

AGREEMENT

Between

TOWNSHIP OF PEMBERTON

AND

PEMBERTON TOWNSHIP

POLICEMEN'S BENEVOLENT ASSOCIATION

LOCAL NO. 260

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JANUARY 1, 2014 through DECEMBER 31, 2017

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PREAMBLE

This Agreement entered into this      day of 2014, by and between the TOWNSHIP OF PEMBERTON, in the County of Burlington, New Jersey, a municipal corporation of the State of New Jersey, hereinafter called the "Township", and PEMBERTON TOWNSHIP POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL NO. 260, hereinafter called the "Association", represents the complete and full understanding on all bargainable issues between the Township and the Association.

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ARTICLE I

RECOGNITION

- A. The Township hereby recognizes the Association as the exclusive collective negotiating agent for all Patrolmen and Sergeants employed in the Police Department.
- B. The title of Patrolman or Sergeant shall be defined to include the plural as well as the singular and males as well as females.

ARTICLE II

MANAGEMENT RIGHTS

A. Except as otherwise provided by law, the Township hereby retains and reserves unto itself, without limitations, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the Laws and Constitution of the State of New Jersey and of the United States, including, but without limiting the generality of the foregoing, the following rights:

1. To the executive management and administrative control of the Township Government and its properties and facilities and the activities of its employees;
2. To hire all employees and, subject to the provisions of law, to determine their qualifications and conditions for continued employment or assignment and to promote and transfer employees;
3. To suspend, demote, discharge or take other disciplinary action for good and just cause according to law.

B. The exercise of the foregoing powers, rights, authority, duties and responsibilities of the Township, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement, and then only to the extent such specific and express terms hereof are in accordance with the Constitution and Laws of New Jersey and of the United States.

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ARTICLE III

ASSOCIATION DUES

- A. The Township agrees to deduct from the salaries of its employees covered by this Agreement dues for the Association. These deductions shall be made in compliance with NJSA 52: 14-15.9(e), as amended. Said monies together with records of any corrections shall be transmitted to the Association office by the fifteenth (15th) of each month following the monthly pay period in which deductions were made.
- B. If during the life of the Agreement there shall be any change in the rate of membership dues, the Association shall furnish to the Township written notice prior to the effective date of such change.
- C. The Association will provide the necessary "check-off authorization" form and deliver the signed forms to the Township Treasurer. The Association shall indemnify, defend and save the Township harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Township in reliance of salary deduction authorization cards submitted by the Association to the Township.

ARTICLE IV

AGENCY SHOP

A. REPRESENTATION FEE

The Township agrees to deduct the fair share representation fees from the earnings of those employees who elect not to become a member of the Association and transmit the representation fee to the majority representative after written notice of the amount of the fair share assessment is furnished to the Township of Pemberton and the New Jersey Public Employment Relations Commission.

B. COMPUTATION OF FAIR SHARE REPRESENTATION FEE

1. The fair share representation fee for services rendered by the majority representative shall be in an amount equal to the regular membership dues, initiation fees and assessments of the majority representative, less the cost of benefits financed through the dues and available only to members of the majority representative, but in no event shall the fee exceed 85% of the regular membership dues, fees and assessments. Such sum representing a fair share representation fee shall not reflect the costs of financial support of political causes or candidates except to the extent that it is necessary for the majority representative to engage in lobbying activity designed to foster its policy goals in collective negotiations and contract administration and to secure for the employees it represents advances in wages, hours, and other conditions of employment which ordinarily cannot be secured through collective negotiations with the Township.

2. The majority bargaining representative shall provide, sixty (60) days prior to January 1 and July 31 of each year, advance written notice to the public Employment Relations Commission, the Township and to all employees within the unit, as shall be determined by a list of such employees and furnished by the Township, the information necessary to compute the fair share representation fee for services enumerated above.

3. Any challenge to the assessment by an employee shall be filed in writing with the Public Employment Relations Commission, the Township and the majority bargaining representative within thirty (30) days after receipt of the written notice by the employee. All challenges shall specify those portions of the assessment challenged and the reason therefor. The burden of proof relating to the amount of the fair share representation fee shall be on the majority bargaining representative.

C. CHALLENGING ASSESSMENT PROCEDURE

1. The majority bargaining representative agrees to establish a procedure by which non-member employees in a unit can challenge the assessment as provided in NJSA 34:13A-5.6 and NJAC 19:17-1, et seq. Any challenging employee may appeal to a Board consisting of three (3) members appointed by the Governor, and such other appeals as may be allowed by law.

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2. In the event the challenge is filed, the deduction for fair share representation fee shall be held in the escrow account maintained by the Association pursuant to NJAC 19:17-4.2 pending final resolution of the challenge.

D. DEDUCTION OF FEE

1. No fee shall be deducted by an employee sooner than:
  - a. The thirtieth (30th) day following the notice of the amount of the fair share fee;
  - b. Satisfactory completion of a probationary period or the thirtieth (30th) day following the beginning of employment, whichever is later, for new employees appointed to positions in the negotiations unit;
  - c. The tenth (.10th) day following the beginning of employment for employees entering into work in the negotiations unit from reemployment lists;
  - d. The date of satisfactory completion of the probationary period or the completion of a three (3) month period following the beginning of employment, whichever is sooner, for employees hired on a temporary basis; provided, however, that no employee in the aforesaid categories nor any employees in the employ of the Township at the time an agency shop agreement becomes effective shall be required to tender the fair share fee before the thirtieth (30th) day following the date the said agreement becomes effective.

E. PAYMENT OF FEE

The Township shall deduct the fee from the earnings of the employees and transmit the fee to the majority bargaining representative quarterly during the term of this Agreement.

