

**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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In the Matter of Interest Arbitration Between :

**BOROUGH OF NORTH  
PLAINFIELD**

**"the Borough or Employer"**

and

**PBA LOCAL 85 & PBASO LOCAL 85**  
**"the PBA or Union"**  
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**INTEREST ARBITRATION  
DECISION  
AND  
AWARD**

Docket No: IA-2008-036 & 037

Before: Robert M. Glasson, Arbitrator

**APPEARANCES**

**FOR THE BOROUGH:**

Eric M. Bernstein, Esq.  
Eric M. Bernstein & Associates  
Of Counsel & On the Brief  
Deborah J. Bracaglia, Esq., On the Brief

**FOR THE PBA:**

Richard Loccke, Esq.  
Loccke, Correia, Schlager, Limsky & Bukosky  
Of Counsel & On the Brief

### **Procedural History**

The Borough of North Plainfield (the “Employer” or “Borough”) and PBA Local 85 & PBASO 85 (the “PBA” “SOA” or “Union”) are parties to collective bargaining agreements (the “CBAs”) which expired on December 31, 2007. Upon expiration of the CBAs, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA & PBASO filed petitions with the New Jersey Public Employment Relations Commission (“PERC”) on January 8, 2008, requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on January 28, 2008 from its Special Panel of Interest Arbitrators.

I conducted mediation sessions on April 11 and May 8, 2008 which proved unsuccessful. Formal interest arbitration proceedings were invoked and a hearing was conducted on August 20, 2008, when the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs and the record was closed on October 2, 2008. The parties agreed to extend the time limits for the issuance of the award to August 1, 2009.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria in subsection g. of this section.”

### **Statutory Criteria**

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each factor.

(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 condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 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:4-45.1 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 municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 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 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)

## **PARTIES' LAST OFFERS**

### **PBA**

1. **Term of Agreement:** January 1, 2008 to December 31, 2012.

2. **Salary:**

The PBA and PBASO proposed a five percent (5%) increase across-the-board on each rank, step and position to be effective on January 1 in each calendar year.

3. **Union Business:**

The PBA proposes the following changes in Article III, Union Business:

- A. The PBA proposes a deletion of the language which refers to State and Regional meetings and that such references shall be changed to read "Any Union Business."
- B. The Borough shall also grant to the Delegate and at least three (3) additional Delegates (or ten percent (10%), whichever is higher, of the entire PBA membership) leave from duty to attend all State PBA conventions consistent with N.J.S.A. 40A:14-177.
- C. In the event the Delegate is elected or appointed to a full-time position with the State PBA then the Borough agrees to grant said Delegate full release without loss of compensation for as long as the position is held so as to fulfill duties of said position (with State reimbursement of said Delegate's cost to Borough).

4. **Acting Assignments:**

The PBA and PBASO propose that all work in a higher rank be paid at the rate of the higher ranked position.

5. **Hours of Work:**

- A. The PBA and PBASO propose that all references to the seventy-two (72) hour buyback provision be deleted from Article VI in the CBAs.

6. **Longevity:**

The PBA and PBASO propose that Article X, Longevity, be modified by deleting the "grandfather" provisions covering officers hired after July 1, 1994.

7. **Clothing Allowance:**

The PBA and PBASO propose that the current clothing allowance be increased by \$100 in each year of the new CBA.

**BOROUGH**

1. **Term of Agreement:** January 1, 2008 to December 31, 2011.

2. **Salary:**

The Borough proposed the following salary increases:

- A. 3.4%, effective March 1, 2008 for all employees in the bargaining units and for all employees on the Borough's active payroll at the time of the award.
- B. 3%, effective January 1, 2009.
- C. 3%, effective January 1, 2010.
- D. 3.4%, effective March 1, 2011.

3. **Hours of Work:**

The Borough proposes the addition of the following language to Article VI, Hours of Work, in both CBAs:

The Borough reserves the right to have the officers work the full or portion of the "extra duty time."

4. **Vacations:**

The Borough proposes the following modifications to Article VIII, Vacations, in both CBAs:

Carryover in Section 2 shall be for business necessity only, approved in writing by the Chief of Police and into the next succeeding year only. Failure to take such will result in the loss of such carryover time. All existing carryover vacation for anyone hired before January 1, 2008 shall be redlined as to the amount, days and monetary value as of December 31, 2007.

5. **Leaves of Absence:**

The Borough proposes the following modifications to Article IX, Leaves of Absence, in both CBAs:

- A. Any employee hired on or before December 31, 2007 who retires under this Agreement shall not be eligible to receive payments in excess of the calculated amount (pursuant to the previous Borough sick leave ordinance) as of December 31, 2007. Therefore, for example, if an employee's sick leave under the previous ordinance is valued at \$30,000, the employee could collect no more than \$30,000 at the time of the eligibility to receive such payment.
- B. Any employee hired on or after January 1, 2000, who retires under this Agreement shall not be eligible to receive payments for eligible sick days in excess of Fifteen Thousand (\$15,000) Dollars, as calculated under the previous salary ordinance.
- C. The exceptions to Paragraph A and B above are that an employee hired before January 1, 2000 who retires before June 30, 2009, shall be entitled to receive payment for terminal leave based upon the previous sick leave ordinance calculation with no monetary cap at the employee's daily rate of pay at the time of retirement.

6. **Overtime Payments:**

The Borough proposes the following modifications to Article XI, Overtime Payments, in both CBAs:

- A. Overtime shall be hours actually worked in excess of a daily or weekly schedule.
- B. All accrued compensatory time shall be capped at the employee's hourly rate as of December 31, 2008.

7. **On Call Credits:**

The Borough proposes the following modifications to Article XII, On Call Credits, in both CBAs:

All accrued compensatory time shall be capped at the employee's hourly rate as of December 31, 2008.

8. **Retention of Benefits:**

The Borough proposes that Article XVII, Retention of Benefits, be deleted from both the PBA and PBASO CBAs.

9. **Insurance Plans:**

The Borough proposes the following modifications to Article XIX, Insurance Plans, in both CBAs:

- A. Effective January 1, 2008, members of both bargaining units shall make annual health care insurance contributions based upon their annual salaries (which shall be computed as base salary plus overtime).
- (1) 1% of annual salary for employees making less than \$50,000.
  - (2) 1.5% of annual salary for salaries between \$50,000 and \$100,000.
  - (3) 2% of annual salary for salaries greater than \$100,000.
  - (4) The Borough's obligation to pay dental insurance premiums shall be capped at the rates paid by the Borough for such as of May 31, 2008. All increases in premiums in excess of such amounts shall be borne solely by the employees.

10. **Legal Defenses:**

The Borough proposes the following modifications to Article XXII, Legal Defenses, in both CBAs:

The Borough shall assign the affected police officer(s) counsel to assure sole control of his/her defense and the officer's legal fees so long as the officer qualifies for a defense under N.J.S.A. 40A:14-155 at the "prevailing rate." Prevailing rate shall be defined as the hourly rate charged by the Borough Attorney to the Borough. If the insurance carrier/joint insurance fund provides a defense on behalf of the affected employee, counsel will be assigned as part of that defense and the Borough shall have no monetary obligation to pay legal fees. If the affected employee requests the assignment of his/her own counsel, then the Borough shall have no monetary obligation to pay legal fees.

11. The Borough acknowledged mutual agreement on the following proposals:
- A. Article III (Union Business) to be revised to reflect the provisions of N.J.S.A. 40A:14-177 as it relates to Paragraph 2 only.
  - B. Effective January 1, 2009, Article X (Salary) to be revised by adding Paragraph 3 to the base salary of all employees and eliminate the unreimbursed expenses authorization.
  - C. Article XI (Overtime Payments) to be revised by deleting the last sentence of Paragraph 6 (PBASO CBA) and Paragraph 7 (PBA CBA).
  - D. Article XIV (Grievance Procedure) to be revised by designating all days as "calendar days."
  - E. Article XXII (Legal Defenses) in the PBASO CBA shall be modified by adding the statutory language of N.J.S.A 40A:14-155 included in the PBA CBA to Paragraph 1 of the PBASO CBA.



## **PARTIES' POSITIONS**

### **PBA POSITION**

The following are the PBA's arguments and contentions in support of the statutory criteria. References to "PBA" shall include both the PBA and the PBASO except when a proposal is not applicable to both bargaining units.

#### **Interests and Welfare of the Public**

The PBA submits that the North Plainfield Police Department is one of the busiest in Somerset County. The PBA cites the testimony of Lieutenant Joseph Mack, a 23-year veteran of the North Plainfield Police Department. Lieutenant Mack detailed the nature of the town and its many law enforcement challenges. Mack described the impact of the numerous commercial businesses on Route 22 as well as other areas of the Borough. Route 22 is a major thoroughfare in this section of New Jersey and has tens of thousands of persons passing along this highway on a daily basis. For example, Lieutenant Mack described the gang activity coming out of Plainfield and some other areas which has focused on harassing these people. In one case, such a person was beaten so badly that he subsequently died of his injuries. While this problem may be seen occasionally elsewhere, it is a regular factor in the Borough.

According to the PBA, North Plainfield is a busy law enforcement community. The PBA cites the following statistics derived from P-5, the Uniform Crime Report ("UCC") to show the high level of activity in North Plainfield:

<b>Criminal Activity</b>	<b>Number of Occurrences</b>	<b>2007 Increase</b>
Criminal Activity	63	+28.3%
Violent Crime per 1,000		+28%
Rape	2	+40%
Robbery	37	+11.8%
Aggravated Assault	22	+52.2%
Motor Vehicle Theft	76	+50%
Domestic Violence	232	+1.2%

The PBA submits that the above data shows the significant variety of criminal activity and increases challenging the Police Officers in North Plainfield and that North Plainfield is at the top of virtually every category of measurable offenses listed in the Uniform Crime Report. P-1 shows additional police activity. During the most recent completed year, 2007, there were 29,232 calls for service and 1,058 arrests.

Lieutenant Mack described the following improved police services and increased facilities available to the public: Enhanced DARE; SRO; Active Shooter; Current Chief (In Office Approximately Four Years) Accent on Training; Good Morning Program/Senior Citizen Speaker Program; National Night Out; STEP Program in Summer; PBA Supports Project Graduation/Youth Sports and Activities; Defibrillators in Cars - Have Been Used to Save Lives; All Officers Trained as First Responders/Regular Annual Updates on Certification; Multi-Lingual Ability - Approximately Fifty Percent (50%) of Force; MOI Certification; 9 Firearms Instructors/Range Master; Bicycles; New Computers and Communication Equipment; New Police Department Headquarters Under Construction; New

Weapons; School Liaison Officer; Four-Wheel Drive Vehicles; Park and Walk Programs/Community Policing; MVR in Cars; and MDT in Cars.

The PBA submits that North Plainfield police officers are well trained. There are currently 14 Method of Instruction (MOI) certified Officers in the Department, which both facilitate in-house training and make available training personnel for other Departments. Many of the training assignments for other Police Departments as well as new recruit training at the Police Academy are conducted by North Plainfield Police Officers. North Plainfield is frequently considered as the model and source of Instructors.

Inter-Municipal and County level cooperative operations also include, on a regular basis, the North Plainfield Officers. The County SWAT Unit, managed by the Somerset County Prosecutor's Office is under the command of a North Plainfield Police Officer. The Somerset County Narcotics Unit, managed by the Somerset County Prosecutor's Office, has a full-time assigned North Plainfield Police Officer assigned. The County Fatal Accident Unit, County Arson Task Force and Somerset County Dive Team are all entities with regularly participating North Plainfield Police Officers.

The PBA points to Lieutenant Mack's testimony that officers within the department enjoy an excellent *esprit de corps* and an excellent working relationship. Mack stated that the officers of the North Plainfield Police Department are proud to serve and have an excellent relationship with the public. Mack testified that the respect shown by the North Plainfield Police Officers to the public is met with respect in return. The PBA maintains that the North Plainfield Police Department is a highly productive, well-managed law enforcement agency that serves the interests and welfare of the public.

**Comparison of the Wages, Salaries, Hours  
and Conditions of Employment**

The PBA contends that the Borough's Police Officers are not well compensated in comparison with their peers in other law enforcement agencies and enjoy no offsetting benefits or exceptional conditions of employment which would justify this lower compensation.

The PBA submits that Borough officers work more hours per year than officers in other comparable departments. In addition, both CBAs include language which directs that certain make-up time shall be required. This make-up time is not the result of fixed scheduling which is traditionally found in other law enforcement agencies. Officers are required to create a "reserve pool of hours" which is utilized in management's discretion to meet the Department's needs including training, "manpower shortages" and "Borough-wide emergencies." The PBA seeks to eliminate these provisions, known as the "seventy-two hour buyback provision" from the CBAs. This language gives the Borough the ability to draw down on this reserve hour pool and dictate extra duty work without extra compensation. The PBA notes that there is no restriction on the use of such hours for manpower shortages or Borough-defined emergencies except that the hours will be used in four-hour blocks or more. There is no other contract in evidence in this case which has anything like this type of provision.

The PBA contends that the base pay of Borough police officers is well below other comparable jurisdictions. Comparable municipalities include Scotch Plains, Mountainside, Watchung, Warren and South Plainfield.

The PBA submitted the following 2007 maximum step salary data to support its salary proposal:

**CHART 1**

**Comparison of 2007 Base Rates at Top Step**

	2007 Base
South Plainfield	\$85,297
Spotswood	\$83,740
Scotch Plains	\$82,835
Somerset County Prosecutor's	\$83,461
Manville	\$88,057
Mountainside	\$82,611
Watchung	\$83,057
Warren	\$81,146
Somerset	\$87,893
STFA	\$101,200
<b>Average Top Step Base</b>	<b>\$85,929</b>
<b>North Plainfield Maximum Base</b>	<b>\$82,740</b>
<b>North Plainfield Compared to Average</b>	<b>(\$3,189)</b>
<b>Percentage Comparison</b>	<b>(3.86%)</b>

The PBA submits that the above data shows that Borough police officers are below average and that it will require an increase of 3.86% just to reach the average maximum salary in 2007.

The PBA submitted the following comparability data on negotiated salary increases in 2008, 2009, 2010 and 2011:

**CHART 2**

**Comparison of Base Rate Increases**

	2008	2009	2010	2011
Bernards Township	4.95	3.8	3.8	3.8
Monroe	4.25	4.25	4.25	
Mercer Prosecutor	4.25	4.25	4.25	
Mountainside	9.91	4	3.75	
Scotch Plains	3.75			
Somerville	4	4		
Spotswood	4	4	4	
Milltown	4	4		
State Police	4			
Watchung	4			
East Brunswick	3.9	3.9	3.9	
Somerset Prosecutor	3.5	4		
South Plainfield	3.9	3.9	3.9	
Summit	3.8	3.8	3.8	
Berkeley Heights	4.5			
Plainfield	3.75	3.75		
<b>Average</b>	<b>4.414%</b>	<b>3.946%</b>	<b>3.915%</b>	<b>3.8%</b>

The PBA submits that the average annual salary increases listed above, along with the 3.86% lag in maximum salary in 2007, establish support for its last offer on salary in 2008, 2009, 2010, 2011 and 2012.

The PBA notes that another common issue in benefit comparisons among law enforcement agencies is clothing allowance. The PBA submitted the following comparability data to show that the current clothing allowance is below average:

**CHART 3**

**Uniform Allowance Comparisons**

Bernards Township	\$1,100
Monroe	\$1,050
Milltown	\$800
Mountainside	\$1,100
Scotch Plains	\$850
Somerville	\$1,500
Spotswood	\$1,250
Warren	\$1,025
South Plainfield	\$1,400
Summit	\$1,500
Plainfield	\$700
<b>Average</b>	<b>\$1,116</b>
<b>North Plainfield Annual Uniform Allowance</b>	<b>\$775</b>
<b>Compared to Average</b>	<b>(\$341)</b>
	<b>(44%)</b>

The PBA submits that the above data confirms that the current clothing allowance in North Plainfield is well below the uniform allowance in other municipalities.

The PBA submits that its proposal on Union Business is essentially a request that the language of the CBA be made consistent with the statute. The statute in question, N.J.S.A. 40A:14-177, has been modified since the language of the current CBAs were negotiated. Under the statute, there is now a percentage allowance for personnel to attend the PBA Convention. Since there are more than 40 officers in the bargaining unit, the statutory formula would generate a right to have four PBA members attend the PBA convention. The current language of the contract limits attendance below the statutory mandate for the PBA Convention and the mini-convention. The PBA seeks compliance with the statutory mandate.

The final issue in dispute is Acting Assignments. Both the PBA and SOA have requested contract revision to provide that "all work in a higher rank be paid at the rate of the higher rated position." The PBA cites the testimony of Lieutenant Mack regarding the modification and increased workload of acting assignments over the recent past. Mack testified concerning the need for intense supervision and the obligation of supervision as well as training along with additional paperwork and liability. The PBA submits that this is a classic example of the additional workload and obligation being assumed by existing staff. The PBA seeks language to provide that when the Borough designates an officer to be in charge then that officer should be commensurately compensated. Whether it is a Patrolman acting as a Sergeant, a Sergeant acting as a Lieutenant or a Lieutenant as a Captain, the officer should be properly compensated for the level of work. Also, the obligation of performance and liability should be considered. Lieutenant Mack's testimony on this point was clear and uncontested at hearing. The PBA notes that most of the other contracts in evidence provide for this type of compensation when working in a higher rated position.



### **Private Sector Comparisons**

The PBA notes that the Borough presented some evidence with respect to private sector comparisons. The PBA contends that the best comparisons are made with law enforcement agencies. The PBA contends that private sector comparisons should not be given great weight since law enforcement is a unique area of endeavor and not paralleled in the private sector.

The PBA maintains that due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison to private sector employees (as compared to other police officers) must result in a strong justification for significantly higher compensation to be paid to police officers. The PBA cites the following excerpt from Arbitrator Carl Kurtzman's interest arbitration award in support of its argument regarding private sector comparisons:

“As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.” (Borough of River Edge and PBA Local 201, PERC IA-97-20, at 30).

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey.

Certainly this is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Again such public franchise and unique provisions of statutory authority are not found in the private sector. There is no portability of pensions in the law enforcement community after age thirty-five. Police officers may not take their skills and market them in other states as one may market one's own skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of police officers to their employers:

1. The Federal Fair Labor Standards Act, 29 USCA §201, *et seq.* applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7 day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. The New Jersey State Wage & Hour Law, NJS4 34:11-56a, *et seq.* does not apply to the employment relationship between a police officer and the officer's Public Employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, Perry v. Borough of Swedesboro, 214 N.J. Super. 488 (1986).
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. NJS4 40A:14-118. There is no such statute covering private employment in New Jersey.

4. NJSA 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, NJSA 40A:14-122. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under 40A:14-122.2. There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be a resident of the State of New Jersey, NJSA 40A:14-122.8. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, 40A:14-127.1. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, NJSA 40A:14-127.3. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage NJSA 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed six days in any one week, "except in cases of emergency." NJSA 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.
11. NJSA 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65-year maximum applies to private sector employees.

13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees' pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, NJSA 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

The PBA submits that the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. Police Officers are statutorily conferred with specific authority and “ . . . have full power of arrest for any crime committed in said officer’s presence and committed anywhere within the territorial limits of the State of New Jersey.” NJSA 40A:14-152.1. A Police Officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector. Police Officers are trained in the basic Police Academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training schedule is a matter of New Jersey statutory law and is controlled by the Police Training Commission, a New Jersey statutorily-created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of police officer certification and the police officer’s job. This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New

Jersey private sector employee must consider the possibility that his industrial employer might move that plant to another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

The PBA contends that local comparisons are more relevant to police salaries. The PBA cites the decision of Arbitrator William Weinberg in support of its argument:

“Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g, (2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct Employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, at pages 29 - 31).

The PBA argues that any time there is a comparison made between a police officer and a private employee generally, the police officer's position must gain weight and be given greater support by such comparisons. The police officer lives and works within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny, accountability and authority are unparalleled in employment generally. The police officer carries deadly force and is licensed to use said force within a great discretionary area. A police officer is charged with access to the most personal and private information of individuals and citizens generally. A police officers' highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. The PBA notes that in such a wide array of titles as the nearly infinite number covered in the general category of "private employment" there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A police officer is a career committed 25-year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The PBA asserts that a police officer should be considered on a higher wage plane than private employment generally.

### **Stipulations of the Parties**

The only stipulations between the parties in this case were procedural in nature. The PBA submits that an analysis of this criterion will not have significant weight on the determination of the issues presented in this case.

