

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the:

TOWNSHIP OF LOWER

"Public Employer"

-and-

LOWER TOWNSHIP PBA LOCAL 59

"Union."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2004-070

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Township:

Anthony Monzo, Esq.
Monzo Catanese, P.C.

For the PBA:

Bruce D. Leder, Esq.
Cohen, Leder, Montalbano & Grossman, LLC

I was appointed interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in an impasse involving the Township of Lower [the "Township" or "Employer"] and Lower Township PBA Local 59 [the "PBA"]. Three pre-interest arbitration mediation sessions were held but the impasse remained unresolved. A formal interest arbitration hearing was held on August 8, 2005 at the Lower Township Hall. Testimony was received from Police Officer Bruce Miller, Captain Louis Russo, and Kathleen McPherson, Business Administrator. Both parties introduced extensive documentary evidence in support of their respective positions on the issues in dispute. Post-hearing briefs were submitted by both parties and were transmitted simultaneously to the parties on December 17, 2005.

FINAL OFFERS OF THE PARTIES

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

The PBA

1. **Duration of the Agreement** – The PBA seeks a three (3) year agreement.
2. **Wage increases** – The PBA seeks a 5.2% increase for each year of the contract.
3. **Minimum Recall** – Police Officers shall be guaranteed four (4) hours pay at time and one-half.

4. **Equipment Allowance** – Increase the list of items to approve for purchase.
5. **Acting Supervisor's Pay** – Officers assigned to the role of shift commander will be paid \$2.00 per hour over and above their normal rate of pay.
6. **Health Insurance** – No change except to provide the following:
 - (a) Police Officers who receive a disability retirement benefit shall receive health insurance.
 - (b) The coverage for retired employees and their spouse shall continue until age 65. When the employee or the spouse reaches 65, the other will continue to receive coverage until he/she also reaches age 65. Dependents shall continue to receive benefits until age 23.
 - (c) In the event a Police Officer is killed in the line of duty, health insurance coverage for the surviving spouse and dependents shall continue until remarriage of the spouse or for any surviving child until the age of 23. Coverage will remain to the level of benefits the member was receiving at the time of death.
7. **Clothing Allowance** – All police officers assigned as detectives shall receive \$750.00 for the first year of the contract. It shall increase by \$100.00 in the 2nd and 3rd years. School resource officers will receive one-half of the amount that detectives receive.
8. **Court Time** – Increase the minimum to four (4) hours pay.
9. **Terminal Leave** – Increase the maximum to \$15,000.00.
10. **Work Schedule** – Increase the base salary by the amount of money equivalent to 104 hours of pay currently received as a lump sum.
11. **Off Duty Work** – Include the hourly rate of pay in a new Article in the contract.
12. **College Credits** – Increase the maximum \$750.00 to \$1,000.00.

13. **Work Schedule** – Incorporate the existing schedule.

The Township

1. **Article 6. Leave of Absence.** Replace with the following:
 - A. Family/Medical Leave of Absence will be granted in accordance with the provisions of the Federal Family and Medical Leave Act ("FMLA") and the New Jersey Family Leave Act ("NJFLA") and the regulations promulgated thereunder. Under the provisions of these statutes, the Employee is entitled to twelve (12) weeks of leave during a twelve (12) month period, which leave may be extended at the request of the Employee, upon good cause shown, for up to a total of six (6) additional months (excluding the initial twelve (12) week period). The Employee shall be entitled to leave for the Employee's own serious health condition, or the need to care for a spouse, child or parent with a serious health condition. In addition, the Employee may take leave to care for a parent, child or parent-in-law. The circumstances under which leave may be taken vary depending on the type of leave requested and the Employer will grant leave in accordance with the provisions of each statute, the regulations issued for each statute, and judicial decisions interpreting the requirements of each statute. If the Employee takes FMLA or NJFLA leave, the Employee may, at the Employee's option use accrued sick leave, vacation and other administrative leave during the FMLA or NJFLA leave. The Employer retains all rights to require proper certification from a health care provider pursuant to all Applicable Laws. Any other leave of absence shall be granted in the sole and absolute discretion of the Township Manager and shall not be for a period in excess of six (6) months.
 - B. Any unpaid leave of absence granted because of illness or disability will not result in cessation of insurance, health and welfare benefits set forth in Article 12. The employee shall not earn any seniority during the period of such leave of absence, and there will be no additional accrual of vacation, sick and personal days during the period of such leave of absence.
 - C. As to any unpaid leave of absence granted for any reason other than illness or disability, the Township shall have sole discretion to determine if such leave will result in a cessation of insurance, health and welfare benefits during such leave of absence. The Employee shall not earn any seniority during the period of such

leave of absence, and there will be no additional accrual of vacation, sick and personal days during the period of such leave of absence.

- D. Unless otherwise specifically set forth in this Agreement to the contrary, all of the provisions of the New Jersey Department of Personnel Regulations concerning leaves of absence, as set forth in Title 4A of the New Jersey Administrative Code, Chapter 6, Subchapter 1, as applied to State service, shall apply to the PBA.
- E. Before an employee goes on FMLA or NJFLA leave without pay, the Employee shall be entitled to use all of the sick, vacation and personal days which have been credited to the Employee at the beginning of the year. The employee also acknowledges that sick, vacation and personal days are not earned during any FMLA or NJFLA leave or any other unpaid leave of absence. Accordingly, (i) if an Employee on such leave does not return to work, he shall reimburse the Employer for the paid sick, vacation and personal days used in excess of his prorated entitlements as set forth in Paragraphs 9E, 11E and 15C of this Agreement, or (ii) if an Employee on such leave does return to work, the sick, vacation and personal days to be credited in the future shall be reduced by such days used in excess of his prorated entitlements.

2. **Article 8. Work Week – Overtime**

- a. Replace Paragraph A with the following:

- A. For purposes of this Article, a work-period shall be defined as a 28 day period commencing 12:01 a.m. on a Sunday morning and ending 28 days later at 11:59 p.m. Saturday night. If the Township maintains an eight hour work-day, the Employees shall work 21 eight hour work-days, totaling 168 hours, during each 28 day work-period. The exact days and hours to be worked hereunder and under Paragraph D below shall be determined by the Township. There shall be no overtime hereunder or under Paragraph D below unless an Employee works in excess of 168 hours for any 28 day work-period.

- b. Replace Paragraph D with the following:

- D. As a result of the Township's unilateral change to 12 hour work-days, which requires 14 – 12 hour work-days for each 28 day work period, totaling 168 hours, and while this change remains in effect, all references in this Agreement to

vacation, sick, personal and other days of leave shall be converted to hours, such that every 8 hours equals one day.

3. **Article 9. Vacations.** Add the following new paragraph:

- F. Vacation leave entitlements for the entire year shall be credited to the Employee at the beginning of each calendar year in anticipation of continued employment for the full year. In the event the Employee terminates employment, takes a leave of absence, or has any other change in status where such leave is not earned for a portion of the year, the Employer shall recover the prorated value of vacation leave, and if the Employee utilizes more leave than is earned, he shall be required to reimburse the Employer for the value of the used, but unearned, leave. For the purposes hereof, the prorated value of the vacation leave shall be determined by (i) dividing the number 52 into the number of full weeks in such years as of the date of such termination of employment, leave or change in status, then (ii) multiplying such fraction by the total number of vacation days credited at the beginning of such year, and then (iii) subtracting the vacation days used in such year.

4. **Article 11. Sick Leave.** Add the following new paragraph:

- E. Sick leave entitlements for the entire year shall be credited to the Employee at the beginning of each calendar year in anticipation of continued employment for the full year. In the event the Employee terminates employment, takes a leave of absence, or has any other change in status where such leave is not earned for a portion of the year, the Employer shall recover the prorated value of sick leave, and if the Employee utilizes more leave than is earned, he shall be required to reimburse the Employer for the value of the used, but unearned, leave. For the purposes hereof, the prorated value of the sick leave shall be determined by (i) dividing the number 52 into the number of full weeks in such years as of the date of such termination of employment, leave or change in status, then (ii) multiplying such fraction by the total number of sick days credited at the beginning of such year, and then (iii) subtracting the sick days used in such year.

5. **Article 12. Health Insurance.** Delete in its entirety and replace with the following.

Article 12 – Insurance, Health & Welfare

- A. The Township shall provide the following health benefits for all permanent and provisional employees working thirty (30) hours per week or more,

and their dependents, beginning on the first day of the third month after two (2) months of active employment:

1. Major Medical Benefits with 100% coverage in-network for covered services. For out-of-network services, there will be a \$500 deductible per person and a 40% co-insurance charge after deductibles on the first \$2,000 of covered charges per person. The maximum deductibles and co-insurance charges per family will be based on two individuals, totaling \$1,000 for the deductibles and \$1,600 for co-insurance. The deductibles and co-insurance charges do not apply in-network. The in-network co-payments will be \$10 per office visit. All coverage for out-of-network will be based upon usual and customary charges. The covered services provided hereunder are set forth on Schedule A attached hereto.

2. A Prescription Drug Plan which will require co-payments of \$5 for generic and \$10 for brand name. There will be one (1) co-payment per ninety (90) day supply of medication for mail orders.

3. A Dental Plan with payment limitations as follows:

Preventative Maintenance, etc.	100%
Diagnostic and Restorative Treatment	85%
Endodontics and Periodontics	85%
Prosthodontics (Fixed and removable)	85%
Orthodontics	85%

Maximum Benefit: \$1,300 per person per calendar year. \$2,950 lifetime maximum per person for orthodontic service.

4. A Vision Care Plan with benefits payable only once every twenty-four (24) months as follows:

	Benefit
Vision Analysis	\$80
Single Vision Lenses	\$70
Bifocal Lenses	\$85
Multi-focal Lenses	\$100
Contact Lenses	\$110
Frames	\$85

5. These benefits, in their amended form, will start on the date this Agreement is executed by both parties and shall continue for the life of the term of this Agreement and until a successor Agreement is reached between the parties subject to the provisions in Paragraph D below.

B. The Township shall provide the following health benefit coverage for retired employees up to sixty-five (65) years of age:

1. Eligibility

1. Employee retires at age sixty-two (62) or older with at least fifteen (15) years service with the Township.
2. Employee retires before age sixty-two (62) with at least twenty (20) years service with the Township and twenty-five (25) years of service credit as required under N.J.S.A. 40A:10-23.
3. Coverage is for retired employee and those dependents at time of retirement, but only for as long as they remain dependents. Subsequent marriage will not make a new spouse and dependents eligible.

2. Benefits

1. Major Medical Benefits as described under Section A(1) of this Article.
2. Prescription Drug Plan as described under Section A(2) of this Article.

3. Coordination of Benefits

If the retired employee takes a job with an employer who provides health benefits, he/she must obtain primary coverage thereunder, and the Township will be the secondary insurer. The same applies if the retired employee's spouse has or takes another job which provides health benefits, the employed spouse's benefits will be the primary coverage.

C. The Township shall provide the following health benefits coverage for retired employees who have reached the age of sixty-five (65):

1. Eligibility

1. Employee retired at age sixty-two (62) or older with at least fifteen (15) years continuous service with the Township at the time of retirement.
2. Employee retired with at least twenty (20) years service with the Township, not necessarily continuous, and twenty-five (25) years of service credit as required under N.J.S.A. 40A:10-23, at the time of retirement.
3. Employee retired at age sixty-five (65) or older but with less than fifteen (15) years of service with the Township, shall be allowed to participate in any Township group plans for supplemental Medicare Insurance, (if the Township

provides one) and prescription program as long as the employee pays the premiums.