F. ASSOCIATION RESPONSIBILITY

The Association assumes responsibility for acquainting its members, as well as other employees affected by the representation fee, of its implications, and agrees to meet with the employees affected upon request to answer any questions pertaining to this provision.

G. MISCELLANEOUS

1. The Association shall indemnify, defend and hold the Township harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Township in reliance upon fair share fee information furnished by the Union or its representatives



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ARTICLE V

NO-STRIKE PLEDGE

- A. The Association covenants and agrees that during the term of this Agreement, neither the Association nor any person acting in its behalf will cause, authorize, or support, nor will any of its members take part in any strike ( i.e., the concerted failure to report for duty, or willful absence of any employee from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment), work stoppage, slowdown, walk-out or other job action against the Township. The Association agrees that such action would constitute a material breach of this Agreement.
- B. In the event of a strike, a slow-down or walk-out, it is covenanted and agreed that participation in any such activity by any employee subject to the term of this Agreement shall be deemed grounds for termination of employment of such employees with due process.
- C. The Association will actively discourage and will take whatever affirmative steps are necessary to prevent or terminate any strike, work stoppage, slowdown, walk-out or other job action against the Township.
- D. Nothing contained in this Agreement shall be construed to limit or restrict the Township in its right to seek and obtain such Judicial relief as it may be entitled to have in law or in equity for injunction or damages or both, in the event of such breach by the Association or its members.

ARTICLE VI

HOURS OF WORK, OVERTIME, TRAINING TIME AND CALL-IN TIME

A. WORK SCHEDULE

1. The normal work period shall generally consist of an average of forty (40) hours in a seven (7) day period, except as provided in subsections 3 through 6 of this Article.

2. If the Township elects to utilize a twelve (12) hour shift, then the parties agree that the twelve hour shift scheduled will be based on a fourteen day work period which will rotate in the following manner: Day 1-2-3-4-5-6-7-8-9-10-11-12-13-14. In this sequence days 1 & 2 are on, days 3 & 4 are off, days 5, 6 & 7 are on, days 8 & 9 are off, days 10 & 11 are on and days 12, 13, & 14 are off. In this example Day 1 is a Monday.

a. The twelve hour work schedule set forth above requires an employee to work eighty-four (84) hours in a fourteen day period. It is not the intent of the Parties that the twelve hour shift employees work more regular work hours, over the period of a year, than eight hour or ten hour shift employees. To equalize the regular work over an annual period, the Township shall have the option of maintaining the shifts at twelve (12) hours and providing overtime compensation as required; providing advanced notice of at least twelve hours to Officers affected as to the adjustments of their scheduled hours on not more than two days to reduce their total to eighty (80) hours in any fourteen period; or granting each officer working a twelve hour schedule a prorated annual total of nine (9) 12 hours scheduled paid days off (SDO Days) (For a total of 108 hours, which shall be scheduled at the Township's discretion.)

3. Lunch Breaks: During a regularly scheduled shift, an employee will be allotted one (1) hour paid meal break. The employee's supervisor will determine if meal breaks will be allotted in a single one (1) hour period or two (2) half-hour periods. If due to unusual and emergent circumstances, it is not possible for an employee to take a meal break on a given shift, no additional compensation shall be provided.

4. If an employee utilizes sick time, said employee will be charged with the actual amount of hours used (e.g. for a sick absence of an entire shift, an employee working on a ten hour shift would be charged 10 hours for a sick absence of an entire shift, while an employee working on a 12 hour shift would be charged 12 hours.)

5. Employees shall be charged vacation credit on a day to day basis based on the number of hours in each shift (e.g., 12 hours credit for a 12 hour shift schedule, 10 hours credit for a 10 hour shift, 8 hours credit for an 8 hour shift schedule.)

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6. Except in cases of emergency, the Chief of Police shall provide an employee thirty (30) calendar days notice before being permanently assigned to a new shift, schedule or division.

#### B. OVERTIME PAY

1. Employees shall be paid at the premium rate of time and one half for all hours worked in excess of their regularly scheduled shift. This shall be subject to the employer's FLSA compliant payroll time card policy, attached hereto as Appendix A.

2. The time an employee works pursuant to the Uniformed Jobs in Blue Program is not shift work and such work is not hours working in excess of the employee's regular shift and shall not count for any overtime purposes.

3. There shall not be any pyramiding of premium pay — time which is specifically subject to a premium rate by way of this contract shall not be subject to any additional premium based on Subparagraph B.

#### C. COURT TIME

Only actual required court time, including travel time between the Township municipal building and court, is working time, subject to subparagraph E below. Any actual court time outside an employee's normal scheduled shift shall be compensated at the premium rate of time and one half pursuant to Subparagraph B(1) above.

#### D. TRAINING TIME

Only actual time spent in required scheduled training is working time. The Township reserves the right to adjust an employee's schedule to ensure that the employee works the equivalent of their normal scheduled hours in the work period. Work within and pursuant to such a schedule shall be at the employee's regular straight time rate.

#### E. CALL IN GUARANTEED MINIMUM

1. Subject to subparagraphs 2-3 below, any employee who is called longer than 30 minutes after the end of his or her scheduled shift and required to return to work, will be guaranteed a minimum of two (2) hours pay at the rate of time and one-half.

2. The Guaranteed minimum shall not apply to members engaged in the following:

- a. Municipal Court security duty when Pemberton Township police officers are actually utilized for that assignment.
- b. Training time (either as the trainer or trainee).
- c. Staff meeting scheduled more than 24 hours in advance.

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3. Any employee called in and required to return to work two hours or less prior to the commencement of his or her scheduled shift shall not be guaranteed any minimum work time.

F. VOLUNTARY DUTY SWITCHES

1. Voluntary shift swaps of full shifts arranged between officers shall be permitted absent unusual circumstances, subject to the requirement that the shifts are both within the same work period, are the same length, and the swap does not create any obligation to pay overtime.