### **Lawful Authority of the Employer**

The PBA asserts that an award of its salary proposals will not have an adverse financial impact on the Borough. This factor generally references the “Cap Law” which is a limitation on spending consistent with certain statutory formula based upon certain classifications of municipal expenditures. The application and calculation of the Cap Law are set forth in each Municipal Budget. The PBA notes that the Borough’s Cap calculation for 2008 is found on *Sheet 3b* of the 2008 Budget Form. (P-17).

The PBA notes that the Budget passed by the Borough is \$19,240 under Cap. The important point to note is in the right-hand column where the maximum allowable budget appropriations are listed as \$14,004,248. The appropriations within Cap for 2008 are listed at \$13,985,008. The Budget for 2008 is therefore \$19,240 under Cap. The PBA contends that this amount under Cap is significant for two reasons. First, the Budget is structured within the statutory limitation and there is no Cap problem presented. Second, the amount of flexibility “under Cap” which is not utilized, \$19,240, goes forward as a “Cap Bank” for a subsequent budget. The Borough therefore has, going into 2009, an additional sum of Cap flexibility of \$19,240. The Cap Bank of \$19,240 going into 2009 is significant with respect to prior Cap Banks. In 2006 the Cap Bank available was \$11.79. In 2007 the Cap Bank available was \$9,531. The amount going forward into 2009 is therefore more than double the combination of the Cap Banks of the preceding two years. The PBA submits that this is

a positive trend and will likely result in Cap flexibility into the subsequent year. The PBA submits that there is no Cap problem in the Borough.

**The Financial Impact on the Governing  
Unit, its Residents and Taxpayers**

According to the PBA, an award of its last offer on salary will have a *de minimis* impact on the taxpayers. It has already been established that this Police Department runs on an extremely efficient level. Manpower today is essentially the same as it was a decade ago. Increased services and workload have been absorbed by essentially the same number of personnel. The Borough also receives significant monies from the Municipal Court, directly resulting from police activity. In the 2008 Budget at *Sheet 4* there is noted that in 2007 alone, the Borough received \$371,157 from the North Plainfield Municipal Court. (P-17).

In addition to the \$371,157 in Municipal Court revenue there are also in 2007 numerous other revenue sources in the form of aid and grant money for public safety. There was a Homeland Security Grant in 2007 of \$90,000. (P-17, Sheet 5). Numerous other smaller grants such as "Safe and Secure Community Programs", \$90,000, Body Armor Fund, \$4,499, and Highway Pedestrian Safety, \$14,688. Confiscation distributions through the Somerset County Prosecutor's Office from seizures is not listed in the Grant column. Such sums will vary, of course, from year-to-year but are in addition to those noted above.

The PBA submits that the cost of police services in North Plainfield is a small fraction of the Tax Levy. When one considers the significant offsets from monies generated as noted above, the net impact is even smaller. The PBA contends that taxes in North Plainfield are not driven by law enforcement services. The vast majority of the Tax Levy is for schools and County taxes. Cumulatively, this totals 74% of the Tax Levy. (P-17, Sheet 17).



The Budget documents for the last three years are in evidence. The Budgets are sequentially 2006 (B-7), 2007 (P-18) and 2008 (P-17). The PBA contends that these Budgets are conservative and contain built-in flexibility which is the product of a conservative approach. The PBA cites the testimony of Borough Auditor David Morrison under cross examination. Morrison was asked to explain various issues and in particular the Line Item entitled "Interest on Investments and Deposit" which appears near the bottom of *Sheet 4* on each sequential Budget. According to the PBA, the Borough has an apparent policy of significantly underestimating the amount of money which will be realized through interest on investments and deposits. While this is certainly proper, it does reflect the conservative approach and an annual reserve which has been growing each year. In 2005 there was no amount of money anticipated to be received in this category. The amount realized for that year was \$60,000. Notwithstanding the amount of \$60,000 realized in 2005, the Municipality anticipated only \$50,000 in 2006. The amount actually realized in 2006 was \$219,220. Having realized \$219,220 in 2006, the Borough nonetheless anticipated only \$150,000 in 2007. The amount actually realized in 2007 was \$251,957. Notwithstanding the amount of \$251,957 having been realized in 2007, the amount anticipated in 2008 is only \$175,000.

The PBA submits that the trend is clear. This Borough has as a sort of "cookie jar" derived from the underestimating of anticipated revenues from investments and deposits. There is nothing wrong with a conservative budget. Conservatism however must be recognized when the municipality is saying that they are living on a tight budget. The PBA contends that the budget is nowhere near as tight as the Borough claims.

On the subject of extraordinary aid, Morrison suggested that the Borough was unique and had to apply for such aid. Morrison acknowledged that the Borough was one of 310 towns that asked for more money from the State. Morrison acknowledged that North Plainfield received \$500,000 in extraordinary aid in 2008, double the amount of State money received in 2007. This amount is also reflected on *Borough Exhibit B-26*.

Another point of conservative budget planning is a review of surplus balances. On the 2008 Budget (*P-17*) at *Sheet 39* there is a line stating the "Surplus Balance January 1" of the years 2007 and 2006. The amount for 2006 is \$993,922. The amount for 2007 is \$1,081,997. On the same page is a box captioned "Proposed Use of Current Fund Surplus in 2008 Budget." Here the amount of surplus anticipated is only \$237,000. The line below shows that the planned "Surplus Balance Remaining" for 2008 is \$516,763. The PBA submits that the Surplus Balances remaining will continue to grow and exist in the future.

The PBA notes that there was much discussion at hearing about the alleged high tax rate within the Borough. According to the PBA, while the taxes may be high, the "County Equalization Ratio" is very low. P-25 is the "Somerset County 2007 Abstract of Ratables." This statutorily required document is prepared annually by counties across the State. On the third page of this document there is a column, number 7, which is captioned "General Tax Rate per \$100." Here, the admittedly high appearance of the North Plainfield Borough Tax Rate is stated at \$5.52. The column immediately to the right however, column eight, is captioned "County Equalization Ratio." Here the ratio between assessed and actual value is 45.89%. This, the Effective Tax Rate in North Plainfield in 2007 consistent with this county-prepared schedule is \$2.53. This number brings the tax rate very much in line with other tax rates in the County. The PBA submits that the tax rate in numerous Somerset County municipalities is higher than the tax rate in North Plainfield.

The PBA provided the following general observations are appropriate in reviewing the finances of the Borough of North Plainfield:

1. The Results of Operations (AFS, Sheet 19, *P-19*) shows the 2007 Year End Result of Operations to be \$171,765. This is an important calculation because it indicates the ability to regenerate surplus.
2. Unexpended Balance of Appropriation Reserves (AFS Sheet 19)

YEAR CANCELLED	FROM/YEAR	AMOUNT
2007	2006	\$242,358
2006	2005	\$247,903

The Borough continues to have excess budget appropriations. This affords them a certain amount of budget flexibility. Any agency would have negative numbers if there were serious financial problems.

3. Fund Balance (2006, 2007 AFS Sheet 21) (*P-19*)

YEA R	BALANCE 12/31	UTILIZED	PERCENT
2007	\$753,763	\$500,000	66.33%
2006	\$1,063,954	\$500,000	46.99%

The Borough continues to maintain its Fund Balance and utilize above fifty percent (50%) to reduce the Tax Levy.

4. Tax Rates (2006, 2007 County Tax Rate Certification (*P-23*))

YEAR	MUNICIPAL	COUNTY	SCHOOL	TOTAL
2007	1.483	.74	3.296	5.520
2006	1.358	.69	3.122	5.170

The Tax Rate had a nominal increase from 2006 to 2007. This is recommended by rating agencies and considered sound financing.

Looking at the Tax Rate historically, the Borough enjoyed a flat Tax Rate for a number of years.

YEAR	MUNICIPAL	COUNTY	SCHOOL	TOTAL
2002	.95	.50	2.15	3.60
2001	.92	.49	1.92	3.33
2000	.89	.49	1.90	3.28
1999	.88	.47	1.91	3.26
1998	.85	.50	2.00	3.35
1997	.89	.51	2.03	3.43

Source: Preliminary Official Statement dated July 15, 2003 (P-24)

5. Tax Levy (2006, 2007 AFS Sheet 17) (P-19)

YEAR	AMOUNT	% FOR MUNICIPAL
2007	\$45,894,734	26.2%
2006	\$43,296,158	26.1%

Although the dollar amount of the Tax Levy has increased, only twenty-six percent (26%) of the Tax Levy is for Municipal purposes.

6. The Tax Collection rate has been significantly high (P-19, Sheet 22) and the most recent year reported (2007) was 96.32%.
7. Property Values (2006, 2007 County Tax Rate Certification 19) (P23)

YEAR	AMOUNT
2007	\$1,830,286,311
2006	\$1,616,739,184

8. Debt Service (2006 Report of Audit) (B-2)

<b>EQUALIZED VALUATION BASIS</b>	<b>DECEMBER 31</b>	\$1,790,020,631
<b>EQUALIZED VALUE</b>	3.5%	\$62,650,722
<b>NET DEBT</b>	0.73%	\$13,010,183
<b>REMAINING BORROWING POWER</b>		\$49,640,539

North Plainfield Borough is well below the statutory debt limit and has more than sufficient borrowing power remaining. This is a clear indication of a sound financial condition.

9. Cash Balances (AFS Sheet 9) (P-19)

<b>FUND</b>	<b>BALANCE AS OF 12/31</b>
<b>CURRENT FUND</b>	\$2,154,881
<b>CAPITAL FUND</b>	\$2,194,707
<b>TRUST FUND</b>	N/A

The PBA submits that the above chart shows that the Borough has an excellent cash position.

According to the PBA, the above analysis and data shows that the Borough is not a poor town and certainly not one that is unable to afford a reasonable wage increase consistent with the comparability standards set forth in this case.

**Continuity and Stability of Employment**

The PBA submits that an analysis of this criterion suggests reliance on the private sector concepts of “prevailing rate” and “area standards.” The PBA submits that both concepts strongly support an award of its last offer. The PBA contends that the Borough’s

last offer cannot be sustained under these standards. Comparability data does not favor the Borough's proposal. The PBA cites the testimony of the Borough Administrator that none of the other bargaining units in the Borough have completed negotiations. The PBA notes that Borough exhibits include comparisons with other Police Departments which enjoy retiree medical benefits, a significant benefit not enjoyed by the Borough's police officers. The PBA submits that the Borough's last offer cannot be sustained by either internal or external comparisons.

The PBA cites two issues under this criterion. First, the PBA cites its issue requesting additional Union Business leave. The current language limits the number of officers who may attend State PBA Conventions. There are 44 officers in the bargaining unit which is important under the revised statute. The law has changed since this contract language was included in the Agreement in prior years. N.J.S.A. 40A:14-177 provides a percentage of PBA members as the statutorily entitled group who attend conventions. The PBA maintains that the 10% rule should be included in the CBAs or in the alternative, the statute and its provisions should be referenced in the Union Business Article.

The second component of the Union Business proposal is in circumstances where the State PBA Delegate is elected to State Position that additional time should be provided without loss of compensation so that the Delegate can fulfill State PBA duties. In fact, the State Delegate has been elected to the Executive Board of the State PBA. The PBA requests that the CBA be modified to provide for additional time under the statute.

The PBA requests that its last offer be awarded.

### **BOROUGH POSITION**

The following are the Borough's arguments and contentions in support of the statutory criteria. References to "PBA" shall include both the PBA and the PBASO except when a proposal is not applicable to both bargaining units.

### **Duration of Agreement**

The PBA proposes a five-year contract effective January 1, 2008 through December 31, 2012. The Borough proposes a four-year contract effective January 1, 2008 through December 31, 2011. The Borough notes that a review of the CBAs submitted by the PBA show eight agreements with a three-year duration; eleven agreements with a four-year duration; six agreements with a five-year duration; and two agreements with a six-year duration. The Borough submits that a large majority of the CBAs submitted by the PBA are four years in length, with the next largest group being three years. The Borough maintains that the comparability data favors its proposal for a four-year CBA.

### **Salaries**

### **Cost-Out of PBA Salary Proposal**

The PBA proposed a 5% across-the-board wage increase effective January 1 of each year. As of December 31, 2007, there were 44 active police officers and superior officers including one Corporal, nine Sergeants, three Lieutenants, one Captain and thirty officers.

A 5% increase for each of the five years as proposed by the PBA produces the following dollar increases for entry level officers and maximum step officers:

In 2008, a 5% increase produces an increase of \$1,863 for entry level officers and an increase of \$4,137 for police officers at the maximum salary increasing the maximum salary to \$86,877. The six officers serving in the Detective Bureau are also entitled to a

detective differential of 3% of base pay, which equates to an additional \$2,606 for a total salary of \$89,483.

In 2009, a 5% increase produces an increase of \$1,957 for entry level officers and an increase of \$4,344 for officers at maximum, increasing the maximum salary to \$91,221. The six officers serving in the Detective Bureau will receive an additional \$2,737 for a total salary of \$93,958.

In 2010, a 5% increase produces an increase of \$2,054 for entry level officers and an increase of \$4,561 for officers at maximum, increasing the maximum salary to \$95,782. The six officers serving in the Detective Bureau will receive an additional \$2,873 for a total salary of \$98,655.

In 2011, a 5% increase produces an increase of \$2,157 for the entry level officers and an increase of \$4,789 for officers at maximum increasing the maximum salary to \$100,571. The six officers serving in the Detective Bureau will receive an additional \$3,017 for a total salary of \$103,588.

Finally, in 2012, a 5% increase results in an increase of \$2,265 for entry level officers and an increase of \$5,029 at maximum, increasing the maximum salary to \$105,600. The six officers assigned to the Detective Bureau will receive an additional \$3,168 for a total salary of \$108,768.

The Borough calculates the total dollar increase as \$22,860 for top-step officers, raising the top-step officer's salary from \$82,740 to \$105,600 by the end of the CBA for a total percentage increase of 27.63% or an annual percentage increase of 5.53% per year.

In 2008, a 5% increase for Sergeants produces a dollar increase of \$4,758 for a total salary of \$99,910. The Sergeant assigned to the Detective Bureau would be entitled to an additional \$2,997 detective differential for a total salary in 2008 of \$102,907.



In 2009, a 5% increase for Sergeants produces a \$4,996 increase for a total salary of \$104,906. The Sergeant assigned to the Detective Bureau would receive an additional \$3,147 for a total salary of \$108,053.

In 2010, a 5% increase for Sergeants produces an increase of \$5,245 for a total salary of \$110,151. The Sergeant assigned to the Detective Bureau would receive an additional \$3,305 for a total salary of \$113,456.

In 2011, a 5% increase for Sergeants produces an increase of \$5,508 for a total salary of \$115,659. The Sergeant assigned to the Detective Bureau would receive an additional \$3,470 for a total salary of \$119,129.

In 2012, a 5% increase for Sergeants produces an increase of \$5,783 for a total salary of \$121,442. The Sergeant assigned to the Detective Bureau would receive an additional \$3,643 for a total salary of \$125,085.

The total dollar increase for Sergeants is \$26,290, raising the Sergeant's salary from \$95,152 to \$121,442 for a total percentage increase of 27.63% or an annual percentage raise of 5.53% per year.

In 2008, a 5% increase for Lieutenants produces a dollar increase of \$5,378 for a total salary of \$112,941. The Lieutenant assigned to the Detective Bureau would be entitled an additional \$3,388 detective differential for a total salary of \$116,329.

In 2009, a 5% increase for Lieutenants produces an increase of \$5,647 for a total salary of \$118,588. The Lieutenant assigned to the Detective Bureau would receive an additional \$3,558 for a total salary of \$122,146.

In 2010, a 5% increase for Lieutenants produces an increase of \$5,929 for a total salary of \$124,517. The Lieutenant assigned to the Detective Bureau would receive an additional \$3,736 for a total salary of \$128,253.

In 2011, a 5% increase for Lieutenants produces an increase of \$6,226 for a total salary of \$130,743. The Lieutenant assigned to the Detective Bureau would receive an additional \$3,922 for a total salary of \$134,665.

In 2012, a 5% increase for Lieutenants produces an increase of \$6,537 for a total salary of \$137,280. The Lieutenant assigned to the Detective Bureau would receive an additional \$4,118 for a total salary of \$141,398.

The total increase is \$29,717 for Lieutenants, raising the Lieutenant's salary from \$107,563 to \$137,280 or a total percentage increase of 27.63% over five years for an annual percentage raise of 5.53% per year.

In 2008, a 5% increase for Captains produces an increase of \$6,540 for a total salary of \$137,341. In 2009, a 5% increase for Captains produces an increase of \$6,867 for a total salary of \$144,208. In 2010, a 5% increase for Captains will produce a dollar increase of \$7,210 for a total salary in 2010 of \$151,418. In 2011, a 5% increase for Captains produces an increase of \$7,571 for a total salary of \$158,989. In 2012, a 5% increase for Captains produces an increase of \$7,949 for a total salary of \$166,938.

The proposed total dollar increase for Captains is \$36,137 raising the Captain's salary from \$130,801 to \$166,938 for a total percentage increase of 27.63% or an annual percentage raise of 5.53% per year.

The Borough submitted the following salary schedule to illustrate the effect of the PBA's proposed salary increases:

<b><u>Police Officer</u></b>						
<b><u>Step</u></b>	<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>	<b><u>2012</u></b>
Pre-Academy	\$34,226	\$35,937	\$37,734	\$39,621	\$41,602	\$43,682
Academy	37,268	39,131	41,088	43,142	45,299	47,564

Class F (12-24 mos.)	45,101	47,356	49,724	52,210	54,821	57,562
Class E (24-36 mos.)	52,616	55,247	58,009	60,909	63,954	67,152
Class D (36-48 mos.)	60,133	63,140	66,297	69,612	73,093	76,748
Class C (48-60 mos.)	67,650	71,033	74,585	78,314	82,230	86,342
Class B (60-72 mos.)	75,165	78,923	82,869	87,012	91,363	95,931
Class A (Greater than 72 mos. - Max)	82,740	86,877	91,221	95,782	100,571	105,600
Class A/CID (With Detective Differential)	85,222	89,483	93,958	98,655	103,588	108,768
Corporal	88,946	93,393	98,063	102,966	108,114	113,520

**Sergeant**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Sergeant	\$95,152	\$99,910	\$104,906	\$110,151	\$115,659	\$121,442
Sgt/CID	98,007	102,907	108,053	113,456	119,129	125,085

**Lieutenant**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Lt.	\$107,563	\$112,941	\$118,588	\$124,517	\$130,743	\$137,280
Lt./CID	110,790	116,329	122,146	128,253	134,665	141,398

**Captain**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Capt.	\$130,801	\$137,341	\$144,208	\$151,418	\$158,989	\$166,938

The Borough calculates the cost of the PBA's proposal for step increases to be an additional \$510,761 over five years. The Borough submits that if the PBA's salary proposal is awarded, the Borough will have to come up with significantly greater new funding to pay for these increases.

## **Other PBA Proposals**

### **Union Business**

With regard to Article III (Union Business), the PBA has a three-part proposal. The first proposal is to replace language referring to State and Regional meetings with a reference to “any Union business.” Article III in the PBASO agreement relates solely to leave for members of the PBASO Negotiating and PBASO Grievance Committees – there is no reference in the PBASO Agreement to State and Regional meetings. Accordingly, it is assumed that this proposal relates solely to the PBA Agreement. Article III, Section 2 of the current PBA Agreement reads as follows:

“The Borough grants the PBA delegates leave from duty, with full pay, for twenty-four (24) hours for all membership meetings of the State and Regional PBA bodies when such meetings occur during the concerned delegates’ scheduled work day. The 24-hour period shall be chosen by the Delegates as to be most convenient to the hours they work . . . The Borough also grants the executive delegates and three (3) additional delegates leave from duty, with full pay, to attend the State PBA Annual Convention.”

If “State” and “Regional meetings” are replaced with “any Union business” then the Borough would be required to grant PBA delegates leave with pay for twenty-four hours for “any Union business.” The Borough opposes the PBA proposal.

A review of the 31 comparison agreements submitted by the PBA reveals that the current provision regarding time off for Union Business for North Plainfield police officers is already quite generous when compared to similar provisions in other jurisdictions. Several of the agreements submitted by the PBA, including the agreements for Bernards Township (P-7, Nos. 2, 3, 4 and 5), Somerville (P-9, No. 18) and Springfield (P-9, No. 20) do not include any provision at all regarding time off for Union business. The Agreement between the Spotswood and PBA Local 225 (P-9, No. 19) provides that “each representative will be expected to perform his/her duties as a representative of the Association on his/her own

time.” A number of the 31 comparable Agreements submitted by the PBA do include a provision allowing a specified number of delegates to attend the PBA State Convention and/or the Mini Convention and some Agreements also permit attendance at monthly meetings at the State, County and/or local levels, all of which are currently permitted for North Plainfield officers in accordance with Article III of the current Agreement.

