

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

TOWN OF KEARNY

"Public Employer,"

- and -

DEPUTY POLICE CHIEFS ASSOCIATION

"Association."

Docket No. IA-2008-029

**OPINION
AND
AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Frederick T. Danser, Esq.
Apruzzese, McDermott, Mastro
& Murphy, P.C.

For the Union:

James M. Mets, Esq.
Mets, Schiro & McGovern

I was designated by the New Jersey Public Employment Commission to serve as interest arbitrator after the Town of Kearny [the "Township"] and the Deputy Police Chiefs Association [the "Association"] reached an impasse in negotiations. The unit consists of three (3) Deputy Chiefs who had previously been unrepresented. Upon receiving certification, this was their first negotiations process for an initial collective negotiations agreement. Several mediation sessions were conducted due to the fact that an entire new labor agreement was being negotiated and many of the proposed terms had not been agreed to. Because the impasse remained, a formal interest arbitration hearing was held on May 1, 2009, at which time testimony and documentary evidence were submitted into the record. Post-hearing briefs were filed on or about December 1, 2009.

As required by statute, each party submitted a final or last offer. They are as follows:

FINAL OFFER OF THE TOWN OF KEARNY

1. Term. Six years - July 1, 2007 to June 30, 2012.
2. Wages
 - 1/1/07 – 3.0% GWI (General Wage Increase)
 - 1/1/08 – 3.25% GWI
 - 1/1/09 – 3.25% GWI
 - 1/1/10 – 3.25% GWI
 - 1/1/11 – 3.25% GWI
 - 1/1/12 – 3.25% GWI
3. Muster Pay – Not to be included in this first contract.

4. Longevity

- a) Current employees:
 - 4 to 7 years – 2.0%
 - 8 to 11 years – 4.0%
 - 12 to 15 years – 6.0%
 - 16 to 19 years – 8.0%
 - Beginning 20th year – 10% with cap of \$15,000.00
- b) Employees promoted to Deputy Chief on or after 1/1/09:
 - 10 to 13 years – 4.0%
 - 14 to 17 years – 6.0%
 - 18 to 21 years – 8.0%
 - Beginning 22nd year – 10% with cap of \$15,000.00

5. Hospitalization

Section 1. The Employer agrees to provide health insurance under the provisions of the State Health Benefits Plan as that plan may be modified during the terms of this contract. The Town shall pay the full cost of the Direct 15 and if the employee chooses a different plan that is more expensive, he/she will pay the difference to the Town through payroll deductions.

Section 2. The Employer agrees to provide at no expense to the employees, a five thousand (\$5,000.00) dollar Life Insurance Policy for all employees covered by this Agreement. The Employer agrees to provide upon their retirement, a five thousand (\$5,000.00) dollar Life Insurance Policy to be paid for by the retiree.

Section 3. The Employer shall provide each member of the unit with a dental insurance program by Delta Dental. The coverage shall be no less than 80% by the Plan and 20% by the member of the unit. The annual deductible for the single plan shall be \$50.00 and for the family plan \$150.00. The Employer shall pay the full cost of the premiums for said insurance. Annual coverage shall be \$2,000.00 and orthodontia an additional \$1,000.00. All retired employees who have been, prior to retirement, employees covered by this Agreement, shall be allowed to, at the retiree's option, remain in the dental insurance program by Delta Dental at the retiree's sole expense.

Section 4. The Employer at its cost shall provide to all employees and their dependents a prescription drug plan. Each prescription and renewal shall be paid for by the Employer subject to a co-payment by the employee, which shall be consistent with the co-pays charged by the State Health Benefits Plan.

The Employer further agrees to provide at no cost to all qualified retired employees under State Statute who have been prior to their retirement, employees covered by this agreement and their dependents a Prescription Drug Plan. Each prescription and renewal shall be paid for by the Employer subject to a co-payment by retired employees, which shall be consistent with the co-pays charged by the State Health Benefits Plan.

Section 5. The spouse and dependents of any officer who dies while employed by the Employer shall receive all health benefits (medical, prescriptions and dental) enjoyed while the officer was an active employee at the Employer's expense, unless such benefits are provided at the expense of the State of New Jersey. The benefits shall continue for said officer's surviving spouse in the same manner as for a surviving spouse of a retiree and for dependents until they become emancipated. Employees who are hired on or after July 1, 2005 and who die while off-duty must have a minimum of four (4) years of New Jersey creditable PFRS service at the time of death to be eligible for this benefit.

6. Hours of Work

Section 1. The work day shall consist of not more than eight (8) consecutive hours in a twenty-four hour period and the work week shall consist of five (5) days in a seven (7) day period.

The assignments for Deputy Chiefs shall provide coverage on all three (3) shifts consistent with the daily and weekly work schedule set forth above.

7. Vacation

Section 1. All current employees covered by this Agreement who have completed three (3) or more years of service shall receive twenty-nine (29) working days of vacation with pay

annually. Such entitlement shall be effective for the year during which the third year of employment is completed. All new employees to the title of Deputy Chief shall receive twenty-five (25) working days of vacation.

Section 2. All employees in addition to all other allowable vacation time shall receive an additional vacation day for every five (5) years of service after twenty (20) years of service with the Town of Kearny. The additional vacation day shall be considered earned as of January 1st of each year, if the employee shall have completed, or will complete his necessary years of service during said calendar year. Vacation entitlement will be prorated in the year of termination of employment with the Town.

Section 3. In order not to hamper proper and efficient police operations, both parties agree that the scheduling of vacations must be left to the Employer but the following conditions shall be observed, in such scheduling:

- (a) Employees shall submit their vacation requests by March 1 of each year. Vacation requests will be granted wherever possible subject to the operational needs of the Department.
- (b) No employee shall be permitted to take more than three (3) consecutive weeks of vacation at one time.
- (c) Vacation period assignments during June, July and August shall be based exclusively upon seniority among the employees, and no employee shall be assigned more than two (2) weeks vacation during those months.

8. Holidays – Deputy Chiefs to continue receiving holiday pay in accordance with present practice, and those Deputy Chiefs working 5 on 2 off to receive the following holidays off without loss of regular pay but with no additional holiday pay:

New Year's Day	July 4 th (Independence Day)
Martin Luther King Day	Labor Day
President's Day	Thanksgiving
Good Friday	Day after Thanksgiving
Memorial Day	Christmas Day

If Deputy Police Chief is required to return to duty on any of the above listed holidays, there shall be no additional compensation paid to such Deputy Chief, either in compensatory time or cash.

Deputy Police Chiefs are required to work on any other Town designated holiday at no additional compensation.

9. **Additional Proposals**

The Town reserves its right to supplement this final offer if the parties are unable to agree on remaining contract issues and submit such agreement to the arbitrator by way of stipulation.

FINAL OFFER OF THE ASSOCIATION

1. **Term** – Six year contract: January 1, 2007 through December 31, 2012 (with salary adjustment for lost wages in 2004, 2005 and 2006)

2. **General** – All benefits and contract language not addressed herein are to be consistent with current bargaining agreement between the Town and Kearny Superior Officers' Association.

3. **Wages**

A. 15% differential over Captain or 10% differential over "Night captain."

B. Muster pay of .6% to continue.

4. **Vacation**

Bargaining unit members shall be allowed to use vacation days in half increments.

5. **Acting Pay**

Bargaining unit members shall be compensated at the Chief's rate of pay for all hours serving in acting Chief capacity.

6. **Association Leave Time**

The Association members shall be allowed to attend negotiations meetings without loss of pay. One designee from the Association shall be released to attend Association business on an as needed basis. The Association shall also be entitled to have 2 members attend, without loss of pay, Stat PBA conventions and the State Collective Bargaining Seminar. The duration of said leave shall be governed by N.J.S.A. 40A:14-177, N.J.S.A. 11A:6-10 and N.J.A.C. 4A:6-1.13(b).

7. **Holiday Pay**

Incorporated and attached settlement agreement (Exhibit B) into the Agreement.

8. **Prior Tentative Agreements**

All prior tentative agreements reached at mediation are to be included in the Arbitrator's Award.

BACKGROUND

This proceeding involves an atypical set of circumstances in that the award herein will represent the first collective negotiations agreement between the Association and the Town. The negotiating unit consists of three Deputy Police Chiefs. The Association was certified by PERC as the majority representative for the Deputy Police Chiefs in 2007 after the conduct of a representation election. The police department consists of approximately 120 officers.

The Town of Kearny is one of 12 municipalities located in Hudson County, has a population of approximately 40,000 and has boundary lines that connect to

both Essex and Bergen counties. It had a median household income of \$56,609 in 2007 and an average residential tax of \$8,278.

Each of the three Deputy Chiefs is in charge of a specific division in the Department. One ["DC#1"] is an Administrative Deputy Chief who is in charge of administrating functions such as supervising the Chief of Police's office staff, assignment of personnel, budget preparation, payroll, scheduling, recordkeeping, training and service as a liaison with other law enforcement agencies such as Office of Homeland Security and Preparedness and Hudson County Office of Emergency Management. Another Deputy Chief ["DC#2"] is in charge of Operations. He is the Patrol Division Commander which includes all patrol units and supervisors, Command of the Community Policing Unit which includes the D.A.R.E. unit, School Resource Officers, and any community based programs, Commander of the Traffic Division which includes a Sergeant, two Patrolmen and handling traffic functions and school crossing guards, Fleet Patrol which is shared with the Deputy Chief in charge of the garage, Director of crimes unit, administratively in charge of the tactical services unit and S.W.A.T. team. A third Deputy Chief ["DC#3"] is in charge of the Investigations Division. He supervises all units in the Detective Bureau, which includes the Criminal Division. The Investigation Division includes the Juvenile Bureau which has two Detectives and a Supervisor, Bureaus of Criminal Investigation which has two Detectives who are responsible for crime scene investigation, administrative fingerprinting, criminal fingerprinting, Megan's Law registration, gun permits, the Vice Unit

which has a Sergeant with four Detectives, ABC Control Detective who handles all licensing, inspections and ABC license transfers. In addition, the Investigation Commander must deal directly with the Hudson County Prosecutor's Office, the Division of Criminal Justice and the Attorney General's Office. He must submit monthly reports to the Chief regarding investigations. He must submit quarterly reports regarding juveniles to the Hudson County Prosecutor's Office.

As previously indicated, this is an initial collective negotiations agreement. During negotiations, dozens of economic and non-economic issues were discussed, many of which remain at issue. This is evidenced by the issues that were identified as being in dispute in the Association's petition to initiate interest arbitration. These issues include, but are not limited to, wages, overtime, vacations, hours of work, medical insurance, acting pay, time off for conducting union business, holidays, clothing allowance, night hazard differential, longevity and terminal leave.