4. Coverage is for retired employee and spouse, both of whom have reached sixty-five (65). When one employee or spouse reaches sixty-five (65), the other will continue to receive coverage as described under Section B of this Article, until he/she also reaches sixty-five (65).
2. Benefits are limited to a maximum of \$_____ (the maximum benefits will be determined based upon the yearly rate of percentage pay increase; the maximum amount in the year 2003 was \$720.85) in the year 2004, \$_____ in the year 2005 and \$_____ in the year 2006, for retired employees and spouse, to assist in the purchase of a Medicare supplement health benefits plan. Medicare Part B payments/deductions shall have been authorized by each. The Township reserves the right to purchase the supplements directly, or to reimburse the employee and/or spouse.
 3. If retired employee or spouse has or takes a job with an employer who provides health benefits, he and/or she must obtain primary coverage thereunder, and the Township will be the secondary insurer. Coordination of benefits will apply.
- D. The Township reserves the right to change Third Party Administrators and/or Health Plans, as long as the within benefit levels and deductible and co-payment costs to employees are substantially equivalent.
 - E. When both husband and wife are Township employees, family coverage will be provided under only one Agreement, with the supplemental benefit of 100% coverage for Vision and Dental, and 100% reimbursement of In and Out-of-Network deductibles and co-payments.
 - F. When an employee's spouse works for another employer with family health benefits, then the employee may waive health insurance coverage under the Township Plan in favor of coverage under the spouse's plan. In this event, the Township will annually award a \$1,500 cash payment in December of that year in lieu of enrolling the employee in the Township plans. An employee who waives coverage shall be permitted to resume coverage under the same terms and conditions as apply to initial coverage if the employee ceases to be covered through his/her spouse for any reason, including, but not limited to, the retirement or death of the spouse, or divorce.
 - G. There will no longer be a medical fund to reimburse deductibles, co-payments, or other out-of-pocket expenses.
 - H. The provisions of this Agreement do not affect the health benefits coverages of employees who retired prior to the effective date of this

same Agreement, all of which benefits are to be determined by prior Agreements in effect at the time of retirement.

- I. The Township agrees to provide a free legal defense to any employee sued in his/her official capacity for any legal act committed within his/her authority as a Township employee.
 - J. The Township shall continue to provide a \$10,000 life insurance policy on the employee's life only, in addition to the insurance provided by the state pension plan.
 - K. For an employee who retires due to accidental disability in accordance with N.J.S.A. 43:16A-7, which shall exclude mental incapacitation, such as post-traumatic stress disorder, and who receives 66 and 2/3 percent Accidental Disability Retirement Benefits from the Police and Firemen Retirement System, the Township shall continue to provide the same level of health insurance benefits, as may be changed from time to time by the Township, that are provided to all other Police Officers regardless of the date of retirement. If the retired employee or spouse has or takes a job with an employer who provides health benefits, he and/or she must obtain primary coverage thereunder, and the Township will be the secondary insurer. Coordination of benefits will apply.
 - L. In the event a Police Officer is killed in the line of duty, health insurance coverage for his surviving spouse shall be continued until remarriage of such spouse, and for any surviving children until the age of 23. Coverage will remain at the level of benefits that the member was receiving at the time of death.
 - M. When an Employee is required to use his or her own vehicle, he or she shall be compensated at the mileage rate published by the Internal Revenue Service plus tolls.
6. **Article 14. Clothing Allowance.** Modify last two sentences of Paragraph B as follows:

The allowance may not be carried over into the following year, and all funds not expended within 12 months of date of appropriation are forfeited. The allowance for each year during this Agreement shall be \$100.00.

7. **Article 15. Time Off.**
- a. Paragraph A is modified as follows:
 - A. Each Employee shall be granted four personal days off annually with no loss of compensation. These days shall be requested at least 72 hours before the requested time off. Requests for such time off shall not be unreasonably denied.

b. A new Paragraph C is added as follows:

C. Personal leave entitlements for the entire year shall be credited to the Employee at the beginning of each calendar year in anticipation of continued employment for the full year. In the event the Employee terminates employment, takes a leave of absence, or has any other change in status where such leave is not earned for a portion of the year, the Employer shall recover the prorated value of personal leave, and if the Employee utilizes more leave than is earned, he shall be required to reimburse the Employer for the value of the used, but unearned, leave. For the purposes hereof, the prorated value of the personal leave shall be determined by (i) dividing the number 52 into the number of full weeks in such years as of the date of such termination of employment, leave or change in status, then (ii) multiplying such fraction by the total number of personal days credited at the beginning of such year, and then (iii) subtracting the personal days used in such year.

c. A new Paragraph D is added as follows:

D. In the event of a death of an Employee's "family member" as listed below, an employee shall be granted up to three working days off without loss of pay from the date of death up to and including the day after the funeral. The following is a list of those persons who qualify within the term "family members":

Mother
Father
Spouse
Children
Grandparents/Grandchildren
Sister
Brother
Step Children
Father-In-Law
Mother-In-Law
Step Mother
Step Father
Step Sister
Step Brother
Half-Sister
Half-Brother

Aunt
Uncle

“Family member” shall also include any relative of the employee or person that has been residing in the employee’s household. Under no circumstances shall the provision of this Paragraph result in an increase in an employee’s normal earnings.

8. **Article 19. Wages.**

- a. The salaries will be increased by 3.2% per year for each year of the Contract.
- b. The longevity schedule in Paragraph C will be modified as follows:
 - 1% of base pay after 5 years of service
 - 3% of base pay after 10 years of service
 - 5% of base pay after 15 years of service

9. **Article 28. Term and Renewal.** Four years.

BACKGROUND

Lower Township is one of 16 municipalities located in Cape May County, New Jersey. It has 23,881 residents, making it the municipality that has the largest permanent population in the County. The second largest is Middle Township with 17,274 residents, with Ocean City ranking third at 15,828 residents.

The boundaries of the Township reflect an unusual geographic mix. The Township has a land mass of 28 square miles. Much of the Township’s land is situated along the southern end of the narrow Cape May peninsula. To the east, the Township extends to a small area that is oceanfront. The Township has land

adjacent to the western portion of barrier islands where Wildwood and Wildwood Crest is located. To the south, the Township extends across the Cape May Canal bordering the communities of Cape May, West Cape May and Cape May Point.

The Township attracts many tourists, especially during the summer months because of its many recreation areas such as campgrounds, marinas, fishing and resort homes and motels. The Township also houses the Cape May – Lewes Ferry Terminal, a site policed by the Delaware River and Bay Authority (DRBA) Police. Tourism causes a dramatic increase in summer population. Its summer population projection in 2005 was 88,626 and this number is projected to rise into the future. According to the Mayor, on any given summer day, the population can swell upwards to 100,000. This, in turn, causes a significant increase in the number of calls for service. The monthly calls for service statistics reflect a large increase from the beginning of June to the end of August. The department hires nine or ten Special Law Enforcement Officers during the summer season. The PBA asserts that the demands of policing the recreation areas and spillover from the Lewes Ferry Terminal are not fairly reflected in compensation. The Township responds that DRBA is an active police force with a high volume of calls and its police force also has rendered assistance to the Township. The Township further points out that recreation areas and marinas exist in most coastal municipalities and that any crimes occurring there are accounted for in the Uniform Crime Reports.

The police department has 45 members. There are seven (7) Sergeants, two (2) Lieutenants, one (1) Captain, and a Chief of Police. The bargaining unit consists of Patrol Officers and seven Sergeants. The PBA asserts that the department is understaffed having experienced a decline from 54 police officers to 45 during the recent past. The PBA points to a statistic reflecting that the Township has only 1.9 police officers per 1,000 people, a rate that is almost 50% below the Cape May County rate of 3.3. The Township rejects this contention citing the 54 as a temporary spike up from the normal complement of 40. The Township has submitted a Local Government Budget Review Report stating that the Township's patrol function is properly staffed. This report also notes that the police department is well managed and effective. Statistics concerning criminal activities in the Township generally show a low to moderate rate of violent and non-violent crimes although the Township's rate of domestic violence is above the county or state average. This activity strains the department because longer police responses are involved as well as the responsibility of having more than one officer respond to each incident.

The Township's finances reflect characteristics that are mixed. Its demographics show lower than average incomes but dramatically increased real estate evaluations, stable tax rates and effective fiscal management.

The issues at impasse are many and they are predominantly economic. They include, among other things, salaries, work schedules, paid time off, clothing allowance, health insurance and terminal leave. The Township and the PBA engaged in serious efforts to resolve these and other issues but, despite achieving progress on many issues, they were unable to reach an agreement on a total overall package acceptable to each. Thus, some issues were potentially resolvable, but they remained in dispute because of their linkage to issues that stayed at impasse. The parties each contend that their proposed total package should be awarded. In their arguments and presentation of evidence, the Township and the PBA focus on the overall financial impact of the economic issues, internal and external comparability and the financial posture of the Township. The PBA contends that the Township's financial ability allows for an adoption of its last offer while the Township maintains that an award of the PBA's proposals would have negative financial impact on the governing body, the taxpayers and the residents.

I have already set forth each party's last or final offers on each individual issue in dispute. Because of the large number of disputed issues, I will first consider each individual issue in dispute and provide a concise summary of the parties' positions, argument and evidence presented on that issue. Each party's submission was comprehensive and, as required, contained argument referencing the statutory criteria. After consideration of the presentations on

each of the disputed issues, I will then set forth the award that I have rendered on each issue accompanied by a full text of the award at the end.

I am required to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

In interest arbitration proceedings, it is traditional that the party seeking to change the conditions of employment bears the burden to prove the basis for such modifications. I apply that principle as part of my analysis to each of the issues in dispute. While the merits of each disputed issue will be considered individually, I must also give consideration to the totality of the changes that are

to be awarded on the net changes to the terms set forth in the existing agreement. This consideration is consistent with the statutory requirement that the arbitrator must determine whether the total net annual economic changes for each year of the agreement are reasonable under all the criteria. Thus, any decision herein to award or deny any individual economic issue in dispute will include consideration as to the reasonableness of the individual issue awarded in relation to the terms of the entire award. On non-economic issues, the burden to be met must be at a level beyond merely making a request for change without evidentiary support.

Duration

The PBA proposes that the duration of this Agreement be three years while the Township proposes four years. I believe that a contract duration of four (4) years rather than three (3) years is reasonable and warranted in light of the lengthy nature of the negotiations and the mediation/arbitration proceedings. The Township and the PBA will benefit from the economy and stability caused by such an award. An award of a three (3) year agreement would result in an immediate commencement of negotiations over a new agreement. The parties and the public interests would not be served by a three (3) year agreement. A four (4) year agreement would allow the Township and the PBA a period of stability to implement the terms of this award before engaging in another round of bargaining. Accordingly, I award a four (4) year Agreement with a duration from January 1, 2004 through December 31, 2007.

Minimum Recall

The PBA proposes to modify Article 8 – Work Week – Overtime, Section B to increase the guaranteed minimum of two (2) hours pay at time and one-half to four (4) hours pay at time and one-half. The Township opposes this proposal.

The record does reflect that the average minimum recall in the County (for operational purposes) is three (3) hours and that the municipalities of Wildwood Crest, Middle Township, Sea Isle City and Ocean City have a four (4) hour minimum. However, the record does not reflect the potential financial impact of the proposal that would double the number of hours of minimum recall. The frequency of recalls under the twelve (12) hour schedule is not known. Accordingly, I find there is insufficient justification to award this proposal.

Acting Supervisor's Pay

The PBA has proposed that Police Officers assigned to the role of Shift Commander will be paid \$2.00 per hour over and above their normal rate of pay. According to the PBA, Lower Township is one of four municipalities in the County that does not provide any compensation for Police Officers who are required to act as a police supervisor. The PBA points out that these Sergeants are paid approximately \$5,000 more in base salary than rank and file Police Officers. Thus, its proposal for \$2.00 per hour when signed to act as a supervisor would

actually be less than the differential between the salaries. This, it is argued, is minor compensation for the responsibility that an upgraded Police Officer has for making command decisions. The Township opposes this proposal.

