

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

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In the Matter of Interest Arbitration Between :  
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**TOWNSHIP OF NUTLEY** : **INTEREST ARBITRATION**  
“the Township or Employer” : **DECISION**  
and : **AND**  
: **AWARD**  
:  
**PBA LOCAL 33 & SOA** : Docket No: IA-2009-071/072  
“the PBA, SOA or Union” :

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**Before:** Robert M. Glasson, Arbitrator

**APPEARANCES**

**FOR THE TOWNSHIP:**

Of Counsel and on the Brief:  
Ramon E. Rivera, Esq.  
Scarinci & Hollenbeck

On the Brief:  
Christina Michelson, Esq.

**FOR THE PBA/SOA:**

David J. DeFillippo, Esq.  
Klatsky, Sciarabone & DeFillippo

### **Procedural History**

The Township of Nutley (the “Township”) and PBA Local 33 (the “PBA”) and the Nutley Superior Officers Association (the “SOA”) are parties to collective bargaining agreements (the “CBA”) which expired on December 31, 2007. Both the PBA and the SOA negotiated a one-year extension to the 2004-2007 CBA with the Township. Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA and SOA filed petitions with the New Jersey Public Employment Relations Commission (“PERC”) on March 12, 2009, requesting the initiation of compulsory interest arbitration. 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 December 2, 2009, from its Special Panel of Interest Arbitrators.

I conducted numerous mediation sessions which proved unsuccessful. Formal interest arbitration proceedings were invoked and a hearing was conducted on January 13, 2011, when the parties presented documentary evidence and testimony in support of their positions. At the hearing, I granted the parties’ request to supplement the record with financial certifications. Both parties filed post-hearing briefs and the record was closed on April 1, 2011.

On May 31, 2011, the PBA/SOA requested that the record be supplemented by including Township of Nutley Resolutions 124-11 and 134-11 adopted on May 17, 2011 and June 7, 2011. The resolutions confirm new employment terms for bargaining unit members represented by Teamsters Local 97 and all unrepresented employees for 2009, 2010, 2011 and 2012. The Township opposed the PBA/SOA request arguing that the record is closed.

On June 22, 2011, I conducted a teleconference with Counsel for the PBA/SOA and the Township. During the teleconference, I granted the PBA/SOA request to supplement the record and advised Counsel that I would entertain a request to either schedule an additional day of hearing or to require written submissions regarding the relevance and impact of the resolutions in relation to the statutory criteria. Counsel mutually agreed to submit written statements of position regarding the relevance and impact of the resolutions in relation to the statutory criteria. On June 29, 2011, I conducted a second teleconference with Counsel for the Township and PBA/SOA in which it was agreed that the parties may cite Interest Arbitration awards posted on the PERC website in their written submissions. The written statements of position were received on July 13, 2011.

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 agreed to extend the time limits for the issuance of the award to November 30, 2011. This extension was necessary because I was recuperating from major surgery from August 15, 2011 to October 15, 2011.

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 Last Offer**

1. **Term of Agreement:** January 1, 2009 to December 31, 2012.

2. **Salary:**

The PBA proposes an across-the-board salary increase of 2.5% effective January 1, 2009; 3.0% effective January 1, 2010; 3.5% effective January 1, 2011; and 3.5% effective January 1, 2012. The salary increases shall be applied to all steps and ranks in the PBA/SOA bargaining units and shall also be applicable to all officers employed after January 1, 2008 regardless of whether said officer is still employed as of the date of the issuance of the Award in this matter.

3. **Training Stipend:**

The PBA proposes that the training stipend be increased by \$350 each year of the new CBA, retroactive to January 1, 2009. Said increase shall be added to all steps and ranks on the salary schedules to be followed by the above annual across-the-board salary increases.

### **Township's Last Offer**

1. **Term of Agreement:** January 1, 2009 to December 31, 2012.

2. **Salary:**

- A. January 1, 2009 0% Increase to base pay
- B. January 1, 2010 0% Increase to base pay
- C. January 1, 2011 0% Increase to base pay
- D. January 1, 2012 0% Increase to base pay
- E. The Township also proposes to add three (3) additional steps to the salary guide for the PBA to increase from five (5) steps to ten (10) steps from Patrol Officer 1<sup>st</sup> Step to Sergeant.
- F. The Township proposes to add four (4) steps to the SOA salary guide to increase from three (3) steps to seven (7) steps for the Lieutenant to Deputy Chief of Police.
- G. The Township proposes to eliminate longevity for employees hired after January 1, 2011. The Township also proposes to freeze the current value of longevity for active employees.
- H. The Township proposes to eliminate training stipends for all bargaining unit members.

3. **Clothing Allowance:**

The Township proposes to eliminate the current clothing and maintenance allowance for all bargaining unit members.

4. **Holidays:**

The Township proposes to reduce the annual payment for holidays from fourteen (14) to seven (7).

5. **Vacation Leave:**

Reduce the annual vacation leave by five (5) days in each of the periods of service for the PBA/SOA.

PBA:

1-10 years	Patrol - 10	Sergeant - 15
11-15 years	Patrol - 15	Sergeant - 20
16+ years	Patrol - 20	Sergeant - 25

SOA:

1-10 years	Lt. - 15	Cpt. - 20	Deputy Chief - 20
11+ years	Lt. - 25	Cpt. - 25	Deputy Chief - 25

6. **Personal Days:**

The township proposes to reduce personal days for PBA bargaining unit members to a maximum of two (2) days annually and for SOA bargaining unit members to a maximum of three (3) days annually.

7. **Sick Time:**

The Township proposes that all accumulated sick time as of December 31, 2010 shall remain fixed at the current value and number of sick days. Any payment for future accumulation (earned after January 1, 2011) of sick time shall be capped at \$15,000. Any member who seeks to use sick time shall have such time deducted from their sick leave bank of time earned prior to December 31, 2010. If that bank is exhausted then the employee may use sick time earned after December 31, 2010.

8. **Bereavement Leave:**

The Township proposes to reduce bereavement leave from four (4) days to a maximum of three (3) days. The Township proposes to eliminate bereavement leave for the death of an Aunt or Uncle or corresponding in-law.

9. **Medical Insurance:**

- (a) The Township proposes that all PBA and SOA bargaining unit members shall contribute seven percent (7%) of their base salary toward the cost of their health benefits.
- (b) The Township will pay the cost of health coverage for all retirees and their eligible dependents so long as the retiree has retired with at least twenty-five (25) years of service credit in the Police and Fire Retirement System and had worked a period of at least twenty-five (25) years with the Township. The Township and the Union may agree to permit a retiree who does not meet the above requirements to participate in the City's health insurance plan at his or her own cost.

10. **Contract language Changes:**

- (a) Article X, Section 5, "Notification of Manpower Allocation."

Existing Language:

The Chief of Police shall serve written notice to the PBA on a quarter annual basis setting forth the minimum manpower allocation established for uniformed patrol officers assigned to patrol cars (exclusive of fixed posts) on each shift.

Proposed language:

**5. Manpower Requirements:** The Department agrees that one Sergeant and two patrol officers shall be permitted to be off at the same time on each of the three patrol division shifts. The category of time taken (Vacation, PDO, SDO) to conform with this requirement shall be irrelevant, except that Vacation picks in accordance with Article XII of this agreement, shall be given priority. Time off that exceeds the terms of this provision shall be at the sole discretion of the Shift Commander/Supervisor.

- (b) Article IX, Section 2 "Overtime Rate."

Existing Language:

In the event an employee is called in to work during other than regularly scheduled hours, including off duty court or administrative appearances, but

excluding disciplinary hearings, he/she shall be paid at the rate of time and one half (1 ½) for a guaranteed minimum of two (2) hours for all hours worked, whichever is greater, provided however that the two (2) hour minimum shall not apply to hours worked contiguous with the employee's work day. For court appearances, which would qualify for overtime, the employee shall have the option of accepting compensatory time (at time and one half). All overtime payments pursuant to this article shall be made no later than the second pay period from the time worked and no longer than four (4) weeks in total. The Township shall be assessed an additional \$5.00 per day penalty thereafter.

Proposed Language:

2. Overtime Rate. In the event an employee is called in to work during other than regularly scheduled hours, including off duty court or administrative appearances, but excluding disciplinary hearings, he/she shall be paid at the rate of time and one half (1 ½) for a guaranteed minimum of two (2) hours for all hours worked, whichever is greater, provided however that the two (2) hour minimum shall not apply to hours worked contiguous with the employee's work day. Upon the signing of this agreement, the option of selecting compensatory time shall be eliminated. All overtime payments pursuant to this article shall be made no later than the second pay period from the time worked and no longer than four (4) weeks in total. The Township shall be assessed an additional \$5.00 per day penalty thereafter.
- (c) Article IX, Section 6, "Compensatory time accumulation."

Existing Language:

Employees shall be permitted to accumulate one hundred fifty (150) hours of compensatory overtime.

Proposed language:

Upon the signing of this agreement, the practice of accumulating compensatory hours shall be eliminated, consistent with new provisions in Section 2. Employee compensatory hours previously earned shall continue to be credited to the employee, and they may continue to utilize them in conformance with the terms of this agreement. Once existing compensatory hours have been exhausted, employees shall have the option of converting no more than three (3) vacation days (25 1/2 hours) into compensatory hours per year to allow employees to take such time off in hours. Any such converted hours must be taken within the calendar year in which they were converted, and in no event will such hours be allowed to accumulate.

## **PARTIES' POSITIONS**

### **PBA/SOA POSITION**

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

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

The Union submits that N.J.S.A. 34:13A-16(g)(1) requires the Arbitrator to consider the interest and welfare of the public. In order to properly analyze this factor, the Arbitrator must be aware of just who constitutes the “public” in Nutley. In Exhibits D, E, F and H, the PBA and SOA have attached numerous documents defining the Township of Nutley and its residents. Exhibit F also includes additional data relative to Essex County as a whole.

The Union notes that the numerous scenic parks, beautiful homes and an aggressive and professional police department helped Nutley achieve its designation as “#1 Best Place to Live”, according to the March 2008 edition of New Jersey Monthly Magazine. (E-1). Illustrating its family-oriented character, nearly 30% of the 10,884 households had children under the age of 18 and, further, 54% of the households comprised married couples living together. (E-3). The residents within the Township are fairly affluent. The Union notes that the median household income for the Township, as per the 2000 Census, was \$59,634. To put this in perspective, Nutley’s median household income not only exceeded New Jersey’s median household income (\$55,146) but surpassed the national median household income (\$41,994) by nearly \$20,000. Moreover, the Township’s per capita income (\$28,309) also surpassed the state and national averages.(E-11). More recently, the 2010’s median household income in Nutley rose to \$75,110 – approximately \$6,000 above the level for New Jersey (\$69,784) and \$23,000 more than the nation as a whole (\$53,712). (E-18).

The PBA and SOA submit that the value of Nutley housing has skyrocketed in the last decade. For example, in 1998, the average residence in Nutley sold for \$163,715. (H-19). By 2003, the average resale value of a home in Nutley was \$288,242. By 2009, the average home in Nutley sold for \$385,288. (H-1). Thus, the average value of a home in Nutley increased by \$100,000 in the six-year period between 2003 and 2009. Moreover, the value of homes in Nutley more than doubled in the decade between 1998 and 2009. (H-1 & H-19).

Perhaps the main reason for the skyrocketing values of Nutley residences is the fact that its Police Department is extremely professional, efficient and effective in combating crime and maintaining the Township's character as a family-oriented community. The unions note that the municipality's violent crime rate per 1,000 actually decreased from 2008's 10.5 to just 1.0 in 2009. (G-17). The Township's nonviolent crime rate also fell dramatically in 2009. In 2008, the Township's nonviolent crime rate per 1,000 residents was 45.3. In 2009, this number plummeted to just 13.8. Murders, rapes, robberies and aggravated assaults all dropped dramatically between 2008 and 2009. Perhaps the most profound decrease concerned the number of robberies within the Township. In 2008, 175 robberies were reported. In 2009, just seven robberies were committed within the confines of the municipality. As for aggravated assaults, while there were 137 in 2008, just 16 aggravated assaults were committed within the Township in 2009. (G-17).

To fully appreciate the effectiveness of the Nutley Police Officers in maintaining law and order in the Township, the Arbitrator must consider that Essex County had the dubious distinction in 2009 of leading the entire state in the following crimes:

- Murders (57)
- Robberies (910)
- Aggravated assaults (1,288)
- Burglaries (663)
- Total crimes (47,493) (G-3).

Essex County had the most arrests in 2009 in the entire state (47,493). (G-5). Of all the counties in New Jersey, Essex County had the most drug arrests in 2009 (10,218). (G-6). Thus, when you consider the high crime rate within the County and, particularly, the communities surrounding the Township, the Nutley Police Department's 2009 performance is extraordinary.

Despite its attempts to forecast a gloomy future, Nutley's prospects for continued growth are fantastic. For example, the long dormant site of an old bank was refurbished and opened as the "new" Bank of Nutley in September 2008. Moreover, in the fall 2010, the town announced plans for a facelift of its business district in the southern half of the town. (E-30). Indeed, the Township is already in the process of securing federal and state funding for a "massive upgrade of midtown Nutley." (E-39).

Moreover, recent luxury apartments have opened within the Township in at least two locations. For example, the Riverview Court Luxury apartments, consisting of 76 units, recently opened and are filling up fast. (E-30). Cambridge Heights, another luxury apartment complex, also recently finished construction. In the spring 2010, the Township's governing body announced plans for the installation of "high intensity lights for athletic and other special events" at Monsignor Owens Field. (E-31).

The PBA/SOA submit that Nutley is enjoying rising property values while still retaining its character as an affluent, family-oriented community. In order to maintain its

status as one of the best places to live in New Jersey, it is imperative that Nutley continue to be able to not only attract but also retain qualified police officers of the highest professionalism and competence. In order to do this, these officers must be fairly compensated at levels which are comparable to other municipal law enforcement officers in Essex County as well as the State of New Jersey as a whole.

The Union asserts that Nutley police officers have a very dangerous and demanding job. While the arbitrator is required to compare the salary and fringe benefits of Nutley police officers with other wage earners in both the public and private sector, it must be emphasized that law enforcement is one of the most dangerous and stressful occupations in America. Thus, these officers must be properly compensated in order to ensure that the Township will continue to attract and retain high caliber police officers to safeguard the residents as well as businesses in Nutley.

As discussed above, the Nutley Police Department was able to effectuate dramatic reductions in 2009:

1. Overall crime index total (1,744 to 386);
2. Violent crime (327 to 25);
3. Nonviolent crime (1,417 to 361);
4. Crime rate (55.7 to 14.7);
5. Violent crime rate (10.5 to 1.0);
6. Nonviolent crime rate (45.3 to 13.8);
7. Robberies (175 to 7);
8. Aggravated assaults (137 to 16);
10. Burglaries (488 to 86);
11. Motor vehicle thefts (370 to 36). (G-17 & G-18).

Despite its affluent and family-oriented character, Nutley Police Officers have responded to and investigated crimes which are as varied in nature as they are numerous. Indeed, as Chief Holland testified during the interest arbitration hearing, the Township has a growing drug problem which the members of the police force are aggressively working to combat and otherwise curtail.

As detailed above, Nutley Police Officers are extremely busy as well as effective in combating crime. However, the highly volatile nature of law enforcement in New Jersey was underscored by the fact that four officers statewide lost their lives while on the job between July and September 2008 alone. (I-12-19).

Even these grim numbers do not tell the full story. Each year police officers are assaulted in performance of their duties at an astonishing rate. The 2009 Uniform Crime Report revealed that 2,156 municipal police officers were assaulted in 2009. Incredibly, this number actually constituted a “decrease of 8% when compared to 2008.” Despite this decrease, one out of every ten municipal police officers was assaulted in 2009. G-13). The PBA and SOA further proved that most of the assaults upon police officers in 2009 occurred in Essex County – 254 (or 11.8% of all assaults on police officers statewide). G-16).

Separate and apart from the dangers of police work, are the demands of the job which result in an officer’s enhanced risk for heart disease and other health problems – all of which serve to reduce his/her life expectancy. The impact of rotating shift work – and its nexus to heart disease – was detailed by the Associated Press.(I-36). This factor obviously contributes to the fact that while the life expectancy in the United States is 73 years, “policemen in the US have a life expectancy of 53-66, depending upon which research one decides to embrace.” (I-41).

Moreover, “heart disease is the single greatest cause of early retirement and the second greatest cause of limited duty assignments” for police officers. (I-48). Lastly, police officers, unfortunately, have a significantly higher risk of suicide and divorce. Indeed, the “divorce rate” is a whopping 80% among law enforcement marriages. (I-52).

Despite all the risks, dangers and sacrifices, Nutley police officers, as detailed above, have been extremely effective in combating crime in the Township. Through the efforts of the Police Department, the Township has maintained its family oriented character and continues to enjoy rising property values. Accordingly, Nutley Police Officers have an extremely busy and dangerous job and deserve to be properly and fairly compensated.

### **Comparisons**

34:13A-16(g)(2) requires a comparison of wages, salaries, hours and conditions of employment for employees in both the public and private sectors. The PBA and SOA have set forth in Exhibits J and K detailed information concerning the rising personal income in the private sector, increase in consumer cost and other general information regarding wages for employees in both the private and public sectors.

In January 2010, the Public Employment Relations Commission (PERC) issued its Biennial Report on the Police and Fire Public Interest Arbitration Reform Act. (Exhibit K). Attached to the aforesaid Report was a summary of the salary increases resulting from both interest arbitration awards as well as voluntary settlements. Over the last decade, voluntary settlements have run slightly higher than those set forth in interest arbitration awards – both, however, hovering around an annual average of approximately 4.0%. This is illustrated by the following chart:

<u>Year</u>	<u>Average % Awarded</u>	<u>Average % Settlements</u>
2009	3.75%	3.60%
2008	3.73%	3.92%
2007	3.77%	3.97%
2006	3.95%	4.09%
2005	3.96%	3.94%
2004	4.05%	3.91%
2003	3.82%	4.01%
2002	3.83%	4.05%
2001	3.75%	3.91%

As illustrated above, the average salary increase in all Awards between 2001 and 2009 was 3.84%. The average salary increase in all voluntary settlements during the same period was 3.93%.

