

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Arbitration Between:

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**TOWNSHIP OF GREEN BROOK**

"Public Employer,"

- and -

**FRATERNAL ORDER OF POLICE, LODGE 23**

"Union."

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2011-030

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Employer:**

Mark S. Ruderman, Esq.  
Ellen M. Horn, Esq., on the Brief  
Ruderman & Glickman, P.C.

**For the Union:**

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

Pursuant to a petition to initiate compulsory interest arbitration filed by the FOP Lodge 23 [the "FOP"], I was designated to serve as interest arbitrator by the New Jersey Public Employment Relations Commission on April 4, 2011. The FOP is a party to a collective negotiations agreement [the "Agreement"] with the public employer, the Township of Green Brook [the "Township" or "Employer"] which expired on December 31, 2009. The negotiations unit consists of all officers below the rank of Captain.

Pre-interest arbitration mediation sessions were held in Green Brook, New Jersey on September 23 and October 11, 2011. Although the number of issues in dispute were narrowed during the mediation session, the impasse remained and an interest arbitration hearing was held on January 30, 2012. At the hearing, each party presented their last offers on the issues in dispute. I received testimony and documentary evidence from the FOP and the Township. I received post-hearing submissions from both parties on May 7, 2012.

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

### **LAST OFFER OF THE FOP**

1. **Duration of Agreement**

The FOP proposes a five (5) year contract, January 1, 2010 through December 31, 2014.

2. **Article IV - Overtime (page 11)**

Paragraph A. This clause shall be revised so as to reference the current 12-hour schedule for the Patrol Division. Additionally, the Patrol Division's recurring "short shifts" of 8 hours shall be eliminated. Instead, all officers assigned to the Patrol Division shall be afforded 104 hours of "Kelly" time on an annual basis.

Paragraph B. This paragraph shall be revised so as to clarify that overtime shall be due and owing for any and all work performed beyond the officer's normal work day, consistent with the parties' current practice and custom. Additionally, the maximum compensatory time which an officer may accrue shall be increased from 240 hours to 360 hours.

3. **Article V - Holidays (page 13)**

Paragraph A shall be modified so as to establish two additional "floating" holidays annually. Additionally, holiday pay shall be rolled into base pay for pension purposes.

4. **Article VI - Vacation (page 14)**

Paragraph B shall be revised so as to permit all officers to reserve as much as 50% of their annual vacation leave beyond the April 1 deadline. Additionally, officers shall be permitted to utilize their vacation leave in individual days. As a result, the "4-split rule" shall be eliminated.

5. **Article X - Wages (page 23)**

All wages shall be increased 2.75% across-the-board for each year of the new collective bargaining agreement. All retroactive increases shall be applicable to officers who may have terminated employment since December 31, 2010.

6. **Article XIII - Bereavement Leave (page 26)**

Paragraph A shall be revised in two respects: (1) bereavement leave shall be four (4) working days; and (2) each "day" of bereavement leave shall be equal to the officer's regularly assigned shift (i.e. 8 hours or 12 hours, respectively).

Paragraph C (new). Officers shall also be entitled to two (2) days bereavement leave for relatives not falling under the definition of "immediate family".

7. **Article XVIII— Work in Higher Rank (page 31)**

This clause shall be revised so as to entitle police officers who work in the capacity of Acting Sergeant or Watch Commander for at least half of a given shift, retroactive to the first hour. To further clarify, "Acting Sergeant" and "Watch Commander" shall be defined as the senior officer assigned to the patrol shift in question.

8. **Article XXV -Uniforms Maintenance and Personal Property Damage (page 38)**

Paragraph A shall be revised so as to entitle each FOP member with an annual uniform allowance in the amount of \$1,200. Said amount shall be payable to each FOP member as part of his/her regular base pay for pension purposes.

9. **Article XXVI— Automatic Payroll Deduction for Dues (page 39)**

The following provision shall be added to this clause:

The Township agrees to grant a day off without loss of pay to one (1) member of the FOP selected by the Membership as Delegate to attend regularly scheduled State Union meetings as long as the day off is a regularly scheduled working day.

The Township further agrees to grant time off on any regularly scheduled working day for the Delegate and one (1) alternate member to attend the bi-annual State and National union conventions, and State mini-conventions. Such time off shall include travel time as necessary. Proof of attendance shall be provided to the Police Chief or his designee upon his request.

## **LAST OFFER OF THE TOWNSHIP**

1. Duration – 3 years
2. Salary:  
  
2010 - 0%  
2011 - 0%  
2012 - 1.5%
3. Salary Guide. Add six steps and lower the starting salary to \$40,000 for new hires. Equalize all the steps.

## **BACKGROUND**

The Township of Green Brook is one (1) of twenty-one (21) municipalities in Somerset County. It has a population of 7,200 over a land area of 4.6 square miles. It is a fast growing municipality as evidenced by the fact that the number of Township residents has grown by more than 25% between 2000 and 2010. In 2010, the household median income was \$80,644 and the median family income was \$87,744. The Township's character is primarily residential and it has home valuations well above the County average. In 2011, the Township's total tax rate was 2.219, of which 0.425, or less than 20%, was attributed to the municipal tax rate. This rate is comparatively low and the overall record reflects that the Township's financial health has traditionally been excellent but that it experienced distress beginning after 2007, at which time its revenues and surplus balances began to decrease. This led to budget difficulties in 2010 that led the Township to seek a waiver of its tax levy cap and to engage in several significant cost cutting measures.

The police department consists of a Police Chief, one (1) Captain, one (1) Lieutenant, five (5) Sergeants and thirteen (14) Patrol Officers. One patrol officer was laid off in 2010 and another retired in 2011 leaving a staff of nineteen at time of hearing. Neither vacancy has been filled. The bargaining unit consists of all officers below the rank of Captain. The Patrol Division normally works twelve (12) hour shifts and officers rotate shifts every four weeks.<sup>1</sup> In 2010, seven (7) violent crimes and 133 non-violent crimes were reported. The Uniform Crime Reporting Unit for the year ending December 31, 2010 showed a crime rate per 1,000 residents of 19.4, representing a sharp increase from 7.2 in 2009.<sup>2</sup> A comparability chart in evidence shows that Green Brook ranked twelfth (12<sup>th</sup>) in maximum base salary in 2009 at \$88,864 and below the \$90,273 average and \$89,503 median.<sup>3</sup> The starting salary of \$48,875 is above the average and median and the number of steps, at six, are the second lowest in the County. The Township seeks a new salary guide increasing the steps and decreasing the starting salary.

Most of the issues in dispute are economic in nature, including salary, vacations, holidays, bereavement leave, higher rank pay, uniform allowance, overtime pay and Union leave. The parties also disagree on the duration of the

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<sup>1</sup> Police Officer Seidel testified that the schedule occasionally provides for "short shifts" of eight (8) hours each month for the purpose of maintaining a 2080 hour work year.

<sup>2</sup> Notwithstanding these figures, the Report also reflects sharp declines in violent crime and non-violent crime between 2009 and 2010.