Although there may be merit in theory for providing a differential, the record does not reflect a justification based upon the frequency or length of any such assignments that would serve to evaluate the reasonableness of providing additional compensation for the duties assumed or for serving as a "penalty" to the Township if it has overused its authority to make temporary supervisory assignments. For these reasons, I do not award this proposal.

Workweek – Overtime – Work Schedule

The Township and the PBA each have proposals in the above areas. I have grouped them for consideration.

The Township's first proposal is to replace paragraph A with a new paragraph A. Article 8, paragraph A currently reads as follows:

- A. The following present work week shall continue:
 - (i) Each Employee shall be compensated for required overtime for all hours worked beyond the regularly scheduled hours for the shift, or 40 hours in any one week, except as provided in Paragraph C below. For purposes of this Article, a week shall be defined as a seven day period commencing 12:01 a.m. Sunday morning and ending 11:59 p.m. Sunday night. Overtime shall be computed to the nearest quarter

hour and shall be paid at the rate of time and one-half the Employee's straight time pay.

- (ii) Under the existing work schedule, each Employee is compelled to work two extra days (16 hours) during each eight week cycle (58 days). In lieu of regular payments for these extra days work, each Employee shall receive payment equivalent to 13 days pay at the Employee's straight time rate in a lump sum in the first paycheck in December, regardless of the actual number of "extra days" actually worked. This provision shall not affect operational overtime or overtime resulting from attendance at Court.

The Township seeks to replace paragraph A with the following:

For purposes of this Article, a work-period shall be defined as a 28 day period commencing 12:01 a.m. on a Sunday morning and ending 28 days later at 11:59 p.m. Saturday night. If the Township maintains an eight hour work-day, the Employees shall work 21 eight hour work-days, totaling 168 hours, during each 28 day work-period. The exact days and hours to be worked hereunder and under Paragraph D below shall be determined by the Township. There shall be no overtime hereunder or under Paragraph D below unless an Employee works in excess of 168 hours for any 28 day work-period.

The Township also proposes to replace existing paragraph D with a new paragraph D. Currently Article 8, paragraph D reads as follows:

- D. If a work schedule change is made, all days of work (based on eight (8) hours) will be converted to hours such that, without limitation, all sick days, vacation days, personal days, holidays, leave without pay and overtime, will be converted to hours based upon eight (8) hours per day. If such conversion is permanent, the parties agree to amend this Agreement accordingly.

The Township seeks to replace paragraph D with the following:

As a result of the Township's unilateral change to 12 hour work-days, which requires 14 – 12 hour work-days for each 28 day work period, totaling 168 hours, and while this change remains in effect, all references in this Agreement to vacation, sick, personal and other days of leave shall be converted to hours, such that every 8 hours equals one day.

The PBA proposes to incorporate the existing twelve (12) hour work schedule into the Agreement. The PBA also seeks to replace Article 8, paragraph A(ii) with language that would increase the base salary by the amount of money equivalent to 104 hours of pay. This amount is currently being received as a lump sum pursuant to paragraph A(ii) and the hours of work under the twelve (12) hour schedule have not changed.

The parties proposals all relate to the issue of work schedule and the evolution of that issue after the Township, on February 13, 2001, implemented a new work schedule changing the previous work schedule of forty (40) hour per week shifts with eight (8) hour tours of duty to an eighty-four (84) per two-week shift with a twelve (12) hour tour of duty.¹ At the time of implementation, the change was not necessarily envisioned to be permanent as evidenced by Article 8, paragraph D. This paragraph contemplated the conversion of leave time and overtime based upon eight (8) hours per day if such work schedule change were to be made "permanent." The new schedule was not changed either prior to the

¹ Under the eight (8) hour schedule, the police officers worked two extra days during each eight (8) week or fifty-eight (58) day cycle causing an additional 104 hours or 13 days of pay.

expiration of the Agreement on December 31, 2003 and continues to remain in place. During the negotiations over a new Agreement, the Township contemplated a return to the old schedule but did not implement a return. The Township's position was that it could do so unilaterally as a non-negotiable exercise of managerial prerogative.² The PBA rejected the Township's position that it could make such a unilateral change. The proposals of the Township and the PBA, in the interest arbitration proceeding, both contemplate the continuation of the eighty-four (84) hour per two-week shift with a twelve (12) hour tour of duty. However, the proposals differ on what language should be placed into the agreement reflecting the work schedule and also over related aspects of formalizing the implementation of this schedule into the Agreement.

The Township seeks to replace the existing paragraph D with language set forth above that would note that the work schedule of twelve (12) hour work days was the result of the Township's unilateral change to this work schedule from the old work schedule. The PBA proposes to incorporate the existing twelve (12) hour work day schedule into the Agreement but opposes the wording of the Township's proposal. The PBA does not contest that portion of the Township's proposed change in paragraph D that reflects the conversion of vacation, sick, personal and other days of leave to hours such that every eight hours equals one day.

² During these proceedings, a Scope of Negotiations petition was filed with PERC on this issue but was withdrawn without prejudice.

In evaluating the Township's proposed language to reflect the change to be "unilateral", I am not persuaded that this description is necessary or appropriate. I reach this conclusion based upon the fact that the "new" work schedule has been in effect since February 13, 2001 and it now represents the existing terms and condition of employment with respect to days on and days off, the length of the work day and the number of hours to be worked per the two week shift. The Township's apparent reasons for proposing that the term "unilateral" be contained in the new paragraph D is to preserve its position that it has a non-negotiable managerial prerogative to determine work schedules and presumably, its asserted right to "unilaterally" change the work schedule. I reach no conclusion as to whether, and under what circumstances, the Township can exercise a non-negotiable managerial prerogative to change the existing work schedule. In accordance with existing case law³, the Township may do so if work schedule language in the collective negotiations agreement is found to significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy or if the language were found to substantially limit the Township's governmental policy-making powers.

In this instance, language that would describe the existing work schedule as being the product of unilateral action would not be accurate inasmuch as the PBA seeks and agrees to its continuation. As such, there is a mutual agreement to continue the schedule that was implemented on February 13, 2001. It is

³ I do not set forth the myriad of PERC and court cases that analyze the negotiability of work schedules. Counsel for the Township and the PBA are well acquainted with such case law.

reasonable and appropriate to award language that reflects the existing work schedule and also reflects the parties' prior agreement under the prior Article 8, paragraph D to convert paid time off, leave without pay and overtime based upon eight (8) hours per day. Accordingly, I award a new Article 8, paragraph D to replace the existing Article 8, paragraph D. It shall read as follows:

The work schedule shall remain as changed on February 13, 2001. That work schedule shall be described as having a 28 day work cycle, totaling 168 hours based upon twelve (12) hour work days requiring fourteen (14) twelve-hour workdays for each 28 day work period. All references in this Agreement to vacation, sick, personal and other days of leave shall be converted to hours, such that every 8 hours equals one day. In the event that the Township asserts that it has a non-negotiable managerial prerogative under existing case law to effectuate a change in this work schedule, nothing herein shall be construed to constitute a waiver of its non-negotiable managerial prerogatives.

Given the award with respect to Article 8, paragraph D, there is a need to replace Article 8, paragraph A(i) and (ii) with a new Article 8, paragraph A. I award the Township's proposed Article 8, paragraph A with some modification that makes the language consistent with what has been awarded as the new paragraph D.

For purposes of this Article, a work-period shall be defined as a 28 day period commencing 12:01 a.m. on a Sunday morning and ending 28 days later at 11:59 p.m. Saturday night. If the Township is determined to have a non-negotiable managerial prerogative to return to an eight hour work-day, the Employees shall work 21 eight hour work-days, totaling 168 hours, during each 28 day work-period. The exact days and hours to be worked hereunder and under Paragraph D below shall be determined by the Township. There shall be no overtime hereunder or under Paragraph D below unless an Employee works in excess of 168 hours for any 28 day work-period.

The remaining issue is whether the 104 hours of work (thirteen (13) days pay at the employee's straight time rate of eight (8) hours of work due to working two extra days during each eight (8) week or fifty-eight (58) day cycle), now paid in a lump sum pursuant to Article 8, paragraph A(ii) should be placed into base pay by the amount of money equivalent to 104 hours of pay because the 104 hours are part of the 12 hour day work schedule.

Under the terms of the "old" work schedule, the additional compensation of 104 hours for thirteen (13) days of pay was paid in lump sum. The same amount of hours, 2184, are being worked under the "new" work schedule. The "new" schedule shall continue under the terms of this Award. Police Officers who work 2,184 hours under their normal shift should receive, in their base pay, the salary that they earn for working their normal work hours. That salary should be in base pay and there is no rationale for splitting salary earned during normal work hours into base pay and lump sum pay.

The Township is already paying the amounts due but without the "roll up" costs associated with calculations made from base salary. Those costs are justified, they are reasonable and must be borne along with costs arising from compensation earned for work performed during the other 2,080 hours. The PBA's proposal is awarded effective January 1, 2007. Reference to lump sum salary at Paragraph A(ii) shall be deleted. I have not adjusted the salary

schedule to reflect the incorporation of this portion of salary into base pay on that date and direct the parties to do so when they finalize the language for the new Agreement.

Health Insurance

Health and welfare insurance are covered under Article 12 of the existing Agreement. The plan references, among other things, basic medical benefits, major medical benefits, prescription drugs, a dental plan, a vision care plan, retiree health benefit coverage, survivor health insurance benefits, life insurance, and cash payments for the waiver of health insurance coverage if an employee elects coverage under a spouse's plan. For reasons of economy and consistency, the Township proposes a new health insurance plan.

The Township contends that under its health insurance proposal [see pp. 6-10], the police officers will continue to receive the same level of health benefits under the Township's proposal as they receive under the existing agreement and had received under the prior agreement. The Township rejects the PBA's contention that the Township's proposal reduces the level of benefits received, although it acknowledges that changes in co-pays and deductibles that increase out of pocket expenses. The Township points to substantial increases in the maximum benefit for dental care, orthodontic services and vision benefits. The Township acknowledges that its proposal would affect health benefits received

by retired employees over the age of 65 but that its proposal on this point would simply place the PBA on parity with all other Township employees.

The PBA has also made proposals on health insurance [see pp. 3]. It seeks to extend health insurance to police officers who retire on disability (accidental or ordinary), the maintenance of health insurance for a surviving spouse of a police officer killed in the line of duty and the maintenance of retiree health insurance for a police officer's spouse who is not the same age as the officer.

The PBA objects to what it terms the "sharp ax" of the Township's proposals that increases co-pays for in-network benefits from \$5 to \$10, ends the maximum in-network co-payment caps per person and per family, modifies upwards the maximum out-of-pocket expense for out-of-network benefits, increases the co-payments of the prescription plan and eliminates per person and per family maximums for prescriptions and reduces diagnostic services under the dental plan. With respect to retiree benefits, the PBA makes the following argument:

The Township proposes retiree eligibility rules. Those changes would be acceptable if they included health insurance coverage for all those who retire on a disability pension. The Township's proposal limits retire health care to accidental and not ordinary disability and excludes mental incapacity altogether.

The benefits to be received in retirement are also attacked in the proposal by the Township. Currently, a retiree is entitled to all benefits. (health insurance, prescription plan, dental plan and vision care). The Employer

proposes to eliminate the vision and dental plan for retirees. The expense of health insurance is not contested by the PBA. The PBA opposes the drastic changes offered by the Township. The changes in the insurance coverage as opposed to copay changes are totally unacceptable. The PBA also opposes any diminution in retirees' health care coverage.

I have carefully considered the changes proposed by the Township with respect to health insurance. The interests and welfare of the public are served by allowing the Township to administer a health insurance plan on as broad a base as possible. With some modifications set forth below, I award the Township's proposal.