The Association's stated main goal is to include most benefits and contract language consistent with what exists in the collective negotiations agreement between the Town and the Kearny Superior Officer's Association. The parties did engage in a review of the Superior Officer's Association agreement in an attempt to ascertain what items could be included in the Deputy Chief Association's initial contract and, where appropriate, what items would need to be revised or eliminated to meet the unique conditions and

responsibilities held by the Deputy Chiefs. While the parties achieved some success in this endeavor during the mediation process, disagreements remained and these efforts necessarily gave way to focusing on the major issues in dispute which are salary and other major compensation related items. I have received the agreements that were made as stipulations pursuant to N.J.S.A. 34:13A-16(g)(2) and will decide the remainder of the issues on their merits. In order not to overly burden this decision with a lengthy summary and analysis of those other issues, I will instead focus on the main issues of concern and address the others in more summary fashion at the conclusion of this decision.

The underlying rationale for the Association's proposals is the contention that the Deputy Chiefs have an exceptionally high level of responsibility, they are on call on a 24/7 basis and routinely perform duties beyond the work hours required by their normal shifts. Given these responsibilities, including those of a supervisory/managerial type, the Association asserts that they should be compensated by at least 15% more than the next subordinate rank of Captain. This approach is said to be consistent with recommended police practice. On this point, the Association submits:

This practice reflects the higher level of responsibility, and in law enforcement, liability faced by those accepting the burdens of rank. This is particularly important when the affected employee is not eligible for overtime. Without this differential, the potential for subordinates to make significantly greater salaries with overtime is very real. Indeed, in relation to this bargaining unit, in 2004, 6 subordinate officers earned more overall salaries than Deputy Chiefs and in 2005, 2006 and 2007 and 2008, 8 subordinate officers earned greater overall salaries than Deputy Chiefs. In

some instances, subordinate officers made almost \$30,000 per year more than the Deputy Chiefs.

The Association deems it important to set forth the history of the relationships between Captains, the Deputy Chief and the Chief, in order to place its wage proposals in proper perspective. It points out that on March 13, 1998, the then Acting Chief of Police sent a letter to the governing body concerning the possible promotion to the one Deputy Chief position of the now DC#1 who was then serving in the rank of Captain. The letter, Exhibit P7, set forth the concern about an erosion of a differential between the Captain and Deputy Chief which once was 17% but had decreased to 9%. The letter indicated that the average in the differential three ranks below Deputy Chief was 15%. The Acting Chief expressed concern that three other Captains had declined to take the position of Deputy Chief. It submits that DC#1 accepted the appointment as Acting Deputy Chief in April 1998 in anticipation of redress. Thereafter, the governing body passed an ordinance on November 10, 1998 that set compensation for the Deputy Chief at a level that was 10% above the highest paid Captain and set compensation for the Chief at 15% above the Deputy Chief. Ordinances through 2003 set forth the salaries for the Deputy Chief and the Police Chief that were consistent with maintaining that differential. An ordinance on January 8, 2002 provided increases of a 2.5%/2.5% split in 2001, 3.8% in 2002 and 3.8% in 2003 for both the Deputy Chiefs and the Captain. There was no muster pay at that time.

As indicated, there was only one Deputy Chief going into 2004, DC#1. In 2004, another Captain was promoted to Deputy Chief, DC#2 and in 2005 another Captain was promoted to Deputy Chief, DC#3. Thus, from that time on, there were three Deputy Chiefs all of whom were unrepresented and whose salary terms were set by ordinance as they had been in the past.

In 2004 and 2005, the salaries for the three Deputy Chiefs were not increased as negotiations were pursued for the rank and file police and superior officers who, unlike the Deputy Chiefs, were unionized. Negotiations were completed in 2006 and the salaries were increased for the rank and file police officers represented by PBA Local 21 and the Kearny Superior Officer's Association through 2008. The Chief of Police at that time submitted a letter to the governing body expressing his concern over the status of the Deputy Chiefs and himself because they had not received increases. In pertinent part, the letter stated the following:

As you are aware both the PBA and the SOA of the Police Department have completed contract negotiations and have begun to receive the increases that were negotiated in their weekly paycheck. Having waited until such time as our two bargaining units have come to agreement with the town, my Deputy Chiefs and myself feel the time has come to adjust our salaries accordingly.

I have enclosed the calculations based upon the percentage increase reflected in the aforementioned PBA/SOA contracts, which will maintain the present rank differentials for Chief and Deputy Chief. (My office will provide figures and retro calculations on the standard town forms).

In late 2006, the governing body then considered taking action to adjust the salaries for the Deputy Chiefs and the Police Chief which had remained unchanged in 2004, 2005 and 2006. On February 13, 2007, the Town acted by adopting a salary ordinance covering the Town's executive employees and other exempt employees that increased their salaries for 2004, 2005 and 2006. The ordinance included the positions of Deputy Police Chief and the Police Chief. The ordinance provided for retroactive wage increases of 2.5% for 2004, 2.75% for 2005 and 3% for 2006. The ordinance also provided an additional .6% increase in muster pay annually, a benefit PBA Local 21 and the SOA had achieved. As a result of the ordinance, the base salary for the Deputy Chiefs and Chief respectively increased to \$119,447 and \$137,634 in 2004, \$123,468 and \$141,989 in 2005, and \$127,935 and \$147,126 in 2006. In the meantime, the SOA had completed negotiations for a contract between 2004 and 2008 that had provided for 3.9% increases, not including the 0.6% muster pay that increased the base salary for Captains to \$104,831 in 2004, \$109,573 in 2005, \$114,529 in 2006, \$119,710 in 2007 and \$125,125 in 2008.

The Deputy Chiefs, on August 17, 2006, had petitioned the Police Chief requesting that they be permitted to join the Superior Officer's Association, the organization representing Sergeants, Lieutenants and Captains. A reasonable inference can be drawn that this request was based upon dissatisfaction with the status of the then pending ordinance in light of the terms that the SOA had negotiated. In 2007, the Deputy Chiefs then petitioned PERC to have the Deputy

Chief's Association be recognized or certified as the exclusive representative representing the three Deputy Chiefs. Once certified, negotiations began but thereafter resulted in impasse. During this time, the SOA reached another agreement for years 2009 through 2012 calling for 3.25% annual increases as well as the 0.6% muster pay.

Based upon this general overview of events leading to representation, it is apparent as to why the parties' respective final offers on salary commence on January 1, 2007 and extend through December 31, 2012 because these are the years of agreed upon increases for the SOA unit while the salaries for the Deputy Chiefs remained in dispute for 2007 and beyond. It should be noted that the Association's salary proposal, in addition to the 2007-2012 years, also proposes salary adjustments for 2004, 2005 and 2006 in consideration "for lost wages" as a result of the 2.5%, 2.75% and 3% increase received by ordinance for those years.

POSITIONS OF THE PARTIES

The Association

The Association contends that when its proposals are reviewed against the statutory criteria, its final offer must be awarded in its entirety. It submits that a Town such as Kearny, which has unique residential, commercial and industrial components, requires a police department that is effectively and capably led and managed. This is asserted to be in the public interest as well as maintaining consistent treatment for the Deputy Chiefs with the other police officers who

provide law enforcement services within the Town. The Association further contends that its salary proposals fit within the fiscal needs of the Town, at a level that the taxpayers can support without negative impact on the Town's budgeting ability. Referring to the Town's offer as maintaining a "status quo," the Association submits that employee morale will suffer and that there will be a severe negative impact on the Deputy Chiefs, the police department and the public by undermining a long-established practice of pattern of settlement between the Deputy Chiefs and the Superior Officers' Association. Expanding further on its view of the interest and welfare of the public, the Association makes the following argument:

The arbitrator must recognize the importance of the jobs performed by the members of the Association and the unique difficulties presented in their high-level law enforcement positions. Notably, those services provided by members of the Association are a particularly important aspect of the overall public safety of the Town. Therefore, the Town's ability to attract, attain, and promote qualified Superior Officers to the position of Deputy Chief has an impact on the quality of life of its residents, measured in the comprehensive law enforcement and supervisory function provided by Association members.

Serving as a Deputy Chief in the Town is a twenty-four (24) hour, seven (7) day a week operation. It is a position that is extremely demanding upon the personnel who hold such positions. Simply put, there is no "down time" for a Deputy Chief, as maintaining acute attentiveness is of vital importance day and night. Association members, as Deputy Chiefs shoulder a heavy supervisory and operational burden in the Town Police Department.

Based upon their vital role in preserving the public safety and the unique circumstances of their employment, an analysis of the services provided by Association members clearly supports the award of the Association's final offer in its entirety. Quite simply, awarding the Association's final offer would promote the Town's ability to attract, retain and promote qualified Superior Officers to

the position of Deputy Chief. This, in turn, positively impacts the quality of life of the residents of this Town in terms of safety and ensuring the effectiveness of the Police Department.

The Association makes argument concerning wage comparisons. It focuses on what it sees as an historic differential and asserts that the Town's offer represents a decrease. On this point, it offers the following argument.

The percentage raises unilaterally imposed in 2004, 2005 and 2006 were significantly less than those given to the other police bargaining units; 8.0% for the Deputy Chiefs versus 11.7% for the PBA and SOA. In addition, the differential for the Chief of Police remained at 15% over Deputy Chief.

The Town is asking the Arbitrator to start this contract term (2007) causing bargaining unit members to fall behind other private and public sector employees with regard to percentage wage increases. Most significantly, the Town's proposal disparately treats Deputy Chiefs from PBA and SOA bargaining unit members by seeking to remove the salary differential, .6% muster pay, 12% longevity, and vacation days. This Arbitrator must reject the Town's final offer and award the Association's proposal, which is more in line with the increases in public employment in general and private employment, traces the historical pattern of settlement with the most comparable units (i.e., police units) and basically returns the parties to the status quo.

