

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

BOROUGH OF PRINCETON,

“Public Employer,”

- and -

PBA LOCAL 130 SUPERIORS,

“Union.”

Docket No. IA-2002-057

**DECISION
AND
AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Borough:

Michael J. Herbert, Esq.
Herbert, Van Ness, Cayci & Goodell

For the Union:

John D. Reading, President
PBA Local 130 Superiors

The Borough of Princeton [the "Borough"] and PBA Local 130 Superior Officer's Association [the "SOA" or "Union"] are at an impasse during the process of negotiating their initial collective negotiations agreement [the "Agreement"]. The SOA consists of 1 Captain and 2 Lieutenants. A collective negotiations agreement currently exists between the Borough and PBA Local 130 covering a negotiating unit of 6 Sergeants and 24 Police Officers. That agreement has effective dates of January 1, 2001 through December 31, 2003. The salaries for the rank of Lieutenant and Captain as set by Borough salary ordinance have not increased since January 1, 2000.

After direct negotiations between the Borough and the SOA were not successful, a petition was filed by the SOA on February 2, 2002 requesting the appointment of an interest arbitrator through the New Jersey Public Employment Relations Commission, pursuant to P.L. 1995, c.425. Thereafter, in accordance with the Commission's rules, I was appointed to serve as interest arbitrator on March 14, 2002. I conducted pre-interest arbitration mediation sessions on April 17, 24 and May 13, 2002. At the conclusion of the last mediation session, and at the request of the negotiating teams for the Borough and the SOA, I submitted a Recommended Interest Arbitration Award in an effort to assist the parties in reaching a voluntary settlement. The terms of the recommended interest arbitration award were not mutually accepted. Thereafter, I conducted an interest arbitration hearing on July 8, 2002. At the hearing the parties argued

orally, submitted documentary evidence into the record and testimony was received from Lieutenants Reading and McManimon, Captain Federico and Robert W. Bruschi, Borough Administrator. Post hearing briefs were filed by both parties in support of their respective positions.

As required by statute, I have set forth below the last or final offer of each party.

SOA Final Offer

1. Salary

Each employee in the Superior Officers' Association shall be paid no less than 15% of the base hourly rate of pay of the employee at the next lowest rank.

	01/01/01	07/01/01	01/01/02	07/01/02	01/01/03	07/01/03
Lieutenants	4%	4%	4%	4%	4%	4%
Captain	15% above Lt.'s base salary		4%	4%	4%	4%

2. Article X - Longevity Pay

The annual salary for each Superior Officer shall be increased by the following steps:

<u>Longevity</u>	<u>Year 2001</u>	<u>Year 2002</u>	<u>Year 2003</u>
After 15 years of continuous service	\$2,700.00	\$3,200.00	\$3,700.00
After 20 years of continuous service	\$3,700.00	\$4,200.00	\$4,500.00
After 24 years of continuous service	\$4,700.00	\$5,200.00	\$5,700.00

3. Article V - Hours of Employment and Compensation for Extra Hours

Section 5.01

- A. The normal work-week for all Superior Officers shall be forty (40) hours per week, eight (8) hours per day, Monday through Friday, as assigned by the Chief of Police. Hours worked during the normal work-day shall be paid at the straight time rate.

Section 5.2

- A. Overtime Pay

Superior Officers, who incur additional duty beyond the normal hours of employment, shall be compensated for such additional duty by overtime pay.

- B. Overtime Pay Defined

As used in the Agreement, "overtime pay" means pay calculated at an hourly rate equal to one and one-half (1 ½) times the employee's regular hourly rate (including base salary, and longevity).

- C. Call-Back Pay

Employees called back to work shall be guaranteed a minimum of four (4) hours pay at the rate of time and one-half (1 ½) of the employee's hourly rate.

- D. Stand-By Pay

Employees who are assigned to stand-by status shall be compensated at the rate of 5% of the employee's regular hourly rate per each hour of stand-by.

- E. Compensation Payment

The compensation due for overtime, call-back and stand-by time, as defined hereinabove for duty performed after the date of execution of this contract shall be paid not later than the second pay period following the pay period in which the overtime, call-back or stand-by compensation report is recorded in the Borough Payroll Office.

4. Article XVIII - Clothing Allowance for Superior Officers

Section 18.01

Effective January 1, 2001, January 1, 2002 and January 1, 2003, the Superior Officers' clothing allowance will be at the rate of one thousand six hundred (\$1,600.00), two thousand one hundred (\$2,100.00) and two thousand six hundred (\$2,600.00), respectively. Payment will be made in January for all Superior Officers in that position for at least six (6) months. All others in that position will be paid when they complete six (6) months.

Section 18.02

The cost of dry cleaning clothing worn Superior Officers will be borne by the Borough.

5. Article VII - Holidays & Sick Time

Section 7.01

Each employee shall be entitled to one hundred twelve (112) paid hours of holiday time annually. Employees may elect to be paid for up to one hundred twelve (112) hours of holiday time per year, which shall be added to the employee's base hourly rate of pay for the purpose of pension inclusion and shall be paid in accordance with the balance of the provisions of this agreement. In addition, an employee may elect to carry over up to twenty-four (24) hours of holiday time per year into the next calendar year as specified and scheduled by the Chief of Police.

Employees shall be paid for unused holidays, not carried over, no later than the first pay period in December of each year. Any unanticipated holiday time granted to all Borough employees during the contract period will also be given to the Superior Officers' Association Unit.