<sup>3</sup> Such charts are not fully informative as to total compensation given the fact that some figures include holiday pay and normally do not show longevity pay or, as here, that Green Brook officers do not receive any longevity pay.

contract. The evidence submitted into the record includes, but is not limited to, base salary comparisons with and without longevity, fringe benefit comparisons, cost of living data, New Jersey and national economic data, municipal data sheets, municipal court revenues, appropriations and tax levy cap calculations, collective negotiations agreements, interest arbitration awards and summaries and private sector wage data. The Township and the FOP sharply disagree on the health of the Township's finances, as well as how the overall salary and benefit levels compare within Somerset County. This disagreement is reflected in the significant differences in their respective last offer salary proposals.

In general, the FOP contends that the Township is an affluent, fast growing municipality that is financially sound, has budgeted well within its appropriations and tax levy caps and can afford what the FOP believes are relatively modest salary proposals without adverse financial impact. These proposals are asserted to have support in comparability data, cost of living evidence and fall within the Township's financial ability. The Township disagrees. It contends that there is a dramatic cost differential between the parties positions and that the FOP's salary proposal dramatically differs from the manner in which the Township was compelled to treat its civilian employees. It submits that the costs will pose a significant financial burden on the Township, create difficulty in the Township's ability to meet its other financial obligations and strain its ability to stay within the tax levy cap due to declining revenues. The parties' positions on these issues, as well as the evidence in support of their

positions, will be summarized in greater detail during an evaluation of the merits of their proposals and in conjunction with an application of the statutory criteria.

### **DISCUSSION**

I have carefully reviewed and thoroughly considered the arguments and evidence submitted into the record by the Township and the FOP in support of their respective positions. The Township and the FOP have offered testimony and considerable documentary evidence in support of their last offers. Each submits that an application of the statutory criteria supports its last offer in its totality.

The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the disputes issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) 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).

As guidance for the evaluation of the issues, I have applied the following principles that I believe are implied when applying the statutory criteria. The party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. No proposed issue by either party can be deemed presumptively valid without justification supported by the statutory criteria. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. The terminal procedure required by statute is conventional arbitration. This procedure allows for judgment and discretion when fashioning an award and does not confine the arbitrator to select between each party's final offer.

I next address the merits of the testimony, the documentary evidence and argument presented by the parties at the hearing and in their written post-hearing submissions as they relate to the individual issues that the parties have placed before me for determination.

### **Duration**

The FOP proposes a five (5) year contract, January 1, 2010 through December 31, 2014. The Township proposes a contract duration of January 1, 2010 through December 31, 2012. Each party offers an analysis of why its respective position should be adopted.

After review of their respective submissions, I decline to award either party's proposed contract duration. The interests and welfare of the public criterion supports a contract of a four year duration. The record closed during May 2012 and contains sufficient financial and economic evidence that allows for an award through December 31, 2013, thereby permitting an award one year beyond what the Township has proposed and one year less than the FOP has proposed. The record does not accurately reflect sufficient budget or comparability data that would justify the awarding of a five year award. Accordingly, the contract duration shall be January 1, 2010 through December 31, 2013.

#### **Article IV – Overtime**

The parties currently operate under an overtime system set forth in Article IV. Article IV provides an integration of the work schedule into the overtime provision. The existing work schedule provides for twelve (12) hour days but it also provides for eight (8) hour "short shifts" in order to meet the requirement in Article IV(A) stating that officers work an average of forty (40) hours per week. The short shifts allow for a 2080 hour work year and avoids having to schedule the additional 104 hours of work that would normally accrue on a standard annual twelve (12) hour work schedule. The FOP proposes to eliminate the "short shifts", credit officers with 104 hours of "Kelly time", increase the maximum amount of compensatory time from 240 hours to 360 hours and to codify an existing practice of paying overtime for hours worked beyond an officer's normal work day as opposed to hours in excess of forty (40) per week.

The rationale for the FOP's overtime proposals is fully set forth in its formal argument:

The FOP proposes to revise the provisions of Paragraph A so as to eliminate the "short shifts" (i.e. 8 hours) worked by the officers assigned to the Patrol Division at various times in the calendar year. Instead, the FOP proposes that each of those officers be credited with 104 hours of "Kelly Time" annually. As Officer Seidel testified, the officers' use of such "Kelly Time" would be subject to approval of his/her supervisor and, further, that any such request could be denied by the Township if, at the time said request is submitted, would require the Department to hire another officer on overtime.

As per Ptl. Seidel's testimony, any such unused "Kelly Time" could (1) be carried over to the succeeding year; or (2) "cashed out" at the officer's current rate of pay – at the Township's option. Ptl. Seidel also testified that no adverse impact would result to the Township in the event that the "short shifts" are eliminated. Indeed, Ptl. Seidel testified that the efficiency and effectiveness of the Police Department would be enhanced as said short shifts are actually counter-productive. Moreover, the FOP's proposal on this point would actually promote continuity among the patrol officers and patrol supervisors.

The FOP also seeks to revise the provisions of Paragraph B of Article IV so as to clarify that overtime shall be due and owing for any and all work performed beyond the officer's normal work day – consistent with the parties' current practice and custom. The FOP further proposes to increase the maximum amount of comp time which may be accrued from 240 hours to 360 hours.

Ptl. Seidel testified that the provisions of Paragraph 8(1) – wherein it states that overtime accrues for all hours in excess of 40 hours per week – are outdated and otherwise not compliant with the parties' actual practice. Officer Seidel testified – without contradiction – that all overtime accrues for any and all work performed beyond an officer's normal work day (i.e. 8 hours or 12 hours – depending upon the officer's work schedule). Officer Seidel further testified that the proposed increase in the maximum comp time bank to 360 hours – still well below the 480 maximum allowed under the Fair Labor Standards Act – would reduce the Township's exposure to having to pay cash for overtime worked by the officers during the calendar year.

The Township urges rejection of the FOP's proposals to change Article IV.

It submits the following arguments in support of its position that the proposals be denied:

The Interest Arbitrator should reject the remaining FOP benefit proposals. The FOP proposes to eliminate "short shifts" and replace them with 104 hours of Kelly time on an annual basis. Kelly days will inevitably result in increased overtime costs. Even though the PBA contends that Kelly days will not result in overtime, overtime is inevitable. For example, if an officer is granted Kelly

time and another officer subsequently calls in sick and the officer on Kelly time is not available to return to duty, the Township will be required to pay overtime to fill the shift. In a small department such as Green Brook, where shifts are leanly staffed, flexibility is limited. This increases the occurrence of the need to address manpower shortages through overtime.

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Green Brook officers have the option to elect compensatory time instead of overtime. They can bank their compensatory time up to 240 hours, which they can carry from year to year. Upon retirement (or any separation of employment), as required by the Fair Labor Standards Act ("FLSA"). Green Brook pays the officer for all of his or her banked compensatory time at their salary at the time of separation. See 29 CFR § 553.21. The FLSA prohibits public safety employees from banking more than 480 hours of compensatory time. 29CFR § 553.21.

