

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

TOWNSHIP OF WASHINGTON

"Public Employer"

and

PBA LOCAL 301

"Union"

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2009-053

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Township:

Matthew J. Giacobbe, Esq.

Cleary, Giacobbe, Alfieri & Jacobs, LLC

For the PBA:

Donald B. Ross, Jr., Esq.

Lindabury, McCormick, Estabrook & Cooper, P.C.

This award arises from an interest arbitration proceeding involving the Township of Washington [the "Township"] and PBA Local 301 [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 sessions but the impasse remained. This required the scheduling of interest arbitration hearings. At the interest arbitration hearing, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Each party filed post-hearing briefs, the last of which was received on or about January 3, 2011.

As required by law, the Township and the PBA submitted last offers on the disputed issues for consideration by the arbitrator. They are as follows:

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. **Term of Contract:** January 1, 2009 through December 31, 2013.
2. **Wages:**

Effective January 1, 2009 – 3.9% across the board plus a \$1,000 equity adjustment for members of the bargaining unit.

Effective January 1, 2010 – 3.75% across the board

Effective January 1, 2011 – 3.5% across the board

Effective January 1, 2012 – 3.0% across the board

Effective January 1, 2013 – 3.0% across the board

3. **Sick Time**: Increase to 120 hours per year from the current 80 hours – all other sick leave provisions to remain unchanged.
4. **Health and Dental Insurance**: Combine both plans into one program with officers paying the current 1.5% of base salary towards both programs.
5. **Longevity**: Add the sum of \$500 to each Step on the longevity scale.
6. **Vacation**: Implement the same vacation as that provided to other Township employees, including Lieutenants in the police department.
7. **Outside Employment Rate**: Increase by \$3.00 to \$58.00 per hour.

The Township

1. **Article V – Salaries**
 - 2.5% salary increase for 2009
 - 2.0% salary increase for 2010
 - 1.5% salary increase for 2011
 - Waive retroactive payment for 2009
 - Add four (4) additional steps to the salary guide and equalize the steps for all new hires.
2. **Article VII – College Incentive**
 - Eliminate all college incentives for new hires.
3. **Article XIII – Additional Benefits**

- Direct 15 as baseline plan; employee required to pay any difference with another plan provided by SHBP (same as all other Township employees).
- Eliminate retiree medical coverage for all new hires.
- Employees shall contribute 1.5% of pensionable base salary in accordance with N.J.S.A. 40A:10-21(b) toward cost of major medical coverage.
- Contribution of 1.5% towards health benefits shall be retroactive to 2009.
- New hires pay 20% of medical care coverage in lieu of 1.5% of salary.

4. **Miscellaneous**

- Change twelve (12) hour shifts to eight (8) and ten (10) hour shifts.

BACKGROUND

The Township of Washington is located in Morris County. At 45.12 square miles it has the largest area in Morris County. It has a population of approximately 19,000 residents. As of date of hearing, the bargaining unit consisted of twenty-five (25) police officers, a decrease from previous levels. Overall, the police department was reduced from 35 to 28 positions since 2007. The bargaining unit consists of Patrol Officers, Corporal Sergeants and Sergeant First Class. In 2007, the jurisdiction of the police department expanded when the Township contracted with the Borough of Califon, an adjacent Hunterdon County municipality, to provide police services to residents of that community.

At hearing, the substantial portion of the record that was developed centered on wage and benefit comparisons between PBA Local 301 unit members and the other thirty-eight (38) Morris County municipalities, the

downsizing of the Police Department over the last few years, increased demands on the department and the productivity of its officers, the rising cost of health insurance and the legislated imposition of health insurance employee contributions, the financial profile of the Township, the impact of budget and tax levy caps on the Township's finances, the changing and declining economic climate generally and arguments by each party aimed at persuading the arbitrator that its position was more reasonable than the other party. Financial certifications were provided by PBA Financial Expert Vincent J. Foti and Township Chief Financial Officer Kevin Leifer. The evidence and arguments offered by each party was comprehensive, competent and submitted with heavy emphasis on each party's arguments as to the application of the statutory criteria to their respective positions. Due to the substantial record, a full summation of their presentations must give way to a more limited overview of the parties' submissions with respect to the main themes each has advanced. On each individual item in dispute I will more fully detail the parties' evidence and arguments when deciding the merits of each individual issue.

The PBA contends that its compensation proposals must be viewed in the context in which unit employees are asserted to rank poorly compared to other law enforcement units in Morris County. By way of example, it submits documentation stating that PBA Local 301 ranks 22nd out of 37¹ in base pay, 7th from the lowest in longevity, 4th from the lowest in holiday pay and 28th out of 37 in overall compensation. It claims that the 80 hours of sick leave received is at

¹ Its submissions includes 37 municipalities.

the bottom of the County. For these reasons, the PBA seeks an equity adjustment of \$1,000 in addition to percentage increases of 3.9%, 3.75%, 3.5%, 3% and 3% between 2009 and 2013 that it contends equates to what it terms "the going rate average." The PBA states that it is not unmindful of the changing world but that "this dispute must of necessity be evaluated in the context of 2009, not 2011, at least for the first two years of the contract."

