

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

TOWNSHIP OF HANOVER

"Public Employer"

and

PBA LOCAL 128

"Union"

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2009-079

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Township:

Fredric M. Knapp, Esq.

Marissa Becker Ruggiero, Esq.

Knapp, Trimboli & Prusinowski, LLC

For the PBA:

David J. DeFillippo, Esq.

Klatsky, Sciarabone & DeFillippo

This award arises from an interest arbitration proceeding involving the Township of Hanover [the "Township"] and PBA Local 128 [the "PBA" or "Union"]. Direct negotiations between the parties towards reaching a new agreement resulted in an impasse. A petition seeking the invocation of interest arbitration was filed by the PBA and I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425. I conducted a pre-interest arbitration mediation session but the impasse remained, thus requiring the scheduling of interest arbitration hearings on September 29, 2010 and February 25, 2011. At the interest arbitration hearings, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Testimony was received from Chris Martino, President, Local #128, Joseph Petrucelli, CPA, Stephen Gallagher, Hanover Township Chief of Police, Silvio Esposito, Township Financial Advisor and Chief Financial Officer and Joseph A. Giorgio, Township Business Administrator. Each party filed post-hearing briefs which were received on June 5, 2011. The parties have also engaged in direct post-record voluntary settlement efforts without having reached agreement.

FINAL OFFERS OF THE PARTIES

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

The PBA

1. **Duration of Agreement:** Five (5) years agreement commencing January 1, 2009 through December 31, 2013.

2. **Article II – Hours of Work**

Currently those officers working the twelve (12) hour schedule are afforded nine (9) 12hour days off with pay - referred to as "circle days" - which are scheduled by the Police Department. The PBA proposes that individual PBA members shall be provided the discretion to schedule said "circle days" at their option, subject to the Department's minimum staffing levels.

3. **Article IV – Payment in Lieu of Holidays**

Officers shall be paid at the rate of time and one-half (1 ½) their regular rate of pay for all work performed on a holiday.

4. **Article VII – Wages**

- Salaries shall be increased. Retroactive to January 1, 2009, as follows:

2009-3.5%
2010-3.5%
2011-3.5%
2012-3.5%
2013-3.5%

- The longevity schedule Set forth on page 17 shall be increased as follows:

2009 - All steps increased by \$300
2010 - 10th year; 15th year and 20th year steps shall be increased by \$200
2011 - 15th and 20th year steps shall be increased by \$200
2012 - 20th year Step shall be increased by \$200
2013 - 20th year Step shall be increased by \$200

- Out of Title Pay. All officers assigned to the Patrol Division shall be entitled to out of title compensation consistent with the terms of Township Ordinance Sec. 61-22

5. **Article X – Uniforms and Uniform Allowance**

- Section 1. The annual clothing allowance shall be increased as follows:

2009 - Increased by \$100 to \$850

2010 - Increased by \$100 to \$950

2011 - Section 1 shall be deleted and replaced with a one-time base salary adjustment of \$950 into base salary for all PBA members

- Section 2: this clause shall be revised to state as follows:

With the exception of uniform shirts, trousers. Uniform cap and ties. The employer shall provide to Patrolmen, Sergeants, and Detective all other necessary materials for Patrolmen, Sergeants, and Detectives to perform the duties required of them as a result of normal wear and tear or damage in the line of duty.

With regard to the uniform allowance, it shall be the responsibility of the Chief of Police to establish appropriate specifications for the uniform which must be conformed to and met by the items of clothing purchased by each Patrolman, Sergeant, and Detective

- Section 3: This uniform maintenance allowance shall be increased as follows

2009- Increased by \$50 to \$350

2010- Increased by \$20 to \$400

2011- Section 3 shall be deleted and replaced with a one-time base salary adjustment of \$400 shall be made into the base salary of each officer

The Township

1. **Duration of Agreement:** Four (4) year agreement commencing January 1, 2009 through December 31, 2012.

2. **Article VII - Wages:**

Effective January 1, 2009 -2.5%

Effective January 1, 2010 -2.0%
Effective January 1, 2011 -2.0%
Effective January 1, 2012 -1.5%

3. **Article XI – Insurance and Retirement:** Effective upon execution of the contract, the Township will no longer offer the two (2) traditional health insurance/medical benefits plans previously offered through the North Jersey Municipal Employee Benefits Fund (hereinafter referred to as the "Fund"). The two (2) plans to be discontinued are the Hanover Choice 20 and the Hanover Choice 250 plans. In their place, the Township will make available to all current and future members of the PBA, the Patriot 5 and Hanover Township Open Access health insurance/medical benefits plans.
4. **Article XI – Insurance and Retirement:** Any person hired by the Township as a patrolman on or after January 1, 2009 shall be responsible to pay 25% of the total monthly premium cost for health insurance/medical benefits coverage under a single, parent/child, husband/wife or family plan as offered by the Township through the North Jersey Municipal Employee Benefits Fund. The contribution cost per year, per employee, shall be calculated by the Township's Finance Department in accordance with the total premium costs assessed through the Fund in making available the various health insurance plans.
5. **Article XI – Insurance and Retirement:** Any person hired by the Township as a patrolman on or after January 1, 2009 shall not be eligible to receive health insurance/medical benefits coverage upon retirement irrespective of the number of years of earned net credited service with the Township or any other municipality through the Police and Firemen's Retirement System. At the time of retirement, the spouses and dependents of said retirees shall also not be eligible to receive any health insurance/medical benefits coverage as well.
6. **Article VII – Wages, Section 2, Longevity:** Any person hired by the Township as a patrolman on or after January 1, 2009 shall not be eligible to receive longevity benefits.
7. **Pay Period:** Effective upon execution of this contract, all employees shall be issued paychecks twice per month instead of bi-weekly as has been the past practice.

BACKGROUND

The Township has 13,000 residents living in 10.8 square miles of this Morris County community. It is one of thirty-eight (38) municipalities in Morris County and is comprised of the unincorporated communities of Cedar Knolls and Whippany and borders the Townships of Morris, Parsippany-Troy Hills, East Hanover and the Boroughs of Morris Plains and Florham Park. The Township is primarily a suburban, residential municipality but many commercial and industrial businesses are located within its borders, including Lucent Technologies, Abbott Labs, Verizon and Bear Sterns. The Morristown Airport also lies within its borders.

At time of hearing, there were 25 members in the PBA Local 128 bargaining unit. In addition, the Department employs a Chief of Police, one (1) Captain, and one (1) Lieutenant. The bargaining unit includes seventeen (17) Patrol Officers, four (4) Detectives, one of whom acts and is paid as a Sergeant, and four (4) Sergeants. One Patrol Officer position was open at the time of hearing. In 2008, the Patrol Officers were paid on a salary schedule that includes an Academy step and seven steps thereafter ranging from \$26,988 to \$85,963. The Detectives were paid at the single rate of \$91,894. Sergeants were paid on a three step schedule ranging from \$94,172 to \$98,730.

The PBA submits that the police department is professional, efficient and effective and allows for an environment that protects the Township's residential, business and commercial communities and maintains its family-oriented character. It points out that the Township's crime index total fell from 190 in 2007 to 142 in 2008. During the same time period, violent crimes fell from 178 to 138, the crime rate per 1,000 fell from 13.8 to 10.4 and the violent crime rate per 1,000 fell from 0.8 to 0.3. The Township has maintained a healthy socio-economic profile. The 2000 census showed a median household income of \$84,115, a median family income of \$93,937 and a per capita income of \$37,661. These statistics reflect amounts beyond the respective income levels in the County of Morris as a whole. The Township acknowledges this but contends that the onset of the 2008 recession and events thereafter have reduced revenues and ratables and have threatened its ability to maintain a high level of service to its residents while being required to limit spending and taxes.