Under proposed Article 12, paragraph B(1), the provision that defines eligibility, a subsection 4 shall be added that provides that police officers who receive a disability retirement through accidental injury shall be eligible for health insurance coverage as well as police officers who receive ordinary disability resulting from a job related injury. Under proposed Article 12, paragraph D, section 2, the section that covers the benefits to be provided, subsection 3 shall be added providing for the inclusion of a dental plan as described under Section A(3) and subsection 4 shall be added providing for the inclusion of vision care as described under Section A(4). I find insufficient justification for the elimination of these benefits. Paragraph H shall add the following sentence to clarify the rights of present employees who retire as well as the rights of those who have already retired prior to the effective date of this Award:

The terms of this plan shall apply to employees who retire in the future unless the terms are modified by the parties prior to their retirement.

Terminal Leave

The PBA proposes to modify Article 5 – Retirement, Section C to increase the current maximum terminal leave benefit of \$12,000.00 to \$15,000.00. Article 5 – Section C now states the following:

Upon regular retirement, an employee will receive a terminal leave benefit based upon the cash value of accumulated sick leave to a maximum of 180 days. The employee shall have the option to be paid the accumulated sick leave (i) in a lump sum in cash (subject to the limitations set forth in Paragraph E below) or (ii) as regularly scheduled paychecks until fully exhausted. For employees hired on or after January 1, 2000, the maximum terminal leave benefit will be \$12,000.00.

In accordance with Article 5, police officers who were hired prior to January 1, 2000 receive a terminal leave benefit based upon the cash value of accumulated unused sick leave up to a maximum of 180 days. The PBA's proposal is to increase the maximum terminal leave benefit of \$12,000 to \$15,000 for those hired after January 1, 2000. The PBA points out that due to increases in salaries over this period of time, the amount of accumulated days necessary to receive the maximum terminal pay would stay approximately the same. The Township opposes this proposal.

The PBA has shown that an increase in the maximum terminal leave benefit is warranted for those hired after January 1, 2000. An increase to

\$15,000 effective January 1, 2006 would represent a modest adjustment after five years of no increase. The salary adjustments during this period of time that increase the worth of a sick day justify the adjustment sought by the PBA. Its proposal is awarded:

Equipment Allowance & Clothing Allowance

The PBA has proposed to modify two sections that appear in Article 14 – Clothing Allowance. The first proposal would increase the list of items that a police officer may purchase from an annual allowance. Article 14, Section B states:

- B. Each uniformed Police Officer shall receive a yearly allowance for his purchase of the items listed below:

- Binoculars
- Glasses (Sun)
- Jacket Badges
- Off-duty Holsters
- Gun Cleaning Kit
- Summons Book Cover
- Metal Clip Boards
- 9mm and 12 Gauge Ammunition
- Police Tote Bag
- Cool Shirts
- I.D. Wallets
- Business Cards
- Riot Helmets (police type)
- New Jersey Statute Books (criminal law)

The allowance may be carried over into the following year, but all funds not expended within 24 months of date of appropriation are forfeited. The allowance for each year during this Agreement shall be \$150.00.

The PBA notes that it is not seeking an increase but merely an extension of approved items to those already enumerated due to a need to purchase additional items that do not appear on the list. The Township has not agreed to this proposal.

The PBA also seeks to modify Article 14, Section D. Section D states:

- D. The Township shall provide an additional equipment allowance annually to Police Officers assigned to detectives for the acquisition of all equipment and footgear utilized in the course of their duties. The allowance for each year during this Agreement shall be \$750.00.

The PBA proposes to increase the annual allowance of \$750 by \$100 in 2005 and by an additional \$100 in 2006. The PBA also seeks that a clothing allowance be provided for School Resource Officers (SROs) in the amount of one-half of the allowance received by Detectives. According to the PBA, the increases for Police Officers assigned to the Detective Bureau is warranted due to the increased costs and maintenance of non-uniform attire. The PBA points out that there are costs associated with purchasing business and undercover attire. With respect to the SROs, the PBA, through the testimony of Patrol Officer Miller, points out that SROs have no clothing allowance but often choose to work in plain clothes in order to have a less intimidating presence in school.

The Township opposes the proposed increase in the annual allowance. The Township, citing Miller's testimony that the allowance is taxed, opposes this

rationale as a basis for an increase. The Township also opposes extending the allowance to SROs because the PBA's rationale that SROs wear civilian clothing at school is inconsistent with the police department's School Resource Officer Program nor part of the School Police Liaison Officer job description. According to the Program, "... The School Resource Officer who is presenting/instructing shall wear the Lower Township Police Class A uniform. When the SRO is performing other functions appropriate/acceptable clothing shall be worn. At all times the SRO shall be readily identified as a police officer."

In addition to the PBA's proposals, the Township seeks to modify the last two sentences of Article 14, Section B by deleting those sentences and adding the following:

The allowance may not be carried over into the following year, and all funds not expended within 12 months of date of appropriation are forfeited. The allowance for each year during this Agreement shall be \$100.00.

The net effect of the Township's proposal is to eliminate the carryover of unexpended funds into the following year and to reduce the annual allowance from \$150 to \$100. The PBA urges rejection of the Township's proposal.

The PBA has established that there is merit to increasing the allowance paid to police officers assigned to serve as Detectives due to the increase in clothing and maintenance costs associated with their duties and responsibilities. I award no increase for 2004 and 2005. I award an increase of \$150 over the

two (2) year period thereafter. The allowance for 2006 shall be increased from \$750 to \$825 and the allowance for 2007 shall be increased from \$825 to \$900. The PBA has not met its burden with respect to its proposal that SROs receive one-half of the Detective allowance. That proposal is denied.

The remaining issues are the PBA's proposal to expand the list of items that can be purchased with their annual \$150 allowance as well as the Township's proposal that the carryover to 24 months be eliminated and the allowance reduced to \$100. There is no justification for a reduction in the allowance or the elimination of the right to carryover the allowance to 24 months. With respect to the PBA's proposal to expand the list of items that can be purchased with the annual allowance, I note that Article 14, Section C provides for a committee to determine the need to replace any uniform or equipment that is listed under paragraph A. It is sensible to broaden the scope of this committee to include review and determination of any additional items that can be purchased under paragraph B. This would ensure that any expansion of items would be reasonable and police related. Accordingly, I modify Article 14, Section C to add the following sentence to the end of the paragraph: "The committee shall also determine whether an item should be added or deleted from paragraph B."

Time Off (Personal Leave, Vacations and Sick Leave)

The Township proposes three changes to Article 15 – Time Off. Article 15, Sections A and B read as follows:

- A. Each Employee shall be granted six personal days off annually with no loss of compensation. These days shall be requested at least 72 hours before the requested time off. Requests for such time off shall not be unreasonably denied.
- B. All personal days must be used in the calendar year earned and will not be carried over to any succeeding calendar year.

The Township proposes to modify Section A to read:

- A. Each Employee shall be granted four personal days off annually with no loss of compensation. These days shall be requested at least 72 hours before the requested time off. Requests for such time off shall not be unreasonably denied.

The Township also proposes to add a new Section C to Article 15. The new Section C is intended to prorate personal leave entitlements. The proposal states:

- C. Personal leave entitlements for the entire year shall be credited to the Employee at the beginning of each calendar year in anticipation of continued employment for the full year. In the event the Employee terminates employment, takes a leave of absence, or has any other change in status where such leave is not earned for a portion of the year, the Employer shall recover the prorated value of personal leave, and if the Employee utilizes more leave than is earned, he shall be required to reimburse the Employer for the value of the used, but unearned, leave. For the purposes hereof, the prorated value of the personal leave shall be determined by (i) dividing the number 52 into the number of full weeks in such years as of the date of such termination of employment, leave or change in status, then (ii) multiplying

such fraction by the total number of personal days credited at the beginning of such year, and then (iii) subtracting the personal days used in such year.

The Township also proposes to add a new Section D to Article 15. The new Section D would state:

- D. In the event of a death of an Employee's "family member" as listed below, an employee shall be granted up to three working days off without loss of pay from the date of death up to and including the day after the funeral. The following is a list of those persons who qualify within the term "family members":

- Mother
- Father
- Spouse
- Children
- Grandparents/Grandchildren
- Sister
- Brother
- Step Children
- Father-In-Law
- Mother-In-Law
- Step Mother
- Step Father
- Step Sister
- Step Brother
- Half-Sister
- Half-Brother
- Aunt
- Uncle

"Family member" shall also include any relative of the employee or person that has been residing in the employee's household. Under no circumstances shall the provision of this Paragraph result in an increase in an employee's normal earnings.

The Township asserts that the six personal days that its Police Officers now receive is double the County average. Specifically, it points out that Cape

May receives 3 personal days, Middle Township receives 3, North Wildwood receives 3, Ocean City receives 2, Wildwood Crest receives 32 hours, and Wildwood receives none. Thus, the Township views its proposed reduction from 6 to 4 days as reasonable because it would result in as many or more personal days as is being received in other municipalities in the County. The Township acknowledges that its Police Officers receive a low number of vacation days compared with other municipalities but contends that when the number of vacation, personal, sick days and other paid time off is compared with other departments, no disparity exists on the number of paid days of leave that can be taken even if its proposal is adopted.

With respect to the proposed new Section C, personal leave entitlements would be credited at the beginning of each year and prorated in the event that an employee does not continue employment with the Township. The new Section D would provide up to three working days for bereavement purposes, presumably as an offset to the reduction in the number of personal days proposed.

The Township also proposes to modify Article 9 – Vacations and Article 11 – Sick Leave to provide for the proration of paid time off entitlements consistent with its proposal to prorate personal leave. The proposed language in the Township's proposal to add a new Section F to Article 9 and a new Section E to Article 11 parallels the language it proposes on personal leave proration.

The PBA opposes any changes to personal leave days. The PBA also asserts out that the bereavement leave proposed is currently part of the rules and regulations of the police department and is part of the existing terms and conditions of employment for Police Officers. The PBA also opposes prorating personal leave and the addition of Section F to Article 9 and the addition of Section E to Article 11 that would also prorate vacation and sick leave.

The Township's observation that the number of personal days its police officers currently receive is well above the County average is accurate. But the record also reflects that the number of vacation days that its police officers currently receive are the lowest or among the lowest in the County. There are no proposals made by the PBA to increase the number of paid days off in any existing category. Given a more broad view of the existing level of paid days off in all categories, I do not award a reduction in the number of personal days.

I find merit to the Township's desire to add paragraph C to the Agreement that would result in a proration of paid leave time for personal leave. The Township's rationale for proration in this instance is sound. The Township's proposal is awarded:

Personal leave entitlements for the entire year shall be credited to the Employee at the beginning of each calendar year in anticipation of continued employment for the full year. In the event the Employee terminates employment, takes a leave of absence, or has any other change in status where such leave is not earned for a portion of the year, the Employer shall recover the prorated value of personal leave, and if the Employee utilizes more leave than is

earned, he shall be required to reimburse the Employer for the value of the used, but unearned, leave. For the purposes hereof, the prorated value of the personal leave shall be determined by (i) dividing the number 52 into the number of full weeks in such years as of the date of such termination of employment, leave or change in status, then (ii) multiplying such fraction by the total number of personal days credited at the beginning of such year, and then (iii) subtracting the personal days used in such year.

I also award the Township's proposals with respect to prorating vacations and sick leave.