According to the PBA, the Township's financial position is, and has been, healthy and can support the awarding of its position without any adverse financial impact on the governing body or taxpayers and within the Township's Cap limitations. The PBA cites high rates of property tax collection, the Township's ability to retain significant annual appropriation reserves, low municipal and overall tax rates, a strong ratable base on a per capita basis and substantial assets as shown by the Township's ownership of 125 properties having an assessed value of more than \$35 million. The PBA claims that the Township's financial position has been dramatically advanced by recent reductions in staffing levels which have produced substantial savings in personnel costs. The PBA also points to the Township's \$250,000 contract to provide police services with the neighboring municipality of Califon that has placed additional responsibilities on Washington Township police officers despite the reduced manpower. Testimony concerning the added responsibilities and the work of the Police Department was offered by PBA President Philip Seabeck.

The Township disagrees with the PBA's assessment of the record and contends that its final offer is more reasonable under the statutory criteria. The Township submits a series of arbitration awards and voluntary settlements during similar time periods all of which contain salary terms falling well below 3% in contrast to the PBA's proposal averaging 3.43% per year between 2009 and 2013 without adding in the \$1,000 equity adjustment sought by the PBA in the initial year of the Agreement. The Township submits a comparison of average salaries in Morris County showing that Township police officers received reasonably comparable salaries that, while somewhat lower than other municipalities, are balanced by receiving benefits it claims are superior to many of their counterparts. Its exhibits reflect a maximum salary of \$89,942 under its proposals compared with the County average of \$93,794. It contests the PBA's assertion that its sick leave benefits are low. While ten (10) sick days are received per year, unit employees receive 50% of unused sick leave each year in cash and an additional three (3) days sick leave for each year of service when hospitalization, major illness or recuperation requires the employee to miss more than ten (10) consecutive workdays. In addition, if a single major illness or hospitalization extends more than twenty-four (24) calendar days, officers receive paid sick leave from the 25th calendar day to the 182nd calendar day in that year. The longevity benefit, at \$2,000 at the sixteen (16) year level is claimed by the Township to exceed the \$1,524.63 County average payment at sixteen (16) years and the County average of \$1,821.54 at twenty-one (21) years.

The Township also disagrees with the PBA's assessment of the Township's finances. It contends that its offer is more reasonable than the PBA's when considering the 2% tax cap levy and the fiscal problems that face the Township. The Township points to a \$589,991 reduction in state aid since 2007, a \$215,488 increase in PFRS pension contributions and a \$61,815 increase in health insurance premiums for active PBA members. These and other financial issues are said to have caused decline in surplus value from \$3,482,600 in 2007 to \$2,635,068 in 2008 and to \$1,552,225 in 2009. The Township also cites decreases in interest earned on the surplus from \$354,160 in 2007 to \$131,403 in 2008 and to \$40,425 in 2009. The Township also points to the impact of the tax levy cap which at 4% in 2010, compelled the reduction of operating expenses for most departments by a minimum of 20%. The reduction of the tax cap levy to 2% in 2011 is claimed to cap the Township's ability at an additional \$217,000 in tax collections.

DISCUSSION

The Township and the PBA have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. All submissions have been thoroughly reviewed and considered.

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 (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 interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. I have applied that principle to my analysis of the issues in dispute. 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. Any decision to award or deny any individual issue in dispute will 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 three year agreement effective January 1, 2009 through December 31, 2011. 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 record in this matter did not close until the beginning of 2011. Two additional contract years will allow for stability and a period of time for each party to evaluate any changes that each wishes to propose for the future upon contract expiration. Moreover, the record in this proceeding is sufficiently broad in scope to permit an award covering this time period consistent with the statutory criteria. Accordingly, I award a contract duration that extends through December 31, 2013.

Sick Time

The PBA has proposed to increase the number of sick hours from the current level of 80 hours to 120 hours per year. It proposes no other changes to the provision. The PBA's proposal must be evaluated in the context of the terms that already exist in Article X:

- A. Employees shall receive the following sick leave:
 - 1. Up to one (1) year of service – 2 ½ days per quarter.
 - 2. After one (1) year of service – 10 days per year.
- B. Beginning January 1, 2000, unused sick leave will not accumulate from year to year. Those employees that have accumulated sick days prior to January 1, 2000 will retain those days for future use and/or payment upon retirement at the appropriate rate pursuant to Paragraph F.
- C. Beginning January 1, 2000, employees will be paid for fifty percent (50%) of their unused sick leave each year. Payment will be made during the first pay period of the following year.
- D. In addition to the sick leave granted pursuant to Paragraph A, however, each full-time employee shall receive additional sick leave in the amount of three (3) days for each year of service under the following circumstances: Hospitalization, major illness or recuperation which requires the employee to miss more than ten (10) consecutive working days. This added sick leave shall apply only to those days over and above the ten (10) consecutive workdays missed due to hospitalization or recuperation. A doctor's certification will be required to establish eligibility.
- E. In addition to the sick leave granted pursuant to Paragraphs A, B and D for any single major illness or hospitalization which extends more than twenty-four (24) calendar days, paid sick leave will be granted from the twenty-fifth (25th) calendar day to the one hundred eighty-second (182nd) day. Proof of the eligibility for extended benefits will be required in the form of a doctor's certificate. The Township reserves the

right to send the employee to a Township-selected doctor (expenses paid by the Township).