PERC's Biennial Report also analyzed salary increases for those in private industry. In 2007, the PBA and SOA proved that wages in the "total private sector" increased by 4.3%. Those employees in the construction (4.6%); manufacturing (6.9%); information (5.1%); finance/insurance (6.4%); real estate-rental-leasing (4.5%); professional/ technical services (5.1%) and management of companies/enterprises (6.8%) all earned salary increases above the 4.3% average. Federal government employees in New Jersey enjoyed salary increases of 5.2% in 2007. While employees of local government earned salary increases of 3.5% in 2007, state government employees enjoyed wage increases of 5.0%. (K-36). In 2006, the average Essex County private wage earner brought home a salary of \$53,842. In 2007, this amount increased to \$55,879 – or 3.8%. (K-37).

The PBA and SOA demonstrated that fair and appropriate salary increases continued in 2008 as total private sector wages increased by another 2.5%. Those employees in utilities, construction, information, administrative/waste service, healthcare/social assistance and

art/entertainment/recreation all earned increases above the 2.5% average. Significantly, state government employees in New Jersey earned another 5.8% wage increase in 2008. The news was equally good for those employed by local governments in New Jersey. As the PBA and SOA demonstrated, said employees earned 3.4% increase in wages in 2008. (K-26).

According to the PBA/SOA, personal income rose by 4.3% nationally and 3.6% locally in the 3<sup>rd</sup> quarter of 2008. (J-2). Moreover, in the 4<sup>th</sup> quarter of 2008, New Jerseyans enjoyed a 3.3% personal income increase while nationwide, Americans earned 3.9% increases in wages. (J-13).

It is also important to consider the salaries provided to public employees within the Township. For example, the PBA and SOA's exhibits demonstrated that Nutley public school teachers received 3.9% annual pay raises for the 2010-2011 school year. (E-44).

The need for a fair and reasonable wage increase is also illustrated by the fact that the consumer price index (CPI) increased by 3.8% in 2008. (J-11). Obviously, Nutley police officers must be afforded adequate pay raises in order to keep pace with the rising cost of living in New Jersey as well as the salary increases being extended to public and private sector employees. By providing Nutley police officers fair and competitive wages, the Township will not only be able to continue to attract but, more importantly, retain qualified law enforcement officers. In doing so, the Township will reap the double benefit of maintaining not only an experienced but highly efficient and competent police department capable of serving all of the needs of its residents and business owners.

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

Pursuant to N.J.S.A. 34:13A-16(g)(1)(5) and (9), an interest arbitrator must analyze the “lawful authority of the employer” in determining whether to award the proposals advanced by the PBA/SOA or those pursued by the Township. This analysis generally focuses on whether the PBA’s economic proposals will create any “cap” difficulties for the Township, specifically the “spending” cap as well as the “tax levy” cap. The PBA and SOA maintain that they proved through the submission of two detailed reports, buttressed by the testimony of its financial consultant, Joseph Petrucelli, CPA, FCPA, as well as other exhibits, that their proposals will not present any spending cap nor tax levy cap problem for Nutley. Further, the unions have demonstrated that the Township possesses the financial wherewithal to easily fund the fair and appropriate wage increases contained in our Final Offer.

Before addressing Petrucelli’s expert reports, it must be emphasized that the Township’s own financial “expert”, Commissioner Thomas Evans, acknowledged during his direct testimony that Nutley was a “financially secure town.” According to the PBA/SOA, Nutley is in fine financial shape because it is able to regenerate millions of dollars in surplus each year and also collect more tax revenue each year than initially budgeted; reaps miscellaneous revenue not anticipated on an annual basis and regularly collects more revenue than initially budgeted and/or spends less than initially budgeted for appropriations each year. Moreover, as Petrucelli demonstrated, neither the tax levy cap nor spending cap poses any barrier in providing fair and reasonable wage increases. The PBA/SOA offered the following to illustrate that there is no “cap” problem in Nutley:

### **Spending Cap**

- The Township's 2010 budget utilized a 3.5% "spending" cap increase, with the "maximum COLA rate ordinance."
- "The Township has available cap bank spending for the 2011 budget of \$1,188,991.76 before applying the applicable Spending Cap law..."

### **Tax Levy Cap**

- Due to the fact that the "Township has maximized the amount to be raised by taxation in the 2010 proposed budget at 3.5% . . . the Township does not have a tax levy cap limitation issue."
- The Township "has enjoyed significant revenue growth over a 10-year history."

Petrucelli emphasized the Township's long-standing ability to regenerate millions of dollars in surplus each year. In 2008, the Township regenerated a surplus of approximately \$4.2 million. 2008 was not an aberration but rather the continuation of a long-standing trend of the Township's ability to regenerate surplus from year to year. In fact, in 2009 the Township regenerated a surplus in the amount of nearly \$4 million. This is illustrated below:

December 31, 2008 surplus balance	\$5,252,089
January 1, 2009 surplus balance	\$5,252,089
January 1, 2009 surplus balance	\$5,252,089
<u>- surplus used in 2009 budget</u>	<u>-\$4,100,000</u>
\$ surplus left over	\$1,152,089
December 31, 2009 surplus balance	\$5,110,054
<u>- \$ surplus left over as of 1-1-09</u>	<u>-\$1,152,089</u>
\$ surplus regenerated 2009	\$3,957,965

In 2009, Nutley regenerated \$3,957,965 in surplus. The ability to regenerate surplus on an annual basis, as Petrucelli explained, is evidence of a township that is, as Evans acknowledged, a "financially secure town."

Petrucelli further proved that the Township has little difficulty collecting taxes from its property owners. In fact, the exact opposite is true as the Township actually collects more tax revenue each year than it initially budgeted to collect. As Petrucelli demonstrated, the excess tax revenue collected each year averaged \$2.4 million between 2005 and 2009. Couple this with the fact the Township has “increased its estimated revenue raised by taxation by \$8,704,324 or nearly 34% . . . since 2005” further corroborates Evans’ acknowledgment that the Township is a “financially secure town.” Additionally, the PBA and SOA proved through Petrucelli’s expert testimony and reports that “the Township’s budgeted revenue growth raised by taxation since 1998” has actually “increased...by \$17,626,202 or 109.17% from January 1, 1999 to January 1, 2010.” Therefore, as Petrucelli explained, the Township has enjoyed “an average annual increase of 9.92% in budgeted, estimated revenues to be raised by taxation.”

As for police salary and wages, Petrucelli revealed that the Township regularly spends less on police salary and wages than it initially budgets to spend. The amount left over will sit in a reserve account for up to a year and then lapses into surplus. For example, the Township reserved \$154,995 in police salary and wages in 2009. Significantly, the Township actually increased the 2010 budgeted police salary and wages by 12.65% more than the amount it actually spent in 2009.

Petrucelli further demonstrated that the cost of owning a home in Nutley between 1998 and 2009 has greatly increased. According to his expert calculations, “a police officer will need to earn \$49,314 in 1998 compared to \$92,941 in 2009” to purchase the very same house. Accordingly, the Police Officers need a fair wage raise in order to keep pace with the rising cost to continue to live in the Township.

Perhaps one of the most telling and significant data contained in Petrucelli's reports is the fact that it costs each household in Nutley only \$82.15 a month for around the clock police protection, 365 days a year.

In 2009, the Township's "excess results from operations" totaled \$3.9 million. In layman's terms, the Township collected more revenue than it initially budgeted to collect and/or spent less than originally budgeted to spend to the tune of nearly \$4 million in 2009. As Petrucelli testified, municipal budgets, in principle, are supposed to "balance" (i.e., appropriations equaling expenditures). However, in Nutley, "the Township's excess results represent 8.1% . . . less spending than budgeted and unbudgeted revenues. This would indicate the budget performs well."

The PBA and SOA proved that the Township's "cash balances" (i.e., cash on hand) regularly exceeds \$10 million each year. In fact, as of December 31, 2009, the Township's cash balance was actually just under \$13 million. Stated another way, as Petrucelli explained, "[t]he December 31, 2009 cash balance has increased \$2,369,618.25...over the December 31, 2009 levels, or an increase of 22.45%."

Further proof of the fact that Nutley is, as Evans testified, "a financially secure town", is the fact that the Township "with a low 0.25% net debt, is well below the statutory debt limit and has more than sufficient borrowing power remaining." The significance of the low percent net debt, Petrucelli explained, "indicates that the Township is not financially extended and remains a solution to solve the Tax Appeal issue that the Township has raised."

Lastly, Petrucelli emphasized that the Township "has continually had an increase in the tax base which allowed it to increase its overall tax levy."

Base on the above data, the PBA/SOA maintains that the Township has more than sufficient financial reserves to fund its salary proposals. In short, Petrucelli's reports prove

that Nutley is in fine financial shape and, further, that the Arbitrator is not prohibited by either the “spending” cap or the “tax levy” cap in awarding the fair and reasonable proposals advanced by the PBA and SOA in this matter.

### **Comparisons**

N.J.S.A. 34:13A-16(g)(2)(a) mandates that the Arbitrator conduct a comparison of salaries with other employees “in public employment in the same or similar comparable jurisdiction” and (c) with other employees “in public and private employment in general.”

According to the PBA/SOA, Nutley police officers typically are among the worst paid in all of Essex County. Despite their relatively poor salaries, Nutley officers rank with the best in the state and have helped the Township maintain its affluent and family-oriented character. Moreover, there is very little turnover within the Department. However, the salary freeze proposed by the Township would drastically alter this scenario in the years to come. If awarded, the Township’s 0.0% salary proposal will cause Nutley police officers to drop dramatically in comparison with their law enforcement brethren in Essex County – to the point where the Nutley officers may achieve the dubious distinction of being the worst paid officers in this 21-municipality County. As a result, officers will no longer have an incentive to remain with the Department for their entire careers. Moreover, Nutley will likely be unable to attract any experienced, trained officers from other departments to switch over and immediately enhance the training, experience and efficiency of its Department. The result for Nutley will be increased turnover which, in turn, will cause its training expenses to skyrocket as newer officers will have to be hired and trained.

Accordingly, it is respectfully submitted that the PBA/SOA’s salary proposals are much more reasonable and, in the long run, more beneficial to the residents of the Township.

In 2006, the top paid Nutley Patrolman earned a base salary of just \$72,699. To put this in perspective, only three Essex County municipalities paid their top Patrolman lower salaries: Bloomfield (\$71,338); Belleville (\$70,339); and East Orange (\$67,264). It should also be noted that the 2006 average salary for an Essex County top paid Patrolman was \$75,181. Therefore, in 2006 the top paid Nutley Patrolman also earned \$2,482 below the Essex County average for that year. (T-1).

In 2007, the average Essex County top paid Patrolman earned a base salary of \$78,496. The Nutley top paid police officer earned a base salary of just \$76,075 – or \$2,421 below the County average for that year. Once again, the top paid Patrolman in Nutley earned the 4<sup>th</sup> worst base salary in all of Essex County – besting, again, only Bloomfield, Belleville, and East Orange. (T-2).

In 2009, the Nutley top paid Patrolman earned a base salary of \$79,534. To put this in perspective, the Nutley top paid Patrolman not only earned the 5<sup>th</sup> worst base salary in 2008 in all of Essex County, but his/her base salary was actually \$2,455 below the County average. (T-3).

In 2009, the average Essex County top Patrolman earned a salary increase of 3.63%. (T-18). The PBA is proposing a mere 2.5% increase for that year – or 1.13% below the Essex County average for 2009. If awarded, the Nutley top paid Patrolman would earn a 2009 base salary of \$81,522. Thus, even in the best case scenario for a Nutley Patrolman, a 2.5% salary increase would result in a base salary of \$81,522 – the 4<sup>th</sup> worst base salary in the County. Moreover, the Nutley top paid Patrolman would, once again, earn a base salary significantly below the Essex County average. The PBA proved that the average top paid Essex County Patrolman earned a base salary of \$84,972 in 2009. Thus, even with the PBA’s proposed 2.5% salary increase, the Nutley Patrolman would still earn \$3,450 below the County average

for that year. Obviously, the worst case scenario for the Nutley Patrolman is a 0% salary increase, as proposed by the Township, for 2009. If awarded, the Nutley Patrolman would not only receive the worst percentage increase for that year in the County, but his/her base salary of \$79,534 would fall to the 2<sup>nd</sup> worst base salary for that year (besting only East Orange's base salary of \$75,372). (T-18 & T-4).

For 2010, the PBA proposes a 3.0% salary increase. The PBA's proposed salary increase for 2010 is actually below the Essex County average of 3.16%. (T-12). If awarded, the Nutley top paid Patrolman would earn a base salary of \$83,968. To put this in perspective, the Essex County average base salary for a top Patrolman in 2010 was \$89,183. Therefore, even in the event that the PBA's 3% salary increase is awarded, a Nutley top paid Patrolman would still earn \$5,215 less than the 2010 average base salary in Essex County. Moreover, the Nutley top paid Patrolman's proposed 2010 base salary - \$83,968 – would constitute the lowest base salary in all of Essex County for 2010. Predictably, an award of the Township's unreasonable and unjustifiable 0.0% salary increase for 2010 would qualify as the worst percentage raise in Essex County (tying North Caldwell) but also would fall below the 2010 Essex County average by nearly \$10,000. (T-19 & T-5).

For 2011, the PBA proposes a 3.5% salary increase. The PBA proved that its salary proposal is in line with the Essex County average of 3.41% for 2011. (T-13). Moreover, an award of the PBA's salary proposal would result in a base salary for its top Patrolman of \$86,907. Accordingly, even under the PBA's scenario, its top Patrolmen would not only earn a base salary which is approximately \$5,000 below the County average of \$91,771, but also earn the lowest base salary in all of Essex County for that year. (T-6).

For 2012, the average Essex County Patrolman will earn a salary increase of 3.5% - the same percentage sought by the PBA in the instant matter. The lowest percentage increase provided in 2012 was 2.5% (Essex Fells). (T-14).

Moreover, the PBA showed that the average base salary for a top paid Patrolman in Essex County in 2012 will be \$94,289 and the lowest was provided to Newark officers (\$89,866). Here, the PBA proposes a 3.5% salary increase which would result in a base salary of \$89,949. Thus, even under the PBA's proposed salary increase, Nutley top-paid Patrolmen would earn \$5,000 below the County average and also earn the 2<sup>nd</sup> lowest base salary in the County for that year. (T-7).

In Exhibits T-15 through T-35, the PBA sets forth an analysis of the Essex County Patrolmen's base salary plus longevity for 2006 through 2012. These exhibits demonstrate that the longevity provided to the Nutley Patrolmen; Sergeants and Lieutenants – whether at the 10-year; 15-year; 20-year or 25-year steps – is in line with the longevity compensation provided to their Essex County counterparts. In many instances, the longevity provided to the Nutley police officers, irrespective of rank and years of service, is actually less than the County average.

Accordingly, the Township's proposal to: (1) eliminate longevity for new hires (i.e., those hired after January 1, 2011); and (2) "freeze" the current value of longevity for all active employees – must be soundly rejected. In fact, the longevity provided to the Nutley police officers pales in comparison with that provided to other municipal law enforcement officers in Essex County. Below is a summary of the longevity provided to a Nutley 10-year Patrolman with the Essex County average (note: the below chart assumes the PBA's 2009 – 2012 wage proposals are awarded):

<u>Nutley 10-year</u>	<u>Essex County 10-year</u>	<u>Longevity Average</u>
<u>Year</u>	<u>Patrolman Longevity</u>	
2006	\$2,908	\$2,925
2007	\$3,043	\$3,117
2008	\$3,181	\$3,235
2009	\$3,261	\$3,395
2010	\$3,359	\$3,533
2011	\$3,476	\$3,634
2012	\$3,597	\$3,897

As the above data illustrates, the longevity currently provided to Nutley 10-year Patrolmen, as well as that which would be due and owing in the event that the salary proposals advanced by the PBA are awarded are not only in line with the longevity compensation provided to other Essex County officers, but are actually below the County averages each year.

The news is just as bleak when we compare the Nutley police Sergeants with their brethren throughout the County. In 2006, the average Essex County Sergeant earned a base salary of \$85,899. The Nutley Sergeant earned a base salary of just \$81,603. To appreciate just how poor a base salary this was, the Arbitrator must consider: (1) the Nutley Sergeant's 2006 salary was the 2<sup>nd</sup> lowest in the entire County that year (besting only Belleville); and (2) the Nutley Sergeant's base salary trailed the County average by \$4,296. (U-1).

In 2007, the Nutley Sergeant earned a base salary of \$85,336 – surpassing only Bloomfield (\$85,321) and Belleville (\$84,145). The County average for that year was \$89,732 – or \$4,396 more than the Nutley Police Sergeant earned that year. (U-2).

In 2008, the Nutley Sergeant earned a base salary of just \$89,165 – the second lowest in the entire County. Moreover, the County average of \$93,418 exceeded Nutley Sergeant's base salary by \$4,253. (U-3).

In 2009, the average Essex County Sergeant received a salary raise of 3.64%. (U-18). In the instant matter, the PBA proposes a mere 2.5% salary increase for that year – or 1.64%

below the County average for 2009. Moreover, if awarded, the Nutley Police Sergeant's base salary will only be increased to \$91,394. Therefore, even if the PBA's salary proposal is awarded, the Nutley Sergeants will earn: (1) the 2<sup>nd</sup> lowest base salary in 2009 for the entire County, besting only Maplewood (\$90,925); and (2) a base salary \$5,526 below the County average of \$96,920. (U-4).