Five Somerset municipalities, Bernardsville, North Plainfield, South Bound Brook, Franklin and Peapack-Gladstone, permit their officers to bank the maximum 480 hours of compensatory time permitted by law. Five Somerset municipalities in addition to Green Brook, Bedminster, Bridgewater, Branchburg, Hillsborough and Warren, cap the banking of compensatory time at less than the legal limit. Bridgewater allows officers to cap up to 200 hours of compensatory time. Bedminster permits officers to bank up to 160 hours.

Branchburg has a 125 hour cap, Hillsborough has a 120 hour cap, and Warren caps compensatory time at 32 hours. Eight Somerset municipalities, Bernards, Bound Brook, Far Hills, Manville, Montgomery, Raritan, Somerville and Watchung do not provide compensatory time. Therefore, five Somerset municipalities permit the accrual of more compensatory time than Green Brook, while thirteen Somerset municipalities permit the accrual of less or no compensatory time. See EEB, Section 3, Part 8.

The FOP proposes to increase the cap on the compensatory time bank from 240 hours to 360 hours, permitting the accrual of 120 additional compensatory time hours. The Interest Arbitrator should reject the FOP's proposal because of its attendant costs. Because the FLSA requires compensatory time to be paid at the employee's rate of pay upon separation of employment and not at the lower rate in effect at the time it was earned, the FOP's

proposal will require the Township to pay current rates for an even greater number of hours worked at lower rates. The longer the employee banks the compensatory time, the greater the difference between the rate at which the compensatory time was earned and the rate that the Township must pay for the comparability time.

### Award

The FOP's proposal is multi-pronged. Its proposal to eliminate the eight (8) hour "short shifts" would, in essence, add one hundred and four (104) hours to the work schedule and provide compensatory time, in a like amount, to be used except when limited by the Department's need to call in a police officer on overtime. I do not award this proposal. There is a potential for added administrative burden and the speculative nature of whether efficiency and effectiveness would be served that cannot be resolved on this record. However, the Department should not be precluded from making a change if these concerns can be satisfied through continued dialogue. The contract should provide the Chief with the flexibility to make the change if the department determines that the proposal could serve the needs of the Department depending on factors such as changed staffing levels. Accordingly, I award the following language to Article IV, Paragraph A:

At the sole discretion of the Department, it may, upon at least thirty (30) days notice, alter the current 12-hour schedule in the Patrol Division by eliminating receiving "short shifts" of eight hours. In the event that such a shift is implemented, the Chief, or his designee, shall have the sole discretion to determine whether additional hours worked shall be compensated by compensatory time or cash on a straight time basis.

I do not award the FOP's proposal to increase the amount of compensatory time that an officer can accrue from the existing level of 240 hours to 360 hours. The Department has contracted by two officers and a 50% increase in the amount of compensatory time could interfere with departmental operations or the staffing of shifts at the reduced staffing levels.

I do award the FOP proposal to Amend Article IV, Paragraph B(1) to provide that overtime shall be due and owing for all work performed beyond the officer's normal work day. FOP testimony reflects that this language would accurately reflect the parties' current custom and practice. This testimony was not rebutted. This language shall be effective on the first day after the expiration of the Agreement. Stability is served by incorporating language into the Agreement that reflects the practice that the parties have mutually accepted where such practice is inconsistent with the language in the Agreement. Hours worked in excess of forty (40) hours per week will, pursuant to Article IV, Paragraph B(1)(a), continue to be compensated at time and one half except for hours in which overtime compensation has already been paid for work performed beyond the officer's normal work day.

#### **Article V – Holidays**

The FOP proposes two changes to the existing provision on holidays. Article V, Section A recognizes eleven (11) paid holidays. Article V, Section B provides for an officer to receive pay for the holiday if the officer is required to



work on a holiday in addition to the officer's regular hourly rate for all hours worked on the holiday. Article V, Section C allows an officer to take compensatory time in lieu of holiday pay with the permission of the Chief for up to six (6) of the eleven (11) paid holidays. In the event that such compensatory time cannot be arranged within the year of the holiday, the officer will then receive pay for the holiday.

The FOP's first proposal is to create two additional days as "floating holidays", thus increasing the number of holidays to thirteen (13). According to the FOP, the increase in the number of days would offset a disparity in leave provisions that is said to exist between Green Brook officers and officers employed by other municipalities in Somerset County. The FOP further submits that the additional two holidays would provide uniformity with the Township's civilian workers who currently receive ten (10) holidays and three (3) "floating holidays" for a total of thirteen (13).

The Township urges rejection of the FOP's proposal. It contends that the FOP's quest to obtain parity with other Township employees ignores the fact that police officers receive one more personal day than the Township's municipal employees and a superior vacation schedule as well. The Township further argues that a parity principle is not applicable given the fact that police officers in 2009 received 1% more of a wage increase than did the Township's municipal

workers and that the FOP's wage proposals ignore the fact that municipal workers have had their wages frozen in 2010 and 2011.

The FOP also proposes to roll each officer's holiday compensation into base pay for pension purposes. According to the FOP, holiday pay is now paid to officers in a lump sum and that this is not pensionable. The FOP also argues that increasing creditable compensation for pension purposes would ease the disparity in wages received by Township police officers in comparison to salaries received in other departments in Somerset County.

The Township objects to the proposed roll in of holiday pay asserting that the additional pension costs associated with the proposal would cause adverse financial impact on the Township's budget.

### Award

I do not award either proposal as they have been advanced. The additional costs for adding two additional holidays and folding all holidays into base pay extend beyond the total net economic changes in this award that I have found to be reasonable during this contract term. However, the inclusion of one (1) of the existing holidays into base pay will allow for a modest increase in base pay at minimal cost to the Township. Accordingly, effective after the expiration of the Agreement, Article V, Section 1 shall recognize ten (10) paid holidays and the

salary schedule shall be adjusted to incorporate the value of one (1) day of base pay into base salary.

### **Article VI – Vacation**

The FOP proposes to modify the vacation provision as it concerns the scheduling of vacation time. Currently Article VI, Sections B and C speak to the scheduling of vacation time as follows:

- B. All vacation time shall be scheduled by April 1 as the needs of the Department require on the basis of seniority. Each and every employee must take the authorized annual vacation and compensation will not be allowed in lieu of vacation time. All vacation time shall be used in the year earned. Exceptions may be made by resolution of the Township Committee.
- C. Changes in the scheduling of vacations will not be permitted without the prior approval of the Police Chief.

In addition to the above terms for vacation leave, Officer Seidel testified to the existence of a “four split rule.” Officer Seidel’s testimony as to the application of the four split rule was as follows:

- Q. Let’s back up. Say for 2012 you get whatever your vacation schedule is set forth in article six. What, if any, requirement do you have to submit all your requests to use all your vacation time for 2012?
- A. We have to submit all of it by April 1<sup>st</sup> as per the current policy. In addition, we’re only allowed to take vacation four times a year or in four blocks throughout the year.
- Q. The first proposal, we want to be able to reserve 50 percent of your vacation -- or an officer’s vacation time after April 1?