However, of the 31 agreements submitted by the PBA, only four Agreements include language authorizing paid time off to conduct PBA business. Article III of the Agreement between Piscataway and PBA Local 93 (P-8, No. 15) provides for time off for the Legislative State Delegate of the New Jersey State PBA to “conduct Association business on the State or local level and to attend monthly Conference meetings which require their attendance.” That Agreement further grants the President and Recording Secretary time off “to conduct Association business as required by the Association and the Administrative Officials of the Township.”

Article 14 of the Agreement between the Franklin Township and PBA Local 154 (P-7, No. 6) has similar language allowing time off with pay “to the Legislative State Delegate of the New Jersey PBA or his/her designee, to conduct PBA business on the state or local level and to attend monthly state and/or county conferences or scheduled tri-county conference meetings which require their attendance.” The Agreement also provides that the PBA President shall have ten paid days off per year for Association business.

Article XXIX of the Agreement between New Brunswick and PBA Local 23 (P-11) grants time off without loss of pay to the legislative state delegate of the New Jersey State PBA “to conduct association business on the state or local level and to attend monthly state, county conference, and scheduled tri-county meetings which require their attendance.” The New Brunswick agreement also grants paid time off to the President and Recording Secretary

“to conduct Association business as required by the Association and the administrative officials of the employer.” In the Agreement between the Borough of South Plainfield and PBA Local #100 (P-13), Article III allows “time off when needed to conduct any PBA business as required.”

Thus, of the thirty-one agreements submitted by the PBA, these are the only four agreements that include language authorizing paid time off for unspecified Union business. The Borough maintains that the current language in Article III is more than fair in allowing time off for Union Business. Moreover, the PBA has submitted no documentation regarding the potential financial impact of this proposal. Accordingly, the Borough requests that the Arbitrator deny the PBA’s proposal.

The second proposal by the PBA with regard to Article III – Union Business includes a reference to N.J.S.A. 40A:14-177 with regard to leave for attendance at state or national conferences. This portion of the PBA proposal was agreed to in concept by the Borough during the negotiations process. (See Borough’s last offer).

The third portion of the PBA proposal relates to Article III – Union Business provides as follows:

“In the event the Delegate is elected or appointed to a full time position within the State PBA then the Borough agrees to grant said Delegate full release without loss of compensation for as long as the position is held so as to fulfill duties of said position (with State PBA reimbursement of said Delegate’s cost to Borough).”

The Borough requested clarification with regard to this proposal; however, no such clarification was ever forthcoming from the PBA. The Borough objects to inclusion of such a provision absent language guaranteeing reimbursement of the salary of the officer in question from the PBA. For obvious reasons, the Borough cannot agree to commit taxpayers’ funds to pay for an officer who is not working in the Borough. The Borough notes

that not a single agreement submitted by the PBA includes a similar provision. Therefore, the Borough requests that the Arbitrator deny the PBA's proposal.

### **Acting Assignments**

With regard to Article IV, Acting Assignments, the PBA is proposing that "all work in a higher rank be paid at the rate of the higher rated position." Currently, Article IV, Acting Assignments of both the PBA and PBASO Agreements read as follows: "Acting assignments shall be made by the Chief of Police." The Borough contends that the PBA offered no rationale for this proposal nor did they provide any documentation or information with regard to the potential financial impact of this proposal. The PBA did indicate, during the negotiations process, that they are seeking to be paid at the higher pay rate when temporarily assigned to a higher rank from "minute one" of the temporary assignment. Provisions related to temporary or acting assignments to a higher rank are not included in approximately one-half of the Agreements submitted by the PBA. In those agreements where such a provision is present, many require that the acting assignment be of a specified duration before the officer is entitled to the higher rate of pay. For example, in the Agreement between the City of Plainfield and PBA Local 19(P-16), an officer is entitled to be paid at the higher rate only when "such assignment exceeds twenty-five (25) hours within a two (2) week period." In the Agreement between the Township of Warren and PBA Local 235 (P-9), Article XVII, Work in Higher Rank, provides as follows:

"When a patrol officer is in charge for half a shift or more when a supervisor is not available (working), he or she shall receive additional compensation equal to one and one-half (1.5) hour's pay at his or her overtime rate. For the Officer to earn the extra pay referred to herein, the Officer must complete the assignment to the satisfaction of the Chief of Police or his designee."

In Warren, an officer must serve at the higher rank for at least half of the shift. However, the officer is not entitled to the rate of pay of the higher rank, but the officer is entitled to compensation at the regular overtime rate.

Article XIV. Acting Senior Officer, of the Agreement between the Township of Monroe and PBA Local 255 (P-8) provides that any officer assigned by the Chief of Police or the Director of Public Safety to the duties of a senior officer “for any workday” shall be compensated at the senior officer’s base rate of pay.

Similarly, the agreement between the Borough of Somerville and PBA Local 147 (P-9) provides, at Article VI (B), that “any officer assigned or required by regulations to assume the duties and responsibilities of an officer of a higher rank for two consecutive hours or more shall be compensated for those hours at the rate of the higher rank as if he were assigned permanently to that position . . .”

The Agreements between the State of New Jersey and the State Troopers, Trooper and Sergeants’ Units, (P-9) provide that officers assigned to a higher rank in an acting capacity, “the member will be entitled to receive the rate of pay of the higher rank upon completion of eight bi-weekly pay periods of continuous service.”

Finally, in the CBAs between Bernards Township and PBA Local 357, both the Police Officers and Supervisors’ CBAs include the following provision, which is quite similar to that currently in the North Plainfield agreements:

“Article 5 – Flexibility of Assignment – Patrol Officers, regardless of regular assignment, may be reassigned by the Chief of Police to perform any duty related to their profession as Patrol Officers.”

Of the thirty-one agreements submitted by the PBA, only two, the agreements between the PBA and South Plainfield (P-13) and Watchung (P-9) include language similar to the PBA proposal. Accordingly, the Borough requests that the Arbitrator deny the PBA’s proposal.



### **Hours of Work**

The PBA is proposing a modification to Article VI, Hours of Work, by deleting all references to the seventy-two (72) hour “pay back” provision. The “pay back” provision, which the PBA is proposing to delete, relates to those officers working the 4 x 4 schedule as outlined in Article VI, Section 1(a) of the PBA and PBASO agreements. Thirty-six of the forty-seven officers in the Department work the 4 x 4 schedule. Pursuant to that schedule, the officers work four 11-hour days and then have four days off. In accordance with Article VI, Section 2, all employees of the Department are required to work 2080 hours per year. Those officers working the 4 x 4 schedule, by virtue of the schedule, fall short of the requisite 2080 hours per year by an average of 72 hours per year. The “pay back” provision that the PBA/PBASO seeks to delete is the requirement that those officers working the 4 x 4 schedule make up the 72 hours so as to work the requisite 2080 hours per year. Article VI, Section 2 sets forth how the hours are to be made up. Article VI, Section 2 provides that the officers working the 4 x 4 schedule will make up the 72 hours by completing in-service training, filling in during manpower shortages, during Borough-wide emergencies and/or as otherwise mutually agreed.

Given that each officer must receive approximately sixty hours of mandatory training each year, the majority of the seventy-two hours are currently made up by the officers attending such mandatory training. This proposal would result in a seventy-two-hour reduction in the work hours during each work year for a majority of the officers. Using the Class A officer’s salary as a basis for the hourly rate (as the majority of officers are in that category), the Borough calculates the cost of this proposal as \$598,234 over five years.

Moreover, in comparable municipalities, the relevant contracts provide for an adjustment when officers work more or less than 2080 hours in a year. Thus, in Bernards

Township, the officers work 2,184 hours per year and are given 110 hours of comp time to make up for the fact that they are working more than 2080 hours. Bound Brook has a schedule similar to that in Bernards Township. The Bound Brook officers also work 2184 hours per year and they are given nine compensatory days or 108 compensatory hours to make up for the additional hours they work beyond 2080 hours in a year. Similarly, in Manville, the officers work twelve-hour shifts and are given "nine (9) compensatory vacation days in lieu of monetary reimbursement for the additional four (4) hours scheduled during the regular two (2) week rotations." (B-10, Article V, page 6). In North Plainfield, the reverse is true, i.e., the officers work approximately seventy-two hours less than 2080 hours each year. Accordingly, the Borough submits that requiring those officers to make up the seventy-two hours is consistent with the practice in other municipalities with a 2080-hour schedule.

#### **Longevity**

With regard to Article X (Longevity), the PBA is proposing to modify this provision by deleting the "grandfather" provisions covering officers hired after July 1, 1994. The Borough opposes this proposal since it will significantly add to the Borough's operational costs. Moreover, this longevity proposal adds significantly to the PBA's already excessive salary proposals by providing more officers with longevity payments sooner.

Currently, thirty officers were hired after July 1, 1994. If this proposal is granted, twelve officers will immediately become entitled to longevity payments at the ten-year rate of 4% of base salary. None of these officers would be entitled to any longevity payments under the current provision. In addition, eight officers would immediately be eligible for longevity payments at the five-year rate of 2% of base salary.

Looking at the longevity payments to police officers in 2007, the final year of the existing agreement, the total cost to the Borough for longevity payments was \$90,076. The cost of the longevity under the PBA proposal in 2007 would be \$47,121. This is more than the actual cost of longevity for 2007 under the existing language. This represents a 52% increase. The Borough calculates the cost of longevity for the years 2008 through 2012, based upon the PBA's proposal is as follows:

2008	\$145,376
2009	\$173,173
2010	\$192,193
2011	\$214,112
2012	\$238,039

While many of the comparison municipalities offered by both the PBA and the Borough provide for longevity payments, there are some municipalities, including Green Brook, South Bound Brook and the Somerset County Prosecutor's Office which do not provide for any longevity whatsoever. Many municipalities are recognizing that longevity, especially when it is a percentage of salary, causes salaries to escalate at a rate which is significantly greater than that of the general population and as a result, the tax burden in these municipalities is spiraling out of control. In fact, a number of municipalities are attempting to pull back on longevity payments. Thus, for example, in Somerville, only those officers hired prior to January 1, 1977 are entitled to longevity, while in South Plainfield, only those officers hired before January 1, 1994 receive longevity pay. Similarly, in Manville, only those officers hired before January 1, 1996 are entitled to longevity and in Scotch Plains, the 2% longevity for those with five to ten years of service was eliminated for those hired after October 1, 2005. Thus, the trend is clearly toward less or no longevity pay.

The Borough asks that the PBA longevity proposal be denied.

### **Clothing Allowance**

The PBA proposes to increase the annual clothing allowances specified in Article XV, Section 1 by \$100 for each year of the contract. Currently, the PBA agreement provides for a \$775 clothing allowance while the PBASO Agreement provides for an \$825 clothing allowance.

The Borough contends that the current clothing allowance is more than sufficient to meet the needs of the bargaining unit. This is especially true for the PBA since the officers are provided with uniforms at the outset of their employment. Moreover, Article XV, Section 2 of both the PBA and PBASO agreements provide that “if clothing or eyeglasses are damaged in the line of duty, normal wear and tear accepted [should be excepted] an additional allowance for same will be granted by the Chief of Police upon presentation to him of proof of such damage in the line of duty.” Given the fact that the officers are provided with uniforms at the start of their employment and provided reimbursement in the event of damage to clothing in the line of duty, it is respectfully submitted that the current clothing allowances are more than sufficient to allow the officers to maintain and even supplement their uniforms during the course of a year.

The comparative data submitted by the Borough shows that two comparable municipalities, Green Brook and Watchung, have no provision whatsoever in their contracts for clothing or maintenance payments. In both of those municipalities, as is the case in North Plainfield, the municipality provides the uniforms. In the case of Green Brook, the municipality also cleans the uniforms. In Manville, where the uniforms are provided by the Borough (as is the case in North Plainfield), there is a \$650 uniform maintenance payment provided in the contract. Similarly, in Somerset County, the County Prosecutor’s Officers

are provided with uniforms by the County and given a \$500 per year payment for uniform maintenance and in Plainfield, the uniformed employees are provided with uniforms and given a maintenance allowance of \$700. Moreover, in those jurisdictions where both a uniform allowance and a uniform maintenance payment are provided, it is the uniform maintenance payment which is relevant for purposes of comparison here since the Borough of North Plainfield provides the officers with uniforms. The Borough maintains that when compared to other jurisdictions, the current payment of \$775 to PBA officers and \$825 to PBASO officers compares very favorably to the uniform maintenance payments made in comparable jurisdictions. Only two comparable municipalities provide a greater allowance, South Plainfield and South Bound Brook (and in the case of South Bound Brook, there is no indication that the Borough provides the uniforms, thus, the higher uniform allowance is understandable).

The Borough asks that the PBA proposal on increased clothing allowance be denied.

#### **Total Cost**

The Borough calculates the total percentage increase of the PBA economic proposals as 14.2% in 2008, 14.6% in 2009, 14.4% in 2010, 13.5% in 2011 and 13.4% in 2012. The Borough calculates the total percentage increase of the PBASO economic proposals as 9.6% in 2008, 10.1% in 2009, 10.5% in 2010, 10.7% in 2011 and 10.9% in 2012. The Borough describes the PBA and PBASO economic proposals as excessive and asks that such proposals be denied.

## **Borough Proposals**

### **Duration of Agreement**

The Borough is proposing a four-year contract for the period of January 1, 2008 through December 31, 2011.

### **Hours of Work**

The Borough proposes adding the following language to Article VI, Section 2 (Hours of Work), which provides that the minimum call out time for officers shall be compensated with four hours of “extra duty time”:

“The Borough reserves the right to have the officers work the full or entire portion of the “extra duty time.”

This language is being proposed in order to explicitly give the Borough the option of requiring an officer to remain on duty for the entire “extra time” for which he or she is being paid. Since the Borough is already paying the officer for the entire four hours, it would not result in any detriment to the officer by requiring him or her to remain on duty. The proposed change would reduce the Borough’s operational costs and is in accordance with the Borough’s managerial prerogative to call officers in for necessary duty.

Comparing the Borough’s proposed provision with the other CBAs submitted by the Borough reveals that compensation of four hours “extra duty time”, in itself, is very generous when compared with the eleven comparison agreements submitted by the Borough. The Borough notes that only four of the CBAs pay “extra duty time” of at least four hours.

### **Vacations**

With regard to Article VIII (Vacations), the Borough proposes restricting carryover days, as set forth in Section 2, to those approved in writing by the Chief of Police for business necessity only, and that such days shall only be carried over into the next succeeding

year. The failure to use such days will result in the loss of such carryover time. The Borough further proposes that all existing carryover vacation for anyone hired before January 1, 2008 shall be redlined as to the amount, days and monetary value, as of December 31, 2007. A review of the 11 comparable CBAs submitted by the Borough shows that eight of the CBAs prohibit the carry over and/or accumulation of vacation days. The only exceptions are if an officer, because of illness or other emergency, cannot take his or her scheduled vacation, or if the vacation cannot be scheduled because of Borough demands. For example, Article XV, Section 1(B) of the Agreement between Scotch Plains and PBA Local 87 (B-11) states that vacation days are to be used in the calendar year in which they accrued. That Section further provides:

“If an Employee is unable to take his vacation within the calendar year in which it accrued due to extended illness or injury, or because the Employer cannot permit the Employee to take his vacation due to the needs of the Department, then the Employee can carry over his vacation entitlement into the next succeeding calendar year only . . . The Chief of Police shall have the discretion to determine whether such illness or injury was of a nature to permit the Employee to accumulate vacation days not actually used.”

The CBAs of Bound Brook (B-18), Green Brook (B-15), Somerville (B-19), South Plainfield (B-20) and Watchung (B-12) have almost identical provisions as Scotch Plains, and South Bound Brook (B-22) is silent as to carry over, which typically indicates that no such carry over and/or accumulation is permitted. Even stricter is the CBA between the Borough of Manville and PBA Local 36 (B-10) which provides, in Article X, Section (E), that “Police Officers may not accumulate vacations without the permission of the Mayor and Council.” The Borough’s proposal in this respect is the same as the majority of other municipalities and therefore, more than fair in restricting the carrying over of unused vacation time.

### **Leaves of Absence**

With regard to Article IX (Leaves of Absence), the Borough proposes a monetary cap on the amount of terminal leave payments. The current CBA provides for terminal leave in accordance with the CBAs between the Borough and the PBA and PBASO from 1976. These terminal leave terms are incorporated into Ordinance No. 659. These CBAs provide for a cap of 180 accumulated sick days. The Borough proposes imposing a monetary cap based on the new sick leave ordinance, Ordinance 8-11. Under the Borough's proposal, any employee who retires that was hired on or before December 31, 2007 cannot receive payment in excess of the calculated amount (i.e., the amount under the previous Borough sick leave ordinance) as of December 31, 2007. For example, if an employee's sick leave under the previous salary ordinance is valued at \$30,000, the employee could collect no more than \$30,000 at the time of eligibility to receive such payment.

In addition, the Borough proposes that any employee who retires that was hired on or after January 1, 2000 shall not be eligible to receive payment for sick days in excess of \$15,000, as calculated under the previous salary ordinance. The Borough, however, proposes an exception to the above two proposals for employees hired before January 1, 2000 who retire before June 30, 2009. In these cases, the employee shall be entitled to receive payment for terminal leave based on the previous sick leave ordinance calculation with no monetary cap at the employee's daily rate of pay at the time of retirement. The Borough recently adopted an Ordinance providing for the caps proposed by the Borough for non-unionized employees, many of whom are the highest paid employees in the Borough.

A review of the CBAs in other municipalities shows that the Borough's proposal is very much in line with those other municipal CBAs. Of the eleven municipalities, six have imposed a cap on terminal leave, either in the form of a monetary cap or a cap on the number



of days, and one CBA does not mention terminal leave in any manner. For example, the CBA between the Green Brook Township and FOP Lodge 23 (B-15) imposes a \$5,000 cap on the accumulation of 60 days or less accrued sick leave, a \$10,000 cap on the accumulation of 120 days or less accrued sick leave and a \$15,000 cap on the accumulation of 180 days or less accrued sick leave. Similarly, the CBA between the City of Plainfield and PBA Local 19 (B-9) imposes a cap of \$15,000 on any accumulated sick leave payment. Therefore, the two municipalities that border the Borough both impose monetary caps on terminal leave payments.

### **Salary**

The Borough is proposing a 3.4% increase for calendar year 2008, effective March 1, 2008. The Borough's proposed salary increase is not applicable to any employees for 2008 and 2009 who are not on the Borough's active payroll as of the date the award is issued. The Borough proposes a 3.0% increase for 2009 and 2010 and a 3.4% increase for 2011, effective March 1, 2008. The proposed salary increases will produce the following dollar increases for those at entry level police officers and those at the maximum salary:

### **Police Officer**

In 2008, a 3.4% increase produces an increase of \$1,533 for entry level officers and an increase of \$2,813 for officers at maximum salary. In 2009, a 3.0% increase produces an increase of \$1,399 for entry level officers and an increase of \$2,566 for officers at maximum. In 2010, a 3.0% increase produces an increase of \$1,440 for entry level officers and an increase of \$2,643 for officers at maximum. In 2011, a 3.4% increase produces an increase of \$1,682 for entry level officers and an increase of \$3,085 for officers at maximum.

Based on the above numbers, an entry level officer will make \$46,634 in 2008; \$48,033 in 2009; \$49,473 in 2010 and \$51,155 in the final year of the contract. The

proposed dollar increase over the four-year period is \$6,054 for Class F officers (entry level). In addition, a top-step officer will make \$85,553 in 2008; \$88,119 in 2009; \$90,762 in 2010 and \$93,847 in the final year of the contract. The proposed dollar increase over the four-year period is \$11,107 for Class A officers (the top step), compared to the PBA's proposed increase of \$17,831 over this time period.

### **Sergeant**

In 2008, a 3.4% increase produces an increase of \$3,235 for Sergeants and an increase of \$3,109 for Sergeants with less than one year in grade. In 2009, a 3% increase produces an increase of \$2,951 for Sergeants and an increase of \$2,836 for Sergeants with less than one year in grade. In 2010, a 3% increase produces an increase of \$3,040 for Sergeants and an increase of \$2,921 for Sergeants with less than one year in grade. In 2011, a 3.4% increase produces an increase of \$3,548 for Sergeants and an increase of \$3,410 for Sergeants with less than one year in grade.

