap threshold. As such, over the course of a four-year Agreement, it would effectively deny the Borough the ability to take advantage of the arbitration reform legislation which is set to expire on April 1, 2014. Moreover, the 2010-2011 budget did not contain any funding for salary increases. Additionally, the draft 2012 budget contemplates a 1.5% increase for all Borough employees. Accordingly, if the increases requested by the PBA are granted, the Borough will be forced to absorb the impact of those raises in a two-year, rather than four-year, period. As a result, the Borough will have no choice but to increase taxes and/or institute layoffs, requiring both the taxpayer and Borough employees to suffer.

Moreover, Borough police officers are already receiving a higher salary than most police officers working in Morris County as well as other employees of the Borough. As discussed above, although other Borough employees have agreed to wage freezes, the PBA has requested a 9.3% wage increase which is simply unreasonable. It would guarantee tax increases to a community that has already seen its taxes increase by 44% since 2006. See Certification of Robert Kalafut dated May 4, 2011. As such, the Arbitrator should award the Borough's final offer.

**Financial Impact on the Governing Unit, Its Residents  
and Its Taxpayers**

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

The Borough maintains that its economic offer considers the financial impact on the governing unit, its residents and taxpayers because it takes into account the State and Nation's bleak economic condition and perhaps the greatest economic turmoil since the Great Depression. The state of the economy certainly impacts upon the Borough's ability to provide a fair economic offer, while continuing to maintain the fiscal stability necessary to operate. For the 2011 fiscal year, New Jersey has a budget deficit of \$10.7 billion, over

1/3 of its projected revenues. The percentage of unemployed New Jersey residents has more than doubled since the recession began. (B-46). New Jersey has the largest budget gap per taxpayer in the country. Additionally, in 2010, the State shed 22,000 jobs. (B-51). The effect of granting an economic benefit in excess of the Borough's proposal will negatively impact the Borough's ability to minimize possible future tax rate increases for the Borough's taxpayers. Moreover, the Borough's ability to increase the tax rate is now statutorily limited to a 2% hard tax cap levy pursuant to N.J.S.A. 40A:4-45.45 et seq.

The Borough asserts that its offer represents a fair balance between reasonable salary increases in the face of an unstable economy in the State, the ever increasing health benefits and pension costs, decreases in State aid, decreases in tax collections as well as a decrease in surplus and ensures the financial stability of the Borough without overwhelming already strapped taxpayers.

### **Fiscal Problems Facing the Borough**

As summarized below, the exhibits presented at the hearing and financial certification of the Borough's CFO, Robert Kalafut, demonstrate that the Borough is confronting a number of difficult fiscal problems and financial challenges:

#### **Reduction in State Aid**

Madison's fiscal stability has suffered from the continual reduction in State aid. From 2006-2010, the Borough's State aid has been reduced by 34.16% or from \$1,228,115 in 2006 to \$808,529 in 2010. See Certification of Robert Kalafut dated May 4, 2011. Moreover, the Borough's interest income has dropped by nearly \$1.1 million since 2006. Id.

#### **Increase to Pension Contributions**

The costs related to pension contributions for police officers are continually increasing. The Borough's pension contributions for PFRS alone have increased from

\$348,832 in 2006 to \$1,240,990 in 2011, which is an increase of 255%. Id. Additionally, the New Jersey League of Municipalities provided correspondence which stated that the costs associated with increased pension payments should be part of the collective bargaining process. Therefore, any increases in salary will further increase the costs of pensions beyond the figures stated above.

#### **Increase in Health Care Costs**

The costs related to employee health care are significant. In 2011, health care costs for the Borough's police officers was \$679,998. See Certification of Robert Kalafut dated May 4, 2011. However, the members of the PBA/SOA contribute only \$40,429 per year toward those costs. Id. Lastly, the New Jersey State Health Benefits Plan has a mandated increase in 2011 of 12.2% for active PBA members and 13.3% for retired PBA members.

The increases in costs and shortfalls in revenues as outlined in the certification of Robert Kalafut are due to the economic climate of the State and Nation and not due to any budgeting mismanagement by the Borough. The increased costs of health care and pension contributions are wholly outside the control of the Borough and its Governing Body. As a result, in the past six years, property taxes have increased by 44% or from \$9,146,273 in 2005 to \$13,173,804 in 2011. Id. The Borough is currently attempting to stabilize its finances by seeking reasonable salary increases, keeping the police officers salary comparable to other Morris county municipalities and creating additional steps in the salary guide in order to develop greater fiscal stability for the Borough. The PBA's proposal can only be construed as harmful to the taxpayers of the Borough by simply ignoring the current economic crisis.

Unemployment in the State of New Jersey has reached all-time new highs. In August 2011, the State unemployment rate was 9.4%. (B-140). The taxpayers of the Borough are

simply suffering from the economic crisis while the police officers continue to enjoy the job security of their employment with the Borough.

Meanwhile, the Borough's offer takes into consideration the financial impact of its residents and taxpayers. The Borough CFO stated in the financial certification that the Borough is struggling financially. See Certification of Robert Kalafut dated May 4, 2011. As discussed above, since 2006, the taxes for the Borough have increased 44.03% for taxpayers, while the surplus and revenues are still decreasing. Id. Madison has the 4th highest average tax bill of the 39 towns in Morris County. See Reply Certification of Robert Kalafut dated May 31, 2011.

Madison has its own electric utility which has experienced a 34.7% decline in the electric utility surplus since 2006 requiring the ratepayers to absorb a compounded 70.1% increase in electric utility rates. See Certification of Robert Kalafut dated May 4, 2011. Moreover, a 36.41% decline in the water utility surplus since 2006 has resulted in a compounded 78.2% increase in water utility rates. Id. Overall, the Borough's financials reflect a cash surplus decrease of \$8,227,580 from 2006 to 2010. Id. In the two years from 2008-2010 alone, the surplus declined by \$9,870,856. Id. The Borough has been unable to replenish these dramatic reductions in surplus. Id.

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

### **Cost of Living**

The arbitrator is required to consider the cost of living in rendering his award. N.J.S.A. 34:13A-16(g)(7). In Hillsdale, the Appellate Division faulted the Hillsdale arbitrator for failing to “consider or discuss the disparity between policy salary increases and the consumer price index.” Hillsdale, supra., 263 N.J.Super. at 195. In addition, N.J.S.A. 34:13A-16(g)(8) requires the arbitrator to consider “other factors . . . ordinarily or traditionally considered in the determination of wages.” Certainly, the cost of living must be considered one of those factors.