The Association contends that the principal of pattern of settlement supports its position and that this principal would be undermined by the Town's offer. It points out that the Town's offer would be inconsistent with the manner in which it has treated the Deputy Chiefs in the Fire Department. The Association stresses that its relative position would be eroded further by virtue of the Town's proposal to eliminate the 0.6% in muster pay, the 12% step in the longevity program, and reduction in vacation days. In sum, the Association argues that

"[t]he internal pattern of settlement of the PBA and SOA (not to mention the KFD Deputy Chiefs) should be the overriding consideration in deciding this argument. The Town cannot be allowed to cut the salaries and economic benefits of Police Deputy Chiefs." The Association further contends that the Town's proposal ignores wage comparisons between the Deputy Chiefs and the Deputy Chiefs in other municipalities. It submits a chart showing that in 2006, the Deputy Chiefs earned less than Hackensack, Union City, Secaucus, Nutley, Weehawken, Teaneck and Wayne and would lose relative ground assuming settlement patterns were to remain consistent with the average of settlements and awards as they existed through the 2009 time period.

Referencing the overall compensation criterion, the Association argues that the Town's offer will subject Association bargaining unit members to a disproportionately lower salary and benefits package than that granted to other police bargaining unit members. The Association submits that:

Deputy Chiefs are not entitled to overtime compensation for hours regularly worked in excess of the normal work days. Longevity pay for Deputy Chiefs is 2% less than that enjoyed by the PBA and SOA. The differential between ranks for Association members has been unilaterally removed while the differential for SOA members and Chief of Police has remained intact. Sergeants will receive 17.5% over top paid Patrolmen; Lieutenants receive 12.5% over Sergeants; and Captains receive 12.5% over Lieutenants. (Exhs. P-13, P-14, Exs. T-85, T-86). The members of the Association have been singled out to lose muster pay which will result in the loss of .6% pay whereas the PBA and the SOA have retained this benefit. They have also been denied the 2% longevity increase and the Town is seeking to take away vacation days. Moreover, the Town has already moved the Association members to the modified State Health Benefits Plan (the Traditional Plan was

eliminated) and seeks a premium share if an Association member is not in District 15. (See Exh. P-11 for SHBP data). The effect of this is to render the overall benefits package for the Association members substantially degraded relative to other bargaining units.

Turning to the criteria that concern financial impact and statutory limitations, the Association contends that the Town has not presented any claim or evidence that it could not lawfully pay for an award that grants the Association proposals. It further maintains that its proposals, if awarded, would not cause adverse financial impact on the governing unit, its residents and taxpayers. The Association notes that in certain prior years, the Town has decreased municipal taxes, has kept property taxes relatively stable, maintains a Aa3 bond rating and closed its fiscal year on June 30, 2009 with a surplus reserve that increased from \$4 million to \$5 million. Noting that the annual budget appropriations exceed \$66 million, the Association compares the cost of its proposals and contends that there is minimal budgetary impact:

For the years 2007 through 2012 the total cost difference between implementing the rank differential versus the Town's proposal is \$183,738 or .28% of the FY2008 Town budget. The total cost of the retroactive pay for 2004 through 2006 including longevity and holiday pay is \$41,259 or 0.6% of the FY2008 Budget. (Exh. P-19C). In the end, the entire cost to the Town to implement the Association's proposal versus the Town's proposal over the period of 2004 through 2012 is \$228,997 (\$25,444 on average per year). This is .34% of the FY 2008 budget or .04% per year.

The Town

The Town acknowledges that its proposal does not maintain or preserve a differential that existed in previous years but points out that no contractual

differential ever existed and that the differential varied significantly as reflected in 1998 correspondence showing that it was 8.9% at that time. Moreover, the Town contends that the differential changed in 2004 pursuant to an executive pay plan for all Town personnel that included the Chief of Police and the Deputy Chiefs. According to the Town, it should not be held to make payments that go beyond a rate that is fair and appropriate for the Deputy Chief position simply because of payments that are made at lower levels within the Department. It claims that if it is forced to do so, it would then be required to drive compensation levels higher in accordance with changes to the lower levels of the salary guide and void any attempts by the governing body to exercise some control over the growth of the highest levels of compensation by setting a reasonable ceiling.

The Town asserts that the best comparison to be drawn is the one comparing salary increases for the Deputy Chiefs to increases provided to the Chief of Police. The Town contends that it provides fair compensation levels and points to the fact that the Deputy Police Chief base salary in 2006 was \$127,935, inclusive of the 0.6% muster pay, and that its 3.0% proposal in 2007 and 3.25% annually through 2012 would increase the base salary to \$154,624 without the addition of the muster pay and not including additional payments of \$15,462 in longevity (at 10%) and \$7,731 in holiday pay for an overall total of \$177,818. This, it asserts, is wholly reasonable compared to the Association's proposal to boost base salary to \$168,220 in 2012 with muster pay and to have an additional 12% pay for longevity. According to the Town, muster pay is not justifiable

because the Deputy Chiefs do not muster, that the Chief of Police no longer receives this payment since 2007 and that longevity for the Chief has also remained at 10%. The Town deems it significant that the compensation package that it has proposed to the Deputy Chiefs has also been applied to the Police Chief. The Town believes that its proposal strikes a fair balance in providing a generous compensation plan for Deputy Chiefs consistent with its wage policy for its executive and exempt employees and within the current state of current economic and budgetary conditions.

The Town references other wage agreements that it has made within the Town and asserts that its proposal reflects consistency:

The proposed GWI for each year from 1/1/09 through 12/31/12 equates to the same GWI negotiated between the Town and the PBA and the PSOA; as well as between the Town and CS11 and the Association of Department Heads and Assistant Department Heads. The GWI proposed by the Town for the Deputy Chiefs is also the same salary adjustment provided for non-unionized administrative staff, including the Police Chief for calendar years 2007 through 2010. (See T-83 through T-87).

The Town also voices objection to any Association proposal that seeks adjustments for what the Association terms "lost wages" during 2004, 2005 and 2006. It notes that the Association seeks retroactive adjustments to salary, holiday pay and longevity for these calendar years at a cost of \$41,637. The Town contends that there is no requirement to negotiate over any term and condition of employment that predates the certification of the Deputy Chiefs Association. On this point it makes the following argument:

As the record in this case reflects the Deputy Police Chiefs Association was certified by PERC as the majority representative on March 13, 2007. The Town has made a final offer on terms and conditions of employment for the time period From January 1, 2007 forward thru December 31, 2012, and takes the position that there should be no adjustment of salary or other economic benefits for any of the years that pre date the year of certification. In fact, the Town contends that its legal obligation to negotiate with the Association commences with the date of certification and that obligation does not require negotiations for time periods that precede the certification date. The Town further contends that since it has no obligation to negotiate with the Association concerning time periods that pre date certification, the arbitrator is and should be precluded from making an award that enhances economic terms for the DPC for any such time periods over the objection of the employer. See In the Matter of Borough of Flemington and James Yard, 19 N.J.P.E.R. 24125 where Director Gerber refused to issue a complaint, finding that: "The employer is not required to negotiate directly with the employees where there is no negotiation representative, the employer has no negotiation obligation prior to changing terms and conditions of employment."

The Town also contends that the Association's proposal is excessive and unreasonable:

There is a substantial difference between the parties concerning the appropriate salary adjustments that should be applied to the pay rates for deputy police chiefs during the term of the proposed new contract. The Town starts with the existing salary level paid to deputy police chiefs in 2006 (the last year of salary increase prior to certification of the DPCA) and applies percentage increases of 3.0% in 2007 and 3.25% in 2008 thru 2012 (T-145). The DPCA adopts a formula that provides for a 10% differential above a night captain whose rate includes .06% muster pay and a 5% override for working the night shift (T-144).

With respect to its remaining proposals, the Town asserts that muster pay should not be provided because Deputy Police Chiefs do not engage in any muster time and that the Chief does not receive this payment. The Town goes

on to compare its longevity proposal with that of the Association. On this point, it submits the following argument:

All three deputy chiefs currently enjoy a salary enhancement via longevity in the amount of 10% above the base rate. The Town has proposed that this current longevity factor be maintained with the proviso that longevity be capped at a maximum of \$15,000.00 per annum. The analysis of the longevity factor over the term of the proposed contract shows that the Town's proposal yields a total of \$85,293.00 per man whereas the Association proposal would result in payments of \$110,277.00 per man resulting from a higher base salary and a 12% longevity factor at the 24th year of service. The total longevity cost of the DPCA proposal is adjusted downward by \$8,659.00 for Deputy Chief King who does not reach his 24th year until 2009 (T-147). Thus, the difference in cost to the Town on this one issue alone is approximately \$25,000.00 per man more over the six year term based upon the Association proposal; and that is in addition to the \$85,000 per man payout produced by the Town proposal. This is but one example of the substantial built in structural cost of the existing compensation plan. The proposal by the Town seeks a balance between the reasonable expectations of its employees by maintaining the 10% longevity factor and the ever more strident demands of taxpayers to reign in these costs by eliminating longevity altogether, much less agreeing to an even higher percentage (12%) on a higher base salary. The add on of a \$15,000.00 cap as proposed by the Town must also be described as a reasonable cost containment measure that has minimal negative impact on these employees.

The Town also seeks the awarding of its vacation proposal. It would maintain the 29 vacation day benefit for current Deputy Chiefs but would limit increases beyond that level by limiting the add-on days of one per five years of service to the 20 year service mark and beyond. The Town contends that the Association's proposal that would include single days and allow for half day vacation plus emergency vacation days (EVDs) would negatively impact on operations. The Town believes that if there are to be any changes to benefits

such as vacations, such changes need to begin at the top of the organization in order to implement any such change throughout the police department. As part of its reasonable attempt to have cost containment, it proposes that the vacation benefit be limited to 25 days for any newly appointed Deputy Chief.

The Town recognizes that because this bargaining unit includes only three employees, the dollar impacts of this contract when measured against its overall budget may not be substantial. However, the Town contends that this cannot be the only consideration, especially under poor economic conditions. The Town notes that its per capita income was estimated at \$25,071 in 2007 with a median household income of \$56,609. The mean social security income was estimated at \$15,263 and the mean retirement income at \$16,564. With an average residential tax of \$8,278 in 2008, an increase of 49.2% between 2000 and 2008, the ratio of average residential tax to per capita income reflects that property taxes absorbed 33% of per capita income. According to the Town, these facts must be measured against the Association's proposal that base salary be raised to \$168,220 per Deputy Chief by January 1, 2012, an increase of \$40,285 or \$6,714 per year for each Deputy Chief.

DISCUSSION

The Association and the Town have offered testimony, and substantial documentary evidence and argument support of their final offers. The issues in dispute are numerous and very broad in scope. All of the evidence and

argument have been considered. I am required to make a reasonable determination of the above issues, giving due weight to those factors set forth 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.
- (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).