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ARTICLE VII

VACATIONS

A. Each employee shall be entitled to annual vacation leave with pay in accordance with the following schedule:

1. From date of hire through third year of service:  
Twelve (12) vacation days per year.
2. From beginning of fourth year through tenth year of service:  
Fifteen (15) vacation days per year.
3. From beginning of eleventh year through fifteenth year of service:  
Twenty (20) vacation days per year.
4. Over fifteen (15) years of service:  
Twenty-five (25) vacation days per year.

B. Employees shall be permitted to use available vacation in half day increments, subject to the limitation that the half day increments must be limited to the first half of the work day or the second half of the work day, and not the middle of any shift.

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ARTICLE VIII

HOLIDAYS

A. GENERAL PROVISIONS

1. All employees covered under the terms of this Agreement shall celebrate the following paid holidays:

New Year's Day	Labor Day
Presidents' Day	Columbus Day
Good Friday	Veterans' Day
Memorial Day	Thanksgiving
Independence Day(July 4th)	Friday Following Thanksgiving Day
Martin Luther King's Day	Christmas Eve (December 24 <sup>th</sup> )
Easter Sunday	Christmas Day (December 25th)

2. An employee covered by this agreement who works on a covered holiday listed in section "1" of Article VIII shall be paid at a rate of time and one half for all hours worked, to be paid in the employee's regular biweekly pay. The holiday begins at 12:00 a.m. (midnight) and extends to 11:59 P.M. on the actual calendar date of the holiday as noted in section "1" of Article VIII.

ARTICLE IX

LEAVES OF ABSENCE

A. PERSONAL LEAVE

The Township shall permit each officer three (3) personal leave days per year with pay. The request for such leave days shall be made to the Chief at least one (1) week prior to its anticipated use, and the scheduling of such leave shall not interfere with the efficient operation of the Department. In the event of a legitimate emergency, the one (1) week notice requirement may be waived by the Chief of Police. In the case of legitimate emergency, a request to use personal time pursuant to the same notice requirements as required for sick leave shall not be unreasonably denied. Failure to use the personal leave day shall not cause the Township to make any payment for such time not utilized. The personal leave days shall not be accumulative.

B. BEREAVEMENT LEAVE

1. Each officer shall be given five (5) days leave of absence with pay in the event of the death of the officer's spouse or child and three (3) days leave of absence with pay in the event of a death within the Officer's immediate family other than a spouse or child.

2. Immediate family is defined as husband, wife, father, mother, grandfather, grandmother, father-in-law, mother-in-law, brother, sister, child, ward, stepmother, stepfather and stepchildren.

3. An additional two days of leave for traveling time may be granted at the discretion of the Mayor.

C. MATERNITY LEAVE

Leave for an employee's pregnancy and/or post pregnancy bonding shall be provided as per the family Leave Act and/or the New Jersey Family Leave Act, in addition to any other applicable leaves. Continuation of work, modified duty and leave during pregnancy shall be in accordance with applicable law and Departmental Policy, as well as consistent within the reasonable medical needs of the officer.

D. SICK LEAVE

1. Each employee covered by this agreement shall receive 120 hours of sick time per year. When an employee utilizes sick time said time shall be credited as time worked.

2. Sick leave may be used by employees who are unable to work because of:

a. Personal illness or injury;

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- b. Exposure to contagious disease;
- c. Care, for a reasonable period of time, of a seriously ill member of the employee's immediate family (See N.J.A.C. 4A:1-1.3 for definition of immediate family, See N.J.A.C. 4A:6-1.21A for family leave under State law and See N.J.A.C. 4A:6-1.21B for Federal family and medical leave);  
or
- d. Death in the employee's immediate family, for a reasonable period of time.

3. Sick leave may be used by an employee with a disability for absences related to the acquisition or use of an aid for the disability when the aid is necessary to function on the job. In such cases, reasonable proof may be required by the appointing authority.

4. Employees shall be permitted to use sick time in minimum one hour increments, so long as it is not used to interrupt or as a break in the shift. If an employee is absent five (5) consecutive work days, he or she shall be required to provide a doctor's note. Management may request a doctor's note in other circumstances as permitted pursuant to its managerial prerogative.

5. Employees covered under this Agreement shall indefinitely accumulate sick leave.

6. In calendar year 2014 only, employees shall also have the option to request payment for any unused sick leave up to a maximum of thirty (30) hours. Payment under this provision shall be made by the last pay in November 2014. However, employees must notify the Township that they are electing to receive payment under this provision, in writing, no later than November 1st of 2014 with the amount of sick leave eligible for payment to be determined as of that date. Furthermore, in order to qualify for payment, an employee must maintain a bank of at least fifteen (15) sick days, not including the days sought for reimbursement. This provision regarding sick leave sell back shall be operative in 2014 only and thereafter shall be void and shall be stricken from the contract.

#### E. PAYMENT OF ACCUMULATED SICK LEAVE UPON RETIREMENT

All employees hired on or before December 8, 2000 may upon retirement sell back fifty percent (50%) of accumulated sick time with a maximum payout of ten thousand (\$10,000.00) dollars. All employees hired after December 8, 2000 may sell back fifty percent (50%) of accumulated sick time with a maximum payout of five thousand (\$5,000.00) dollars.



ARTICLE X

HEALTH AND WELFARE

A. HEALTH BENEFITS

1. The Township shall continue to provide group major medical, hospitalization, and prescription drug insurance benefits. The Township shall have the right, at its discretion, to administer the health insurance benefits through a self-insurance plan, third-party insurer, or by any combination of self-insurance and third-party insurance so long as substantially equivalent benefits are provided. The level of benefits in place on the date this collective bargaining agreement is ratified and as expressed in the attached benefits summary and the summary plan document shall establish prospectively the threshold for benefits when applying the "substantially equivalent" analysis set forth in this paragraph.