The issues in dispute are primarily economic as that term as defined by statute. They include medical insurance, retiree medical benefits, wages, longevity, hours of work, payment in lieu of holidays and uniforms/uniform allowance. In addition, there are two non-economic issues. One involves the timing for the issuance of paychecks and the other is the duration of the agreement.

The Township and the PBA have made expert and comprehensive evidentiary submissions in support of their respective positions. The Township and PBA Local 128 have also provided extensive argument as to the relevance of the nine statutory criteria and the weight to be afforded to the evidence each has submitted on them. The specifics of those submissions will be reviewed in the context of evaluating the parties' respective proposals. In general, the evidence with respect to the Township's budget and finances and comparability among law enforcement units form the major part of the parties' presentations. Within these broad topics, the predominant focus of the evidence includes budgetary trends, cap calculations, tax appeals, tax rates, pension contributions, ratables, state aid, fund balance, comparative salaries within the County of Morris and comparative benefit levels within the County of Morris.

Both parties, through testimony and exhibits of financial experts, have provided substantial data and opinion as to the Township's finances. The parties' views on the health of the Township's finances differ, but mostly so with respect to the amount of funds that the Township can reasonably commit toward financing the terms of the new labor agreement. There is little disagreement as to the years that preceded the expiration of the Agreement. In the years that precede 2009, the record reflects that the Township had a solid residential, business and commercial tax base, consistently rising revenues and real estate values and a stable tax rate through the exercise of sound fiscal management. Evidence of the Township's financial ability preceding the new contract years is

the 2008 one year voluntarily negotiated agreement that included an across the board increase of 4.2% following contract years that also provided increases of 4.2%. Going forward into this contract period, the PBA relies mainly upon the financial data through year 2008 while the Township focuses on changes in that data caused by the onset of the recession late in 2008 and its effects thereafter. The PBA asserts that notwithstanding the recession, the Township's financial profile remains strong. These different perspectives are reflected in the terms that each party has proposed in their respective final offers.

In order to place the parties' differing views on the Township's finances in perspective, I have summarized the major points emphasized by the PBA and the Township.

PBA

- The Township has continually regenerated millions in surplus each year between 2005 and 2010, utilizing surplus revenue to stabilize the tax levy and assist its requirement to comply with the tax levy cap. The PBA contends that the Township's regenerated fund balance of \$2,529,785.56 on December 31, 2010 is available for the 2011 budget to stabilize taxes and to fund the PBA's requested salary increases.
- Actual revenue raised by taxation has continually exceeded the Township's budgeted estimates. The PBA cites data showing that the Township exceeded its revenue estimates by an average of \$1,290,814.82 or by a total of \$8,344,888.90 for the six year period between 2005 and 2010.
- The Township has enjoyed continued revenue growth that exceeds the requested salary increases proposed by PBA Local No. 128. According to the PBA, estimated budget revenues between 2005 and 2010 have grown by an average of 6.32% per year, a figure far in excess of the salary increases proposed by the PBA.

- The Township has continually had appropriation reserves which arise out of spending less than budgeted and encumbrance reserves. Per the Unaudited Annual Financial Statement as of December 31, 2010 the Township had \$1,953,064.76 in available reserves for future spending. The PBA points out that the total reserves for 2010 amounted to \$1,953,064.76. By continually spending less than is budgeted, the reserves that lapse after one year generate surplus.
- The Township has continually had additional revenues it did not anticipate and per the Unaudited Annual Financial Statement as of December 31, 2010 had additional revenue of \$341,031.75. The PBA asserts that the Township consistently receives revenue from sources that are not anticipated in the budget nor raised by taxation, thus enabling revenue to be available for budget appropriations in future years.
- The Township has had the ability to generate millions in results from operations which become available for future year budgets.
- According to the PBA, retirements, resignations and other reductions have created substantial savings to the Township. The PBA asserts that in 2010, 1 resignation occurred. In 2011, 2 other resignations occurred. The estimated cost savings related to resignations and reductions is \$544,737.69 over the proposed contract period. These reductions will also provide additional estimated annual savings of \$271,163.82 (based on the 2012 year proposal calculations) to the Township. In addition, 2 more members are currently eligible for retirement which could generate additional estimated annual savings of \$229,589.90 (based on the 2012 year proposal calculations) to the Township.
- The Township has \$2,096,291.86 in reserve for tax appeals at December 31, 2010 and has the ability to finance any others that may arise that have not been reserved for. The PBA rejects the Township's argument that tax appeals would prevent the Township from funding the PBA salary proposal.
- The Township's collection rate has increased to 96.91% for the December 31, 2010 year. According to the PBA, the cash collection rate to total levy has increased from 95.0% in 2008 and 2009 to 96.91% in 2010. The increased collection rate is said to enable the Township to reduce the non-spending budget appropriation "Reserve for Uncollected Taxes" and in turn, reduce the following year required tax levy.

The Township

- The Township points out that statutory changes have caused a reduction in the property tax levy cap from 4% in 2010 to 2% in 2011, thereby permitting only a \$288,108.25 increase in the 2011 tax levy.
- The Township submits that there has been a sharp decline in the collection of revenues in 2009 and 2010 due to decreases in ratables. Instead of the increase of \$8,461,454 in ratables in 2008, there was a \$26,128,223 decrease in 2009 and an additional decrease of \$15,745,683 in 2010. Thus, the sum of ratables went from \$2,039,915,715 in 2008 to \$2,013,787,492 in 2009 and \$1,998,041,809 in 2010. According to CFO Silvio Esposito, the decline in ratables as caused a smaller base in which to spread tax obligations, thereby causing a need for increased taxes. The amount to be raised by taxation has increased from \$11,860,389 in 2007 to \$12,623,177 in 2008 to \$13,360,491 in 2009 and o \$14,405,413 in 2010.
- The Township submits that its general revenues have significantly declined pointing to \$9,573,266 in 2008 and a drop to \$8,535,244 in 2009 and a further decrease to \$7,690,287 in 2010.
- The Township submits that there has been an increase in commercial tax appeals. It points to more than 60 pending commercial tax appeals, including the major tax appeal filed by Alcatel-Lucent for the tax years 2008, 2009 and 2010, all of which could result in large decreases in assessments and the mandatory refund of \$2-\$5 million previously collected.
- Because of declining revenues and cap restraints, the Township is utilizing a higher percentage of surplus towards succeeding budget years. This percentage as risen from 82.17% in 2007 to 87.13% in 2008 and 89.04% in 2009.
- The Township was required to perform a reevaluation of all Township properties in 2011, at an estimated cost of \$300,000 to \$350,000, a portion of which will be absorbed in the 2012 budget and counted against the 2% property tax levy cap.
- The Township lost approximately \$1 million in State Aid between 2007 and 2010. State aid to the Township has decreased from

\$3,245,163 in 2007 to \$3,019,839 in 2008 to \$2,938,448 in 2009 to \$2,293,522 in 2010.