The interest arbitrator must consider the CPI in determining whether the Borough or the PBA has proposed the more reasonable economic package. The CPI shows a minor increase in the costs of goods and services. The Borough contends that the minor increase in the CPI demonstrates that the Madison police officers will not suffer any detriment to their standard of living. The Borough’s reasonable offer will still continue to increase the disparity in purchasing power between Borough police officers and the average Morris County consumer.

Accordingly, the Borough asserts that its salary proposal is reasonable and should be implemented.

### **Lawful Authority of the Employer**

The Appellate Division in Hillsdale interpreted the “lawful authority of the employer” criterion to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed, stating, “Given the existence of financial constraints and budget caps . . . an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget.” Hillsdale, 137 N.J. at 86. In applying the lawful authority of



the employer criterion, the Arbitrator must address the Borough's budget cap situation, as well as the statutory requirement that the Borough prepare a balanced budget each year.

In the present matter, the Borough provided evidence to support its position that its final offer is more reasonable in light of the lawful authority of the employer. The PBA's proposals will negatively impact on the fiscal stability of the budget by failing to address the insurance increases, cuts in state aid, and the tax rate cap. Further, the PBA's final offer will provide the police officers with benefits not afforded to the other bargaining units in the Borough, which is in contrast with the established long-standing pattern between the PBA and FMBA. Thus, the Borough's offer is more reasonable and should be implemented.

#### **Statutory Restrictions on the Borough**

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

Section 10 of P.L. 2007, c.62 originally established a tax levy cap of 4% above the previous year's tax levy. However, on July 13, 2010, Governor Christie signed into law P.L.

2010, c. 44 in order to cut the allowable tax levy increase to 2%. The Union's final offer is over 50% of the Borough's permitted tax levy increase. See Reply Certification of Robert Kalafut dated May 31, 2011.

The Borough argues that the PBA's last offer is neither fair, equitable nor realistic under the statutory restrictions imposed by the Local Budget Law and must be rejected in favor of the Borough's proposal.

### **Overall Compensation**

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

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

### **Continuity and Stability of Employment**

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

The Borough of Madison Police Department has approximately 30 members. (B-33). No Borough police officer has ever been laid off or put on furlough. The absence of any layoffs, furloughs, and downsizing is in complete and utter contrast to the current economic climate in the nation and in many municipalities within the State of New Jersey. Municipal employees and state employees have been experiencing mass layoffs, job cuts, furloughs, and salary freezes. As of August 2011, New Jersey has the 15<sup>th</sup> highest unemployment rate in the country. (B-140). Large scale job cuts have been taking place in both public employment and private employment. Private employers have instituted large scale job cuts which make headlines frequently, while the Madison Borough police officers enjoy secure and stable employment without any threat to job loss or furlough.

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

Moreover, the exhibits provided by the Borough, specifically B-33, show that the continuity and stability of employment in the unit is strong. There is no evidence of turnover and, based on the annual salaries of the police officers in 2010, 17 of the 23 police officers on the force are receiving maximum base salaries. Additionally, there are five superior officers receiving base salaries of \$103,619 and two receiving a base salary of \$114,496. (B-33).

Thus, based upon the above, it appears most of the unit members are receiving top pay, thereby indicating they have been with the Borough for many years. Further, the 2010 annual salary for police officers demonstrates that the unit members are well compensated and there is no evidence of turnover. Borough police officers are well paid compared to New Jersey's private sector, where salaries have been cut and employees have been laid off in thousands. As such, Borough police officers will continue to enjoy continuity and stability of employment. Thus, the Borough's offer is more reasonable.

In conclusion, the Borough asserts that its final offer is fair, reasonable, well-balanced and provides an intelligent approach for future financial stability. The Borough submits that its proposals will keep its police officers on par with the County average while still providing additional fringe benefits above the County average. The Township asks that its last offer be awarded in its entirety.

### **Discussion**

The parties presented testimony and hundreds of documentary exhibits totaling thousands of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to their own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals. The following are the terms of my award:

1. I shall award a four-year agreement. The duration of the new four-year agreement shall be January 1, 2010 to December 31, 2013.
2. I shall award the following changes to the salary and longevity schedules:
  - (a) Effective July 1, 2010, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 1.5%. All other steps on the Wage Schedule shall be frozen.
  - (b) Effective January 1, 2011, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on the Wage Schedule shall be frozen.
  - (c) Effective January 1, 2012, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on the Wage Schedule shall be frozen.
  - (d) Effective January 1, 2013, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on the Wage Schedule shall be frozen.
  - (e) Effective July 15, 2012, all new hires will be hired pursuant to a new Wage Schedule (Wage Schedule A-1) which will include three additional steps. All steps will be full-year steps. The new Step 1 shall be \$46,000. All other steps shall be equalized between Step 1 and Step 9, the maximum step of \$99,190.
  - (f) All salary increases are fully retroactive to the above effective dates.
3. The PBA proposal that overtime to be paid from beginning of overtime worked is awarded. Paragraph B in Section 1 of Article 4 of the PBA and SOA contracts shall be deleted. This shall be effective September 1, 2012.
4. All other proposals of the Borough and the PBA/SOA are denied.

### **Cost Analysis**

The bargaining unit (at the close of the record) includes 29 Officers. The total base pay salary for 29 bargaining unit members in 2009 is \$2,618,691. The total salary in 2009 for the Police Officers at maximum, Sergeants and Lieutenants is \$2,249,951. (E-33 & U-5). The following calculations do not assume any resignations, retirements, promotions or additional new hires. Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers.

### **2010**

The PBA proposed a 1.5% across-the-board increase to be effective May 1, 2010. The cost of the PBA proposal (excluding increments) in 2010 is reduced to \$26,187 because of the delay to May 1. The full base salary increase is \$40,048. The Borough proposed no salary increase above the incremental increases paid in 2010.

I awarded a 1.5% salary increase at maximum and to Sergeants and Lieutenants effective July 1, 2010. The full base salary increase is \$33,750. The actual cost to the Borough in 2010 is \$16,875 or 0.75% with the remaining 0.75% paid in 2011 as carry-over. All other steps on the Wage Schedule shall be frozen in 2010 to reduce the impact of incremental increases. Six bargaining unit members received incremental increases in 2010 totaling \$51,161 which the Borough calculated as a 13.87% increase of base salary. (E-42). The actual cost of the incremental movement in 2010 is approximately \$15,000 since the effective dates of the increments are April 29, 2010 (2 officers), August 28, 2010 (2 officers) and December 8, 2010 (2 officers). The six officers are now receiving the full value of the delayed incremental increases from 2009. There is no basis to add additional dollars to those officers that received automatic incremental salary increases in 2010.