In 2010, the average Essex County Sergeant received a salary raise of 3.31%. (U-12). In the instant matter, the SOA is proposing a mere 3.0% raise. Moreover, the Essex County 2010 average salary for a Sergeant was \$101,046. (U-5). Even in the event that the PBA's salary proposal is awarded, a Nutley Sergeant will earn a base salary in 2010 of just \$94,136. Therefore, even under the PBA's salary proposal, a Nutley Sergeant will earn the worst base salary in all of Essex County in 2010. Further, the Nutley Sergeant will earn a base salary of nearly \$7,000 below the County average of \$101,046. (U-5). Clearly, if the Township's salary proposal is awarded, a Nutley Sergeant will continue to earn \$89,165 in 2010 (for the third year in a row). Such a salary would not only place the Nutley officers nearly \$12,000 below the County average but also approximately \$6,000 below the next lowest in the County (Maplewood \$95,618). (U-5).

In 2011, the PBA seeks a 3.5% salary increase. It should be noted that the average salary increase in Essex County for Sergeants was 3.39%. (U-20). Nutley, once again, proposes a 0% salary increase for 2011. The PBA notes that no Essex County municipality will pay salary increases less than 2% in 2011. (U-20). Moreover, the average 2011 base salary for a Sergeant is \$103,798. (U-6). Even under the best case scenario for the PBA (i.e., an award of the 3.5% salary increase), a Nutley Sergeant will earn a base salary of just \$97,431 – or approximately \$6,300 below the County average. (U-6). The Nutley Sergeant

would still earn the lowest base salary in 2011 – trailing the second worst (Essex Fells - \$98,548) by approximately \$1,100. (U-6). Predictably, if the 0% salary increase is awarded by the Township, the Nutley Police Sergeants will continue to earn the lowest – by far – base salary in Essex County in 2011 and will continue to fall even further below the County average – this time by approximately \$14,000.

In 2012, the average Essex County Sergeant will receive a salary raise of 3.49% - almost identical to the proposed 3.5% advanced in the instant matter by the PBA. (U-35). Moreover, the PBA proved that the average Essex County Sergeant will earn a base salary in 2012 of \$106,604. In the event that the PBA's salary proposal is awarded, a Nutley Sergeant will earn a base salary of \$100,841 – nearly \$2,000 below the County average.

The Sergeants' base salary plus longevity ranks among the lowest in all of Essex County. This fact further illustrates the unreasonableness of the Township's proposal to "freeze the current value of longevity for active employees." If the current longevity entitlements are frozen, Nutley Sergeants will continue to fall further and further behind their Essex County brethren. Below is a comparison of base salary plus longevity for Essex County Sergeants in their 15<sup>th</sup> year of service (again, the below chart assumes the PBA's salary proposal for 2009-2012 is awarded):

<u>Year</u>	<u>Nutley 15-year Sergeant Longevity</u>	<u>Essex County 15-year Longevity Average</u>
2006	\$4,896	\$5,127
2007	\$5,120	\$5,338
2008	\$5,350	\$5,552
2009	\$5,484	\$5,756
2010	\$5,643	\$6,094
2011	\$5,846	\$6,249
2012	\$6,050	\$6,803

As illustrated by the above chart, the longevity compensation provided to the Nutley Sergeants is actually below (even if the SOA's salary proposals are awarded) the Essex County average in every year from 2006 through 2012. Therefore, there is no justification for the Township's proposal to eliminate longevity for new hires as well as to "freeze" the current value of longevity for active employees.

In Exhibit B, the SOA compared the base salary and salary plus longevity of its Lieutenants with their colleagues throughout Essex County. The Lieutenant's base salary and longevity continue to rank among the poorest in the entire County.

In 2006, the average Essex County Lieutenant earned a base salary of \$96,821. The Nutley Lieutenant, however, earned a salary of just \$91,621 – more than \$5,000 below the County average. (V-1).

In 2007, the average Essex County Lieutenant earned a base salary of \$101,107. The Nutley Lieutenant, on the other hand, earned a base salary of just \$95,754 – the 2<sup>nd</sup> lowest in the entire County (besting only North Caldwell). Moreover, the Nutley Lieutenant's 2007 base salary trailed the Essex County average by nearly \$6,000. (V-2).

In 2008, a Nutley Lieutenant earned a base salary of \$100,000. Predictably, the Nutley Lieutenant's base salary was the 3<sup>rd</sup> lowest in the entire County for 2008 – surpassing only Maplewood and North Caldwell. Moreover, the Nutley Lieutenant's 2008 base salary was \$5,238 below the County average for that year. (V-3).

In 2009, the PBA proposes a salary increase of just 2.5% - which is well below the County average of 3.64%. (V-32). If the SOA's 2.5% salary increase is awarded, a Lieutenant will earn a 2009 base salary of \$102,500 – again the 2<sup>nd</sup> lowest in the County and nearly \$7,000 below the County average.

For 2010, the average salary raise for Essex County Police Lieutenants was 3.48%. (V-33). Here, the SOA is only proposing a 3.0% for that year – nearly 0.5% below the County average. In the event that the SOA’s salary proposal is awarded, Nutley Lieutenants will earn a base salary of \$105,575. To put this in perspective, even in the best scenario for the Lieutenants, their base salary in 2010 will still be the 2<sup>nd</sup> lowest in the entire County and approximately \$8,000 below the County average of \$113,336. Under the Township’s proposal in 2010, a Lieutenant would receive a base salary of \$100,000 for the third straight year – the worst salary in the County and \$13,336 below the County average. (V-5).

In 2011, the average salary increase in Essex County for a Lieutenant is 3.39%. (V-27). Here, the SOA proposes a 3.5% wage increase – which would result in a 2011 base salary of \$109,270. Thus, even under the SOA’s salary proposals, the Nutley Lieutenant’s base salary would constitute the 3<sup>rd</sup> lowest in the entire County and will also trail the County average by nearly \$8,000. Under the Township’s proposal, Nutley Lieutenants would earn the lowest base salary in the County (\$100,000) and also trail the County average by more than \$17,000. (V-6).

The average salary increase in 2012 for Essex County Lieutenants is 3.51%. (V-35). The SOA’s proposed wage increase of 3.5% in 2012 is in line with the County average. Moreover, even if the SOA’s salary proposal is awarded, the Nutley Lieutenant will earn a base salary in 2012 of just \$113,094 which is the 2<sup>nd</sup> lowest in the County and nearly \$8,000 below the County average of \$121,961. Under the Township’s proposal, a Lieutenant would continue to earn \$100,000 which is \$21,961 below the County average. (V-7).

The base salary and longevity provided to Nutley Police Lieutenants pales in comparison to the base salary and longevity provided to their colleagues in Essex County.

The following chart compares the longevity provided to 20 year Nutley Lieutenants with their colleagues in Essex County. The longevity provided to Nutley Lieutenants trails the County average, further proving that the Township's proposal to eliminate longevity for new hires and "freeze" longevity at their current value for active employees must be rejected.

<u>Year</u>	<u>Nutley 20-year Lieutenant Longevity</u>	<u>Essex County 20-year Longevity Average</u>
2006	\$7,330	\$7,616
2007	\$7,660	\$7,927
2008	\$8,000	\$8,239
2009	\$8,200	\$8,526
2010	\$8,446	\$8,942
2011	\$8,742	\$9,164
2012	\$9,048	\$10,206

As illustrated above, longevity for Nutley Police Lieutenants is below the longevity provided to their colleagues throughout the County.

In conclusion, the PBA contends that the above data demonstrates that there is absolutely no justification for an award of the Township's salary and longevity proposals. To the contrary, the PBA and SOA's proposals are fair, reasonable and in line with that provided to other Essex County law enforcement officers. Indeed, an award of the Township's wage and longevity proposals would have a dramatic and adverse impact on the Police Department's future as officers would no longer be rewarded or otherwise have any incentive to spend their entire careers with the Department. In the long run, it will be the residents and business owners of Nutley who will suffer as the Township will no longer be able to attract and retain high caliber police officers.

### **Training Stipend**

The PBA/SOA seek to increase the training stipend by \$350 each year of the four-year agreement, retroactive to January 1, 2009. The annual increases shall be added to all steps and ranks of the salary schedules in the PBA and SOA contracts prior to the application of salary increases. All PBA and SOA members currently receive an annual training stipend. The PBA/SOA notes that the stipend is built into the parties' salary guide for both the 2004-2007 CBA as well as the 2008 one-year extension negotiated by the parties.

The Unions contend that this proposal is fair and reasonable and necessary to maintain parity with the Township's firemen who negotiated a \$300 annual increase in their training stipends between 2010 and 2012.

### **Longevity**

The police unions are opposed to the Township's proposal to eliminate longevity for new hires and to freeze the current value of longevity for active employees. The Unions maintain that the current longevity compensation is below the longevity enjoyed by other Essex County police officers and the awarding of the Township's proposal will further widen the salary gap in comparison to other Essex County police officers.

The Unions note that their current longevity compensation is consistent with those levels provided to other Township union employees including the dispatchers and the firefighters. The Unions further note that the current longevity for the firefighters has not been frozen nor has it been eliminated for new hires.

### **Clothing Allowance**

Currently, Nutley Police Officers receive an annual clothing allowance of \$625 as well as an annual maintenance allowance of \$825. The Unions are opposed to the

Township's proposal to eliminate the clothing allowances. The Unions contend that the Township's proposal is unwarranted and unreasonable.

In Exhibit X-5, the PBA and SOA included a comparison between the clothing and maintenance allowances provided to its members with the compensation afforded to other Essex County Municipal Police Officers. The \$625 clothing allowance provided to Nutley Police Officers suffers in comparison to amounts provided to officers in Verona (\$1,000); West Orange (\$900); Newark (\$1,000); Montclair (\$1,050) as well as several other municipalities. The average Essex County clothing allowance is \$798. The Unions note that the current clothing and maintenance allowances are identical to those received by the rank-and-file firefighter bargaining unit and the firefighters' superior officers bargaining unit. The PBA and SOA note that the civilian unions in the Township have maintained their existing clothing allowances.

### **Holidays**

Nutley Police Officers currently receive 14 paid holidays annually. The PBA is opposed to the Township's proposal to reduce the number of paid holidays from 14 to 7 for the following reasons:

First, the PBA asserts that its holiday entitlement is consistent with the benefits provided to other Essex County municipal Police Officers. The average in the County is 13.5 paid holidays annually. The 14 holidays provided to Nutley Police Officers are identical to that provided to officers employed by East Orange; Montclair; North Caldwell, Roseland and West Orange. Moreover, Newark and Bloomfield Police Officers are paid for more holidays annually.

Second, the Unions point out that the 14 paid holidays provided to Nutley Police Officers are consistent with the entitlement provided to other Township employees. The Dispatchers, Firefighters and Fire SOA receive 14 paid holidays annually. Employees of the DPW/Parks and Recreation receive 15 paid holidays a year.

#### **Personal Days**

The Unions are opposed to the Township's proposal to reduce the number of personal days from four to two days for rank-and-file officers and from four (or five) days to three days for SOA officers. The PBA and SOA note that the four personal days provided to the members of the PBA are identical to that provided to the Township's Dispatchers. Moreover, the four personal days provided to Nutley Police Officers, Sergeants and Lieutenants are identical to personal days provided to Nutley Firemen. Fire Superiors receive 6 personal days a year. The proposed reduction of two personal days, if awarded, would provide members of the PBA with inferior benefits when compared to the three personal days afforded to the employees within the DPW/Parks and Recreation as well as non union employees of the Township (who also receive three personal days a year).

#### **Vacation Leave**

The Unions are opposed to the Township's proposal to reduce annual vacation leave. The Unions assert that the Township's proposal is inconsistent with the benefits provided not only to law enforcement officers throughout Essex County but also to other employees within the Township. The current vacation schedule for PBA and SOA members is summarized below:

<u>Rank</u>	<u>1-10 Years</u>	<u>11-15 Years</u>	<u>16+ Years</u>
Patrolmen	15 days	20 days	25 days
Sergeants	20 days	25 days	30 days
Lieutenants	20 days	30 days	30 days
Captains	25 days	30 days	30 days
Deputy Chief	25 days	30 days	30 days

The Township proposes to reduce the vacation leave by five days at each step in the vacation schedule. In Exhibit X, the PBA and SOA included a comparison of vacation leave within Essex County. The Unions point out that at each step, the Nutley Police Officer is either below or approximately equal to the Essex County vacation average. This is summarized below:

<u>Year of Service</u>	<u>Nutley Officer</u>	<u>Essex County Average</u>
10	15 days	18.5 days
15	20 days	21.6 days
20	25 days	24.2
25	25 days	25.2

Accordingly, the above chart demonstrates that the vacation leave provided to Nutley Police Officers (non-supervisory) is consistent with, if not identical to, the vacation leave provided throughout Essex County.

Moreover, the Unions note that the vacation leave is identical to the vacation leave currently provided to members of the FMBA. Additionally, the PBA notes that no other

unions in the Township have had their vacation days reduced – including the members of the FMBA and Fire Superiors. Consequently, the PBA respectfully submits that there is no basis in the record to justify any reduction in the vacation leave entitlement of our members.

#### **Terminal Leave Proposal**

Currently, PBA and SOA members receive 15 sick days annually. Unused sick days accumulate from year-to-year. Upon retirement, PBA and SOA members are entitled to be paid for all unused sick time “at the then current rate of pay” by either: (1) payment for up to 16 pay periods (160 days) or (2) remain on the Township’s payroll until the exhaustion of the accumulated time.

The Unions are opposed to the Township’s proposal to reduce the terminal leave benefits by: (1) freezing all accumulated sick leave time as of December 31, 2010 at both the current number and current value; (2) payment for future accumulated sick leave (i.e., days earned after January 1, 2011) shall be capped at \$15,000; and (3) sick time used in 2011 and beyond shall be deducted first from the pre-December 31, 2010 time bank.

The Unions contend that the terminal leave benefit provided to Nutley Police Officers is in line with the benefit provided to other Essex County municipal employees. Further, the terminal leave entitlement provided to Nutley Police Officers is consistent with the terminal leave benefits provided to both its Nutley Firefighters as well as Fire Superiors.

#### **Bereavement Leave**

Nutley Police Officers receive four days of bereavement leave for immediate family members and one day of bereavement leave for non-immediate family members. The Township proposes to reduce the 4 -day bereavement leave to 3 days as well as eliminate the 1-day bereavement leave for other relatives.

The Unions point out the Dispatchers receive bereavement leave which is identical to that provided to members of the PBA and SOA. Further, employees in the DPW/Parks and Recreation are entitled to five days for the death of an immediate family member – as well as a separate 1-day bereavement leave for other relatives. Finally, members of both firefighter units receive basically the same bereavement leave as PBA and SOA members.

#### **Additional Salary Steps**

The Unions are opposed to the Township's proposal to add three steps to the salary schedule. Not counting the Academy Step, there are five steps in the PBA's salary guide. The Unions point out that this is consistent with the salary schedule in the DPW/Parks and Recreation contract as well the salary schedule in the FMBA contract. The Unions maintain that there is no basis in the record to warrant any alteration of the salary schedule.

#### **Health Care Premium Contribution**

The Unions are opposed to the Township's proposal that all bargaining unit members contribute 7% of their base salary toward the cost of their health benefits. This would be an increase from the current 1.5% required by statute. The Unions note that no other Essex County municipal Police Officers are required to pay more than the statutory 1.5% contribution for health benefits. The Unions point out that the 2009-2012 FMBA contract as well as the 2009-2012 FMBA Superiors contract requires the Township to pay 100% of all health insurance premiums and will not be subject to the 1.5% statutory contribution until the expiration of the 2009-2012 CBAs. Additionally, all other Township unions (Dispatchers; DWP/Parks and Recreation) are paying the statutory 1.5% premium sharing contribution. The Unions maintain that the 7% premium sharing contribution proposed by the Township must be rejected.

### **Post-Retirement Medical Benefits**

The Unions are opposed to the Township's proposal to limit its obligation to provide post-retirement medical benefits only to those retirees who have "retired with at least twenty-five (25) years of service credit in the Police and Fire Retirement System and had worked a period of at least twenty-five (25) years with the Township . . ." Article XVII of the 2004-2007 PBA and SOA collective bargaining agreements provide as follows:

The Township shall provide for hospital medical insurance, inclusive of Major Medical, for all employees and their families at no cost to the employee. The benefit shall be the same as previously provided under the New Jersey State Health Benefits Program (SHBP) . . . The Township shall provide for hospital and medical insurance for all retirees and their spouses, excluding employees who elect deferred retirement, for the life of the retirees.

Article XVII obligates the Township to provide, at no cost, post-retirement medical benefits for all police officers who qualify for any PFRS retirement (including an Ordinary; Involuntary or Accidental Disability retirement). Moreover, there has never been any actual years of service threshold which an officer (or any other Township employee) must satisfy as a prerequisite to qualify for post-retirement medical benefits. As PBA President O'Halloran certified, "there have been a number of officers who retired on a PFRS disability during my tenure with the Police Department" who have been provided with post-retirement medical benefits.

The Unions note that the current entitlement to post-retirement medical benefits is consistent with the benefits provided to all other Township employees – union and non-union. Also, the Township's proposal would likely render most, if not all, officers who retire on a PFRS Disability ineligible for post-retirement medical benefits. Due to the extremely volatile nature of the law enforcement profession, as well as the alarmingly high number of

assaults committed on municipal Police Officers each year (especially in Essex County), the likelihood that a Nutley Police Officer may be disabled during his/her career is, unfortunately, quite high. The Unions submit that it is extremely unfair to require these officers to put their life and well-being on the line every day and, at the same time, deny said officers post-retirement medical benefits in the event that they are disabled in the service of the Township.