- A. That is correct.
- Q. That would address some unforeseen circumstances that would arise in the year after April 1, then?
- A. Yes. Anything that would come up in October you obviously might not know about by April 1<sup>st</sup>.
- Q. This four block rule, what do you refer it to as? Four split rule?
- A. Correct. It's referred to as the four split rule internally.
- Q. That means that whatever vacation you have, if you've got 20 days of vacation you've got to use up the 20 days in no more than four separate occasions?
- A. Yes, provided those four occasions take place after April 1. If you take vacation time prior to April 1 we have been told that that does not count towards your instances.

This only applies to the 16 officers in patrol. It doesn't apply to any of the other officers employed by the police department.

The FOP proposes to make the following changes to Article VI:

Paragraph B shall be revised so as to permit all officers to reserve as much as 50% of their annual vacation leave beyond the April 1 deadline. Additionally, officers shall be permitted to utilize their vacation leave in individual days. As a result, the "4-split rule" shall be eliminated.

Officer Seidel was questioned as to the purpose of the elimination of the four split rule:

- Q. What, if any, operational difficulties would arise if Mr. Mastriani were to award the elimination of the four split rule?
- A. There would not be any operational difficulties.

Q. Why do you say that?

A. Again, in conversations that have happened with Chief Rasmussen or Captain Leon and my predecessor it has been stated that should the eight hour days be eliminated, there would be no need for a four split rule any more.

Q. When an officer submits a request for vacation, will it be approved if at the time of its submittal it will cause overtime?

A. No.

Q. It will be denied?

A. Correct.

The Township urges denial of the FOP proposal. It offers the following arguments:

Green Brook officers receive paid leave time that exceeds or is comparable to the paid leave time other Somerset County municipalities provide to their officers. Green Brook officers receive comparable vacation benefits. After 10 years of service, Green Brook officers receive the fifth most generous vacation benefits out of eighteen Somerset County municipalities. At twenty vacation days, Green Brook exceeds the County average of 18.2 days by almost two vacation days per year. FOP Exhibit X. Page 4. At twenty years of service. Green Brook officers receive the eighth most generous vacation benefits out of eighteen Somerset County municipalities and the amount of vacation days reflects the County average. See FOP Exhibit X. Page 4. In comparing maximum vacation benefits, Green Brook officers receive twenty-five (25) vacation days (200 hours) per year after twenty years of service. Vacation benefits range from a high of 270 vacation hours (33.75 eight-hour days) in North Plainfield to a maximum of 18 vacation days in Bernardsville. See EER Section 3, Part 4. The Interest Arbitrator should deny the FOP requested modifications to the vacation article. The FOP proposal to reserve as much as 50% of their annual vacation leave after the April 1 deadline and their proposal to eliminate the 4-split rule will disrupt operational efficiency and cause additional overtime. Presently, all vacation

days must be scheduled by April 1 and all vacation time must be allocated in four blocks.

### Award

The FOP's proposal would significantly alter the existing contractual procedures for the taking of vacation. I am not persuaded that the testimony offered in support of this proposal would not create administrative difficulties in scheduling vacation without affecting staffing levels that would force increases in overtime costs. However, the Department should not be precluded from allowing greater flexibility in the taking of vacation time if circumstances permit. Accordingly, I award language that will provide sole discretion to the Chief, or his designee, to permit officers to utilize vacation leave in individual days, not to exceed four (4) such days in any calendar year.

### **Article XIII - Bereavement Leave**

The FOP proposes two modifications to Article XIII – Bereavement Leave. The FOP submits that the current provision causes a burden to members by not calculating a day equal to the length of the officer's shift which then forces an officer to use accrued paid leave. It also seeks to expand bereavement leave for relatives who do not fall under the contract's definition of "immediate family."

The existing provision states the following:

- A. Each employee shall be allowed time off between the death and the burial up to a maximum of four (4) days with pay

upon the death of a family member of his/her immediate family, one day of which shall be the date of death or the day of the funeral.

- B. For purposes of this section, the term "immediate family" shall include only the employee's mother, father, mother-in-law, father-in-law, spouse, child, son-in-law, daughter-in-law, grandparent, grandchild, brother, sister step or half relative, or domestic partner. In the event of the death of another relative or in-law, an employee may request a vacation or personal day(s) or optional paid holiday.

The first part of the FOP proposal is to equate a leave day for bereavement to the number of hours that an officer would be working on the day of the leave. Thus, a "working day" would be either eight (8) or twelve (12) hours depending on an officer's schedule. According to the Township, the current bereavement leave benefit provides for four (4) eight-hour days and extending the benefit to four (4) twelve-hour shifts increases an already generous benefit and imposes additional costs on the Township.

In addition, the FOP proposes that the Township provide two (2) bereavement leave days to non-immediate family members. Currently, Article XIII (B) requires an employee to request a vacation, personal or optional paid holiday in the event of the death of another relative or in-law that falls outside of the definition of an immediate family member. The Township objects to expanding the scope of bereavement leave and complains that the FOP's proposal does not define the relatives that would trigger the two bereavement days. According to the Township, the proposal is too vague and could be read to apply to any distant familial relationship.

### Award

It is apparent from the record (see testimony of Officer Seidel pages 41, 42, 66, 67 and 68) that bereavement leave may not, in practice, be operating consistently with, or as required by, existing contract language. I award a continuation of the existing language except for a clarification that the requirement that there be a maximum of four (4) days leave with pay, as referenced in Article XIII, Paragraph A, be applied in a manner that is consistent with the length of the officer's workday on the day that the leave is taken.

I do not award an expansion of bereavement leave for relatives not falling under the definition of immediate family. While such expansion is not without merit, any such expansion should specify or define the actual relative to which the expansion should apply.

### **Article XVIII – Work in Higher Rank**

The existing Agreement contains a provision stating that police officers who work in the capacity of Acting Sergeant or Watch Commander shall be paid at a Sergeant's rate of pay but only after the officer works eight (8) consecutive work shifts. The FOP has proposed modifications to this provision. Its proposal reads as follows:



This clause shall be revised so as to entitle police officers who work in the capacity of Acting Sergeant or Watch Commander for at least half of a given shift, retroactive to the first hour. To further clarify, "Acting Sergeant" and "Watch Commander" shall be defined as the senior officer assigned to the patrol shift in question.

In support of its proposal, the FOP offered the testimony of Officer Seidel. According to Officer Seidel, due to the current requirement that an officer must work eight consecutive work shifts to be paid at a Sergeant's rate of pay, police officers are rarely compensated for assuming the duties and responsibilities of a higher rank. In addition to that requirement, the police officer who serves in a higher rank for eight (8) consecutive shifts, does not receive retroactivity back to the first day that the duties were assumed. The FOP submits a chart into evidence reflecting many occasions when officers served in the capacity of a higher rank without compensation compared to the relatively few occasions when compensation is received.