- F. Upon either an actual non-deferred service retirement or a disability retirement, as determined by Police & Fire Retirement System (P.F.R.S.), all unused sick days which have been accumulated prior to January 1, 2000 pursuant to Paragraph B shall be compensated at the then applicable salary rate, to a maximum amount of seven-thousand five hundred dollars (\$7,500.00).
- G. Any time sick leave is taken, the annual allotment of sick time shall be utilized first, followed by the accumulated sick days until the employee reaches the 25th calendar day, prior to the use of the "extended" sick leave granted pursuant to Paragraph D and E. in the event an employee does not have any accumulated sick days then the three (3) days per year of service, as per Paragraph D, will apply.
- H. Notwithstanding Paragraph G, in the case of a job-related injury, it shall not be necessary to utilize the accumulated sick days prior to the "extended" sick leave benefits.
- I. In an instance where the 182 limit has been reached and the employee still had unused accumulated sick days, those unused accumulated sick days can be used at the end of the 182nd day.

As is evident from the above provision, the Township and the PBA have negotiated a comprehensive and detailed sick leave provision. While the annual accumulation of ten (10) days per year may rank on the low side within the County, the remaining provisions in Article X provide for a 50% annual buy back and, under certain circumstances, for additional sick leave to be granted in occurrences involving hospitalization, major illness, recuperation in the amount of three (3) days for each year of service and for long-term major illness or hospitalization of up to 182 calendar days. When the terms of Article X are

viewed in their overall context, I find that there is insufficient justification to increase the amount of paid sick leave as proposed by the PBA.

Health and Dental Insurance

The PBA and the Township each propose changes to the health insurance program. The PBA proposes to combine health and dental insurance plans into one program with officers paying the current 1.5% of base salary towards both programs. It asserts that the \$950 each offer now pays for dental insurance is burdensome given the additional amounts that the law requires them to contribute toward health insurance. The Township's proposal is multifaceted. It reads as follows:

- Direct 15 as baseline plan; employee required to pay any difference with another plan provided by SHBP (same as all other Township employees).
- Eliminate retiree medical coverage for all new hires.
- Employees shall contribute 1.5% of pensionable base salary in accordance with N.J.S.A. 40A:10-21(b) toward cost of major medical coverage.
- Contribution of 1.5% towards health benefits shall be retroactive to 2009.
- New hires pay 20% of medical care coverage in lieu of 1.5% of salary.

As each party recognizes in its proposal, unit members were required to contribute 1.5% of base salary towards health care benefits as required by law on May 21, 2010 pursuant to P.L. 2010, Chapter 2 as a result of legislative action legally mandating the contributions. Five months after the close of record, there was additional legislative action once again addressing 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 contribution pursuant to a percentage schedule based upon a combination of the type of coverage the employee selects and the amounts of base salary earned. 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 restrictions, one of which is to implement Chapter 78 in accordance with its terms. Accordingly, the Award will reflect that health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

The proposals of the parties that are not pre-empted by the health insurance proposals include the PBA's proposal to combine both plans into one program for the purpose of police officers paying health insurance contributions, the Township's proposal to use Direct 15 as the base line plan with the employee required to pay any difference that may exist with any other higher cost plan provided by SHBP, the elimination of retiree medical coverage for all new hires, that health insurance contributions be retroactive to January 1, 2009 and that new hires pay 20% of the cost of medical coverage in lieu of the legislated contribution assuming that the 20% is a higher figure than the legislation requires.

The Township provides its health insurance through the SHPB as a result of an agreement with the PBA to change carriers in the face of a huge increase in premiums required by the old carrier. Health insurance contributions, pursuant to P.L. 2011 Chapter 78, are calculated off the cost of coverage that only includes medical and prescription coverage. In contrast, non-SHPB members calculate health insurance contributions off of everything involving health care including medical, prescription, dental and vision care. Assuming the legality of the PBA's proposal, I do not award this proposal to combine both plans into one program for the purpose of calculating health insurance contributions pursuant to P.L. 2011 Chapter 78. The collective negotiations agreement in the record does not contain reference to the dental insurance benefit in any respect, including either the amount of employee contribution or the Township's cost of providing such insurance. Sufficient time exists between the date of this award and the expiration of the Agreement to clarify any issue with respect to this proposal and to submit proposals for the next agreement consistent with the evidence that exists at that time.

The Township's proposals were developed during the time in which employees were required to contribute a minimum of 1.5% of base salary. It emphasized the need to have greater contributions in light of insurance costs. P.L. 2011 Chapter 78 now provides for a contribution schedule based upon type of coverage, base salary and cost of coverage. The amount of health insurance contributions required by the employee and received by the Township as a

revenue will well exceed any previous requirement set by legislation. Because the Township's proposals are based primarily at offsetting the costs of providing health insurance coverage and because those will exceed the amounts that were contemplated under its proposals, I do not award the Township's proposals. These include the proposal that new hires pay 20% of medical care coverage, that one type of coverage, Direct 15, be used as a baseline plan and that the 1.5% contribution which was effective May 21, 2010, be deducted retroactively to January 1, 2009. I also note that the revenues to be derived by the Township as a result of the health insurance contributions shall not be considered as an enhancement to their ability to fund the PBA's salary proposals.