2. For changes in health benefits other than those benefits contemplated by the attached benefits summary and the summary plan description, the Township shall advise the PBA in advance of any changes becoming effective. In the event the PBA does not agree that the proposed plan provides for substantially equivalent benefits, the matter shall be submitted promptly to arbitration prior to the implementation of any such change.

3. The combined calendar year maximum for well care coverage shall be removed effective no later than sixty (60) calendar days from the date this contract is ratified.

4. Eligibility for medical benefits is dependent upon an employee's permanent full-time status with the Township (regularly scheduled to work an average of 35 or more hours per week). Employees electing benefits under this plan shall be required to pay contributions based on a percentage of the cost of coverage as set forth in Section 39 of P.L. 2011, c.78, subject to any right which may exist in the future to negotiate contributions- however, this shall not be construed as a mid-contract reopener provision unless such a reopener is required by law.

5. The Township will assume the cost of health benefits coverage and pay all premiums for employees who have retired with a minimum of twenty-five (25) years or more of service credit in the State of New Jersey Police and Fire Retirement System (PPRS) and a period of continuous service of 20 years with Pemberton Township, or who is approved by PPRS for a work related accidental or ordinary disability retirement, at the "single" level of coverage. Retirees will receive the same health benefits and under the same terms and conditions as current active employees. However, a retired employee may upgrade the health benefit to a family plan and any increased cost shall be paid by the employee at the group rate. In the event that the Township becomes fully insured (rather than self-insured) a retired employee may purchase coverage for his or her eligible dependents under the Township's benefit plan provided that the retiree pays the difference between the premium for "single" coverage and the premium for "husband/wife" or "family" coverage, as the case may be.

B. INJURY IN THE LINE OF DUTY

1. If an employee is incapacitated and unable to work because of an injury incurred in the line of duty, he shall be entitled to injury leave with full pay during the period in which he is unable to perform his duties, as certified by a medical doctor, until such time as payments commence under Workers Compensation. Thereafter, the Township shall pay the difference between the employee's regular rate of pay and that paid under Worker's Compensation until such time as a medical doctor certifies that the employee is physically able to perform his duties.

2. Any police officer who receives Worker's Compensation benefits for a duty related injury who has not or does not intend to file a third party action or claim agrees to assign to the Township, or its Worker's Compensation carrier, or their representatives, any and all unasserted rights, claims and causes of action that the police officer may have against any third party who may be liable or responsible for the police officer's injuries or damages. The police officer shall fully cooperate with the Township, its insurance carrier, or their representatives, in the prosecution and presentation of such claims or causes of action, including but not limited to, the provision of required discovery requests, and the appearance depositions and trials subject to the other provisions of this Agreement for time reimbursement.

However, if the officer has or intends to assert or file a claim against a third party then this paragraph shall not apply.

C. NON DUTY RELATED DISABILITY

1. When disability as the result of personal injury, illness, or pregnancy is caused to an employee by accident or exposure that does not arise out of and in the course of the employee's employment, the employee may apply for disability benefits provided by the Township's "Private Plan" temporary disability insurance.

2. The Private Plan must be approved by the Division of Temporary Disability Insurance (within the New Jersey Department of Labor and Workforce Development).

3. At a minimum, the approved Private Plan must meet the basic provisions required of the State Plan. Under the private plan:

- a. Benefits paid must be at least equal to the amount that would be paid on a State Plan claim.
  - b. Eligibility requirements cannot be more restrictive than they would be for a State Plan claim.
  - c. Coverage must be at least equal to that offered by the State Plan.
4. There will no cost to employees for Private Plan coverage.

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ARTICLE XI

CLOTHING ALLOWANCE

A. A seven hundred and fifty dollar (\$750.00) annual clothing allowance, for the purchasing of non-uniform clothing, (plain clothes), shall be implemented for officers assigned as Detectives. When an officer is assigned as a Detective for less than a full calendar year, the annual clothing allowance shall be prorated monthly. Clothing allowance shall be paid first pay period in January. In the event an officer is assigned to the Detective Bureau after the first pay period in January the prorated payment will be made to that officer on the next pay period following the assignment.

B. The Township will provide uniform maintenance (i.e. cleaning and repairs, to include Detective's clothing), through a contracted service.

ARTICLE XII

SALARIES

A. Upon completion of the Academy, an officer shall be moved to the “Base” hourly rate in effect for that contract year. Upon the completion of a full year of service (including Academy time), an officer shall move to step 1 of the salary schedule for that contract year. Subsequent step movement shall be consistent with current practice under the applicable salary guide set forth below.

B. The salary guides set forth below reflect the following across the board increases:

1. Effective 1/1/2014 1.5%
2. Effective 1/1/2015 1.5%
3. Effective 1/1/2016 1.5%
4. Effective 1/1/2017 1.5%

C. For employees hired as a Pemberton Township police officer prior to April 16, 2014, the hourly rates for each calendar year of this Agreement shall be as follows:

1. Patrolmen

	<u>1/1/2014</u>	<u>1/1/2015</u>	<u>1/1/2016</u>	<u>1/1/2017</u>
Academy	\$16.89	\$17.14	\$17.40	\$17.66
Base	\$25.08	\$25.46	\$25.84	\$26.23
Step 1	\$29.90	\$30.35	\$30.81	\$31.27
Step 2	\$30.94	\$31.40	\$31.87	\$32.35
Step 3	\$33.44	\$33.95	\$34.46	\$34.97
Step 4	\$35.83	\$36.37	\$36.91	\$37.47
Step 5	\$38.37	\$38.94	\$39.53	\$40.12
Step 6	\$40.10	\$40.70	\$41.31	\$41.93

