

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between:

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**TOWNSHIP OF WASHINGTON**

“Public Employer”

and

**PBA LOCAL 206**

“Union”

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2007-073

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Township:**

Kenneth G. Poller, Esq.  
Kenneth G. Poller, P.A.

**For the PBA:**

D. John McAusland, Esq.

This award arises from an interest arbitration proceeding involving the Township of Washington [the "Township"] and PBA Local 206 [the "PBA" or "Union"]. The terms of their collective bargaining agreement [the "Agreement"] expired on December 31, 2006 and has remained in full force and effect. Direct negotiations between the parties towards reaching a new agreement resulted in an impasse. A petition seeking the invocation of interest arbitration was filed by the PBA and I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425.

I conducted a pre-interest arbitration mediation sessions on October 31 and November 27, 2007 and again on January 22, 2008. The impasse remained despite the negotiations efforts of the parties. This required the scheduling of interest arbitration proceedings on October 6, 2008. The hearings concluded that day. At the interest arbitration hearing, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Testimony was received from Detective John W. Calamari and Gary Vinci of Lerch, Vinci and Higgins accounting firm. Each party filed post-hearing briefs, the last of which was received on or about January 15, 2009.

As required by law, the Township and the PBA submitted last offers on the disputed issues for consideration by the arbitrator. They are as follows:

### **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: The PBA proposes a five (5) year contract commencing January 1, 2007 and expiring on December 31, 2011.
2. Salary Increases to All Steps:

As of January 1, 2007	4.5%
As of January 1, 2008	4.5%
As of January 1, 2009	4.5%
As of January 1, 2010	4.5%
As of January 1, 2011	4.5%
3. Reduction in Senior Officer Differential: Article V, paragraph D, shall be modified as follows: (strike thru represents language to be removed, underlined represents language to be added), effective January 1, 2007:
  - D. Senior Officer Differential – Employees having completed ~~seventeen (17)~~ thirteen (13) years of service shall receive an increase in their base pay rate of an amount equal to one-half (1/2) the difference between the Employee's then current base rate and the next higher rank rate of pay. [For example, a Sergeant having completed

~~seventeen (17)~~ thirteen (13) years of Police service shall receive a Sergeant's pay expanded by one-half (1/2) the difference between the Sergeant's base rate and the Lieutenant's base rate of pay. The following rank sequence shall be used for Senior Officer compensation computation purposes: Patrolman – Sergeant – Lieutenant – Captain – Chief. For those persons in the Detective Bureau the sequence shall be: Detective – Detective Sergeant – Lieutenant.] The Senior Officer Differential shall not exceed five (5%) percent of the base rate of the Officer's permanent rank pay rate.

### **The Township**

1. Duration: The Township proposes a four (4) year contract commencing January 1, 2007 and expiring on December 31, 2010.
2. Salary increases of 3.25% for each of the four (4) contract years.
3. Contribution toward medical insurance coverage by all members of the PBA in the amount of ten percent (10%) of the premium costs.
4. Elimination of unlimited sick leave, and replacement with a sick leave policy of fifteen (15) days per year.

### **BACKGROUND**

The Township and the PBA offer comprehensive evidence concerning the Township's socio-economic and demographic characteristics as well as the operations of the police department.

Substantial evidence was also produced by the Township dealing with its finances and the changes that were occurring to the national and state economy towards the end of 2008. In addition, comparability evidence as submitted by each party, mainly focusing upon municipalities which are considered part of the "Pascack Valley." Among these include Emerson, Hillsdale, Montvale, Park Ridge, Rivervale, Washington Township, Westwood and Woodcliff Lake. The Union, PBA Local 206, is a consolidated local and represents police officers in municipalities including Washington Township, Park Ridge, Woodcliff Lake, Westwood, Emerson, Oradell, Haworth, Rivervale and Old Tappan. Other municipalities in the area include Haworth, Old Tappan and Oradell.

The Township is primarily residential in nature. It has 2.91 square miles with 9,670 residents. In 2007, the Township's original budget was \$11,255,672, of which \$8,049,697 was raised by municipal taxes. This amounts to 71.52% of the total budget, a level approximately 1.5% higher than in 2006. When State and Federal grants, deferred charges, debt service, capital improvements and reserve for uncollected taxes is deducted from the original budget, the Township's operating budget for 2007 was \$9,230,003. The Township's total tax levy in 2007 was \$30,869,451, a sum that represented an 8.6% increase from 2006. In 2008, the increase was reduced to 5.2%. The Township's effective tax

rate in 2007 was \$1.60, somewhat below the average equalized municipal tax rate in Bergen County of \$1.68. The Township's ranking on this figure is 47<sup>th</sup> out of 70 municipalities in the County.