I also do not award the Township's proposal to eliminate retire medical coverage for all new hires. N.J.S.A. 52:14-17:38 authorizes the Township to offer retirees employer paid retirement medical benefits. It has done so pursuant to the collective negotiations agreement at Article XIII, paragraph 4 which states the following:

The Township shall continue such insurance coverage upon retirement for employees who retire with at least twenty-five (25) years of service in the NJ State Pension System, and twenty (20) years of service with Washington Township (for any employees hired after January 1, 2003). Coverage ends at the year Medicare coverage commences or 65 years of age, whichever is sooner. This provision does not apply to any officer who loses his health benefits through an illegal activity, or whose pension is cancelled for cause.

As shown by the above, the Township's obligation terminates upon a retiree reaching 65 years of age or the year that Medicare coverage commences, whichever is sooner. Accordingly, the Township's obligation on this issue has a terminal point and is not intended to serve as a lifetime benefit. In addition, P.L. 2011 Chapter 78 contains new requirements that set standard employee contributions to be deducted from a retiree's retirement allowances.

All aspects of the health insurance portion of this award have been rendered in the context that the legislated provisions are new and their impact somewhat uncertain. The terms of the health insurance portion of the award are not intended to foreclose *de novo* review of the health insurance provision by the parties during future negotiations nor should they be construed as a waiver of either party's right to reintroduce any proposal at that time that was not awarded herein. Accordingly, I award the following language to Article XIII:

Health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. No retroactive health insurance contributions are awarded prior to the effective date of these provisions.

Miscellaneous

The Township proposes to change twelve (12) hour shifts to eight (8) and ten (10) hour shifts. The PBA urges rejection of this proposal. After review of the entire record of this proceeding, I conclude that the Township has offered insufficient evidence to justify an award that changes the existing work schedule.

The existing work schedule was developed pursuant to a comprehensive memorandum of agreement in 2000 and has remained in effect since that time.

The Township's proposal must be addressed in the context of being able to analyze its impact on departmental operations. The department has undergone recent change by virtue of reductions in staffing as well as an expansion in its geographical responsibilities after contracting to provide police services with the Borough of Califon. Little, if any, evidence has been presented for time periods prior to or after the above changes that would signify legitimate business reasons that would support an award changing the work schedule. In the absence of sufficient credible evidence justifying a change in the work schedule, I do not award the Township's proposal.

Longevity

The PBA proposes to add the sum of \$500 to each step on the longevity scale. The Township urges rejection of this proposal. The basis for the PBA's proposal is to achieve the same longevity maximum schedule that exists in the Township's Superior Officers Association bargaining unit.

The PBA's longevity schedule states:

The following longevity amounts shall be added to the base salary for employees under the Agreement:

5-10 years	\$1,000.00
11 – 15 years	\$1,500.00
16+	\$2,000.00

Longevity shall be computed from appointment day of full-time employment.

The SOA longevity schedule states:

The following longevity amounts shall be added to the base salary for Superiors. This shall be paid prior to the last pay in December.

After the completion of 11 years	\$1,500.00
After the completion of 16 years	\$2,000.00
After the completion of 21 years	\$2,500.00

Longevity shall be computed from appointment day of full-time employment as a police officer for Washington Township.

With certain modifications described below, I conclude that there is merit to the PBA's proposal to increase longevity amounts by \$500 at each step of the three step schedule. Because the purpose of the provisions is to reward length of service in the police department, there is merit to the PBA's argument that this benefit be parallel regardless of rank. However, the PBA's proposal seeks increased longevity amounts without any corresponding change in eligibility requirements that are stricter in the SOA agreement. Accordingly, I award the amounts proposed but in a modified fashion that requires the years of service to correspond with the same longevity steps set forth in the SOA schedule. This will result in the delay in qualifying for the initial longevity step from five (5) years as it presently exists to after the completion of eleven (11) years which will also provide an offset to any increased costs caused by the awarded change. This

award shall be effective January 1, 2013 and shall apply to all current police officers.

Vacation

The PBA proposes to implement the same vacation as that provided to other Township employees, including Lieutenants in the police department. The Township seeks rejection of this proposal. Article XI, Vacations currently provides the following benefit:

Full-time employees shall receive the following vacation time:

1. Newly hired officers shall receive one-half (1/2) day of vacation each month of service during the remainder of the first calendar year of employment.
2. During the first (1st) full calendar year of service through the end of the sixth (6th) year of service – two (2) weeks vacation.
3. At the start of the calendar year in which the employee completes his sixth full year of service, the employee becomes eligible for three (3) weeks of vacation. Example: employees hired September 1981 becomes eligible for three (3) weeks paid vacation starting January 1, 1987.
4. At the start of the calendar year in which the employee completes his/her eleventh (11th) full year of service, the employee becomes eligible for four (4) weeks of vacation.
5. At the start of the calendar year in which the employee completes his/her twentieth (20th) full year of service, the employee becomes eligible for five (5) weeks of vacation.

With written permission prior to December 31st of any year, five (5) days of accrued vacation may be carried over to be used in the following year before June 30th. If the carried-over vacation is not

used by June 30th, or an extension not granted by the employer, said vacation shall lapse.