Finally, the Unions assert that the Township's proposal would adversely affect a large number of PBA and SOA members who possess PFRS service credit as a result of their employment or military service prior to commencing employment with the Nutley Police Department. As O'Halloran certified, these officers will be deprived of post-retirement medical benefits upon attaining 25 years of pension service credit. Instead, these officers would be forced to postpone retirement plans and continue working with the Township for several more years in order to qualify for post-retirement medical benefits. The Unions submitted a list of thirty Nutley police officers (who possess PFRS service credit as a result of either prior law enforcement or military experience) who would be adversely affected by the awarding of the Township's proposal.

The Unions point out that the hiring of officers with prior law enforcement experience has benefitted the Township. These officers were already trained and experienced prior to joining Nutley Police Department. As O'Halloran certified, "we were able to perform our duties immediately and with little supervision. The Township also reaped significant savings in training costs as well."

In O'Halloran's February 4, 2011 Certification, he listed fourteen current members of the Fire Department who possess PFRS service credit for prior employment in law

enforcement, postal service, etc., who as a result, will be “eligible for post-retirement medical benefits upon attainment of any PFRS retirement.” These firefighters will not be subject to any limitation of post-retirement medical benefits based on years of service in Nutley. O’Halloran further certified:

As stated above, the above officers, including myself, will likely prolong their tenure with the Police Department in order to complete the proposed 25 years of actual service. These officers will continue to remain in the employ of the Township long after their intended date of retirement. During said prolonged period, the officers will be earning the top base salary for their respective positions. On the other hand, if these officers retired after completion of 25 years of pension service credit, these officers will “come off the books” and, likely, be replaced with new officers earning significantly lower salaries – if they are replaced at all.

The Unions assert that the Township’s post-retirement medical benefits proposal must be denied.

#### **Notification of Manpower Allocation**

The Township seeks to modify the provisions of Article X, Section 5 of the PBA collective bargaining agreement. This clause currently provides as follows:

The Chief of Police shall serve written notice to the PBA, on a quarter-annual basis, setting forth the minimum manpower allocation established for uniform patrol officers assigned to patrol cars (exclusive of fixed posts) on each shift.

The Township seeks to revise the above clause as follows:

**Manpower Requirements:** The Department agrees that one Sergeant and two Patrol Officers shall be permitted to be off at the same on each of the three Patrol Division shifts. The category of time taken (Vacation, PDO, SDO) to conform with this requirement shall be irrelevant, except that Vacation picks in accordance with Article XII of this agreement, shall be given priority. Time off that exceeds the terms of this provision shall be at the sole discretion of the Shift Commander/Supervisor.

The PBA submits that there is no justification in the record to warrant any change in the existing text of Article X, Section 5. This clause merely obligates the Chief to advise the PBA of the Patrol Division's minimum staffing levels. The clause does not obligate the Chief to negotiate with the PBA those minimum staffing levels (i.e., five officer minimum; four officer minimum, etc.). Rather, the Chief merely sets the minimum staffing level for the Patrol Division. If, for whatever reason, the levels for a particular shift fall below said "minimums", then the Department merely hires another officer on overtime to maintain the minimum staffing level for that particular shift.

The proposed language would, conceivably, permit the Township to deny a request for paid leave (i.e., vacation, etc.) even under circumstances which would not require the Police Department to fall under its established "minimum" staffing levels. That is, there may be occasions where more than one Sergeant and two Patrol Officers may be permitted off at the same time on a given shift without adversely affecting the shift's minimum staffing levels. In that circumstance, the proposed "one Sergeant and two Patrol Officers off" policy would be overbroad, unnecessary and unreasonable. Moreover, the last portion of the proposed text -- empowering the Shift Command/Supervisor with the "sole discretion" to permit additional officers off – without establishing any standards, guidelines, etc. – is an invitation for arbitrary and capricious decisions which, ultimately, may lead to more grievances filed and increased litigation.

For all of the above reasons, the PBA asserts that the current language should be maintained.

### **Overtime Rate**

The Township also seeks to revise the provisions of Article IX, Section 2 which reads as follows:

In the event an employee is called in to work during other than regularly scheduled hours, including off-duty court or administrative appearances, but excluding disciplinary hearings, he/she shall be paid at the rate of time and one-half (1½) for a guaranteed minimum of two (2) hours for all hours worked, whichever is greater, provided however that the two (2) hour minimum shall not apply to hours worked contiguous with the employee's workday. For court appearance, which would qualify for overtime, the employee shall have the option of accepting compensatory time (at time and one-half). All overtime payments pursuant to this article shall be made no later than the second pay period from the time worked and no longer than four (4) weeks in total. The Township shall be assessed an additional \$5.00 per day penalty thereafter.

The Township proposes to delete the last two sentences of Article IX, Section 2 and replace with the following:

Upon the signing of this agreement, the option of selecting compensatory time shall be eliminated. All overtime payments pursuant to this article shall be made no later than the second pay period from the time worked and no longer than four (4) weeks in total. The Township shall be assessed an additional \$5.00 per day penalty thereafter.

The Township seeks to eliminate the existing, long-standing option allowing officers to elect to be paid for overtime in the form of either cash or compensatory time. Frankly, the “cash or comp time” option works to the benefit of both the Township and the PBA. The Township benefits because the “comp time option” helps maintain its cash overtime costs to relatively manageable levels. The Township has also not established that the current compensatory levels maintained by the officers approach or even exceed the maximum compensatory levels established under the *Fair Labor Standards Act* which is 480 hours. The CBA permits the maximum accumulation of 150 hours of comp time.

### **Compensatory Time Accumulation**

Officers are currently permitted to accrue 150 hours of compensatory time. The Township seeks to eliminate the comp time option. The Unions contend that the elimination of the comp time option is unwarranted. The Unions submit that the Township will likely suffer in the future in the event that its proposal is awarded as officers will be compensated for all overtime in the form of cash at the rate of time and one-half (1½). Consequently, the Township's overtime budget would be increased significantly.

### **Supplement to Brief**

On July 13, 2011, pursuant to the mutual agreement of the parties, the PBA/SOA supplemented its post-hearing brief with respect to the relevance and impact of the passage of two resolutions (Resolution 124-11 and 134-11) setting forth the terms and conditions of employment for certain union and non-union Nutley Township employees in relation to the statutory criteria.

The PBA/SOA notes that each of the above resolutions established salary increases for the members of Local 97 (Parks and Recreation employees) as well as for "all non-union employees" as follows: 2.25% in 2009; 2.25% in 2010; 1.75% in 2011; and 1.75% in 2012. The PBA/SOA contends that the Township's decision to negotiate and/or implement the above salary increases corroborates the position advanced by the PBA and SOA - and supported by the expert report and testimony of Joseph Petrucelli, CPA - that the Township possesses the financial resources to fund the fair and reasonable salary increases sought by the police officers in the instant proceedings. The raises sanctioned under the two resolutions further illustrate the unreasonableness of the Township's proposed 0% salary increases over a four-year period.

Further, the PBA/SOA submits that the resolutions severely undermine the balance of the various items contained in the Township's Final Offer which sought to significantly reduce or even eliminate entirely numerous other contract benefits. The PBA/SOA points out that none of the Township's proposals to eliminate clothing/maintenance allowance; reduce holiday leave by 50%; and curtail vacation; personal and bereavement leaves were included in the resolutions. The PBA/SOA acknowledge that the resolutions call for the elimination of longevity for new hires but does not require the non-union and Parks and Recreation employees to satisfy a premium sharing obligation above 1.5% of their base salary, pursuant to Ch. 2, P.,L. 2010. Finally, it must be emphasized that the resolutions do not change or otherwise alter the eligibility for post- retirement medical benefits. The Township's proposal to the PBA/SOA seeks to not only establish an actual years of service threshold (25 years) for police retirees to satisfy but to also eliminate post-retirement medical benefits for officers who retire on a disability. The absence of any change in the criteria for post-retirement benefits in either resolution is not supportive of the Township's post-retirement medical benefits proposal.

### **TOWNSHIP POSITION**

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

The Township submits that its 2009 budget was based on a 0% increase for salaries and wages for all employees. (Certification of Commissioner Thomas J. Evans ("Evans Cert.") at ¶ 52). In 2009, the national and local economy experienced a catastrophic recession. The Township lessened the burden on the taxpayer by raising the tax levy by 3.4% or \$1,130,973 instead of 4%. Raising the tax levy to 4% would have obviously increased the tax payments for the taxpayers during a period of time where many residents were facing

their own economic crisis. The Township balanced the economic hardships of the taxpayers with adjusting its operational expenses. Id. at ¶ 54.

Furthermore, although the new 2% cap levy does not include health care or pension costs, each will increase significantly, which will impact the Township's overall budget. Id. at ¶ 66. Health care and pension costs will increase over \$1.1 million in 2011. Id. Even with the minimal contribution of 1.5% of base salary for health benefits by employees, pursuant to N.J.S.A. 40A:10-21 (b), the Township faces substantial health care premium increases. Id. at ¶ 56. The projected State Health Benefits Premium increase for 2010 is 15.9% and 11.7% in 2011. Id. There is no dispute that the Township must absorb the differences between the 1.5% paid by its employees and the overall cost of health care. As such, the Township's final offer addresses the burden of increasing health care costs that ultimately will fall on the taxpayers.

While health care and pension costs have increased, the cap levy has been reduced significantly to 2%. Accordingly, the Township is statutorily limited in how much it can increase its operational budget and raise taxes on its taxpayers. The Township's final offer was a responsible reflection of the financial issues and, as such, is the most reasonable proposal in terms of the interests and welfare of the public.

The Township asserts that the "interests and welfare of the public" require the adoption of the Township's Final Offer since it is more supportive of the public's interest and welfare than the Unions' proposal. The Township's final offer will accomplish several important public policy goals. Most important, the Township's final offer will enable the Township to maintain its fiscal stability and survive the recession. As summarized below, the exhibits presented at the hearing and the financial certification of Commissioner Evans demonstrates that the Township is confronting a number of fiscal challenges:

(1). **Increases in Health Care Costs:** The Township's final offer provides immediate assistance to its taxpayers by increasing health care contributions from employees. The proposed 7% health care contribution will offset the ever-increasing costs of health insurance. Health care premiums are a driving cost in the Township's budget. See Evans Cert. ¶ 12. The projected State Health Benefits Premium increase for 2010 is 15.9% and 11.7% for 2011. Id. at ¶ 56. Although employees contribute 1.5% for health care, the overall cost of premiums has increased dramatically, which the Township must absorb.

(2) **Increase to Pension Contributions:** The Township's cost related to pension contributions for police officers has increased annually. The Township contributed pension payments of: \$2,942,420 in 2011, \$2,417,496.00 in 2010, and \$1,916,687 in 2009. Evans Cert. at ¶ 60. The state mandated payments for pensions contributions have significantly increased in each of the past three years. The overwhelming cost of pensions is required for all public employees, not just the Police Department. The Township contributes approximately 25% of a policeman's salary toward his pension, while paying approximately 8% for Public Employee Retirement System employees. Therefore, the police bargaining units represent a much larger portion of the Township's pension budget.

(3) **Reduction in State Aid and Rising Cost of Garbage and Sewerage Disposal**

Not only has the Township has struggled with lost interest earnings (which recently contributed almost \$500,000 to the Township's budget, but now struggle to earn \$20,000), the Township has, also lost a significant amount of state aid. Id. at ¶ 13. The aid provided by the State of New Jersey to the Township decreased in 2010 by \$559,675 in municipal state aid; \$1,853,700 in school aid; and \$1,203,499 in county state aid. Moreover, in comparison to the surrounding municipalities of Belleville, Bloomfield, and Clifton, the Township receives significantly less aid from the State. Id. at ¶ 15; (T-5A). For example, in 2010,

Belleville, Bloomfield and Clifton each received over \$2.0 million in Consolidated Municipal Property Tax Relief Act (“CMPTRA”) state aid, whereas, the Township received \$446,823. (T-5A.) Belleville, Bloomfield and Clifton also received over \$20 million in school state aid, compared to the \$9 million the Township received in school state aid. Further, the rising costs of garbage and sewerage disposal greatly impact the budget and impose a burden on the taxpayers. Therefore, the lost interest earnings, the state aid reductions and rising costs of garbage and sewerage disposal have reduced revenue in the Township’s budget. In response to the unforeseen revenue reduction, the Township submitted its final offer.

The Township’s salary proposal and other cost savings measures will provide the taxpayers with substantial immediate relief. In addition, the Township’s proposal provides long-term assistance as well. For example, providing health care for all employees with twenty-five (25) years of service in the Police and Fire Retirement System and with the Township will drastically reduce future health care costs.

Furthermore, the Township’s offer will ensure that its police officers, who are statutorily entitled to the interest arbitration process, do not receive far superior wages and benefits than civilian Township employees, who do not enjoy the same benefits. The police bargaining unit members will continue to enjoy their competitive benefits with the Town’s final offer. The Township’s final offer clearly takes the best interests and welfare of the public into account, whereas, the Unions simply seek increases in an economy that has had a tremendous impact on the citizens of Nutley.

According to the Township, the Unions’ financial expert, Joseph R. Petrucelli, failed to account for the current economic crisis in any of his expert reports. See Petrucelli’s Report 1 dated January 11, 2011 (“Expert Report 1”) and Petrucelli’s Report dated February 3, 2011

("Expert Report 2"). Petrucelli's reports fail to differentiate the terms of "continued revenue growth" from a municipality's budget. See Expert Report at pg. 4 and Expert Report 2, pg.

3. First, it must be clarified that the growth of the Township's budget and the associated growing tax burden on taxpayers must not be confused with the terminology of revenue growth used in the private sector. See Evans Cert. at ¶ 12. The Township's revenues are not growing; rather, the Township's tax burden is growing. The Township must focus on the drivers of rising costs in its municipal budget, which include the following: health insurance premiums, pension costs, sewer and garbage disposal costs, and employee compensation.

Moreover, Petrucelli's reports fail to appreciate the current economic climate. Petrucelli's reports provide for a ten-year view of the finances, rather, than recognizing the drastic downturn the economy has faced. Unemployment in Essex County and the state of New Jersey has reached new highs; in April 2008 the state unemployment was 5.5% and in April 2010 the unemployment rate reached 11%. (T-51). The taxpayers of the Township are suffering from the economic crisis while the Unions are seeking salary increases and even more financial benefits.

Meanwhile, the Township's offer takes into consideration the financial impact of the Township's budget on its residents and taxpayers. Commissioner Evans stated in his financial certification that the Township's average median income is \$59,600. See Evans Cert. at ¶ 14; & T-8A. In 2010, there were 291 pending foreclosures which is a significant increase from the 120 pending foreclosures in 2009. (T-2A). Therefore, the taxpayers simply cannot afford a raise in taxes. Adopting the Unions' final offer would be unreasonable in light of the delicate economic condition that the Township and its taxpayers face. Thus, the Township submits that its final offer is the most reasonable and should be adopted.

## **Comparisons**

The Township maintains that its final offer is more reasonable when compared to the recent trends in interest arbitration awards. The Township contends that its police officers are well-compensated and receive competitive salary and financial benefits when compared to other municipalities within Essex County. The Township is not the only public employer seeking financial assistance through the interest arbitration process. There is a trend developing in interest arbitration awards to include wage freezes within the salary guides. In the Matter of County of Hunterdon and FOP Lodge 94, (Arbitrator Robert M. Glasson), the arbitrator's award included a salary increase freeze in 2009 and the first nine steps were frozen at the 2009 level in 2010 and 2011. (T-159). In the Matter of Township of East Orange and East Orange FOP Lodge No. 111, (Arbitrator James W. Mastriani), the arbitrator's award included a wage freeze in the first and third years of the seven-year agreement. Exhibit T-A.

Moreover, there is a trend in the recent interest arbitration awards to provide lower salary increases throughout the contract. See Borough of Keyport and PBA Local 223. (T-166). In the Matter of Borough of Bergenfield and Policemen's Benevolent Association Local No. 309, Arbitrator Pierson opined that in the interest and welfare of the public, the police officers were to be awarded a 2.5% salary increase for each of the four years of the contract. See Exhibit T-B. In the Matter of South Orange Village and South Orange PBA Local 12 and PBA Local 12A (Superior), Arbitrator Mastriani awarded the following salary increases: Step 1 through Step 6 = 2% increase throughout the contract; Step 7 and rank of Sergeant and Lieutenant = 2.75% in 2008 and 2009, 2.5% in 2010 and 2.0% in 2011. See Exhibit T-C. In the Matter of County of Essex and Essex County Sheriffs Officers, P.B.A.

Local No. 183, (currently on Appeal), Arbitrator Weisblatt issued an award with the following salary increases: January 2008 = 2.85%; January 2009 = 0%; September 2009 = 2.75%; and July 2010 = 2.50%. (T-161). Similarly, Arbitrator Mastriani awarded the following salary increase: October 2008 = 2.5%, July 2009 = 2.5% and July 2010 = 2.5%.

In the Matter of Asbury Park and P.B.A. Local 6. (T-165).

Additionally, recent arbitration awards have increased the employees' health care contribution. In the Matter of Arbitration between the Township of Ocean and PBA Local No. 57 and Superior Officers Association, Arbitrator Mastriani held that all employees were required to pay 6% of the cost of the premium effective October 1, 2010. (T-160). Also, Arbitrator Mastriani held that effective January 1, 2011, the contribution levels for employees will be 9% of the cost of the premium for health benefits. Moreover, the Township of West Orange and the Township's Fire Department Unions recently executed a MOA on March 11, 2011, which includes a 7.5% insurance contribution from employees' base salary. See Exhibit T-D; E.