The size of the Township's police department reflects the overall size of the town. There are 23 officers, including the Chief, three (3) Lieutenants, six (6) Sergeants, one (1) Detective and twelve (12) Police Officers. All are in the bargaining unit with the exception of the Chief. Detective John Calamari offered testimony detailing the department's operations. Highlights of his testimony show that the department is engaged with the community. A chart reflecting incidents regarding direct police involvement show 15,436 incidents in 2007, an increase from the two prior years. Beyond the more traditional work that includes the detection and apprehension of those who commit crimes, Calamari testified to community service activities that include checking on elderly residents who make up almost 17% of the Township's population, assisting residents with daily non-emergency problems and department initiatives such as raising money to fund a motor cycle unit. The Township has a low crime rate, some 75% below the County crime rate.

The costs of operating the police department represent more than one-third of the Township's operating budget. In 2008, total police

personnel costs amounted to \$3,600,421 an increase from the \$3,429,415 spent in 2007.<sup>1</sup> The figures represent 37.16% of the Township's operating budget in 2007 and 37.75% in 2008. The Township points out that this figure would rise to 38.39% in 2008 if the PBA's 4.5% proposal were to be awarded.

Against this general backdrop the parties offer evidence and arguments in support of their respective proposals.

The PBA proposes wage increases of 4.5% over the life of the five year agreement commencing January 1, 2007 through December 31, 2011. Its sole other proposal is to modify the senior officer differential by lowering the years of eligibility from the completion of seventeen (17) years of police service to thirteen (13) years.

The PBA does not agree with the Township's assessment of its financial position. It makes several points in this regard. It points to the Township having maintained a healthy surplus balance slightly exceeding \$2 million over the last three years and its ability to realize the surplus that it anticipates. Another indicator is the tax collection rate which has

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<sup>1</sup> The 2008 figures are in the Township's exhibits and solely for the purposes of calculation assumed a 3.25% salary increase.

consistently been at or near 99%. Pointing to the budget documents, the PBA notes that the Township has consistently raised around \$500,000 more than it anticipates.

Turning to the appropriations cap, the PBA submits that the Township had a cap bank of \$111,686 in 2007 and was \$222,895 under its spending limitation. In 2008, again citing the budget documents, the PBA notes that the Township was under its appropriation limitation by \$436,000. Thus, even if the arbitrator were to award the PBA's salary proposal, the Township would not exceed its appropriations cap. Turning to the tax levy cap, the PBA emphasizes that the Township, in budget year 2008, budgeted to raise \$8.48 million but, under the cap, was permitted to raise \$8.82 million. The PBA calculates that the Township had the capacity to raise an additional 4%, or \$342,258 by taxation and thus, the PBA's proposals will not compel the Township to exceed its obligations.

The PBA also contends that an award of its proposal would not cause a negative financial impact on its residents. The PBA estimates that the entire cost of base salaries for police officers amounts to \$48 per month for 3,219 households and that an increase in the amount that the PBA seeks would have insignificant impact on costs.



The PBA submits cost of living data reflecting a range of increases between 3.3% and 3.8% in the years 2004 and 2007 but observes that the index has shown an increase during the latter part of 2008 with annualized increases for July and August projected at levels above 5%.

The PBA expresses concern that the Township's offer could affect the continuity and stability of employment of the Township's police officers. It cites the testimony of Calamari that two officers have left the Township in recent years to be employed by other municipal departments in Bergen County at higher pay. In the PBA's view, two officers is a large number because of the small size of the department. It believes that a major contractual inadequacy exists, namely the inability of a Township police officer to earn health benefits upon retirement, a benefit that exists in many other departments.

The PBA argues that the comparability data more strongly favors its position over the Township's. The PBA rejects the testimony of Auditor Gary Vinci showing that the national percentage increases in private industry was 3.3% in 2007 and 3.5% for state and local government employers on a national basis. The PBA asserts that average wage increases in New York, northern New Jersey and Long Island are more relevant and show payroll tax records for all employees in this region

reflecting increases of 6.91% based upon an average wage of \$65,627. The PBA cites a private sector wage report by PERC showing a 4.3% increase in private sector wages in New Jersey in 2007. The PBA notes that there are no other collective bargaining agreements within the Township representing non-law enforcement employees.