This is the first collective negotiations agreement between the Town and the Deputy Chief's Association. The award herein will represent all of the

economic and non-economic terms of that agreement. By virtue of the process that the parties have engaged in, the award will consist of several distinct categories of articles. One such category will include stipulations of the parties based on their mutual agreements. These articles to be included in the agreement are as follows and will be fully set forth in the Award:

- ____ - General Agreement
- Article ____ - Recognition and Scope of Agreement
- Article ____ - Collective Negotiation Procedure
- Article ____ - Discrimination and Coercion
- Article ____ - Management of Town Affairs
- Article ____ - Death in Family
- Article ____ - Disciplinary Hearing - Rights of Police Officers
- Article ____ - Reimbursement of Travel Expenses
- Article ____ - Educational Benefits
- Article ____ - Household Member Illness
- Article ____ - Access to Personnel Files
- Article ____ - Pensions
- Article ____ - Discharge or Suspension
- Article ____ - Bulletin Board

A second category of issues to be included in the award are those that, although they have not been stipulated to, the articles have been adapted from

the Superior Officers Association agreement and are appropriate for inclusion in the parties' initial agreement. They include:

Article ____ - Union Security

Article ____ - Grievance Procedure

Article ____ - Arbitration

Article ____ – Retroactivity

Article ____ - Duration

Article ____ - Terminal Leave

Article ____ - Pay Treatment for Extended Illness

Article ____ - Liability Insurance

Article ____ - Schedule for Payment of Certain Benefits

Article ____ - Conducting Union Business

A third category in this award will address articles that remain in dispute and require resolution by way of award. These include Salary, Longevity, Vacation, Muster Pay, Hospitalization, Acting Pay, Holiday Pay, Association Leave Time, Hours of Work, Clothing Allowance, Continued Education and Training Allowance, Training Schools, Call-In Time and Minimum Pay-Court or Other Appearances and Overtime.

I am required by N.J.S.A. 34:13A-16d(2) to determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

DURATION

Both parties have proposed a contract duration commencing January 1, 2007 through December 31, 2012. Because the parties are in agreement on the duration of the contract, this contract duration is awarded.

STIPULATIONS

I have previously referenced the fact that the Town and the Association have reached stipulations of agreement on many contract articles. These stipulations will be incorporated into the Award section in full detail and need not be set forth at this time.

CONTRACT ARTICLES ADAPTED FROM THE SOA AGREEMENT FOR INCLUSION IN THE DEPUTY CHIEF'S ASSOCIATION AGREEMENT

During the course of the proceedings, the Town and the Association have addressed many issues but have not reached formal stipulation on their inclusion. I have deemed it appropriate and consistent with the statutory criteria to include certain provisions from the SOA agreement into the initial Deputy Chief's Association agreement with certain adaptations that make the contract

language in those articles compatible with the rank of the Deputy Chief. As with the stipulations, I will incorporate these articles into the Award section in full detail and not set them forth at this time.

MAJOR ECONOMIC ITEMS

As is evident from the summary of the evidence and arguments, the major source of this dispute is the parties' disagreement over whether changes to certain key conditions of employment for the Deputy Chiefs should more closely compare to those terms that the Town has set for the Chief of Police, other executive exempt employees and other employee organizations or to those that have been set through negotiation for the Superior Officers Association. The parties' final offers flow directly from their respective views on this point. In this regard, their last or final offers more resemble those that would normally be received in a final offer rather than in a conventional proceeding.

From the Town's perspective, once the three Deputy Chiefs were promoted out of the SOA unit and into the unrepresented position of Deputy Chief, they then became subject to the terms that the Town sets for its executive and exempt employees, including the Chief of Police and that this practice should not be abandoned. From the Association's perspective, the Deputy Chief's should have continued to be subject to the same terms and conditions of employment that the SOA have received and that a salary differential as it once existed in the past should be restored.

In the years 2004, 2005 and 2006, the Deputy Chiefs continued to be unrepresented and received salary increases of 2.5%, 2.75% and 3% over these three years. The base salary for the position went from \$113,100 in 2003 to \$127,935 in 2006 as a result of the percentage increases and muster pay which was provided by ordinance. As Deputy Chiefs, they continued to receive the maximum longevity benefit of 10% that they had been receiving. In 2006, this called for an additional \$12,794 at top longevity step. During this time period, the same salary ordinance for the Deputy Chiefs also adjusted the base salary (to \$147,126) and longevity (10%) for the Chief of Police by the same percentages that the Deputy Chiefs received and also provided muster pay to the Chief. During these three years and for 2007 and 2008, the SOA had negotiated increases of 3.9% along with muster pay for these contract years 2004 through 2008.

In 2007, the Deputy Chiefs sought and received certification as the Kearny Deputy Police Chiefs Association and began negotiations after receiving increases in 2004, 2005 and 2006 through ordinance. Without having reached an agreement with the Town for 2007 or thereafter, the salaries for the Deputy Chiefs were neither adjusted by negotiations nor by a July 15, 2008 ordinance adopted by the Town that applied to the Chief of Police for years 2007, 2008, 2009 and 2010. That ordinance increased the salary for the Chief of Police by 3% in 2007, by 3.25% in 2008, by 3.25% in 2009 and by 3.25% in 2010 causing

his annual salary to increase to \$151,540, \$156,465, \$161,550, and \$166,800 respectively. Significantly, the Chief of Police no longer received the 0.6% increase in muster pay that he had received in the prior ordinance for 2004-2006. In this proceeding, the Town proposes to increase the salaries for the Deputy Chiefs over this time period by the same 3.0%, 3.25%, 3.25% and 3.25% amounts and also without the 0.6% increase in muster pay. The proposal matches what was set by ordinance for the Chief. These proposals would raise the annual salary for the Deputy Chief to \$131,773 in 2007, \$136,056 in 2008, \$140,477 in 2009 and \$145,043 in 2010. Pointing to the consistency it has sought to maintain, the record includes a January 27, 2009 ordinance showing that compensation for executive and exempt employees were increased by 3.25% in 2009, 2010, 2011 and 2012, the same amounts the Town has proposed for the Deputy Chiefs. These increases would raise the annual salary for the Deputy Chief to \$149,756 in 2011 and to \$154,623 in 2012 without the 0.6% in muster pay.

In support of its salary proposals, the Association refers to an additional contract that the Town had negotiated with the SOA for 2009 through 2012 that called for 3.25% increases but points out that the SOA also received the 0.6% in muster pay which the Town has not offered to the Deputy Chiefs. The Association essentially seeks parity with the SOA between the years 2007 and 2012 coupled with an adjustment in 2007 it justifies by the lesser amounts that the Deputy Chiefs received between the years 2004 and 2006 as compared to

the SOA, along with the muster pay increases that the SOA continued to receive between the years 2007 and 2012. The Association also seeks the additional bump in longevity maximum pay from 10% to 12 % that the SOA negotiated in 2006 that the Deputy Chiefs and the Chief did not receive by Town ordinance. When the Association's proposals are calculated, the Deputy Chief, in 2012 would receive \$167,492 in salary, including muster pay, and \$20,099 in longevity pay at the 12% maximum compared to the Town's proposal which would yield \$154,623 in base salary without muster pay and \$15,462 in longevity pay at 10%.

The Association has offered forceful arguments on behalf of the Deputy Chiefs. At the risk of oversimplification, the Association relies upon maintaining differentials that preceded 2004, makes claim to a pattern of settlement prior to 2004 that it accuses the Town of seeking to break. It makes claim to a reinstatement of the differentials with all benefits enjoyed by the SOA in order to recoup "what has been lost." The Association views the Town's proposal as a cut in salary and economic benefits for the Deputy Chiefs. In the Association's view:

To award the Town's economic package which is insultingly inferior to those of the PBA and SOA bargaining units, would defile these tenets of sound labor relations, make a mockery of the Deputy Chief position, and be of a great disservice to the public that the Association members serve. It may cause current and prospective Deputy Chiefs to seek demotions or refuse promotions to that title. The wage and economic proposals of the Town will not adequately compensate the members of the Association for the rigorous tasks and responsibilities they face on a daily basis. The effects of awarding such an inferior offer would not only serve to demoralize the members of the Association and retard their economic package

as active employees of the Town, but would also drastically reduce the value of their pension benefit under the PFRS.

The parties' submissions include how the statutory criteria should be applied to their proposals. After careful review of their submissions and all of the evidence in this proceeding, I am persuaded that internal comparisons within the Town as they relate to salary adjustments for its executive/exempt staff and the Chief of Police are the most relevant considerations and entitled to the most weight. When applying this principle to this record, a review of departmental and Town pay practices is required in order to ascertain what represents a reasonable determination of the issues for the Deputy Chiefs. When doing so, I am compelled to conclude that the Town's emphasis on the relationships between the Deputy Chief and the Chief commencing in 2004 must be given greater weight than the relationships that existed between the Deputy Chief and the lesser ranks that existed prior thereto. When this conclusion is applied to this record, it requires me to accept the Town's proposal over that of the Association as it concerns salary, the inclusion of a muster pay provision and longevity.¹ This will provide salary increases effective and retroactive to January 1, 2007 of 3.0% followed by annual increases of 3.25% through January 1, 2012, no muster pay and a longevity schedule that maintains a 10% maximum. I have also awarded a one-time non-base payment in lieu of the amount of muster pay that would have been received in 2007, 2008 and 2009 as consideration for the non-application of

¹ I do not award the Town's proposal to have a dollar cap on the 10% longevity step or new longevity schedule for the newly promoted.

this payment to Deputy Chiefs for those years and beyond, the amount of which shall be calculated in the same manner as it had in the past.