## **2011**

The PBA proposed a 2.5% across-the-board increase to be effective January 1, 2011. The cost of the PBA proposal (excluding increments) in 2011 is \$68,644. The Borough proposed a 2% salary increase (excluding increments) to be effective upon all Borough employees entering the State Health Benefits Program. The Borough's salary proposal in 2011 increases base salary by \$54,114. The actual payout would be reduced by the delayed implementation triggered by the Borough's move to the State Health Benefits Program.

I awarded a 2% salary increase (excluding increments) at maximum and to Sergeants and Lieutenants effective January 1, 2011. The cost of the awarded salary increase in 2011 is \$45,674. All other steps on the Wage Schedule shall be frozen in 2011 to reduce the impact of incremental increases. Five bargaining unit members received incremental increases in 2011 totaling \$35,866 which the Borough calculated as an 11% increase of base salary. Again, the actual cost of the incremental movement in 2011 is reduced since the effective dates of the increments are April 29, 2011 (2 officers), August 28, 2011 (1 officer) and December 8, 2011 (2 officers). The five officers are now receiving the full value of the delayed incremental increases from 2010. There is no basis to add additional dollars to those officers that received automatic incremental salary increases in 2011.

## **2012**

The PBA proposed a 2.6% increase to be effective January 1, 2012. The cost of the PBA proposal (excluding increments) in 2012 is \$73,866. The Borough proposed a 2.0% salary increase to be effective January 1, 2012. The cost of the Borough's proposed salary increase in 2012 (excluding increments) is \$55,730.



I awarded a 2% salary increase (excluding increments) at maximum and to Sergeants and Lieutenants effective January 1, 2012. The cost of the awarded salary increase in 2012 is \$46,222. All other steps on the Wage Schedule shall be frozen in 2012. I have frozen the steps to reduce the impact of incremental increases. Five bargaining unit members received incremental increases in 2012 totaling \$26,637 which is a 6.84% increase of base salary. Again, the actual cost of the incremental movement in 2012 is reduced since the effective dates of the increments are April 29, 2012 (2 officers), August 28, 2012 (1 officer) and December 8, 2012 (2 officers). The five officers are now receiving the full value of the delayed incremental increases from 2011. There is no basis to add additional dollars to those officers that received automatic incremental salary increases in 2012.

### **2013**

The PBA proposed a 2.7% increase to be effective January 1, 2013. The cost of the PBA proposal (excluding increments) in 2013 is \$79,598. The Borough did not make a proposal in 2013 since it proposed a three-year contract ending on December 31, 2012.

I awarded a 2% salary increase (excluding increments) at maximum and to Sergeants and Lieutenants effective January 1, 2013. The cost of the awarded salary increase in 2012 is \$47,512. All other steps on the Wage Schedule shall be frozen in 2013. I have frozen the steps to reduce the impact of incremental increases. Five bargaining unit members received incremental increases in 2013 totaling \$40,410 which is a 10.37% increase of their base salary. Again, the actual cost of the incremental movement in 2013 is reduced since the effective dates of the increments are April 29, 2013 (2 officers), August 28, 2013 (1 officer) and December 8, 2013 (2 officers). The five officers are now receiving the full value of the delayed incremental increases from 2012. There is no basis to add additional dollars to those officers that received automatic incremental salary increases in 2013.

### **Interests and Welfare of the Public**

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this criterion might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Borough to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

*The interests and welfare of the public* require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony." (In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall now discuss the issues with respect to the interests and welfare of the public factor and comparability.

#### **Term of Agreement**

I shall award a four-year agreement effective January 1, 2010 to December 31, 2013. The Borough seeks a three-year contract and the PBA seeks a four-year contract and suggested that it would accept a fifth year. I shall award a four-year contract. This will provide needed stability in the relationship which can be undermined by continuous negotiations and interest arbitration. I note that the parties have gone more than thirty months without a contract. Another consideration favoring a longer contractual duration is the cost associated with negotiations and interest arbitration. Therefore, given that the award of a three-year CNA would mean that the parties will commence negotiations almost immediately, I shall award a four-year contract. This will give the parties some "breathing room" before commencing negotiations for a successor agreement.

### Salary

The major issue in this matter is salary and salary guide structure. While I am required to evaluate the merits of the disputed issues individually, I am guided by criterion N.J.S.A. 34:13A-16 (g) (8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award and the requirement to balance all of the major components included in the award.

PERC has recognized that arriving at an economic award is not a “precise mathematical process” and given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgement and discretion and an arbitrator will rarely be able to demonstrate that an award is the only “correct” one. See Borough of Lodi, 24 NJPER 466 (29214 1998). I have awarded the above salary increases and a new salary and longevity schedule for new hires for the following reasons:

First, salary and the cost of health care are often linked in bargaining. Modifications on health care influence the level of salary increases. It is undisputed that the cost of health insurance coverage is a significant component of employee benefits exceeded only by the cost of pension contributions. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

Since the close of the hearing, P.L. 2010, c. 2 was amended by P.L. 2011 c.78. Chapter 78 mandates contributions from public employees to defray the cost of health insurance benefits. Chapter 78 further provides for a minimum contribution of 1.5% of base salary up to a maximum of 35% of the cost of the health insurance coverage. This will greatly increase the contributions to the cost of health insurance for the vast majority of the PBA and SOA bargaining unit members. The mandated contributions are phased in over four years beginning in July 2011. The mandatory contributions range from 3% to 35% of the cost of coverage. The percentage of contribution ranges from 3% of family coverage premium costs for an employee earning \$25,000 annually to 35% of family coverage premium costs for an employee earning \$110,000 or more annually. The following shows the percentage cost of family coverage:

\$50,000 to less than \$54,999	12% of the cost of coverage
\$55,000 to less than \$59,999	14% of the cost of coverage
\$60,000 to less than \$64,999	17% of the cost of coverage
\$65,000 to less than \$69,999	19% of the cost of coverage
\$70,000 to less than \$74,999	22% of the cost of coverage
\$75,000 to less than \$79,999	23% of the cost of coverage
\$80,000 to less than \$84,999	24% of the cost of coverage
\$85,000 to less than \$89,999	26% of the cost of coverage
\$90,000 to less than \$94,999	28% of the cost of coverage
\$95,000 to less than \$99,999	29% of the cost of coverage
\$100,000 to less than \$109,999	32% of the cost of coverage
\$110,000 or more	35% of the cost of coverage

This means that a bargaining unit member earning \$90,000 annually will be paying 28% of the cost of family coverage when Chapter 78 is fully implemented in 2014. 2012 is the second year of the phase-in at 50% of the annual contribution rate. Thus, a Police Officer earning \$90,000 annually would contribute 14% of the cost of coverage in 2012. The cost to the Borough for Family coverage in the SHBP with prescription is \$23,746 annually in 2012. Thus, the cost to a Police Officer with Family coverage with prescription earning

\$90,000 annually will be \$3,324 in 2012, \$4,986 in 2013 and \$6,650 in 2014. This contribution is equivalent to 3.69% in 2012; 5.54% in 2013; and 7.38% in 2014. The former 1.5% contribution in effect from May 22, 2010 through the first six months of 2011 was \$1,350 annually.