Leave of Absence

The Township proposes to replace the existing Article 6 – Leave of Absence with an entirely new provision. Currently Article 6 provides for the following:

- A. A leave of absence without pay may be granted for good cause to any Employee for a period of six months. Such leave shall be granted at the sole discretion of the Township after recommendation from the Chief. The leave may be extended for an additional six months, and shall not be arbitrarily denied. The term good cause shall not include any situation where an employee requests a leave from the Department so as to seek employment with any other private or public employer or to become self-employed. No leave of absence shall be given under any circumstances to persons who desire to obtain other means or sources of employment. Any Employee who seeks a leave of absence on such a pretext may be terminated from his employment by the Department and Township and seeking a leave of absence under such a pretext shall constitute good cause for the termination of the Employee's employment.
- B. Any unpaid leave of absence granted because of illness or disability will not result in cessation of benefits. The

Employee shall not earn any seniority during the period of such leave.

- C. As to any unpaid leave of absence granted for any reason other than illness or disability, the Township shall have sole discretion to determine if such leave will result in a cessation of benefits and the accrual of seniority during such leave of absence.

The Township proposes to replace the above with the following:

- A. Family/Medical Leave of Absence will be granted in accordance with the provisions of the Federal Family and Medical Leave Act ("FMLA") and the New Jersey Family Leave Act ("NJFLA") and the regulations promulgated thereunder. Under the provisions of these statutes, the Employee is entitled to twelve (12) weeks of leave during a twelve (12) month period, which leave may be extended at the request of the Employee, upon good cause shown, for up to a total of six (6) additional months (excluding the initial twelve (12) week period). The Employee shall be entitled to leave for the Employee's own serious health condition, or the need to care for a spouse, child or parent with a serious health condition. In addition, the Employee may take leave to care for a parent, child or parent-in-law. The circumstances under which leave may be taken vary depending on the type of leave requested and the Employer will grant leave in accordance with the provisions of each statute, the regulations issued for each statute, and judicial decisions interpreting the requirements of each statute. If the Employee takes FMLA or NJFLA leave, the Employee may, at the Employee's option use accrued sick leave, vacation and other administrative leave during the FMLA or NJFLA leave. The Employer retains all rights to require proper certification from a health care provider pursuant to all Applicable Laws. Any other leave of absence shall be granted in the sole and absolute discretion of the Township Manager and shall not be for a period in excess of six (6) months.
- B. Any unpaid leave of absence granted because of illness or disability will not result in cessation of insurance, health and welfare benefits set forth in Article 12. The employee shall not earn any seniority during the period of such leave of

absence, and there will be no additional accrual of vacation, sick and personal days during the period of such leave of absence.

- C. As to any unpaid leave of absence granted for any reason other than illness or disability, the Township shall have sole discretion to determine if such leave will result in a cessation of insurance, health and welfare benefits during such leave of absence. The Employee shall not earn any seniority during the period of such leave of absence, and there will be no additional accrual of vacation, sick and personal days during the period of such leave of absence.
- D. Unless otherwise specifically set forth in this Agreement to the contrary, all of the provisions of the New Jersey Department of Personnel Regulations concerning leaves of absence, as set forth in Title 4A of the New Jersey Administrative Code, Chapter 6, Subchapter 1, as applied to State service, shall apply to the PBA.
- E. Before an employee goes on FMLA or NJFLA leave without pay, the Employee shall be entitled to use all of the sick, vacation and personal days which have been credited to the Employee at the beginning of the year. The employee also acknowledges that sick, vacation and personal days are not earned during any FMLA or NJFLA leave or any other unpaid leave of absence. Accordingly, (i) if an Employee on such leave does not return to work, he shall reimburse the Employer for the paid sick, vacation and personal days used in excess of his prorated entitlements as set forth in Paragraphs 9E, 11E and 15C of this Agreement, or (ii) if an Employee on such leave does return to work, the sick, vacation and personal days to be credited in the future shall be reduced by such days used in excess of his prorated entitlements.

The Township contends that the substitution of its proposed language on leave of absences would conform that benefit to that prescribed in New Jersey Department of Personnel Regulations. The PBA opposes this proposal.

The Township's proposal patterns the leave of absence language set forth in NJDOP regulations. The proposal is reasonable and the PBA's opposition to this proposal does not sufficiently justify the retention of the present language set forth in Article 6. Accordingly this proposal is awarded.

Court Time

The PBA proposes to modify Article 23 – Court Time, Section B. Article 23, Section B currently guarantees a minimum of two (2) hours at time and one-half for the appearance at any court for any Police Officer who is required to appear in court on his day off. The PBA proposes to increase the guaranteed minimum to four (4) hours pay at time and one-half. The PBA contends that police officers within the County receive an average of three (3) hours pay at a minimum. The PBA believes this proposal is warranted when considering that a police officer has been called in to work on a day that was otherwise scheduled as a non-work day. The Township opposes this proposal.

The justification offered by the PBA has merit in part. The record reflects that the average minimum in the County for County court is three (3) hours at that the municipalities of Wildwood Crest, Middle Township, Sea Isle City and Ocean City have a four (4) hour minimum. An increase in the guaranteed minimum from two (2) hours pay to three (3) hours for County courts has been justified and is reasonable due to travel requirements that extend beyond the municipality. However, I find that the PBA has not met its burden with respect to

an increase in the minimum number of hours for appearances at Lower Township Municipal Court. The record reflects that the average minimum is two (2) hours, the same minimum as is currently provided for in Lower Township. Significantly, Wildwood Crest, Cape May, Sea Isle City and Ocean City all provide for a lesser minimum for municipal court appearances compared with appearances at courts other than municipal. Accordingly, I award the following modification to Article 23, paragraph B.

Effective January 1, 2007, there shall be a minimum of three (3) hours pay guaranteed for appearance at any court for any police officer who is required to come into court (other than Lower Township Municipal Court) on his day off. There shall also be a minimum of two (2) hours pay guaranteed for appearing at Lower Township Municipal Court for any police officer who is required to appear in said court unless said appearance occurs either within 30 minutes after the conclusion of his shift or occurs 30 minutes before commencement of his shift.

Off Duty Work

The PBA proposes to include the hourly rate of pay for off duty work in a new article in the Agreement. The Agreement is currently silent on this issue. The PBA points out that this proposal will only guarantee the rate of pay being received and does not guarantee employment. The purpose of the proposal is said to avoid future disputes over what the rate of pay is. The Township opposes this proposal.

This proposal is a narrow one. It does not interfere with the Township's lawful authority to pass an ordinance adopting increases in the hourly rate or the administrative fee it may charge for administering off or extra duty work. The amount of the hourly rate of pay received is a term and condition of employment and it is reasonable to express that amount in the collective negotiations agreement. Accordingly, a new article shall be added to the Agreement that reflects the current authorized hourly rate of pay received for off duty work.

College Credits

The PBA proposes to increase the current maximum college credit benefit of \$750.00 to \$1,000.00. The PBA contends that the increase would encourage the attainment of a degree and that the increase is modest. The Township opposes this proposal. The existing provision concerning this benefit is set forth in Article 20 – College Credits:

- A. The Township shall pay for college credits taken as part of a program leading to an Associates or Bachelor's degree in police science in an accredited institution of higher learning in the amount of \$20.00 per college credit. Other credits in police related courses paid for during 1976 shall be paid for at a rate of \$10.00 per credit. Should a State law be passed providing additional money for such credits, the additional funds shall be added to the amounts paid by the Township.
- B. Where the Township requires an Employee to attend schooling and pays the tuition therefore, any college credits earned shall not be compensable under Paragraph A above.
- C. The maximum amount of this benefit is not to exceed \$750.00 to any one Employee in a calendar year.

The PBA correctly notes that the cost of college credits has been steadily increasing. There is also merit to the PBA's contention that higher education increases the knowledge and effectiveness of a police officer. I also note that the Agreement requires that the degrees pursued be in police science and police related courses, a requirement that promotes a return on investment. This proposal is awarded effective January 1, 2007. I further note that the parties have not addressed the applicability of Paragraph A concerning the limit on per credit payment. Paragraph A appears to be inconsistent with Paragraph C. To the extent that the maximum amount of the benefit in Paragraph C conflicts with what appears to be an outdated dollar amount for credit reimbursement in Paragraph A, the maximum amount shall govern. The parties may wish to clarify this when they finalize contract language.

Salaries

Turning to the issue of wages, the PBA seeks a 5.2% increase for each year of the contract while the Township has proposed salary increases of 3.2% per year in each year of the contract. The PBA's proposal is for a three year agreement while the Township proposes a duration of four years. I have already awarded a four year agreement. The initial wage adjustment will be effective January 1, 2004.

The existing salary schedule is set forth at Article 19 of the Agreement:

Schedule A

	2003 Salary 3.6%
Step 1	\$33,560.97
Step 2	\$39,434.16
Step 3	\$45,675.05
Step 4	\$51,917.33
Step 5	\$56,212.55
Step 6	\$60,408.90
Sergeants	\$65,426.95

The PBA's salary proposal emphasizes comparisons with other police officers working in Cape May County. The PBA believes that the appropriate comparison group are the police departments that operate in Cape May County. Woodbine, Dennis and Upper Township do not operate a police department but because they are serviced by the New Jersey State Police, the State Police are included in the PBA's comparison group. The comparison group also includes the police departments in Sea Isle City, Wildwood Crest, Wildwood, Cape May, North Wildwood, Avalon, Middle, Ocean City and Stone Harbor.

As of 2003, the last year of the Agreement, Lower Township ranked fifth in the PBA's comparison group behind Cape May, Middle, Ocean City and the State Police. Utilizing this comparison group, the average top step police salary in the County was \$61,297 while the top step in Lower Township was \$60,409. The PBA submits the following charts reflecting the 2003 base salaries for these departments as well as charts for 2004 and 2005 reflecting where Lower Township would rank for those years based upon the Township's proposal for

3.2% increases compared with the PBA's proposal for 5.2% increases. The charts reflect the following:

2003 Base Salary

Rank	Town	Base Salary
1	State Police	75,566
2	Ocean City	63,120
3	Middle Township	60,966
4	Cape May	60,669
5	Lower Township	60,409
6	North Wildwood	59,962
7	Sea Isle	59,461
8	Avalon	59,185
9	Wildwood Crest	59,050
10	Stone Harbor	58,739
11	Wildwood	56,942

2004 Base Salary

Rank	Town	Base Salary
1	State Police	78,588.64
2	Ocean City	67,570.00
3	Lower Township PBA (5.2%)	63,550.00
4	North Wildwood	63,439.00
5	Middle Township	63,252.00
6	Cape May	63,213.00
7	Lower Township (3.2%)	62,342.00
8	Wildwood Crest	62,235.00
9	Sea Isle	61,780.00
10	Avalon	61,345.00
11	Stone Harbor	60,943.00
12	Wildwood	59,220.00

2005 Base Salary

Rank	Town	Base Salary
1	State Police	81,732.19
2	North Wildwood	69,447.00
3	Ocean City	68,314.00
4	Lower Township PBA (5.2%)	66,854.00
5	Cape May	65,741.00
6	Middle Township	69,447.00
7	Lower Township (3.2%)	64,337.00
8	Sea Isle	64,190.00
9	Wildwood Crest	63,623.00

The PBA also contends that police officers in Lower Township are behind other police officers in the neighboring communities when total available compensation is calculated. This includes base salary plus longevity, equipment allowance, clothing allowance, shift differentials and college credits. The PBA calculated these differentials in a chart submitted into evidence at P. Ex. II-2.