Here, the Unions' final offer included an across-the-board increase in 2009 = 2.5%; 2010 = 3.0%; 2011 = 3.5%; and 2012 = 3.5%. In contrast, where the Township's final offer included a 0% salary increase, the Township's offer is more akin to the other recent interest arbitration awards. In addition, the Township's final proposal seeks a 7% contribution of base salary toward the cost of health care. Accordingly, the Township contends that its proposal is more in line with the recent arbitration award trends than the Unions' final offer and should be adopted.

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

The Township contends that its last offer is more reasonable when compared to public employment in the same or similar comparable jurisdictions. The benefits provided to the Township's police officers are generous and comparative to police officers in surrounding municipalities within Essex County. The Interest Arbitration Act provides for a comparison with other jobs in both the public and private sectors. An arbitrator can no longer assume that a police officer is per se entitled to a higher percentage increase than non-uniformed employees. According to the May 2009 State Occupational Employment and Wage Estimates for New Jersey, the average mean annual salary was \$50,010 for all occupations and \$77,660 for Police Officers and Sheriffs Officers. (T-50).

**Rank and File Police Officers- PBA**

The arbitrator must compare the benefits received by Nutley police officers to those in comparable municipalities. In comparing all additional benefits, the Township of Nutley offers similar or better benefits than other municipalities in Essex County for both PBA and SOA. Further, it should be noted that Nutley is a smaller community within Essex County; the population is approximately 27,000. (T-39).

In comparing benefits, we begin our analysis with the clothing allowance. Currently, the Union's clothing allowance is \$625. Additionally, the Township's police officers are entitled to a maintenance allowance of \$825. When combined, the Township's police officers received \$1,450 for both benefits. In comparison to other municipalities within Essex County, the Township's police officers receive a larger combined benefit than most other municipalities. See Exhibit T-101 (which is below).

### **Uniform Allowance**

Municipality	Uniform Allowance	Maintenance
Belleville	\$1,000	-
Bloomfield	\$850	\$450 ammunition
Caldwell	\$650	\$385
Cedar Grove	\$850	-
City of Orange	-	-
East Orange	\$750	-
Essex Fells	\$900	-
Fairfield	\$440	\$435
Glen Ridge	-	-
Irvington	None	-
Livingston	\$875	\$610
Maplewood	\$1,275	\$385
Millburn	\$950	-
Montclair	\$1,050	-
Newark	\$1,000	-
North Caldwell	\$700	-
<b>Nutley</b>	<b>\$625</b>	<b>\$825</b>
Roseland	\$1,200	-
South Orange	\$725	\$325
Verona	\$1,000	-
West Caldwell	None	-
West Orange	\$900	-

Further, the Township's police officers enjoy 14 holidays per year. (T-85). In Essex County, the average amount of holidays provided per year is 12.6. See Exhibit T-86 below.

### **Holidays**

Municipality	Days per year
Belleville	14
Bloomfield	7.9% added to base pay and 1 day off per year
Caldwell	13
Cedar Grove	12
East Orange	14
Essex Fells	0 - Eff. 1/1/09 – all holidays eliminated.
Fairfield	13
Glen Ridge	-
Irvington	2 days compensatory time for Election Day & Veteran's Day
Livingston	13
Maplewood	13

Millburn	13
Montclair	14
Newark	16
North Caldwell	14
<b>Nutley</b>	<b>14</b>
Roseland	14
South Orange	13
Verona	0
West Caldwell	9
West Orange	14

The Township submits that its police officers receive holiday compensation that exceeds the Essex County average of 12.6 holidays annually.

#### Longevity Average

Completion of years	6 years	11 years	16 years	21 years
Average	4	6	8	10
High	6	8	10	12
Low	2	4	6	8
Nutley	4	6	8	10

Thus, Township's police officers enjoy a longevity benefit that is comparable to other municipalities.

Additionally, Township's police officers receive vacation leave which is near the County average. Township's police officers with over 20 years of service receive vacation leave that exceeds the Essex County average. (T-89). Specifically, they receive 25 days after 20 years of service, while the average is 23.4 days.

An important comparison between police officers is maximum base salary. The Township submits that the Nutley maximum step salaries are similar to the Essex County average and comparable even though the Township is a smaller municipality in comparison to the other Essex County communities. (T-105).

**Maximum Base Salary Comparison**

Municipality	2006	2007	2008
Belleville	-	\$73,170	\$76,500
Bloomfield	\$77,024	\$80,105	\$81,707
Caldwell	-	\$83,552	\$83,774
Cedar Grove*	-	-	\$85,572
East Orange**	\$64,833	-	-
Essex Fells***	-	-	\$87,772
Fairfield	\$78,520	\$81,661	\$84,927
Glen Ridge	\$73,485	\$76,425	\$79,482
Irvington	\$76,832	\$79,137	\$82,326
Livingston	-	-	\$86,175
Maplewood	-	\$79,529	\$81,915
Millburn*	-	-	\$82,886
Montclair	\$74,872	\$77,826	\$81,371
Newark*	-	-	\$82,842
North Caldwell*	-	-	\$85,527
<b>Nutley</b>	<b>\$72,699</b>	<b>\$76,075</b>	<b>\$79,534</b>
Roseland	-	\$67,409	\$70,105
South Orange	\$73,864	\$77,003	-
Verona	-	-	\$88,379
West Caldwell	-	-	\$87,320
West Orange	\$75,445	\$78,312	\$81,366

\*2009, \*\*2005, \*\*\*2010

The Township submits that it provides sick leave, personal days and bereavement days that exceed the Essex County averages. The sick leave average in the county is 13.6 whereas the Township's police officers receive 15 sick days annually. (T-82). The Township's police officers receive 4 personal days annually whereas the County average is 1.5 days annually. (T-84). As to bereavement days, the Township's police officers receive similar, if not more bereavement days than other County municipalities. (T-87).

The Township contends that the above-referenced benefits afforded to the Unions are either comparable and/or exceed the Essex County municipal average. The Township's exhibits in the record demonstrate that the Township's final offer is reasonable. As such, many of the benefits can be reduced or modified without negatively impacting the Unions.

According to the May 2009 State Occupational Employment and Wage Estimates for New Jersey, the mean annual salary for protective service occupations was \$52,230 and \$77,660 for police officers and sheriff's patrol officers. (T-50). The PBA maximum salary was \$79,534 in 2008, which exceeds the mean average salary provided in the State Occupational Employment and Wage Estimates for New Jersey.

The Township submitted sufficient evidence establishing that the overall compensation and benefits provided to its police officers are equal to or exceed the averages provided throughout Essex County. The benefit levels are excessively higher than the County average. While the Township's final offer seeks to reduce benefits and stabilize salary increases, the Unions' final offer will greatly increase the budget.

It should also be noted that the Fire Unions and the Township voluntarily reached an agreement with the following salary increases: January 2009 = 0%; January 2010 = 2.5%; January 2011 = 3%; January 2012 = 3.5% for rank and file. The following increases were made for the Fire Superior Officers: Lieutenant/Captain- January 2009 = 0%; January 2010 = 2.5% + \$2500; January 2012 = 3.5% + \$3100. (T-11). The Township's final offers to the police units represent its continued commitment to fiscal responsibility by stabilizing tax increases and maintaining the existing level of services to the community. However, the Arbitrator must compare the Unions' final offer to the Fire Unions' Memorandum of Agreement when crafting a formal award. In that analysis, it's really apparent that the Township's final offer is more similar to the Fire Unions' Memorandum of Agreement given the zero increase in the first year. As such, the Arbitrator must award the Township's final offer.

### **Health Care Contributions**

The Township proposes that all bargaining unit members contribute 7% of their base salary toward the costs of their health benefits. The Township notes that it is facing ever increasing costs for health care. Specifically, the rising health care premiums are a driving cost in the Township's budget. See Evans Cert. ¶ 12. The Township faces substantial health care premium increases this year. The projected State Health Benefits Premium increase for 2010 is 15.9% and 11.7% for 2011.

Employees currently contribute 1.5% of their base salary toward their health care benefits. N.J.S.A. 40A:10-21(b) was amended effective May 21, 2010 and provides that the cost of employee health benefits shall be shared by public employees through the withholding of 1.5% of the employee's base salary. As such, the statute requires public employees of the State of New Jersey, municipalities, counties and local school boards to contribute a minimum of 1.5% of base salary toward their own health benefits. All police bargaining unit members have been contributing 1.5% of base salary since May 22, 2010.

Moreover, in Township of Ocean and PBA Local No. 57 and SOA, Arbitrator Mastriani's award required that all employees pay 6% of the cost of the premium in effect for the State Health Benefits Program effective October 1, 2010 and 9% of the cost of the premium for health benefits. Arbitrator Mastriani provided the following:

Co-payment toward health insurance premiums among Monmouth County municipalities is not uncommon. The awarding of employee contributions in this instance does not cause the Township of Ocean to be out of step within Monmouth County. The labor agreements in evidence reflect that approximately 50% of the municipalities have some formula requiring contribution toward health insurance premiums. The structure of the contributions vary. Some require dollar contributions while others require percentage contributions. Notwithstanding the wide variety of co-pay structures, the recently enacted legislation provides for the common thread that the contributions must rise to the level of at least 1.5% of salary. Within

the scope of all of these schemes, the Township's proposal is not unreasonable and is consistent with the internal policy within the Township.

The Township submits that denying a health care contribution when the Township has a stable budget is inappropriate. In a previous interest arbitration award, Borough of Ramsey and PBA Local 155, Docket No.: IA-2007-081 the arbitrator ruled:

The fact that the Borough can maintain a stable budget without achieving a particular cost saving proposal is insufficient reason to deny a proposal. The awarding of the Borough's health insurance proposal is not based solely on its financial abilities or inabilities. Although the Borough did receive savings in 2004 of approximately \$67,500 when it moved to a fully paid PPO, the record reflects steady increases since that time and a current cost of over \$22,000 for a family plan. The Borough, under 34:13A-16(g)(1), may properly offer proposals designed to offset cost increases in the absence of budgetary crises, especially when they are supported, as here, by other statutory criteria.

As in Ramsey, the Township's proposal for health care contributions should not be denied on reasons of a stable budget.

Further, the Township of West Orange recently entered into a Memorandum of Agreement with the Fire Department Unions which requires that all employees provide 7.5% of their base salary toward health care benefits. (Exhibit T-D; E). The Township submits that there is a trend toward requiring public employees to contribute more than the required 1.5% toward health care contributions.

The Township maintains that its final offer is more in line with the trend toward higher health care contribution and its final offer should be awarded.

The Township asserts that its proposal to require twenty-five years of service with the Township to be eligible for retiree health benefits is reasonable. As stated above, the

rising cost of health care is one of the driving factors within the Township's budget. The Township proposed the following in its final offer:

The Township will pay the cost of health coverage for all retirees and their eligible dependents so long as the retiree has retired with at least twenty-five (25) years of service credit in the Police and Fire Retirement System and had worked a period of at least twenty-five (25) years with the Township. The Township and the Unions may agree to permit a retiree who does not meet the above requirements to participate in the City's health insurance plan at his or her own cost.

According to N.J.S.A. 40A:10-22, a local public employer may continue to offer health care coverage to its retired employees and provide the following:

The continuance after retirement of any employee may be provided at rates and under the conditions as shall be prescribed in the contract, subject, however, to the requirements set forth in N.J.S.A. 40A:10-23. The contribution required of any retired employee toward the cost of coverage may be paid by him to his former employer or in such manner as the employer shall direct.

Thus, if the local public employer chooses to offer health care coverage to its retirees, it must abide by the conditions set forth in N.J.S.A. 40A:10-23. This statute ordinarily requires retired employees to pay for the cost of health care coverage for themselves and their dependents. The local public employer, however, may pay the premiums for retired employees under certain conditions as follows (emphasis added):

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees a. who have retired on a disability pension, or b. who have retired after 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or c. who have retired and reached the age of 65 years or older with

25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or d. who have retired and reached the age of 62 years or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe.

As such, the Township is authorized to determine the combination of service and credit for retired employees to provide health benefits. N.J.S.A. 40A:10-23. The Township notes that Irvington, Newark, Essex Fells, Cedar Grove have similar provisions.

Based on the foregoing, the Township asserts that its proposal is warranted. The realities of the economic crisis have touched all of the Township's residents and, as such, the Township is required to set forth a responsible and fair budget. Many other municipalities have similar requirements to ensure that "lifetime" health benefits are only awarded to employees that provide 25 years with the Township. For all the above reasons, the Township maintains that its health care proposals are both fair and reasonable; are in the "interests and welfare of the public," and should be awarded.

#### **Financial Impact**

The arbitrator is required to consider the financial impact of the award on the governing unit in rendering his award. N.J.S.A. 34:13A-16(g)(6). The Township's final offer seeks a 0% increase in salaries. In contrast, the Unions' final offer called for the following increases in salary: 2.5% in 2009; 3.0% in 2010; 3.5% in 2011 and 2012, which total 12.5%, without the compounding effect. In addition, the Unions' final offer included an increase in the training stipend of \$350 for each year of the agreement.

The Township submitted a chart showing that the Union's final offer for 2011 costs \$7,366,829, whereas the Township's final offer costs \$6,667,740, with a difference of \$699,089. In 2012, the Unions' final offer would increase the overall expenditure to \$7,407,225, in comparison to the Township's total of \$6,980,529, with a difference of \$426,696. Therefore, it cannot be disputed that the Township's final offer of 0% increases provides less of a burden on its taxpayers. (T-3A).

Moreover, the Public Safety Department, which includes the fire and police departments, constitutes the largest portion of the Township's overall budget. In 2009, the budget for the Public Safety Department was \$12,521,182 and in 2010 it was \$12,953,309. See Evans Cert. ¶ 29. The Police salaries and wages in 2009 were \$7,634,188 and in 2010 were \$8,267,284. This does not include the cost of health insurance and pension benefits which when included could increase a police officer's salary by 41% in 2010 and as much as 63% by 2012. Accordingly, any increase in the Unions' salaries will have a dramatic impact on the entire budget. Furthermore, the Unions' financial expert asserted that the Township has \$154,995 left in reserve in salaries and wages from the 2009 year. See Expert Report 1. He also claimed the 2010 police budget increased by 12.65%.

There are many factors that influence the operations over the course of the year. Some of the monies not used for operational purposes are transferred into the Township's reserve for the payment of accrued sick and vacation time at retirement, as long as, it is not disruptive to regenerating fund balance. The Township's accrued liability for sick and vacation payouts exceed \$2.2 million. The remaining unspent monies are lapsed to Fund Balance and used in subsequent years' budget as "tax relief" in support of that year's municipal budget. As an accounting practice, the unspent budget appropriations lapse to fund

balance after the subsequent year. In the subsequent budget, the fund balance is budgeted as “anticipated surplus” and deemed a revenue for the next year’s budget. Since this amount is a revenue in the next year’s budget, this amount offsets the burden on the taxpayers. Thus, this amount cannot be used only for police salaries, it is used to offset the entire Township budget.

In 2009, the Township provided \$7,634,188 in the budget for Police Salaries and Wages. The employees of the Police Department were paid the total amount budgeted of \$7,494,188. The remaining amount of \$154,995 will either be transferred to the Township’s reserve for payment of accrued sick and vacation payouts or lapse to surplus and budgeted “anticipated surplus” in the Township’s budget in 2011. By way of background, the Township creates a budget for each fiscal year which includes the budgetary appropriations for each department within the Township, including the Police Department. N.J.S.A. 40A:4-3 requires the Township to adopt an annual budget for each fiscal year and prepare same on a cash basis.

In order to properly adhere to N.J.S.A. 40A:4-3, the Township will set forth additional funds within the budget for unanticipated expenditures. The funds that are not used in each Department in that given year are the reserved amounts. The Police Department’s budget for 2010 is \$8,265,284. The Township set forth this amount in the Police Department’s budget for salaries and wages. Amounts appropriated for health care costs and pension payments for police officers are budgeted in separate appropriation line items and are in addition to the Police Salaries and Wages (“S & W”) budget line item.

Dramatic fluctuations in fund balance can have disastrous effects on the Township’s budget and its taxpayers and would negatively impact the Township’s bond rating. The

Township deems that its responsibility is to manage this balance over time and avoid actions that would hurt its taxpayers. The Township budgets for anticipated expenditures based on the current and preceding year and budgetary forecasts for the subsequent year.

Since N.J.S.A. 40A:4-3 requires the Township to budget on a cash basis, the Township sets forth additional funds to cover expenditures. All funds that are not used in that year's budget, i.e., "Reserve," are then placed on the balance sheet as a "fund balance" in the subsequent year. This fund balance is then budgeted as anticipated surplus and used as revenue in the subsequent budget. In 2010, the Township anticipated 74% of its fund balance as anticipated surplus in its budget. This anticipated surplus is a form of tax relief and the remainder of unused Fund Balance is held to manage cash flow due to the volatility in cash collections. The Township must guarantee payments to the county and the school district and therefore must provide for the volatility in cash flow. The anticipated surplus has declined dramatically in the past three years. In 2008, the anticipated surplus was \$4.1 million. In 2009, the anticipated surplus was \$4.1 million. In 2010, the anticipated surplus was \$3.8 million.

The "Amount to be Raised by Taxation in the Municipal Budget" is the difference between the total budget requirement and all miscellaneous revenues anticipated. The tax rate that is struck by the county which is used to bill and collect taxes is rounded up to ensure the full amount necessary is billed. It is that rounding up, in addition to the tax collection rate, which influences the amount billed and collected. More importantly, the Township revenues are not growing, as alleged by the Unions' financial expert, rather, the Township's tax burden is, which ultimately is paid by the taxpayers. Ultimately, the critical issue at hand is the Township's obligation to the taxpayers of Nutley to ensure tax relief. New Jersey

has the highest tax rate in the Country. Essex County has the highest tax rate in New Jersey. As such, it is the Township's obligation not only to stabilize taxes, but to reduce where possible. Further, the Township's tax levy is only one portion of the tax bill that residents must pay. The school district and the County also add to the municipal tax bill. Thus, the Township must go beyond tax stabilization to ensure that the tax bill does not increase.