The Township urges rejection of the proposal. The Township contends that an award of the proposal would result in significant increased costs to the Township based upon the FOP's own chart that reflects the alleged frequencies when its proposal would apply. In addition, the Township asserts that many municipalities in Somerset County do not provide acting pay at all.

## Award

The evidence submitted by the FOP justifies that a modification be made to Article XVIII but not to the extent that it seeks. The testimony and the FOP's chart reflects that the Township frequently deploys police officers to work in the capacity of an Acting Sergeant or Watch Commander. This increases their authority, duties and responsibilities for which they are accountable. Under the existing provision, the officer does not receive any out of title compensation except in limited circumstances.

The Township's chief objection to the FOP's proposal is based upon the costs associated with having to pay police officers a Sergeant's rate of pay to the extent that it would become financially burdensome. This objection tends to support the FOP's contention that police officers are frequently required to exercise the greater authority and responsibility of a higher rank without receiving consideration. As the provision currently reads, work in a higher rank is compensated infrequently due to the onerous requirements that currently exist. In this regard, the existing provision amounts more to a broad managerial right to maintain the services of a Sergeant or Watch Commander without having to compensate those who are assigned to act in that capacity than it is a benefit to be received by those who are deployed. Currently, officers must work eight consecutive work shifts in the higher rank and would only receive compensation when the assignment extends to a ninth consecutive work shift and beyond without any retroactive compensation for the first eight (8) consecutive work

shifts. If such assignments were infrequent, there would be little support for the FOP's proposal. However, the record shows that such assignments are commonplace.

It is noted that this is a small department and that the needs for supervision on a temporary basis necessarily extend beyond the Township's ability to staff the position by adding an additional full-time Sergeant. An equitable balance must be struck between these two competing needs. A reasonable determination of this issue is to reduce the number of consecutive work shifts that a police officer must work in order to receive compensation for work in a higher rank before compensation is received and also to provide compensation for officers who are frequently deployed in that capacity during a calendar year even if such assignments are not made on a consecutive basis.

Accordingly, I award the following effective on the first day after the expiration of the Agreement:

Police officers who work in the capacity of Acting Sergeant or Watch Commander shall be paid at a Sergeant's rate of pay commencing on the fifth (5<sup>th</sup>) consecutive work shift and each consecutive work shift thereafter. Police officers who work in the capacity of Acting Sergeant or Watch Commander for more than a total of eight (8) work shifts during a calendar year, whether consecutive or not, shall be paid it at a Sergeant's rate of pay.

### **Article XXV – Uniform Allowance**

Under Article XXV, Section A, the Township reimburses officers for articles of clothing that are damaged in the line of duty up to the value of \$150 per item. The reimbursement does not apply to standard issue uniform components. Article XXV, Section C requires the Township to exchange new uniform components for those that are damaged or worn out upon surrender of the damaged or worn article. Under Article XXV, Section B, the Township retains a uniform cleaning service that, on a weekly basis, picks up, cleans and delivers back to headquarters up to four articles of clothing per officer.

The FOP proposes to eliminate the above described replacement system and provide each officer with an annual uniform allowance of \$1,200. This allowance would be paid along with an officer's regular base pay in order to be creditable for pension purposes.

The Township objects to the proposal on several grounds. It further objects to relinquishing control over the expenditure of the system and uniform maintenance allowance. The Township notes that Officer Seidel's testimony acknowledges that officers currently maintain a professional appearance under the current system that the contract provides and thus, no modifications to the provision are necessary. It also points out that the proposal is more centered on compensation and that the additional pension contributions on base salary increases would cost about 25% above the amount of the allowance. Additional

costs would accrue for overtime calculations due to the increase the FOP's proposal would cause in the base salary rate.

### Award

In my evaluation of this proposal, I initially observe that in general there is no single system that covers the issue of providing and maintaining uniforms. It may indeed be preferable for the Township to provide a fixed allowance and then be relieved of the obligations to exchange uniforms periodically and to provide a weekly cleaning service. The main focus of the analysis is not on which system is the more desirable one but rather on whether there is sufficient evidence that the existing process set forth in Article XXV is not meeting the legitimate needs of the Township's police officers. This burden has not been met on this record and accordingly, the FOP's proposal is denied.

### **Article XXVI – Union Leave Automatic Payroll Deduction for Dues**

Article XXVI currently provides a system for the withholding and transmitting of dues to the FOP. The FOP seeks to add language to the provision that would provide for Union leave. The Agreement does not currently contain a Union leave provision.

The FOP's proposal is as follows:

The Township agrees to grant a day off without loss of pay to one (1) member of the FOP selected by the Membership as Delegate to attend regularly scheduled State Union meetings as long as the day off is a regularly scheduled working day.

The Township further agrees to grant time off on any regularly scheduled working day for the Delegate and one (1) alternate member to attend the bi-annual State and National union conventions, and State mini-conventions. Such time off shall include travel time as necessary. Proof of attendance shall be provided to the Police Chief or his designee upon his request.

According to the FOP, the amount of Union leave time that it has requested is necessary in order to service its membership. Officer Seidel testified that adequate notice would be given to the Department in advance of the monthly meetings of the State Office in order that coverage be provided for the delegate who would attend. He acknowledged that the proposal could have economic impact on the Township by having to replace the delegate with an officer who would receive their overtime. With respect to attendance at bi-annual State and national union conventions and State mini-conventions, Officer Seidel testified that a delegate is currently permitted leave time but not an alternate delegate.

The Township objects to the potential to incur overtime if it was required to give any FOP member time to attend monthly State FOP meetings and replace the delegate with an officer on overtime. It offers a similar objection to allowing alternates attend bi-annual meetings and the State mini-convention.

### Award

The Agreement does not contain a Union Leave provision. Because testimony reflects that the Township provides such union leave, a separate contract article should be included in the Agreement. The contract article should reflect that existing established practices concerning union leave shall continue. In addition, that article shall include language confirming statutory rights in respect to union leave and that the FOP, upon at least seven (7) days notice, be provided with a maximum of six (6) days per year, in addition to whatever days are required by established practice and statute, for the Delegate and/or Alternate Delegate to attend bi-annual State and National union conventions and state mini-conventions.

Accordingly, I award the following language:

Established practice as to the taking of Union Leave shall continue. FOP Lodge 23 shall receive all leaves of absence with pay that it, as an employee organization is essentially entitled to, pursuant to N.J.S.A. 11A:6-10. In addition, the Township shall provide, upon at least seven (7) days notice, a maximum of six (6) days annually, for the Delegate and/or Alternate Delegate to attend bi-annual State and National union conventions and State mini-conventions.