The PBA further contends that the salary increases received in Lower Township for 2001, 2002 and 2003 were less than the County average and that the Township's proposal would further erode relative compensation. The PBA submits the following chart reflecting this argument:

	2001	2002	2003	2004	2005	2006
County Average	3.7%	4%	4.5%	4.1%	4.6%	5.1%
Lower Township	3.6%	3.6%	3.6%	--	--	--

Asserting that the Township's proposal (3.2%) would have a negative impact on salaries, the PBA submits the following chart reflecting percentage increases in various County departments between the years 2001 and 2006:

% of Wage Increases

	2001	2002	2003	2004	2005	2006
Avalon	3.5	4.16	4.14	3.65		
Cape May	3	3	9.75	3.85	4	4.25
Lower Township	3.6	3.6	3.6			
North Wildwood	2.5	3.5	3.75	4.5	4.5	4.5
Ocean City	4	4	4	3.88		
Stone Harbor	3.75	3.75	3.75	3.75		
Middle Twp	3.5	3.75	3.75	3.75	3.75	
Wildwood	5.06	4	4	4		
Wildwood Crest	3.38	3.3	3.5	3.7	3.9	
Sea Isle City		3.9	3.9	3.9	3.9	
County Prosecutor		5.26	5.2	5.1	5	5
County Co/So		5.35	5.39	5.62	7.88	7.54
State Police (Upper Twp, Dennis Twp, and Woodbine)	4	4	4	4	4	4
Average						

Similar arguments are made by the PBA on behalf of Sergeants as reflected in the following chart:

Sergeant's Base Salary

	2003	2004	2005	2006
Sea Isle	\$63,432.00	\$65,905.00	\$68,476.00	
Wildwood Crest	\$63,850.00	\$66,212.00	\$68,794.00	
Wildwood	\$61,782.00	\$64,254.00		
Lower Twp	\$65,426.00			

Cape May	\$64,456.00	\$66,937.00	\$69,615.00	\$73,573.00
North Wildwood	\$64,408.00	\$68,087.00	\$74,535.00	\$77,144.00
Avalon	\$63,043.00	\$66,345.00		
Middle Twp	\$65,625.00	\$68,086.00	\$70,639.00	
Ocean City	\$68,801.00	\$72,237.00		
Stone Harbor	\$63,436.00	\$65,815.00		
State Police (Upper Twp, Dennis Twp, and Woodbine)	\$78,097.00			

The PBA urges rejection of comparisons with private sector employees because it argues there are no easily identifiable private sector employees performing similar services. The PBA offers the following arguments on this point:

The arbitrator must give little or no weight to a comparison between the police officer and private sector employees. Police officers live and work within a heavily structured and statutorily controlled environment in a para-military setting with little or no ability to move to another job. Police Officers are subject to scrutiny and accountability which is unparalleled in public employment. Police officers carry weapons and a license to engage in force with a great deal of discretion. Police officers are required, before they begin working, to complete a twenty-two (22) week vigorous training program established by the New Jersey Police Training Commission. Subsequently, there are subject to a one (1) year probationary period. No other public employee or private sector employee has such requirements.

Finally, although an old cliché that police officers are on duty twenty-four (24) hours a day, no other public or private sector employee has such a responsibility. This arbitrator must find that there is no comparison of the Lower Township police officers and private sector employees including security guards deserves no weight in this matter.

The PBA also urges rejection to comparisons the Township makes with other employees employed by Lower Township. According to the PBA, there has

never been an internal pattern of settlement with respect to negotiated salary increases and that some of the major terms and conditions of employment have been different. This includes health insurance where the PBA received benefits contained in an employee health plan booklet dated April 15, 1996 while other public employees employed by the Township do not have the same benefit.

The PBA contends that an award of its proposals would not compel the Township to exceed its statutory spending limitations, commonly referred to as the Cap law (see N.J.S.A. 40A:4-4.5.1). The PBA further contends that an award of its wage proposal would not have adverse financial impact on the governing unit, its residents and taxpayers. The PBA argues from the analysis it makes of the Township's official financial documents. The PBA emphasizes that the Township has been consistently able to regenerate a surplus as evidenced from Results of Operations data. It points to recent history reflecting the positive differences between the total amount of revenues anticipated (budgeted) and the amount of revenues actually received (realized) and also the amount of money appropriated but not spent. These funds become reserve appropriations and become surplus after one year. The PBA also focuses on the Township's Fund Balances pointing out that these funds have been utilized as a source of revenue for each budget year, enabling the Township to reduce the amount of money it has to raise by taxes. The PBA provides a summary of these statistics:

Year	Balance	Utilized in Budget	Percentage
2004	\$3,605,104	\$2,640,000	73.23%
2003	\$4,252,193	\$2,925,000	68.79%
2002	\$4,222,631	\$2,480,463	58.74%
2001	\$3,296,442	\$1,515,000	45.96%
2000	\$2,269,786	\$1,295,000	57.05%
1999	\$1,899,097	\$1,050,000	55.29%

The PBA further contends that the municipal tax rate has only had a very modest increase between 2001 and 2005 (total increase over 4 years of .024%) and that the increased tax burden on the average price of a house sold in 2004 (\$223,881) would only have been \$53.83 over 4 years.

The PBA offers the following positions with respect to other financial evidence. It points out that the Township has an excellent tax collection rate, a low debt service and has appropriated hundreds of thousands of dollars each year under the Cap. The PBA submits the following argument that its proposals are well within the Township's Cap bank:

The importance of the cap bank is especially relevant when considering the difference in the two offers. The Police Department has 45 members. Excluding the chief, the captain and lieutenants, there are 41 bargaining unit members, which includes 7 sergeants. The total 2003 base salary, wages is \$2,388,157. The difference between Lower's 3.2% offer and the PBA's 5.2% offer is 2%. Two (2%) percent of the total salary of \$2,388,157 is \$47,769.00. That number would only require use of 10% of the cap bank.

Based upon all of the above, the PBA seeks the awarding of its proposal for 5.2% annual increases.

The Township contends that the PBA's salary proposal is unreasonable and that its own salary proposal should be adopted because it is more consistent with the statutory criteria. As an initial matter, the Township argues that the PBA's comparison with the New Jersey State Police is without foundation. The Township acknowledges that the State Police does provide services similar to those provided by Township police in what it terms are remote areas of the County covering Woodbine, Upper and Dennis Townships. However, the Township points out that the jurisdiction of the State Police encompasses the entire State of New Jersey and cannot be used for comparison purposes. The Township asserts that the guidelines for comparability set forth by PERC at N.J.A.C. 19:16-5.14 are geared towards local law enforcement agencies and the municipalities that establish them. The Township submits that:

The State Police have statewide jurisdiction, and its members may be and are in fact transferred and stationed anywhere within the State of New Jersey. Its members must also have at least a two year college degree before being considered for employment. The employing entity, the State of New Jersey, is a sovereign entity with a tax base of over eight million persons, and the constitutional authority to tax commerce, income, property, and to establish a myriad of other taxes and sources of revenue unavailable to a municipalities.

The Township submits that the PBA's wage proposals well exceed the amount of increases in municipalities within Cape May County. The Township provides data showing that in Cape May there were 3.5% increases in 2004, 2005, and 2006, 3.75% increases in Middle Township in 2004 and 2005,

increases in Wildwood Crest of 3.7% in 2004 and 3.9% in 2005, 3.9% increase in Sea Isle City in 2004 and 2005, 3.75% increase in Stone Harbor in 2004.

In the Township's view, the most apt comparisons to Lower Township are to be made with the municipalities of Cape May, Middle Township, North Wildwood, Wildwood and Wildwood Crest. When comparing these five municipalities with Lower, the only municipality with a higher base salary is Middle Township at \$60,966 compared with \$60,409 in Lower. The Township also points out that a Police Officer in Lower reaches a maximum salary at Step 6 and that this salary at Step 6 is the highest in the County. When this figure is compared with median and average salaries elsewhere, the Township contends that its police officers are well paid and that its proposal maintains their position. The Township points to statistics compiled by the New Jersey Department of Labor reflecting less median and average salaries for police officers employed in the Atlantic-Cape May County area and the Burlington-Camden-Gloucester-Salem County areas.

The Township also seeks great weight to be given to salaries paid within the Township. The Township provides an analysis with respect to internal comparability:

With regard to a comparison with fellow workers and unions in the Township, as can be seen in Schedule B of the Agreement between the Township and the Supervisors Union, January 1, 2005 through December 31, 2008, the base pay of Step Six officers is higher than the majority of salaries paid to the individuals charged

with the responsibility of administering the Township, and the base pay of sergeants is higher than all of the administrative supervisory positions. When the actual pay received by the officers and sergeants is considered, the disparity in salaries between the employees of the Police Department and the Supervisors Union of the Township is substantial. This comparison is even more disparate with respect to the Township's Agreements with Teamsters Local Union No. 676, and the Officer Workers Association Local 3779 AFSCME.

Not only is there a substantial disparity in the amount of base pay and actual pay received, there is a disparity in the annual pay increase proposed by the PBA and the pay increases received by all other Township employees. The Agreement with the Supervisors Union which has been recently negotiated and executed on June 27, 2005, provides for a 3.50% wage increase for the years 2005, 2006 and 2007 and 3.70% for the year 2008. The Agreement with the Teamsters, also recently negotiated and executed on June 24, 2005 provides for a base hourly wage increase of 65¢ for the year 2005, 68¢ for the year 2006 and 70¢ for the year 2007, which equates to a 3.50% across the board increase for the years 2005, 2006 and 2007. The proposal of the PBA of 5.20% yearly increase is well in excess of the yearly increase received by the police officers' fellow Township employees. The progressive effect of this disparity is presented on a graph found in EXHIBITO. If the PBA is awarded their proposed 5.20% yearly increase, not only will they have a substantially higher rate of yearly increase in pay, they will also enjoy (substantially) better health coverage than their fellow Township coworkers. See EXHIBIT F "Comparison of PBA Health Benefits and Other Township Employees". There is simply no support in the record to justify this disparity in health benefits and rate of pay increase between the PBA and other Township employees. A copy of these agreements are attached as EXHIBITS P, Q and R.

The Township further contends that there would be negative financial consequences to the Township if the PBA's wage proposal is awarded. The Township submits that it is not a wealthy community as reflected in data showing that the income of Township households and per capita income is less than the surrounding communities as well as for the State of New Jersey in general. The

median income per household is \$38,977 while the median household income for the entire County is \$41,591. The Township acknowledges that its tax rate did not rise in 1998, 2000, 2002 and 2003 while it only increased by 1.9¢ and 2.1¢ in 1999 and 2001 respectively. However, this tax rate stability is said to come only after a period of financial crisis and by the Township exercising fiscal responsibility. The Township submits data reflecting that the police department was responsible for 23% of all costs incurred by the Township and 39% of the total cost for all employees employed by the Township. The costs for meeting the needs of the police department are said to have resulted in continuous increased appropriations for the police department. In 2002, the Township appropriated \$3,200,000 compared with \$3,527,000 in 2005.

In addition to the above, the Township submits cost of living data reflecting that annual cost of living during the terms of the prior Agreement totaled 9.2% while salary increases were provided at a level of 14.4%.

For the purpose of projecting a reasonably accurate analysis of salary costs and the differences in the parties' positions, I will utilize Township Exhibit E. This exhibit provides a roster by rank with accompanying salaries. It reflects seven (7) sergeants receiving a base pay of \$65,426.95. This equals \$457,988. The roster reflects 36 patrol officers, 27 of whom were at salary maximum, \$60,408.90, in 2003. Because each of the 9 police officers who are not at salary maximum will either have advanced to maximum or will advance during the term

of this Agreement, I will assume all 36 patrol officers to be at salary maximum for the purpose of cost analysis. This yields gross salaries of \$2,174,688. Thus, the salary base for unit employees (Sergeants and Patrol Officers) will be calculated at \$2,632,676.

The difference in cost based upon awarding either of the parties' respective proposals in their entirety is as follows:

<u>Year</u>	<u>Township 3.2%</u>	<u>PBA 5.2%</u>	<u>Difference</u>
2004	\$2,716,921	\$2,769,575	\$52,654
2005	\$2,803,863	\$2,913,593	\$109,730
2006	\$2,893,586	\$3,065,099	\$171,513
2007	\$2,986,181	\$3,224,484	\$238,303

The positions offered by the Township and the PBA reflect that each has properly submitted evidence and argument on the relevant statutory criteria to be considered. The Township places greater reliance on financial impact considerations while the PBA relies mainly upon comparability data. A determination of the salary issue cannot be made based upon an adoption of either party's reasoning in its entirety. A reasonable determination on salary flows from a careful weighing and balancing of all of the relevant criteria and, after doing so, a determination results that is less than that proposed by the Union and more than what has been proposed by the Township.