Article XI, Vacations in the PBA Agreement as set forth above and Article XI, Vacations in the SOA Agreement provide the same vacation schedule with one exception. Each provides for the identical schedule for up to one year of service, after one year of service, after six years of service, and after eleven years of service. Each schedule also provides for a maximum amount of vacation of twenty-five (25) days. However, the PBA agreement commences the maximum benefit upon the completion of the twentieth full year of service while the SOA Agreement provides for one additional day per year beyond twenty (20) days after sixteen years of service until reaching the maximum of twenty-five (25) days of vacation. Despite the fact that both agreements confer vacation benefits upon the achievement of certain years of service and both contain the same maximum number of vacation days, I do not award the PBA proposal to match the SOA schedule. Unlike the longevity proposal, the vacation proposal has impact on department operations. The PBA's proposal to maintain similar vacation schedules after sixteen years of service up to the same maximum allowance now provided in each agreement would, under existing reduced staff levels, could have an exacerbating impact on staffing and result in increased overtime costs. These considerations have not been addressed. For these reasons, I do not award the PBA proposal.

Article VIII – College Incentive

The County proposes to eliminate all college incentives for new hires. The PBA urges rejection of this proposal. The Agreement at Article VIII provides a very comprehensive scheme for compensating an employee for college credits or tuition. A review of that Article reflects that the existing college incentive plan has evolved in various stages linked to effective dates of employment. There is a Plan A for employees employed prior to December 31, 1988. There is a Plan B for employees employed on or after January 1, 1989. There is a Plan C for employees employed on or after January 1, 1997. In addition, there is a Plan D that an employee may enroll in in lieu of Plans A, B or C (but not in addition thereto). There is no effective employment date mentioned for eligibility for Plan D but in the absence of a date and given the fact that access to Plan D must be in lieu of Plans A, B or C, it appears that any new employee would be entitled to the language in Plan C which applies to employees employed on or after January 1, 1997 unless that employee enrolls in Plan D as an option. Under Plan C, new employees would “receive 80% tuition reimbursement plus cost of books (with receipts) upon completion of the course with a grade of “C” or better (or a passing grade for a pass/fail course) for courses of study in connection with Approved Degree Programs. Under this Plan C, payment shall be made only for courses necessary to obtain an Associate’s and Bachelor’s degree.”

Given the fact that terms and conditions for police officers have become more attractive since 1997 and that law enforcement has become more

sophisticated, it is a reasonable conclusion that the Township's hiring process would, more likely than not, employ a prospective police officer with at least a Bachelor's degree, especially with the broadened opportunities that higher education now provides for students to matriculate in criminal justice programs. Under these circumstances, it is reasonable to eliminate all prior programs, including Plan C, that reimburse employees for courses that lead to less than a Master's degree for new hires is reasonable. However, I do not award the elimination of college incentives for new employees who have already achieved a Bachelor's degree and matriculate in a course of study in connection with Approved Degree Programs or degree programs otherwise approved by Township committee that are courses designed to lead to a Master's degree under the existing approval language. For such new employees, I award a program that allows sole eligibility for the receipt of the current level of incentive in Plan D of 50% tuition reimbursement plus cost of books (with receipts) upon completion of the course with a grade of "C" or better (or a passing grade for a pass/fail course) towards achieving a Master's degree.

Outside Employment Rate

The PBA proposes to increase the outside employment rate by \$3.00 to \$58.00 per hour. Currently, Article VI(H) requires that employees be paid at the flat rate of \$55.00 per hour for contractor work that is scheduled through the Township and reimbursed to the Township by the contractor. As is commonly understood, the costs for such extra duty pay are borne by outside contractors

with the Township receiving an administrative fee from the contractor to cover its own costs of administering the program. The labor agreements in the record reflect that a majority of municipalities that are comparable to the Township of Washington provide for extra duty rates that exceed what is now provided for in Article VI(H). The last adjustment in this rate occurred at least six years ago. When viewed in this light, the PBA's proposal is reasonable. It cannot be awarded retroactively and would become effective upon adoption by Township resolution. I award the PBA's proposal that the rate be increased to \$58.00 per hour upon action by the Township to adopt this amount which shall occur within a reasonable period of time after the issuance of this award.

Salaries

The Township and the PBA propose sharply different salary terms. The PBA proposes the following salary increases:

Effective January 1, 2009 – 3.9% across the board plus a \$1,000 equity adjustment for members of the bargaining unit.
Effective January 1, 2010 – 3.75% across the board
Effective January 1, 2011 – 3.5% across the board
Effective January 1, 2012 – 3.0% across the board
Effective January 1, 2013 – 3.0% across the board

The Township proposes the following salary increases:

- 2.5% salary increase for 2009
- 2.0% salary increase for 2010
- 1.5% salary increase for 2011
- Waive retroactive payment for 2009

- Add four (4) additional steps to the salary guide and equalize the steps for all new hires.

As previously stated, the record contains substantial evidence relating to employee compensation in Washington Township and elsewhere, Township finances and other areas of relevance that must be considered in rendering a wage determination. Among this evidence, I am persuaded by the parties' respective presentations that the most relevant and compelling facts include the following:

- General economic conditions affecting the nation, the state, the county and the Township underwent significant change towards the end of contract expiration and into the succeeding two years, 2009 and 2010, prior to the close of the record.
- The staffing levels in the police department significantly declined after 2007 and through 2011, thereby causing substantial reduction in law enforcement personnel costs during this time period. From a total of 35 since 2007, the staffing level has been reduced to 28. The Department lost 8 members (1 Police Officers, 2 Corporals, 2 Sergeants, 1 Sergeant First Class, 1 Lieutenant and 1 Captain) due to the retirement and two police officers due to transfer to Wayne and East Brunswick.
- The calls for service have increased as well as the expansion of the department's geographic jurisdiction as a result of the Township's contracting with the Borough of Califon to provide police services.
- Top Patrolman Maximum Base Salaries with Longevity in 2008 reflect that at \$87,941, Washington Township fell within a minus 5% (\$83,544) and plus 5% (\$92,338) of the twenty-three Morris County municipalities of Chester Township, Roxbury, Morris Plains, Florham park, Chatham Borough, Madison, Wharton, Jefferson, Mendham Township, Mendham Borough, Mountain Lakes, Morristown, Rockaway Township, Chatham Township, Dover, Long Hill, Boonton Township, Butler, Kinnelon, Rockaway Borough, Mount Olive and Hanover.