### Salary

The FOP has proposed wage increases of 2.75% across the board for each year of the new Agreement. The Township has proposed that there be a zero increase in 2010, a zero increase in 2011 followed by a 1.5% across the

board increase in 2012. In addition, the Township proposes that the starting salary in the salary schedule be lowered to \$40,000 for new hires, that a new salary schedule be set for new hires that adds six additional steps to the existing schedule and that all steps in that schedule be equalized. I have already determined that the terms of the Agreement shall commence on January 1, 2010 and expire on December 31, 2013. Therefore, the wage portion of the Award will cover those four years.

The parties have submitted extensive evidence extending to all of the statutory criteria. However, the main emphasis of their submissions center on the Township's finances and comparability.

The FOP has proposed to increase wages by 2.75% across the board on each step of the salary schedule for each year of five years commencing January 1, 2010. In 2010, two police officers received step increases. There are no further step increases based upon the scattergram submitted into evidence.

Each party contends that an application of the statutory criteria favors the selection of its last offer. The starting point for an analysis is the relative cost of the parties' proposals. The Township has submitted a cost analysis that I accept as an accurate assessment of costs. In the first year, it includes the cost of the FOP's proposals for additional holidays, increases in uniform allowance and the



roll in of those amounts into base pay. The relative cost outs on a percentage basis are as follows:

#### FOP

	2010	2011	2012	2013	2014
Salary Increase	2.75%	2.75%	2.75%	2.75%	2.75%
Compounding	0.16%	0.16%	0.16%	0.16%	0.16%
Salary Increments	1.18%	--	--	--	--
Overtime	--	--	--	--	--
Holidays	0.66%	--	--	--	--
Vacation	--	--	--	--	--
Bereavement Leave	--	--	--	--	--
Work in Higher Rank	--	--	--	--	--
Uniform Maintenance	1.27%	--	--	--	--
Union Meetings/Conventions	--	--	--	--	--
<b>Total</b>	<b>6.02%</b>	<b>2.91%</b>	<b>2.91%</b>	<b>2.91%</b>	<b>2.91%</b>

FIVE YEAR TOTAL = 17.66% OR 3.53% PER YEAR

#### Township

	2010	2011	2012
Salary Increase	0.00%	0.00%	1.50%
Compounding	0.00%	0.00%	0.00%
Salary Increments	1.18%	0.00%	0.00%
Starting Salary	--	--	--
Salary Guide	--	--	--
<b>Total</b>	<b>1.18%</b>	<b>0.00%</b>	<b>1.50%</b>

THREE YEAR TOTAL = 2.68% OR 0.89% PER YEAR

The Township calculates the difference in the salary component of the final offers as amounting to \$51,563 in 2010, \$97,608 in 2011 and \$122,075 in 2012 for a total difference of \$271,348 or 14.08% over the three year period. The figures represent accumulated costs over the three years. In years 2013 and 2014, the Township has not made a proposal but calculates the FOP's

proposals as costing an additional \$52,224 in 2013 and an additional \$53,660 in 2014.<sup>4</sup>

The FOP asserts that the Township has sufficient financial health to fund its wage proposals. Citing official budget documents, it points out that the municipal tax rate was only 19% of the total tax rate and that this shows that the interests and welfare of the public are served by maintaining an effective police force at a low cost. It also points out that the tax collection rate has consistently been above 98% and was 98.96% in 2011, thus reflecting the public's ability to meet its tax obligations. The FOP also cites data that shows that the Township has had the ability to consistently maintain fund balances. The 2010 Report of Audit shows a December 31, 2009 fund balance of \$227,846 that increased to \$337,451 in 2010 and \$594,364 in 2011. The FOP emphasizes that revenues realized in 2011 were \$302,345 more than what the Township budgeted. An additional indication of financial health is the Township's collection of \$195,441 in additional revenues that were not anticipated in its 2011 budget or raised through taxation. Another indicator of financial health is the net debt percentage which, at 1.045%, is significantly below the statutory debt limit. The FOP further submits that the Township is below its appropriate cap limit by \$188,396 and \$127,218 below its tax cap levy, thereby showing that it can expend more funds within its statutory limitations.

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<sup>4</sup> The costs are calculated on a scattergram that changes annually and reflects two reductions in personnel due to a layoff in 2010 and a retirement in 2011. Staffing levels decreased from 21 at the beginning of 2010 to 19 in 2012.

The Township disagrees with the FOP's assessment of its finances and contends that an award of the FOP's proposal could create adverse impact on its finances and interfere with its lawful spending and taxing obligations. The Township points out that its surplus balance decreased from \$1,295,109 as of January 1, 2007 to \$227,847 as of January 1, 2010, although the surplus balance did increase to \$337,450 as of January 1, 2011. The Township anticipated \$250,000 of that surplus be directed towards its 2011 budget. However, \$100,000 additional surplus was dedicated to the budget in order to maintain the same level of revenues that it had in 2010. An additional negative impact on the Township's budget has been reductions in state aid. The Township experienced a decrease of \$18,300 in 2009 over the previous year and an additional \$78,000 in 2010. The Township analyzes its financial data and concludes that in 2010, it needed \$784,400 from revenue sources other than surplus anticipated and state aid in order to equal its 2009 revenues. It also points to a reduction in the tax levy cap up to 2% in 2011.

The Township asserts that its financial health after the deep recession deteriorated to such an extent that it was required to submit a Waiver Request Application in 2010. Its levy cap waiver request amounted to \$473,032. Yet, even with this request, the Township engaged in significant cost reductions and eliminated positions and conducted reductions in force, including the layoff of one police officer. The Waiver Request Application reflects many of the actions the Township took to control costs. These include the shared service agreements with Warren Township to purchase fuel, the combining of its planning board and

zoning board into a single use land board, an assortment of personnel actions that reduced the Township's overall staffing levels and changes in public works projects including leaf collection. Its municipal employees did not receive raises in 2010 and 2011. The Township acknowledges that it had the ability in 2011 to generate an additional \$127,000 in revenue by increasing the municipal tax rate to the maximum tax levy cap but that it made a sound policy decision to not do so because the municipal tax rate had already risen by 5.72%, not including the savings it achieved from the sun-setting of the Township's local open space tax.

The also parties offer submissions that concern comparability. The FOP advances a substantial number of exhibits including charts and labor agreements depicting maximum patrol officer pay for various Somerset County municipal departments including Green Brook as well as Sergeant and Lieutenant base salary after ten years for contract years 2009 through 2014. The exhibits also compare top step patrol pay, Sergeant and Lieutenant base pay against those departments who receive longevity pay at ten, fifteen and twenty year longevity levels for contract years 2009-2014.

Based upon the data it has submitted, the FOP submits that Green Brook police officers do not fare well compared to other Somerset County municipalities. It submits that a police officer's top step pay of \$88,864 in 2009 ranked twelfth in the County. It submits that this ranking is artificially high given the fact that the Township's police officers, unlike most others, do not receive

longevity pay. The FOP asserts that under the Township's proposal, its police officers would suffer an erosion in base salary that would cause it to fall into a comparatively worse position than it was in 2009 and 2010. According to the FOP, the data shows rising salaries for Somerset County police officers during the years of contract duration based upon their receipt of average increases of 2.93% in 2010, 3.51% in 2011 and 3.31% in 2012. The FOP emphasizes that similar results are reached when comparisons are made in rates of pay for the Sergeant and Lieutenant ranks. The FOP points out that a Sergeant in Green Brook, at \$97,750 in 2009, earned more than \$3,000 below the County average while Lieutenants, at \$106,637, received \$6,000 below the County average.