Subject to the first paragraph of this Article, if an employee shall fail to take any holiday time off as specified and scheduled by the Chief of Police, that employee shall be deemed to have waived the same, and shall not thereafter be entitled to the holiday time so waived or to payment thereof; provided, however, that if any holiday time shall have been accumulated holiday time off need not be taken in kind,

and instead, the employee may be paid thereafter on a straight time basis.

If the Chief of Police shall fail, by December 1st, to specify and schedule when holiday time off shall be taken, the employee shall be paid on a straight time basis for the holiday time off not so specified and scheduled. The Department shall view each holiday time off request in light of current manpower needs. Current manpower needs shall reflect special details, stakeouts and other events / Police activities that require Police personnel. Once holiday time off is granted, that holiday time off will be honored unless an emergency situation arises.

Section 7.02

All members are entitled to unlimited sick days to be utilized for family emergencies. The family member or significant other must be a household member.

An employee shall be granted eight (8) hours of holiday time for every four (4) months he / she does not utilize any sick time.

6. **Article IX - Vacations**

Section 9.01

Each employee shall be entitled to vacation time as follows:

A. Amounts of Vacation Time

1. Upon completion of five or more, but less than eight years of continuous service on anniversary year of joining the Department 136 hours
2. Upon completion of eight or more, but less than fourteen years of continuous service on anniversary year of joining the Department 192 hours
3. Upon completion of fourteen or more, but less than eighteen years of continuous service on anniversary year of joining Department 224 hours
4. Upon completion of eighteen or more, but less than twenty-two years of continuous service on

anniversary year of joining Department 248 hours

5. Upon completion of twenty-two or more years of continuous service on anniversary year of joining the Department 264 hours

7. **Article XXI - Personal Days**

Section 21.01

All employees of the Superior Officers' Association shall be entitled to twenty-four (24) hours personal time off annually with pay. Personal leave shall be scheduled forty-eight (48) hours in advance, except in an emergency, by requesting the time at the employee's choice in half-day or full-day increments and be approved by the Chief of Police, said approval not to be unreasonably withheld as long as adequate manpower is available. Personal leave shall not be used for vacations and is not accumulative nor will payment be made for unused personal leave upon retirement, separation or resignation.

8. **Job Classification Differential**

If the administrative superior officer performs the duties of the Chief of Police, he or she shall be paid at the salary rate of the Chief of Police.

Borough of Princeton Final Offer

1. **Duration** of contract January 1, 2002 - December 31, 2003

2. **Salary**

Lieutenant Salary 01/01/01 \$89,265
(Entry Lieutenant \$1,000 less for six months)
Captain Salary 01/01/01 \$93,728
(Entry Captain \$1,000 less for six months)
2.5% Increase 01/01/02 & 2.5% increase 07/01/02 for
Lieutenants & Captains 5% above Lieutenants (Entry
Positions \$1,000 less)

2.5% Increase 01/01/03 & 2.5% increase 07/01/03 for
Lieutenants & Captains 5% above Lieutenants (Entry
Positions \$1,000 less)

	01/01/01	01/01/02	07/01/02	01/01/03	07/01/03
Lieutenant	\$89,265	\$91,497	\$93,784	\$96,129	\$98,532
Entry Lt.	\$88,265	\$90,497	\$92,784	\$95,129	\$97,532
Captain	\$93,728	\$96,071	\$98,473	\$100,935	\$103,458
Entry Captain	\$92,728	\$95,071	\$97,473	\$99,935	\$102,458

3. No shift differential.
4. No overtime.
5. No Stand-by.
6. **Longevity** Schedule identical to PBA.

Article X - Longevity Pay and Uniform Allowance

The annual salary for each Police Office shall be increased by the following steps:

Longevity

	Year 2001	Year 2002 & 2003
After 5 years of continuous service	\$550.00	\$550.00
After 8 years of continuous service	\$750.00	\$1,200.00
After 10 years of continuous service	\$1,200.00	\$1,700.00
After 15 years of continuous service	\$1,500.00	\$2,000.00
After 20 years of continuous service	\$2,000.00	\$2,500.00
After 24 years of continuous service	\$2,500.00	\$3,000.00

In no event shall the increments of this paragraph on account of longevity exceed the amount of \$2,500 in year 2001 and \$3,000.00 in years 2002 and 2003. Longevity increments shall take effect upon the anniversary of employment.

7. **Clothing Allowance** identical to PBA "Clothing Allowance for Detectives".

Article XVIII - Clothing Allowance for Detectives

Section 18.01

Effective January 1, 2001, January 1, 2002 and January 1, 2003, and retroactive to that date, the Detective clothing allowance will be at the rate of one thousand one hundred (\$1,100.00), one thousand two hundred (\$1,200.00) and one thousand three hundred (\$1,300.00), respectively, for Officers assigned as Detectives. Payment will be made in January for all Detectives in that position for at least six (6) months. All others in that position will be paid when they complete six (6) months.

Section 18.02

The cost of dry cleaning clothing worn by Detectives will be borne by the Borough.

8. **Vacation** schedule identical to PBA.