The PBA contends that its proposal is more consistent with the Township's regarding municipal police departments within Bergen County. The PBA has submitted all such contracts into evidence and calculates that the average increase for 50 contracts in 2008 was 4.18%, 4.33% for 29 contracts in 2009, 4.19% for 15 contracts in 2010 and 4.4% for four contracts in 2011. The PBA submits a chart reflecting base salary increases for local municipalities in 2008 showing raises ranging between a low of 3.5% in Oradell to a high of 4.55% in Waldwick. In another chart showing 2009 increases, the raises fell between a low of 3.5% in Oradell to a high of 4.4% in Haworth. Similar increases were noted in 2010, ranging between a low of 3.5% in Oradell and a high of 4.4% in Haworth. Based upon the contracts in evidence, the PBA makes the following argument on the comparability issue:

The Township proposal by contrast is clearly inadequate as compared with the Bergen County data. Of 62 available agreements in 2007, the lowest raises offered in Bergen County were Woodcliff Lake and North Arlington at 3.5%

annually. Only six contracts featured raises below 3.9%. Of 50 contracts available for 2008, the lowest raise was 3.5% and only 7 contracts featured raises below 3.9%. In 2009, the lowest raise was 3.5% and only six contracts out of 29 featured raises below 3.9%. By contrast, thirteen 2009 agreements feature raises of 4.2% or higher. Of 160 total agreement years in evidence over the period 2007 to 2011, only one municipality (Oradell in 2010) had one year of 3.25% raise. By contrast, twenty-seven of the 160 agreement years in evidence during this period feature raises of 4.5% or more. That is 17% of the total years in evidence!

The PBA urges rejection of the Township's proposal to have officers make a 10% contribution towards the premium costs for medical insurance coverage. The PBA calculates that the maximum contribution under the Township's proposal would be \$2,038 annually, based upon the annual cost of family coverage of \$20,376 in 2007. The entire contribution would be \$36,426 annually for the entire unit. The PBA contends that the Township did not provide any financial justification for the proposal noting that, according to the Township's exhibits, the cost of providing health benefits increased to \$376,718 in 2007 but dropped to \$287,606 in 2008, representing an \$89,112 reduction or 23% of the costs of the entire department's group health benefit package. The PBA disagrees with the Township's evidence concerning comparables that was made in support of the Township's health insurance proposal because Vinci's report did not contain a breakdown by region or employment classification to determine relevance. The PBA also notes that the Township did not present

comparable data within police departments in Bergen County. The PBA submits its own comparability data demonstrating:

[T]hat of the 68 departments in Bergen County, ***only six contribute*** in any way towards their health benefits. Of those six departments, the collective bargaining agreements list the contribution for five of those departments. Of those 5 departments, the average annual contribution is \$663. It should be noted that the amounts set forth in Appendix C include the maximum allowable contribution under the contract through its term.

The proposal of the Township of Washing is notable in two respects with respect to this comparable. First, it is the only contribution plan that would require a percentage of the benefits cost be paid by all employees for all coverage levels. Leonia requires employees to pay 10% of the cost of additional dependent coverage. No other department is required to pay a percentage of all benefit cost in the County.

The second reason that the Township's proposal is notable with respect to the comparables is that it is nearly twice the maximum contribution rate in any other contract. Under the Township's proposal, at the 2007 rates, a police officer seeking a family plan would be required to contribute \$2,038 annually to that plan. Presently, police officers in Mahwah Township must pay a maximum contribution of \$1,040 annually at the conclusion of 2010. That is the highest amount among the five municipalities with an employee contribution in Bergen County.

Of course, these two points miss the most glaringly obvious deficiency in the Township's proposal with respect to the comparables: no one else is doing this. 61 municipalities in Bergen County have 100% fully paid medical benefits. This represents 91% of the municipalities in the County. [emphasis in original].

The PBA also urges rejection of the Township's proposal to eliminate unlimited sick leave and, in its place, provide a sick leave policy of fifteen (15) days per year. In the PBA's view, the Township provided no justification for its proposal. According to the PBA, the Township's comparison of sick leave benefits in 11 municipalities contain several who also provide unlimited sick leave. The PBA notes that the labor agreements in evidence show 18 municipalities who provide one or more year of sick leave. The PBA argues that the Township's proposal represents a dramatic departure from thirty (30) years of history whereby the parties have mutually agreed to a system that encourages employees to use sick leave prudently. The PBA points to the terminal leave program in Article XXIV that provides incentives to employees to use nine (9) sick days or less per year and rewards an employee with five (5) days of terminal leave during a year in which that employee has not used any sick days. The PBA also submits that there has been no abuse of the existing provision. It points to 2005 where there were 239 days of sick leave use amounting to less than ten (10) days per employee including the fact that one police officer had been absent for 54 days that year due to a disability. The 2006 figures were skewed because that same officer was absent 201 days in that year and retired at the end of that year due to disability.