The cost to Sergeants and Lieutenants with Family coverage with prescription earning \$110,000 annually will be \$4,156 annually in 2012, \$6,234 in 2013, and \$8,312 in 2014. This contribution is equivalent to 3.77% in 2012; 5.67% in 2013; and 7.56% in 2014. The former 1.5% contribution in effect from May 22, 2010 through the first six months of 2011 was \$1,650 annually.

The above numbers are based on the Borough's 2012 premium rates. However, if the premium rates increase in 2013 and 2014, the Borough will receive even higher contributions toward the cost of health insurance premiums from the Police Officers since the percentage contributions are applied to the premiums not a Police Officer's base salary. The above analysis shows that the enactment of Chapter 78 provides the Borough with substantial cost containment of health benefits. The Borough will realize a significant increase in health benefit contributions from Police Officers as the health benefit premium sharing is phased in between 2011 and 2014. The former 1.5% of base salary contribution will be equivalent to more than 7% of base salary for a significant portion of the bargaining unit by 2014.

The true value of increased cost sharing is shown by estimating the contributions in 2012, 2013, and 2014. In 2012, the base salary will be \$2.86 Million. The former 1.5% contribution would have yielded \$42,900 in 2012. Under the new premium sharing formula, the contribution will be approximately \$70,000 in 2012. The annual contribution rate for the first six months of 2012 is Phase 1 (25%) and Phase 2 (50%) for the last six months of 2012.

The annual contribution rate for the PBA/SOA bargaining unit members in Phase 2 is \$93,216. The annual contribution rate will increase to \$139,824 in Phase 3 which is effective in July of 2013. The total contribution in 2013 will be approximately \$116,500. When fully implemented in July of 2014, the annual contribution will be \$186,432. If the premium rates increase 10% in 2013 and 2014, the annual contributions to health care premiums will increase to \$225,000. The Borough will achieve a significant increase in health care contributions and its Police Officers will see a commensurate decrease in their net annual salary which cannot be offset by commensurate salary increases. Chapter 78, when fully phased in, will provide a significant offset against current premiums. It will also provide protection against future premium increases as such increases will be shared by the Borough's police officers.

I fully recognize that the savings to the Borough cannot be balanced by the award of salary increases to police officers to cover such increased premium sharing costs. The terms of my award provide for an average increase at maximum of 1.87% annually; the freezing of any increases in the steps on the salary guide; the award of a new salary guide for new hires; and the elimination of the five-year longevity increase. I have shown that I have not increased the salary of the Borough's police officers to offset the increased cost of premium sharing. The analysis of Chapter 78 simply shows the impact on both the Borough and the police officers.

In addition, I note that the Borough achieved considerable savings by moving its health and prescription coverage to the SHBP. This was made easier by the PBA/SOA agreement at the hearing on March 30, 2011. The PBA/SOA agreement cleared the way to move to the SHBP without the potential of PERC or other challenges to any changes in the level of benefits. The Borough estimated that it would save \$642,158 annually (for all

Borough employees) by moving from the North Jersey Municipal Employee Benefit Fund (“NJMEBF”) to the SHBP. (E-45). The annual cost for family coverage in 2011 under the SHBP for health and prescription coverage was \$21,090. The annual cost for family coverage in 2011 under the NJMEBF (UHC \$10 Copay Plan) for health and prescription coverage was \$27,576. In 2011, at least 21 bargaining unit members had Family coverage, Parent/Child or Employee/Spouse. This change to the SHBP provided savings of between \$120,000 and \$130,000 annually for the police bargaining unit alone. The PBA estimates the savings generated by moving to the SHBP as \$145,966. (U-7). The PBA/SOA agreement to allow the Borough to move to the SHBP provides savings that more than cover the cost of the 2% salary increases awarded in 2011, 2012 and 2013 to maximum step police officers, Sergeants and Lieutenants. Also, the 2% salary increases awarded in 2011, 2012 and 2013 are not applicable to police officers receiving annual increments as all of the steps on the salary schedule are frozen at the 2010 levels.

Second, effective July 15, 2012, all new hires will be hired pursuant to a new salary schedule (Appendix A-1). Appendix A-1 will have three additional steps. The probation step will be eliminated. A new Police Officer, hired on or after July 15, 2012, will reach maximum salary after eight full years of service. Under the 2006-2009 CNA, Police Officers reached maximum after five full years of service. The new Step 1 shall be \$46,000. All other steps shall be equalized between Step 1 and Step 9, the maximum step of \$99,190. This is the same maximum salary on Appendix A applicable to all police officers hired before July 15, 2012. The new salary schedule (with three additional steps) will result in future savings to the Borough of nearly \$100,000 in cumulative earnings as each new Police Officer progresses through the steps of the salary schedule to maximum. The \$100,000 calculation does not include “roll-up” costs.



The cumulative salary savings generated by a new salary schedule also benefits the bargaining unit as a whole. Salary schedules that allow accelerated movement to the maximum step will eventually undermine the ability of the parties to negotiate salaries for maximum step Police Officers since a significant expenditure of available funds will be needed to pay less experienced officers' high increments. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced Police Officers continue to receive competitive salary increases. Ignoring this issue will create serious problems for the parties in future negotiations. This is becoming increasingly important as resources decline and the cost of annual increments becomes a bigger part of the funds available for salary increases. During the last several years, it has become commonplace to see arbitrated and negotiated contracts with extended salary schedules for new hires. The above analysis is applicable to my decision to freeze the steps on the salary schedule at the 2010 levels.

The modifications to the salary schedule will give the Borough considerable future savings which will offset the cost of senior Police Officers salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective department. These changes will not impact on the Borough's ability to recruit and retain Police Officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all Police Officers.