2. Sergeants

	\$44.09	\$44.75	\$45.42	\$46.11
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D. For employees hired as a Pemberton Township police officer on or after April 16, 2014, the following Ten Step salary guide shall apply with the hourly rates for each Calendar Year of this Agreement as follows:

1. Patrolmen

	<u>1/1/2014</u>	<u>1/1/2015</u>	<u>1/1/2016</u>	<u>1/1/2017</u>
Academy	\$16.75	\$17.00	\$17.26	\$17.52
Base	\$25.00	\$25.38	\$25.76	\$26.14
Step 1	\$26.45	\$26.85	\$27.25	\$27.66
Step 2	\$27.90	\$28.32	\$28.74	\$29.17
Step 3	\$29.35	\$29.79	\$30.24	\$30.69
Step 4	\$30.80	\$31.26	\$31.73	\$32.21
Step 5	\$32.25	\$32.73	\$33.22	\$33.72
Step 6	\$33.70	\$34.21	\$34.72	\$35.24
Step 7	\$35.15	\$35.68	\$36.21	\$36.76
Step 8	\$36.60	\$37.15	\$37.71	\$38.27
Step 9	\$38.05	\$38.62	\$39.20	\$39.79
Step 10	\$39.81	\$40.41	\$41.01	\$41.63

2. Sergeants

	\$43.78	\$44.44	\$45.10	\$45.78
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E. LONGEVITY

All full time employees who have completed the following number of years of continuous full time employment with the Township of Pemberton shall be entitled to the specified percentages of longevity pay in addition to their step 6 pay or Sergeant's pay:

5 years	4%
10 years	8%
15 years	10%
20 years	12%
24 years	14%

Longevity payments shall commence with the next pay period following the date of completion of said service.

Note: Employees who have completed 15 years of service as of the date of the execution of the 2007-2009 contract and have become eligible for longevity at the rate of 12% pursuant to the contractual terms then in effect, shall not have their longevity reduced as a result of the modification of the longevity schedule in the 2007-2009 contract.

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F. SHIFT DIFFERENTIAL

A six hundred dollar (\$600.00) annual shift differential payment shall be provided to the officers who regularly are assigned to the 2nd shift (overnight). When an officer is assigned to the 2nd shift (overnight) for less than a full calendar year the annual differential payment shall be prorated monthly. Shift differential shall be paid by the last pay in November of each year.

G. DETECTIVE STIPEND

In recognition of the special duties and responsibilities assumed by detectives, all detectives shall be entitled to four percent (4%) detective increment computed on the sum of their existing rate and longevity rate, if any.

H. TRAFFIC SAFETY, EMT AND K-9 STIPEND

1. Officers assigned to the K-9 unit, Traffic Safety Unit or as a certified EMT shall be paid a nine hundred dollar (\$900.00) stipend for each unit assigned.

2. When an officer is assigned to K-9, Traffic Safety or is a certified EMT for less than a full calendar year the annual stipend shall be prorated monthly. Stipends shall be compensated as part of base pay and paid as part of the employee's regular pay.

3. The parties agree that the Township adequately compensates K-9 officers for all activities associated with care and maintenance of service animals by way of granting them 2 hours off each work day. The parties agree that this time, while not required by this contract, is sufficient to cover all compensable time associated with the off-duty tasks of animal care and maintenance.

I. EMERGENCY MEALS FOR OVERTIME

The Township shall provide each employee, who is required to work for any reason of emergency other than manpower shortages due to employee vacations, sick time or other authorized leave, with a meal of not less than three (\$3.00) dollars nor more than five (\$5.00) dollars. An employee shall be entitled to one (1) meal at the end of four (4) hours continuance work if such work assignment shall be for a duration of five (5) or more hours. This provision shall be applicable for five (5) hour periods of continuance work thereafter.

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J. EDUCATION EXPENSES

The Township shall reimburse a police officer for the costs of tuition, required course books and directly related supplies for any approved courses taken which lead to a recognized Associates or Bachelor's Degree. Enrollment in the course must be approved in advance in writing by the Mayor, whose approval shall not be unreasonably withheld. The police officer shall be required to maintain a "C" average or better in order to receive reimbursement, except that this requirement may be waived by the Mayor when a lower grade is the result of work schedule conflicts, which must be verified in writing.

K. OFFICER IN CHARGE COMPENSATION:

1. Whenever a police officer is directed to accept responsibility for work done by a Sergeant, he shall be compensated at the Sergeant rate for all hours he/she performs such an assignment.

2. Whenever a police sergeant is specifically assigned, in writing by the Chief, to act as a Lieutenant, he/she shall be compensated at the higher rate for all hours he/she works in such an acting capacity. Such assignments shall only be made in cases of operational necessity.

ARTICLE XIII

GRIEVANCE PROCEDURE

A. A grievance is a complaint that there has been an improper application, interpretation or violation of this Agreement or administrative policies and practices. Also included in the scope of grievable items are disciplinary actions, which are not appealable to the New Jersey Department of Personnel as a matter of right. In order to provide for the expeditious and mutually satisfactory settlement of grievances, the procedures hereinafter set forth shall be followed. Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss and resolve the matter informally with any appropriate member of the Department.

B. Complaints may be initiated by an employee to his superior or the Chief of Police. An earnest effort shall be made to settle the dispute immediately. If the complaint is not adjusted satisfactorily at this stage and the employee wishes to file a grievance, it shall be presented by the employee or by the authorized Association representative.

C. When the Association wishes to present a grievance for itself, or for an employee or groups of employees for settlement, or when an aggrieved employee wishes to present a grievance, such grievance shall be presented as follows:

Step One:

Within ten (10) calendar days of the event giving rise to the grievance, the aggrieved employee, the President of the Association or his duly authorized representative, shall present the grievance to the Chief of Police, or his duly designated representative. The Chief of Police shall answer the grievance within ten (10) calendar days.