I have given most weight to the following considerations. The Township's socio-economic characteristics reflect that household and per capita income are less than surrounding communities. Cost of living data severely undermines the level of increases sought by the PBA. Real estate valuation in the Township has risen dramatically. The Township's finances are sound as evidenced by a comparison between its revenues and expenditures, the stability of its tax rate, its tax collection rate and its ability to maintain a healthy cap bank. The Township could fund the PBA's proposal but, if required to do so, its financial impact would be adverse to the governing body and the public. The Township's proposal, if awarded, would result in an erosion of the PBA's salary schedule relative to surrounding communities with potentially negative impacts on the continuity and stability of the police force as well as upon the morale of the employees. The most relevant comparisons are with neighboring municipalities of Cape May City, Middle Township, North Wildwood, Wildwood and Wildwood Crest. The Award contains modifications that balance costs to the Township such as a modified insurance plan with greater co-pays and out-of-pocket costs, the proration of vacation, sick and personal time, and a new leave of absence provision. The Township has also justified the addition of an additional step to be added to the salary schedule for new hires. This latter result will promote substantial cost savings for new employees over the course of their movement to the salary maximum when compared with movement on the existing salary schedule.

Based upon all of the above, I award salary increases to the salary schedule of 3.75% effective January 1, 2004, 4% effective January 1, 2005, 4%

effective January 1, 2006 and 3.75% effective January 1, 2007. The average increase is 3.85%. This will be accompanied by a new salary schedule for new hires containing an additional step towards the reaching of salary maximum upon the date of award issuance. The salary schedules will appear as follows:

Schedule A
Employees Hired Prior to August 28, 2006

	2004	2005	2006	2007
Step 1	\$34,820	\$36,212	\$37,661	\$39,073
Step 2	\$40,913	\$42,549	\$44,251	\$45,911
Step 3	\$47,388	\$49,283	\$51,255	\$53,177
Step 4	\$53,864	\$56,019	\$58,260	\$60,444
Step 5	\$58,321	\$60,653	\$63,079	\$65,445
Step 6	\$62,674	\$65,181	\$67,788	\$70,331
Sergeants	\$67,880	\$70,596	\$73,420	\$76,173

Schedule B
Employees Hired on or After August 28, 2006

	2004	2005	2006	2007
Step 1	\$34,820	\$36,212	\$37,661	\$39,073
Step 2	\$40,913	\$42,549	\$42,683	\$44,282
Step 3	\$47,388	\$49,283	\$47,705	\$49,492
Step 4	\$53,864	\$56,019	\$52,727	\$54,702
Step 5	\$58,321	\$60,653	\$57,749	\$59,912
Step 6	\$62,674	\$65,181	\$62,771	\$65,121
Step 7			\$67,788	\$70,331
Sergeants	\$67,880	\$70,596	\$73,420	\$76,173

I have calculated the costs of the award to be \$2,731,401 in 2004, \$2,840,467 in 2005, \$2,954,283 in 2006 and \$3,065,069 in 2007.⁴

⁴ Precise calculations must give way to reasonable projections because of changes in staffing levels due to turnover, promotions and/or retirements. All increases are retroactive to their effective dates. Those eligible for retroactivity are those presently employed and those who have retired including those who may have retired on ordinary or disability pension.

I have calculated the costs of the Award compared with the proposals of the parties.

<u>Year</u>	<u>Township 3.2%</u>	<u>PBA 5.2%</u>	<u>Difference</u>	<u>Award</u>	<u>Above the Township's</u>	<u>Below the PBA's</u>
2004	\$2,716,921	\$2,769,575	\$52,654	\$2,731,401	\$14,480	\$38,174
2005	\$2,803,863	\$2,913,593	\$109,730	\$2,840,467	\$36,604	\$73,126
2006	\$2,893,586	\$3,065,099	\$171,513	\$2,954,283	\$60,697	\$110,816
2007	\$2,986,181	\$3,224,484	\$238,303	\$3,065,069	\$78,888	\$159,415

The average increase awarded calculates to 3.875%. The costs are clearly within the Township's statutory spending limitations and can be funded without adverse financial impact to the governing body, its residents and taxpayers.

The increases are consistent with those in the municipalities that are most comparable to Lower Township. For the contract years in evidence, the average increase was 4.0% in Cape May City, 3.75% in Middle Township, 3.5% in North Wildwood, 4% in Wildwood and 3.8% in Wildwood Crest. Other nearby municipalities such as Sea Isle City averaged 3.9% and there was a 3.8% increase in Ocean City for 2004. In 2004, the salary maximums in the municipalities of Cape May City, Middle Township and North Wildwood exceeded Lower Township while Wildwood and Wildwood Crest were less. The adjustments will maintain the relative relationship in salary that existed prior to the new effective date of the new Agreement.

The terms of the Award are also in harmony with statewide statistics calculated by PERC reflecting awards and settlement averages ranging between 3.82% and 4.05% between January 1, 2003 and December 31, 2005.

The Township has submitted evidence concerning internal comparables reflecting increases between 3.5% and 3.7%. While the increases awarded herein are slightly above these percentages, they are generally consistent and I conclude, in the absence of a history of an internal pattern requiring identical treatment, that the external comparables in surrounding police departments should be given somewhat greater weight.

The terms of the award are consistent with furthering the interests and welfare of the public by maintaining relative compensation for a police department that is productive and effective at a cost that the record reflects can be borne by the Township based upon budgetary data showing a strong financial foundation. Continuity and stability in the department's workforce will be maintained by the overall terms of the award.

I do not award the Township's proposal to reduce longevity for new hires. The Township will receive significant savings from new hire salaries due to the additional step in the salary schedule and can revisit this issue in future negotiations.

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

AWARD

1. All proposals by the Township and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this award.

2. **Duration**

The effective date of this Agreement shall be January 1, 2004 through December 31, 2007

3. **Article 8 – Work Week – Overtime – Work Schedule**

Delete old Paragraph A and add new Paragraph A:

For purposes of this Article, a work-period shall be defined as a 28 day period commencing 12:01 a.m. on a Sunday morning and ending 28 days later at 11:59 p.m. Saturday night. If the Township is determined to have a non-negotiable managerial prerogative to return to an eight hour work-day, the Employees shall work 21 eight hour work-days, totaling 168 hours, during each 28 day work-period. The exact days and hours to be worked hereunder and under Paragraph D below shall be determined by the Township. There shall be no overtime hereunder or under Paragraph D below unless an Employee works in excess of 168 hours for any 28 day work-period.

Delete old Paragraph D and add new Paragraph D:

The work schedule shall remain as changed on February 13, 2001. That work schedule shall be described as having a 28 day work cycle, totaling 168 hours based upon twelve (12) hour work days requiring fourteen (14) twelve-hour workdays for each 28 day work period. All references in this Agreement to vacation, sick, personal and other days of leave shall be converted to hours, such that every 8 hours equals one day. In the event that the Township asserts that it has a non-negotiable managerial prerogative under existing case law to effectuate a change in this work schedule, nothing herein shall be construed to constitute a waiver of its non-negotiable managerial prerogatives.

The 104 hours of pay for 104 hours of work performed above 2,080 hours that is currently received as lump sum salary for 2,184 hours of work performed under the existing work schedule shall be incorporated into base pay effective January 1, 2007. The parties shall amend the salary schedule awarded to reflect the incorporation of lump sum salary into base pay salary. Reference to lump sum salary at Article 8, Paragraph A (ii) shall be deleted.

4. **Article 12 – Health Insurance**

Effective as soon as administratively practicable but no later than thirty (30) days after notice to the PBA, the existing Article 12 shall be deleted in its entirety and shall be replaced with the following:

A. The Township shall provide the following health benefits for all permanent and provisional employees working thirty (30) hours per week or more, and their dependents, beginning on the first day of the third month after two (2) months of active employment:

1. Major Medical Benefits with 100% coverage in-network for covered services. For out-of-network services, there will be a \$500 deductible per person and a 40% co-insurance charge after deductibles on the first \$2,000 of covered charges per person. The maximum deductibles and co-insurance charges per family will be based on two individuals, totaling \$1,000 for the deductibles and \$1,600 for co-insurance. The deductibles and co-insurance charges do not apply in-network. The in-network co-payments will be \$10 per office visit. All coverage for out-of-network will be based upon usual and customary charges. The covered services provided hereunder are set forth on Schedule A attached hereto.

2. A Prescription Drug Plan which will require co-payments of \$5 for generic and \$10 for brand name. There will be one (1) co-payment per ninety (90) day supply of medication for mail orders.

3. A Dental Plan with payment limitations as follows:

Preventative Maintenance, etc.	100%
Diagnostic and Restorative Treatment	85%
Endodontics and Periodontics	85%
Prostodontics (Fixed and removable)	85%
Orthodontics	85%

Maximum Benefit: \$1,300 per person per calendar year. \$2,950 lifetime maximum per person for orthodontic service.

4. A Vision Care Plan with benefits payable only once every twenty-four (24) months as follows:

	Benefit
Vision Analysis	\$80
Single Vision Lenses	\$70
Bifocal Lenses	\$85
Multi-focal Lenses	\$100
Contact Lenses	\$110
Frames	\$85

5. These benefits, in their amended form, will start on the date this Agreement is executed by both parties and shall continue for the life of the term of this Agreement and until a successor Agreement is reached between the parties subject to the provisions in Paragraph D below.

- B. The Township shall provide the following health benefit coverage for retired employees up to sixty-five (65) years of age:

1. Eligibility

1. Employee retires at age sixty-two (62) or older with at least fifteen (15) years service with the Township.
2. Employee retires before age sixty-two (62) with at least twenty (20) years service with the Township and twenty-five (25) years of service credit as required under N.J.S.A. 40A:10-23.
3. Coverage is for retired employee and those dependents at time of retirement, but only for as long as they remain dependents. Subsequent marriage will not make a new spouse and dependents eligible.
4. Police Officers who receive a disability retirement through accidental injury shall be eligible for health insurance coverage as well as police officers who receive ordinary disability resulting from a job related injury.

2. Benefits

1. Major Medical Benefits as described under Section A(1) of this Article.
2. Prescription Drug Plan as described under Section A(2) of this Article.
3. Dental Plan Benefits as described under Section A(3) of this Article.

4. Vision Care Benefits as described under Section A(4) of this Article.

3. Coordination of Benefits

If the retired employee takes a job with an employer who provides health benefits, he/she must obtain primary coverage thereunder, and the Township will be the secondary insurer. The same applies if the retired employee's spouse has or takes another job which provides health benefits, the employed spouse's benefits will be the primary coverage.

C. The Township shall provide the following health benefits coverage for retired employees who have reached the age of sixty-five (65):

1. Eligibility

1. Employee retired at age sixty-two (62) or older with at least fifteen (15) years continuous service with the Township at the time of retirement.

2. Employee retired with at least twenty (20) years service with the Township, not necessarily continuous, and twenty-five (25) years of service credit as required under N.J.S.A. 40A:10-23, at the time of retirement.

3. Employee retired at age sixty-five (65) or older but with less than fifteen (15) years of service with the Township, shall be allowed to participate in any Township group plans for supplemental Medicare Insurance, (if the Township provides one) and prescription program as long as the employee pays the premiums.

4. Coverage is for retired employee and spouse, both of whom have reached sixty-five (65). When one employee or spouse reaches sixty-five (65), the other will continue to receive coverage as described under Section B of this Article, until he/she also reaches sixty-five (65).