This will become more significant in 2014 when salary increases will be limited to 2% of base salary inclusive of increments and longevity. The additional steps will decrease the Borough's incremental costs. Substantial incremental salary increases would have diminished the PBA's ability to negotiate salary increases for maximum step Police Officers.

Third, I awarded a modified longevity schedule applicable to all employees hired on or after July 15, 2012. The new longevity schedule eliminates the \$300 payment after five years. There is no sound basis to continue a five-year longevity step when the new salary schedule requires the completion of eight years of service to reach maximum.

Fourth, while the PBA has submitted considerable comparability salary data showing that the average annual increase is higher than the awarded salary increases, I find that much of the comparability data relied upon by the PBA is “dated” as many of the CBAs in the record were negotiated or arbitrated in better economic times. Comparability data is deserving of considerable weight in negotiations and arbitration. Comparability data must be measured against and balanced with all of the statutory criteria. In past years, comparability data was measured against annual cost-of-living increases which were consistent with the average annual salary increases and the Employer’s ability to fund salary increases. In other words, when the CPI was between 3.5% and 4%, the average salary increases were between 3.5% and 4%. In 2007, the CPI was 3.7% and the average increases in PERC reported awards and voluntary settlements were 3.77% and 3.97%. However, the CPI has declined dramatically in recent years and there has not been an equivalent decline in the average salary increases. The CPI was 1.6% in 2008 and 2.3% in 2009 and the average increase in PERC reported voluntary settlements and awards in 2008 and 2009 ranged from 3.6% to 3.92%. In both 2008 and 2009, Police Officers received a 4% across-the-board salary increase. This is more than double the CPI in 2008 and 2009 and higher than PERC reported settlements and awards in 2008 and 2009. Obviously, the salary increases lagged behind the changes in the CPI. This commonly occurs since comparability data is derived from multiple year contracts whereas the CPI is measured on a monthly and annual basis.

The cost of living data shows that the Consumer Price Index (“CPI”), as published by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”), for New York-Northern New Jersey increased by 1.4% in 2010, 2.7% in 2011. Thus, the average increase in the CPI during the last four years (2008, 2009, 2010 and 2011) is 2.0%. The most recent BLS data shows a 1.8% increase in the CPI for the one-year period ending May 31, 2012. (BLS News Release, NY-NJ, 12-1230, June 14, 2012).

This dramatic decline in the CPI must be given considerable weight. I note that this decline in the CPI is mirrored by a significant decline in the most recent PERC salary data. The average increase in awards posted on the PERC webpage is 2% in 2010, 1.8% in 2011 and 2% in 2012. This is significantly below the average of the PERC reported settlements and awards in recent years. Also, PERC reports in its *Salary Increase Analysis* posted on its webpage, that the average increase in awards is 2.05% in 2011 and 1.82% for the first four months of 2012. Also, PERC reports average voluntary settlements as 1.87% in 2011 and 1.83% for the first four months of 2012.

This decline in salary increases in 2010, 2011 and 2012 is a recognition of not only the decline in the CPI but it is also a recognition of the decline in the ability of a public employer to fund salary increases at prior levels. It is undisputed that a public employer’s ability to maintain revenue levels in 2010 and beyond has been severely diminished. The Tax Levy Cap in 2011 is 2%. Also, the Appropriations Cap has been reduced from 3.5% annually to 2.5% annually. This will severely limit the ability of a public employer to maintain the current level of services if salary increases continue to exceed increases in the CPI by up to 2% annually. Salary increases at 2008 and 2009 levels will only further reduce a public employer’s ability to maintain the current level of services and will result in layoffs

and/or furloughs. It is well established that many police and fire departments throughout the State have experienced massive layoffs, demotions and furloughs. We have also seen the parties working together to avoid layoffs and demotions by agreeing to postpone or modify certain economic benefits. In prior years, the economy was much stronger than it is currently. We have experienced one of the worst recessions since the 1930s with high unemployment; a massive deficit in the State budget; hundreds of millions of dollars in reduced State Aid to municipalities; and tens of thousands of municipal, county and state employees being laid off or furloughed. Furloughed employees effectively receive a salary reduction of 2% for each week they are furloughed. State employees have experienced not only furloughs but wage freezes as well. Municipalities are experiencing a record number of tax appeals with significant potential loss of tax revenues and increased costs to defend such appeals, thereby undermining the tax base. Moreover, pension costs are at an all-time high with municipalities and counties contributing 25% or more of a public safety officer's salary to PFRS. The above events must be factored into the analysis of what weight to give to the statutory criteria.

In summary, I find that the PBA and the Borough salary proposals are both outside the current trends in negotiated settlements and awards as well as the average increase in the CPI. The PBA's salary proposal at 2.5% in 2011, 2.6% in 2012 and 2.7% in 2013 is somewhat above the current trends. The Borough's salary proposal of 0.0% in 2010 is significantly below the average salary increases. I awarded salary increases in 2011 and 2012 that are similar to the Borough's proposed salary increases. The Borough proposed 2% salary increases in 2011 and 2012. The Borough proposed that the 2% salary increase be delayed to the effective date of the change to the SHBP in 2011. The Borough proposed a 2% salary increase effective January 1, 2012. I awarded a 2% salary increase effective January 1, 2011 and January 1, 2012. However, I did not apply the 2% salary increases to the steps on the

salary schedule in 2010, 2011, 2012 and 2013. This reduced the payout in 2010 by more than \$8,000. In 2011, the reduced payout is approximately \$12,000. In 2012, the reduced payout is approximately \$25,000. In 2013, the reduced payout is approximately \$30,000. This is best illustrated by showing that the “frozen” 5<sup>th</sup> Year Step which four officers will reach in 2013 remains at the 2010 step of \$82,207. If the across-the-board increases had been applied to the steps in 2010, 2011, 2012 and 2013, the 5<sup>th</sup> Year Step would have increased to \$88,547. This reduces the payout in 2013 for the four officers by \$6,340. However, even under the “frozen” salary schedule, all four officers will move from the 4<sup>th</sup> Year Step of \$76,846 to the 5<sup>th</sup> Year Step of \$82,207. This is a \$5,361 salary increase which is equal to a 6.9% salary increase. I find that comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and recent declining salary increases. Comparability data from prior years cannot be given as much weight as more current salary data, cost-of-living and budget data. I awarded salary increases that recognize the significant decline in the cost-of-living, acknowledge the Borough’s (and other public employers) reduced ability to fund salary increases at prior levels, and noted the substantial decline in average salary increases in 2010, 2011 and 2012.