Step Two:

If the grievance is not resolved at Step One or if no answer has been received within the time set forth in Step One, the Association or the aggrieved employee shall present the grievance within seven (7) calendar days in writing to the Mayor, or his designee, as the case may be. This presentation shall set forth the position of the Association or the aggrieved employee, and at the request of either party, discussions may ensue. The Mayor, or his designee, as the case may be, shall answer the grievance in writing within fifteen (15) calendar days after receipt of the grievance setting forth the position of the employer.

Step Three:

If the grievance is not resolved at Step Two, or if no answer has been received by the Association or the aggrieved employee within the time set forth in Step Two, the grievance may be presented by the Association or the aggrieved employee in writing within ten (10) calendar days to the Township Council. The final decision of the Township Council shall be given to the



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Association or the aggrieved employee in writing within thirty (30) calendar days after the receipt of the grievance.

Step Four:

If the grievance has not been settled by the parties at Step Three of the Grievance Procedure or if no answer in writing by the Township Council has been received by the Association within the time provided in Step Three, and if the grievance concerns the alleged violation of a specific provision(s) of this Agreement, the Association (and not the aggrieved employee) may, within sixty calendar days, invoke arbitration of the grievance in accordance with Article XIV.

With respect to the deadlines set forth herein, in the event that the calendar day on which a grievance or a grievance response is due falls on Saturday, Sunday or a holiday that is recognized in the collective bargaining agreement, the filing date shall fall on the next calendar day that is also a regular working day.

In the event a grievance is not processed in accordance with the time limitations set forth above, the grievance shall be deemed satisfactorily resolved and no further action may be taken pursuant to this Article. The parties may mutually extend the time limits set forth in this Article.

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ARTICLE XIV

ARBITRATION

- A. Any grievance not settled by the Grievance Procedure may be referred to an arbitrator as hereinafter provided.
- B. The Association may institute arbitration proceedings when the Grievance Procedure has been exhausted by requesting the Public Employment Relations Commission to appoint an arbitrator to hear the dispute in the manner set forth in the Rules and Regulations and Statement of Procedure of the Public Employment Relations Commission. A copy of this request shall be forwarded to the Township Council.
- C. The costs for the services of the arbitrator shall be borne equally between the Township and the Association. Any other expenses incurred, including but not limited to the presentation of witnesses, shall be paid by the party incurring the same.
- D. The arbitrator shall set forth his findings of facts and reasons for making the award within thirty (30) days after conclusion of the arbitration hearing, unless otherwise agreed by the parties. The arbitrator shall not add to, subtract from, modify or amend in any way this Agreement. Only one (1) issue or grievance may be submitted to an arbitrator unless the parties otherwise agree.
- E. The arbitrator's decision shall be final and binding on all parties.
- F. In no event will an arbitration hearing be conducted less than thirty (30) days from the answer of the Township Council or the date when such answer was due. In the event the grievance is appealed to the New Jersey Civil Service Commission, the employee or the Association shall withdraw the arbitration case and shall be barred from proceeding to arbitration in accordance with this Article. Any expenses incurred by the parties in the filing of such arbitration will be paid by the employee or the Association in the event the matter proceeds to the New Jersey Civil Service Commission.

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ARTICLE XV

REQUIRED AND PERSONAL EQUIPMENT

A. REQUIRED EQUIPMENT

The Township shall provide all required equipment, including but not limited to holster, baton, baton holder, belt, handcuffs, handcuff holder and Sam Browne belt and soft body armor, if any of these are required. Employees who have already purchased such equipment shall receive no compensation therefor, but shall receive replacement thereof upon presentation of damaged equipment.

B. FOOTWEAR

The Township will reimburse employees up to one hundred twenty dollars (\$120.00) per year for work footwear, upon presentation of a receipt of purchase.

C. PERSONAL EQUIPMENT

In the event of any of the following personal equipment is lost or damaged during the employee's performance of his duties, the Township shall provide payment up to the amounts indicated upon presentation of an appropriate invoice:

Watch	\$50.00
Prescription Glasses	Full Replacement
Non-prescription Glasses	\$35.00
Contact Lenses	Full Replacement
Cell Phone	\$100.00 (Damage only)

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ARTICLE XVI

P.B.A. ACTIVITIES

A. The Township agrees to grant the necessary time off to the proper P.B.A. officers to attend monthly state meetings and to attend any State or National Convention of the New Jersey State Policemen's Benevolent Association.

B. Further, the Township agrees to grant a total of fifty-two (52) hours of time off per year without loss of compensation for use of employees, designated by the P.B.A. to conduct any business of the P.B.A. If all such fifty-two (52) hours are not utilized in any year, such hours shall accumulate and may be utilized in subsequent years. The welfare of the Department shall be considered when time off is required or granted.

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ARTICLE XVII

JOB POSTING

A. To keep the employees within the department organizational unit informed of positions in which they may be interested for reassignment and to provide an opportunity to apply for such positions, existing or planned job vacancies or new job openings shall be posted prominently for seven (7) calendar days. The posting shall include a description of the job, including the shift and days off.

B. Each calendar year beginning on the first pay period, or at other times when appropriate, the department shall open up the patrol shifts for preferential assignment. Shift bidders shall be assigned in accordance with civil service seniority of fully qualified employees in time and grade. Employees with special assignments who are fully qualified shall have preference among those within the same assignment who are less senior to them.

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ARTICLE XVIII

MILEAGE ALLOWANCE

A. Before a Police Officer may use his own vehicle for police business, he shall first request permission from the Chief. If no Police vehicle is available, the Police Officer shall then request a Township vehicle from the Township Administrator or his designee. If no Township vehicle is available, the officer may utilize his own vehicle and shall be reimbursed at the standard IRS Mileage Reimbursement Rate applicable at the time of travel.