- There has been a decrease in court revenue as shown by the following summary of [Municipal Court] Tickets Issued and Lost Municipal Court Revenue 2007-2010

	<u>Total Tickets Issued</u>	<u>Resulting Revenue</u>
2007	7412	\$661,740
2008	6862	\$665,399
2009	5774	\$513,578
2010 (projected)	3000	\$392,027

- Budgetary pressures have caused the Township to propose and implement a layoff plan that includes two police officers. Exhibit A to the November 11, 2010 resolution provides for the following Reductions in Staff:

- Administration Department – eliminate one clerk (p/t) position
- Engineering Department – eliminate one Engineer Aide II position
- Administration Department, Buildings and Ground – eliminate one custodian (f/t) position
- Police Department – eliminate two Patrol Officer positions
- Construction Code Official Department
- Public Works Department, Roads – eliminate one Laborer II / Sanitation Collector II/Truck Driver Position
- Public Works Department, Parks Maintenance – eliminate two Park Maintenance Worker (f/t) position
- Board of Health – eliminate one Health Educator (p/t) position
- Proposed Reduction of Full-Time to Part-Time Status
- Administration Department – reduce one Executive Assistant position and one General Secretary position from full to part-time
- Finance Department – reduce one Account Clerk position from full to part-time
- Board of Health – reduce one Public Health Nurse Position from full to part-time
- Violations Bureau – reduce one Deputy Court administrator/Violations Clerk position from full to part-time
- Construction Code Official Department – reduce one Electric Subcode Official, Electrical Inspector position from full to part-time
- Engineering Department – Two junior engineers

- There has been a decline in the number of Building Permits issued between 2006 and 2009. There were 1,142 issued in 2006, 912 in 2007, 870 in 2008 and 897 in 2009.

The parties have submitted cost outs of the respective final offers on salary. As is evident in their analyses, the amounts of the difference that has been calculated differs significantly depending on whether the dollar differences are calculated on an individual annual basis or on a cumulative basis over the four or five year period.

The PBA's cost out is as follows:

- The PBA estimates the difference between the cost of the Township's and the PBA's proposals as a total of \$154,013.58 that it contends can be easily funded by the Township. The PBA provides the basis for its cost comparisons as follows:

The cost proposal was based on date of hire information provided by PBA Local No. 128. We first applied a 3.50% increase to the base salary for the year 2009, 3.50% for 2010, 3.50% for 2011, 3.50% for 2012 and 3.50% for 2013 in accordance with the existing step guide for PBA Local No. 128 members. We then applied longevity, seniority and the step base at the appropriate level in accordance with the existing agreement based on the date of hire. The PBA Local No. 128's Final Offer (Tab 7) of 3.50%, 3.50% 3.50%, 3.50% and 3.50% was compared to the Township's final offer of 2.50% in 2009, 2.0% in 2010, 2.0% in 2011, and 1.5% in 2012 (Tab 7). The differences between the increases of the two final cost proposals after the analysis are as follows:

Year to Year Differences

The difference between the Township and PBA 2009 cost proposal	\$42,471.49
The difference between the Township and PBA 2010 cost proposal	\$38,648.07
The difference between the Township and PBA 2011 cost proposal	\$39,515.27
The difference between the Township and PBA 2012 cost proposal	\$53,324.27

Cumulative Differences

The Cumulative difference between the Township and PBA cost proposals is \$173,959,101.

Note: A Cost Difference was not calculated for 2013 as the Township did not provide an offer for that year.

Based upon charts calculating total base salary, minus payroll costs or pension costs, the Township summarizes cost differences as follows:

Year	Township Offer	PBA Offer	Difference
2009	\$2,292,727	\$2,322,559	\$29,832
2010	\$2,346,438	\$2,415,854	\$68,416
2011	\$2,410,325	\$2,553,375	\$143,050
2012	\$2,449,619	\$2,646,869	\$197,250
TOTAL DIFFERENCE			\$438,548

DISCUSSION

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been

designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

In addition to the statutory criteria, in interest arbitration proceedings, I am guided by the following principles. The party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. No proposed issue by either party can be deemed presumptively valid without justification supported by the statutory criteria. If this were not the case, parties could frivolously propose demands, without evidentiary support, especially given the liberty afforded by conventional arbitration to make an unlimited number of proposals without fear of adverse consequence. Any decision to award or deny any individual issue in dispute must include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an individual issue is decided

can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be reached after assessing the merits of any individual issue within the context of an overall award.

Duration

The PBA proposes a five year agreement effective January 1, 2009 through December 31, 2013. The Township proposes a four year agreement effective January 1, 2009 through December 31, 2012. Under all of the facts and circumstances that are present in this record, a contract duration that extends through December 31, 2013 is a reasonable determination of this issue. The additional contract year proposed by the PBA will allow for stability and a reasonable period of time prior to contract expiration for each party to evaluate any changes that each wishes to propose a successor agreement. Moreover, the record in this proceeding is sufficiently broad and substantive in scope to permit an award covering this time period consistent with the application of the statutory criteria. Accordingly, I award a contract duration that extends through December 31, 2013.

Article II – Hours of Work

The PBA proposes a change to Article II – Hours of Work. Although not specifically expressed in Article II, the current patrol schedule is for twelve (12) hour shifts to be worked over a two (2) week cycle providing seven (7) such

twelve (12) hour workdays. There is a 108 hour difference in annual hours worked by officers who are assigned to the patrol division. According to testimony of PBA President Martino, officers assigned to the patrol division receive nine (9) twelve (12) hour shifts off annually in order to provide parity in the hours that are worked among all of the officers. The parties define these days as "circle days." Martino's testimony is that the "circle days" are earned on a pro-rata basis during the year, essentially amounting to one day for every six weeks of work. Martino's testimony is that patrol officers have little discretion as to when they are scheduled off on a "circle day" because they are used when an officer's absence from work will not create a shortage on a patrol shift that would necessitate another officer being assigned on an overtime basis. The PBA's proposal is intended to provide officers with a greater ability to choose when to take a "circle day."

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

In the instant matter, the PBA is proposing to modify the "circle" day entitlement in two respects. First, the PBA proposes that the officers be provided with the discretion to use all 9 days at their discretion, subject, of course, to Department staffing needs. Second, the PBA is proposing that all 9 "circle" days be awarded to the officers on January 1 of each calendar year.

PBA President Martino testified that an award of this proposal would not have an adverse impact on the operations of the Police Department as the use of such "circle" days cannot be approved if same would result in a shortage on a particular shift and necessitate overtime. At the same time, PBA President Martino explained, officers would be able to use the "circle" day when they

could best use it, for example, attending family functions, etc. PBA President Martino testified that the morale of the Department would be enhanced by an award of this proposal and that the approval of such "circle" day requests would be done on a seniority basis, much like that employed for approval of other paid leave requests such as vacation, personal days, etc.

Moreover, the PBA respectfully submits that affording all 9 "circle" days up front to an officer would not have any adverse impact on the Township and, in turn, would similarly boost the morale of the Department. Again, the use of such "circle" days cannot occur under circumstances where in the Department would have to hire a replacement officer on overtime.

For all of the above reasons, it is respectfully submitted that the PBA's proposal relative the scheduling and use of "circle" days must be granted.

The Township urges denial of the PBA's proposal asserting that to award options would usurp its managerial prerogatives regarding staffing. The Township expands upon its argument in its post-hearing submission:

... as stated by PERC in its decisions in Matter of Jersey City, P.E.R.C. No. 94-30, 19 NJPER 542 (¶24256, 1993) and Passaic Bd. of Ed., 15 NJPER 490, 492 (¶20200, 1989), staffing/manning decisions are not negotiable as they are the managerial prerogative of the employer. As the Commission stated in City of East Orange, 6 NJPER 378 (¶11195, 1980); aff'd (App. Div. 1981), certif. den., 88 N.J. 476 (1981) staffing issues are "... within the rubric of 'manpower,' an issue repeatedly heretofore held by us not to be mandatorily negotiable ...". The decision in Hunterdon County, 14 NJPER 331 (¶19123, 1998), serves to show that, even where a contract between a municipality and a union, as is the case here, contains language that may contradict the municipality's manning/staffing decision, the municipality's decision concerning manning will take precedence because such decisions are not mandatorily negotiable and are within the its managerial prerogative.