The PBA refers to its only other proposal in addition to its salary proposal. That proposal would modify the existing senior officer differential to allow it to commence in the fourteenth (14<sup>th</sup>) year of service rather than the eighteenth (18<sup>th</sup>) year. In the PBA's view, the senior officer differential is essentially an additional pay step in the salary schedule that artificially enhances the maximum base pay for police officers. It notes that this step now occurs in eighteen (18) years, but yet both the PBA and the Township show the senior officer rate as the maximum patrol rate for the purposes of base rate comparisons within the County. In the PBA's view, the maximum rate for patrolmen in Washington Township is comparatively low within the County. For example, even if the \$90,580 figure, that includes the senior officer differential, were used for comparison purposes, the Township ranked 42 out of 67 available contracts. But if the top step base salary of \$86,324 were used, the comparability number would drop to 61 out of 67. Thus, the senior officer differential is said to merely be a delayed top step which, even when put into the comparison calculations, show comparatively low salaries within the County. The effect of maintaining the senior officer differential in the eighteenth (18<sup>th</sup>) year is said to continue the delayed onset of maximum base pay resulting in a "pernicious effect on an officer's lifetime earnings." The PBA submits that its proposal is not costly. It submits a chart reflecting cost estimates based upon the time it would take an officer to reach a senior officer differential

under its proposal. These figures, assuming 4.5% increases, its senior officer proposal would only amount to \$9,331 in 2007, \$9,751 in 2008, \$15,046 in 2009, \$20,799 in 2010 and \$8,512 in 2011.<sup>2</sup>

Based upon all of the above, the PBA believes that its proposals are more reasonable than that of the Township's and should be adopted in their entirety while rejecting the Township's proposals in their entirety.

The Township, in response to the PBA's proposals, submits a last offer that includes a salary increase of 3.25% for each of four years of 2007 through 2010, a contribution towards medical insurance of 10% of premium costs and the elimination of unlimited sick leave with a sick leave policy of fifteen (15) days per year.

Initially, the Township challenges the PBA's salary proposals in light of changing financial economic circumstances that arose during mid to late 2008. While offering extensive argument on this point, its view can perhaps be best expressed by a single sentence it advances in its written argument: "Are words such as recession, economic contraction, financial upheaval, unemployment, bankruptcy, and cutbacks irrelevant to the

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<sup>2</sup> These figures appear to be low in that three officers would qualify for over \$4,000 increases and another would also later become eligible.

PBA?” It urges that the PBA’s proposals be assessed based upon difficult economic times and the application of the statutory criteria which it contends more favors the Township’s position than the PBA’s. The Township argues that the interests and welfare of the public are best served by an awarding of its own proposals. Pointing to the published options being considered by then Governor Corzine at the time that include postponing raises for state employees, layoffs and elimination of tax rebates, the Township submits that the downturn in the current economic climate and dealing reasonably with wage proposals “is the essence of the public interest criterion.” Pointing to reductions in State and Federal grants, the Township asserts that it will likely sustain further reductions in the outside financial support it receives. The PBA’s proposals, in its view, would aggravate the 38% that the Township now spends out of its entire operating budget for the personnel costs of police.

In respect to the comparability criteria (a, b and c), the Township acknowledges that consideration of comparability is mandated as a statutory factor but it contends that the PBA’s efforts to match its proposal with the highest level of negotiated increases by other police unions focuses too narrowly on that point while ignoring what wages and increases look like in the workforce at large. The Township refers to the testimony of its auditor, Gary Vinci, and his firm’s report (the “LVH Report”)