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ARTICLE XIX

PRIORITY FOR OVERTIME

- A. Overtime, when available, shall be available in order preference based upon a rotating seniority roster.
- B. There may be certain situations in which the Department, because of special skills or other attributes of a particular police officer, determines that it is in the best interests of the employer to pass an employee or employees on the seniority list. In such cases, the rotating seniority roster shall not apply, however it is agreed that any bypassed employees must become next on the list for purposes of the overtime roster.
- C. The purpose of this section is to equalize overtime among employees.
- D. It will be the obligation of the employees to set up their own rotating seniority roster.
- E. It is agreed that if the assignment for a police officer is requested by an outside person or organization which will provide compensation to the Township pursuant to Article XX below and municipal ordinance, then the Township will offer said assignment to members covered by this Agreement prior to any other person or organization. It is further agreed that selection for said assignment will be based on a rotating seniority roster.

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ARTICLE XX

UNIFORMED JOBS IN BLUE PROGRAM

- A. On certain occasions, public and private entities in the Township of Pemberton wish to engage the services of a uniformed member of the Pemberton Police Department to provide security services, such as traffic control and crowd control. The Township shall have the authority to authorize, manage and control a program to allow members to perform such uniformed work, consistent with the Township's obligation to bargain with the P.B.A. over equitable assignment of opportunities and hourly rates.
- B. Opportunities for such uniformed work shall be available in order of preference based upon a rotating seniority roster.
- C. Officers assigned uniformed work under the Jobs in Blue Program shall be paid the following wages for each hour worked:

Third party contractors other than non-profit organizations:

Hourly rate: One and one-half times the contracted regular hourly rate of pay of the police officer(s) assigned to the work.

Schools and non-profit organizations:

Hourly rate: \$50 per hour (flat rate).



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ARTICLE XXI

JOB SAFETY COMMITTEE

A. As soon as practicable, a job safety committee shall be arranged, which will have the following functions:

1. The P.B.A. shall designate a safety committee, which may forward its suggestions relative to job safety to the Public Safety Committee. Such suggestions shall be in writing.
2. The suggestions may be discussed at the next Public Safety Committee meeting, provided at least one week's notice is given.
3. Any suggestions or other matters brought up by the Committee shall not be considered negotiations, but shall be merely for the purposes of conference and discussion as the mutual desire of both parties. These items shall also not be considered grievances.

Township of Pemberton --and--  
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ARTICLE XXII

BULLETIN BOARD

- A. The employer will supply one (1) bulletin board for the use of the P.B.A. to be placed somewhere in Police Headquarters.
- B. The bulletin board shall be for the use of the P.B.A. for posting of notices and bulletins pertaining to P.B.A. business and activities and matters dealing with the welfare of the employees.
- C. No matter may be posted without receiving permission of the officially designated Association representative.
- D. No matter may be posted which is considered to be inflammatory.

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1/1/2014 through 12/21/2017

ARTICLE XXIII

MISCELLANEOUS

A. PAY PERIODS

The Township, at its option, may institute a payroll plan providing for a pay period every two weeks that is twenty-six (26) pay periods per year. The Township will notify the P.B.A. not less than sixty (60) days prior to the institution of such payroll plan.

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1/1/2014 through 12/21/2017

ARTICLE XXIV

SEPARABILITY AND SAVINGS

A. If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be invalid by operation of law or by a court order or other tribunal of competent jurisdiction, such provision shall be inoperative but all other provisions shall not be affected thereby and shall continue in full force and effect.

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ARTICLE XXV

FULLY BARGAINED PROVISIONS

A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all negotiable issues, which were or could have been the subject of negotiations. However, the Township agrees to comply with the provisions of N.J.S.A. 34:13A-5.3.

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ARTICLE XXVI

TERM AND RENEWAL

This Agreement shall be effective as of January 1, 2014 and shall remain in full force and effect until December 31, 2017, or until a new Agreement is executed.

Township of Pemberton -and-  
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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on  
the 25<sup>th</sup> day of July, 2014.

MICHAEL BREWER,  
ACTING PRESIDENT  
PEMBERTON TOWNSHIP  
POLICEMEN'S BENEVOLENT  
ASSOCIATION, LOCAL NUMBER 260

DAVID PATRIARCA  
MAYOR  
TOWNSHIP OF PEMBERTON  
COUNTY OF BURLINGTON STATE  
OF NEW JERSEY

*Michael Brewer* #18105

*David A. Patriarca*

ATTEST:

ATTEST:

*M. R. #1899*

*Greg Coslor*

DATE:

10914149v6

# **EXHIBIT B**



P.E.R.C. NO. 2015-57

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PEMBERTON,

Petitioner,

-and-

Docket No. SN-2014-091

PEMBERTON PBA LOCAL NO. 260,

Respondent.

Appearances:

For the Petitioner, Archer & Greiner, P.C., attorneys  
(David A. Rapuano, of counsel)

For the Respondent, Sciarra & Catrambone, L.L.C.,  
attorneys (Christopher A. Gray, of counsel)

DECISION

On April 23, 2014, the Township of Pemberton petitioned for a scope of negotiations determination concerning the grievance procedure article in its expired agreement with PBA Local 260. The Township seeks to remove step three of the grievance procedure and the PBA seeks to retain the process as written in a successor agreement.

The parties have filed briefs and exhibits. The Township has filed a certification of Township Business Administrator Dennis Gonzalez. These facts appear.

The PBA represents all patrol officers and sergeants employed by the Township's police department. The parties' most recent agreement has a duration from January 1, 2010 through

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2.