The Township argues that more weight should be placed upon broader comparability evidence than that submitted by the FOP. It submits that comparisons in private employment and the public employment in general are equally important to the public to comparisons among police officers. The Township contends that non-law enforcement municipal employees in Green Brook received wage freezes in 2010 and 2011 due to financial exigencies and that its salary offer is in line with how it treated civilian employees within the Township. It also observes that case law requires arbitrators not to over-rely on wage and benefit comparability. The Township submits wage analyses from private sector data and public sector data in general and submits that the FOP's proposal is unreasonable, especially given the deep economic recession and the fiscal crisis that existed in Green Brook during 2010 and 2011.

I have considered all of the financial and comparability data, as well as the evidence submitted on overall compensation, cost of living and continuity and stability in employment.

### Award

The salary proposals of the parties will be analyzed in the context of the awarding of a contract duration that extends through December 31, 2013. This requires the awarding of salary terms that extend over a four year contract period that includes 2010, 2011, 2012 and 2013.

The last contract year that set salaries for unit employees reflects the following salary schedule:

Functional Scale (TSP)	1/1/09
Probationary Officer (.55 TSP)	48,875
Class E Officer (.6 TSP)	53,318
Class D Officer (.7 TSP)	62,205
Class C Officer (.8 TSP)	71,091
Class B Officer (.9 TSP)	79,978
Class A Officer (TSP)	88,864
Sergeant (1.1 TSP)	97,750
Lieutenant (1.2 TSP)	106,637
Probationary Officer (.55 TSP)	48,875

The statutory criteria must be applied to the record evidence as a requirement in making a reasonable determination of the wage issue. Normally, no single criterion can control the terms of a salary award. This is so because

there are tensions between and among the criteria that require the arbitrator to use judgment and discretion when reaching a result based upon that criteria. All of the statutory criteria are relevant. But some are entitled to more weight than others because every wage dispute must consider circumstances that are unique to each jurisdiction.

The interests and welfare of the public criterion [N.J.S.A. 34:13A-16g(1)] must be given the most weight. It is a criterion that embraces many, if not all, of the other factors as well as their interrelationships. This factor requires consideration of financial impact [N.J.S.A. 34:13A-16g(6)] on the Township, its residents and taxpayers and it also requires that the lawful limitations imposed upon the Township by the appropriation and tax levy caps be applied. These limitations concern the lawful authority of the employer [N.J.S.A. 34:13A-16g(5)]. Evidence on internal and external comparability [N.J.S.A. 34:13A-16g(2)(a), (b) and (c)] are relevant and also implicate the public interest because how police officers are treated in Green Brook compared to elsewhere could impact upon the morale, productivity, efficiency and job performance of the police department. Private sector wage comparisons are relevant but are of more limited value because of the difficulty in comparing work and income between police officers and the hundreds of classifications that make up the private sector. The overall compensation presently received [N.J.S.A. 34:13A-16g(3)] allows for an assessment of the value of the totality of existing contract terms and the reasonableness of the parties' proposals for change not only in salary but in

other benefits. Continuity and stability of employment [N.J.S.A. 34:13A-16g(8)] of unit members is relevant due to the fact that the retention and hiring of police officers often involve an officer's consideration of the levels of existing contract terms. The cost of living factor [N.J.S.A. 34:13A-16g(7)] is also relevant but is not controlling. It is a factor that evaluates the amount of new expenditures required to fund an award within the context of the broader economy and also changes in the value of unit employees' wages regarding purchase power.

Each party has relied upon its own comprehensive evidentiary submissions. After careful review of those submissions, I do not find that either final offer represents a reasonable determination of the salary issue. The FOP's proposal is not inherently unreasonable in the abstract or based upon economic circumstances that were present at the time that the prior Agreement was negotiated. However, it must be deemed excessive in the context of how the Township was required to deal with its finances in 2010 and 2011, the wage treatment received by the Township's non-law enforcement employees who suffered two years of wage freeze during those years, the sharp increases in municipal taxes and the sharp drop in the tax cap levy in 2011. This observation is not meant to discount the comparability evidence submitted by the FOP. That evidence weighs heavily on rendering an award that exceeds what the Township has proposed, but only to the extent that increases beyond what the Township has proposed are reasonable and do not place undue stress on its finances or its ability to properly staff its police department.



The above stated considerations, and others required by other statutory criteria, compel me to conclude that a reasonable determination of the salary issue to be no increase in 2010 beyond the 1.18% cost of the step movements during that year and wage increases at each step of the salary schedule of 2% effective January 1, 2011, 2.25% effective January 1, 2012 and 1.5% effective January 1, 2013. The salary schedule produced by these terms is as follows:

Functional Scale (TSP)	1/1/10 0.0%	1/1/11 2.0%	1/1/12 2.25%	1/1/13 1.5%
Probationary Officer (.55 TSP)	48,875	49,853	50,974	51,739
Class E Officer (.6 TSP)	53,318	54,384	55,608	56,442
Class D Officer (.7 TSP)	62,205	63,449	64,877	65,850
Class C Officer (.8 TSP)	71,091	72,513	74,144	75,257
Class B Officer (.9 TSP)	79,978	81,578	83,413	84,664
Class A Officer (TSP)	88,864	90,641	92,681	94,071
Sergeant (1.1 TSP)	97,750	99,705	101,948	103,478
Lieutenant (1.2 TSP)	106,637	108,770	111,217	112,885

The costs of the Award are \$22,242 in 2010 due to step movement at a percentage of 1.18%. The two (2%) percent increase in 2011 will cost an additional \$37,500. The two and one-quarter (2.25%) percent increase in 2012 will cost an additional \$43,031. The one and one-half (1.5%) increase in 2013 will cost an additional \$29,333. The total cost on a year to year basis is \$131,606 and the cumulative cost adding each year's cost on top of prior years' costs for all four years is \$315,363.

The reasoning for the terms of the Award have, to some extent, been addressed. Beyond what has been expressed, I have concluded that the two

year wage increase the Township implemented for its non-law enforcement municipal employees, and proposed here, is neither warranted nor justified. It does not represent a pattern as that term has been defined. Moreover, assuming that it did, the FOP's submission concerning comparability justifies the deviation I have awarded. Green Brook officers receive reasonable compensation but a two year wage freeze, especially in the absence of longevity payments, would aggravate their wage levels compared to other Somerset County municipalities. The result sought by the Township might have greater appeal if its financial posture relative to other Somerset County municipalities required the adoption of its proposal. However, Green Brook's relative financial profile remains positive and its official budget data reflect the ability to expend the \$37,500 in 2011 that are required to fund the 2% wage increase. The FOP contends that even the amount after the 2010 wage freeze is unreasonable but this contention ignores the fact that all sectors of Green Brook's government were impacted by the budget shortfalls and its police officers, notwithstanding its external comparability arguments, must reasonably be required to experience the impacts suffered in the Township's other sectors.