### **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 addition, N.J.S.A. 34:13A-16(g)(8) requires the arbitrator to consider "other factors...ordinarily or traditionally considered in the determination of wages." Certainly, the cost of living must be considered one of those factors. The cost of living statistics are promulgated by the United States Bureau of Labor Statistics and are measured using a measurement system known as the Consumer Price Index ("CPI"). (T-43).

The Township contends that the CPI demonstrates that the Township's final offer will not diminish the Unions' standard of living. The Union's salary increases are not in line with the CPI and the Unions failed to establish that the standard of living for police officers will be negatively affected by the Township's final offer. The Township submits that its salary proposal is reasonable and should be awarded.

Moreover, the Township has been negatively impacted by the 2009 recession. New Jersey has the 16<sup>th</sup> highest unemployment rate in the Country and Essex County has the fourth highest county rate in the State of New Jersey. See Evans Cert. ¶ 17; See Exhibit T-52. In fact, New Jersey has the twenty-second highest unemployment rate in the Country. According to the Bureau of labor Statistics U.S. Department of Labor, Essex County's unemployment rate is 10.6% and is the 4<sup>th</sup> highest ranking of unemployment in the State of New Jersey.

Further, municipalities across the state have also suffered from the economy and were forced to initiate layoffs of their police departments. Police and fire have recently seen an increase in layoffs across the state. Id. For example, Trenton planned to lay off approximately 111 police officers. See Exhibit T-56. Even smaller towns are laying off police officers, for instance, Franklin Township laid off 8 police officers. See Exhibit T-58. Some municipalities are demoting police officers to deal with budgetary issues. For example, Garfield demoted 12 police officers to fill a budget gap. See Exhibit T-59.

The taxpayer's of the Township have suffered from the economic downturn. In 2010, there are 291 pending foreclosures which has increased from the 120 pending in 2009. In addition, there were 50 short sales and/or sheriff sales in 2010. Moreover, the Township has been informed that Hoffman LaRoche, the Township's largest commercial business, will be demolishing buildings in 2011 and early 2012, which will negatively impact their ratable base. Hoffman LaRoche has also indicated that it intends to initiate significant layoffs in 2011.

Based on the above, it is clear that the Township has much more at stake than the Unions. The CPI has declined during the last three years. The Unions enjoy high salaries when compared to private industry salaries. However, the Township is facing a shrinking tax base in an uncertain economic climate.

#### **Lawful Authority**

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: "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. Therefore, the Arbitrator must consider the Township’s budgeting restricting as prescribed by law.

According to the new amendment of N.J.S.A. 40A:4-45.45(b), effective July 10, 2010, the Legislature implemented a 2% cap on the tax levy with certain exceptions, including health care and pensions. The amendment lowered the original levy cap from 4% to 2%. The Township is limited to raising the tax levy 2% which in effect restricts the amount that the Township can raise its overall budget. The tax levy is determined by the net increase in costs incurred by the governing body.

The 2% cap levy amendment set forth in N.J.S.A. 40A:4-45.46 has significantly restrained the Township’s ability to raise appropriations within its budget and from raising revenue through taxes. N.J.S.A. 40A:4-45.45 (b) provides as follows:

The following exclusions shall be added to the calculation of the adjusted tax levy: increases in amounts required to be raised by taxation for capital expenditures, including debt service as defined by law; increases in pension contributions and accrued liability for pension contributions in excess of 2.0%; increases in health care costs equal to that portion of the actual increase in total health care costs for the budget year that is in excess of 2.0% of the total health care costs in the prior year, but is not in excess of the product of the total health care costs in the prior year and the average percentage increase of the State Health Benefits Program, P.L.1961, c.49 (C.52:14-17.25 et seq.), as annually determined by the Division of Pensions and Benefits in the Department of the Treasury; and extraordinary costs incurred by a local unit directly related to a declared emergency, as defined by regulation promulgated by the Commissioner of the Department of Community Affairs, in consultation with the Commissioner of Education, as appropriate.

Furthermore, the governing body of a local unit may request approval, through a referendum to voters, to increase the amount to be raised by taxation by more than 2%.

The 2% cap levy affects not only the Police Department’s budget but the Township’s entire budget. The Township must make limitations to the overall budget in order to maintain a 2% cap levy. See Evans Cert. ¶ 50. In an effort to control the budget, the

Township laid-off the following public employees in 2010: two police officers, two firefighters, one full-time parks department employee, two part-time parks department employees, and one part-time public works employees. Additionally, several positions within the Township have been vacated by attrition and remain unfilled, and remaining staff were reassigned or took on additional responsibilities.

The Township contends that the Unions' final offer is not equitable under the statutory restrictions imposed by N.J.S.A. 40A:4-45.45(b), and must be rejected.

### **Overall Compensation**

The Arbitrator must consider the overall compensation received by the Township police and superior officers. N.J.S.A. 34:14A-6(g)(3). Along with their base salary, bargaining unit members are afforded the following benefits including, but not limited to: training stipend of \$1,800; bullet proof vests; overtime rates of time and one half for a guaranteed minimum of two (2) hours; overtime rates for court appearances and employees have the option of accepting compensatory time; accumulation of one hundred and fifty (150) hours of compensatory time; injury-on-duty leave for up to one full year; sick days and unlimited sick leave accumulation; use of sick leave for caring for a family member; terminal leave; bereavement leave; medical insurance benefits; a family dental plan; uniform allowance; longevity; holidays; vacation; and legal defense for actions that arise out of an employee's performance.

The Township submits that the above benefits are comparable to other Essex County municipalities. Therefore, the Township's final offer does not negatively impact the overall strong compensation package already enjoyed by the Unions. If any increases are required by the Arbitrator, then only minimal increases are necessary as the Unions' compensation package is comparable to surrounding municipalities. Moreover, any salary increases cannot

exceed the Township's Memorandum of Agreement with the Fire Unions pursuant to N.J.S.A. 34: 13A-16(g)(2). See Exhibit T-11. The Township's Memorandum of Agreement with the Nutley FMBA, is the most comparable agreement for this matter because it accurately demonstrates what the Township was willing to agree to on the date it was executed. However, much time has passed since the Memorandum of Agreement was negotiated and the economic climate has only gotten worse. See Evans Cert.

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

The "continuity and stability of employment" criteria relate to employment issues such as layoffs, give backs, and salary freezes. Hillsdale, 263 N.J.Super. at 195. The Township's Police Department has sixty-one (61) members. The two police officers that were laid-off in the beginning of the year were reinstated effective February 1, 2011. See correspondence from Chief Holland to O'Halloran dated February 14, 2011 as Exhibit F.

The Township asserts that the Unions failed to provide evidence that there was a high turnover rate within the Township. Chief Holland testified that the Township has had recent retirements from the police department. The Township notes that seven officers retired from the department in 2010 and 2011. The Township notes that the Unions failed to provide evidence that the police officers retired due to the Township's financial benefits. Rather, there is sufficient evidence throughout the State that public employees are retiring due to possible legislation pending that may affect pensions. See Exhibit T-54-67.

The Township is a suburban community situated between two urban areas, Newark and Passaic, that have significant crime issues. Chief Holland testified that the spill over crime from Newark and Passaic will likely increase over time and required the Police Department to respond. The Township's police departments have located most stolen vehicles from Newark and Passaic in the Township of Nutley. In addition, Chief Holland

testified that there has been an increase in illegal prescription drug sales within the Township. Holland testified that in 2009, there were 69 officers within the Department, and through attrition, the Department currently has 61 officers. Recently, the two laid-off officers were reinstated due to additional funds received from retirements. With the reinstatement of the two laid-off officers, the police department is at a total of 63 members. As such, the Township will continue to be a stable employer. See Exhibit F.

#### **Other Issues**

Along with its salary and health benefit proposals, the Township includes other economic and non-economic items in its fair and final offer. Both parties proposed the duration of the new agreement to be from January 1, 2009 to December 31, 2012. In addition to the salary proposal, the Township proposed three steps be added to the salary guide for the Patrol Officers. For the SOA, the Township proposed to add four steps to the SOA salary guide to increase from three steps to seven steps from Lieutenant to Deputy Chief of Police. These additional steps to the Township's salary guide will help control the Police Department's budget and save money.

Moreover, the Township also proposed the elimination of longevity for employees hired after January 1, 2011 and a freeze of the current value of longevity for active employees, which is consistent with the Township's salary proposals. As provided above in detail, the Unions enjoy comparative and/or better benefits than the Essex County average. In order to decrease the overall budget, the Township proposed to eliminate the training stipend for all members; eliminate clothing and maintenance allowance; reduce holidays from 14 days to 7 days; reduce allotted vacation leave; reduce bereavement leave and reduce personal days. The Township also seeks to fix all accumulated sick time as of December 31, 2010 and cap any future sick time payment at \$15,000.

In addition, the Township proposed modifying Article X, Section 5, entitled, "Notification of Manpower Allocation," which provides the existing language:

The Chief of Police shall serve written notice to the PBA on a quarter annual basis setting forth the minimum manpower allocation established for uniformed patrol officers assigned to patrol cars (exclusive of fixed posts) on each shift.

The Township's proposed language is as follows:

Manpower Requirements: The Department agrees that one Sergeant and two patrol officers shall be permitted to be off at the same time on each of the three patrol division shifts. The category of time taken (Vacation, PDO, SDO) to conform with this requirement shall be irrelevant, except that Vacation picks in accordance with Article XII of this agreement, shall be given priority. Time off that exceeds the terms of this provision shall be at the sole discretion of the Shift Commander/Supervisor.

The Township proposes to modify Article IX, Section 2, entitled, "Overtime Rate," which provides the following existing language:

In the event an employee is called in to work during other than regularly scheduled hours, including off duty court or administrative appearances, but excluding disciplinary hearings, he/she shall be paid at the rate of time and one half (1 ½) for a guaranteed minimum of two (2) hours for all hours worked, whichever is greater, provided however that the two (2) hour minimum shall not apply to hours worked contiguous with the employee's work day. For court appearance, which would qualify for overtime, the employee shall have the option of accepting compensatory time (at time and one half). All overtime payments pursuant to this article shall be made no later than the second pay period from the time worked and no longer than four (4) weeks in total. The Township shall be assessed an additional \$5.00 per day penalty thereafter.

The Township's proposed language is as follows:

2. Overtime Rate. In the event an employee is called in to work during other than regularly scheduled hours, including off duty court or administrative appearances, but excluding disciplinary hearings, he/she shall be paid at the rate of time and one half (1 ½) for a guaranteed minimum of two (2) hours for all hours worked, whichever is greater, provided however that the two (2) hour minimum shall not apply to hours worked contiguous with the employee's work day. Upon the signing of this agreement, the option of selecting compensatory time shall be eliminated. All overtime payments pursuant to this article shall be made no later than the second pay period from

the time worked and no longer than four (4) weeks in total. The Township shall be assessed an additional \$5.00 per day penalty thereafter.

Finally, the Township proposes to modify Article IX, Section 6, entitled, "Compensatory time accumulation," which provides the following existing language:

Employees shall be permitted to accumulate one hundred fifty (150) hours of compensatory overtime.

The Township's proposed language is as follows:

Upon the signing of this agreement, the practice of accumulating compensatory hours shall be eliminated, consistent with new provisions in Section 2. Employee compensatory hours previously earned shall continue to be credited to the employee, and they may continue to utilize them in conformance with the terms of this agreement. Once existing compensatory hours have been exhausted, employees shall have the option of converting no more than three (3) vacation days (25 1/2 hours) into compensatory hours per year to allow employees to take such time off in hours. Any such converted hours must be taken within the calendar year in which they were converted, and in no event will such hours be allowed to accumulate.

The Township contends that the above proposals are reasonable based upon the exhibits and testimony provided at the arbitration hearing and therefore should be awarded.

#### **Supplement to Brief**

On July 13, 2011, pursuant to the mutual agreement of the parties, the Township supplemented its post-hearing brief with respect to the relevance and impact of the passage of two resolutions (Resolution 124-11 and 134-11) setting forth the terms and conditions of employment for certain union and non-union Nutley Township employees in relation to the statutory criteria. The following are the terms of the resolutions which are identical for Local 97 bargaining unit members and exempt employees:

1. Salary: 2.25% in 2009; 2.25% in 2010; 1.75% in 2011; and 1.75% in 2012.
2. Elimination of Lincoln's birthday as a holiday.
3. Elimination of longevity for new hires.

4. Elimination of contractual provision which permits employees to earn a personal day for every six months without usage of a sick day.

The Township contends that comparing the salaries of Local 97 bargaining unit members and exempt employees to police salaries shows that police officers have a much higher salary. The salary range for employees for the non-police employees range from \$30,000 to \$50,000 whereas a police officer's ranges from \$45,000 to \$81,000. The Township notes that the salaries of SOA unit members range from \$90,000 to \$140,000. This means that the financial impact of similar percentage salary increases will be much greater in the police bargaining units with significant retroactive salary payments.

In support of its salary proposal, the Township cites the award of Arbitrator Mason in *Borough of Spotswood and PBA Local 225* in which the arbitrator awarded salary increases of 0.0% in 2011; 2% on July 1, 2012 and 2% on January 1, 2013. He further froze longevity at current rates and converted the percentage value to flat dollars for active employees and eliminated longevity for all employees not currently receiving longevity. Moreover, the arbitrator modified terminal leave. The Township asserts that the Mason award supports its position for 0.0% salary increases for the four-year contract period and that longevity pay should be eliminated for new hires and frozen at current levels for active employees.

The Township asserts that the resolutions establishing new terms and conditions of employment for Local 97 bargaining unit members and exempt employees have minimal relevance in relation to the statutory criteria.

The Township asserts that its final offer on all issues is fair and reasonable and should be implemented by the arbitrator.

### **Discussion**

The parties presented testimony and more than 225 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 its 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, 2009 to December 31, 2012.
2. I shall award the following changes and increases to the salary schedule:
  - (a) Effective January 1, 2009, all steps on the salary schedule in Article V (PBA) and Article VII (SOA) shall remain at the salaries in effect in 2008 except for the payment of increments.
  - (b) Effective January 1, 2010, all steps on the salary schedule in Article V (PBA) and Article VII (SOA) shall be increased by 2.5% plus \$300 except that the Deputy Chief salary shall remain at \$140,431.
  - (c) Effective January 1, 2011, all steps on the salary schedule in Article V (PBA) and Article VII (SOA) shall be increased by 3% plus \$300 except that the Deputy Chief salary shall remain at \$140,431.
  - (d) Effective January 1, 2012, all steps on the salary schedule in Article V (PBA) and Article VII (SOA) shall be increased by 3.5% plus \$300. The Deputy Chief salary shall be increased to \$143,809 effective January 1, 2012.
  - (e) Effective January 1, 2012, all new hires will be hired pursuant to a new salary schedule (Schedule 'B') which will include three (3) additional steps. The Academy Step shall be \$25,000 and Step 1 shall be \$30,000. These steps shall be six (6) month steps. All other steps are twelve (12) month steps and will be equalized between Step 1 and the maximum step of \$87,837.
  - (f) All salary increases are fully retroactive to the above effective dates.
  - (g) Effective January 1, 2012, the longevity schedule for new hires shall be as follows:

10 years	2%
15 years	4%
20 years	6%
24 years	8%

3. I shall award a cap of \$15,000 on payment for unused sick leave. The \$15,000 cap will apply to all current employees that have less than \$15,000 in accrued sick leave. Current employees with more than \$15,000 shall be capped at the level that is “in the bank” as of December 31, 2011.
4. All other proposals of the Town and the PBA/SOA are denied.

#### **Cost of Salary Proposals**

The current PBA bargaining unit (at the close of the record) for 2010 includes 13 Sergeants, 7 Detectives, 34 Patrol Officers at Step 5 (maximum), one Patrol Officer at Step 4, 3 Patrol Officers at Step 3 and 2 Patrol Officers at Step 2. The total base pay salary for 60 bargaining unit members in 2009 is \$4,833,267. The cost of longevity for the 60 bargaining unit members is \$218,375. The salary cost-out shall be calculated on a base salary including longevity of \$5,051,642.

The current SOA bargaining unit (at the close of the record) for 2010 includes 1 Deputy Chief, 1 Captain and 6 Lieutenants. The total base pay salary for eight bargaining unit members in 2009 is \$853,221. The cost of longevity for the SOA bargaining unit members is \$52,487. I note that the Deputy Chief is not receiving longevity pay. The salary cost-out shall be calculated on a base salary including longevity of \$905,708.

The total base salary and longevity costs for the PBA and the SOA in 2009 is \$5,957,350.

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. The calculations of the parties’ last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their last offers. Historically, incremental costs have not

been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making about 30% of the maximum step officer's salary. The PBA bargaining unit has low incremental costs as more than 90% of the unit are at maximum salary. There are no incremental costs in the SOA bargaining unit.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculation of the parties' last offers for 2009, 2010, 2011 and 2012 do not include the cost of increments.

**Cost of Parties' Salary Proposals  
and the Awarded Salary Increases**

**2009**

The PBA/SOA proposed a 2.5% across-the-board increase to be effective January 1, 2009. The cost of the PBA/SOA proposal (excluding increments) in 2009 is \$148,934. The PBA/SOA proposed a \$350 increase in the Training Stipend in 2009. The total cost of the Training Stipend is \$23,800. Thus, the total cost of the PBA/SOA proposal in 2009 is \$6,130,084.

The Township proposed no salary increases in 2009. The total cost of the Township's salary proposal in 2009 is \$5,957,350.

I awarded no salary increases in 2009. The total cost of the awarded salary schedule in 2009 is \$5,957,350. However, since I have frozen the Deputy Chief salary for the duration of the 2009-2012 CBA, the base salary for calculation of salary increases in 2010, 2011 and 2012 shall be \$5,816,819.