Article IX - Vacations

Section 9.01

Each employee shall be entitled to vacation time as follows:

A. Amounts of Vacation Time

1. Upon completion of three or more months,
but less than six months of continuous service 40 hours
2. Upon completion of more than six months,
but less than one year of continuous service
an additional 40 hours
3. Upon completion of more, but less than
five years of continuous service on July 1st 96 hours
4. Upon completion of five or more, but less than
eight years of continuous service on anniversary
year of joining the Department 112 hours
5. Upon completion of eight or more, but less
than fourteen years of continuous service
on anniversary year of joining the Department 168 hours

- 6. Upon completion of fourteen or more, but less than eighteen years of continuous service on anniversary year of joining Department 200 hours
- 7. Upon completion of eighteen or more, but less than twenty-two years of continuous service on anniversary year of joining Department 224 hours
- 8. Upon completion of twenty-two or more years of continuous service on anniversary year of joining the Department 240 hours

B. Vacation Schedules

Vacations shall be scheduled according to the following:

- 1. Each employee entitled to more than one hundred twelve (112) hours vacation time shall select a vacation period of at least eighty-four (84) but not more than one hundred thirty-two (132) consecutive work hours.
 - (a) Each employee entitled to one hundred twelve (112) or less vacation hours according to Section 1 hereinabove, shall be permitted to schedule their allowed vacation time in one (1) block of time or two (2) blocks of time, neither of which can be shorter than thirty-six (36) hours.
 - (b) It is understood that rank and seniority, in that order, shall govern in the selection of the employee who shall be entitled to take the vacation time as requested.
- 2. Following a reasonable time for the selection of vacation time by all employees under section 1 hereinabove, an employee entitled to vacation in excess of one hundred twelve (112) hours shall be permitted to schedule their vacation time as follows:
 - (a) Employees entitled to more than one hundred twelve (112) hours but less than two hundred (200) vacation hours shall be permitted to take the balance of their vacation time, described under section 1 hereinabove, as an additional vacation period of consecutive work hours.

(b) Employees entitled to two hundred (200) or more vacation hours shall be permitted to take the balance of the vacation days in one (1) or two (2) additional vacation periods in addition to the vacation time provided for in section 1 hereinabove. If the employee selects one (1) vacation period, then the remaining vacation shall be in consecutive hours off. If the employee selects two (2) vacation additional periods, these vacation periods shall be taken in no less than thirty-six (36) or more than eighty-four (84) consecutive work hours.

(1) If an employee entitled to two hundred (200) or more vacation hours decides to divide his/her remaining vacation into two (2) additional periods, the second period shall be selected by rank and seniority as in section b.1(b) hereinabove.

(2) Following a reasonable time, employees deciding to divide their remaining vacation into two (2) periods shall be permitted to select their remaining vacation by rank and seniority.

(3) To provide for the orderly scheduling of vacations during a calendar year pursuant to Sections 1, 2 and 3, hereinabove, the Chief of Police shall post vacation schedule sign-up sheets. After the sign-up sheets have been posted for a reasonable period of time and the employees have been given an opportunity to sign up for their requested vacation time, the parties agree that it shall be the responsibility of the Chief of Police to implement the above criteria for the selection of vacation. The parties further agree that in an emergency (such as, but not limited to civil disturbance or disaster) that the needs of the Department are paramount.

9. **Holiday** schedule identical to PBA.

Article VII - Holidays & Sick Time

Section 7.01

Each employee shall be entitled to one hundred four (104) paid hours of holiday time annually. Employees may elect to be paid for

up to sixty (60) hours of holiday time per year. Employees shall be paid for unused holidays, not carried over, no later than the first pay period in December of each year. In addition, an employee may elect to carry over up to twenty-four (24) hours of holiday time per year into the next calendar year as specified and scheduled by the Chief of Police.

Any unanticipated holiday time granted to all Borough employees during the contract period will also be given to the PBA unit.

Subject to the first paragraph of this Article, if an employee shall fail to take any holiday time off as specified and scheduled by the Chief of Police, that employee shall be deemed to have waived the same, and shall not thereafter be entitled to the holiday time so waived or to payment thereof; provided, however, that if any holiday time shall have been accumulated holiday time off need not be taken in kind, and instead, the employee may be paid thereafter on a straight time basis.

If the Chief of Police shall fail, by December 1st, to specify and schedule when holiday time off shall be taken, the employee shall be paid on a straight time basis for the holiday time off not so specified and scheduled. The Department shall view each holiday time off request in light of current manpower needs. Current manpower needs shall reflect special details, stakeouts and other events / Police activities that require Police personnel. Once holiday time off is granted, that holiday time off will be honored unless an emergency situation arises.

To ensure minimum manpower requirements, a system of mandatory hold over and call back will be used.

10. **Sick Days** identical to PBA.

Article VII - Holidays & Sick Time

Section 7.02

All members are entitled to unlimited sick days to be utilized for family emergencies. The family member must be a household member.

An employee shall be granted eight (8) hours of holiday time for every four (4) months he / she does not utilize any sick time.

11. **Personal Days** identical to PBA.

Article XXI - Personnel Days

Section 21.01

All employees of the Association shall be entitled to twenty-four (24) hours personal time off annually with pay. Personal leave shall be scheduled forty-eight (48) hours in advance, except in an emergency, by requesting the time at the employee's choice in half day or full day increments and be approved by the Chief of Police, said approval not to be unreasonably withheld as long as adequate manpower is available. Personal leave shall not be used for vacations and is not accumulative nor will payment be made for unused personal leave upon retirement, separation or resignation.

BACKGROUND

The Borough of Princeton is located in Mercer County. It has a land area of 1.84 square miles and a population of approximately 12,000 residents. The demographics and socio-economic characteristics of the Borough reflect higher than average median value for single family homes and per capita and family income. Notwithstanding the Borough's higher than average ranking, many low to moderate income families reside in the Borough. The Borough provides a fair share of affordable housing and has been noted to be aggressive in providing housing opportunities for this segment of its population.