The aforementioned PERC decisions validate the Township's position that the Police Department shall continue to schedule the circle days, as the Police Department has the managerial

prerogative to make such manning/staffing decisions unilaterally. Accordingly, this should not be an issue for negotiation, and the PBA's proposal should be denied.

I find the Township's concerns asserting interference with its non-negotiable right to staff the department to not be persuasive given the concessions that appear in the PBA's proposal and argument. The issue predominantly concerns when earned time off may be taken rather than staffing, so long as minimum staffing levels are not compromised nor overtime required to backfill a vacancy if the absent officer is replaced. However, because the department is small, a granting of authority to a police officer to take a circle day at his or her option could result in confusion and inconvenience without language setting forth specificity as to limitations on the selection of circle days. Currently, there is no contractual provision that serves as guidance with respect to this issue. I have awarded the following language for the purpose of providing a contractual procedure that will provide some discretion to the officer while easing operational concerns as to staffing:

Officers who are assigned to work the twelve (12) hour schedule shall receive nine (9) 12 hour days off annually earned on a pro rata basis. These days shall be defined as "circle days." The Chief of Police, or his designee, shall have the discretion to grant a "circle day" to an officer, based upon that officer's request, provided that the request be in writing at least seven calendar days prior to the requested day off and provided that the request does not violate the Department's minimum staffing levels nor cause the Department to replace the absent officer by the use of an assignment that compels overtime. A written response to a request to take a "circle day" shall be provided by the Chief or his designee, no later than four days prior to the "circle day" being requested.

Article IV – Payment in Lieu of Holidays

The PBA proposes that officers be paid at the rate of time and one-half of their regular rate of pay for all work performed on a holiday. The Township opposes this proposal.

Citing the testimony of PBA President Martino, the PBA points out that police officers do not receive holidays in the form of time off or monetary compensation. Martino testified that compensation for 13 holidays was rolled into each officer's base pay on the basis of an 8 hour work day back in 2002. The PBA asserts that it is not seeking to change that arrangement nor to increase its entitlement to holiday compensation. Instead, it contends that the proposal is limited to those officers who work on any of the thirteen recognized holidays and, if they do, that they receive pay at the rate of time and one half. The PBA believes that this proposal is equitable and would merely provide a small benefit to those officers who are inconvenienced by being required to work on the specified holidays.

The Township seeks denial of the PBA's proposal believing that it would provide "an unconscionable windfall" in light of the previous May 1, 2002 Recommended Interest Arbitration Award that folded holiday pay into base salary for all employees.

The existing arrangement with respect to holiday pay is set forth in Article IV as follows:

ARTICLE IV – PAYMENTS IN LIEU OF HOLIDAYS

Section 1: Elimination of Holidays

There shall no longer be any holidays for employees covered under this Agreement.

Section 2

Effective January 1, 2002 all holiday pay for all employees covered by this Agreement was folded into the base pay on the basis of 13 holidays at the rate of an eight (8) hour day and paid along with the regular payroll and be used for all calculations purposes.

Although the PBA is technically correct that unit members are not rewarded with premium pay for work performed on a holiday, the PBA's proposal fails to take into consideration that the parties negotiated a trade off when it folded thirteen (13) holidays into base pay. That arrangement substantially improved base pay at a rate well above the across the board salary increase for that year and thereafter. Moreover, the rate of holiday pay at the time of the fold in has been compounded by wage increases since 2002 and thereafter. Also, by requiring that the value of the fold in be used for all calculation purposes, unit members have benefited by the fold in above and beyond the improvements that were made to base salary. The Township has been required to make increased pension payments because of the fold-in and on the amount that salaries have increased since the date of the fold-in. Significantly, the 2002 arrangement specifically recognized that "there shall no longer be any holidays for employees

covered under this Agreement.” Based upon these reasons, I do not award the PBA's proposed change.

Article X – Uniforms and Uniform Allowance

Article X of the existing Agreement provides for a clothing allowance of \$750 and a uniform maintenance allowance of \$300. The language in Article X details the manner in which uniforms are provided and the terms of the existing allowances. Article X currently provides the following terms:

ARTICLE X - UNIFORMS AND UNIFORM ALLOWANCE

Section 1

The Employer shall pay all bargaining unit members a clothing allowance of \$750 for 2008. Payments shall be made against this allowance only upon submission of approved vouchers describing the clothing to be purchased, which must be appropriate for the duties performed pursuant to specifications established by the Chief of Police. Upon actual purchase of clothing, itemized receipts must be presented promptly to the Township Administrator.

Section 2

With the exception of the shirts, trousers, uniform cap and ties which cost to the Township shall not exceed the amount specified in Section 1 above per bargaining unit employee, the employer shall also provide to patrolmen, sergeants and detectives, all other necessary materials for patrolmen, sergeants and detectives to perform the duties required of them as a result of normal wear and tear or damage in the line of duty.

With regard to the uniform allowance, it shall be the responsibility of the Chief of Police Department to establish appropriate specifications for the uniform which must be conformed to and met by the items of clothing purchased by each patrolman, sergeant and detective. Upon actual purchase of clothing, an itemized receipt must be presented promptly to the Chief of Police.

Section 3

Each officer shall receive a Uniform Maintenance Allowance of \$300.00 for each calendar year which allowance shall be paid in two (2) equal installments on June 1 and December 1. Said Allowance shall be prorated for new hires.

Employees must be employed from January 1st through June 30 to receive a full payment on June 1st, and must be employed from July 1st through December 31st, to receive a full payment on December 1st. However, employees who resign from employment prior to June 30th or December 31st shall receive payments prorated, on a monthly basis, from the date of hire, to June 30 or December 31st, as the case may be. Proration as described above shall be calculated from the first day of the month, following the date of employment to the last day of the month, prior to the date of termination. Thus, proration can be done on the basis of full months of employment in either the case of termination or hire.

The PBA proposes change in all three sections of Article X. The PBA's proposed changes are as follows:

- Section 1. The annual clothing allowance shall be increased as follows:

2009 - Increased by \$100 to \$850

2010 - Increased by \$100 to \$950

2011 - Section 1 shall be deleted and replaced with a one-time base salary adjustment of \$950 into base salary for all PBA members

- Section 2: this clause shall be revised to state as follows:

With the exception of uniform shirts, trousers. Uniform cap and ties. The employer shall provide to Patrolmen, Sergeants, and Detective all other necessary materials for Patrolmen, Sergeants, and Detectives to perform the duties required of them as a result of normal wear and tear or damage in the line of duty.

With regard to the uniform allowance, it shall be the responsibility of the Chief of Police to establish appropriate

specifications for the uniform which must be conformed to and met by the items of clothing purchased by each Patrolman, Sergeant, and Detective

- Section 3: This uniform maintenance allowance shall be increased as follows

2009- Increased by \$50 to \$350

2010- Increased by \$50 to \$400

2011- Section 3 shall be deleted and replaced with a one-time base salary adjustment of \$400 shall be made into the base salary of each officer

The PBA points to the testimony of PBA President Martino that the costs for purchasing uniforms and maintaining those uniforms, which include both a winter and summer uniform, have undergone increases since the time of the last year of the Agreement. The Township opposes increasing the existing levels of these two allowances for economic reasons. It further objects to rolling the allowances into base pay due to the increase in pension costs that the Township would be required to pay.

The testimony of PBA President Martino is credible that the costs associated with maintaining uniforms in the condition that the Chief can require have been subject to increase since the 2008 level of allowance was set. Most of the agreements in evidence reflect modest increase in this type of allowance since 2008. The annual allowance for uniform maintenance is set forth in Section 3 at \$300. I award an increase of \$100 annually in the uniform maintenance allowance effective January 1, 2013. I do not award the PBA proposals to increase the annual clothing allowance in Section 1 nor to roll the

clothing and maintenance allowance into base salary. Further, I decline to award the language revisions to Section 2 in the absence of evidence that would justify the revision sought by the PBA. The overall cost of this award is approximately \$2,000 in 2013.