Based on the above numbers, a Sergeant will make \$98,387 in 2008; \$101,338 in 2009; \$104,378 in 2010 and \$107,926 in 2011. The proposed dollar increase over the four-year period is \$12,774 for Sergeants, compared to the PBA's proposed total dollar demand of \$20,782 over the same time period. In addition, a Sergeant with less than one year in grade will make \$94,551 in 2008; \$97,387 in 2009; \$100,308 in 2010 and \$103,718 in 2011. The proposed dollar increase over the four-year period is \$12,276 for Sergeants with less than one year in grade.

### **Lieutenant**

In 2008, a 3.4% increase produces an increase of \$3,657 for Lieutenants and an increase of \$3,554 for Lieutenants with less than one year in grade. In 2009, a 3% increase produces an increase of \$3,336 for Lieutenants and an increase of \$3,243 for Lieutenants

with less than one year in grade. In 2010, a 3% increase produces an increase of \$3,436 for Lieutenants and an increase of \$3,340 for Lieutenants with less than one year in grade. In 2011, a 3.4% increase produces an increase of \$4,011 for Lieutenants and an increase of \$3,899 for Lieutenants with less than one year in grade.

Based on the above numbers, a Lieutenant will make \$111,220 in 2008; \$114,556 in 2009; \$117,992 in 2010 and \$122,003 in 2011. The proposed dollar increase over the four-year period is \$14,440 for Lieutenants, compared to the PBA's proposed total dollar demand of \$23,180 over the same time period. In addition, a Lieutenant with less than one year in grade will make \$108,106 in 2008; \$111,349 in 2009; \$114,689 in 2010 and \$118,588 in 2011. The proposed increase over the four-year period is \$14,036 for Lieutenants with less than one year in grade.

#### **Captain**

In 2008, a 3.4% increase produces an increase of \$4,447 for Captains and an increase of \$3,730 for Captains with less than one year in grade. In 2009, a 3% increase produces an increase of \$4,057 for Captains and an increase of \$3,403 for Captains with less than one year in grade. In 2010, a 3% increase produces an increase of \$4,179 for Captains and an increase of \$3,505 for Captains with less than one year in grade. In 2011, a 3.4% increase produces an increase of \$4,878 for Captains and an increase of \$4,091 for Captains with less than one year in grade.

Based on the above numbers, a Captain will make \$135,248 in 2008; \$139,305 in 2009; \$143,484 in 2010 and \$148,362 in 2011. The proposed dollar increase over the four-year period is \$17,561 for Captains, compared to the PBA/PBASO's proposed total dollar demand of \$28,188 over the same time period. In addition, Captains with less than one year in grade will make \$113,444 in 2008; \$116,847 in 2009; \$120,352 in 2010 and \$124,443 in

2011. The proposed dollar increase over the four-year period is \$14,729 for Captains with less than one year in grade.

### **Compounding**

In addition, since each percentage raise is based on a percentage from the previous year, there is a compounding effect for 2009, 2010 and 2011. The compounded percentage increase of the Borough's salary proposal for maximum step officers is 13.42%, as compared to the 21.57% increase pursuant to the PBA's salary proposal.

The total compounded percentage increase for Sergeants is 13.86% as compared to the 21.57% increase pursuant to the PBA's proposal. The total compounded percentage increase for Lieutenants and Captains is 13.4% as compared to the 21.57% increase pursuant to the PBA's proposal.

Since not all of the police personnel are at the top step of the salary guide, the arbitrator must also take into account the additional costs incurred by the Borough in the step increases received by bargaining unit members as they move through the salary guide. Under the Borough's proposal, the salary guides for all employees hired on or before December 31, 2007 would be as follows:

<b><u>Police Officer</u></b>					
<b><u>Class</u></b>	<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>
F	\$45,101	\$46,634	\$48,033	\$49,473	\$51,155
E	\$52,616	\$54,404	\$56,036	\$57,717	\$59,679
D	\$60,133	\$62,177	\$64,042	\$65,963	\$68,205
C	\$67,650	\$69,950	\$72,048	\$74,209	\$76,732
B	\$75,166	\$77,721	\$80,052	\$82,453	\$85,256
A	\$82,740	\$85,553	\$88,119	\$90,762	\$93,847

### **Sergeant**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Sergeants	\$95,152	\$98,387	\$101,338	\$104,378	\$107,926
< 1 yr grade	\$91,442	\$94,551	\$97,387	\$100,308	\$103,718

### **Lieutenant**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Lieutenants	\$107,563	\$111,220	\$114,556	\$117,992	\$122,003
< 1 yr grade	\$104,552	\$108,106	\$111,349	\$114,689	\$118,588

### **Captain**

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Captains	\$130,801	\$135,248	\$139,305	\$143,484	\$148,362
< 1 yr grade	\$109,714	\$113,444	\$116,847	\$120,352	\$124,443

### **Incremental Costs**

The Borough calculates the incremental costs under its proposal as \$383,135, compared to the PBA's proposal of \$441,184 over the same four-year period. The Borough calculates the total cost of its salary proposal as \$558,982 not including longevity pay. The Borough calculates the cost of the PBA's proposal as \$1,559,703 which is \$1,000,721 more than the cost of the Borough's proposal.

The Borough asks that its last offer on salaries be awarded.

### **Overtime Payments**

The Borough proposes the inclusion of language which states that overtime shall be hours actually worked in excess of a daily or weekly schedule. The current CBA defines "overtime" as any time worked in excess of eight hours in one calendar day or forty hours in one calendar week, provided, however, that working in excess of such hours is not considered overtime if it is occasioned by regular shift changes. The Borough submits that

its proposal does not result in any actual significant change in what constitutes overtime and should therefore be adopted. The Borough also proposes that all accrued compensatory time be capped at the employee's hourly rate as of December 31, 2008. This aspect of the proposal is for financial reasons, as accrued compensatory time has been increasing.

For the above reasons, the Borough proposes a cap at the employee's hourly rate as of December 31, 2008 for all accrued compensatory time for on-call credits (Article XII).

#### **Retention of Benefits**

The Borough proposes deleting Article XVII (Retention of Benefits) in its entirety.

The specific language provides:

“All rights and privileges heretofore granted to the members of the PBA [and PBASO], as a matter of practice, are hereby preserved unto them.”

A review of the eleven comparable CBAs in the record indicates that seven of the CBAs do not contain a retention of benefits provision. The Borough asserts that its proposal is supported by the CBAs in the record.

#### **Insurance Plans**

The Borough proposes that, effective January 1, 2008, police officers make annual health insurance contributions as follows: 1% of annual salary for officers making salaries less than \$50,000; 1.5% for salaries between \$50,000 and \$100,000; and 2% for salaries greater than \$100,000. These are the same contributions required by non-union Borough employees. The Borough submits that the financial impact of such contributions on individual officers is minor but would generate significant savings to the Borough.

The Borough notes that other municipalities have adopted similar contribution requirements. For example, the CBA between Somerset County and PBA Local 307 (B-14) provides for a contribution of 1% of salary in excess of the first \$50,000 of annual salary for employees with salaries above \$50,000; a contribution of 1.5% of salary in excess of the first

\$50,000 of annual salary for employees with salaries above \$80,000; and a contribution of 2% of salary in excess of the first \$50,000 of annual salary for employees with salaries above \$100,000.

The Borough calculates its annual health insurance cost for police officers as \$578,583. The Borough asserts that it must take action to contain these costs. According to the Borough, most employees in the private sector contribute to the cost of insurance premiums and in the public sector, the trend is toward employee contributions.

The Borough also proposes that its obligation to pay dental insurance premiums be capped at the rates paid by the Borough as of May 31, 2008 and that all future increases are to be borne by the employees. Of the municipalities that provide dental insurance, several require some sort of contribution by the employee. For example, the CBA between the Borough of Bound Brook and PBA Local 380 (B-18) provides that the Borough's obligation for dental coverage shall not exceed \$40.16 per month per department member. Similarly, the CBA between the City of Plainfield and PBA Local 19 provides for a payroll deduction for dental insurance premiums. The Borough submits that its proposal is consistent with other municipal practices. The Borough contends that employees in the private sector have long been either contributing to, or solely responsible for, dental insurance premiums. With rapidly escalating costs of medical benefits, the public is no longer in a position to bear the entire cost of these benefits. The Borough submits that its proposal is a modest attempt to begin cost containment and asks that it be awarded.

#### **Legal Defense**

The Borough proposes changing Article XXII (Legal Defense) to provide for the assignment of counsel to the employee by the Borough. The current provision provides:

“The affected police officer(s) shall select his/her own counsel to assume sole control of his/her defense and the Borough agrees to assume the full cost of the officer’s legal fees . . . However, should an insurance carrier enter a defense on behalf of the affected employee and furnished counsel as part of that defense, the Borough’s obligation under this provision shall be deemed to have been satisfied, under said circumstances, the affected employee(s) shall have the right to select his or her own counsel at the Borough’s expense.”

The Borough proposes the following provision to be included in the new CBA:

“The Borough shall assign the affected police officer(s) counsel to assure sole control of his/her defense and the officer’s legal fees . . . If the insurance carrier/joint insurance fund provides a defense on behalf of the affected employee, counsel will be assigned as part of that defense and the Borough shall have no monetary obligation to pay legal fees. If the affected employee requests the assignment of his/her own counsel, then the Borough shall have no monetary obligation to pay legal fees.”

The Borough submits that a review of the comparable CBAs in the record indicates that both the current provision and the provision proposed by the Borough are more detailed and protective of employee rights than other CBAs. The CBA between the Township of Scotch Plains and PBA Local 87 (B-11) states that the Township will “provide the necessary means for the defense of any Employee” and “provide for legal expenses connected with the defense of such suits irrespective of outcome.” Similarly, the CBA between Bound Brook and PBA Local 380 (B-18) states, in relevant part, that, “The employer shall provide legal aid to all personnel covered by this Agreement in suits or other proceedings . . . .The attorney selected shall be reasonably satisfactory to the officer.” The CBA between Watchung and PBA Local 193 (B-12) simply states that “The Borough will provide legal aid to all personnel covered by this Agreement to the extent that may be required by law.” In addition, four of the remaining comparable municipal contracts say nothing as to an employee’s legal defense. Under such circumstances, the obligation of the municipality is simply to meet any statutory requirements.



The Borough maintains that its proposal to select an attorney to represent the employee, while continuing to pay legal defense costs, is reasonable and consistent with other municipal CBAs.

**Comparison of the Wages, Salaries, Hours  
and Conditions of Employment**

The Borough submits that its proposals are consistent with the agreements reached and the salary packages provided to police officers in comparable jurisdictions in Somerset County and surrounding, similarly situated municipalities. The Borough submitted 15 CBAs from comparable municipalities/ jurisdictions. A review of the percentage increases provided for in those agreements reveals that not a single agreement includes a raise close to the 5% proposed by the PBA. The Borough points out that none of the CBAs include a percentage increase greater than 4%. Thus, the PBA's salary proposal is clearly not in line with the increases being offered to police officers in surrounding, comparable localities.

Based on the total number of bargaining unit members as of December 31, 2007, including step increases, the Borough estimates that the cumulative increased cost of the PBA's proposal is \$1,559,703, not including longevity. The cumulative increased cost of the Borough's wage proposal is \$558,982. The following is a summary of the salary increases in surrounding, comparable municipalities:

<b><u>Municipality</u></b>	<b><u>Duration</u></b>	<b><u>Average</u></b>
Green Brook (B-15)	2006 – 2009	4%
Bound Brook (B-18)	2004 – 2007	4%
Scotch Plains (B-11)	2005 – 2008	3.75%
Bernards Township	2005 – 2007	4%
(B-16 &17) (P-7, 1–5)	2008 – 2011	3.8%
South Bound Brook (B-22, 23)	2007 – 2009	3.5%
South Plainfield (B-20, 21)	2006 – 2010	3.9%
Plainfield (B-9)	2007 – 2009	3.75%
Manville (B-10)	2005 – 2007	4%

Somerville (B-19)	2006 – 2009	4%
Watchung (B-12)	2006 – 2008	4%
Somerset County Prosecutor's Office (B-13, 14)	2004 – 2006	3.5%

The Borough calculates the average of the above annual increases as 3.8%. However, since many of the 4% increases were negotiated several years ago, and in light of the current economic conditions, that average is higher than what is currently reasonable and realistic and is 1.2% lower than the PBA's salary proposal.

The Borough contends that the above cited settlements are much closer to the Borough's salary proposal. In fact, given the recent turn of events affecting the financial markets and the significant downturn on Wall Street, it is respectfully submitted that the demands by the PBA are unrealistic.

The Borough cites the agreement in Bernards Township at 3.8%, which is less than the 4% increases provided in the previous Bernards Township agreements, as further indication of the downward trend in wage increases. With current economic conditions, wage increases can only be expected to go down further.

The Borough maintains that the CBAs submitted by the PBA do not support their salary proposal of 5% annual increases. According to the Borough, a number of the same agreements submitted by the Borough, including Bernards Township, Manville, South Plainfield, Somerville and the Somerset County Prosecutor's Office, all reflect percentage increases well below the 5% proposed by the PBA. The Borough cites P-12, the 2007-2011 agreement with the Somerset County Prosecutor's Office Detective's Unit which reflects a two-tiered approach to salary increases as follows:

Detectives on steps 1 – 7 receive the following:

2007 – **No Increase** (increased to 37.5 hour workweek)  
2008 – **3.5%**  
2009 – **3.5%**  
2010 – **No increase** (increased to 40 hour workweek)  
2011 – **3.5%**

Detectives on Step 8 and Sergeants receive the following:

2007 – **3.5%** plus an increase to 37.5 hour workweek  
2008 – **3.5%**  
2009 – **3.5%**  
2010 – **4.0%** plus an increase to a 40-hour workweek  
2011 – **3.5%**

The Borough contends that the above agreement is consistent with its salary proposal. As reflected above, those below the maximum step on the salary guide have two years with no increase and an increase in work hours from 35 hours per week to 40 hours per week. With the exception of 2010 when those at the top of the guide will receive 4%, all other increases are 3.5%.

Similarly, the 2004-2007 Franklin Township CBA (P-7) shows an increase of 3.5% and Hillside Superiors (P-7, #7 & #8) entered into a Memorandum of Agreement in May 2008, providing for raises of 3% in 2007, 3.75% in 2008, 4% in 2009 and 2010 and 4.5% in 2011. The Milltown CBA reflects 4% raises for the years 2006 through 2009 (P-7, #10) and East Brunswick agreed to raises of 3.75% in 2007 and 3.9% in 2008. The Spotswood CBA for the period 2007 through 2010 (P-9, #19) reflects 4% increases, as do the agreements with the New Jersey State Police (P-9, #21 & #22). The Mountainside CBA provided for salary increases of 3.75% in 2007; 4% in 2008 and 2009; and, 3.75% in 2010; while Piscataway Township officers received raises of 0.5% in 2002, 3.4% in 2003 and 3.9% in 2004 through 2006.

In addition to the various CBAs, the PBA submitted an interest arbitration award issued by Arbitrator James W. Mastriani in the matter of the Somerset County Sheriff's Office and FOP Lodge 39. The Award provides for raises of 3.5% for those on Steps 1-10 and 4% for those on Step 11 for 2005, 2006 and 2007.

Thus, the Borough asserts that the evidence submitted by both the Borough and the PBA overwhelmingly supports the Borough's salary proposal. Coupled with the recent turn of events in the financial markets and the dire economic conditions predicted to continue for the foreseeable future, the Borough submits that its proposed salary increases are clearly the more reasonable and should be awarded.

The Borough submits that one of the major objectives of interest arbitration is to allow employees to remain in relative standing to that of comparable jurisdictions. The Borough asserts that its proposal would continue that standing. For example, the Borough's maximum salary in 2007 was \$82,740; a figure which was well within the range for top step police officers in the comparable municipalities selected by the Borough. The salaries of the comparable municipalities reflect that the top step officers' salaries ranged from \$78,045 in Plainfield to \$88,057 in Manville in 2007. Similarly, the salaries of sergeants in comparable municipalities for the year 2007 ranged from \$84,374 in Bound Brook to \$103,445 in Manville. North Plainfield's sergeant's salary for 2007 was \$95,152, again, well within the range for comparable municipalities. Similarly, the top step lieutenants' salaries range from \$93,213 in Bound Brook to \$107,952 in South Plainfield. The top step lieutenant's salary in North Plainfield for that same year was \$107,563.

Furthermore, the comparable data submitted by the PBA provides further support regarding comparability. Top step patrol salaries range from a low of \$74,068 for Somerset County Sheriffs' Officers to a high of \$93,687 for a Senior Patrolman (a title that does not

exist in North Plainfield) in Franklin Township. North Plainfield's top step salary falls right in the middle of the comparables provided by the PBA. Moreover, in North Plainfield, a police officer reaches the maximum step on the guide after only six years which is less than comparable municipalities. Looking at the comparable data submitted by the PBA for Sergeants, Lieutenants and Captains reveals a similar result. For each of these positions, North Plainfield's salary for calendar year 2007 was well within the range of the comparable municipalities. North Plainfield's sergeant's and lieutenant's salaries are among the highest when compared with those municipalities. Only one municipality, Summit, had a higher lieutenant's salary in 2007 and only three municipalities had a sergeant's salary higher than that in North Plainfield in 2007.

The Borough asserts that its proposed salary increases would maintain salaries well within the range of salaries for comparable municipalities using both the Borough and PBA comparables in the record.

The Borough notes that both PBA and PBASO bargaining unit members are significantly higher paid than those of many other North Plainfield employees, residents and citizens. B-6 shows that the per capita income for the Borough was \$22,791, while the median household income was \$55,322 and the median family income was \$62,875 according to 2000 United States Census data. In the year 2003 (data for the year 2000 is not available), by contrast, a top step police officer in the Borough of North Plainfield earned \$70,727, well above both the median family and median household income for North Plainfield residents and more than triple the per capita income in North Plainfield. The contrast is even greater when looking at the salaries of the superior officers. In 2003, sergeants earned \$81,336, while lieutenants earned \$91,945 and captains earned \$112,900. This is more than double the median household income for the Borough.

### **Private Sector Comparisons**

As for the private sector, there are no comparisons between the Borough and PBA proposals. However, given the existing salaries of North Plainfield's police officers, it is quite clear that when compared to other occupations, the PBA/PBASO's membership is doing exceedingly well salary wise, especially in these tough economic times. B-6 shows that North Plainfield has a 4.7% unemployment rate in 2006 and that percentage is likely to increase in light of recent events in the financial industry.

The Borough maintains that its proposal of 3.4% in 2008; 3.0% in 2009 and 2010 and 3.4% in 2011 is more in line with the comparisons than the PBA's salary proposals. Therefore, on the issue of private sector comparison, as borne out by the supportable and submitted data, the Borough's proposals are more reasonable.

### **The Financial Impact on the Governing Unit, its Residents and Taxpayers**

The Borough points out that it continues to struggle with the economic problems and realities prevalent throughout New Jersey. As noted at greater length in the Borough's Application for Extraordinary Aid for 2008 (B-26), during 2007, signs of financial distress for a significant portion of the tax base continued to manifest themselves. During 2007, the decline in the percentage of current tax collections accelerated, dropping almost a full percentage to 96.32%. The collection rate realized in 2007 was the worst collection rate in over ten years and 2007 represented the third successive annual decrease experienced by the Borough. During 2007, the Borough's total tax rate increased from \$5.17 to \$5.55 per \$100 of assessed valuation, an increase of 6.77%. This increase is significantly more than the 2.8% Consumer Price Index rate increase for 2007 in the New York/Northern New Jersey/Long Island area. Moreover, recently released census data for calendar year 2005

reflects that 10.3% of the Borough's children in the 5–17 age group live in homes that are below the poverty level.

The Borough of North Plainfield is a primarily residential community with a large percentage of its residents on fixed incomes. The residents of the Borough have come to rely upon the Borough for a variety of essential services. As the net costs to deliver these services increases, there has not been a corresponding increase in the income of the residents who are most reliant on these services. The Borough submits that it has been in a “maintenance budget approach” for several years. Indicative of some of the cost savings measures implemented by the Borough are B-24, a Memorandum from the Mayor to all exempt salaried employees, advising that due to the difficult economic times facing the Borough, all non-unionized employees will be contributing to their health and dental insurance as of June 1, 2008. In addition, the Borough adopted an Ordinance in July 2008, revising its Personnel policies to impose limits on payments to retiring employees and other cost savings measures. (B-25).

The Borough asserts that its residents do not have boundless resources. The economic outlook for the nation, the State, the County and the Borough is clouded by war and economic uncertainties. Taxes cannot be raised inordinately and the Borough is required to budget within the confines of the CAP. Moreover, public safety functions already are a significant part of the overall expenditures of the Borough. In the 2008 Municipal Budget, the total appropriation for the Police Department was \$4,778,500 or 24.32% of the total appropriations of \$19,646,939, the largest single portion of the municipal budget for 2008. (B-5). Along the same lines, a review of the 2008 municipal budget reveals that the largest single increase in appropriations is the increase to police and fire pensions.