The facts of this case reflect that the terms and conditions of employment for Deputy Chiefs have historically been effectuated through Town ordinance rather than through collective negotiations which began in 2007. While the Association makes claim to a historical differential and a pattern of settlement, the record does not fully support such claims. Initially, it must be noted that a pattern of settlement claim typically relates to terms set between two or more bargaining units of the same employer. But the Deputy Chiefs did not constitute a bargaining unit until 2007 and had not contractual or legal claim to pattern as their terms were unilaterally set by ordinance prior thereto. The record also reflects that there has not been longstanding uniformity in salary differential between a Captain and a Deputy Chief as evidenced by letters, memos and documents showing varying percentage differentials going back to the mid 1990s. The documents do reflect the receipt of percentage differentials in certain years higher than what would be caused by the Town's proposals here and that the Deputy Chiefs were successful in restoring that higher amount prior to 2004. But, regardless of how that level was set by ordinance prior to 2004, that amount had changed in 2004, 2005 and 2006 when the terms of salary increase were set for the Deputy Chiefs in an identical manner to the terms that were set for the Chief of Police. While the percentage increases for the unrepresented Deputy Chiefs and the Chief may have departed from the relationships that existed

immediately prior to 2004, this departure was well within the lawful discretionary powers of the Town to set salary policy for unrepresented executives through Town ordinance over this three year period. The Deputy Chiefs then sought and achieved representation in 2007 due to dissatisfaction with the increases received in 2004, 2005 and 2006 but, at this point, no bargaining obligation existed for the setting of those terms and any claim for uniformity in treatment with the SOA rather than with the Chief had been weakened. Moreover, for the year 2007 and beyond, the Town ordinances have continued to set salary terms for the Chief that continued to depart from the increases achieved by the SOA, reflecting a continuation of salary policy for the Town's higher level employees. In this proceeding, the Town offers these same terms it set for the Chief to the Deputy Chiefs. I cannot conclude that the change from not being represented to being represented compels a reversion in the relationship that the Town set for the Chief and the Deputy Chiefs beginning in 2004 back to what had previously have existed. Moreover, the Association has not shown that the overall compensation and benefits received by the Deputy Chiefs, while less than the SOA on a percentage basis, are unreasonable as a result of the Town's proposal. That proposal would increase the annual rate of pay for the Deputy Chief from \$127,925 in 2006 to \$154,623 in 2012 not including maximum longevity pay which, at 10%, would yield an additional \$12,794 in 2006 and would be worth \$15,643 in 2012. The value of holiday pay would also increase over this time period from \$6,397 to \$7,731 for a total compensation package for Deputy Chiefs, not including other benefits of monetary value, of \$177,818 as of

2012, even without the inclusion of a muster pay provision which, in the absence of such pay being received by the Chief since 2007 and the absence of such requirement for a Deputy Chief to muster, I do not award here. As indicated above, I have awarded a one-time non-base payment in lieu of the muster pay that would have been received for 2007, 2008 and 2009 as equitable consideration for the non-application of this payment to Deputy Chiefs for those years and thereafter, the amount of which shall be calculated in the same manner as it had in the past.

Based upon the above, the initial agreement shall provide for across the board increases of 3.0% effective January 1, 2007, 3.25% effective January 1, 2008, 3.25% effective January 1, 2009, 3.25% effective January 1, 2010, 3.25% effective January 1, 2011 and 3.25% effective January 1, 2012, yielding an annual salary level of \$131,773 in 2007, \$136,056 in 2008, \$140,477 in 2009, \$145,043 in 2010, \$149,757 in 2011 and \$154,624 in 2012. All increases shall be retroactive to their effective dates.

I have calculated the total overall net economic change for each year of the agreement, including salary, longevity and holiday pay. The change, without accumulation is \$13,242 for 2007, \$14,775 for 2008, \$15,255 for 2009, \$15,750 for 2010, \$16,263 for 2011 and \$16,794 for 2012. Additional costs include the one-time non-base payment of the 0.6% muster pay for years 2007, 2008 and 2009. I find the costs and the terms of the Award to be consistent with the interests and welfare of the public to provide reasonable terms and conditions of

employment for Deputy Chiefs consistent with the statutory criteria and whose costs fall within the public employer's statutory limitations without adverse financial impact on the governing body, its residents and taxpayers. Moreover, the salary increases are generally consistent with the cost of living data and increases shown in external comparisons for the years in dispute. Although the Association has argued otherwise, there is no evidence that the overall compensation and benefits provided herein will negatively impact on the continuity and stability of employment for Deputy Chiefs.

LONGEVITY

The Town has proposed that the Deputy Chiefs be subject to the following longevity schedules:

- a) Current employees:
 - 4 to 7 years – 2.0%
 - 8 to 11 years – 4.0%
 - 12 to 15 years – 6.0%
 - 16 to 19 years – 8.0%
 - Beginning 20th year – 10% with cap of \$15,000.00
- b) Employees promoted to Deputy Chief on or after 1/1/09:
 - 10 to 13 years – 4.0%
 - 14 to 17 years – 6.0%
 - 18 to 21 years – 8.0%
 - Beginning 22nd year – 10% with cap of \$15,000.00

The proposed schedule for current employees is consistent with what they have been receiving with the exception of placing a dollar cap on the amount received. For newly promoted employees to Deputy Chief, they would be subject

to a slightly revised schedule with the maximum step being received two years later with the same dollar cap of \$15,000. Both schedules would end with the maximum longevity step being 10%. The Association has proposed the same schedule that negotiated with the SOA in 2006 which provided for an increase in the longevity maximum from 10% to 12%. The analysis here is similar to that previously provided in the salary section. Given the fact that the longevity benefit for the Deputy Chiefs was 10% in 2003, continued to be set at 10% by ordinance for 2004, 2005 and 2006 in similar fashion to what was set for the Chief of Police for those years and beyond I conclude that the comparison to be given the most weight is that between the Deputy Chief and Chief. Thus, the longevity maximum shall remain at 10%.

Given the fact that this agreement expires on December 31, 2012 and that the SOA agreement has the same expiration date, I conclude that the Town's proposal for longevity change, including a cap should not be awarded to allow for the opportunity to have consistency in any modifications to the longevity program going forward from the expiration dates. Accordingly I award the following longevity provision:

Section 1. Each employee covered by this agreement shall be paid in equal installments in his regular pay check in addition to the rates of pay set forth in Article ____ herein, a longevity increment based upon years of service with the Kearny Police Department in accordance with the following schedule:

Years of Service	Percentage of Salary
4 to 7	2
8 to 11	4
12 to 15	6

Section 2. Each employee shall qualify for the longevity increment on the 1st day of January of the year in which the anniversary of his employment falls. Longevity shall be prorated in the year of termination for those employees who resign their employment with the Town or are discharged for cause. Officers who retire (either service or disability) are not prorated.

HOSPITALIZATION

The Town has proposed a hospitalization plan regarding health insurance. The proposal is consistent with what is currently provided for on a Town-wide basis and accordingly, with certain modifications required by legislative enactment, it is awarded. On this latter point, after the close of the record in this proceeding, the issue of employee contributions was subsequently addressed through legislation, of which I take official notice. [P.L. 2010, Ch. 2]. This legislation requires the payment of 1.5% of base salary towards health insurance for public employees in the absence of any other contractual arrangement, effective May 21, 2010. Subsequently, on June 28, 2011, P.L. 2011, Chapter 78 was signed into law. The hospitalization provision awarded herein, in order to comply with statutory obligations, shall take appropriate notice of such legislative enactments and I also include the following language:

The level of employee contribution of 1.5% of base salary shall be as set forth in P.L. 2010, Ch.2, effective May 22, 2010. This level of employee contribution shall be inclusive of, rather than in addition to, any additional statutory obligation to make contributions toward the payment of health insurance. To the extent that this language is inconsistent with the lawful authority of the Town of Kearny pursuant to P.L. 2011, Chapter 78, enacted on June 28,

2011, the language awarded is not intended to be inconsistent with that lawful authority.

ACTING PAY

I do not award the Association's proposal regarding Acting Pay. In large measure, the rank of Deputy Chief is a managerial position geared to requiring temporary fill ins for the Chief in his absence. Accordingly the proposal is denied.

ASSOCIATION LEAVE TIME

The Association's proposal on this issue is reasonable but does not take the size of the unit into proper account and the fact that one Deputy Chief may be on duty at any particular time. For these reasons, I have awarded the proposal with modifications as follows:

The Association shall be entitled to have one member attend, without loss of pay, State PBA conventions and the State Collective Bargaining Seminar. Additional members may be permitted to attend as determined by the sole discretion of the Chief of Police or his designee. The duration of said leave shall be governed by N.J.S.A. 40A:14-177, N.J.S.A. 11A:6-10 and N.J.A.C. 4A:6-1.13(b).

VACATION

The Town has proposed a vacation provision that would maintain the 29 vacation day benefit for current employees but modify the increases to that benefit by limiting the add on days of 1 per 5 years of service to the 20 year service mark and beyond. The Town also rejects the Association proposal that

would mirror the SOA which would include single days and allow for half day vacations, plus provide for emergency vacation days (EVDs). The Town also proposes to revise the vacation benefit to 25 days for any newly appointed Deputy Chief.

Given the fact that this agreement expires on December 31, 2012 and that the SOA agreement has the same expiration date, I conclude that the existing vacation program for the Deputy Chiefs should remain without substantive modification in order to allow for the opportunity to have consistent vacation benefits for both units, including any modifications for new hires or newly promoted officers. Accordingly I award the vacation article contained in the SOA agreement as follows:

Section 1. All employees covered by this agreement who have completed three (3) or more years of service shall receive twenty-nine (29) working days of vacation with pay annually. Such entitlement shall be effective for the year during which the third year of employment is completed.

Section 2. All employees in addition to all other allowable vacation time shall receive an additional vacation day for every five (5) years of service. The additional vacation day shall be considered earned as of January 1st of each year, if the employee shall have completed, or will complete his/her necessary years of service during said calendar year. Vacation entitlement will be prorated in the year of termination of employment with the Town except in the case of retirement (either ordinary service or for disability) where vacation entitlement shall not be prorated.

Section 3. In order not to hamper proper and efficient police operations, both parties agree that the scheduling of vacations must be left to the Employer but the following conditions shall be observed, in such scheduling:

- (a) Employees desiring specific vacation periods during the months of January through June must request such vacation periods by January 1st. Employees desiring vacation periods during the months of July through September must request

such vacation by March 15th and employees desiring vacation periods during the months of October through December must request such vacation by June 1st. Request for vacation periods shall not be unreasonably denied and the Employer shall approve or reject such request within a reasonable time after the time within such request must be made in accordance with this contract. In determining the allocation of requested vacation periods, seniority in rank shall govern.

- (b) No employee shall be permitted to take more than three (3) consecutive weeks of vacation at one time.
- (c) Vacation period assignments during June, July and August shall be based exclusively upon seniority among the employees.
- (d) No employee shall be assigned more than two (2) weeks vacation during June, July and August.

Section 4. All employees covered by this agreement shall be entitled to their vacation days in single days off or any combination of consecutive days. These consecutive days must be taken in accordance with the provisions set forth in Article XIII, Section 5 of this agreement, in addition:

- (a) Notice shall be given at least seventy-two (72) hours in advance of any single day or other combination of vacation days taken. Exception: In cases of emergency where 72 hours notice cannot be given, maximum notice possible, if any, under the circumstances shall be given. There shall be a maximum of twelve (12) emergency vacation days (EVDS) that may be taken during a calendar year; except that each officer may only use two (2) EVDS from Thanksgiving to December 31. All vacation days including single vacation days and EVDS are subject to approval by the Chief of Police or his/her designee which approval shall not be unreasonably denied.
- (b) Vacation days may precede or succeed regular days off or other authorized non-work days.
- (c) For the purpose of control, it will be necessary for any employee who requests any vacation period during the following designated days, to take a minimum of four (4) consecutive working days off.