The Borough's police department is an active one. The 2000 Uniform Crime Report reflects that the department ranked second in crimes per officer

and fifth in total crimes among Mercer County municipalities. The monthly reports of the police department reflect a growing number of requests for police services. The Borough's police department also provides support and assistance to the Princeton University Public Safety Department concerning incidents which occur on University premises. These include trespassing, substance abuse, medical emergencies and theft.

As stated above, the SOA negotiating unit includes one Captain and two Lieutenants. The Captain serves as the department's second-in-command. His duties, among others, include serving as the Borough's OEM Deputy Coordinator, its 9/11 Coordinator and Administrative Liaison to the Borough's Public Safety Committee. The Captain also serves as the department's Press Information Officer, Safety Officer and is responsible for conducting internal affairs investigations for the Chief. The Lieutenants report to the Captain who in turn reports to the Chief of Police.

There is one Administrative Lieutenant and one Operations Lieutenant. The Administrative Lieutenant is the department's third highest ranking officer. His duties, among others, include serving as the department's Training Officer, the Detective Bureau Commander, Records Bureau Commander and he also serves in the capacity of a court liaison with the Mercer County Prosecutor's Office. He also serves as the Systems Manager for all police computer systems.

The Operations Lieutenant is the department's patrol division commander and community policing commander. He is also commander of the parking enforcement unit and serves as liaison to the municipal prosecutor. Sergeants report to the Lieutenants and are in the PBA Local 130 unit. One major difference in terms and conditions of employment between the Lieutenants and Captains and the Sergeants is that Sergeants receive premium pay for overtime while the Lieutenants and Captains do not.

SOA unit members include Captain Anthony Federico, Lieutenant John Reading and Lieutenant Dennis McManimon. Federico served as Lieutenant from June 1991 through June 2001 at which time he was promoted to Captain. Lieutenant John Reading was promoted to Lieutenant in July 2000. Lieutenant McManimon was promoted to Lieutenant in July 2001. All promoted officers were elevated to the effective salary of their position on the date of their promotion. The last date of salary adjustment for the Lieutenants and Captain was January 1, 2000 pursuant to Ordinance No. 99-4.

POSITIONS OF THE PARTIES

Position of the SOA

The SOA's main contention is that the Borough's Lieutenants and Captains rank low in salary compared to the average salaries for superior officers

in various police departments in Mercer County including Hamilton, Ewing, Lawrence, East Windsor, West Windsor, Trenton and Princeton Township. The SOA also includes Plainsboro Township in its comparison. The SOA notes that Plainsboro is located in Middlesex County but is geographically close and similar in size to the Borough. The SOA acknowledges that the base salaries in Trenton are not comparably high but that other significant benefits such as longevity (up to 13%), overtime (paid) and clothing allowance (\$3,000) cause Trenton's total compensation package for superior officers to be far in excess of that in the Borough. The SOA averages the salaries and calculates \$96,521 and \$100,244 for Lieutenants for 2001 and 2002 respectively. The SOA averages the salaries for Captains as \$105,825 and \$110,166 in 2001 and 2002 respectively. The SOA also supports its longevity proposal based upon its comparisons with the Captains and Lieutenants in the aforementioned departments but acknowledges that its proposal is higher than what is presently being received by PBA Local 130.

The SOA further contends that the existing differentials, or what it terms "split in rank", between Lieutenant and Captain is well below that established in the communities it contends are most comparable. The SOA notes that the Borough has established a 15% differential between Police Officers and Sergeants and a 15% differential between Sergeants and Lieutenants. The SOA compares these differentials with the 6.3% differential which presently exists

between Lieutenant and Captain with the average differential in the comparable communities which it averages to be 10.8%.

The SOA further contends that consideration in the form of compensation should be provided by the Borough for the significant amount of time the superior officers spend on overtime work and mandatory stand-by noting that they presently do not receive compensation for this work or time. Currently, Lieutenants and Captain receive no compensation for overtime unlike the Police Officers and Sergeants who receive premium pay. Police Officers and Sergeants receive overtime pay calculated at an hourly rate equal to one and one-half times the employee's regular hourly rate, including base salary, longevity, allowances for juvenile officers and detective assignments. The SOA has documented the amount of overtime they have put in during an annual time period and the amount of overtime pay they would have received had they received overtime pay at the same rate paid for police officers. At 648 hours worked, the total cost to the Borough would have been \$40,744. The SOA also seeks compensation for mandatory stand-by time which it calculates at more than 2000 hours. Testimony was received to the effect that each unit member is required to be on mandatory stand-by for a substantial number of hours annually. The SOA acknowledges that compensation for overtime and stand-by hours would result in an extraordinary amount of pay and does not propose that they receive

compensation for these hours but instead an annual stipend at a rate of 7% of each employee's total yearly salary to be paid in a pensionable manner.

The SOA also proposes a job classification, or acting pay differential. The SOA notes that the Chief of Police can be absent due to paid leave time and the conduct of official duties requiring one of the Lieutenants or the Captain to assume the duties and responsibilities of Acting Chief. The SOA draws a parallel between Police Officers who receive Acting Sergeant's pay to its proposal for compensation when a superior officer serves as Acting Chief.

With respect to the remaining items, the SOA seeks benefit levels at or higher than those presently contained in the PBA agreement and relies upon comparability data when those benefit levels are higher than presently provided to PBA Local 130.

The SOA contends that its proposal can be funded without interference with the CAP law and without adverse financial impact on the Borough, its residents and taxpayers.