### **Continuity and Stability of Employment**

The Borough asserts that the current private, as well as public sector, job market, coupled with the financial crisis facing our nation and the New York metropolitan area, makes the Borough's proposal more than sufficient to allow continuity and stability in the North Plainfield Police Department.

The Borough provided the following summary of other benefits received by the PBA bargaining units:

- Holidays:** In lieu of receiving days off on holidays, each officer receives payment for a minimum of 14 days per year, the same as Manville and greater than all of the other comparable jurisdictions. Plainfield, Scotch Plains, Somerville and South Plainfield, have 13 paid holidays; Bernards Township and Bound Brook have 12 holidays, Green Brook has 11 holidays and the Somerset County Prosecutor's Officers have 15 holidays.
- Vacations:** Officers receive eight days after one year of service, 17 days after two years of service, 24 days after nine years of service and 30 days after 19 years of service. Many of the comparable municipalities have a maximum vacation of less than 30 days and most of the comparable municipalities require more than 19 years of service to reach the maximum vacation entitlement.
- Health Insurance:** The Borough submits that its health insurance is comparable to demographically similar municipalities.
- Clothing:** The Borough submits that its current clothing allowance is comparable to demographically similar municipalities.
- Sick Leave:** The Borough contends that its sick leave benefits are more than comparable. Borough officers receive 15 sick days per year, which is the maximum provided. A number of the comparable jurisdictions also provide 15 sick days per year, while others provide 12 sick days per year (Bernards Township, Green Brook and Somerville) and South Bound Brook provides 14 sick days per year.

The Borough submits that the PBA's 5% annual salary proposals look even more unrealistic in light of the recent occurrences in the financial industry including, but not limited to, the financial collapse of Lehman Brothers and Bear Stearns, the government bail



out of AIG Insurance Company and the significant downturn on Wall Street, all of which are predicted to negatively affect the nation and especially the New York metropolitan area. Thus, as with all of the other factors, the Borough's economic proposal is clearly the more rational and reasonable one for the arbitrator to consider.

In terms of the various factors to be considered pursuant to the provisions of N.J.S.A.

34:13A-16g(1) through (9), the Borough provided the following summary:

1. As to the interests and the welfare of the public -- the Borough has clearly shown throughout this arbitration process the significant limitations placed upon it by the provisions of N.J.S.A. 40A:4-45.1 et. seq. and the sheer economics of scale that make its proposal much more reasonable and fair.
2. As to comparability, the Borough contends that it has shown, under the provisions of N.J.A.C. 19:16-5.14(d), that its comparables meet the criteria for such much more readily than the PBA/PBASO and, in fact, it is the Borough's position that even the comparables submitted by the PBA/PBASO support the Borough's proposal more so that of the PBA/PBASO.
3. In terms of overall compensation, the Top Step Officers (the most prevalent group in this arbitration) as of January 1, 2008 (with a 3.4% wage increase as proposed by the Borough) shall receive the following pay and benefits:

Base salary: \$85,553

Holidays: 14 paid

Vacations 24 work days (or equivalent hours for those working 4 x 4 schedule) (assuming 10 years of service which the majority of Class A officers have)

Clothing Allowance: \$775

Overtime: In excess of regularly scheduled tour of duty at 1½ of his or her regular pay or one (1) hour off as compensatory time and pay at the rate of fifty percent (50%) of his or her regular rate of pay for each hour of overtime worked. Compensatory time may be accumulated into the following year and/or the patrolman may opt to receive direct payment at the end of the year for any compensatory time accumulated during that year at the Patrolman's prevailing rate of pay.

Call in: Minimum of two hours; officers placed "on-call" (required during off duty hours to be available upon call) receive one hour of compensatory time for every four hours on call.

Sick Leave: 15 days/year

Contribution to medical and hospital insurance in the amount of \$1,328.

4. The parties tentatively agreed to reference the statutory language with regard to attendance at conferences as proposed by the PBA/PBASO (Item 2B of PBA/PBASO proposal regarding Article III – Union Business).
5. As to the lawful authority of the parties, the Borough contends that it has met all of the requirements necessary under this factor throughout this proceeding.
6. The various and sundry exhibits submitted by the Borough, including but not limited to, budget documents, financial statements and tax records clearly highlight not only the precarious financial conditions of the Borough in the past, present and future, but also the significant impact that the awarding of the PBA/PBASO's demands would have on the Borough, its taxpayers and residents. It is abundantly apparent that these demands will dramatically and drastically affect the property taxes of Borough residents. The brief and exhibits can lead the arbitrator to no other conclusion than to award at or near the Borough's economic proposal.
7. The cost of living factor is clearly in the favor of the Borough, especially in light of the recent turn of events in the financial industry.
8. The Borough submits that its proposals will guarantee the continuation and stability of employment for all members of the PBA/PBASO bargaining unit during the proposed contract term.
9. Finally, in light of the Borough's budget cap and tax cap levy, limitations imposed by N.J.S.A. 40A:40-45, the Borough would be hard-pressed to raise taxes to the degree required to fund the PBA/PBASO's proposal. Under the circumstances, and in light of budgetary constraints and statutory restrictions imposed upon the Borough, the proposal put forth by the PBA/PBASO is entirely unrealistic and unaffordable for the Borough, its citizens, residents and taxpayers.

In conclusion, the Borough asserts it has met all of the required factors, criteria and conditions necessary to support its overall proposals, both economic and language and asks that its last offer be awarded.

### **Discussion**

The parties presented testimony and more than 85 documentary exhibits totaling thousands of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to its own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals. The following are the terms of my award:

1. I shall award a four-year agreement. The duration of the new four-year agreement shall be January 1, 2008 to December 31, 2011.
2. I shall award the following changes and increases to the salary schedule:
  - (a) Effective January 1, 2008, all steps on Appendices A-1 and A-2 and all other ranks including Corporal, Sergeant, Lieutenant and Captain shall be increased by 3.75%.
  - (b) Effective January 1, 2009, all steps on Appendices A-1 and A-2 and all other ranks including Corporal, Sergeant, Lieutenant and Captain shall be increased by 3.75%.
  - (c) Effective January 1, 2010, all steps on Appendices A-1 and A-2 and all other ranks including Corporal, Sergeant, Lieutenant and Captain shall be increased by 3.75%.
  - (d) Effective January 1, 2011, all steps on Appendices A-1 and A-2 and all other ranks including Corporal, Sergeant, Lieutenant and Captain shall be increased by 3.75%.
  - (e) All salary increases are fully retroactive to the above effective dates for all employees on the payroll as of January 1, 2009 and all employees that have retired since the expiration of the 2003-2007 CBAs.
3. Effective January 1, 2009, PBA and PBASO bargaining unit members with employee-only health insurance shall make bi-weekly contributions of \$15; bargaining unit members with parent/child coverage shall contribute \$25 bi-weekly; and bargaining unit members with either family or employee/spouse coverage shall contribute \$35 bi-weekly. The Borough shall implement a non-contributory IRS 125 Plan to permit pretax health care contributions. Effective January 1, 2010, PBA and PBASO bargaining unit members with employee-only health insurance shall make bi-weekly contributions of \$20; bargaining unit members with parent/child coverage shall contribute \$30 bi-weekly; and bargaining unit members with either family or employee/spouse coverage shall contribute \$40 bi-weekly.

4. I shall award a modification in the Union Business article in accord with the parties' agreement.
5. I shall award an increase in the PBA clothing allowance from \$775 to \$825 effective January 1, 2008.
6. I shall award the PBA and PBASO proposal for "Acting" pay. This shall be effective July 1, 2009.
7. Effective January 1, 2008, the CBAs shall be modified to provide that vacation leave shall not be accumulated from year-to-year except if the employee is unable to use his annual vacation leave because of operational needs or emergency circumstances. All employees hired before January 1, 2008 shall be "redlined" as to the amount, days and monetary value of their vacation leave as of December 31, 2007.
8. A \$17,500 Cap shall be established for the payment of accumulated sick leave days upon retirement. The date for determining the dollar value of an employee's accumulated sick leave (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) shall be December 31, 2007.

All current employees that have no more than \$17,500 of accumulated sick leave days (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) on the books as of December 31, 2007, shall be capped at \$17,500.

All current employees that have more than \$17,500 of accumulated sick leave days on the books (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) as of December 31, 2007, shall be "grandfathered" at the exact dollar figure that they have on the books on December 31, 2007. Therefore, if the dollar value of an employee's sick leave is \$36,000, the employee could collect no more than \$36,000 at the time of eligibility to receive such payment. \$36,000 will be the maximum sick leave payout that can be paid upon retirement.

All officers hired on or after January 1, 2008 shall have a \$17,500 Cap on the payment of accumulated sick leave days upon retirement based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days.

I shall retain jurisdiction to resolve any disputes regarding the dollar value of accrued sick leave benefits as of December 31, 2007.

9. I shall incorporate the following agreements reached by the parties during direct negotiations:

- (a) Article III (Union Business) to be revised to reflect the provisions of N.J.S.A. 4-A:14-177 as it relates to Paragraph 2 only.
  - (b) Effective January 1, 2009, Article X (Salary) of the PBA Agreement shall be revised by deleting Paragraph 3 and adding the \$425 payment for unreimbursed expenses to the base salary of all unit members.
  - (c) Effective January 1, 2009, Article X (Salary) of the PBA and PBASO Agreement shall be revised by deleting Paragraph 3 and adding the \$425 payment (PBA) and \$375 payment (PBASO) for unreimbursed expenses to the base salary of all unit members.
  - (d) Article XI (Overtime Payments) shall be revised by deleting the last sentence of Paragraph 6 (PBASO CBA) and Paragraph 7 (PBA CBA).
  - (e) Article XIV (Grievance Procedure) in the PBA and PBASO Agreements to be revised by designating all days as "calendar days."
  - (f) Article XXII (Legal Defenses) in the PBASO CBA shall be modified by adding the statutory language of N.J.S.A 40A:14-155 included in the PBA CBA to Paragraph 1 of the PBASO CBA.
10. All proposals of the Borough and the PBA not awarded herein are denied. All provisions of the 2003-2007 CBA shall be carried forward except for those provisions modified by the terms of this Award.

#### **Cost of Salary Proposals**

The current bargaining unit (at the close of the record) includes 30 Patrol Officers, one Corporal, nine Sergeants, three Lieutenants and one Captain. The record does not indicate how many officers are at maximum and how many officers are moving through the steps on the salary schedule. The following calculations assume that all of the rank-and-file officers are at the 2007 maximum salary of \$82,740. The total base pay salary for all bargaining unit members in 2007 is \$3,881,000. The \$3,881,000 salary base in 2007 would be reduced by the lower salaries for less senior Patrol Officers moving to maximum and increased by adding in the cost of longevity. Neither party submitted salary data on step movement. The calculations of the parties' last offers do not include incremental step

increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their last offers. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making less than 30% of the maximum step officer's salary.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculations for 2008, 2009, 2010 and 2011 do not include the cost of increments.

#### **2008**

The PBA proposed a 5% across-the-board increase to be effective January 1, 2008. The cost of the PBA proposal (excluding increments) in 2008 is \$194,050. The total cost of the PBA's proposed salary increase in 2008 is \$4,075,050. The PBA also proposed a longevity modification by deleting the "grandfather" provisions covering officers hired after July 1, 1994. This change would increase the 5% salary increase in 2008 significantly. The PBA did not provide an estimate of the cost of its longevity proposal. The Borough calculated the cost of the PBA's longevity proposal in 2008 as \$49,477. This increases the cost of the PBA salary proposal in 2008 to 6.21%.

The Borough proposed a 3.4% across-the-board salary increase to be effective March 1, 2008. The cost of the 3.4% increase in 2008 (excluding increments) is \$131,954. The actual cost to the Borough in 2008 (paid out from 3/1/08 to 12/31/08) is \$109,962. The new base salary in 2008 is \$4,012,954.

I awarded a 3.75% across-the-board salary increase effective January 1, 2008. The cost of the 3.75% salary increase (excluding increments) is \$145,538. The new base salary in 2008 is \$4,026,538. The cost of the awarded salary increase in 2008 is \$13,584 more than the Borough's proposed salary increase in 2008 and \$48,512 less than the PBA's proposed salary increase in 2008 and \$97,989 less when the cost of the PBA's longevity proposal is included.

### **2009**

The PBA and the Borough agreed to include the \$425 payment for unreimbursed expenses in base salary effective January 1, 2009. This adds \$18,700 to base salary.

The PBA proposed a 5% across-the-board increase to be effective January 1, 2009. The cost of the PBA proposal (excluding increments) in 2009 is \$203,752. The total cost of the PBA's proposed salary increase in 2009 is \$4,278,802.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2009. The cost of the 3% increase in 2009 (excluding increments) is \$120,388. The new base salary in 2009 is \$4,133,343.

I awarded a 3.75% across-the-board salary increase effective January 1, 2009. The cost of the 3.75% salary increase (excluding increments) is \$150,995. The new base salary in 2009 is \$4,177,533. The cost of the awarded salary increase in 2009 is \$30,679 more than the Borough's proposed salary increase in 2009 and \$52,757 less than the PBA's proposed salary increase in 2009.

### **2010**

The PBA proposed a 5% across-the-board increase to be effective January 1, 2010. The cost of the PBA proposal (excluding increments) in 2010 is \$213,940. The total cost of the PBA's proposed salary increase in 2010 is \$4,492,742.



The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2010. The cost of the 3% increase in 2010 (excluding increments) is \$124,000. The new base salary in 2010 is \$4,257,343.

I awarded a 3.75% across-the-board salary increase effective January 1, 2010. The cost of the 3.75% salary increase (excluding increments) is \$156,657. The new base salary in 2010 is \$4,3334,190. The cost of the awarded salary increase in 2010 is \$32,657 more than the Borough's proposed salary increase in 2010 and \$57,283 less than the PBA's proposed salary increase in 2010.

### **2011**

The PBA proposed a 5% across-the-board increase to be effective January 1, 2011. The cost of the PBA proposal (excluding increments) in 2011 is \$224,637. The total cost of the PBA's proposed salary increase in 2011 is \$4,717,379.

The Borough proposed a 3.4% across-the-board salary increase to be effective March 1, 2011. The cost of the 3.4% increase in 2011 (excluding increments) is \$144,750. The actual cost to the Borough in 2011 (paid out from 3/1/11 to 12/31/11) is \$120,625. The new base salary in 2011 is \$4,402,093.

I awarded a 3.75% across-the-board salary increase effective January 1, 2011. The cost of the 3.75% salary increase (excluding increments) is \$162,532. The new base salary in 2011 is \$4,496,722. The cost of the awarded salary increase in 2011 is \$17,782 more than the Borough's proposed salary increase in 2011 (the payout is \$41,907 more than the Borough's payout because of the delay to March 1) and \$62,105 less than the PBA's proposed salary increase in 2011.

The cost of the PBA's clothing allowance proposal is \$4,400 annually for a total cost of \$17,600. The cumulative cost of the PBA's clothing allowance increase is \$66,000. I

awarded a \$50 increase in the PBA unit which will increase the cost by \$1,500 annually effective January 1, 2008.

All of the above salary cost increases will be offset by the savings from the new salary schedule, the value of the health care contributions, the capping of terminal sick leave payments and most significantly by the termination of annual increases in the vacation leave bank which could range from 3.5% to nearly 13% of employees' annual base salary.

### **Interests and Welfare of the Public**

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Borough to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

*The interests and welfare of the public* require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous.

It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony." (In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall now discuss the issues with respect to the interests and welfare of the public factor.

#### **Term of Agreement**

The PBA seeks a five-year agreement whereas the Borough seeks a four-year agreement. The CBAs in the record show eight agreements with a three-year duration; eleven agreements with a four-year duration; six agreements with a five-year duration; and two agreements with a six-year duration. Thus, 19 of the 27 CBAs are four years or less in duration. This comparability alone favors the award of a four-year agreement. However, the uncertain economic climate also favors the four-year term.

Accordingly, I shall award a four-year term commencing on January 1, 2008 through December 31, 2011.

### **Salary**

I conclude that the salary data in the record is supportive of the awarded annual salary increases of 3.75%. The PBA, while seeking 5% annual salary increases, submitted salary data showing that the average salary increase in the County is approximately 3.9%. The PBA contends that the maximum salary for Patrol Officers of \$82,740 in North Plainfield is more than \$3,000 below the County average. However, a review of the salary data, after excluding the \$101,200 State Police maximum (which I find is not a proper comparison) and including the 2007 Plainfield (a neighboring community) of \$75,224, the North Plainfield maximum salary is only \$150 below the average of the PBA's comparable jurisdictions.

The Borough submitted salary data showing the average salary increase in the County as approximately 3.8%. The broader salary data compiled by PERC shows that the average salary increases in 2008 for awards issued in 2008 was 3.73% and the average salary increase in 2008 for voluntary settlements reached in 2008 was 3.92%. I note that the PERC salary data represents a composite average of 2008, 2009, 2010 and 2011. Again, the PERC salary data is supportive of the awarded salary increases and is not supportive of neither the PBA's last offer nor the Borough's last offer. The PERC salary data is consistent with the terms of my award.

As stated above, the cost of salary increases must be measured against the other components of the award. While I am required to evaluate the merits of the disputed issues individually, I am guided by criterion N.J.S.A. 34:13A-16(8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year

of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award and the requirement to balance all of the major components included in the award.

The cost of salary increases will be offset by the savings from the health care contributions, the capping of terminal sick leave payments and most significantly by the termination of annual increases in the vacation leave bank which could range from 3.5% to nearly 13% of employees' annual base salary.

In summary, I find that the terms of my award satisfy the requirements of the interests and welfare of the public criterion to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. Reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. I find that the interests and welfare of the public require a stable and experienced police force and that the terms of my award on salary will maintain the Borough's ability to recruit and retain qualified and experienced police officers consistent with the requirements of this factor.

#### **Health Care Contribution**

The Borough proposes that, effective January 1, 2008, police officers make annual contributions toward the cost of health insurance as follows: 1% of annual salary for officers making salaries less than \$50,000; 1.5% for salaries between \$50,000 and \$100,000; and 2% for salaries greater than \$100,000.

The Borough cites the CBA between Somerset County and PBA Local 307 (B-14) which requires a contribution of 1% of salary in excess of the first \$50,000 of annual salary for employees with salaries above \$50,000; a contribution of 1.5% of salary in excess of the

first \$50,000 of annual salary for employees with salaries above \$80,000; and a contribution of 2% of salary in excess of the first \$50,000 of annual salary for employees with salaries above \$100,000.

The Borough calculates its annual health insurance cost for police officers as \$578,583. The Borough also proposes that its obligation to pay dental insurance premiums be capped at the rates paid by the Borough as of May 31, 2008 and that all future increases are to be borne by the employees.

The PBA is opposed to the Borough's proposal for annual contributions toward the cost of health insurance.

Salary and health care are often linked in bargaining. Modifications on health care influence the level of salary increases. These concessions are often made to insure the continuation of the level of benefits and the continuation of the existing network of doctors and hospitals. The total cost of a settlement for an employer includes the increased cost of a negotiated salary increase and the increased cost of employee fringe benefits. It is undisputed that the cost of health insurance coverage is the most significant component of employee benefits. The costs of these health insurance benefits are rising at a much higher rate than inflation and salary increases. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

Negotiations regarding health insurance are now primarily directed to cost containment issues. Negotiations that included improved health benefits, particularly full retiree health benefits, almost always include some commensurate major concession by a labor organization. In the past, unions have been resistant to both a reduction in plan options

(elimination of Traditional Plan) and to premium cost sharing provisions (in any form) for medical insurance. However, this is no longer the case. Tens of thousands of State employees and School District employees have seen the elimination of the Traditional Plan as well as premium cost sharing provisions. Employees in many counties, including Somerset County, are now sharing in the cost of health insurance premiums and a significant number of municipalities have negotiated both reduced plan options and health insurance premium cost sharing.

The premium cost sharing agreements include fixed dollar biweekly payments (with cap & without cap); obligation to pay the difference between a POS Plan and a Traditional Plan; single only coverage in Traditional Plan with full payment for dependent coverage; elimination of Traditional and limitation to POS Plan only for new hires; cash incentive to switch to lower priced health plan; 50/50 sharing between employer and employee for the increased cost of health insurance premiums (often with cap); bi-weekly contributions based on a salary range; percentage contribution of full cost of health insurance; full payment of dependent coverage in Traditional Plan; employee payment of 50% of annual increases in dependent coverage; declining percentage contribution ranging from 20% upon initial employment declining to no cost beginning with 13<sup>th</sup> year of employment; payroll deduction with or without a 125 Plan (allowing pre-tax payments for health care contributions); financial incentives to migrate to lower cost health plans; and employee financial incentives for “opting out” of employer provided health insurance.