New Years Eve
Christmas Eve

Thanksgiving
Christmas

HOURS OF WORK

The Town has proposed an hours of work article as follows:

Section 1. The work day shall consist of not more than eight (8) consecutive hours in a twenty-four hour period and the work week shall consist of five (5) days in a seven (7) day period.

The assignments for Deputy Chiefs shall provide coverage on all three (3) shifts consistent with the daily and weekly work schedule set forth above.

The Association has also proposed an hours of work article consistent with what is contained in the SOA agreement.

The Town's proposal is awarded with modifications reflecting existing practice, changes and the inclusion of a night differential as it exists in the SOA agreement if the Deputy Chiefs are required to work night shifts. I award the following language:

Section 1. The work day shall consist of not more than eight (8) consecutive hours in a twenty-four hour period except as mutually agreed to by the parties and the work week shall consist of five (5) days in a seven (7) day period. The regular hours of work shall be 8:00 a.m. to 4:00 p.m. and may be adjusted by the Deputy Chiefs with the Chief's approval or by the Chief for operational reasons with one week's notice except in an emergency.

The assignments for Deputy Chiefs shall provide coverage on all three (3) shifts consistent with the daily and weekly work schedule set forth above. Deputy Chiefs shall be eligible to receive paid night hazard differential in the same manner that exists in the SOA agreement if required to work shifts that require the payment of the differential.

HOLIDAY PAY

The Town and the Association have each submitted a holiday pay proposal as part of each final offer. However, both parties cite a 2008 settlement agreement that was reached after issues had developed concerning this issue and have indicated its continued applicability. Accordingly, I award holiday pay pursuant to the terms of the settlement agreement. The terms of the settlement agreement appear in the Award section of the agreement.

REMAINING ISSUES

Certain economic issues remain in dispute and have not been specifically addressed except insofar as the Association has proposed to include articles that exist in the SOA agreement. The record reflects that Deputy Chiefs do not, and have not, received overtime. Because of this, I do not award the overtime article. The same observation is made concerning the Training Schools provision. In the event that the Deputy Chiefs have continued to receive, or are eligible for, call in time or minimum pay-court or other appearances, they shall continue to receive same by contract reference. If not, there shall be no contract reference. I have also awarded the clothing allowance provision from the SOA agreement in the Award section enumerated as #9 calling for a clothing allowance of \$1,000.00 effective January 1, 2007 and the continued receipt of the education and training allowance of \$350 in the section of the Award entitled Schedule for Payment of Certain Benefits enumerated as #11.

Accordingly, and based upon all of the above, I respectfully submit the terms of the Award.

AWARD

1. All proposals by the Town and the Association not awarded herein are denied and dismissed.

2. **Salary:**

The salary for the Deputy Chiefs shall be increased by the following percentages and shall be retroactive to their effective dates. Muster pay shall not be included. Deputy Chiefs shall receive a one-time non-base payment in lieu of the amount of muster pay would have been received in 2007, 2008 and 2009 as equitable consideration for the non-application of this payment to Deputy Chiefs for those years and thereafter, the amount of which shall be calculated in the same manner as it had in the past.

1/1/07 – 3.0%
1/1/08 – 3.25%
1/1/09 – 3.25%
1/1/10 – 3.25%
1/1/11 – 3.25%
1/1/12 – 3.25%

3. **Longevity:**

Longevity pay for the Deputy Chiefs shall be pursuant to the following schedule:

ARTICLE ____ - LONGEVITY

Section 1. Each employee covered by this agreement shall be paid in equal installments in his regular pay check in addition to the rates of pay set forth in Article ____ herein, a longevity increment based upon years of service with the Kearny Police Department in accordance with the following schedule:

Years of Service	Percentage of Salary
4 to 7	2
8 to 11	4
12 to 15	6
16 to 19	8
Beginning 20	10

Section 2. Each employee shall qualify for the longevity increment on the 1st day of January of the year in which the anniversary of his employment falls. Longevity shall be prorated in the year of termination for those employees who resign their employment with the Town or are

discharged for cause. Officers who retire (either service or disability) are not prorated.

4. Hospitalization:

Hospitalization shall be provided pursuant to the following Article:

ARTICLE ____ - HOSPITALIZATION

Section 1. The Employer agrees to provide health insurance under the provisions of the State Health Benefits Plan as that plan may be modified during the terms of this contract. The Town shall pay the full cost of the Direct 15 and if the employee chooses a different plan that is more expensive, he/she will pay the difference to the Town through payroll deductions.

Section 2. The Employer agrees to provide at no expense to the employees, a five thousand (\$5,000.00) dollar Life Insurance Policy for all employees covered by this Agreement. The Employer agrees to provide upon their retirement, a five thousand (\$5,000.00) dollar Life Insurance Policy to be paid for by the retiree.

Section 3. The Employer shall provide each member of the unit with a dental insurance program by Delta Dental. The coverage shall be no less than 80% by the Plan and 20% by the member of the unit. The annual deductible for the single plan shall be \$50.00 and for the family plan \$150.00. The Employer shall pay the full cost of the premiums for said insurance. Annual coverage shall be \$2,000.00 and orthodontia an additional \$1,000.00. All retired employees who have been, prior to retirement, employees covered by this Agreement, shall be allowed to, at the retiree's option, remain in the dental insurance program by Delta Dental at the retiree's sole expense.

Section 4. The Employer at its cost shall provide to all employees and their dependents a prescription drug plan. Each prescription and renewal shall be paid for by the Employer subject to a co-payment by the employee, which shall be consistent with the co-pays charged by the State Health Benefits Plan.

The Employer further agrees to provide at no cost to all qualified retired employees under State Statute who have been prior to their retirement, employees covered by this agreement and their dependents a Prescription Drug Plan. Each prescription and renewal shall be paid for by the Employer subject to a co-payment by retired employees, which shall be consistent with the co-pays charged by the State Health Benefits Plan.

Section 5. The spouse and dependents of any officer who dies while employed by the Employer shall receive all health benefits (medical, prescriptions and dental) enjoyed while the officer was an active employee at the Employer's expense, unless such benefits are provided at the expense of the State of New Jersey. The benefits shall continue for said officer's surviving spouse in the same manner as for a surviving spouse of a retiree and for dependents until they become emancipated. Employees who are hired on or after July 1, 2005 and

who die while off-duty must have a minimum of four (4) years of New Jersey creditable PFRS service at the time of death to be eligible for this benefit.

Section 6. The level of employee contribution of 1.5% of base salary shall be as set forth in P.L. 2010, Ch.2, effective May 22, 2010. The contribution shall not apply to current employees who retire except for those employees who have joined or will join a state or locally administered retirement program on or after May 21, 2010 whose contribution shall be 1.5% of their monthly retirement allowance. This level of employee contribution shall be inclusive of, rather than in addition to, any additional statutory obligation to make contributions toward the payment of health insurance. To the extent that this language is inconsistent with the lawful authority of the Town of Kearny pursuant to P.L. 2011, Chapter 78, enacted on June 28, 2011, the language awarded is not intended to be inconsistent with that lawful authority.

5. **Hours of Work:**

ARTICLE ____ - HOURS OF WORK

Section 1. The work day shall consist of not more than eight (8) consecutive hours in a twenty-four hour period except as mutually agreed to by the parties and the work week shall consist of five (5) days in a seven (7) day period. The regular hours of work shall be 8:00 a.m. to 4:00 p.m. and may be adjusted by the Deputy Chiefs with the Chief's approval or by the Chief for operational reasons with one week's notice except in an emergency.

The assignments for Deputy Chiefs shall provide coverage on all three (3) shifts consistent with the daily and weekly work schedule set forth above. Deputy Chiefs shall be eligible to receive paid night hazard differential in the same manner that exists in the SOA agreement if required to work shifts that require the payment of the differential.

6. **Vacation:**

ARTICLE ____ - VACATION

Section 1. All employees covered by this agreement who have completed three (3) or more years of service shall receive twenty-nine (29) working days of vacation with pay annually. Such entitlement shall be effective for the year during which the third year of employment is completed.

Section 2. All employees in addition to all other allowable vacation time shall receive an additional vacation day for every five (5) years of service. The additional vacation day shall be considered earned as of January 1st of each year, if the employee shall have completed, or will complete his/her necessary years of service during said calendar year. Vacation entitlement will be prorated in the year of termination of employment with the © except in the case of retirement (either ordinary service or for disability) where vacation entitlement shall not be prorated.

Section 3. In order not to hamper proper and efficient police operations, both parties agree that the scheduling of vacations must be left to the Employer but the following conditions shall be observed, in such scheduling:

- (a) Employees desiring specific vacation periods during the months of January through June must request such vacation periods by January 1st. Employees desiring vacation periods during the months of July through September must request such vacation by March 15th and employees desiring vacation periods during the months of October through December must request such vacation by June 1st. Request for vacation periods shall not be unreasonably denied and the Employer shall approve or reject such request within a reasonable time after the time within such request must be made in accordance with this contract. In determining the allocation of requested vacation periods, seniority in rank shall govern.
- (b) No employee shall be permitted to take more than three (3) consecutive weeks of vacation at one time.
- (c) Vacation period assignments during June, July and August shall be based exclusively upon seniority among the employees.
- (d) No employee shall be assigned more than two (2) weeks vacation during June, July and August.

Section 4. All employees covered by this agreement shall be entitled to their vacation days in single days off or any combination of consecutive days. These consecutive days must be taken in accordance with the provisions set forth in Article XIII, Section 5 of this agreement, in addition:

- (a) Notice shall be given at least seventy-two (72) hours in advance of any single day or other combination of vacation days taken. Exception: In cases of emergency where 72 hours notice cannot be given, maximum notice possible, if any, under the circumstances shall be given. There shall be a maximum of twelve (12) emergency vacation days (EVDS) that may be taken during a calendar year; except that each officer may only use two (2) EVDS from Thanksgiving to December 31. All vacation days including single vacation days and EVDS are subject to approval by the Chief of Police or his/her designee which approval shall not be unreasonably denied.
- (b) Vacation days may precede or succeed regular days off or other authorized non-work days.
- (c) For the purpose of control, it will be necessary for any employee who requests any vacation period during the

following designated days, to take a minimum of four (4) consecutive working days off.