December 31, 2013. The parties have finalized a new agreement with a duration from January 1, 2014 through December 31, 2017 subject to this scope determination.

Article XIII is entitled Grievance Procedure and provides for the Chief of Police to hear a grievance at step one and the Mayor to hear the grievance at step two. Step three is the portion the Township seeks to remove and provides:

If the grievance is not resolved at Step Two, or if no answer has been received by the Association or the Aggrieved employee within the time set forth in Step Two, the grievance may be presented by the Association or the aggrieved employee in writing within ten (10) calendar days to the Township Council. The final decision of the Township Council shall be given to the Association or the aggrieved employee in writing within thirty (30) calendar days after the receipt of the grievance.

Step four provides for binding arbitration.

The City has adopted the mayor-council form of government pursuant to the Faulkner Act, N.J.S.A. 40:69A-31 et seq. In summary, the mayor-council form of government vests an elected mayor with the executive functions of the Township and the elected council with the legislative functions of running the Township.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states: "The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations."

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3.

We do not consider the wisdom of the clauses in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters.<sup>1/</sup> The Court stated:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it

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<sup>1/</sup> The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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is permissively negotiable. [87 N.J. at 92-93; citations omitted]

As a general rule, an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation. However, the mere existence of legislation relating to a given term or condition of employment does not automatically preclude negotiations. Negotiation is preempted only if the regulation fixes a term and condition of employment "expressly, specifically and comprehensively." Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. Of Higher Ed., 91 N.J. 18, 30 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." In re IFPTE Local 195 v. State 88 N.J. 393, 403-04, 443 A.2d 187 (1982), quoting State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80, 393 A.2d 233 (1978). If the legislation, which encompasses agency regulations, contemplates discretionary limits or sets a minimum or maximum term or condition, then negotiation will be confined within these limits. Id. at 80-82, 393 A.2d 233. See N.J.S.A. 34:13A-8.1. Thus, the rule established is that legislation "which expressly set[s] terms and conditions of employment...for public employees may not be contravened by negotiated agreement." State Supervisory, 78 N.J. at 80, 393 A.2d 233. [Id. at 44].

The Township argues that step three must be removed from the grievance procedure because under the Faulkner mayor-council

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plan, the mayor is responsible for executive functions that include matters of employment and negotiating contracts subject to council approval. By permitting the council to review and reverse the mayor's determination on a grievance, the council is usurping the power of the mayor in violation of the Faulkner Act.

The Township cites Hillside Firemen's Mutual Benevolent Ass'n v. Menza, 2013 N.J. Super. Unpub. LEXIS 506 (2013) (municipality operating under the mayor-council form of government pursuant to the Faulkner Act may not require by ordinance that its mayor obtain the council's approval for a layoff plan pertaining to all municipal employees); City of Atlantic City v. Gindhart, 2007 N.J. Super. Unpub. LEXIS 2321 (2007) (city council lacked authority initiate litigation which is an executive function under mayor-council form of government); and Torres v. Municipal Council of the City of Paterson, 2007 N.J. Super. Unpub. LEXIS 1482 (city council could not designate itself as the appropriate authority to bring disciplinary charges against police officers).

The PBA responds that the parties' CNAs have permitted grievances to be heard by the Township Council since the 1970s, including the past 23 years that the Township has operated under the mayor-council form of government. It further asserts the mayor is a former police officer who has held office since 2006 and never challenged the council's authority in the grievance

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procedure prior to the council recently reversing his decision. It asserts that the grievance procedure is at least permissively negotiable and that this matter is not preempted by the Faulkner Act as no statute or regulation specifically prohibits the Township and PBA from agreeing to have the council participate in the grievance process. The PBA relies on various Township ordinances establishing the power of the council to conduct investigations and receive reports from the Chief of Police. It distinguishes the cases cited by the Township asserting that the council is not involved in collective negotiations; has not sought to institute a litigation; and has not sought to institute layoffs. Finally, the PBA argues that under the holding of Hillside, this dispute should be decided by the Superior Court as the matter is not an issue inherent under our Act.

The Township replies that PERC has primary and exclusive jurisdiction with respect to this scope of negotiations issue; the past practice of the parties is neither in dispute nor relevant; the council's ratification of the most recent CNA is not relevant to this dispute; the ordinances are not material to the dispute; and the Township Council does not have the statutory authority to overrule the mayor with respect to employee discipline and contractual interpretation.

As set forth above, our scope of negotiations jurisdiction requires us to determine whether the abstract issue - here the

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7.

grievance procedure - is mandatorily negotiable. Our Act specifically makes grievance review procedures mandatorily negotiable. N.J.S.A. 34:13A-5.3 provides, in part:

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization.

Where a statute or regulation is alleged to preempt an otherwise negotiable term and condition of employment, it must do so expressly, specifically and comprehensively. Bethlehem. Nothing in the Faulkner Act specifically prohibits the council from participating as a step in the grievance procedure. The heart of this dispute therefore is not really a negotiability contest between the employer and PBA. It is really a political dispute between the mayor and city council. Our jurisdiction does not permit us to go outside the Employer-Employee Relations Act to find that a mandatorily negotiable issue violates the separation of powers in the Faulkner Act. Accordingly, this issue is better adjudicated by a court rather than a negotiability assessment within our expertise. See City of

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8.

Passaic, P.E.R.C. No. 2000-54, 26 NJPER 75 (¶31027 1999). We note the cases cited by the Township were initiated in the courts, except the Hillside case, where the court found the Civil Service Commission could not rule on a question of statutory law related to the separation of powers. We dismiss this Township's scope of negotiations petition.

ORDER

The scope of negotiations petition filed by the Township of Pemberton is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. None opposed. Commissioners Eskilson, Jones and Wall recused themselves.

ISSUED: March 26, 2015

Trenton, New Jersey