Article XI – Insurance and Retirement

The Township has proposed three changes to the existing Insurance and Retirement provision set forth in Article XI. The initial proposal concerns the plans to be offered to PBA unit members. The proposal is as follows:

Effective upon execution of the contract, the Township will no longer offer the two (2) traditional health insurance/medical benefits plans previously offered through the North Jersey Municipal Employee Benefits Fund (hereinafter referred to as the "Fund"). The two (2) plans to be discontinued are the Hanover Choice 20 and the Hanover Choice 250 plans. In their place, the Township will make available to all current and future members of the PBA, the Patriot 5 and Hanover Township Open Access health insurance/medical benefits plans.

Under the terms of the existing Agreement, the Township currently provides two traditional health insurance benefit plans that are only available for police department employees. They are the Hanover Choice 250 Plan and Hanover Choice 20 Plan. Both are offered through the North Jersey Employee Benefits Fund. The Township's proposal is to change coverage from these two plans to the two plans that are currently available to all Township employees. Those two plans are Hanover Open Access and Hanover Patriot V. The Township points out that by having uniform plans throughout the Township, its

cost will drop from \$796 or \$782 per month for the two plans provided to the PBA to \$631 a month for Hanover Open Access and \$567 per month for Hanover Patriot V. Similarly, family premium costs on the new plans would be reduced from \$2,037 and \$2,027 to \$1,619 and \$1,466 respectively. Under the Township's proposal, an officer could keep either of the two present insurance plans but that officer would be responsible for the cost difference between the two plans. The Township calculates that it would achieve annual savings of \$98,256 by the adoption of its proposal.

The PBA sees the Township's proposal as an unwarranted change from the existing plans and a reduction in the level of benefits and that were awarded by an interest arbitrator on November 16, 2005. The PBA also views the Township's proposal as an "insult to injury" by virtue of the mandatory health insurance contributions they have been required to make due to legislation.

After due consideration of the parties' positions on this issue, I am compelled to conclude that the Township's proposal represents the more reasonable determination of this issue. The proposed plans offer a savings per employee of either \$6,732 or \$5,016 annually for those who choose family coverage. The proposed plans are not inexpensive and show, at 2010 rates, annual family coverage premiums of \$19,428 for the Open Access Plan. The savings will offset much of the cost of wage increases that have been awarded and will cause a substantial decrease in contributions toward premiums at are

now legally required. Although the PBA contends that there would be benefit reductions, it has not established that either of the two plans have inferior protection. The Township's proposal is not only based upon cost but is also an attempt to provide uniform coverages for all employees employed by the Township of Hanover. Based upon these considerations, and the fact that unit employees will continue to receive comprehensive health care coverage under the proposed changes, the Township's proposal is awarded. The effective date for implementation of the change shall be no sooner than October 1, 2013.

The Township's second proposal concerns employee contributions toward health insurance/medical benefits: The proposal is as follows:

Any person hired by the Township as a patrolman on or after January 1, 2009 shall be responsible to pay 25% of the total monthly premium cost for health insurance/medical benefits coverage under a single, parent/child, husband/wife or family plan as offered by the Township through the North Jersey Municipal Employee Benefits Fund. The contribution cost per year, per employee, shall be calculated by the Township's Finance Department in accordance with the total premium costs assessed through the Fund in making available the various health insurance plans.

The Township's proposal concerning contributions towards health insurance/medical benefits is aimed at reducing the Township's financial burden to provide these benefits. It points out that its cost for health insurance was \$496,872 in 2005 and rose to \$729,720 in 2010. The Township acknowledges that Chapter 2, P.L. 2010 required its employees to pay, at minimum, 1.5% of base salary towards health insurance. The Township's proposal is to have

officers hired on or after January 1, 2009 pay 25% of premium costs, an amount that exceeds the required 1.5%. It points out that civilian employees, pursuant to Township of Hanover Ordinance 10-2007 are required to pay 25% of the cost of medical premiums and that this would provide uniformity.

The PBA also acknowledges its obligation under Chapter 2, P.L. 2010 but objects to the 25% proposal of the Township. It notes that the proposal, if awarded, would constitute the highest premium sharing obligation for new employees among law enforcement units in Morris County.

Both parties acknowledge that legislation was enacted requiring unit members to contribute 1.5% of base salary towards health care benefits effective May 21, 2010 pursuant to P.L. 2010, Chapter 2. On June 28, 2011, shortly after the close of the record on June 5, 2011, there was additional legislative action that addressed the issue of employee health insurance contributions. The Governor signed P.L. 2011, Chapter 78 into law with an effective date of June 28, 2011 or the first pay period in July pursuant to that legislation. That legislation provides for amounts of health benefit contributions pursuant to a percentage schedule based upon a combination of the type of coverage the employee selects and the amount of base salary that employee earns. This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider the Township's lawful authority and statutory limitations. One such legal requirement is to implement Chapter 2 and Chapter

78 in accordance with their terms. While it is accurate that the legislation represents a minimum and does not bar the Township's proposal that would require contributions of 25% for new and lesser paid police officers, I do not award the Township's proposal. The existing legislative scheme provides substantial offsets to the Township's financial obligations to provide health insurance/medical benefits, thereby fulfilling its objective during this contract term. I do not find any basis to award a deviation from the mandatory legislative scheme that would require greater contributions for new hires. Accordingly, the Award will reflect that health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. Section 2 of Article XI shall be modified solely to the extent that this requirement be incorporated into the Agreement.

The Township's third proposal concerns the eligibility for health insurance/medical benefits for future retirees. Specifically, the Township proposes that officers hired after January 1, 2009 not receive Township provided medical benefits when they retire. The existing agreement at Article XI, Section 3 provides:

To be eligible to receive health insurance benefits upon retirement, any employee hired on or after January 1, 2001, and retiring in accordance with the provisions of the Police and Firefighters Retirement system, following twenty-five (25) years of continuous service, must complete at least twenty (20) of the twenty-five (25) years of continuous service with the Township of Hanover. Periods of suspension, approved leave of absence or periods of disability/medical leave shall not be deemed to break "continuous service." Only time for which pension payments have been made shall be credited toward the continuous service requirement.

The Township views its proposal as one that would significantly reduce the cost of benefits that have contributed to a “bloated budget.” The Township further notes that if its proposal were awarded, the officers who would then not be eligible for Township provided medical benefits upon retirement would still be eligible for New Jersey’s State Health Benefits Program, Chapter 30, P.L. 1997, a program in which it asserts that the State pays for 80% of the premium for retirees.

The PBA seeks rejection of the proposal. It asserts that the Township’s proposal is “unjustified, unfair and unwarranted.” It submits a chart reflecting that Hanover is one of 22 Morris County municipalities that provide post-retirement medical benefits and asserts that not one of those municipalities has eliminated this benefit. The PBA also objects to a distinction being drawn between new and existing employees contending that a two tier approach on this issue would have negative impact on the morale of the department. It hypothesizes that new employees would be more tempted to transfer to another law enforcement department that continues to provide this benefit, thereby disrupting continuity and stability of employment in the department.