In addition to the above, I take arbitral notice of the recent settlements and awards that include health care prescription drug modifications: (1) Mahwah Township & PBA Local 143: Bi-weekly health care contributions of \$20 effective January 1, 2008; \$25

effective January 1, 2009; and \$40 effective January 1, 2010; (2) Holland Township & PBA Local 188: Effective January 1, 2007, all employees shall contribute \$1,000 annually toward the cost of health insurance; (3) S. Bound Brook & PBA Local 148 & SOA: Effective August 1, 2007, all new employees shall contribute \$25 per month for health insurance; (4) Tinton Falls & PBA Local 251: Effective August 1, 2007, employees will contribute 1% of their annual base wage for medical benefits; (5) Somerset County Sheriff's Office & PBA Local 177: Effective July 1, 2007, employees with salaries above \$50,000, 1% of salary between 50K and 80K; employees with salaries above \$80,000, 1.5% of salary above 50K; employees with salaries above \$100,000, 2% of salary above 50K; (6) River Edge Borough & PBA Local 201 & SOA: Effective January 1, 2008, all officers shall contribute \$20 biweekly for health benefits; (7) Haddon Heights Borough & PBA Local 328: Effective January 1, 2008, all employees shall contribute 1% of their base wages to the employer for Health Care Benefits; (8) East Orange & FOP Lodge 111: Effective January 1, 2009, monthly co-payments for health insurance shall be \$40 for single, \$45 for H/W & P/C and \$50 for family; (9) East Orange & FMBA Local 23 & SOA: Effective January 1, 2009, monthly co-payments for health insurance shall be \$40 for single, \$45 for H/W & P/C and \$50 for family; (10) Borough of Palmyra & FOP Lodge 2: Effective January 1, 2010, \$30 monthly copay for health insurance; (11) Colts Neck Township & PBA Local 333: Effective January 1, 2008, all employees shall contribute 1% of the base wage for health insurance; (12) Rutgers University & FOP Lodge 164: Effective January 1, 2007, employees shall contribute 1.5% of wages for health insurance; (13) County of Warren & FOP Lodge 171: Bi-weekly contributions effective March 1, 2008:



	<b>\$19 - \$35K</b>	<b>\$35 - \$60K</b>	<b>\$60 - \$85K</b>	<b>\$85 +</b>
Single	\$6.00	\$14.00	\$20.00	\$28.00
Parent/Child	\$9.00	\$18.00	\$28.00	\$39.00
H/W	\$12.00	\$23.00	\$34.00	\$44.00
Family	\$15.00	\$30.00	\$42.00	\$57.00
Parent/Children	\$15.00	\$30.00	\$42.00	\$57.00

(14) Hillside Township & FOP Lodge 160: Effective July 1, 2010, employees will contribute \$50 per month toward the cost of their health benefits; (15) Edison Township & IAFF Local 1197: effective January 1, 2009, employees in Traditional Plan shall make monthly contributions of \$30/single, \$33/H&W, \$36/P&C and \$40/Family; (16) Borough of Mountainside & PBA Local 126: Effective January 1, 2008, all officers shall contribute \$40 monthly for health insurance; (17) Township of Moorestown & Fop Lodge 109 & SOA: Effective January 1, 2007, employees who elect to remain in the Traditional Plan shall pay 33% of the difference in premiums for the next costly health plan option; (18) Borough of Ringwood & PBA 247: Employees who elect to remain in the Traditional Plan or Select 20 Plan shall pay a premium equal to the difference between the cost of the plan chosen and the cost of the Aetna Plan; (19) City of Long Branch & IAFF Local 1197: Employees who elect to remain in the Traditional Plan shall contribute \$300 per month for such coverage; (20) Upper Freehold Township & IAFF Local 4306: Effective January 1, 2006, all new employees shall pay 15% of the cost of dependent coverage; (21) Mercer County & PBA Local 167: Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical insurance; (22) Haddonfield Borough & PBA Local 128: Effective January 1, 2007, employees shall contribute \$50 monthly to the cost of prescription drug benefits for dependents; (23) Mercer County & PBA Local 167 (SOA): Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical

insurance; (24) Borough of Spring Lake & PBA Local 50: Effective January 1, 2007, the annual health insurance contribution shall be increased to \$750; (25) Egg Harbor Township & PBA Local 77: effective January 1, 2007, employees shall contribute 15% of dependent health care premiums; (26) Morristown & PBA Local 43: Effective January 1, 2007, new employees shall contribute 10% of the dependent health care premiums; (27) Hammonton & PBA Local 77: Effective January 1, 2007, all employees shall contribute 5% of the dependent health care premiums; (28) Mercer County Sheriff's Office & FOP Lodge 140 (SOA): Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical insurance; (29) Borough of Keyport & PBA Local 223: Effective January 1, 2004, employees shall contribute \$20 biweekly for health insurance; (30) Morris County Sheriff's Office and Sheriff's Officers SOA: Effective January 1, 2008, employees shall contribute 1.2% of the employee's annual salary or 6% of the selected benefit cost not to be reduced below the minimum contribution level of either \$300 annually for employees with dependent coverage and \$200 annually for single coverage; (31) Camden County & FOP Lodge 76: Effective 1/1/08, premium contribution of 2.5% under 30k, 5% for 30-70k, 7.5% for over 30k; new hires pay from 25% to 10% depending on date of hire; (32) Hoboken & PBA Local 2: All officers hired after 12/1/07 shall be enrolled in the City's POS Plan; (33) East Orange & FOP Lodge 111 & FMBA Local 23: Effective 1/1/09, monthly copayments for health insurance premiums shall be \$40 for single, \$45 for H/W & P/C and \$50 for family; prescription copay of \$10 generic and \$15 brand; effective 7/1/08 office visit copay of \$15; new hires must enroll in POS 1 or POS 2 Plan; Existing employees in Traditional Plan must move to POS 1 or POS 2 during next enrollment period; (34) Palmyra & FOP Lodge 2: Effective 1/1/10, \$30 monthly premium copay; (35) Colts Neck & PBA Local 333: Effective

1/1/08, all employees shall contribute 1% of base wages as health care contribution subject to IRS 125 Plan for tax purposes only; (36) Piscataway Township & PBA Local 93 & PBA Local 93 (SOA): Effective 7/1/08, eliminate Traditional Plan, increase prescription copay to \$10 generic & to \$15 for brand; effective 7/1/10, increase brand to \$20; (37) Winslow Township & Police Association: Traditional and HMO insurance eliminated 1/1/09; (38) Little Ferry & PBA Local 102: Health Insurance shall be moved to NJ SHBP; (39) County of Warren & FOP Lodge 171: Effective 3-1-08:

**Bi-Weekly Employee Contributions**

	<b><u>\$19 - \$35K</u></b>	<b><u>\$35 - \$60K</u></b>	<b><u>\$60 - \$85K</u></b>	<b><u>\$85 +</u></b>
Single	\$6.00	\$14.00	\$20.00	\$28.00
Parent/Child	\$9.00	\$18.00	\$28.00	\$39.00
H/W	\$12.00	\$23.00	\$34.00	\$44.00
Family	\$15.00	\$30.00	\$42.00	\$57.00
Parent/Children	\$15.00	\$30.00	\$42.00	\$57.00

Prescription to increase to \$10 for generic, \$20 for name brand and \$30 for formulary; (40) Clifton & FMBA Local 21: Doctor copays increased to \$15 effective 1-1-09; (41) Summit & FMBA Local 54: Health Insurance shall be moved to NJ State Health Benefits Program with standard of substantially similar to the NJ SHBP; employees hired after 1/108 must enroll in NJ Direct 15 for three years; (42) Hillside Township & FOP Lodge 82 & FOP Lodge 160: Effective 1/110, employees shall contribute \$50 monthly to health insurance; (43) Township of Robbinsville & IAFF Local 3786: Health care contribution of 1% of salary effective 1/1/10; officers hired after 7/1/08 are ineligible for health benefits; (44) Tinton Falls Borough & PBA Local 251: Effective 1/109, all employees shall contribute 1% of salary as health care contribution; prescription copays increased to \$10/\$20/\$25; mail order required for maintenance drugs; (45) Township of Gloucester & FOP Lodge 9 & Lodge 9 (SOA):

Effective 7-1/08, \$520 annual health care contribution for single coverage and \$780 for family coverage; prescription drug co-pays for retail purchases shall increase to \$10 for generic; \$20 for brand; \$35 for formulary; and to \$50 for lifestyle; Mail Order prescriptions shall be 2X of the retail co-pay; HMO Blue and Aetna HMO will no longer be an option for current and future employees; (46) West Milford & PBA Local 162 & 162 (SOA): Base plan for all bargaining unit members shall be the Choice 20 Plan. All current bargaining unit members shall have the option to remain enrolled in the Choice 100 and Choice 15 if the employee pays the difference in the premium between Choice 15 Plan and either the Choice 100 Plan or the Choice 20 Plan. Township & PBA shared savings from elimination of Choice 100 and Choice 15 plans; (47) West Caldwell & PBA Local 181: Effective 1-1-09, all participating employees shall contribute \$20 per pay period for health insurance; (48) Berkeley Township & Police SOA: All employees hired after 1/1/06 shall pay 15% of the premium cost of dependent coverage for the first six years of employment; effective 12/31/08, stand-alone prescription plan is eliminated for all future retirees who shall be covered by prescriptions under NJSHBP; (49) North Wildwood & PBA Local 59: Effective 9/1/08, employees pay the difference in premium if they do not elect Plan A; effective 1/1/10, prescriptions copays increased to \$10/mail order, \$15/generic and \$20/brand; (50) Springfield Township & PBA Local 76 & PBA Local 76A (SOA): PPO at not cost to employee, employee pays difference in cost of PPO and Traditional Plan; (51) Freehold Borough & PBA Local 159: Employee to contribute 5% of the cost including prescription to be capped at \$1,500 in 2008; \$1,600 in 2009; and \$1,700 in 2010; (52) Hunterdon County Sheriff's Office & FOP Lodge 94 (SOA): Effective 1/1/08, shall contribute 1.25% of annual salary toward the medical premium; (53) Ocean City & PBA Local 61: State Health Benefits

Program with Direct 10 as base plan; current contributions to increase by \$20 per month;

(54) Stone Harbor & PBA Local 59: Effective 1/1/09, Prescription copays to increase to \$15/mail order, \$20/generic and \$25/brand; (55) Union County & PBA Local 73 & PBA Local 73 (SOA): Effective 9/1/06, Direct Access shall replace the Horizon PPO; the Horizon PPO will be maintained for employees with employees paying the difference between the PPO premium and the Direct Access; (56) North Wildwood & FMBA Local 56: Employees hired after January 1, 2006 will have the option of electing the Premier, patriot X or Patriot V Plan. The Patriot V Plan shall be the primary plan. If an employee selects any of the other Plans, the employee shall pay the premium cost differential between the primary plan and the plan they selected; (57) Borough of Mountainside & PBA Local 126: Effective 1/1/08 all members of the negotiating unit will pay \$40 per month as a contribution for health insurance; (58) Township of Edison & IAFF Local 1197: Effective 4-1-08, Traditional Plan eliminated for new hires, new hires limited to either the PPO or POS plans; effective 1/1/09, retail prescription copays increased to \$7.50 for generic and \$15 for brand, mail order increased to 1.5 times retail; employee contribution to Traditional Plan increased to \$28 bimonthly effective 1/1/08 and to \$35 bimonthly effective 1/1/09; effective 1/1/08, active firefighters who retire and remain in the Traditional Plan shall make monthly contributions of \$30/single, \$33/H & W, \$36/P&C, and \$40/Family; (59) Borough of Point Pleasant Beach & PBA Local 106: Effective 7/1/08, employees shall contribute \$20 monthly for single coverage and \$40 monthly for dual or family coverage; (60) Borough of North Arlington & PBA Local 95: Effective 1/1/09, employees shall contribute \$20 monthly for single coverage and \$40 monthly for dual and family coverage; effective 1/1/08, new employees shall be limited to the selection of an HMO Plan at benefit levels that are substantially similar to the

existing plan; effective 1/1/09, prescription copays shall increase to \$10 for generic and \$20 for name brand; (61) Morris County Sheriff & PBA Local 151: Effective 1/1/2010, the bi-weekly premium contributions shall be increased to:

	<u>Medallion</u>	<u>Wraparound</u>	<u>HMO</u>
Family	\$50.82	\$28.36	\$22.53
P/C	\$36.08	\$20.03	\$8.21
Single	\$19.20	\$10.73	\$8.21

(62) New Jersey Transit & PBA Local 304: Effective 1/1/09, employees shall contribute \$40 per month toward the cost of health insurance premiums; (63) State of New Jersey & PBA Local 105: Effective January 2011, employees shall contribute \$20 bi-weekly for single coverage, \$30 bi-weekly for parent/child and \$40 bi-weekly for family or Employee/Spouse.

Under the interest arbitration statute, health insurance must be treated as an economic item just like salary and longevity. The increased cost of providing this benefit cannot be considered only as an employer obligation but also must be viewed as a continuing fringe benefit to an employee that is more costly to provide. As previously stated, consideration must be given to the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under the statutory criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the entire award.

Accordingly, based on the above data showing extensive health care modifications in CBAs and in consideration of the need to balance all of the components in the award, I shall award the following health care contributions:

Effective January 1, 2009, PBA and PBASO bargaining unit members with employee only health insurance shall make bi-weekly contributions of \$15; bargaining unit members with parent/child coverage shall contribute \$25 bi-weekly; and bargaining unit members with either family or employee/spouse coverage shall contribute \$35 bi-weekly. The Borough shall implement a non-contributory IRS 125 Plan to permit pretax health care contributions. Effective January 1, 2010, PBA and PBASO bargaining unit members with employee only health insurance shall make bi-weekly contributions of \$20; bargaining unit members with parent/child coverage shall contribute \$30 bi-weekly; and bargaining unit members with either family or employee/spouse coverage shall contribute \$40 bi-weekly. These bi-weekly contributions shall not be applicable to employees who "Opt Out" of the Borough's health insurance programs.

#### **Union Business**

The PBA proposed the following changes in Article III, Union Business:

- A. Deletion of the language which refers to State and Regional meetings and that such references shall be changed to read "Any Union Business."
- B. The Borough shall grant to the Delegate and at least three (3) additional Delegates (or ten percent (10%), whichever is higher, of the entire PBA membership) leave from duty to attend all State PBA conventions consistent with N.J.S.A. 40A:14-177.
- C. In the event the Delegate is elected or appointed to a full-time position with the State PBA then the Borough agrees to grant said Delegate full release without loss of compensation for as long as the position is held so as to fulfill duties of said position (with State reimbursement of said Delegate's cost to Borough).

The PBA contends that the current language limits the number of officers who may attend State PBA Conventions. The PBA submits that the law has changed since this contract language was included in the Agreement. N.J.S.A. 40A:14-177 provides a percentage of

PBA members as the statutorily entitled group who attend conventions. The PBA maintains that the 10% rule should be included in the CBAs or in the alternative, the statute and its provisions should be referenced in the Union Business Article.

The Borough, in its last offer and brief, acknowledged the following agreement:

Article III (Union Business) to be revised to reflect the provisions of N.J.S.A. 40A:14-177 as it relates to Paragraph 2 only.

The Borough's agreement appears to satisfy the PBA's proposal that "the statute and its provisions should be referenced in the Union Business Article." Accordingly, Article III, Section 2 shall be modified to incorporate the parties' agreement to reflect the provisions of N.J.S.A. 40A:14-177. I shall retain jurisdiction to resolve any dispute regarding the final contract language.

The PBA's proposal that a Delegate elected or appointed to a full-time position with the State PBA be granted full release without loss of compensation appears to be acceptable to the Borough if the PBA can guarantee the reimbursement of the officer's salary to the Borough.

Accordingly, the PBA's proposal shall be included in the new CBA contingent upon appropriate language guaranteeing the reimbursement of the officer's salary by the PBA to the Borough.

#### **Clothing Allowance**

The PBA proposes that the current clothing allowance be increased by \$100 annually in each year of the new CBA. The Borough is opposed to any increases in the current clothing allowance. The current clothing allowance is \$775 annually for the rank-and-file bargaining unit and \$825 for SOA bargaining unit members.



The PBA submitted comparability data showing that the average clothing allowance was more than \$1,100. The Borough cited annual clothing allowances that ranged from \$650 in Manville to \$1,400 in South Plainfield. The Borough contends that only two comparable municipalities provide a greater allowance, South Plainfield and South Bound Brook.

Comparability data in the record shows that the clothing allowance in North Plainfield is below the average of comparable jurisdictions. I shall award an increase in the rank-and-file clothing allowance of \$75 to be effective January 1, 2008. This will bring the rank-and-file bargaining unit clothing allowance in line with the current SOA clothing allowance of \$825.

#### **Acting Assignments**

Both the PBA and SOA seek to modify Article IV, Acting Assignments to provide that officers are paid for working in a higher rank on an acting basis. The current language simply states: "Acting assignments shall be made by the Chief of Police." The new language would provide that "all work in a higher rank be paid at the rate of the higher rated position." The PBA notes that many of the CBAs in the record provide for compensation when an officer is working in a higher rated position.

The Borough is opposed to any changes in the current language in the CBAs. The Borough submits that approximately 50% of the CBAs in the record included no payment for officers working in a higher rank and that many of these CBAs require that the acting assignment be of a specified duration before the officer is entitled to the higher rate of pay.

A review of the CBAs in the record show the following provisions regarding the payment of "acting pay":

1. "From time to time, the Chief of Police may appoint police officers to act as shift commanders. Police officers performing these functions shall receive an amount equal to one-half of the differential between Sergeant and Patrol Officer 6, which amount will be added to base pay." (Bernards Twp./PBA Local 357, P-7, #2 at 34).
2. "Any officer assigned to the duties of a higher-ranking officer for fourteen (14) consecutive twelve (12) hour working days or twenty (20) consecutive eight (8) hour working days or more, shall be compensated for those days at the rate of the higher rank as if he were assigned permanently to that rank. This compensation is retroactive to the first day worked at that higher position." (Manville Borough/PBA Local 236, P-7, #9 at 8).
3. "Any officer working in the capacity of Sergeant shall receive that sergeant's pay for all hours worked in the rank, payable the next pay period." (South Plainfield/PBA Local 100, P-13 at 13.).
4. "When any uniformed member of the Police Division is directed by the Chief or his authorized designee to serve in an assignment deemed necessary by the Chief and such assignment exceeds twenty-five (25) hours within a two (2) week period, he shall be paid the appropriate rate of pay for all hours worked in said assignment . . . " (Plainfield/PBA Local 19, P-16 at 23).
5. "... any officer assigned or required by regulations to assume the duties and responsibilities of an officer of a higher rank for two (2) consecutive hours or more shall be compensated for those hours at the rate of the higher rank as if he were assigned permanently to that position, retroactive for all hours worked during which said duties or fractions thereof were performed. The assignment of a Patrolman or Sergeant shall be automatic as the need arises; however, the assignment of a Sergeant to a Lieutenant or Captain's position must be specifically assigned by the Chief, or his designee." (Somerville/PBA Local 147, P-18 at 8).
6. "When a patrol officer is in charge for half a shift or more when a supervisor is not available (working), he or she shall receive additional compensation equal to one and one half (1½) hour's pay at his or her overtime rate. For the officer to earn the extra pay, the officer must complete the assignment to the satisfaction of the Chief or his designee." (Warren Township/PBA Local 235, P-23 at 24).
7. "Police officers who work in the capacity of Acting Sergeant or Watch Commander shall be paid at the Sergeant's rate of pay for the time worked in that capacity. The designation of patrolmen to work in the capacity Acting Sergeant or Watch Commander shall be made by the Chief of Police, or in his absence, the person acting in the same capacity." (Borough of Watchung/PBA Local 193, P-24 at 46).

8. "Police officers who work in the capacity of Acting Sergeant or Watch Commander for eight (8) consecutive work shifts shall be paid at the Sergeant's rate of pay." (Green Brook/FOP Lodge 23, B-15 at 31).
9. "Anyone working above his rank shall receive the compensation of the higher rank for the hours worked immediately upon assuming the role of the higher rank." (Borough of Bound Brook/PBA Local 380, B-18 at 16).