- The cost of living as measured by the CPI rose 0.1% 2008, 2.7% in 2009, 1.5% in 2010 and 3.0% in 2011.
- The Township realized only \$16,679,346 in its 2009 budget which was only \$5,256 in excess of the amount budgeted as compared with the realization of \$16,813,589 in 2008 which was \$499,428 in excess of the amount budgeted.
- The Township's tax collection rate has averaged over 98% and has remained stable.
- The Township's reserve balance as of December 31, 2009 for salaries and wages was \$235,829 of which \$166,276 was for police salaries and wages.
- Surplus that was added to balance the budget, revenues placed back into surplus and surplus value at the end of the year all declined significantly between 2007 and 2010.
- State aid to the Township decreased from \$1,836,961 in 2008 to \$1,433,521 in 2010 and was anticipated to decline in 2011.
- Non-unionized employees received 21 hours of furlough in 2009 and 19 hours in 2010. In 2009, DPW Foreman received 2 days of furlough and in 2010, DPW employees received 1 day of furlough.
- The CWA represented dispatchers (8 employees) negotiated a 2009 and 2010 two year contract that included a percentage health insurance contribution and 3.25% and 3.5% increases. Teamsters Local 469 represented DPW employees (19 employees) negotiated a 2008, 2009, 2010 and 2011 four year contract that included a dollar amount health insurance contribution and increases of 3.25%, 3.5%, 3.5% and 3.75%.
- The Township anticipated that the 2% tax cap levy in 2011 will allow the Township to receive \$217,000 in tax collection.

While all of the statutory criteria are relevant, some are entitled to greater weight than others. There is seldom a line of demarcation that isolates the evidence concerning a single criterion from all the rest because there are interrelationships, and in some instances contradictions, between one or more of

the criteria. The interests and welfare of the public [N.J.S.A. N.J.S.A. 34:13A-16g(1)] is paramount because it is a criterion that embraces many of the other factors and recognizes their interrelationships. The interests and welfare of the public clearly require that the Township support and fund an effective, efficient and productive police force. This criterion implicates the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)], as well as the Township's statutory budgetary limitations set forth in N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9) because its funding obligations must be consistent with its financial capabilities. However, the interests and welfare of the public are implicated beyond these financial considerations and obligate the arbitrator to review wage and benefit comparisons [N.J.S.A. 34:13A-16g(2)(a), (b), (c)] because levels of wages and benefits of its police officers compared to other employees employed by the Township and elsewhere have been recognized by the legislature as one of the criteria and this evidence relates 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 such terms can contribute to, or adversely impact on, the continuity and stability of the Township's police officers [N.J.S.A. 34:13A-16g(8)]. Further, levels of existing terms are a reasonable benchmark upon which to evaluate either party's proposals for change. 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 one of the indicators that influences the public's sentiment and willingness to support changes to contract

terms and it also serves as a measure to evaluate how revised contract terms could affect a police officer's standard of living. I evaluate the parties' proposals based upon these considerations.

The last offers of the Township and the PBA must be evaluated in the context of the two full years that they were negotiating changes to the Agreement that expired on December 31, 2008. As the record reflects, the state of the economy and public finance underwent major transition towards the end of 2008. The position of the PBA reveals that it is seeking changes going forward that were more responsive to the economy and the results of negotiation and arbitration that were consistent with the previously healthy economy, produced higher revenues and ratables and yielded higher salary increases before the onset of the financial decline that surfaced towards the end of the prior Agreement and continued into 2009 and 2010. The 2006-2008 Agreement reflected the state of the prior economy as shown in the results in the prior PBA contract that yielded annual increases of 4% in addition to step movement during those years.

The PBA's ability to achieve similar results going forward have not been proven on this record which shows changed financial circumstances within the Township in 2009 and 2010 coupled with 2010 modifications to the Township's lawful authority when developing budgets effective for 2011 and beyond. The record that closed a full two years after contract expiration also shows declines in

cost of living data, declines in surplus and revenues to be placed back in surplus, declines in State Aid which has been the Township's second largest revenue source, declines in interest revenue on surplus and reserves, increases in pension contributions and 2010 modifications reducing the tax cap levy to 2% thereby constraining the Township's ability to raise taxes as a means of offsetting revenue declines and increased costs even if they were willing to do so. Of significant note is that the Township placed \$1,550,000 from surplus in order to balance the 2009 budget but then was only able to replenish the budget with 4467,157 out of the \$1,550,000.