The parties have voluntarily negotiated the retiree health benefits provision pursuant to N.J.S.A. 52:14-17:38. While the benefit is a cost item to the Township, averaging \$15,138 among 25 present retirees, it is a major term and condition of employment included in the overall compensation package

currently received by PBA Local 128. The fact that it represents a cost item is not, in and of itself, a sufficient basis for the elimination of this benefit. The Township is now receiving substantial offsets in the cost of providing its health insurance program. Further, P.L. 2011, Chapter 78 contains new requirements that set standard employee contributions to be deducted from a retiree's retirement allowance. Accordingly, during this contract term, I do not award the Township's proposal to eliminate retiree medical coverage for police officers hired after January 1, 2009.

Article VII – Wages, Section 2, Longevity

The Township and the PBA have each advanced a proposal to change the existing longevity section of the wage article.

Under the existing contract article and section, the following longevity payments are currently being made:

ARTICLE VII – WAGES

Section 2: Longevity

- A. In addition to the salaries listed herein, all eligible police officers shall receive longevity payments which shall be paid and included in the employee's base rate of salary based upon years of Service in accordance in the following schedule:
1. Beginning with the 5th year of employment: \$300/year
 2. Beginning with the 10th year of employment: \$400/year
 3. Beginning with the 15th year of employment: \$500/year
 4. Beginning with the 20th year of employment: \$600/year

The PBA has proposed to increase longevity payments, pursuant to Article VII, Section 2, in accordance with the following annual increases:

2009 - All steps increased by \$300
2010 - 10th year; 15th year and 20th year steps shall be increased by \$200
2011 - 15th and 20th year steps shall be increased by \$200
2012 - 20th year Step shall be increased by \$200
2013 - 20th year Step shall be increased by \$200

The Township opposes the PBA's proposal.

The PBA supports its longevity proposal based mainly upon an analysis that compares the longevity benefits received in Hanover with the average level of longevity benefits within Morris County. The PBA offers charts to support its contention that the existing benefit compares unfavorably. One such chart compares a patrol officer with ten years of service in Hanover with the Morris County average and the other compares a Sergeant with fifteen (15) years of service in Hanover with the Morris County average. The charts reflect the following:

<u>Year</u>	<u>Hanover 10 Year Patrolman</u>	<u>Morris County Average</u>
2006	\$400	\$1,906
2007	\$400	\$1,918
2008	\$400	\$1,968
2009	\$400	\$2,133
2010	\$400	\$2,399
2011	\$400	\$2,952
2012	\$400	\$2,883

<u>Year</u>	<u>Hanover 15 Year Sergeant</u>	<u>Morris County Average</u>
2006	\$500	\$3,056
2007	\$500	\$2,962
2008	\$500	\$2,982
2009	\$500	\$3,287
2010	\$500	\$3,746
2011	\$500	\$4,629
2012	\$500	\$4,588

Notwithstanding the evidence reflecting disparities in comparable levels of longevity benefits, I do not award the PBA's proposals. Comparability is only one of the statutory criteria and cannot be relied upon exclusively. As is the case with most existing contract provisions, they have been negotiated over the course of many years and the benefit levels have presumably evolved based upon mutual accommodations being made on other issues. The PBA has shown that the existing longevity payments are comparatively modest but consideration must be given to the financial impact of the award on the governing body, residents and taxpayers. In light of the record concerning the Township's finances, I conclude that changes in base compensation levels should more appropriately be directed towards base salary improvements.

The Township has also made a proposal on longevity. It has proposed that all patrol officers hired on or after January 1, 2009 not be eligible to receive any longevity benefits. The PBA seeks the denial of this proposal.

According to the Township, the existing benefit imposes a financial burden and is contributing to the Township's budgetary woes. The PBA contends that the existing longevity compensation program is significantly below the amounts provided in police departments throughout Morris County and should not be disturbed. The PBA calculates from agreements in evidence that, in 2011, the average Morris County ten year patrolman will earn \$2,952 in longevity pay while the Hanover police officer will receive \$400. Based upon this data, the PBA urges denial of the Township's proposal and that the PBA proposal.

I do not award the Township's proposal. The current costs for longevity are not substantial based upon the existing longevity benefit schedule. The elimination of this benefit for new hires will not provide significant cost savings to the Township yet create a division in the benefit received among unit employees. The elimination of the existing modest benefit would also erode the overall relative compensation levels between Hanover and similarly situated municipalities in Morris County. Based upon these observations, the Township's proposal is denied.

Pay Period

The Township and the PBA have a procedure wherein the employees receive paychecks on a bi-weekly basis. The Township has proposed that the paychecks be issued twice per month instead of bi-weekly. The purpose of the Township's proposal is to reduce the costs of administering the two additional

paychecks that are required by the bi-weekly payroll procedure. The Township also points out that there is inconvenience and administrative costs associated with adjusting each officer's paycheck during the every eleven year aberration of issuing 27 paychecks instead of the normal 26. In sum, the Township asserts that the award of its proposal would reduce administrative costs, prevent the confusion associated with the 27 paycheck phenomenon and increase economic stability in the Township. The PBA rejects this proposal and seeks that the status quo be maintained.

I award the Township's proposal contingent upon the Township demonstrating to the PBA that it administers the twice per month issuance of paychecks on a uniform basis among all full-time Township employees.

Out of Title Pay

The PBA proposes that out of title compensation be provided to all officers assigned to the patrol division who are designated to supervise a patrol shift in the absence of a Sergeant. It contends that such payments would be consistent with the terms of Township Ordinance SEC. 61-22. The Township opposes this proposal.

Testimony in support of the PBA's proposal was offered by PBA President Mike Martino. Martino testified that one of the department's Detectives, Detective Salvatore Siino, is compensated as a Sergeant because he supervises

the Detective Bureau containing four Detectives, including Siino. Yet, according to Martino, no contractual benefit to be paid as a Sergeant for a patrol officer who occasionally is designated to supervise a patrol shift when a Sergeant is absent. The PBA finds support for its proposal in a Township Ordinance that addresses the issue. It states:

§ 61-22. Work in higher job classification. [Added 6-12-1986 by Ord. No. 20-86]

If an employee is assigned to work in a job group with a higher salary classification for a period that exceeds 10 consecutive working days, such employee shall be paid at a step within the job group of the higher salary classification, which step shall be determined by the Township Committee and Township Administrator.

According to the PBA, if the guidelines of this Ordinance were to be applied to the situation described by Martino, a patrol officer would be entitled to be compensated at the Sergeant's rate of pay after working ten (10) consecutive tours as a Patrol Shift Supervisor. The patrol officer would then receive acting Sergeant pay retroactive to the first tour and would also receive acting pay for any similar future tours that occur during the rest of the calendar year.

The PBA has established that its proposal is reasonable, consistent with the interests and welfare of the public and would not adversely impact upon the Township's finances. A patrol officer who has supervisory responsibilities during a tour of a longer term nature is charged with performing responsibilities that extend well beyond the normal non-supervisory duties of a patrol officer. Such

longer term supervision should be rewarded in the interests of enhancing supervisory effectiveness, control and the desirability of accepting such assignments. The proposal is financially reasonable because the patrol officer with supervisory responsibilities would not be eligible for acting pay until the officer's service extends beyond a tenth consecutive tour of duty. Under the Pitman schedule, this would not occur until the commencement of the fourth week of service in this capacity. The Township will benefit from the officer's performance of supervisory duties on a longer term basis and be required to pay acting pay as if it were to have employed a full-time Sergeant. Retroactivity to the first tour of duty would be provided under that circumstance but no additional compensation whatsoever is required unless the patrol officer exceeds ten consecutive tours of duty. It is also reasonable to compensate that patrol officer as an acting Sergeant in the event that this designation occurs once again during the calendar year because of the supervisory experience the patrol officer has already obtained. The compensation that I award is at the first, or lower step of the three step salary schedule for the rank of Sergeant. I award the following language¹:

A patrol officer serving as a Patrol Shift Supervisor in the absence of a Sergeant shall receive compensation at the level of a first step Sergeant in the event that the patrol officer's service in this capacity exceeds ten (10) consecutive tours of duty. In the event that this occurs, the patrol officer shall receive such acting pay retroactive to the first tour of duty served in the acting capacity. Any patrol officer who has achieved acting pay status and is designated to serve in the acting supervisory capacity again during the calendar year shall

¹ The award is substantially similar, but not identical, to the Township Ordinance. To the extent that there is a difference, the awarded language shall control.

receive acting pay for each additional tour of duty that is worked in that capacity.