New Years Eve
Christmas Eve

Thanksgiving
Christmas

7. **Association Leave Time:**

ARTICLE ____ - ASSOCIATION LEAVE TIME

The Association shall be entitled to have one member attend, without loss of pay, State PBA conventions and the State Collective Bargaining Seminar. Additional members may be permitted to attend as determined by the sole discretion of the Chief of Police or his designee. The duration of said leave shall be governed by N.J.S.A. 40A:14-177, N.J.S.A. 11A:6-10 and N.J.A.C. 4A:6-1.13(b).

8. **Holiday Pay:**

ARTICLE ____ - HOLIDAY PAY

Incorporate Settlement agreement into the Agreement as follows:

Agreement made this 18th day of March, 2008 by and between the Town of Kearny (herein "Kearny" or the "Employer") and the Deputy Police Chief's Association (herein the "Association").

WHEREAS, the Association has been certified as the majority representative for the Deputy Police Chiefs in the Town of Kearny; and

WHEREAS, Kearny and the Association are engaged in collective negotiations for a first contract; and

WHEREAS, a dispute has arisen between Kearny and the Association concerning employee entitlement to certain Holidays which dispute involves a claim by the Association that employees working the 5 on 2 off schedule are entitled to ten (10) holidays off from work in addition to holiday pay; which claimed entitlement is disputed by the Town; and

WHEREAS, Kearny and the Association have negotiated a settlement of the dispute subject to approval of this agreement by the Mayor and Council of the Town of Kearny:

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein set forth the parties as follows:

1. The Deputy Chiefs currently work a non-tour schedule of five consecutive 8-hour days of work followed by two days off versus the tour schedule which consists of four consecutive 8-hour days of work followed by two days off.

Based upon the two different work schedules, it is acknowledged that the employees working on the 5 on 2 off schedules work approximately 17 days per year more than those employees who work the tour schedule. It is further acknowledged and agreed that employees working the tour schedule may or may not be required to work on designated holidays based upon their scheduled days of work which requires coverage 24-hours per day, 7 days per week.

2. In recognition of the two different work schedules, an unwritten understanding was reached many years ago between a prior Police Chief and a prior Mayor whereby employees working on the 5 on 2 off schedule would be allowed to take certain holidays off from work. Because this understanding was not reduced to writing, the within dispute has arisen. Accordingly, the parties have negotiated a settlement of the dispute and herewith confirm the terms of that settlement as follows:

A. Deputy Chiefs shall continue to receive holiday pay in accordance with the present practice.

B. Deputy Chiefs working on the 5 on 2 off shift shall also receive the following holidays off from work without loss of regular salary but with no additional holiday pay:

New Year's Day
Martin Luther King Day
President's Day
Good Friday
Memorial Day
July 4th (Independence Day)
Labor Day
Thanksgiving
Day after Thanksgiving
Christmas Day

C. In the event that a Deputy Police Chief is required to return to duty on any of the above listed holidays, there shall be no additional compensation paid to such Deputy Chief either in compensatory time or cash.

D. Deputy Police Chiefs are required to work on any other Town designated holiday at no additional compensation.

9. **Clothing Allowance:**

ARTICLE ____ - CLOTHING ALLOWANCE

Section 1. A clothing allowance in the amount of \$1000.00 per year shall be paid by the Employer to all employees covered by this agreement effective January 1, 2007. Payment of the clothing allowance shall be made in two installments, one half to be paid the first pay period in May and the second half to be paid the first pay in December.

10. **Stipulations**

GENERAL AGREEMENT

This general agreement made and entered into on the ____ day of _____, 2010, by and between the **TOWN OF KEARNY**, a municipal corporation in the County of Hudson, hereinafter referred to as the "Employer" and **KEARNY DEPUTYPOLICE CHIEF'S ASSOCIATION** hereinafter referred to as the "Association."

WHEREAS, the parties hereto have carried on collective bargaining negotiations for the purpose of developing and concluding a general agreement covering wages, hours of work and other conditions of employment.

NOW, THEREFORE, in consideration of these promises and mutual agreements herein contained, the parties hereto agree with each other with respect to the employees of the Employer recognized as being represented by the Association as follows:

ARTICLE ____ - RECOGNITION AND SCOPE OF AGREEMENT

Section 1. The Employer hereby recognizes the Association as the sole and exclusive representative of all the employees in the bargaining unit as defined in Article I, Section 2, herein for the purposes of collective negotiations and all activities and processes relative thereto.

Section 2. The negotiations unit shall consist of all sworn employees or members of the Police Department of the Town of Kearny, New Jersey, with the rank of Deputy Chief, now employed or hereinafter employed.

Section 3. This agreement shall govern all wages, hours and other conditions of employment herein set forth.

Section 4. This agreement shall be binding upon the parties hereto and their successors.

ARTICLE ____ - COLLECTIVE NEGOTIATION PROCEDURE

Section 1. Collective negotiation with respect to rates of pay, hours of work and other conditions of employment shall be conducted by the duly authorized negotiation agent of each of the parties. Unless otherwise designated, the Mayor of the Employer or his/her designee, and the Association negotiation agent, or his/her designee, shall be the respective negotiation agents for the parties.

Section 2. Collective negotiation meetings shall be held at the times and places mutually convenient at the request of either party.

Section 3. Employees of the Employer who may be designated by the Association to participate in collective negotiation meetings called for the

purpose of the negotiation of a collective negotiation agreement will be excused from their work assignments with pay.

Section 4. No representative of the Employer shall meet with any member of the negotiation unit other than an authorized representative of the Association nor shall any member of the negotiation unit, without specific authority by the Association meet with a representative of the Employer for the purpose of discussing wages, hours or conditions of employment or other matters which are properly subjects of collective negotiations between the parties without prior notification to the Association and the Town of such meetings and without the presence at such meetings of a representative of the Association designated by the Association and a representative of the Employer.

The aforesaid provisions of Section 5 are not intended to prohibit, restrain, interfere with or affect in any way the collective negotiation process or labor management relations activities between the parties, including but not limited to, meetings and discussions between authorized representatives of Employer and the Association during the term of this agreement, the grievance procedure set forth in this agreement and any other meetings or discussions required under this agreement or necessary for the proper implementation and performance of the terms of this agreement.

ARTICLE ____ - DISCRIMINATION AND COERCION

There shall be no discrimination, interference or coercion by the Employer or any of its agents against the employees represented by the Association because of membership or activity in the Association. The Association shall not intimidate or coerce employees into membership.

ARTICLE ____ - MANAGEMENT OF TOWN AFFAIRS

The Association recognizes that areas of responsibility must be reserved to the Employer of the local government as to serve the public effectively. Therefore, the right to manage the affairs of the Employer and to direct the working forces and operations of the Employer, subject to the limitations of this agreement, is vested in and retained by the Employer exclusively.

ARTICLE ____ - DEATH IN FAMILY

The Employer agrees that all employees covered by this contract shall be permitted bereavement leave with pay, not to exceed four (4) working days beginning on the first work day following the date of death of spouses, children, brothers, sisters, mothers, fathers, mother-in-law or father-in-law, sister-in-law and brother-in-law, grandparents of employee or employee's spouse or any member of employee's household.

ARTICLE ____ - DISCIPLINARY HEARING - RIGHTS OF POLICE OFFICERS

In the event any member of the unit is or may become the subject or target of an investigation which may subject such members to discipline or a disciplinary hearing, the parties agree that for the purpose of insuring that the investigations are conducted in a manner which is conducive to good order and discipline and protective of the rights of employees, the following rules are adopted:

- (a) The members shall be given written notice of the charges together with the name of the complainant a reasonable time before any interrogation takes place or written or oral report is required.
- (b) If an interrogation of a member is to take place or if a member is required to file a written or oral report, he/she shall be advised as to whether such interrogation or report is required of him/her as a witness or as a potential target of an investigation.
- (c) If a charge is brought against a member of the unit, a hearing on the charge must be brought within sixty (60) days of the date written notice of the charge is received by the members.
- (d) The member shall have the right to legal counsel of his/her choice.
- (e) The member shall have the right of discovery and production of documents from the Town without limitation.
- (f) The member shall have the right to refuse to take polygraph or similar type lie detector equipment without fear of departmental discipline for such refusal.
- (g) The member shall have the right to refuse to testify at his/her disciplinary hearing without fear of departmental discipline for such refusal.
- (h) The member shall have the right to refuse in any way to prepare to give written or oral reports in connection with any manner in which the said member may be the target of an investigation leading to a disciplinary charge and proceeding without fear of departmental discipline for such refusal in any case where a report has already been filed relating to such matter or in any case where the matter under investigation relates to the private conduct only of the police officer while not on duty.

ARTICLE ____ - REIMBURSEMENT OF TRAVEL EXPENSES

In the event an employee is required to use his/her automobile to travel on business relating to his duties as a police officer, including but not limited to travel to and from court appearances and to and from training schools, such employee shall receive fifteen (\$.15) cents per mile for automobile use together with reasonable parking costs and toll fees.

Effective July 1, 2005, the fifteen (\$.15) cents per mile reimbursement provided for herein shall be increased to the rate allowed by IRS regulations.

ARTICLE ____ - EDUCATIONAL BENEFITS

Section 1. The Employer agrees to pay the cost of education benefits for education courses taken by employees which constitute a benefit to and which are directly related to his employment activities, subject however, to the following limitations:

- (a) Courses must be taken at an accredited college or university.
- (b) Payment will be made at a maximum of \$25.00 per credit.
- (c) Payment for the cost of books shall not exceed \$40.00 per year.
- (d) Payment shall be made in the form of reimbursement to the employee at the rate of 50% per year of said reimbursement costs, as hereinabove defined, payable over two years.
- (e) The Employer shall deduct from said reimbursement cost federal grant and aid funds which have been received by employee, but federal grant and aid shall not include veteran's benefits. Vouchers showing receipted payments for all books and credits must be submitted before any payments can be made.

Section 2. All officers shall receive a \$350.00 annual bonus for continuing education and training.

ARTICLE ____ - HOUSEHOLD MEMBER ILLNESS

Employees covered by this agreement shall be granted leave without loss of pay up to a maximum of five (5) working days in cases where a member of the employee's household is seriously ill or has given birth to a child, provided the employee has no unused vacation time remaining during the calendar year in which the illness or birth occurs.