Position of the Borough

The Borough's salary proposal is based upon an analysis of eleven salary comparisons it performed with eleven police departments which surround the

Borough of Princeton. They include East Windsor, Ewing, Hamilton, Hightstown, Hopewell Township, Lawrence, Plainsboro, Princeton Township, Trenton, Washington and West Windsor. Of the eleven departments, all are in Mercer County with the exception of Plainsboro which is in Middlesex County. The Borough has developed a chart entitled Schedule B.

In its post-hearing brief, the Borough notes that:

Ten of the eleven other departments set forth in Schedule B have the rank of lieutenant (Hightstown Borough does not), while eight of the other departments have a captain's rank. As of January 1, 2002, the Borough's offer would result in the lieutenant's salary being exceeded only by Hamilton Township, Lawrence Township and West Windsor. The salary for lieutenant in Plainsboro is comparable (\$91,654 as compared to \$91,497). Simply put, the Borough's proposal for the lieutenant's salary would place it fourth among the ten other departments in Mercer County that maintain the lieutenants rank. The salary for the Borough captain, as of January 1, 2002, would amount to \$96,072, placing it sixth among the nine departments maintaining that rank.

The Borough contends that its salary proposal is reasonable because it places the salary of the Lieutenants and Captain in the middle or above that of the municipalities it believes are comparable. The Borough also contends that its proposal must be considered in the context of the entire compensation package the Borough provides which it believes to be generous when compared to the other municipalities. For example, the Borough notes that it provides the fourth

highest uniform allowance, that its unlimited sick leave provision is the most attractive among all of the municipalities and that it provides holiday pay amounting to 13 days.

The Borough urges rejection of the SOA's proposals to provide overtime and stand-by compensation to the SOA. The Borough contends that the Fair Labor Standards Act does not require the payment of overtime for the Lieutenants and the Captain. The Borough points to Hopewell, Princeton Township and East Windsor who provide for no overtime pay. The Borough also contends that it is not required by law to make any payment for stand-by pay and that 9 of the 11 municipalities it cites do not grant stand-by pay. The Borough acknowledges that East Windsor awards a payment of \$4,425 and that Lawrence Township provides compensatory time at 25% of the hourly rate for supervisors. The Borough believes that the existing salaries and the salaries it proposes reflects sufficient recognition and consideration for the hours which the Lieutenants and Captain devote extra hours worked and to stand-by pay.

The Borough also urges that salary comparisons be made with other non-law enforcement employees it employs. The Borough provides documents reflecting that these comparisons establish that the Lieutenants and the Captain earn far greater compensation than what is presently received by various Borough administrators, police dispatchers, and its blue and white collar

employees. The Borough acknowledges that the SOA's proposals will not force the Borough to exceed its statutory spending limitations. However, the Borough is concerned that there could be a negative financial impact in its negotiations with other bargaining units if the SOA's proposals were awarded. The Borough also notes that its municipal tax rate is the third highest of the thirteen Mercer County municipalities and that there could be adverse tax consequences to the tax rate if the SOA's proposals were awarded.

The Borough urges rejection of all of the SOA's proposals which exceed payment and benefit levels provided to its police officers and sergeants under the PBA Local 130 agreement. It is argued that any such result granting higher levels of benefits would be detrimental to the harmony and stability which exists in the department.

DISCUSSION

The Borough and the SOA have offered testimony and considerable documentary evidence in support of their last offers. The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which 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.

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The Borough and the SOA have articulated fully their positions on the issues and have submitted evidence and

argument in support of their respective positions. The evidence and arguments have been carefully reviewed, considered and weighed.

N.J.S.A. 34:13A-16g(8) provides that consideration be given to factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. One such factor is that a party seeking such change bears the burden of establishing the need for such modification. I will apply this principle has been applied as part of my analysis of each issue in dispute.

Initially I note that the Borough and the SOA are negotiating their first agreement. The Borough has a history of negotiations and prior agreements with PBA Local 130 bargaining unit covering Police Officers and Sergeants. The Borough and the SOA have recognized that many of the provisions of the PBA Local 130 agreement should be included in their initial agreement and have reached tentative agreement on these provisions. This award will incorporate these provisions by reference and will only address the issues which are in dispute. Any issue not addressed in this award nor tentatively agreed to by the Borough and the SOA during negotiations shall be deemed denied or dismissed.

I first address the several issues proposed by the SOA which seek terms and conditions of employment which would exceed the benefit levels contained in

the rank and file PBA agreement. N.J.S.A. 34:13A-16g(2.c) is a relevant factor in considering the SOA's proposals. This factor requires consideration of terms and conditions of employment "in public employment in the same ... jurisdiction". There is merit to the Borough's contention that it would be detrimental to the Borough to set benefit levels which ignore the terms of the PBA Local 130 agreement. I reach the same conclusion which I set forth in the previously issued recommended award.

Although increased benefit levels for superior officers beyond that of police officers is not necessarily inconsistent with the statutory criteria, I conclude that these issues should be resolved at uniform benefit levels regardless of rank. This is especially applicable in this instance where the superior officers are negotiating their initial agreement.

These issues include SOA proposals for longevity pay, clothing allowance, holiday pay and vacations¹. Longevity pay shall be set at the level set forth in Article X of the PBA Local 130 agreement retroactive to January 1, 2001 as follows:

After 5 years of continuous service	\$550.00
After 8 years of continuous service	\$1,200.00
After 10 years of continuous service	\$1,700.00
After 15 years of continuous service	\$2,000.00
After 20 years of continuous service	\$2,500.00
After 24 years of continuous service	\$3,000.00

¹ I note that the parties proposals on personal days correspond to that set in the PBA Local 130 agreement and shall be considered to have been agreed upon.