This is not to say that the Township has proven that its offer must be adopted in light of the changed financial circumstances. Its proposal of 2.5% in 2009, 2.0% in 2010 and 1.5% in 2011 in addition to step movement, but without any retroactivity for the across the board increase in 2009, must be evaluated in conjunction with other statutory criteria including internal and external comparability and factors which are ordinarily or traditionally considered in the determination of wages. The PBA has established that the Township's proposed increases are generally below the average increases in the record for those years in municipal law departments similar to Washington Township and within Morris County and short of what the Township voluntarily settled for in its non-law enforcement units. The internal settlements differ from one another and do not constitute a pattern in light of the differences and the fact that they occurred early in 2009, well before the Township felt the impact of the declining

economy and its impact on finances. Moreover, the costs associated with annual step movement for the PBA are of a greater magnitude than in the non-law enforcement units and must be considered in the context of the overall financial impact of the award. Yet, these settlements are relevant when considering the adequacy of the Township's offer to the PBA. Further, the increased productivity of the police department establishes that the police officers are doing more with less staff and the expansion of its geographical jurisdiction, has brought increased responsibilities to the department and increased revenue to the Township. These are additional considerations that point to the awarding of terms that are modestly beyond what the Township has proposed and for a longer duration thus providing certainty to the police officers and to the Township's budgetary process. The budgets in evidence also show that the Township will have difficulty funding the full impact of the increases it has proposed and I have awarded and, for that reason, there is merit to deferrals of effective dates for the increases I have awarded.

I am persuaded that the record supports a reasonable determination of the salary issue with due regard to the statutory criteria, that shall include the following terms: a new hire salary schedule with two additional steps, six month delays in the effective dates for each salary increase in 2009 and 2010, annual step movement as proposed by both parties on the effective dates provided by the existing terms of the contract and annual increases of 2.5% in 2009, 2.25% in 2010, 2.0% in 2011, 1.75% in 2012 and 1.5% in 2013. The interests and welfare

of the public will be furthered by these terms which can be funded within the statutory limitations on the Township, without adverse financial impact on the taxpayers and give some weight to each of the statutory criteria. The Award of a new hire schedule with two additional steps and the freezing of the starting and post academy steps in 2012 and 2013 will provide additional costs offsets for new hires.

Such increases are generally consistent with cost of living increases over the time period and will maintain the continuity and stability of employment for Township police officers. There is evidence that two police officers left in 2000, one in 2001, one in 2004, one in 2008 and two in 2010. One left to be employed in her place of residence while five left for positions in higher paid police departments. The number of transfers over the ten year period cannot be deemed to be significant or, standing alone, to have negatively impacted upon the department's operations in a manner that would justify higher salary increases as the PBA suggests. Moreover, departments such as Wayne, East Brunswick and the New Jersey State Police offer attractive levels of compensation and benefits that are superior to many, if not most police departments and, as such, are subject to incoming police transfers for that reason without any negative connotation that sending departments do not itself maintain fair levels of overall compensation. Their departures, however, coupled with recent retirements, substantially decrease personnel costs and are considerations that support the salary award in light of increased productivity.

The awarded increases also provide adjustments that maintain reasonable comparability in law enforcement units over the five year time period as measured by the awards and settlements reported by the New Jersey Public Employment Relations Commission for the years in dispute.

The statute requires a review of overall compensation and benefits being received. Each party disagrees with the attractiveness of those levels and how the existing package stands compared with others. Unit members receive twelve (12) paid holidays per year. Though not part of the base for salary increase purposes, they are included in base salary for weekly distribution at a rate equal to the hourly wage of each officer. Bereavement days are provided on an as needed basis. There is \$2,000 maximum in longevity pay after the completion of fifteen years which is also pensionable under the Agreement. There is five weeks of vacation after completion of the twentieth (20th) full year of service. There is a three hour minimum pay requirement for unscheduled call outs and court appearances, out of rank pay, retiree health insurance through the age of 65, educational incentives, three personal days and a \$925 uniform allowance. In the final analysis, there is nothing in the overall package presently received that suggests the basis for an award that is greater or less than the terms awarded herein.

I have analyzed the record evidence as to costs and conclude that they can be borne by the Township within its statutory limitations and without adverse

financial impact on the governing body, its residents and taxpayers [N.J.S.A. 34:13A-16g(6)]. Under the Township's proposal of 2.5% for 2009, the cost would be \$53,000 in addition to the contractual requirement to advance eligible employees annually on salary steps in the amount of \$92,722 for a total cost of \$145,722. The employer has proposed that retroactive payments for 2009 be waived and that sum would equal the \$53,000 in across the board payments that would otherwise be paid. That sum would roll into contract year 2010 because the across the aboard increases that would be unpaid under the Township's proposal would represent additional base cost commencing January 1, 2010. The projected costs for the 2.0% salary increase proposed by the Township for 2010 would be an additional \$44,000 in addition to the contractual requirement to advance eligible employees annually on salary steps in the amount of \$78,737 for a total cost of \$122,737. An additional \$22,060 in step movement occurred mid-year in 2010. The actual costs for 2010 are somewhat offset by a June 13, 2010 resignation of an officer who would have been earning \$60,516 under the Township's proposal and the August 1, 2010 retirement of a top step officer who would have been earning \$89,851 under the Township's proposal. The sum total of these separations is \$30,000 and \$37,437 respectively or an offset of \$67,437 from the projected annual cost of \$122,737 had they remained employed. The savings from these and other separations due to transfer are not PBA entitlements but they allow for greater expenditures for current members than what the Township has proposed. In 2011, the Township's proposed 1.5% increase would cost \$25,000 in addition to the contractual requirement to

advance eligible employees annually on salary steps in the amount of \$63,901 for a total cost of \$85,901. The annual costs for the two 2010 separations represent an offset from the projected costs submitted by the Township who factored these costs into its calculations despite the retirements. The Township has not made a proposal for 2012 or 2013. The step increase costs for 2012 and 2013 appear to approximate \$50,000 for each year. The only Township proposal for change in the salary structure is its proposal to add four (4) new steps for new hires. I have awarded two new steps for new hires and have frozen the starting and post academy steps for new hires in 2012 and 2013. The annual step increase between the post academy step and salary maximum are in equal dollar amounts as the Township has proposed.