Salaries

The Township and the PBA disagree on the issue of salary increases. The PBA has proposed increases of 3.5% annually for contract years 2009 through 2013. The Township has proposed annual increases of 2.5% in 2009, 2.0% in 2010, 2.0% in 2011 and 1.5% in 2012. Under the conventional arbitration authority given to me, I am not compelled to adopt either party's last offer, although it falls within my judgment to do so. The wage issue, while presented as an individual issue, must also be considered in light of other issues that have been awarded that impact upon Township cost including cost savings and employee income. After giving due regard to the relevant statutory criteria, I have determined not to accept either party's salary proposal as a reasonable determination of the salary dispute.

The parties' proposals must be considered within the framework of the statutory criteria. All of the statutory criteria are relevant, but some are entitled to greater weight than others. The interests and welfare of the public [N.J.S.A. N.J.S.A. 34:13A-16g(1)] is a paramount criterion. It embraces many of the other factors and recognizes their interrelationships. For example, the interests and welfare of the public clearly require the Township to support and fund an effective, efficient and productive police force. The Township prides itself on being a family-oriented, residential community, but its business and commercial

interests are also served by a safe and secure environment that is protected by law enforcement. The Township's ratables are dependent on continuing its tradition of being viewed as an attractive place to live and work. The Township must provide terms and conditions of employment consistent with maintaining an effective police force. The interests and welfare of the public also implicates the financial impact of an award on the Township [N.J.S.A. 34:13A-16g(6)] because the Township's obligation to fund the police department must be consistent with its financial capabilities to do so and its ability to fund all of its obligations in addition to law enforcement. The interests and welfare of the public also extends to consideration of wage and benefit comparisons [N.J.S.A. 34:13A-16g(2)] because the level of wages and benefits of the Township's police officers, as compared to similarly situated employees, especially within Morris County, have been recognized by the legislature as one of the criteria that must be considered. Pay comparisons often relate to employee and department morale, job satisfaction and productivity. The interests and welfare of the public are also implicated in the levels of overall compensation and benefits received [N.J.S.A. 34:13A-16g(3)] because the levels of overall existing terms and conditions of employment are a reasonable benchmark allowing for the public to evaluate either party's proposals for change. The overall compensation and benefits received can also contribute to, or adversely impact on, the continuity and stability of the Township's police officers [N.J.S.A. 34:13A-16g(8)]. The cost of living criterion [N.J.S.A. 34:13A-16g(7)] also implicates the interests and welfare of the public because it is a measure that influences the public's sentiment and

willingness to support contract changes and also to evaluate how revised contract terms could impact upon a police officer's standard of living.

I evaluate the parties' proposals based upon all of the above considerations and the record evidence each party has submitted in connection with the statutory criteria. After doing so, I have concluded that a reasonable determination of the salary issue is to provide increases of 3% in 2009 followed by 2.75% in 2010, and 2.0% in 2011, 2012 and 2013, all with January 1 effective dates representing an average increase of 2.35% during the life of the agreement.

The PBA's proposal of 3.5% annual increases to base salary cannot be awarded. It places little, if any, consideration on the Township's declining ratables, declining revenues and the Township's obligation to meet all of its cost obligations under the tax levy cap that changed from 4% in 2009 and 2010 to 2% in 2011, 2012 and 2013. Its emphasis on comparability data is not persuasive given the fact that the higher averages that it has cited in other Morris County municipalities were achieved in contracts that were negotiated prior to the onset and impact of the recession that caused a decline in salary increases from prior levels. The 2009 and 2010 figures, in many instances, were "out years" of contracts that were concluded in years prior. The Township's proposal cannot be awarded because it gives little, if any, weight to the law enforcement comparability data that each party has submitted into the record, especially for

contract years 2009 and 2010 and also to its ability to provide increases modestly above its own proposal that it can fund without adverse financial impact on the Township and within its statutory obligations. The comparability data, as a whole, warrants a salary increase below the PBA's offer in 2009 and 2010 but higher than what the Township has offered. Although the Township's financial health in 2009 showed and thereafter some decline over previous years, the data reflects that its financial indicators and revenue sources remain strong. Moreover, the Township's financial analysis, while expertly submitted, does not consider the revenues provided by the significant contributions that unit members are required to make pursuant to P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78 and the substantial cost offsets that will accrue to the Township subsequent to the implementation of the changes that I have awarded in the health insurance plans as a result of the adoption of the Township's proposals. The Township estimates annual cost savings that approximate \$100,000, or approximately 4% of unit payroll cost as a result of that portion of the award that allowed the Township to achieve uniformity among all of its employees in its health insurance plans.

For the purpose of calculating cost, I have accepted the Township's carts that estimate the 2008 base to be \$2,169,765. The Township's final offer of 2.5% for 2009 represents an increase of \$122,962 with \$68,630 of this cost stemming from the step movement of officers Gundersdorf, Leggour, Kaiser, Carpenter and Schnauder from Step 6 to Step 7 and an additional \$7,319 from

Officer Weaver's move from Step 4 to Step 5. This raises payroll cost to \$2,292,777. The 3.0% award represents an additional cost of \$11,463 making the new base \$2,304,190.

The Township calculates its 2010 proposal of 2.0% at a cost of \$2,347,438 or \$54,711 over its 2009 costs, with \$7,264 of this cost for Officer Weaver's step movement from Step 5 to step 6. The 2.75% award for 2010 costs an additional \$15,973 over the Township's proposed 2010 base salary increase for that year and, at \$2,374,319, exceeds the cost of the Township's proposal for 2010 by \$26,881 on a cumulative basis because of the carry forward of \$11,463 from 2009.

The Township calculates its 2011 proposal of 2.0% at \$2,410,325, or \$62,887 over its 2010 proposal, including \$13,902 for the cost of Officer Weaver's step movement from Step 6 to the Step 7 maximum. The 2.0% award represents a de minimus dollar increase over the Township's proposal for year 2011 because it is calculated off of a higher base. However, the award also carries forward the cumulative cost differences of \$11,463 and \$15,973 from the awarded increases for 2009 and 2010, thereby increasing payroll cost to \$2,464,755.

The Township calculates its 2012 proposal for a 1.5% increase at \$2,449,619 or \$39,294 over its 2011 cost. All employees are at top step and there is no cost for step movement for this year or beyond. The 2.0% award for

2012 is an additional \$10,001 over the Township's proposal for 2012 but it also carries forward the cumulative cost differences for contract years 2009, 2010 and 2011, causing a payroll cost of \$2,514,050 or \$64,431 over the Township's proposal on a cumulative basis. The Township has made no proposal for 2013 from which to make a comparison. The additional cost of the 2.0% award for 2013 is \$50,281 over the 2012 base causing the 2013 payroll cost to rise to \$2,564,331.