In consideration of the contracts in the record showing that officers working in a higher ranked position receive additional compensation for such work in a higher rank and recognizing that officers' performing work in a higher rank merit appropriate compensation, I shall award the PBA's proposal that all work performed in a higher rank be paid at the rate of the higher ranked position. The new "Acting Assignments" language shall also include a provision requiring that such acting assignments are performed at the direction of the Chief or designee. This shall be effective January 1, 2009.

#### **Hours of Work**

The PBA and PBASO propose that all references to the seventy-two (72) hour buyback provision be deleted from Article VI in the CBAs. According to the PBA, officers are required to create a "reserve pool of hours" which is utilized in management's discretion to meet the Department's needs including training, manpower shortages" and "Borough-wide emergencies." The PBA contends that Borough officers work more hours per year than officers in other comparable departments. In addition, both CBAs include language which directs that certain make-up time shall be required. The PBA contends that this provision gives the Borough the ability to draw down on this reserve hour pool and dictate extra duty work without extra compensation.

The Borough opposes the PBA's proposal. The Borough points out that the "pay back" provision applies to officers working the 4 x 4 schedule. Thirty-six of the forty-seven

officers in the Department work the 4 x 4 schedule which consists of four 11-hour work days followed by four days off. In accordance with Article VI, Section 2, all employees of the Department are required to work 2080 hours per year. The Borough notes that Officers working the 4 x 4 schedule fall short of the requisite 2080 hours per year by an average of 72 hours per year. The “pay back” provision that the PBA seeks to delete is the requirement that those officers working the 4 x 4 schedule make up the 72 hours so as to work the requisite 2080 hours per year.

The Borough notes that the majority of the seventy-two hours are currently made up by the officers attending mandatory training. This proposal would result in a seventy-two-hour reduction in the work hours during each work year for a majority of the officers. The Borough calculates the cost of the PBA’s proposal as \$598,234 over five years.

I conclude that the PBA has not met its burden to justify the deletion of the “72-hour” provision in the CBA. The PBA and the Borough made a deal in a prior CBA to move to the preferred 4/4 work schedule and the “72-hour” provision is a key component of the work schedule for the Borough. Removal of this provision will force the Borough to either hire additional officers or pay officers overtime to make up the 72 hours. This is not justified.

Accordingly, the PBA’s proposal to delete the 72-hour buyback provision is hereby denied.

The Borough proposes adding the following language to Article VI, Section 2 (Hours of Work), which provides that the minimum call out time for officers shall be compensated with four hours of “extra duty time”:

“The Borough reserves the right to have the officers work the full or entire portion of the “extra duty time.”

For essentially the same reasons discussed above, I conclude that the Borough has not met its burden to justify a change in the current language on “extra duty time.” This provision was also part of the agreement to move to the 4/4 schedule. While this provision is not as significant as the “72-hour” provision, it was part of the agreement and the Borough has not demonstrated a basis for modification.

Accordingly, the Borough’s proposal to modify the 4-hour “extra duty” provision is hereby denied.

### Longevity

The PBA and PBASO propose that Article X, Longevity, be modified by deleting the “grandfather” provisions covering officers hired after July 1, 1994. The “grandfather” provision eliminated the 2% and 4% longevity steps at five and ten years of service. Officers hired after July 1, 1994 receive 6% longevity after fifteen or more years of service. This is the maximum longevity received by all unit members regardless of date of hire.

The Borough opposes the PBA longevity proposal. The Borough points out that thirty officers have been hired since July 1, 1994. Granting the PBA proposal will immediately grant 12 officers longevity payments at the ten-year rate of 4% of base salary. In addition, eight officers would immediately be eligible for longevity payments at the five-year rate of 2% of base salary.

The Borough notes that the total cost of longevity in 2007 was \$90,076. The Borough calculates that the PBA’s longevity proposal would increase the total longevity payments by \$47,121 in 2007 for a total of \$137,197. The Borough calculates the cost of longevity for the years 2008 through 2012, based upon the PBA’s proposal as follows:

2008	\$145,376
2009	\$173,173
2010	\$192,193

2011	\$214,112
2012	\$238,039

The Borough notes that in Somerville, only those officers hired prior to January 1, 1977 are entitled to longevity, while in South Plainfield, only those officers hired before January 1, 1994 receive longevity pay. In Manville, only those officers hired before January 1, 1996 are entitled to longevity and in Scotch Plains, the 2% longevity for those with five to ten years of service was eliminated for those hired after October 1, 2005.

The total base salary in 2008 will exceed \$4 million. Thus, by the second year of the new CBA, the cost to implement the PBA's longevity proposal will be more than \$80,000. This is equivalent to 2% alone. There is simply no basis to grant this proposal given the cost. Granting such a proposal would mean that other officers would receive salary increases well below average. In addition to the immediate cost impact, the Borough would face increased costs for all new hires after 5 and 10 years of service.

Again, while there is no evidence in the record to tell the story of why the PBA agreed to the "two-tier" longevity system, undoubtedly, such concession was part of the "give and take" of bargaining in exchange for a proposal sought by the PBA. Finally, I note that this is not a true "two-tier" system as all officers reach maximum longevity after fifteen or more years of service. This is similar to "two-tier" salary schedules where younger officers may take additional years to reach maximum but when they reach maximum, it is the same maximum that is paid to all officers in the bargaining unit.

For all of the above reasons, I conclude that the PBA has not met its burden to justify a change in longevity and it is hereby denied.

### **Legal Defenses**

The Borough proposes the following modification to Article XXII, Legal Defenses, in both CBAs:

The Borough shall assign the affected police officer(s) counsel to assure sole control of his/her defense and the officer's legal fees so long as the officer qualifies for a defense under N.J.S.A. 40A:14-155 at the "prevailing rate." Prevailing rate shall be defined as the hourly rate charged by the Borough Attorney to the Borough. If the insurance carrier/joint insurance fund provides a defense on behalf of the affected employee, counsel will be assigned as part of that defense and the Borough shall have no monetary obligation to pay legal fees. If the affected employee requests the assignment of his/her own counsel, then the Borough shall have no monetary obligation to pay legal fees.

The current CBAs provide a comprehensive Legal Defense provision. This provision is similar to the Borough's proposal with one essential difference. Under the current language in the CBA, "the affected Police Officer(s) shall select his/her own counsel to assume sole control of his/her defense and the Borough agrees to assume the full cost of the Officer's legal fees so long as it qualifies under N.J.S.A. 40A:14-155, at the 'prevailing rate'." The CBA further states that the "Prevailing Rate" is defined as the hourly rate charged by the Borough Attorney to the Borough." All of the remaining provisions are similar, if not identical, to the Borough's proposal.

The significant difference is whether the Borough or the affected Police Officer gets to choose the attorney. A review of the CBAs in the record is not conclusive. A number of the CBAs provide that an officer is permitted to choose his own counsel. This is often limited to the Borough Attorney's hourly. However, the South Bound Brook CBA allows an officer to choose his own attorney "not to exceed \$500 per hour." A number of CBAs provide that the employer "agrees to provide the necessary means for the defense" and as the Borough notes, some CBAs are similar to the Borough's proposal.

The record is inconclusive and does not support the Borough's proposal. A different conclusion might have been reached if the record showed that the current language is not included in other CBAs. Moreover, there is nothing in the record to show the need for a change.

Accordingly, I conclude that the Borough has not met its burden to justify a change in the current Legal Defenses provision and it is hereby denied.

#### **Vacation Carry-Over**

The Borough proposes restricting the number of vacation days that can be carried over from year-to-year. The Borough seeks to restrict carryover days to those approved in writing by the Chief of Police for business necessity only, and that such days shall only be carried over into the next succeeding year. Further, the failure to use such days will result in the loss of such carryover time. The Borough further proposes that all existing carryover vacation for anyone hired before January 1, 2008 shall be redlined as to the amount, days and monetary value, as of December 31, 2007.

The Borough notes that eight of the eleven comparable CBAs submitted by the Borough prohibit the carry over and/or accumulation of vacation days. The only exceptions are if an officer, because of illness or other emergency, cannot take his or her scheduled vacation, or if the vacation cannot be scheduled because of Borough demands. For example, Article XV, Section 1(B) of the Agreement between Scotch Plains and PBA Local 87 (B-11) states that vacation days are to be used in the calendar year in which they accrued. That Section further provides:

"If an Employee is unable to take his vacation within the calendar year in which it accrued due to extended illness or injury, or because the Employer cannot permit the Employee to take his vacation due to the needs of the Department, then the Employee can carry over his vacation entitlement into the next succeeding calendar year only . . . The Chief of Police shall have the



discretion to determine whether such illness or injury was of a nature to permit the Employee to accumulate vacation days not actually used.”

The Borough further notes that the CBAs of Bound Brook (B-18), Green Brook (B-15), Somerville (B-19), South Plainfield (B-20) and Watchung (B-12) have almost identical provisions as Scotch Plains. The CBA between the Borough of Manville and PBA Local 36 (B-10) which provides, in Article X, Section (E), that “Police Officers may not accumulate vacations without the permission of the Mayor and Council.” The Borough asserts that its proposal is the same as the majority of other municipalities. The PBA is opposed to any changes in the current language that would limit the carry-over of vacation days from year-to-year.

Initially, I note that the CBAs in the record overwhelmingly support the Borough’s contention that vacation leave in other municipalities must be taken in the year that it is granted and is not allowed to be carried over except for special circumstances:

- Vacation time shall not be accumulated year-to-year except if the extent of the emergency circumstances occurring toward the end of calendar year shall preclude the employee from utilizing the entitlement during such year. (P-13 at 27).
- All vacation shall be used in the year earned. Exceptions may be made by resolution of the Township Committee. (B-15 at 14).
- B. . . . vacation days are to be used in the calendar year in which they accrued. If an Employee is unable to take his vacation within the calendar year in which it accrued due to an extended illness or injury, or because the Employer cannot permit the Employee to take vacation due to the needs of the Department, then the Employee can carry over his vacation entitlement into the next succeeding calendar year only.  
  
C. Any vacation carried over into the next succeeding year must be taken prior to May 1 of the calendar year. The Chief of Police shall have the discretion to determine whether such illness or injury was of a nature to permit the Employee to accumulate vacation days not actually used. (B-11 at 21).

- Police Officers shall take their vacations at their scheduled time. If the Police Officer is required by the Chief of Police to work during his/her vacation period, or if the Police Officer is unable to use the full allotment of vacation days in the calendar year due to manpower requirements, and a mutually acceptable reschedule cannot be agreed upon, then the Police Officer shall be permitted to carry over to the following year, that portion of the vacation which he/she was unable to take. The unused vacation carried over . . . must be taken during the year of the carry over. If the Police Officer fails to schedule the unused vacation carried over, the Borough has the option of scheduling the Police Officer's unused vacation carried over, allowing the Police Officer to carry over said unused vacation into the next calendar year, or paying the Police Officer for said unused vacation at the end of the year. (B-12 at 23).
- Police Officers may not accumulate vacations without the permission of the Mayor and Council. . . . No compensation shall be paid in lieu of Police Officers not taking his vacation time without the consent of the Mayor and Council. (B-10 at 15).
- If due to operational needs, vacations are refused, said vacations may be carried over to the following year or, at the discretion of the individual officer, they may be paid at the current rate. Either option must be taken by July 1 of the following year. (P-7-10 at 16).
- No vacation credits shall be extended beyond the calendar year in which they fall due, except for good cause being shown. No vacation credits will be extended beyond March 31<sup>st</sup> of the year in which said credits should have been used, unless time is not available, as determined by the Chief of Police. (P-8-14 at 24).
- Vacation days may be carried over to March 31<sup>st</sup> of the following calendar year. (P15 at 10).
- Vacation time shall not be accumulated year-to-year except if the extent of the emergency circumstances occurring toward the end of calendar year shall preclude the employee from utilizing the entitlement during such year. (B-21 at 23 ).

The current CBA provides for generous vacation benefits. After the completion of one year of service, an officer receives 72 hours of vacation leave. This is equivalent to 9 vacation days on a traditional 8-hour workday. After the completion of two years of service, an officer receives 135 hours of vacation leave. This is equivalent to nearly 17 vacation days on a traditional 8-hour workday. After the completion of four years of service, an officer

receives 153 hours of vacation leave. This is equivalent to just under four weeks vacation on a traditional 8-hour workday. After the completion of nine years of service, an officer receives 216 hours of vacation leave. This is equivalent to just under 5½ weeks vacation on a traditional 8-hour workday. After the completion of nineteen years service, an officer receives 270 hours of vacation leave. This is equivalent to nearly seven weeks vacation on a traditional 8-hour workday.

These vacation benefits when coupled with a 4-4 work schedule provide for a considerable amount of time off for North Plainfield police officers. However, the Borough is not seeking to reduce the annual allotment of vacation days. The Borough seeks to eliminate the carry-over of vacation days which will eliminate any long-term financial liability.

A review of a summary of the accumulated vacation days for police officers shows that as of the end of 2007, the Borough's vacation liability for 44 police officers is \$529,000. (Submission to Arbitrator and PBA Counsel from Borough Counsel on April 14, 2008, as requested by Arbitrator). While some officers appear to use their vacation time in the year it is granted with minimal carryover, other officers have as many as 1,869 vacation hours in the vacation bank. This is nearly 47 weeks of accumulated vacation leave. In addition, 12 other officers have between 11 and 40 weeks of accumulated vacation leave. The unlimited accumulation of vacation leave is simply not fiscally sustainable. Unlimited accumulation of vacation leave permits employees to "bank" their annual allotments. Annual vacation leave is 72 hours, 135 hours, 153 hours, 216 hours or 270 hours, depending on years of service. This is equivalent to 3.46%, 6.49%, 7.35%, 10.38%, and 12.98% of annual salary. Thus, if an officer banks 100% of his annual vacation leave, such officer banks between 3.46% and 12.98% of their annual salary.

One Sergeant in the bargaining unit (Sergeant A) had 736 vacation hours in the bank as of December 31, 2007. Sergeant A's hourly rate is \$62.89. Thus, in 2008, Sergeant A could bank 270 hours of vacation time at his hourly rate of \$62.89. This will increase his vacation bank by \$16,980. This is nearly 13% of Sergeant A's annual salary. Another officer in the bargaining unit (Officer B) had 900 vacation hours in the bank as of December 31, 2007. Officer B's hourly rate is \$51.71. Thus, in 2008, Officer B could bank 270 hours of vacation time at his hourly rate of \$51.71. This will increase his bank by \$13,961. Neither Sergeant A nor Officer B can cash out his accumulated vacation leave until they retire or resign. However, the cash value is effectively vested and is increasing by the annual salary increases from year-to-year until Sergeant A and Officer B's retire (or resign).

A review of the current roster of 44 police officers shows that during the term of the new CBA, 12 officers are entitled to 153 hours of vacation leave, 19 officers are entitled to 216 hours of annual vacation leave and 13 officers are entitled to 270 hours of annual vacation leave. The total number of annual vacation days is 9,450. The 2007 hourly rate for a maximum step Patrol Officer is \$38.78, Sergeant is \$45.75, Lieutenant is \$53.26 and Captain is \$62.89. Detectives in the above ranks receive a 3% differential. The total annual liability for accumulated vacation leave (assuming no officer takes vacation) is \$405,000. This is highly unlikely. However, with nearly seven weeks vacation for senior police officers, it is likely that officers are banking a considerable amount of their annual vacation allotment. If employees banked 50% of annual vacation leave, the Borough's cost is more than \$200,000. This is equivalent to a 5% salary increase in 2009 for the entire bargaining unit.

In view of the above analysis, I conclude that the Borough has met its burden. According, I conclude that effective January 1, 2008, the CBAs shall be modified to provide that vacation leave shall not be accumulated from year-to-year except if the employee is unable to use his annual vacation leave because of operational needs or emergency circumstances. All employees hired before January 1, 2008 shall be "redlined" as to the amount, days and monetary value of their vacation leave as of December 31, 2007. These employees are effectively "grandfathered" at the exact dollar figure that they have on the books as of December 31, 2007. I shall retain jurisdiction to resolve any dispute as to the calculation of the monetary value of vacation leave for all employees hired before January 1, 2008.

#### **Sick Leave**

The Borough proposes the following modifications to Article IX, Leaves of Absence, in both CBAs:

- A. Any employee hired on or before December 31, 2007 who retires under this Agreement shall not be eligible to receive payments in excess of the calculated amount (pursuant to the previous Borough sick leave ordinance) as of December 31, 2007. Therefore, for example, if an employee's sick leave under the previous ordinance is valued at \$30,000, the employee could collect no more than \$30,000 at the time of the eligibility to receive such payment.
- B. Any employee hired on or after January 1, 2008, who retires under this Agreement shall not be eligible to receive payments for eligible sick days in excess of Fifteen Thousand (\$15,000) Dollars, as calculated under the previous salary ordinance.
- C. The exceptions to Paragraph A and B above are that an employee hired before January 1, 2008 who retires before June 30, 2009, shall be entitled to receive payment for terminal leave based upon the previous sick leave ordinance calculation with no monetary cap at the employee's daily rate of pay at the time of retirement.

The Borough is seeking a monetary cap on the amount of terminal sick leave payments. The current CBA provides for terminal leave in accordance with the CBAs

between the Borough and the PBA and PBASO from 1976. These terminal leave terms are incorporated into Ordinance No. 659. These CBAs provide for a cap of 180 accumulated sick days. For terminal leave purposes upon retirement, the first ninety days are valued at 50% of value and the second ninety days are valued at 5/6 of value.

Essentially, the Borough's proposal seeks to "redline" the value of the sick leave at retirement for all employees hired on or before December 31, 2007 at the dollar amount determined by Ordinance No. 659 as of December 31, 2007. In addition, the Borough proposes that any employee who retires that was hired on or after January 1, 2008 shall not be eligible to receive payment for sick days in excess of \$15,000, as calculated under the previous salary ordinance.

The Borough notes that a review of the CBAs in other municipalities shows that its proposal is in line with other municipal CBAs. Of the eleven municipalities, six have imposed a cap on terminal leave, either in the form of a monetary cap or a cap on the number of days, and one CBA does not mention terminal leave in any manner. For example, the CBA between Green Brook Township and FOP Lodge 23 (B-15) imposes a \$5,000 cap on the accumulation of 60 days or less accrued sick leave, a \$10,000 cap on the accumulation of 120 days or less accrued sick leave and a \$15,000 cap on the accumulation of 180 days or less accrued sick leave. Similarly, the CBA between the City of Plainfield and PBA Local 19 (B-9) imposes a cap of \$15,000 on any accumulated sick leave payment. The Borough notes that two of the above communities border North Plainfield.

The Borough asks that its proposal be awarded. The PBA is opposed to any changes in the current terminal leave payments concerning sick leave.

This issue is similar to the terminal leave issue discussed above. The maximum payment required under the current CBA for accumulated sick leave upon retirement is 120 days of full pay. The 120 days are based on a formula that provides for 50% of the value of the first 90 days (45 days) and 83.3% of the value of the next 90 days (75 days). Thus, if an employee has accrued 180 sick leave days upon retirement, such employee is entitled to 120 days (960 hours) of terminal pay at the rate in effect at retirement. The current value (on the books) of terminal sick leave is \$993,559 for 44 employees. The current value for retirement purposes for the top twenty employees: \$56,954, \$56,726, \$55,296 (2 officers), \$50,382, \$48,915 (3 officers), \$43,660, \$42,535, \$40,111, \$33,775, \$32,291, \$28,781, \$18,488, \$17,245, \$17,199, \$16,828, \$16,296 and \$15,699.

The current sick leave terminal leave benefit in North Plainfield is a generous benefit in comparison to other CBAs in the record. The following excerpts from CBAs in the record support the Borough's proposal for a cap on terminal sick leave payments:

- Payment of a lump sum of \$15,000 upon retirement recognizing a total accumulation of no fewer than 180 days accrued unused sick leave. (B-15 at 20).
- Upon retirement, payment equal to 1/2 daily rate of pay for each unused sick day, up to \$15,000.(P-13 at 23).
- Upon retirement, payment equal to 1/2 daily rate of pay for each unused sick day, up to \$15,000.(B-21 at 19).
- . . . an Employee shall be entitled to pay on the basis of one (1) days pay for every three (3) days accumulated and not used. For employees hired on or after October 1, 2005 the maximum entitlement to payment shall be \$25,000. (B-11 at 25).
- Effective January 1, 1996, payment of accumulated sick leave . . . shall be capped in the amount of \$15,000 regardless of the number of sick days accumulated. (B-9 at 17).