**Comparison of The Wages, Salaries, Hours  
and Conditions of Employment**

Comparisons of the wages, salaries, hours and conditions of employment of the Borough’s Police Officers are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions.

It is well established that there are no easily identified private sector employees that perform services similar to those performed by the Borough's Police Officers. Neither party submitted salary data on this sub-factor since none exists. A Police Officer's position is a uniquely public sector position that does not lend itself to private sector comparisons.

I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement:

. . . troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers. The weight given to the standard for comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data. (*Village of Ridgewood*, PERC Docket No. IA-94-141 at 29-31).

There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight.

The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party submitted private sector wage data. The *Employment Cost Index* published by the Bureau of Labor Statistics shows that wages and salaries for private industry workers increased by 1.9% for the twelve-month period ending March 2012. The increase for the twelve-month period ending March 2011 was 1.6%. (BLS News Release, 12-0772, April 27, 2012).

The awarded salary increases which average 1.875% annually, are marginally higher than average salary increases in private employment. I conclude that the awarded salary increases, while marginally higher than private employment salary increases in general, are acceptable when measured against the totality of the terms of the award. This sub-factor is not entitled to significant weight.

The next comparison is with public employment in general. Neither party submitted specific salary data on public employment in general. The awarded salary increases which average 1.875% annually are within the range of salary increases for public employees in general in 2010, 2011 and 2012. This sub-factor is supportive of the awarded salary increases.

I shall now address the third sub-factor which includes several elements. The first element is internal comparability with other Borough employees. The Borough's position is clearly stated in its brief:

Although the Borough of Madison maintains its original final offer submission, the Borough asserts that the PBA should not be awarded any salary increases above the Borough's March 30, 2011 final offer. It is important for the Arbitrator to take judicial notice of FMBA Local No. 74's salary increases between the period of 2010-2012. The salary increases are demonstrated within the CNAs between the Borough and the FMBA, which were submitted at the Interest Arbitration hearing. See exhibits B-139 and B-140. B-139 shows that the FMBA received a 0% salary increase in 2010 and a 0% salary increase in 2011. B-140 shows that the FMBA received a 1.5% salary increase in 2012. Thus, the Borough's final offer of 0% in 2010, 2% in 2011 (upon enrollment in the SHBP), and 2% in 2012 is far more reasonable in comparison to the Union's requested salary increase of 1.5% in 2010, 2.5% in 2011, 2.6% in 2012, and 2.7% in 2013. (Borough Supplemental Brief at page 5, May 15, 2012).

The Borough essentially argues that its final offer to the PBA/SOA, which is more than the salary increases negotiated with the FMBA in 2010, 2011 and 2012, should receive

serious consideration given the long history of negotiating the same percentage salary increases with the PBA, SOA and FMBA dating back to 1992. In 2011 and 2012, I awarded 2% salary increases to the maximum-step Police Officers, Sergeants and Lieutenants. This is the same 2% increase that the Borough proposed in its final offer. The Borough proposed a later implementation date for the 2% increase in 2011 which is effective January 1, 2011. However, I reduced the cost of the annual salary increases by freezing the steps on the salary schedule for all four years of the new CNA. The Borough's final offer applied the 2% salary increases to all of the steps on the salary schedule in both 2011 and 2012. As stated above, this reduced the payout in 2011 by approximately \$12,000 in 2011 and approximately \$25,000 in 2012. In addition, it reduced the payout in 2010 by more than \$8,000. The cumulative effect of the four-year freeze will be seen in 2013 when the reduced payout is approximately \$30,000. This savings is derived from not applying the compounded 7.5% increase to the steps. As stated above, while this reduces the pay-out for Police Officers moving through the steps to maximum, it still provides for a significant annual salary increase.

The Borough's final offer to the PBA/SOA on salary is 2.5% higher than the settlement with the FMBA for 2010, 2011 and 2012. (4.0% vs. 1.5%). The Borough provided excerpts from other interest arbitration decisions emphasizing the importance of settlement patterns. I agree with my colleagues' analysis of the importance of maintaining an established pattern of settlement. An established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and provides consistency in bargaining. I have issued awards in which established patterns of settlement were given great weight. However, a settlement that is outside the mainstream



of other settlements cannot automatically create a pattern. The Borough's voluntary settlement with the FMBA, which averages 0.50% annually is not in line with PERC reported settlement data nor is it in line with current CPI data as discussed extensively above. It is more than 4.0% below the average three-year negotiated salary increases as reported by PERC. The Borough's voluntary settlement with the FMBA would be given greater weight if it had stood the test of interest arbitration.

Finally, I note that the 2010-11 CNA between the Borough and the FMBA was finalized on May 14, 2010. This means that FMBA bargaining unit members, unlike PBA and SOA bargaining unit members, were not required to contribute 1.5% of annual base salary as a required health care contribution mandated by Chapter 2 which was effective May 22, 2010. Moreover, the 2012 CNA was finalized on March 28, 2011. Thus, FMBA bargaining unit members, unlike PBA and SOA bargaining unit members, were not required to contribute a percentage of their annual base salary as a required health care contribution mandated by Chapter 78 which was effective June 28, 2011. Thus, as discussed above, PBA and SOA bargaining unit members have been making health care contributions since May of 2010 under both Chapter 2 and Chapter 78. The FMBA will not begin making health care contributions under Chapter 78 until at least January 1, 2012 and possible as late as January 1, 2013. FMBA bargaining unit members, because of the later phase-in date, will be making lower percentage contributions than PBA/SOA bargaining unit members. This is a significant difference in total compensation which weakens the Borough's "pattern" argument.

Accordingly, I conclude that the Borough's voluntary settlement with the FMBA which is significantly below the Borough's final offer and the average of PERC reported voluntary settlements is not entitled to substantial weight.

The third sub-factor is comparison to the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with employees performing the same services in public employment. I provided analysis of this sub-factor in my discussion of *Salary* on pages 60-69. I found that the comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and declining salary increases. I have awarded salary increases that recognize the significant decline in the cost-of-living, the Borough's (and other public employer's) reduced ability to fund salary increases at prior levels, and the substantial decline in average salary increases in 2010, 2011 and 2012.