## **2010**

The PBA/SOA proposed a 3.0% across-the-board increase to be effective January 1, 2010. The cost of the PBA/SOA proposal (excluding increments) in 2009 is \$183,902. The PBA/SOA proposed a \$350 increase in the Training Stipend in 2010. The total cost of the Training Stipend is \$23,800. Thus, the total cost of the PBA/SOA proposal in 2010 is \$6,337,786.

The Township proposed no salary increases in 2010. The total cost of the Township's salary proposal in 2010 is \$5,957,250.

I awarded a 2.5% salary increase in 2010. The total cost of the awarded salary increase in 2010 is \$145,420. I awarded a \$300 increase in the Training Stipend in 2010. The total cost of the Training Stipend is \$20,100. Thus, the total cost of the awarded salary increases in 2010 is \$165,520. The base salary cost for calculation of increases in 2010 is \$5,982,339. The actual base, including the Deputy Chief's salary is \$6,122,770.

## **2011**

The PBA/SOA proposed a 3.5% across-the-board increase to be effective January 1, 2011. The cost of the PBA/SOA proposal (excluding increments) in 2011 is \$221,822. The PBA/SOA proposed a \$350 increase in the Training Stipend in 2011. The total cost of the Training Stipend is \$23,800. Thus, the total cost of the PBA/SOA proposal in 2011 is \$6,583,408.

The Township proposed no salary increases in 2011. The total cost of the Township's salary proposal in 2011 is \$5,957,350.

I awarded a 3.0% salary increase in 2011. The total cost of the awarded salary increase in 2011 is \$179,470. I awarded a \$300 increase in the Training Stipend in 2011.

The total cost of the Training Stipend is \$20,100. Thus, the total cost of the awarded salary increases in 2011 is \$199,570. The base salary cost for calculation of salary increases in 2010 is \$6,181,909. The actual base, including the Deputy Chief's salary is \$6,322,340.

## **2012**

The PBA/SOA proposed a 3.5% across-the-board increase to be effective January 1, 2012. The cost of the PBA/SOA proposal (excluding increments) in 2012 is \$230,419. The PBA/SOA proposed a \$350 increase in the Training Stipend in 2012. The total cost of the Training Stipend is \$23,800. Thus, the total cost of the PBA/SOA proposal in 2012 is \$6,837,627.

The Township proposed no salary increases in 2012. The total cost of the Township's salary proposal in 2012 is \$5,957,350.

I awarded a 3.5% salary increase in 2012. The total cost of the awarded salary increase in 2012 is \$216,367. I awarded a \$300 increase in the Training Stipend in 2012. The total cost of the Training Stipend is \$20,100. Thus, the total cost of the awarded salary increases in 2012 is \$236,467. The total salary cost in 2012 is \$6,418,376. The actual base, including the Deputy Chief's salary is \$6,558,807.

## **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 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 Township

to exceed its authority under the CAP law. The award can be funded without the Township 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, 2009 to December 31, 2012 which is effectively a stipulated agreement as both the Township and the PBA/SOA proposed a four-year agreement effective January 1, 2009 to December 31, 2012.

### **Salary**

The major issue in this matter is salary, longevity and health care premium sharing. 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.

Salary and 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.

The Township proposed that all bargaining unit members contribute 7% of their base salary toward the cost of health benefits. At the close of the hearing, all bargaining unit members were contributing 1.5% of base salary toward the cost of medical insurance benefits pursuant to the requirements of P.L. 2010, c. 2. This is a statutory obligation that the Township is required to implement. The record indicates that the Township implemented the 1.5% contribution effective May 22, 2010. The 1.5% contribution is in line with the significant pattern of negotiated and arbitrated agreements that include premium cost sharing provisions and other cost containment agreements. In an award issued in January 2010, I showed this statewide pattern by detailing the large number of voluntary agreements and awards providing for premium sharing and cost containment in support of an award of the employer's health care cost sharing proposal. (*Township of Lakewood & PBA Local 71*, PERC Docket No. IA-2009-049, at 46-54, January 10, 2010).

However, since the close of the hearing, P.L. 2010, c. 2 has been amended by P.L. 2011 c.78 to provide 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 cost for health insurance for the vast majority of the PBA bargaining unit members and all of the SOA bargaining unit members. The contributions are phased in over four years. 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 show the percentage cost of family coverage:

\$70,000 to less than \$75,000	22% of the cost of coverage
\$75,000 to less than \$80,000	23% of the cost of coverage
\$80,000 to less than \$85,000	24% of the cost of coverage
\$85,000 to less than \$90,000	26% of the cost of coverage
\$90,000 to less than \$95,000	28% of the cost of coverage
\$95,000 to less than \$100,000	29% of the cost of coverage
\$100,000 to less than \$110,000	32% of the cost of coverage
\$110,000 or more	35% of the cost of coverage

This means that a Nutley Township police bargaining unit member earning \$90,000 annually will be paying 28% of the cost of family coverage. The cost of family coverage in the State Health Benefits Program (the “SHBP”) in 2012 is \$1,478.75 monthly for NJ Direct 15 which totals \$17,745 annually. The cost of family coverage in Direct 10 in 2012 is \$1,552.88 monthly which totals \$18,635 annually. The record does not indicate if the Township has elected to have its prescription drug coverage provided through the SHBP. The above cost includes prescription drug coverage.

2012 would be the second year of the phase-in at 50% of the annual contribution rate. Thus, a police officer earning \$80,000 annually would contribute 12% of the cost of coverage. The contribution for family coverage in Direct 10 would be \$2,236 annually in 2012. This would increase to \$3,354 (18%) in 2013 and to \$4,472 (24%) in 2014. The former 1.5% contribution in effective May 22, 2010 through the first six months of 2011 was \$1,350 annually.

A police officer earning \$90,000 annually would contribute 14% of the cost of coverage. The contribution for family coverage in Direct 10 would be \$2,609 annually. This would increase to \$3,912 (21%) in 2013 and to \$5,232 (28%) in 2014. The former 1.5% contribution in effective May 22, 2010 through the first six months of 2011 was \$1,350 annually.

A police officer earning \$100,000 annually would contribute 16% of the cost of coverage. The contribution for family coverage in Direct 10 would be \$2,982 annually in 2012. This would increase to \$4,472 (24%) in 2013 and to \$5,964 (32%) in 2014. The former 1.5% contribution in effect May 22, 2010 through the first six months of 2011 was \$1,350 annually.

This means that in 2014, a police officer earning \$80,000 will contribute 5.6% of base salary toward the cost of full family health coverage. This is equal to 5.8% at \$90,000 and 5.96% at \$100,000. The maximum contribution of 35% applicable to salaries of \$110,000 or more is \$6,522 annually in 2014. This is nearly \$5,000 more than the \$1,650 generated by the 1.5% contribution.

The above analysis shows that the enactment of P.L. 2011, c. 78 will provide the Township with substantial cost containment of health benefits. The Township will realize a significant increase in health benefit contributions from its 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 5.5% of base salary for more than 90% of the bargaining unit by 2014. The contribution rate will be 1.5% of base salary in 2010 and 2011. In 2012, the contribution rate will increase to the equivalent of at least 2.75%; in 2013 it will increase to the equivalent of at least 4.13% and then to the equivalent of least 5.5% in 2014.

The true value of increased cost sharing is shown by calculating the contributions in 2012, 2013, and 2014. In 2012, the total base salary under the terms of the award will be \$6,558,807. The former 1.5% contribution would have yielded \$98,382 in 2012. Under the new premium sharing formula, the contribution would be the equivalent of \$180,367 in

2012; \$270,879 in 2013; and to \$360,734 in 2014. The above numbers are based on the SHBP's 2012 premium rates. However, if the premium rates increase in 2013 and 2014, the Township will receive even higher contributions from its police officers since the percentage contributions are applied to the premiums not an officer's base salary.

The Township, in its last offer, proposed that all police officers contribute 7% of base salary toward the cost of health benefits. Upon the close of the record, this was a proposal that was "ahead of its time" as there was nothing in the record to support the Township's proposal. No other municipality, county or the State of New Jersey negotiated premium sharing that was significantly above the annual 1.5% required by P.L. 2010, c. 2. Based on the evidence in the record, the Township's proposal for a contribution of 7% of annual base salary could not be sustained. While, I may have increased the 1.5% contribution of base salary toward the cost of health insurance premiums, such increases would have been measured against the total economic package including salary increases. Thus, it is clear that the Township has achieved much of its goal to require its employees to contribute 7% of annual salary toward the cost of health benefit coverage. While this goal was not achieved through the collective bargaining process — the result is the same — the Township will achieve a significant increase in health care contributions and its police officers will see a commensurate decrease in their annual salary. This is equivalent to approximately 4% annually in 2014.

The new health benefit premium sharing, 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 Township's police officers. Simply stated, the vast majority of police officers in the PBA and SOA bargaining units will

be contributing between 24% and 35% of future premium increases. The financial gain to the Township which provides for a commensurate decrease in a police officer's annual salary favors the award of salary increases above the Township's four-year 0.0% salary proposal and below the PBA/SOA four-year salary proposal of 12.5% and a \$350 annual increase in the Training Stipend.

I awarded no salary increases in 2009. In 2010, I awarded a 2.5% salary increase and a \$300 increase in the Training Stipend. In 2011, I awarded a 3% salary increase and a \$300 increase in the Training Stipend. In 2012, I awarded a 3.5% salary increase and a \$300 increase in the Training Stipend. These increases are applicable to all steps on the salary schedule and to all ranks in the bargaining unit. In addition, I awarded a new salary schedule and longevity schedule for all officers hired on or after January 1, 2012. This new salary schedule has three additional steps and reduced longevity benefits. Finally, I froze the Deputy Chief salary at the 2008 salary of \$140,431. I note that the current Deputy Chief is not receiving longevity payments. I have frozen the salary to bring it into line with the current rank differentials. The rank differential for First Sergeant, Lieutenant and Captain is 12%. The rank differential for Deputy Chief is nearly 22%. I increased the Deputy Chief salary in 2012 to \$143,809 which is 12% above a Captain's salary in 2012.

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, P.E.R.C. No. 99-28, 24 NJPER 466 (29214 1998). I have awarded the above salary increases for several reasons.

First, I have “mirrored” the terms of the salary increases negotiated between the Township and the FMBA/SOA. The annual salary increases awarded to the PBA/SOA are identical to the salary increases negotiated in the Fire Department bargaining units in 2009, 2010, 2011 and 2012. In 2008, the salary of a maximum step Patrol Officer was \$79,534 whereas the salary of a maximum step Firefighter was \$79,333. The total salary increase for the four-year period is 9% which average 2.25% annually. In addition, I awarded the same \$300 annual increase to the Training Stipend that the firefighters received in the “Haz Mat” Stipend. This will add approximately 1% to the salary schedule bringing the average increase to 2.5% annually. Interest arbitration awards and PERC decisions are replete with references to “pattern” bargaining and maintaining uniformity of benefits between police officers and firefighters. An award below the award received by the firefighter bargaining units would alter what appears to be a long history of maintaining nearly identical salary schedules, longevity schedules and other economic benefits. I would be reluctant to maintain the pattern if the salary increases were outside of the current comparability data. However, the salary increases awarded herein and negotiated with the firefighter bargaining units are within the range of recent settlements.

Second, the awarded salary increases are similar to the increases negotiated by the Township with employees in the Teamster Local 97 bargaining unit as well as the salary increases received by the Township’s exempt employees. The salary increases are 2.25% in 2009, 2.25% in 2010, 1.75% in 2011 and 1.75% in 2012. While these salary increases average 2% versus 2.5% for police and fire, I note that the salary increases are full retroactive for Local 97 and exempt employees resulting in a much higher payout over the four years.

Also, the record does not indicate if the Local 97 contract executed in June of 2011 maintained the health care contribution at 1.5% through the end of 2012.

Third, effective January 1, 2012, all new hires will be hired pursuant to a new salary schedule (Schedule ‘B’) which will include three additional steps. The Academy Step shall be \$25,000. This is a six-month step. Step 1 shall be \$30,000 and is also a six-month step. Steps 2-8 shall be twelve-month steps. All other steps will be equalized between Step 2 and the maximum salary of \$87,837. This is the same maximum salary on Schedule ‘A’ applicable to all officers hired before January 1, 2012. The new salary schedule (with three additional one-year steps) will result in future savings to the Township of nearly \$150,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. In the first five years of employment, the cumulative earnings on Schedule ‘B’ are reduced by \$125,000 when compared to the same movement on Schedule ‘A’. Schedule ‘A’, if not modified, would have provided a \$54,547 salary increase after only two years on the job. 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 salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced 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 costs of annual increments become 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 modifications to the salary schedule will give the Township 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 police department. These changes will not impact on the Township'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.

Fifth, I awarded a modified longevity schedule applicable to all employees hired on or after January 1, 2012. The new longevity schedule eliminates the 2% longevity step after five years of service. The new salary schedule has an Academy Step and Steps 1 through 8. This means that a police officer hired on or after January 1, 2012 will now take an additional three years to reach maximum. The new longevity schedule is 2% after ten years of service; 4% after fifteen years of service; 6% after twenty years of service; and 8% after 24 years of service. Thus, there will be no longevity costs to the Township for new hires until at least 2022. The modified longevity schedule and the additional steps on the salary schedule will provide for a more equitable distribution of future salary increases to the Township's experienced police officers. This will become more significant in 2013 when salary increases will be limited to 2% of base salary inclusive of incremental costs and longevity costs. The additional steps will decrease the Township's incremental costs. Under the current schedule, if not modified, rookie police officers would have received a \$25,648 increase after six months on the job followed by a more than \$14,447 increase after 12

months on the followed by another \$14,450 increase after 24 months on the job. These large increases would have diminished the PBA's ability to negotiate reasonable salary increases for experienced officers.

Fourth, while the PBA/SOA 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/SOA 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 the other statutory criteria. In past years, comparability data was measured against annual cost-of-living increases which were consistent with the average annual 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%. 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 increase in 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 3.3%

through October 2011. Thus, the average increase in the CPI during the last four years is 2.15%. This dramatic decline in the CPI must be given considerable weight. I note that this decline in the CPI has also seen significant decline in the most recent PERC salary data. The average increase in PERC reported awards and voluntary settlements for the period January 1, 2010 through October 15, 2010 is 2.5% annually. The average increase in awards posted on the PERC webpage in 2011 is 2.25%. This is 1.5% 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. 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 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 up to 5% when furloughed. State employees are experiencing 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 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 to the statutory criteria.

In summary, I find 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 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 have awarded salary increases that recognize the significant decline in the cost-of-living, acknowledged the Township'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 and 2011.

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

Comparisons of the wages, salaries, hours and conditions of employment of the Township'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 police officers who perform services similar to those performed by Township police officers. Neither party

submitted salary data on this sub-factor since none exists. A police officer position is a uniquely public sector position that does not lend itself to private sector comparisons.

The Township and the PBA/SOA agree that there are no 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 emphasized private employment comparisons.

I take arbitral notice that the awarded salary increases which average 2.5% annually, are higher than average salary increases in private employment in 2009. I conclude that the awarded salary increases, while 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 any salary data on public employment in general. I have served as a mediator, fact-finder and interest arbitrator (binding fact-finding) in many cases involving other public sector employees; i.e., school district employees and non-police municipal and county employees. A review of this salary data shows that the average annual salary increases in public employment in general are consistent with the awarded salary increases. 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 Township employees. I have already discussed the internal comparability between the PBA/SOA and the firefighter bargaining units as well as the impact of the negotiated settlement with IBT Local 97 and the salary increases granted to exempt employees. I placed great weight on the settlements between the Township and its firefighter bargaining units in awarding salary increases that are identical to those negotiated by the Township and the firefighter bargaining units. I noted that the awarded salary increase are marginally higher than the salary increases negotiated with IBT Local 97 but found that the payout was also marginally higher over four years since Local 97 received a salary increases in 2009 - the year that salaries were frozen at the 2008 level.

I find that this sub-factor is fully supportive of the awarded salary increases in 2010, 2011 and 2012.

I provided extensive analysis of the third sub-factor, 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, namely, comparisons to other police officers in similar jurisdictions in my discussion of *Salary* on pages 79-90.

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, acknowledge the Township's (and other public employers) reduced ability to fund salary increases at prior levels, and the substantial decline in average salary increases in 2010 and 2011.

**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 Township 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. The Township 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 slightly less than 10% over four years for an average of just less than 2.5% annually. There is no additional cost to the Township in 2009 since the salary schedule was frozen at 2008 levels. There were incremental costs in 2009 but this is minimal as the vast majority of the Township police officers are at the maximum step on the salary schedule. The incremental costs are minimal in 2010, 2011 and 2012. The incremental costs will be significantly reduced in 2012 when Schedule ‘B’ is implemented.

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. P.L. 2011 c.78 requires a minimum contribution of 1.5% of base salary up to a maximum of 35% of the cost of the health insurance coverage. As discussed above, when fully implemented, the vast majority of the Township’s police officers will be contributing an average of 5.5% of base salary toward the cost of health insurance premiums. This means that in 2014, a police officer earning \$80,000 will contribute 5.6% of base salary toward the cost of full family health coverage. This is equal to 5.8% at \$90,000 and 5.96% at \$100,000. The maximum contribution of 35% applicable to salaries of \$110,000 or more is \$6,522 annually in 2014. This is nearly \$5,000 more than the \$1,650 generated by the 1.5% contribution.