- . . . said employee shall be eligible for pay for unused accumulated sick leave on the basis of 50% of sick leave accumulated and not previously used up to a maximum payment not to exceed \$10,000 per employee. The maximum payment shall increase to \$11,000 in 2007, \$12,000 in 2008, \$13,000 in 2008 and \$15,000 in 2010. (P-10 at 11).
- At the time of retirement, an employee will be paid for 50% of their accumulated sick time with a cap of \$15,000. (P-8-13 at 49).
- Unused sick leave for Patrol Officers shall be paid . . . at the rate of one hour for each two accumulated up to a total of 480 hours. (B-12 at 40).
- The following condition shall apply to members hired after November 1, 1990: These members shall be entitled to receive the value of unused sick leave up to a maximum of 481 hours. (P-11 at 8).
- . . . the Borough shall make a lump sum payment to the retiree on a three (3) to one (1) rate with a maximum accumulation of 125 days at the then prevailing rate of pay for the years 2005, 2007 and 2007. (B-10 at 21).
- All accumulated sick days shall be compensated for at the rate of one (1) days pay for every three (3) days accumulated. (B-18 at 8).
- At the time of retirement, an employee will be paid for 50% of their accumulated sick time with a cap of \$15,000. (P-8-12 at 20).
- However, in no event shall the amount paid exceed \$15,000 for any employee hired on or after September 1, 2000.
- . . . shall be paid for their unused accumulated sick days, not to exceed \$12,000 at the employee's current rate of pay at retirement. (P-9-19 at 29).

The evidence in the record supports a cap on terminal sick leave payments. I shall establish a \$17,500 cap on the payment of accumulated sick leave. As the Borough recognized in crafting its proposal, whatever cap is established, the cap must allow current employees the opportunity to maintain the value of the terminal sick leave benefit as of December 31, 2007, the date of the expiration of the 2003-2007 CBA. Thus, the following shall be the method for implementing the \$17,500 Cap on terminal sick leave payments upon retirement:



1. Effective January 1, 2008, a \$17,500 Cap shall be established for the payment of accumulated sick leave days upon retirement. The date for determining the dollar value of an employee's accumulated sick leave (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) shall be December 31, 2007.
2. All current employees that have no more than \$17,500 of accumulated sick leave days (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) on the books as of December 31, 2007, shall be capped at \$17,500.
3. All current employees that have more than \$17,500 of accumulated sick leave days on the books (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) as of December 31, 2007, shall be "grandfathered" at the exact dollar figure that they have on the books on December 31, 2007. Therefore, if the dollar value of an employee's sick leave is \$36,000, the employee could collect no more than \$36,000 at the time of eligibility to receive such payment. \$36,000 will be the maximum sick leave payout that can be paid upon retirement.
4. All officers hired on or after January 1, 2008 shall have a \$17,500 Cap on the payment of accumulated sick leave days upon retirement based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days.
5. I shall retain jurisdiction to resolve any disputes regarding the dollar value of accrued sick leave benefits as of December 31, 2007.

**Overtime Payments, On-Call Credits & Retention of Benefits**

The Borough proposes the following modifications to Article XI, Overtime Payments, in both CBAs:

- A. Overtime shall be hours actually worked in excess of a daily or weekly schedule.
- B. All accrued compensatory time shall be capped at the employee's hourly rate as of December 31, 2008.

The Borough proposes the following modifications to Article XII, On Call Credits, in both CBAs:

All accrued compensatory time shall be capped at the employee's hourly rate as of December 31, 2008.

The Borough seeks to delete Article XVII, Retention of Benefits, from both of the CBAs.

The PBA is opposed to any changes in the current overtime and compensatory time practices and opposes deletion of Article XVII, Retention of Benefits. The Borough has offered no rationale for changing the current overtime practices. As stated at the outset, a governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I conclude that the Borough has not met its burden and the Borough's proposals are hereby denied.

### **Mutual Agreements**

The Borough acknowledged mutual agreement on the following proposals which are Incorporated by reference in this award:

1. Article III (Union Business) to be revised to reflect the provisions of N.J.S.A. 40A:14-177 as it relates to Paragraph 2 only.
2. Effective January 1, 2009, Article X (Salary) to be revised by adding Paragraph 3 to the base salary of all employees and eliminate the unreimbursed expenses authorization.
3. Article XI (Overtime Payments) to be revised by deleting the last sentence of Paragraph 6 (PBASO CBA) and Paragraph 7 (PBA CBA).
4. Article XIV (Grievance Procedure) to be revised by designating all days as "calendar days."
5. Article XXII (Legal Defenses) in the PBASO CBA shall be modified by adding the statutory language of N.J.S.A 40A:14-155 included in the PBA CBA to Paragraph 1 of the PBASO CBA.

### **Comparability**

The second criterion is commonly referred to as the "comparability" factor. There are three sub-factors in the second criterion which require that the arbitrator compare the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other

employees performing the same or similar services and with other employees generally (a) in private employment; (b) public employment; and (c) in public employment in the same or similar jurisdictions.

In my discussion on salaries, I analyzed the third sub-factor, 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 services in public employment and concluded that the awarded salary increases were consistent with the comparability data submitted by both the Borough, the PBA and PERC.

I will now address the comparison of the wages, salaries, hours, and conditions of employment of the North Plainfield police officers (employees involved in the arbitration proceedings) with the wages, hours and conditions of employment of other employees performing the same or similar services in private employment. In its brief, the PBA argued persuasively and extensively that private sector comparisons should not be considered controlling since there is no comparable private sector job compared to that of a police officer. It is well established that there are no easily identified private sector police officers who perform services similar to those performed by Borough police officers. Neither party submitted salary data on this sub-factor since none exists. A police officer position is a uniquely public sector position that does not lend itself to private sector comparisons.

I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (See the excerpt on pages 21-22). There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight.

The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party emphasized private sector comparisons. The Borough, in its brief, correctly noted that its salary proposal was more in line with private sector settlement rates than the PBA's salary proposal.

I take arbitral notice that the awarded salary increases which average 3.75% annually, while somewhat higher than average salary increases in private employment in 2007 and 2008 (at the time the record was closed) is consistent with the requirements of this subfactor. I conclude that the awarded salary increases, while higher than private employment salary increases in general, is acceptable when measured against the totality of the terms of the award. This sub-factor, while supportive of the awarded salary increases, is not entitled to significant weight.

The next comparison is with public employment in general. Neither party submitted any salary data on public employment in general. I have served as a mediator, fact-finder and interest arbitrator (binding fact-finding) in many cases involving other public sector employees; i.e., school district employees and non-police municipal and county employees. A review of this salary data shows that the average annual salary increases in public employment in general are consistent with the awarded salary increases that average 3.75% annually. This sub-factor is supportive of the awarded salary increases.

#### **Lawful Authority of the Employer**

Three of the statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), refer to the lawful authority of the employer. These factors, among other things, require the arbitrator to consider the limitations imposed on the Borough by the CAP law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect

homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

More specifically, g(1) refers to the original 1976 Cap law; g(5) refers to the lawful authority of employer and cites the 1976 Cap law; and g(9) refers to the recently enacted 2007 Cap law which limits tax levy increases. It is well established that arbitrators must recognize and respect the statutory limits which have been placed on public employers. The Borough of North Plainfield and all other municipalities in the State face constraints in their ability to increase appropriations and, beginning in 2008, on their ability to raise taxes. The expenditure or appropriations cap applies to the total current expense portion of the budget and not to any particular line item within the budget. Under the expenditure cap, the current expense portion of the budget can be increased by a maximum of 3.5% without a referendum. It is well established that the Reform Act does not require an arbitrator to award the amount the employer has budgeted. The Borough is free to budget an amount which it considers sufficient for negotiations of CBAs and that amount is not determined by the CAP Law.

The terms of my award on salary cost more than the Borough's proposed salary increases in all four years of the 2008-2011 CBA. The difference is approximately  $\frac{1}{2}$  of 1% annually. However, as state above, the cost of salary increases will be offset by the savings from the health care contributions, the capping of terminal sick leave payments and most significantly by the termination of annual increases in the vacation leave bank which could range from 3.5% to nearly 13% of employees' annual base salary. The cost savings from health insurance will range from \$520 to \$1,040 annually. The savings from the termination of annual increases in the vacation leave bank will offset a significant portion of the salary increases.

There is absolutely no evidence in the record to show that the terms of the awarded salary increases or any other aspect of this award will cause the Borough to approach the limits of its financial authority or to breach the constraints imposed by the three statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,  
its Residents and Taxpayers**

The above discussion under the *lawful authority* is applicable to the *financial impact* factor and need not be repeated. For all of the reasons cited above, I conclude that there is no evidence that the terms of my award will require the Borough to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the Borough's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

**Cost of Living**

Arbitrators must consider changes in the cost of living. The cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 3.7% in 2007 and 1.6% in 2008 following dramatic decreases in October, November and December after crossing 5% earlier in 2008. These wild fluctuations are attributed to the volatile pricing of energy.

I conclude that the awarded salary increases and the total cost of the award, after factoring in all components including the savings from the health care contribution are

consistent with the CPI in 2007 and above the current increase in the CPI in 2008. The Borough's final offer is also above the CPI in 2008. I find that the PBA's final offer is considerably above the CPI data in 2008.

I conclude that the awarded base salary increases, while moderately higher than the increases in the cost of living, provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Borough's police officers. The award provides for base salary increases that over the full term of the CBA will allow for a modest increase in real earnings consistent with historical trends.

#### **Continuity and Stability of Employment**

The terms of my Award will maintain the continuity and stability of employment for the Borough's police officers. The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Borough to continue to recruit and retain qualified police officers.

The awarding of a cap on terminal sick leave, the additional cost of contributing to the cost of health insurance premiums, and the termination of annual increases in the vacation leave bank will provide long-term savings to the Borough that will enhance its ability to maintain a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact on the Borough's ability to recruit and retain police officers since these changes are consistent with the majority of the CBAs in the County and throughout the State.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

### **Overall Compensation**

A review of this factor requires consideration of 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.” I have considered the overall compensation received by the Borough police officers and find that the terms of my Award will maintain existing levels. The terms of my award are consistent with other external settlements in Somerset County and throughout the State, thus maintaining a consistent level of benefits.

Accordingly, after carefully considering each of the statutory criteria in relation to the evidence in the record, I respectfully issue the following award:



## **AWARD**

1. **Term of Agreement:**

There shall be a four-year agreement effective January 1, 2008 through December 31, 2011.

2. **Salary:**

- (a) Effective January 1, 2008, all steps on Appendices A, A-1 and A-2 and all ranks shall be increased by 3.75%.
- (b) Effective January 1, 2009, all steps on Appendices A, A-1 and A-2 and all ranks shall be increased by 3.75%.
- (c) Effective January 1, 2010, all steps on Appendices A, A-1 and A-2 and all ranks shall be increased by 3.75%.
- (d) Effective January 1, 2011, all steps on Appendices A, A-1 and A-2 and all ranks shall be increased by 3.75%.
- (e) All salary increases are fully retroactive to the above effective dates for all employees on the payroll as of January 1, 2009 and all employees that have retired since the expiration of the 2003-2007 CBAs.
- (f) Appendices A, A-1, A-2 and Sergeant, Lieutenant and Captain salary rates for 2008, 2009, 2010 and 2011 are attached. I note that Article X in J-2 has methodology for calculating PBASO salaries. I shall retain jurisdiction to resolve any dispute regarding the salary increases for Sergeant, Lieutenant and Captain in 2008-2011.

3. **Health Care Contributions:**

- (a) Effective January 1, 2009, PBA and PBASO bargaining unit members with employee only health insurance shall make bi-weekly contributions of \$15; bargaining unit members with parent/child coverage shall contribute \$25 bi-weekly; and bargaining unit members with either family or employee/spouse coverage shall contribute \$35 bi-weekly.
- (b) Effective January 1, 2010, PBA and PBASO bargaining unit members with employee only health insurance shall make bi-weekly contributions of \$20; bargaining unit members with parent/child coverage shall contribute \$30 bi-weekly; and bargaining unit members with either family or employee/spouse coverage shall contribute \$40 bi-weekly.

- (c) Effective January 1, 2009, the Borough shall implement a non-contributory IRS 125 Plan to permit pretax health care contributions.
- (d) The bi-weekly contributions shall not be applicable to employees who "Opt Out" of the Borough's health insurance programs.

4. **Acting Pay:**

Effective January 1, 2009, all work performed in a higher rank shall be paid at the rate of the higher ranked position. The new "Acting Assignments" language shall also include a provision requiring that such acting assignments are performed at the direction of the Chief of Police or designee.

5. **Clothing Allowance:**

I award an increase in the PBA clothing allowance from \$775 to \$825 effective January 1, 2008.

6. **Vacation Leave Accumulation:**

- (a) Effective January 1, 2008, the CBAs shall be modified to provide that vacation leave shall not be accumulated from year-to-year except if the employee is unable to use his annual vacation leave because of operational needs or emergency circumstances.
- (b) All employees hired before January 1, 2008 shall be "redlined" as to the amount, days and monetary value of their vacation leave as of December 31, 2007. These employees are effectively "grandfathered" at the exact dollar figure that they have on the books as of December 31, 2007.
- (c) I shall retain jurisdiction to resolve any dispute as to the calculation of the monetary value of vacation leave for all employees hired before January 1, 2008.

7. **Sick Leave Cap:**

The following shall be the method for implementing the \$17,500 Cap on terminal sick leave payments upon retirement:

- (a) Effective January 1, 2008, a \$17,500 Cap shall be established for the payment of accumulated sick leave days upon retirement. The date for determining the dollar value of an employee's accumulated sick leave (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) shall be December 31, 2007.

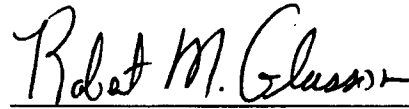
- (b) All current employees that have no more than \$17,500 of accumulated sick leave days (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) on the books as of December 31, 2007, shall be capped at \$17,500.
- (c) All current employees that have more than \$17,500 of accumulated sick leave days on the books (based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days) as of December 31, 2007, shall be "grandfathered" at the exact dollar figure that they have on the books on December 31, 2007.
- (d) All employees hired on or after January 1, 2008 shall have a \$17,500 Cap on the payment of accumulated sick leave days upon retirement based on the current formula of 50% for the first 90 days, and 83.3% of the next ninety days.
- (e) I shall retain jurisdiction to resolve any disputes regarding the dollar value of accrued sick leave benefits as of December 31, 2007.

8. **Mutual Agreements:**

I shall incorporate the following agreements reached by the parties during direct negotiations:

- (a) Article III (Union Business) to be revised to reflect the provisions of N.J.S.A. 4-A:14-177 as it relates to Paragraph 2 only.
- (b) Effective January 1, 2009, Article X (Salary) of the PBA and PBASO Agreement shall be revised by deleting Paragraph 3 and adding the \$425 payment (PBA) and \$375 payment (PBASO) for unreimbursed expenses to the base salary of all unit members.
- (c) Article XI (Overtime Payments) shall be revised by deleting the last sentence of Paragraph 6 (PBASO CBA) and Paragraph 7 (PBA CBA).
- (d) Article XIV (Grievance Procedure) in the PBA and PBASO Agreements to be revised by designating all days as "calendar days."
- (e) Article XXII (Legal Defenses) in the PBASO CBA shall be modified by adding the statutory language of N.J.S.A 40A:14-155 included in the PBA CBA to Paragraph 1 of the PBASO CBA.

9. All proposals of the Borough and the PBA not awarded herein are denied. All provisions of the 2003-2007 CBA shall be carried forward except for those provisions modified by the terms of this Award.

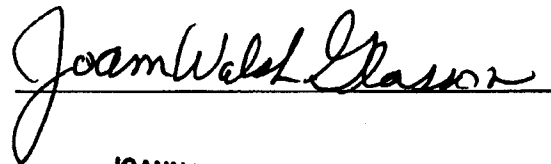


ROBERT M. GLASSON  
ARBITRATOR

Dated: July 25, 2009  
Pennington, NJ

STATE OF NEW JERSEY) ss.:  
COUNTY OF MERCER)

On this 25<sup>th</sup> day of July 2009, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



JOANN WALSH GLASSON  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 12/11/2011

## APPENDIX A

### SALARIES

	<b><u>EFF.</u></b> <b><u>1/1/08</u></b>	<b><u>EFF.</u></b> <b><u>1/1/09</u></b>	<b><u>EFF.</u></b> <b><u>1/1/10</u></b>	<b><u>EFF.</u></b> <b><u>1/1/11</u></b>
<b><u>Class A</u></b> <b>Over 48 months</b> <b>of</b> <b>Service</b> <b>(Maximum)</b>	\$85,843	\$89,503	\$92,859	\$96,341
<b><u>Class B</u></b> <b>36 to 48 months</b>	\$73,986	\$77,201	\$80,096	\$83,100
<b><u>Class C</u></b> <b>24 to 36 months</b>	\$66,503	\$69,438	\$72,042	\$74,743
<b><u>Class D</u></b> <b>12 to 24 months</b>	\$57,240	\$59,827	\$62,071	\$64,399
<b><u>PROBATIONARY</u></b> <b>Date of Academy</b> <b>graduation to</b> <b>twelve (12) months</b>	\$43,106	\$45,163	\$46,857	\$48,614

**APPENDIX A-1**

**SALARIES**

**Effective for Employees hired after September 1, 1998 and prior to March 8, 2001**

	<b><u>EFF.</u></b> <b><u>1/1/08</u></b>	<b><u>EFF.</u></b> <b><u>1/1/09</u></b>	<b><u>EFF.</u></b> <b><u>1/1/10</u></b>	<b><u>EFF.</u></b> <b><u>1/1/11</u></b>
<b><u>Class A</u></b> <b>Over 48 months of</b> <b>Service (Maximum)</b>	\$85,843	\$89,503	\$92,859	\$96,342
<b><u>Class B</u></b> <b>36 to 48 months</b>	\$79,369	\$82,786	\$85,891	\$89,112
<b><u>Class C</u></b> <b>24 to 36 months</b>	\$71,930	\$75,068	\$77,883	\$80,804
<b><u>Class D</u></b> <b>12 to 24 months</b>	\$61,910	\$64,673	\$67,098	\$69,614
<b><u>Class E</u></b>	\$44,263	\$46,364	\$48,102	\$49,906
<b>Second six (6) months</b> <b>of employment</b>	\$38,741	\$40,635	\$42,158	\$43,739
<b><u>ACADEMY</u></b> <b>(1<sup>st</sup> six (6) months of</b> <b>employment)</b>	\$32,831	\$34,503	\$35,797	\$37,139

## APPENDIX A-2

### SALARIES

(Effective for all Employees hired after 3/8/01)

	<b><u>EFF.</u></b> <b><u>1/1/08</u></b>	<b><u>EFF.</u></b> <b><u>1/1/09</u></b>	<b><u>EFF.</u></b> <b><u>1/1/10</u></b>	<b><u>EFF.</u></b> <b><u>1/1/11</u></b>
<b><u>Class A</u></b> <b>Over 72 months of Service (Maximum)</b>	\$85,843	\$89,503	\$92,859	\$96,342
<b><u>Class B</u></b> <b>60 to 72 months</b>	\$77,985	\$81,350	\$84,401	\$87,566
<b><u>Class C</u></b> <b>48 to 60 months</b>	\$70,187	\$73,260	\$76,007	\$78,857
<b><u>Class D</u></b> <b>36 to 48 months</b>	\$62,388	\$65,168	\$67,612	\$70,148
<b><u>Class E</u></b> <b>24 to 36 months</b>	\$54,589	\$57,077	\$59,217	\$61,438
<b><u>Class F</u></b> <b>12 to 24 months</b>	\$46,792	\$48,988	\$50,825	\$52,731

Once an officer has attained "Class F" status, they will serve one (1) year in each Class level until reaching top step "Class A".

<b>If Academy Trained</b> <b>Second Six (6) months</b>	\$38,666	\$40,557	\$42,078	\$43,656
<b><u>ACADEMY</u></b> <b>1<sup>st</sup> six (6) months of employment</b>	\$35,509	\$37,282	\$38,680	\$40,130

## ARTICLE X

### 1. Base Salary

	<b><u>EFF.</u></b> <b><u>1/1/08</u></b>	<b><u>EFF.</u></b> <b><u>1/1/09</u></b>	<b><u>EFF.</u></b> <b><u>1/1/10</u></b>	<b><u>EFF.</u></b> <b><u>1/1/11</u></b>
<b>SERGEANT</b>	\$98,720	\$102,928	\$106,788	\$110,793
<b>LIEUTENANT</b>	\$111,596	\$116,354	\$120,717	\$125,245
<b>CAPTAIN</b>	\$135,706	\$140,795	\$146,075	\$151,526