The above factors have been given more weight than others. Notwithstanding this, the remaining factors are relevant and the terms of the Award are compatible with their application. There is no dispute that Green Brook police officers have lengthy seniority without having turnover due to overall levels of compensation and benefits. Thus, the continuity and stability of

employment and the value of relative overall levels of compensation and benefits will be maintained by the terms of the Award. The comparability evidence on private employment and public employment in general reflect varying comparisons depending on the sector and the nature of the occupations that are included in the data. None require an application of parity and the evidence, in general, reflects that wage trends over the time period are reasonably consistent with the terms of the Award. A similar conclusion is reached as to the cost of living data over the relevant time period. This data reflects swings between negative cost of living increases to above what has been awarded but, on average, the data is reasonably consistent with the terms of the Award. The remaining salary issues involve the Township's proposal to add six steps to the salary schedule, to reduce the starting salary and equalize the dollar amounts between the steps. All proposals are directed towards new hires. The Township has established that among Somerset County municipalities, the existing number of steps are low and the starting salary ranks high. This conclusion supports some change in the salary schedule but not to the extent sought by the Township. I award a new hire salary schedule that provides for a \$44,071 starting salary, adds two (2) new annual steps, maintains the same maximum pay of the Class A Officer and provides equal dollar amounts between steps.

The new hire salary schedule shall be as follows:

Functional Scale (TSP)	Effective 12/31/13
Probationary Officer	\$44,071
Class G Officer	\$51,214
Class F Officer	\$58,357
Class E Officer	\$65,500
Class D Officer	\$72,643
Class C Officer	\$79,786
Class B Officer	\$86,929
Class A Officer	\$94,071
Sergeant	\$103,478
Lieutenant	\$112,885

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

### **AWARD**

1. All proposals by the County and the FOP not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award or required by statute.
2. **Duration** - There shall be a four (4) agreement effective January 1, 2010 through December 31, 2013.
3. **Article IV - Overtime**

Paragraph A:

At the sole discretion of the Department, it may, upon at least thirty (30) days notice, alter the current 12-hour schedule in the Patrol Division by eliminating receiving "short shifts" of eight hours and afford such officers 104 hours of "Kelly Time."

Paragraph B(1):

Effective on the first day after the expiration of the Agreement, overtime shall be due and owing for all work performed beyond the

officer's normal work day. Hours worked in excess of forty (40) hours per week will continue to be compensated at time and one half except for hours in which overtime compensation has already been earned for work performed beyond the officer's normal work day.

4. **Article V – Holidays**

Upon expiration of this Agreement, Article V shall recognize ten (10) paid holidays. The one paid holiday to be eliminated shall be at the discretion of the Township and reflected in Article V. Article V shall reflect, as well as the salary schedule, that each step of the existing and new hire salary schedules has been adjusted to add the value of one (1) day of base pay, formerly paid as a paid holiday, into the salary schedule.

5. **Article VI – Vacation**

The Chief, or his designee, shall have sole discretion to permit officers to utilize vacation leave in individual days, not to exceed four (4) such days in any calendar year.

6. **Article XIII – Bereavement Leave**

I award a continuation of the existing language except for a clarification that the requirement that there be a maximum of four (4) days with pay, as referenced in Article XIII, Paragraph A, be applied in a manner that is consistent with the length of the officer's workday on the day that the leave is taken.

7. **Article XVIII – Work in a Higher Rank**

Police officers who work in the capacity of Acting Sergeant or Watch Commander shall be paid at a Sergeant's rate of pay commencing on the fifth (5<sup>th</sup>) consecutive work shift and each consecutive work shift thereafter. Police officers who work in the capacity of Acting Sergeant or Watch Commander for more than a total of eight (8) work shifts during a calendar year, whether consecutive or not, shall be paid at a Sergeant's rate of pay.

8. **Union Leave** – Add new contract article

Established practice as to the taking of Union Leave shall continue. FOP Lodge 23 shall receive all leaves of absence with pay that it, as an employee organization is essentially entitled to, pursuant to N.J.S.A. 11A:6-10. In addition, the Township shall provide, upon at

least seven (7) days notice, a maximum of six (6) days annually, for the Delegate and/or Alternate Delegate to attend bi-annual State and National union conventions and State mini-conventions.

9. **Salaries**

The existing salary schedule shall be adjusted by the following amounts effective and retroactive to each January 1 effective date for each contract year. Employees who are eligible shall receive step movement in all contract years. All increases shall be at each step of the salary schedule and shall, except for those who have voluntarily resigned or have been separated from employment without good standing, apply to all unit employees and those who have retired on normal or disability pension. The salary schedule for existing employees shall read as follows:

Functional Scale (TSP)	1/1/10 0.0%	1/1/11 2.0%	1/1/12 2.25%	1/1/13* 1.5%
Probationary Officer (.55 TSP)	48,875	49,853	50,974	51,739
Class E Officer (.6 TSP)	53,318	54,384	55,608	56,442
Class D Officer (.7 TSP)	62,205	63,449	64,877	65,850
Class C Officer (.8 TSP)	71,091	72,513	74,144	75,257
Class B Officer (.9 TSP)	79,978	81,578	83,413	84,664
Class A Officer (TSP)	88,864	90,641	92,681	94,071
Sergeant (1.1 TSP)	97,750	99,705	101,948	103,478
Lieutenant (1.2 TSP)	106,637	108,770	111,217	112,885

\*Effective on the day after contract expiration, each step of the existing and new hire salary schedules shall be adjusted by adding the value of one paid holiday into base pay as the result of the elimination of one paid holiday.

**New Hire Salary Schedule**

Officers hired after the date of this Award shall be compensated on a salary schedule that provides for a \$44,071 starting salary, adds two (2) new annual steps, maintains the same maximum pay of the Class A Officer and provides equal dollar amounts between steps.

The new hire salary schedule shall be as follows:

Functional Scale (TSP)	Effective 12/31/13
Probationary Officer	44,071
Class G Officer	51,214
Class F Officer	58,357
Class E Officer	65,500
Class D Officer	72,643
Class C Officer	79,786

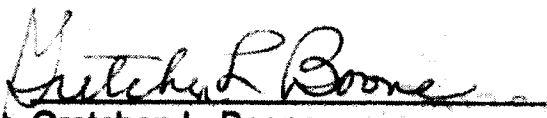
Class B Officer	86,929
Class A Officer	94,071
Sergeant	103,478
Lieutenant	112,885

Dated: December 30, 2013  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey       }  
County of Monmouth       } ss:

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

  
Gretchen L. Boone  
Notary Public of New Jersey  
Commission Expires 4/30/2014