**Lawful Authority of the Employer**

Three of the statutory criteria, N.J.S.A 34:12A-16g(1), (5) and (9), refer to the lawful authority of the employer. These factors, among other things, require the arbitrator to consider the limitations imposed on the Borough by the CAP law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

More specifically, g(1) refers to the original 1976 Cap law; g(5) refers to the lawful authority of the employer and cites the 1976 Cap law; and g(9) refers to the recently amended Tax Levy Cap law which limits tax levy increases from year-to-year. The significant change in the Levy Cap is the reduction of the Levy Cap from 4% annually to 2% annually. The Appropriations Cap has also been reduced from 3.5% to 2.5%. It is well established that arbitrators must recognize and respect the statutory limits which have been placed on public employers. Madison Borough and all other municipalities in the State face constraints on

their ability to increase appropriations and their ability to raise taxes. The expenditure or appropriations cap applies to the total current expense portion of the budget and not to any particular line item within the budget.

The cost of the award is 7.5% over four years at the maximum step on the salary schedule and to the ranks of Sergeant and Lieutenant. I have limited the 7.5% increase to the maximum step on the salary schedule by freezing the steps on the salary schedule at the 2010 level. I have not added an across-the-board increase to the steps on the salary schedule in 2010, 2011, 2012 and 2013 in order to limit the already significant increases generated by the increments on the 2006-2010 salary schedule. The increments paid by the Borough in 2010, 2011 and 2012 are not attributable to my award. The incremental costs will be significantly reduced in 2012 when the new salary schedule is implemented. The new salary schedule (with three additional steps) will result in future savings to the Borough of nearly \$100,000 in cumulative earnings as each new Police Officer progresses through the steps of the salary schedule to maximum..

The cost of the awarded salary increases for Police Officers at maximum, Sergeants and Lieutenants is \$16,875 in 2010 (with a roll-over of \$16,875 in 2011), \$45,674 in 2011, \$46,222 in 2012 and \$47,512 in 2013. I note that the awarded salary increases in 2011 and 2012 cost less than the Borough's proposed salary increases. I awarded, and the Borough proposed, 2% increases in 2011 and 2012. The Borough would have added an additional 2% to all of the steps on the salary schedule in both 2011 and 2012. This would add an additional \$12,000 in 2011 and approximately \$25,000 in 2012. Thus, the cost of the awarded salary increases in 2011 and 2012 are less than the cost of the salary increases proposed by the Borough. Obviously, the 1.5% salary increase awarded in 2010 is above the Borough's proposed 0.0% salary increase. While the Borough did not propose a fourth year in 2013,

I awarded a 2% salary increase which is within the range of other settlements as reported by PERC. The savings from the frozen steps on the salary schedule balance the overall costs of the award.

The cost of the award is reduced by the cost containment savings generated by the premium sharing contributions mandated by the enactment of P.L. 2010, c. 2 and P.L. 2011 c.78. This is approximately 0.6% in 2010 and at least 1.5% in 2011. The cost containment savings will be more than 1.5% in 2012. As discussed above, when fully implemented, the majority of the Borough's Police Officers will be contributing more than 7% of base salary toward the cost of health insurance premiums. As discussed above, this is equivalent to \$6,650 annually under the current SHBP premiums for a family plan for Police Officers with a base salary at \$90,000 and \$8,312 for Sergeants and Lieutenants. The cost of the awarded salary increases is also balanced by the savings derived from the Borough's move to the SHBP.

Finally, I awarded a new salary schedule for new hires to be effective July 15, 2012. The new salary schedule (with three additional steps) will result in future savings to the Borough of nearly \$100,000 in cumulative earnings as each new Police Officer progresses through the steps of the salary schedule to maximum. While the Borough will not realize these savings immediately, the new salary schedule will benefit both the PBA and the Borough as more funds will be available to pay senior Police Officer salaries.

There is absolutely no evidence in the record to show that the terms of the awarded salary increases or any other aspect of this award will cause the Borough to approach the limits of its financial authority or to breach the constraints imposed by the three statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), in funding the salary increases awarded herein.

**Financial Impact on the Governing Unit,  
its Residents and Taxpayers**

The above discussion under the *lawful authority* is applicable to the *financial impact* factor and need not be repeated. For all of the reasons cited above, I conclude that there is no evidence that the terms of my award will require the Borough to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the Borough's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

The impact of the awarded salary increases, when measured against the other terms of the award and cost containment from Chapter 2 and Chapter 78, and the savings from the move to the SHBP clearly shows that the financial impact is minimal. The terms of the award will not impact on the ability of the Borough to maintain existing local programs and services, expand existing programs and services or to initiate any new programs and services.

I am aware that the Borough has seen a serious reduction in its surplus balance which has dropped from a high of nearly \$9 Million in 2007 to an estimated \$3,598,270 as of December 31, 2011. (Certification of Robert Kalafut, Madison Borough CFO, dated May 31, 2011, at page 17). However, the nearly \$3.6 Million surplus will not be impacted by the cost of the awarded salary increases.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

### *Cost of Living*

Arbitrators must consider changes in the cost of living. The CPI has declined dramatically in recent years and there has not been an equivalent decline in the average salary increases. The CPI was 1.6% in 2008 and 2.3% in 2009 and the average increase in PERC reported voluntary settlements and awards in 2008 and 2009 ranged from 3.6% to 3.92%. Obviously, the salary increases lagged behind the changes in the CPI. This commonly occurs since comparability data is derived from multiple year contracts whereas the CPI is measured on a monthly and annual basis.

The most recent cost of living data shows that the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 1.4% in 2010 and by 2.7% in 2011. Thus, the average increase in the CPI during the last four years is 2.0%. This dramatic decline in the CPI must be given considerable weight. I note that this decline in the CPI is mirrored by a significant decline in the most recent PERC salary data. The average increase in awards posted on the PERC webpage in 2011 is 2% in 2010, 1.8% in 2011 and 2% in 2012. This is significantly below the average of the PERC reported settlements and awards in recent years. This decline in salary increases in 2010 and 2011 is a recognition of not only the decline in the CPI but it is also a recognition of the decline in the ability of a public employer to fund salary increases at prior levels.

I conclude that the awarded base salary increases are similar to the average increase in the cost of living. I have given this sub-factor considerable weight and find that in a period of sustained low inflation, the sharp reduction in the CPI must trump comparability data that lags behind the current economic and budgetary data and legislative mandates.

### **Continuity and Stability of Employment**

The terms of my Award will maintain the continuity and stability of employment for the Borough's Police Officers. The salary award in this matter will not jeopardize employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Borough to continue to recruit and retain qualified Police Officers. This factor was given considerable weight in the awarding of a new salary schedule for new hires. The cumulative salary savings to the Borough also benefits the bargaining unit as a whole. The modifications to the salary schedule will give the Borough considerable future savings which will offset the cost of senior Police Officer salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective department. These changes will not impact on the Borough's ability to recruit and retain Police Officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for Police Officers.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

### **Overall Compensation**

A review of this factor requires consideration of 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." I have considered the overall compensation received by the Borough's Police Officers and find that the terms of my Award will maintain existing levels for all current employees and provide competitive benefit levels for all future Police Officers.