ARTICLE ____ - ACCESS TO PERSONNEL FILES

The Employer agrees to permit each employee full inspection and examination without restriction of his/her personnel file at least once during each calendar year upon request by the employee. The inspection shall take place in a private place provided by the Employer at reasonable hours during the day. The Employer may require that such inspection and examination take place in the presence of the Chief of Police or his/her designee and the employee may, at his/her option, have a third party present during such inspection. The employee shall be permitted to copy all or part of statements, writings, or information contained in his/her personal file. The employee shall have the right to challenge any statements therein. If he/she believes any material is inaccurate or incomplete, he/she may submit a grievance and process the same through the grievance procedure.

ARTICLE ____ - PENSIONS

The Employer shall provide pension and retirement benefits to employees covered by this agreement pursuant to provisions of the statutes and laws of the State of New Jersey.

ARTICLE ____ - DISCHARGE OR SUSPENSION

No employee shall be disciplined or discharged without just cause. Except as covered by Department of Personnel rules and regulations an employee who has been disciplined or discharged may grieve such action in accordance with the provisions hereinafter set forth entitled GRIEVANCE PROCEDURE and ARBITRATION.

ARTICLE ____ - BULLETIN BOARD

The Employer shall permit the Association to have an employee Bulletin Board located in the respective Police facilities for posting notices concerning Association business and activities, but no such notice shall contain salacious, inflammatory or anonymous material.

11. Adaptation of Articles

ARTICLE ____ - UNION SECURITY

Section 1. Insofar as permitted by law, the Employer agrees to deduct from the pay of all employees of the Police Department, initiation fees, dues and assessments as required by the PBA By-Laws and other Union rules and regulations duly enacted. All such deductions shall be paid over to the properly designated Union official monthly on a regular recurring basis.

Section 2. Representation Fee.

- (a) Purpose of Fee - If an employee does not become a member of the PBA during any membership year (i.e., from January 1 to the following December 31) which is covered in whole or in part by this agreement, said employee will be required to pay a representation fee to the PBA for that membership year. The purpose of this fee will be to offset the employee's per capita cost of services rendered by the PBA as majority representative.
- (b) Notification - Prior to the beginning of each membership year, the PBA will notify the Employer in writing of the amount of the regular membership dues, initiation fees and assessments charged by the PBA to its own members for that membership year.
- (c) Certification - The PBA will certify to the Employer before the start of each membership year that the amount of the representation fee to be assessed does not exceed eighty-five (85%) percent of dues, fees and assessments, or the maximum allowed by law, and does

not include any amount of dues, fees and assessments that are expended:

1. for partisan, political or ideological activities or causes that are only incidentally related to the terms and conditions of employment, or
 2. applied toward the cost of benefits available only to members of the majority representative.
- (d) Demand and Return - The PBA agrees that it will, in conformity with the applicable laws, establish a demand and return system for all employees and will present appropriate evidence of the existence of such a system to the Employer. The Association may adapt and utilize the PBA Local 21 Demand and Return system as its own.
- (e) The PBA shall indemnify and hold the Employer harmless against any and all claims, demands, suits and other forms of liability, including liability for reasonable counsel fees and other legal costs and expenses that may arise out of or by reason of any action taken or not taken by the Employer in conformance with this provision.

ARTICLE ____ - GRIEVANCE PROCEDURE

Section 1. A grievance is any complaint arising with respect to wages, hours of work or other conditions of employment. In order to provide for the expeditious and mutually satisfactory settlement of grievances, the procedures hereinafter set forth shall be followed.

Section 2. Complaints may be initiated by an individual employee to the Police Chief. The complaint must be filed within thirty (30) calendar days of its occurrence or when the employee reasonably should have known of its occurrence, whichever is later. If the complaint is not adjusted satisfactorily at this level and the employee wishes to enter a grievance, it shall be presented by the authorized Union representatives.

Section 3. When the Association wishes to present a grievance for itself or for an employee or group of employees for settlement, such grievance shall be presented as follows:

Step 1. The Association representative or his/her duly authorized and designated representative shall present and discuss the grievance or grievances orally with the Police Chief or his/her duly designated representative. The Police Chief shall answer the grievance orally within five (5) workdays.

Step 2. If the grievance is not resolved at Step 1, or no answer has been received by the Union within the time set forth in Step 1, the grievance may be presented in writing to the Mayor and Town Council or his duly designated representative within fourteen (14) calendar days. The final decision of the Mayor and Town Council

shall be given to the Union in writing within fourteen (14) days after receipt of the grievance by the Mayor and Council.

Section 4. If the grievance has not been settled by the parties at Step 2 of the Grievance Procedure, or if no answer in writing by the Mayor and Town Council or his duly designated representative has been received by the Association within the time provided in Step 2, the Union may demand arbitration of the grievance in accordance with Article XXIII, ARBITRATION, hereinafter set forth.

Section 5. Nothing herein is intended to deny an employee the right of appeal as expressly granted in DOP rules and regulations for the State of New Jersey.

ARTICLE ____ - ARBITRATION

Section 1. Any grievance or other matter in dispute involving the interpretation or application of the provisions of this agreement, not settled by the Grievance Procedure as herein provided, may be referred to an arbitrator as hereinafter provided.

Section 2. Either party may institute arbitration proceedings when the Grievance Procedure has been exhausted by written demand upon the other party no later than fifteen (15) calendar days thereafter, specifying the nature of the unsettled grievance or other matter in dispute involving the interpretation or application of the provisions of this Agreement and the relief sought. Within fifteen (15) days following presentation of such demand, the party demanding arbitration shall request the New Jersey Public Employment Relations Commission to appoint an arbitrator to hear the arbitration in the manner set forth in its Rules and Regulations.

Section 3. The decision of the Arbitrator shall be in writing and shall include the reasons for such finding and conclusion.

Section 4. The decision of the Arbitrator shall be final and binding on the Union and the Employer.

Section 5. Where an employee has exercised his/her right of appeal as expressly granted in the DOP rules and regulations or Statutes of New Jersey, there shall be no right to arbitration under the provision of this Article.

Section 6. In the event of a change in the law governing the New Jersey Public Employment Relations Commission or its rules and regulations which would in any way affect the method of selection of an arbitrator then, in the alternative, the party demanding the arbitration shall request the American Arbitration Association to submit a list of nine (9) arbitrators from which the parties may make a selection of the arbitrator. If the parties fail to agree on the selection of the arbitrator from the list, each party shall alternately strike one name until but one name remains and that party shall be the arbitrator of the issue or issues to be arbitrated.

The cost of the arbitrator's services, if any, shall be shared by both parties and each of the parties shall bear its own costs.

ARTICLE ____ – RETROACTIVITY

All agreements made herein relative to wages and other fiscal benefits as agreed upon subsequent to January 1, 2007 shall be retroactive to January 1, 2007, except as otherwise provided herein.

ARTICLE ____ - DURATION

Section 1. This agreement shall be in effect from the 1st day of July, 2007 to and including the 31st day of December, 2012.

Section 2. At least 50 days prior to the expiration of this agreement, the parties hereto agree to commence negotiations for a new Collective Negotiations Agreement.

ARTICLE ____ - TERMINAL LEAVE

Each employee covered by this agreement shall be entitled to and granted terminal leave of sixty-five (65) days, with pay at the time of his retirement. Such leave may be taken for purposes of early retirement or an employee may work until retirement at which time he shall be entitled to a terminal leave payment equivalent to sixty-five (65) days' pay.

ARTICLE ____ - LIABILITY INSURANCE

The Employer agrees to provide liability insurance coverage in an adequate sum covering its employees who are covered by the agreement during the performance of duties.

ARTICLE ____ - SCHEDULE FOR PAYMENT OF CERTAIN BENEFITS

The Employer shall pay certain of the contractual benefits under this agreement in accordance with the following schedule:

(a) Payment of holidays shall be included in an officer's base pay and paid in equal installments in his/her regular pay check.

(b) Longevity increments shall be included in an officer's base pay and paid in equal installments in his/her regular pay check.

(c) Retroactive payment of all fiscal benefits provided for under this agreement including but not limited to, wages and the benefits scheduled for payment under this Article, shall be paid as soon as possible after the execution of this agreement.

(d) The \$350.00 payment for continuing education and training shall be paid on the first pay day of September of each year.

ARTICLE ____ - CONDUCTING UNION BUSINESS

Section 1. The Employer shall permit members of the Association Grievance Committee (not to exceed 1), to conduct the business of the Committee, which consists of conferring with employees and management on specific grievances in accordance with the grievance procedure set forth herein, during the duty hours of the members without loss of pay, provided the conduct of said business shall not diminish the effectiveness of the Police Department or require the recall of off-duty policemen to bring the Department to its proper effectiveness.

Section 2. The Employer agrees to grant the necessary time off without loss of pay to the Association bargaining agent and/or assistant bargaining agent to conduct Association business provided that operational needs allow for such release as determined by the sole discretion of the Chief of Police or his designee. The Employer further agrees that said official shall be granted time off without loss of pay to attend in an official capacity as representatives of the Association, funerals for any member of the Kearny Police Department who dies while in active service and other police officers who have given their lives in the line of duty. Nothing herein shall prevent the Chief of Police from allowing said time off in his/her discretion for attendance at funerals of retired members of the Kearny Police Department.

ARTICLE V - PAY TREATMENT FOR EXTENDED ILLNESS

Section 1. The Employer agrees to pay employees at their regular rate of pay during periods of disability due to illness, injury or recuperation therefrom, for a maximum period of one year from the date of such disability, provided such employee is incapable of performing his/her duties as a police officer and that such disability is established by a competent physician.

Section 2. The Employer retains the right to extend this period of payment for disability due to illness or injury beyond one year on its own discretion.

Section 3. The Employer may require at any time during the period of such extended disability as described in Section 2 above, that the employee be examined by a physician selected by the Employer for such purpose.

Section 4. In the event a disagreement arises with respect to the existence or extent of the disability, such issue shall be determined by a physician agreed to by and between both of the parties to this agreement; i.e., the Employer and the Association.

Section 5. The cost of providing a doctor's certificate to establish the existence or extent of disability as may be required under this Article shall be borne by the Employer.

Section 6. Whenever a member of the bargaining unit is injured in the course of his/her employment, the cost of all medical treatment required as a result of such injuries shall be paid by the Employer, provided,

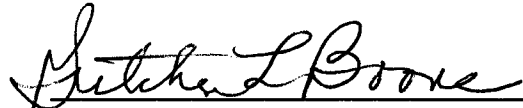
however, that such medical treatment is provided or directed by a physician of the Employer's choice.

Dated: September 7, 2011
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 7th day of September, 2011, 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