Longevity increments shall take effect upon the anniversary of employment

I find merit in the Borough's proposal to award a clothing allowance provision identical to Article XVIII in the PBA Local 130 agreement covering Clothing Allowance for Detectives. For the SOA, that provision shall read:

Effective January 1, 2001, January 1, 2002 and January 1, 2003, and retroactive to that date, the Superior Officer clothing allowance will be at the rate of one thousand one hundred (\$1,100.00), one thousand two hundred (\$1,200.00) and one thousand three hundred (\$1,300.00), respectively. Payment will be made in January for all Superior Officers in that position for at least six (6) months. All others in that position will be paid when they complete six (6) months.

The cost of dry cleaning clothing worn by Superior Officers will be borne by the Borough.

Holiday Pay shall also be set at levels identical to that contained in the PBA Local 130 agreement at Article VII. This provision shall also cover sick time.

Each employee shall be entitled to one hundred four (104) paid hours of holiday time annually. Employees may elect to be paid for up to sixty (60) hours of holiday time per year. Employees shall be paid for unused holidays, not carried over, no later than the first pay period in December of each year. In addition, an employee may elect to carry over up to twenty-four (24) hours of holiday time per year into the next calendar year as specified and scheduled by the Chief of Police.

Any unanticipated holiday time granted to all Borough employees during the contract period will also be given to the Superior Officers unit.

Subject to the first paragraph of this Article, if an employee shall fail to take any holiday time off as specified and scheduled by the Chief of Police, that employee shall be deemed to have waived the same, and shall not thereafter be entitled to the holiday time so waived or to payment thereof; provided, however, that if any holiday time shall have been accumulated holiday time off need not be taken in kind, and instead, the employee may be paid thereafter on a straight time basis.

If the Chief of Police shall fail, by December 1st, to specify and schedule when holiday time off shall be taken, the employee shall be paid on a straight time basis for the holiday time off not so specified and scheduled. The Department shall view each holiday time off request in light of current manpower needs. Current manpower needs shall reflect special details, stakeouts and other events / Police activities that require Police personnel. Once holiday time off is granted, that holiday time off will be honored unless an emergency situation arises.

To ensure minimum manpower requirements, a system of mandatory hold over and call back will be used.

All members are entitled to unlimited sick days to be utilized for family emergencies. The family member must be a household member.

An employee shall be granted eight (8) hours of holiday time for every four (4) months he / she does not utilize any sick time.

The vacation provision shall be set at levels identical to that contained in the PBA Local 130 agreement at Article IX as follows:

Each employee shall be entitled to vacation time as follows:

A. Amounts of Vacation Time

- | | |
|--|-----------|
| 1. Upon completion of three or more months, but less than six months of continuous service | 40 hours |
| 2. Upon completion of more than six months, but less than one year of continuous service an additional | 40 hours |
| 3. Upon completion of more, but less than five years of continuous service on July 1 st | 96 hours |
| 4. Upon completion of five or more, but less than eight years of continuous service on anniversary year of joining the Department | 112 hours |
| 5. Upon completion of eight or more, but less than fourteen years of continuous service on anniversary year of joining the Department | 168 hours |
| 6. Upon completion of fourteen or more, but less than eighteen years of continuous service on anniversary year of joining Department | 200 hours |
| 7. Upon completion of eighteen or more, but less than twenty-two years of continuous service on anniversary year of joining Department | 224 hours |
| 8. Upon completion of twenty-two or more years of continuous service on anniversary year of joining the Department | 240 hours |

The SOA also proposes a job classification differential for when a Superior Officer performs the duties of the Chief of Police. The SOA relies upon a provision in the PBA Local 130 agreement which provides for Acting Patrol Sergeant pay. That provision requires the Chief of Police to designate a patrol officer to serve in the capacity of Acting Patrol Sergeant and to receive the hourly rate for Sergeants for all hours worked as the Acting Patrol Sergeant. Although there is some logic in the parallel the SOA seeks to draw on this issue, there is

insufficient evidence in the record to award this proposal, especially given the open-ended nature of the proposal which does not allow for short-term coverages without requiring acting pay. This proposal may, of course, be revisited in future negotiations, at which time the parties may discuss if, when and under what conditions acting pay would be appropriate.

I next turn to the SOA's proposals for overtime and stand-by pay. In my review of this issue, I do not reach any determination on whether any FLSA obligations are present, although the Borough's position is premised on the absence of any such obligation. Instead, the underlying issue is whether the Lieutenants and Captain should be entitled to consideration for the hours which they work above and beyond the normal workweek and the hours which they are required to be on stand-by status. The record reflects that the Lieutenants and Captain routinely perform work in excess of the normal workweek without additional compensation. It is documented that overtime hours at premium pay would exceed \$40,000 annually. The Lieutenants and Captain are routinely required to report for official duty on weekends and/or nights. The record also reflects that the Superior Officers are scheduled to be on stand-by for approximately 17 weeks per year annually which translates into over 2,000 hours on call per year. During the on-call period the Superior Officers take after-hour administrative phone calls, augment patrol services as needed and are responsible and must be available for emergency response to the community.

Additionally, they are required to report to police headquarters to check on departmental operations at a minimum of one time during every on-call weekend. The failure to provide any financial reward for these hours and the assumption of departmental responsibilities beyond the normal workweek diminishes the relative compensation between these superior officers and those they supervise.