For comparison purposes, I have set forth the cost differences between the Township's offer, the PBA's offer and the terms of the Award. The dollar differences are based upon cumulative costs during each year of the award and the carryover of those cost through 2013:

Year	Township's Offer	PBA's Offer	Award
2009	\$2,292,727	\$2,322,559	\$2,304,190
2010	\$2,347,438	\$2,415,854	\$2,374,319
2011	\$2,410,325	\$2,553,375	\$2,464,755
2012	\$2,449,619	\$2,646,869	\$2,512,075
2013		\$2,739,509	\$2,564,331

The record evidence supports the terms of the salary award. The factors that form the basis for the wage award are unique to the evidence and issues in Hanover. The Township's overall costs can be borne within its appropriation cap and tax levy limitations. The four percent tax levy cap was 4% for 2009 and 2010 and was reduced to 2% in 2011 and thereafter. The cost differences for tax levy

purposes must be calculated on the actual costs for each year over the cost of the prior year which is a lower burden than the cost calculation on a cumulative basis. The 2% increases for the individual years of 2011, 2012 and 2013 can be accommodated within the Township's 2% obligation. The cost of step increases expired during the 2011 contract year and are not burdensome over the life of the Agreement.

The comparability data submitted by both parties as to law enforcement units in Morris County has been reviewed and considered. This includes thirty-eight (38) municipalities, including Hanover. Hanover ranked 22nd out of 38 municipalities in 2007 and received a 4.2% in 2008 which slightly improved its dollar comparisons. Comparability data as to increases for individual contract years vary due to the timing of when the increases were negotiated, to contracts where there was not a standard percentage increase at each step, where one-time adjustments were made at top step and where benefits such as paid holidays were rolled into base pay. The record evidence shows many salary increases for 2009 and 2010 contracts in Morris County that exceed the amounts awarded and are more in line with the PBA's proposals. However, the effective dates of these contracts reflect that the higher amounts represent the carryover of increases into 2009 and 2010 from contracts that were negotiated before the onset of the deep recession in 2008 and thus, were negotiated without consideration of the declining ratables, declining tax base and declining revenues that impacted upon Hanover and many other governing bodies during the years

subsequent to contract expiration. When the comparability evidence for contracts negotiated during 2009 and thereafter are the subject of comparison, the average 2.35% increase of the award herein reflects that substantial weight has been given to comparisons of contract terms that, as here, were negotiated in 2009 and thereafter. That data shows voluntary settlements and interest arbitration awards over the relevant time period that reflect increases substantially similar to what has been awarded. Similar conclusions are drawn from private sector and public sector salary data. Total government wage data for 2009, 2010 and 2011 reflect an average increase similar to what has been awarded. Private sector data shows increases in Morris County of 2.2% in 2009, 1.8% in 2010 and 1.3% in 2011. These increases are below what have been awarded but I give less weight to this data. The Township has received substantial cost offsets from health insurance contributions and from changes to the health insurance plans that amount to approximately 4% of payroll cost going forward. I have also given more weight to the law enforcement comparables due to the lack of similarity in the work performed in the diverse occupations that make up the private sector data.

I have also considered the remaining criteria and conclude that the award is consistent with those standards. The average increase closely parallels the cost of living data over the contract duration. The Award neither expands nor contracts the issues that form the overall compensation and benefit levels that pre-existed the Award. The record reflects that there has been continuity and

stability of employment within the police department and the terms of the Award should maintain that experience in future years.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

AWARD

1. All proposals by the Township and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this award or otherwise agreed to by the parties.

2. **Duration**

There shall be a five-year agreement effective January 1, 2009 through December 31, 2013.

3. **Article XI – Insurance and Retirement**

Effective October 1, 2013, the Township will no longer offer the two (2) traditional health insurance/medical benefits plans previously offered to police officers through the North Jersey Municipal Employee Benefits Fund (hereinafter referred to as the "Fund"). The two (2) plans to be discontinued are the Hanover Choice 20 and the Hanover Choice 250 plans. In their place, the Township will make available to all current and future members of the PBA, the Patriot 5 and Hanover Township Open Access health insurance/medical benefits plans.

4. **Article XI – Insurance and Retirement (Contributions)**

Health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

5. **Pay Period**

Effective as soon as operationally feasible after execution of this contract, all employees shall be issued paychecks twice per month instead of bi-weekly as has been the past practice contingent upon

the Township demonstrating to the PBA that the twice per month issuance of paychecks is uniform among all full-time Township employees.

6. **Article II – Hours of Work (Circle Days)**

Officers who are assigned to work the twelve (12) hour schedule shall receive nine (9) 12 hour days off annually earned on a pro rata basis. These days shall be defined as "circle days." The Chief of Police, or his designee, shall have the discretion to grant a "circle day" to an officer, based upon that officer's request, provided that the request be in writing and made at least seven calendar days prior to the requested day off and provided that the request does not violate the Department's minimum staffing levels nor cause the Department to replace the absent officer by the use of an assignment that compels overtime. A written response to a request to take a "circle day" shall be provided by the Chief or his designee, no later than four days prior to the "circle day" being requested.

7. **Article X – Uniforms and Uniform Allowance**

Section 3: This uniform maintenance allowance shall be increased to \$400 effective January 1, 2013.

8. **Article VII – Wages (Out of Title Pay)**

A patrol officer serving as a Patrol Shift Supervisor in the absence of a Sergeant shall receive compensation at the level of a first step Sergeant in the event that the patrol officer's service in this capacity exceeds ten (10) consecutive tours of duty. In the event that this occurs, the patrol officer shall receive such acting pay retroactive to the first tour of duty served in the acting capacity. Any patrol officer who has achieved acting pay status and is designated to serve in the acting supervisory capacity again during the calendar year shall receive acting pay for each additional tour of duty that is worked in that capacity.

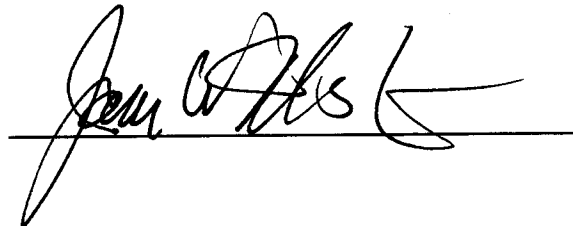
9. **Article VII – Wages**

The existing salary schedule shall be adjusted by the following amounts effective and retroactive to each January 1 effective date for each contract year. All increases shall be at each step of the salary schedule and shall, except for those who have voluntarily resigned or have been separated from employment without good standing, apply to all unit employees and those who have retired on

normal or disability pension. The salary schedule shall read as follows:


Step (Classifications)	1/1/2009 3%	1/1/2010 2.75%	1/1/2011 2.0%	1/1/2012 2.0%	1/1/2013 2.0%
Academy	\$27,695	\$28,456	\$29,025	\$29,606	\$30,198
Step 1	\$47,781	\$49,095	\$50,077	\$51,078	\$52,100
Step 2	\$53,548	\$55,020	\$56,121	\$57,243	\$58,388
Step 3	\$59,315	\$60,946	\$62,165	\$63,408	\$64,676
Step 4	\$65,083	\$66,872	\$68,210	\$69,574	\$70,966
Step 5	\$70,850	\$72,798	\$74,254	\$75,739	\$77,254
Step 6	\$76,618	\$78,725	\$80,299	\$81,905	\$83,543
Step 7	\$88,542	\$90,977	\$92,796	\$94,652	\$96,545
Detective	\$94,651	\$97,254	\$99,199	\$101,183	\$103,206
Sergeant Step 1	\$96,997	\$99,665	\$101,658	\$103,691	\$105,765
Step 2	\$99,344	\$102,075	\$104,117	\$106,199	\$108,323
Step 3	\$101,692	\$104,488	\$106,578	\$108,710	\$110,884

Dated: July 30, 2013
Sea Girt, New Jersey



State of New Jersey }
County of Monmouth } ss:

On this 30th day of July, 2013, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L. Boone
Notary Public of New Jersey
Commission Expires April 30, 2014