### **Other Issues**

I shall now address the other issues. A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. I shall apply that principle in my analysis of each issue in dispute. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award.

### **Overtime**

The PBA proposes that overtime to be paid from beginning of overtime worked. The PBA seeks to change in the method of paying overtime for work performed at the end of an officers' shift. Currently, pursuant to Article IV, Section 1, Paragraph B, in the PBA and SOA contracts, overtime is paid in compensatory time off for the first hour of excess time following a regular shift as follows:

- B. Notwithstanding subsection (a), supra, if an employee is required to work overtime in excess of and in continuation of the regular day shift and said overtime amounts to one (1) hour or less, said time shall be credited to accumulated overtime, and the employee shall receive compensatory time off or overtime pay at the rate of one and one half times regular straight time. Said compensatory time must be taken within 365 days of the date on which it is credited. If, however, said overtime is in excess of one hour, said overtime shall be paid as overtime pay. (J-1 & J-2 at 5).

The PBA contends that this is unusual and uncommon in comparison to other police departments. The PBA has also raised questions as to the validity of the practice under the Fair Labor Standards Act. The Borough did not oppose the PBA/SOA proposal nor did it offer any basis to deny the PBA/SOA proposal.



Accordingly, I shall grant the PBA/SOA proposal to delete Paragraph B in Section 1 of Article 4 of the PBA and SOA contracts. This shall be effective September 1, 2012.

### **Standby Time**

The PBA seeks to increase the compensation for police officers assigned to the Division of Investigations to \$3000 effective January 1, 2010 and then to \$4,000 effective January 1, 2012. This is essentially a "Detective Stipend" which is now set at \$2,000 annually. According to the Borough, the \$2,000 annual payment far exceeds the County average of \$947. (B-113). There is nothing in the record to justify the PBA's proposal to increase the allowance above \$2,000.

Accordingly, I find that the evidentiary record does not support the PBA's proposal and it is denied.

### **Summary**

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year and concluded that the changes are reasonable under the statutory criteria.

In summary, I found that the comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and declining salary increases. Comparability data from prior years cannot be given as much weight as more current salary, cost-of-living and budget data. I have awarded salary increases that recognize the significant decline in the cost-of-living and the substantial decline in average salary increases in 2010, 2011, and 2012. I have

acknowledged the Borough's (and other public employers) reduced ability to fund salary increases at prior levels.

I found that the cost of the awarded salary increases are within the range of salary increases as reported by PERC and that the cost of such salary increases are balanced by the savings from the move to the SHBP; the freezing of increments for all four years of the new CNA at the 2010 level; the implementation of a new salary schedule for new hires; and the additional health care contributions required by Chapter 78.

Accordingly, I hereby issue the following award:

## AWARD

1. I shall award a four-year agreement. The duration of the new four-year agreement shall be January 1, 2010 to December 31, 2013.
2. I shall award the following changes to the salary and longevity schedules:
  - (a) Effective July 1, 2010, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 1.5%. All other steps on the Wage Schedule shall be frozen. Police Officers shall move to the next step on the salary schedule on their respective anniversary dates.
  - (b) Effective January 1, 2011, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on the Wage Schedule shall be frozen. Police Officers shall move to the next step on the salary schedule on their respective anniversary dates.
  - (c) Effective January 1, 2012, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on the Wage Schedule shall be frozen. Police Officers shall move to the next step on the salary schedule on their respective anniversary dates.
  - (d) Effective January 1, 2013, the maximum step on the Wage Schedule (Over 5 Years), Sergeant and Lieutenant shall be increased by 2.0%. All other steps on the Wage Schedule shall be frozen. Police Officers shall move to the next step on the salary schedule on their respective anniversary dates.
  - (e) Effective July 15, 2012, all new hires will be hired pursuant to a new Wage Schedule (Wage Schedule A-1) which will include three additional steps. All steps will be full-year steps. The new Step 1 shall be \$46,000. All other steps shall be equalized between Step 1 and Step 9, the maximum step of \$99,190. The five-year longevity step shall be eliminated.
  - (f) All salary increases are fully retroactive to the above effective dates.
3. The PBA/SOA proposal that overtime to be paid from the beginning of overtime worked is awarded. Paragraph B in Section 1 of Article 4 of the PBA and SOA contracts shall be deleted. This shall be effective September 1, 2012.
4. All other proposals of the Borough and the PBA/SOA are denied.



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ROBERT M. GLASSON  
ARBITRATOR

Dated: July 9, 2012  
Pennington, NJ

**Appendix A**

**SALARIES**

(Applicable to Officers hired before July 15, 2012)

	<b><u>2010</u></b> (7-1-10)	<b><u>2011</u></b> (1-1-11)	<b><u>2012</u></b> (1-1-12)	<b><u>2013</u></b> (1-1-13)
Effective				
Probationary	48,932	48,932	48,932	48,932
First Year	55,713	55,713	55,713	55,713
Second Year	63,681	63,681	63,681	63,681
Third Year	71,248	71,248	71,248	71,248
Fourth Year	76,846	76,846	76,846	76,846
Fifth Year	82,207	82,207	82,207	82,207
Over 5 Years	95,338	97,245	99,190	101,174

**Appendix A-1**

**SALARIES**

(Applicable to Officers hired on or after July 15, 2012)

Effective	<b><u>2012</u></b> (7-15-12)	<b><u>2013</u></b> (1-1-13)
First Year	46,000	46,920
Second Year	52,650	53,703
Third Year	59,300	60,486
Fourth Year	65,950	67,269
Fifth Year	72,600	74,052
Sixth Year	79,250	80,835
Seventh Year	85,900	87,618
Eighth Year	92,550	94,401
Ninth Year	99,190	101,174

**Superior Officers Association**

**Wage Schedule by Job Classification**

	<b><u>2010</u></b> <b>(7-1-10)</b>	<b><u>2011</u></b> <b>(1-1-11)</b>	<b><u>2012</u></b> <b>(1-1-12)</b>	<b><u>2013</u></b> <b>(1-1-13)</b>
Effective				
Sergeant	105,173	107,277	109,422	111,611
Lieutenant	116,213	118,538	120,908	123,327

STATE OF NEW JERSEY) ss.:  
COUNTY OF MERCER)

On this 9<sup>th</sup> day of July 2012, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Joann Walsh Glasson