I conclude that justification has been established for compensation based upon overtime hours worked and hours which the Superior Officers are required to be on-call. I am not persuaded by the Borough's arguments that the salary levels for the Superior Officers sufficiently reflect the amount of time and service each gives to the department and to the community. The record also reflects that nine of the eleven municipalities which the Borough cites as comparable municipalities provide overtime pay and/or payments in lieu of overtime. However, I am not convinced that the stipend should be set in the form of a percentage as the SOA has proposed. Instead, I award a dollar amount stipend as reasonable compensation for these requirements borne by members of this unit. I set this stipend in the following dollar amounts retroactive to their effective date. That amount shall be at \$2,500 effective January 1, 2001, \$3,500 effective January 1, 2002 and \$4,500 effective January 1, 2003 and paid on a pro rata basis in the normal paycheck.

The remaining issue is salary and salary schedules. Each party asserts that the most relevant considerations are internal comparisons with the salary schedules contained in the PBA Local 130 agreement and external comparisons with other municipal police departments in Mercer County². Each party also cites Plainsboro because of its geography and departmental size although Plainsboro is in Middlesex County. The Borough also seeks comparisons with non-law enforcement employees employed by the Borough, as well as the financial impact of the SOA's proposals assuming, for the sake of argument, that the Borough would be required to apply the increases to other Borough employees. The Borough and the SOA stipulate that the CAP law is not implicated in this proceeding because the unit consists of only three employees and the differences in their respective positions would not compel the Borough to exceed its statutory spending limitations.

When the relevant factors raised by the parties are considered and weighed, I conclude that the salary increases for the Lieutenants, as proposed by the Borough, should be set at the same percentage of increase which Police Officers and Sergeants have received in the PBA Local 130 agreement. The Lieutenant salary will be adjusted as follows:

² Although not directly addressed by the parties, all of the statutory criteria are relevant and have been considered in rendering this Award.

	January 1, 2001 4.5%	January 1, 2002 2.5%	July 1, 2002 2.5%	January 1, 2003 2.5%	July 1, 2003 2.5%
Lieutenant	\$89,265	\$91,497	\$93,784	\$96,129	\$98,532

I next turn to the salary for the rank of Captain. The most relevant considerations in resolving this issue include internal comparability within the department and comparability with other municipal police departments with respect to the amount of differential between the rank of Lieutenant and Captain. On this issue, I make the following findings of fact. The pre-existing rate of differential as set by the salary ordinance in 2000 is calculated at 6.3%. The Borough's salary proposal for the Captain contains a dollar differential amounting to 4.8% while the SOA's salary proposal is 15%. The average in the County calculates to 10.8% including Lawrence Township at 10.7%, Ewing Township at 9%, West Windsor Township at 9.7% and Plainsboro at 8.0%. The Borough and the SOA rely principally upon salary comparisons within the County and the inclusion of Plainsboro. The Borough has one Captain who is the department's second-in-command reporting only to the Chief. The duties, authorities and responsibilities of the Captain as set by the Police Department General Orders are broad and comprehensive. A review of the comparable data reflects that the existing differential between Lieutenant and Captain and the differential proposed by the Borough are well below the County average. The proposal of the Borough yields a salary not commensurate with the duties and responsibilities of the office of Captain. The interests and welfare of the public are not served by a table of

organization with a salary structure which does not properly reward and recognize the duties, authorities and responsibilities of the highest ranks in the department. A review of the comparable data, coupled with other relevant considerations, including the rates of salary increase within the department, also reflects that the amount of differential proposed by the SOA is not warranted during the short contract term of three years.

The Borough points out that there are many factors to consider in evaluating comparable data. I have considered this argument. Some Captains receive overtime pay and others do not. Some municipalities have greater longevity pay and others do not. Some have lower salaries but contain significantly higher amounts of longevity. Some have greater uniform allowance and others have less. When all of the factors are taken into consideration, I conclude that a rate differential should be set at a level higher than the Borough has proposed but lower than what the SOA has proposed. A reasonable determination of this issue is to set the Captain's salary calculated on a basis of 8.25% over that of Lieutenant. It does not satisfy the SOA's proposal for a rank differential which equates to the County average, which is more than 2% beyond what I have awarded, but it sets the salary at a differential which is approximately 2% above the pre-existing differential of 6.3%. This formula will yield the following rates of pay for the Captain.

	January 1, 2001	January 1, 2002	July 1, 2002	January 1, 2003	July 1, 2003
Captains	\$96,629	\$99,045	\$101,521	\$104,059	\$106,660

I have also considered the Borough's proposal for an Entry Lieutenant and Entry Captain rate of pay. There is merit to an entry salary requiring 12 months of service prior to achieving top rate of pay. The entry level rate shall be \$1,250 below the top rate set for Lieutenant and Captain. This formula should be implemented for Lieutenants and Captains appointed to those positions after the date of this award. The salary schedules for each rank would read:

	January 1, 2001 4.5%	January 1, 2002 2.5%	July 1, 2002 2.5%	January 1, 2003 2.5%	July 1, 2003 2.5%
Entry Lieutenant	\$88,015	\$90,247	\$92,534	\$94,879	\$97,282
Lieutenant	\$89,265	\$91,497	\$93,784	\$96,129	\$98,532
Entry Captain	\$95,379	\$97,795	\$100,271	\$102,809	\$105,410
Captain	\$96,629	\$99,045	\$101,521	\$104,059	\$106,660

The terms of this award serve the interests and welfare of the public by concluding an initial labor agreement between the Borough and the Superior Officers in a manner which has given weight to internal and external comparability data, which sets terms and conditions of employment within the Borough's lawful spending limitations and without adverse financial impact to its residents and taxpayers, by setting uniform benefit levels equivalent to those set in the PBA Local 130 agreement. Rates of pay have been set consistent with the department's table of organization which sets duties and responsibilities requiring reasonable and justifiable differences in salary among ranks.