The costs of the Award in 2009 include the \$92,722 in step movement and \$26,500 in across the board increases. There is a \$26,500 deferral that would carry forward into contract year 2010. In 2010, there is \$78,737 in step movement and an additional \$24,000 in across the board increases. There is a \$24,000 deferral that would be carried forward into contract year 2011. The 2010 and 2011 costs I have calculated include the costs of at least two officers who resigned or retired and will reduce the projected costs herein. In 2011, the across the board costs are \$33,000 and eligible employees would receive \$63,901 in step movement. In 2012 and 2013, the annual step movements will approximate \$50,000 per year. The 2012 and 2013 across the board increase costs are projected at \$28,500 and \$25,000 respectively.

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.

2. **Duration**

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

3. **Health Insurance**

Health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. No retroactive health insurance contributions are awarded prior to the effective date of each of these provisions.

4. **Longevity**

Effective January 1, 2013, Article XII shall read as follows:

The following longevity amounts shall be added to the base salary for employees under the Agreement:

After the completion of 11 years	\$1,500.00
After the completion of 16 years	\$2,000.00
After the completion of 21 years	\$2,500.00

Longevity shall be computed from appointment day of full-time employment.

5. **Article VII – College Incentive**

Employees hired after the date of this award who have achieved a Bachelor's degree only shall be entitled to receive the current level of incentive in Plan D of 50% tuition reimbursement plus cost of

books (with receipts) upon completion of the course with a grade of "C" or better (or a passing grade for a pass/fail course). This plan shall only apply to courses designed to lead to a Master's degree in connection with Approved Degree Programs or degree programs otherwise approved by Township committee

6. **Outside Employment Rate**

Effective upon adoption by Township resolution which shall occur within a reasonable period of time after the issuance of this award, the outside employment rate shall be increased by \$3.00 to \$58.00 per hour.

7. **Salary**

The existing salary schedule shall be adjusted by the following amounts effective and retroactive to their effective dates. All increases shall be at each step of the salary schedule and at each superior officer rank and shall apply to all unit employees and those who have retired on normal or disability pension and except for those who have voluntarily resigned or have been separated from employment without good standing.

Effective July 1, 2009 - 2.50%
 Effective July 1, 2010 - 2.25%
 Effective January 1, 2011 - 2.00%
 Effective January 1, 2012 - 1.75%
 Effective January 1, 2013 - 1.50%

The salary schedule for employees hired prior to the issuance of this award shall read as follows:

	2009	2010	2011	2012	2013
Patrol Officer					
Start	\$47,032	\$48,090	\$49,052	\$49,911	\$50,659
*Post Academy	\$50,111	\$51,239	\$52,264	\$53,178	\$53,976
** Step 1	\$53,182	\$54,379	\$55,466	\$56,437	\$57,284
Step 2	\$59,330	\$60,665	\$61,878	\$62,961	\$63,906
Step 2A	\$62,416	\$63,821	\$65,097	\$66,236	\$67,230
Step 3	\$65,484	\$66,958	\$68,297	\$69,492	\$70,534
Step 4	\$71,631	\$73,243	\$74,708	\$76,015	\$77,155
Step 5	\$77,783	\$79,533	\$81,124	\$82,544	\$83,782
Step 6	\$83,934	\$85,823	\$87,539	\$89,071	\$90,407
Step 7	\$88,090	\$90,072	\$91,873	\$93,481	\$94,883
***Corporal	\$89,585	\$91,601	\$93,433	\$95,068	\$96,494

Sergeants

Step 1	\$91,082	\$93,131	\$94,993	\$96,656	\$98,106
Step 2	\$93,694	\$95,802	\$97,718	\$99,428	\$100,920
Step 3	\$97,852	\$100,053	\$102,054	\$103,840	\$105,398

*** Sgt. First Class \$102,152 \$104,450 \$106,539 \$108,403 \$110,029

The salary schedule for employees hired after the issuance of this award shall read as follows:

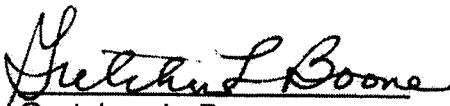
Patrol Officer	2012	2013
Start	\$45,885	\$45,885
*Post Academy	\$48,889	\$48,889
Step 1	\$53,348	\$53,488
Step 2	\$57,807	\$58,087
Step 3	\$62,266	\$62,686
Step 4	\$66,725	\$67,285
Step 5	\$71,184	\$71,884
Step 6	\$75,643	\$76,483
Step 7	\$80,102	\$81,082
Step 8	\$84,561	\$85,681
Step 9	\$89,020	\$90,280
Step 10	\$93,481	\$94,883

Dated: July 21, 2012
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 21th day of July, 2012, 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 4/30/2014