2. Benefits are limited to a maximum of \$_____ (the maximum benefits will be determined based upon the yearly rate of percentage pay increase; the maximum amount in the year 2003 was \$720.85) in the year 2004, \$_____ in the year 2005 and \$_____ in the year 2006, for retired employees and spouse, to assist in the purchase of a Medicare supplement health benefits plan. Medicare Part B payments/deductions shall have been authorized by each. The Township reserves the right to purchase the supplements directly, or to reimburse the employee and/or spouse.

3. If retired employee or spouse has or takes a job with an employer who provides health benefits, he and/or she must obtain primary coverage thereunder, and the Township will be the secondary insurer. Coordination of benefits will apply.
- D. The Township reserves the right to change Third Party Administrators and/or Health Plans, as long as the within benefit levels and deductible and co-payment costs to employees are substantially equivalent.
- E. When both husband and wife are Township employees, family coverage will be provided under only one Agreement, with the supplemental benefit of 100% coverage for Vision and Dental, and 100% reimbursement of In and Out-of-Network deductibles and co-payments.
- F. When an employee's spouse works for another employer with family health benefits, then the employee may waive health insurance coverage under the Township Plan in favor of coverage under the spouse's plan. In this event, the Township will annually award a \$1,500 cash payment in December of that year in lieu of enrolling the employee in the Township plans. An employee who waives coverage shall be permitted to resume coverage under the same terms and conditions as apply to initial coverage if the employee ceases to be covered through his/her spouse for any reason, including, but not limited to, the retirement or death of the spouse, or divorce.
- G. There will no longer be a medical fund to reimburse deductibles, co-payments, or other out-of-pocket expenses.
- H. The provisions of this Agreement do not affect the health benefits coverages of employees who retired prior to the effective date of this same Agreement, all of which benefits are to be determined by prior Agreements in effect at the time of retirement. The terms of this plan shall apply to employees who retire in the future unless the terms are modified by the parties prior to their retirement.
- I. The Township agrees to provide a free legal defense to any employee sued in his/her official capacity for any legal act committed within his/her authority as a Township employee.
- J. The Township shall continue to provide a \$10,000 life insurance policy on the employee's life only, in addition to the insurance provided by the state pension plan.
- K. For an employee who retires due to accidental disability in accordance with N.J.S.A. 43:16A-7, which shall exclude mental incapacitation, such as post-traumatic stress disorder, and who receives 66 and 2/3 percent Accidental Disability Retirement Benefits from the Police and Firemen Retirement System, the Township shall continue to provide the same level of health insurance benefits, as may be changed from time to time by the Township, that are provided to all other Police Officers regardless of the date of retirement. If the retired employee or spouse has or takes a

job with an employer who provides health benefits, he and/or she must obtain primary coverage thereunder, and the Township will be the secondary insurer. Coordination of benefits will apply.

- L. In the event a Police Officer is killed in the line of duty, health insurance coverage for his surviving spouse shall be continued until remarriage of such spouse, and for any surviving children until the age of 23. Coverage will remain at the level of benefits that the member was receiving at the time of death.
- M. When an Employee is required to use his or her own vehicle, he or she shall be compensated at the mileage rate published by the Internal Revenue Service plus tolls.

5. **Article 5 – Retirement**

Section C shall increase the maximum terminal leave benefit for employees hired on or after January 1, 2000 from \$12,000 to \$15,000. The effective for the increase shall be January 1, 2007.

6. **Article 14 – Clothing Allowance**

Article 14, Section C shall add the following language to the end of the paragraph: "The committee shall also determine whether an item should be added or deleted from paragraph B."

Article 14, Section D shall modify the allowance to read \$825 effective January 1, 2006 and \$900 effective January 1, 2007

7. **Article 15 – Time Off**

A new paragraph C shall be added as follows effective January 1, 2007:

Personal leave entitlements for the entire year shall be credited to the Employee at the beginning of each calendar year in anticipation of continued employment for the full year. In the event the Employee terminates employment, takes a leave of absence, or has any other change in status where such leave is not earned for a portion of the year, the Employer shall recover the prorated value of personal leave, and if the Employee utilizes more leave than is earned, he shall be required to reimburse the Employer for the value of the used, but unearned, leave. For the purposes hereof, the prorated value of the personal leave shall be determined by (i) dividing the number 52 into the number of full weeks in such years as of the date of such termination of employment, leave or change in status, then (ii) multiplying such fraction by the total number of personal days credited at the beginning of such year, and then (iii) subtracting the personal days used in such year.

8. **Article 9 – Vacations**

A new paragraph F shall be added as follows effective January 1, 2007:

Vacation leave entitlements for the entire year shall be credited to the Employee at the beginning of each calendar year in anticipation of continued employment for the full year. In the event the Employee terminates employment, takes a leave of absence, or has any other change in status where such leave is not earned for a portion of the year, the Employer shall recover the prorated value of vacation leave, and if the Employee utilizes more leave than is earned, he shall be required to reimburse the Employer for the value of the used, but unearned, leave. For the purposes hereof, the prorated value of the vacation leave shall be determined by (i) dividing the number 52 into the number of full weeks in such years as of the date of such termination of employment, leave or change in status, then (ii) multiplying such fraction by the total number of vacation days credited at the beginning of such year, and then (iii) subtracting the vacation days used in such year.

9. **Article 11 – Sick Leave**

A new paragraph E shall be added as follows effective January 1, 2007:

Sick leave entitlements for the entire year shall be credited to the Employee at the beginning of each calendar year in anticipation of continued employment for the full year. In the event the Employee terminates employment, takes a leave of absence, or has any other change in status where such leave is not earned for a portion of the year, the Employer shall recover the prorated value of sick leave, and if the Employee utilizes more leave than is earned, he shall be required to reimburse the Employer for the value of the used, but unearned, leave. For the purposes hereof, the prorated value of the sick leave shall be determined by (i) dividing the number 52 into the number of full weeks in such years as of the date of such termination of employment, leave or change in status, then (ii) multiplying such fraction by the total number of sick days credited at the beginning of such year, and then (iii) subtracting the sick days used in such year.

10. **Article 6 – Leave of Absence**

The existing Article 6 shall be deleted in its entirety and shall be replaced with the following:

- A. Family/Medical Leave of Absence will be granted in accordance with the provisions of the Federal Family and Medical Leave Act ("FMLA") and the New Jersey Family Leave Act ("NJFLA") and the regulations promulgated thereunder. Under the provisions of these statutes, the Employee is

entitled to twelve (12) weeks of leave during a twelve (12) month period, which leave may be extended at the request of the Employee, upon good cause shown, for up to a total of six (6) additional months (excluding the initial twelve (12) week period). The Employee shall be entitled to leave for the Employee's own serious health condition, or the need to care for a spouse, child or parent with a serious health condition. In addition, the Employee may take leave to care for a parent, child or parent-in-law. The circumstances under which leave may be taken vary depending on the type of leave requested and the Employer will grant leave in accordance with the provisions of each statute, the regulations issued for each statute, and judicial decisions interpreting the requirements of each statute. If the Employee takes FMLA or NJFLA leave, the Employee may, at the Employee's option use accrued sick leave, vacation and other administrative leave during the FMLA or NJFLA leave. The Employer retains all rights to require proper certification from a health care provider pursuant to all Applicable Laws. Any other leave of absence shall be granted in the sole and absolute discretion of the Township Manager and shall not be for a period in excess of six (6) months.

- B. Any unpaid leave of absence granted because of illness or disability will not result in cessation of insurance, health and welfare benefits set forth in Article 12. The employee shall not earn any seniority during the period of such leave of absence, and there will be no additional accrual of vacation, sick and personal days during the period of such leave of absence.
- C. As to any unpaid leave of absence granted for any reason other than illness or disability, the Township shall have sole discretion to determine if such leave will result in a cessation of insurance, health and welfare benefits during such leave of absence. The Employee shall not earn any seniority during the period of such leave of absence, and there will be no additional accrual of vacation, sick and personal days during the period of such leave of absence.
- D. Unless otherwise specifically set forth in this Agreement to the contrary, all of the provisions of the New Jersey Department of Personnel Regulations concerning leaves of absence, as set forth in Title 4A of the New Jersey Administrative Code, Chapter 6, Subchapter 1, as applied to State service, shall apply to the PBA.
- E. Before an employee goes on FMLA or NJFLA leave without pay, the Employee shall be entitled to use all of the sick, vacation and personal days which have been credited to the Employee at the beginning of the year. The employee also acknowledges that sick, vacation and personal days are not earned during any FMLA or NJFLA leave or any other unpaid leave of absence. Accordingly, (i) if an Employee on such leave does not return to work, he shall reimburse the Employer for the paid sick, vacation and personal days used in excess of his prorated entitlements as set forth in Paragraphs 9E, 11E and 15C of this Agreement, or (ii) if an Employee on such leave does return to work, the sick, vacation and

personal days to be credited in the future shall be reduced by such days used in excess of his prorated entitlements.

11. **Article 23 – Court Time**

Paragraph B shall be modified to reflect the following:

Effective January 1, 2007, there shall be a minimum of three (3) hours pay guaranteed for appearance at any court for any police officer who is required to come into court (other than Lower Township Municipal Court) on his day off. There shall also be a minimum of two (2) hours pay guaranteed for appearing at Lower Township Municipal Court for any police officer who is required to appear in said court unless said appearance occurs either within 30 minutes after the conclusion of his shift or occurs 30 minutes before commencement of his shift.

12. **New Article – Off Duty Work**

A new article shall be added to the Agreement that reflects the current authorized hourly rate of pay received for off duty work.

13. **College Credits**

Effective January 1, 2007, the current maximum college credit benefit of \$750.00 shall be increased to \$1,000.00.

14. **Salary**

The salary schedule shall be increased at each step of the salary schedule by 3.75% effective January 1, 2004, 4% effective January 1, 2005, 4% effective January 1, 2006 and 3.75% effective January 1, 2007 and be retroactive to their effective dates. The salary schedules for patrol officers and sergeants shall be modified to read as follows based upon the salary adjustments that have been awarded:

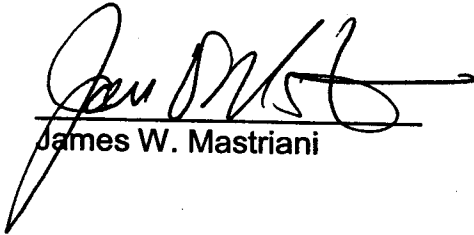
Schedule A
Employees Hired Prior to August 28, 2006

	2004	2005	2006	2007
Step 1	\$34,820	\$36,212	\$37,661	\$39,073
Step 2	\$40,913	\$42,549	\$44,251	\$45,911
Step 3	\$47,388	\$49,283	\$51,255	\$53,177
Step 4	\$53,864	\$56,019	\$58,260	\$60,444
Step 5	\$58,321	\$60,653	\$63,079	\$65,445
Step 6	\$62,674	\$65,181	\$67,788	\$70,331
Sergeants	\$67,880	\$70,596	\$73,420	\$76,173

Schedule B
Employees Hired on or After August 28, 2006

	2004	2005	2006	2007
Step 1	\$34,820	\$36,212	\$37,661	\$39,073
Step 2	\$40,913	\$42,549	\$42,683	\$44,282
Step 3	\$47,388	\$49,283	\$47,705	\$49,492
Step 4	\$53,864	\$56,019	\$52,727	\$54,702
Step 5	\$58,321	\$60,653	\$57,749	\$59,912
Step 6	\$62,674	\$65,181	\$62,771	\$65,121
Step 7			\$67,788	\$70,331
Sergeants	\$67,880	\$70,596	\$73,420	\$76,173

Dated: August 28, 2006
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 28th day of August, 2006, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008