Accordingly and based upon all of the above, I respectfully enter the following award.

AWARD

1. **Duration**

There shall be a three-year agreement effective January 1, 2001 through December 31, 2003.

2. All proposals by the Borough and the SOA not awarded herein are denied and dismissed. Tentative agreements reached by the parties are incorporated herein as well as stipulations which carry forward certain terms of the PBA Local 130 agreement into the SOA agreement.

3. **Longevity**

After 5 years of continuous service	\$550.00
After 8 years of continuous service	\$1,200.00
After 10 years of continuous service	\$1,700.00
After 15 years of continuous service	\$2,000.00
After 20 years of continuous service	\$2,500.00
After 24 years of continuous service	\$3,000.00

Longevity increments shall take effect upon the anniversary of employment

4. Clothing Allowance

Effective January 1, 2001, January 1, 2002 and January 1, 2003, and retroactive to that date, the Superior Officer clothing allowance will be at the rate of one thousand one hundred (\$1,100.00), one thousand two hundred (\$1,200.00) and one thousand three hundred (\$1,300.00), respectively. Payment will be made in January for all Superior Officers in that position for at least six (6) months. All others in that position will be paid when they complete six (6) months.

5. Holiday Pay & Sick Time

Each employee shall be entitled to one hundred four (104) paid hours of holiday time annually. Employees may elect to be paid for up to sixty (60) hours of holiday time per year. Employees shall be paid for unused holidays, not carried over, no later than the first pay period in December of each year. In addition, an employee may elect to carry over up to twenty-four (24) hours of holiday time per year into the next calendar year as specified and scheduled by the Chief of Police.

Any unanticipated holiday time granted to all Borough employees during the contract period will also be given to the Superior Officers unit.

Subject to the first paragraph of this Article, if an employee shall fail to take any holiday time off as specified and scheduled by the Chief of Police, that employee shall be deemed to have waived the same, and shall not thereafter be entitled to the holiday time so waived or to payment thereof; provided, however, that if any holiday time shall have been accumulated holiday time off need not be taken in kind, and instead, the employee may be paid thereafter on a straight time basis.

If the Chief of Police shall fail, by December 1st, to specify and schedule when holiday time off shall be taken, the employee shall be paid on a straight time basis for the holiday time off not so specified and scheduled. The Department shall view each holiday time off request in light of current manpower needs. Current manpower needs shall reflect special details, stakeouts and other

events / Police activities that require Police personnel. Once holiday time off is granted, that holiday time off will be honored unless an emergency situation arises.

To ensure minimum manpower requirements, a system of mandatory hold over and call back will be used.

All members are entitled to unlimited sick days to be utilized for family emergencies. The family member must be a household member.

An employee shall be granted eight (8) hours of holiday time for every four (4) months he / she does not utilize any sick time.

6. **Vacation**

Each employee shall be entitled to vacation time as follows:

A. Amounts of Vacation Time

- | | |
|---|-----------|
| 1. Upon completion of three or more months, but less than six months of continuous service | 40 hours |
| 2. Upon completion of more than six months, but less than one year of continuous service
an additional | 40 hours |
| 3. Upon completion of more, but less than five years of continuous service on July 1 st | 96 hours |
| 4. Upon completion of five or more, but less than eight years of continuous service on anniversary year of joining the Department | 112 hours |
| 5. Upon completion of eight or more, but less than fourteen years of continuous service on anniversary year of joining the Department | 168 hours |
| 6. Upon completion of fourteen or more, but less than eighteen years of continuous service on anniversary year of joining Department | 200 hours |

- 7. Upon completion of eighteen or more, but less than twenty-two years of continuous service on anniversary year of joining Department 224 hours
- 8. Upon completion of twenty-two or more years of continuous service on anniversary year of joining the Department 240 hours

7. Overtime & Stand-By Stipend

I award a dollar amount stipend as reasonable compensation for the extra duty requirements borne by members of this unit beyond the normal work week. I set this stipend in the following dollar amounts retroactive to their effective date. That amount shall be at \$2,500 effective January 1, 2001, \$3,500 effective January 1, 2002 and \$4,500 effective January 1, 2003 and paid on a pro rata basis in the normal paycheck.

8. Salary

The salary schedule for this SOA unit shall read as follows and be retroactive each effective date.

	January 1, 2001 4.5%	January 1, 2002 2.5%	July 1, 2002 2.5%	January 1, 2003 2.5%	July 1, 2003 2.5%
Entry Lieutenant*	\$88,015	\$90,247	\$92,534	\$94,879	\$97,282
Lieutenant	\$89,265	\$91,497	\$93,784	\$96,129	\$98,532
Entry Captain*	\$95,379	\$97,795	\$100,271	\$102,809	\$105,410
Captain	\$96,629	\$99,045	\$101,521	\$104,059	\$106,660

*For newly appointed officers appointed to this rank after the date of the Award. Newly appointed officers shall serve in the entry rate for 12 months before moving to top rate.

Dated: March 3, 2003
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 3rd day of March, 2003, 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 8/13/2003