Finally, I awarded a new salary schedule for new hires to be effective January 1, 2012. The new salary schedule (with three additional one-year steps) will result in future savings to the Township of nearly \$150,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. In the first five years of employment, the cumulative earnings on Schedule ‘B’ are reduced by \$125,000 when compared to the same movement on Schedule ‘A’. Schedule ‘A’, if not modified, would have provided a \$54,547 salary increase after only two years on the job. While the Township

will not realize these savings immediately, the new salary schedule will benefit both the PBA and Township as more funds will be available to pay senior 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 Township 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 Township 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 Township's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

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 increase in 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 3.3% through October 2011. Thus, the average increase in the CPI during the last four years is 2.15%. This dramatic decline in the CPI must be given considerable weight. I note that this decline in the CPI has also seen significant decline in the most recent PERC salary data. The average increase in PERC reported awards and voluntary settlements for the period January 1, 2010 through October 15, 2010 is 2.5% annually. The average increase in awards posted on the PERC webpage in 2011 is 2.25%.

I conclude that the awarded base salary increases, while slightly higher than the average increase in the cost of living, provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Township’s police officers. 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 economic 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 Township’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 Township 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 generated by Schedule ‘B’ to the Township also benefits the bargaining unit as a whole. The modifications to the salary schedule will give the Township 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 police department. These changes will not impact on the Township’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.

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 Township’s police officers and find that the terms of my Award will maintain existing levels.

#### **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.

### **Clothing Allowance**

The Township proposes the elimination of the clothing and maintenance allowances in the PBA and SOA contracts. The current clothing allowance is \$625 and the clothing maintenance allowance is \$825. The Township contends that the total payment of \$1,450 is higher than clothing/maintenance allowances received by other police officers in Essex County. The Township submitted comparability data from other Essex County municipalities.

The Unions are opposed to the Township's proposal to eliminate the current allowances. The Unions submitted the following comparisons with higher clothing allowances: Verona (\$1,000); West Orange (\$900); Newark (\$1,000); Montclair (\$1,050) as well as several other municipalities. The Unions submit that the average Essex County clothing allowance is \$798. The Unions note that the current clothing and maintenance allowances are identical to those received by the rank-and-file firefighter bargaining unit and the firefighters' superior officers bargaining unit.

A review of the comparability data shows numerous municipalities in Essex County with equal to or higher clothing allowances and higher combined clothing/maintenance allowances. There are also numerous municipalities in Essex County with lower clothing allowances and lower combined clothing/maintenance allowances. However, the data is flawed since there is nothing in the record to determine which municipalities may have "rolled" the clothing allowance into base salary.

Accordingly, I find that the evidentiary record does not support the Township's proposal to eliminate the current clothing and maintenance allowances. The Township's proposal is denied.

### **Holidays**

The Township seeks to reduce the number of holidays from fourteen to seven. The Township submitted comparability data showing that the average number of holidays in municipalities in Essex County is 12.6. Again, this data is flawed because many communities, like Nutley have "rolled" the holidays into base salary. The value of the current 14 holidays is 5.38%. Thus, granting the Township's proposal would require a salary reduction of 2.7%. The Township's police officers do not enjoy the holidays like other Township employees as they are scheduled to work an additional 14 days annually. Thus, they are paid for working the extra 14 days.

Accordingly, I find that the evidentiary record does not support the Township's proposal to reduce the number of holidays. The Township's proposal is denied.

### **Vacation Leave**

The Township seeks to reduce the number of annual vacation days by five days annually. The Township's comparability data confirmed that the Township's police officers receive vacation leave which is below the County average at five, ten and fifteen years of service. Township's police officers with over 20 years service receive vacation leave that exceeds the Essex County average by 1.6 days annually.

Accordingly, I find that the Township has not met its burden to demonstrate a need for reducing annual vacation leave by five days annually. The Township's proposal is denied.

### **Personal Days & Bereavement Days**

The Township seeks to reduce the maximum number of personal days from four to three for SOA unit members and from four to two for PBA unit members. The Township contends that the County average is 1.5 days annually.

The Township seeks to reduce the number of bereavement days from four to three. The Unions are opposed to the Township's proposal.

The Unions note that the Township did not negotiate any changes in personal days and bereavement days with the firefighter bargaining units which have identical levels of personal days and bereavement days. The Township conceded in its brief that its police officers receive a similar number of bereavement days as other Essex County municipalities. I have patterned the salary increases, including a 0.0% salary increase in 2009. I see no basis in this record to reduce the number of personal days and bereavement days when the Township did not seek a reduction in personal days and bereavement days from the firefighter units nor did it seek any changes in the recent negotiated settlement with IBT Local 97.

Accordingly, I find that the Township has not met its burden to demonstrate a need to reduce annual personal days and bereavement days. The Township's proposal is denied.

### **Sick Time**

The Township proposes that all accumulated sick time as of December 31, 2010 shall remain fixed at the current value and number of sick days. Any payment for future accumulation (earned after January 1, 2011) of sick time shall be capped at \$15,000. Any member who seeks to use sick time shall have such time deducted from their sick leave bank of time earned prior to December 31, 2010. If that bank is exhausted then the employee may

use sick time earned after December 31, 2010. The Unions are opposed to the Township's "Sick Time" proposal.

I am aware that legislation has been enacted which may impact on the parties' ability to negotiate the level of payment for unused sick leave. This legislation may affect current employees. However, the payout of earned sick leave upon retirement is considered to be a vested benefit. Thus, I see no basis (nor am I inclined) to alter any current levels of payment for unused sick leave that is "in the bank." Again, if this is covered by recent statutory changes, I have no authority to award or continue benefits covered by the statutory change.

However, there is considerable effort being made to cap the payment of sick leave upon retirement. Accordingly, I shall award a cap of \$15,000 on payment for unused sick leave. The \$15,000 cap is consistent with the cap on all State employees. The \$15,000 cap will apply to all current employees that have less than \$15,000 in accrued sick leave. Current employees with more than \$15,000 shall be capped at the level that is "in the bank" as of December 31, 2011.

#### **Medical Insurance**

The Township seeks the following changes in retiree medical insurance. The Union is opposed to the proposed changes.

The Township will pay the cost of health coverage for all retirees and their eligible dependents so long as the retiree has retired with at least twenty-five (25) years of service credit in the Police and Fire Retirement System and had worked a period of at least twenty-five (25) years with the Township. The Township and the Union may agree to permit a retiree who does not meet the above requirements to participate in the Township's health insurance plan at his or her own cost.

Article XVII of the 2004-2007 PBA and SOA collective bargaining agreements provide as follows:

The Township shall provide for hospital medical insurance, inclusive of Major Medical, for all employees and their families at no cost to the employee. The benefit shall be the same as previously provided under the New Jersey State Health Benefits Program (SHBP) . . . The Township shall provide for hospital and medical insurance for all retirees and their spouses, excluding employees who elect deferred retirement, for the life of the retirees.

The Township's main argument is that the high cost of retiree health benefits require that the Township establish stricter limits on eligibility for such coverage.

The PBA/SOA assert that Article XVII obligates the Township to provide, at no cost, post-retirement medical benefits for all police officers who qualify for any PFRS retirement (including an Ordinary; Involuntary or Accidental Disability retirement). Further, there has never been any actual years of service threshold which an officer (or any other Township employee) must satisfy as a prerequisite to qualify for post-retirement medical benefits.

The Unions note that the current entitlement to post-retirement medical benefits is consistent with the benefits provided to all other Township employees – union and non-union. The Unions submit that the Township's proposal would likely render most, if not all, officers who retire on a PFRS Disability ineligible for post-retirement medical benefits. Due to the extremely volatile nature of the law enforcement profession, as well as the alarmingly high number of assaults committed on municipal Police Officers each year (especially in Essex County), the likelihood that a Nutley Police Officer may be disabled during his/her career is, unfortunately, quite high. The Unions submit that it is extremely unfair to require these officers to put their life and well-being on the line every day and, at the same time, deny said officers post-retirement medical benefits in the event that they are disabled in the service of the Township.

Finally, the Unions assert that the Township's proposal would adversely affect a large number of PBA and SOA members who possess PFRS service credit as a result of their employment or military service prior to commencing employment with the Nutley Police Department. The Union points out that these officers will be deprived of post-retirement medical benefits upon attaining 25 years of pension service credit. Instead, these officers would be forced to postpone retirement plans and continue working with the Township for several more years in order to qualify for post-retirement medical benefits. The Unions submitted a list of thirty Nutley police officers (who possess PFRS service credit as a result of either prior law enforcement or military experience) who would be adversely affected by the awarding of the Township's proposal.

I find that the evidence in the record does not support a finding in favor of the Township's proposal. The Township essentially "made a deal" when it hired numerous officers from other police departments with prior service credits as a police officer. These officers accepted employment in Nutley knowing that they would receive retiree health benefits upon satisfying the PFRS requirements. To change the rules of the game now would be "reneging" on a prior promise to provide retiree medical benefits which is considered to be a major term and conditions of employment.

Accordingly, I find that the evidentiary record does not support the Township's proposal to change the eligibility for retiree medical benefits. The Township's proposal is denied.

## **Manpower Allocation**

The Township proposed the following changes to Article X, Section 5, Notification of Manpower Allocation, as follows:

5. Manpower Requirements: The Department agrees that one Sergeant and two patrol officers shall be permitted to be off at the same time on each of the three patrol division shifts. The category of time taken (Vacation, PDO, SDO) to conform with this requirement shall be irrelevant, except that Vacation picks in accordance with Article XII of this agreement, shall be given priority. Time off that exceeds the terms of this provision shall be at the sole discretion of the Shift Commander/Supervisor.

The current language reads as follows:

5. Notice of Manpower Allocation: The Chief of Police shall serve written notice to the PBA on a quarter-annual basis setting forth the minimum manpower allocation established for uniformed patrol officers assigned to patrol cars (exclusive of fixed posts) on each shift.

The PBA submits that there is no justification in the record to warrant any change in the current language. According to the PBA, this clause merely obligates the Chief to advise the PBA of the Patrol Division's minimum staffing levels. The clause does not obligate the Chief to negotiate with the PBA those minimum staffing levels (i.e., five officer minimum; four officer minimum, etc.). Rather, the Chief merely sets the minimum staffing level for the Patrol Division. If, for whatever reason, the levels for a particular shift fall below said "minimums", then the Department merely hires another officer on overtime to maintain the minimum staffing level for that particular shift.

The PBA suggests that the last portion of the proposed language – empowering the Shift Command/Supervisor with the "sole discretion" to permit additional officers off – without establishing any standards, guidelines, etc. – is an invitation for arbitrary and capricious decisions which, ultimately, may lead to more grievances filed and increased litigation.

I am aware that this issue has been the subject of considerable litigation between the parties before PERC and in the courts. While it appears that the Township is concerned about its managerial prerogatives and overtime obligations, there is nothing in the record to support a change in the current language. The Township provided no documentation of overtime costs caused by the current contract language nor has it provided any specific details as to how it will provide more latitude to control costs.

Accordingly, I find that the evidentiary record does not support the Township's proposal to change the language of Article X, Section 5. The Township's proposal is denied.

#### **Overtime Rate**

The Township proposed the following changes to Article IX, Section 2, Overtime Rate, as follows:

2. **Overtime Rate**. In the event an employee is called in to work during other than regularly scheduled hours, including off duty court or administrative appearances, but excluding disciplinary hearings, he/she shall be paid at the rate of time and one half (1 ½) for a guaranteed minimum of two (2) hours for all hours worked, whichever is greater, provided however that the two (2) hour minimum shall not apply to hours worked contiguous with the employee's work day. Upon the signing of this agreement, the option of selecting compensatory time shall be eliminated. All overtime payments pursuant to this article shall be made no later than the second pay period from the time worked and no longer than four (4) weeks in total. The Township shall be assessed an additional \$5.00 per day penalty thereafter.

The current language in the CBA provides as follows:

2. **Overtime Rate**: In the event an employee is called in to work during other than regularly scheduled hours, including off duty court or administrative appearances, but excluding disciplinary hearings, he/she shall be paid at the rate of time and one half (1 ½) for a guaranteed minimum of two (2) hours for all hours worked, whichever is greater, provided however that the two (2) hour minimum shall not apply to hours worked contiguous with the employee's work day. For court appearances, which would qualify for overtime, the employee shall have the option of accepting compensatory time (at time and one half). All overtime payments pursuant to this article shall be made no later than the second pay period from the time worked and no longer than four (4) weeks in total. The Township shall be assessed an additional \$5.00 per day penalty thereafter.

The PBA/SOA is opposed to the Township's proposal to eliminate the existing, long-standing option allowing officers to elect to be paid for overtime in the form of either cash or compensatory time. The Unions contend that the "cash or comp time" option works to the benefit of both the Township and the PBA. The Township benefits because the "comp time option" helps maintain its cash overtime costs to relatively manageable levels. The Unions note that the CBA permits the maximum accumulation of 150 hours of comp time.

The Township is essentially seeking to limit its liability for future payment of compensatory time by keeping such time off the books. As the Unions noted, compensatory time is limited to 150 hours annually. I have assisted parties to voluntary resolution of compensatory time "nightmares" where the number of hours on the books were out of control and the public employer's liability (usually unfunded) was massive. In those cases, provisions were made for the capping of such compensatory time and the employer was given the option of paying off the compensatory time to reduce its unfunded liability.

That is not the case in this matter. There is no evidence of a compensatory time "nightmare" in Nutley Township. Compensatory time is capped at 150 hours, well below the 480 hour cap under the Fair Labor Standards Act. Also, I note that the only overtime that is optional as compensatory time for a police officer is overtime "for court appearances."

Accordingly, I find that the evidentiary record does not support the Township's proposal to change the language of Article IX, Section 2. The Township's proposal is denied. Furthermore, since I have denied the Township's proposal to change Article IX, Section 2, I also will deny its proposal to eliminate compensatory time.

### **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 also determined the total net economic annual changes for each year of the agreement and concluded that those 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 recent 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. I have acknowledged the Township's (and other public employers) reduced ability to fund salary increases at prior levels.

Accordingly, I hereby issue the following award:

## **AWARD**

### **1. Term of Agreement**

There shall be a four-year agreement effective January 1, 2009 through December 31, 2012.

### **2. Salary & Salary Schedule**

I shall award the following changes and increases to the salary schedule:

- (a) Effective January 1, 2009, all steps on the salary schedule in Article V (PBA) and Article VII (SOA) shall remain at the salaries in effect in 2008 except for the payment of increments.
- (b) Effective January 1, 2010, all steps on the salary schedule in Article V (PBA) and Article VII (SOA) shall be increased by 2.5% plus \$300 except that the Deputy Chief salary shall remain at \$140,431.
- (c) Effective January 1, 2011, all steps on the salary schedule in Article V (PBA) and Article VII (SOA) shall be increased by 3% plus \$300 except that the Deputy Chief salary shall remain at \$140,431.
- (d) Effective January 1, 2012, all steps on the salary schedule in Article V (PBA) and Article VII (SOA) shall be increased by 3.5% plus \$300. The Deputy Chief salary shall be increased to \$143,809 effective January 1, 2012.
- (e) Effective January 1, 2012, all new hires will be hired pursuant to a new salary schedule (Schedule 'B') which will include three (3) additional steps. The Academy Step shall be \$25,000 and Step 1 shall be \$30,000. These steps shall be six (6) month steps. All other steps are twelve (12) month steps and will be equalized between Step 1 and the maximum step of \$87,837.
- (f) Effective January 1, 2012, the longevity schedule for new hires shall be as follows:

10 years	2%
15 years	4%
20 years	6%
24 years	8%
- (g) Salary schedules are attached. All salary increases are fully retroactive to the above effective dates.

3. I shall award a cap of \$15,000 on payment for unused sick leave. The \$15,000 cap will apply to all current employees that have less than \$15,000 in accrued sick leave. Current employees with more than \$15,000 shall be capped at the level that is "in the bank" as of December 31, 2011.
4. All other proposals of the Township and the PBA/SOA are denied.



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ROBERT M. GLASSON  
ARBITRATOR

Dated: November 26, 2011  
Pennington, NJ

**Schedule A**  
(Officers hired before January 1, 2012)

	1/1/09	1/1/10	1/1/11	1/1/12
Academy (0-6 months)	25,000	25,000	25,000	25,000
Patrol Officer/1st Step (7-12 months)	45,500	46,938	48,646	50,648
Patrol Officer/2nd Step (13-24 months)	58,723	60,491	62,606	65,097
Patrol Officer/3rd Step (25-36 months)	71,947	74,046	76,567	79,547
Patrol Officer/4th Step (37-48 months)	75,740	77,934	80,572	83,692
Patrol Officer/5th Step (49-60 months)	79,534	81,822	84,577	87,837
First Sergeant	89,165	91,694	94,745	98,361

**Schedule B**  
(Officers hired on or after January 1, 2012)

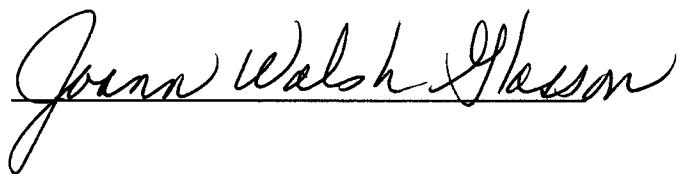
	1/1/12
Academy (0-6 months)	25,000
Patrol Officer/1st Step (7-12 months)	30,000
Patrol Officer/2nd Step (13-24 months)	38,250
Patrol Officer/3rd Step (25-36 months)	46,500
Patrol Officer/4th Step (37-48 months)	54,750
Patrol Officer/5th Step (49-60 months)	63,000
Patrol Officer/6th Step (61-72 months)	71,250
Patrol Officer/7th Step (73-84 months)	79,500
Patrol Officer/8th Step (85 + months)	87,837
First Sergeant	98,361

**Salary Schedule - SOA**

	1/1/09	1/1/10	1/1/11	1/1/12
Lieutenant	100,000	102,800	106,185	110,200
Captain	112,191	115,296	119,055	123,522
Deputy Chief of Police	140,431	140,431	140,431	143,809

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

On this 26<sup>th</sup> day of November 2011, 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  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 12/11/2011**