that compares the annual mean wage of a Township police officer with a broad section of other private and public employees. In one such chart for occupations in the State of New Jersey, Township police, at an annual mean wage of \$94,758, rank fourth and only behind Surgeons, General/Operations Managers and Lawyers. In another, but based upon national estimates, the chart reflects Township police officers at the top of twenty-two (22) occupational groupings. The LVH Report also compares percentage increases during the five (5) years of the expired labor agreement reflecting increases in excess of those received in private industry and state and local government during these years. The Township cites the Private Sector Wage Report issued by PERC stating a percentage increase of 3.5% in 2007 for local government employees. The Township submits that this figure, while well below the PBA's proposals, is a result of a prior healthy economy rather than being reflective of what is being experienced in 2008, 2009 and 2010. The Township also contends that the existing salaries and benefits in Washington Township compare favorably to the communities it uses for comparison purposes that includes Rivervale, Old Tappan, Emerson, Oradell, Hillsdale, Montvale, Westwood, Park Ridge, Woodcliff Lake and Haworth. In its own survey of these communities, the Township ranks the PBA as second in base salary only behind Rivervale. The Township also compares the maximum longevity benefit of 10% and ranks itself tied for

fifth among the 11 municipalities. Turning to holiday pay, the Township ranks itself third in the amount of such pay, only behind Old Tappan and Hillsdale, but first when calculating the actual hourly rate of holiday pay received. When the Township calculates total compensation, consisting of base salary, longevity and holiday pay, the Township calculates itself as ranking second only behind Old Tappan. The Township challenges the PBA's comparability data by noting that certain municipalities include roll-ins of holiday pay, compensation for additional hours worked or the roll in of certain other specific allowances. Thus it views the PBA's data as being overstated. In sum, it concludes that any comparison analysis favors its own proposal of 3.25%.

The Township further contends that the PBA's proposal would have negative financial impact on the governing body, its residents and taxpayers. The Township submits cost calculations concerning its own proposal of 3.25%, the PBA's 4.5% proposal and intermediate levels of increase. The Township's cost analysis is comprehensive and includes not only base salary but all other forms of compensation including college credits, holiday pay, longevity and automobile compensation. As of 2010, the Township calculates the PBA's proposals as costing \$124,018 more than the Township's representing a total amount per employee of \$5,637. Under the Township's proposal, a patrolman would reach \$98,106 in 2010

and an officer with a senior officer differential would increase to \$102,942. It compares this with the PBA's proposal that would see a rise in a police officer's pay to 102,943 in 2010 while an officer receiving senior officer differential would increase to \$108,019. The amount of difference that would need to be applied to the Township's budget is said to impact upon its overall budget that includes cost and obligations in areas that go beyond law enforcement.

The Township urges rejection of the PBA's proposal concerning the senior officer differential. In its written argument, the Township asserts the following:

As to the impact with respect to changing the senior officer differential eligibility period, the Township's PBA contract provides for two forms of longevity comparison. The first (Article XI) is based on the years of employment; the second (Articles V, Paragraph D) is in the form of a senior officer differential. Currently 8 employees receive both. Should the PBA be successful in reducing the required years to be eligible for a senior officer, by 2010, approximately 62% of the bargaining unit will be receiving both forms of longevity. By combining the longevity and the senior officer differential, the imputed longevity percentage will be higher than any of the Township Comparison group of municipalities in the LVH Report. Additionally, none of the Township Comparison Group of municipalities in the LVH Report provide senior officer differential to their respective departments.

Exhibit P-35 offered by the PBA, Cost Out of PBA Senior Officer Differential Proposal, does not reflect the overall impact on compensation. It must be noted that those officers that would benefit from the senior officer differential proposal

would not only be receiving a higher base pay, but also increased longevity and holiday pay as a result. For example, with the present salary guide, Detective calamari would receive an increase of \$4,341 in base salary, \$177 increase in longevity, and \$222 in holiday pay for each of the years of the contract. In the case that a four year contract is awarded, this would mean a cumulative increase of \$18,960 for him alone.

The Township also refers to the cost of living data reflecting that in more recent years, the PBA has received increases exceeding the cost of living and that the municipal tax levy has outstripped the CPI by 20% over the five years between 2003 and 2007.

The Township seeks the adoption of its proposal concerning unlimited sick leave. The Township points to the police department as being the only department in the Township that enjoys this benefit and that only two other towns within the 11 municipalities it uses for comparison purposes offer this or a similar benefit. The Township contends that the present system leads to greater overtime and cites individual officers (Craft, Opelt and Kelley) who took 74 days or more of paid sick leave in the two years leading to the expiration of the last contract.

The Township further asserts that its proposal for 10% contribution for medical and dental insurance premiums is reasonable. The Township submits data reflecting shared premium costs in both private industry and state and local governments. Its charts reflect that the percentage of those

contributing has increased and the average amounts that are paid. The Township also cites the ongoing increase in the number of labor agreements, including law enforcement, that require employee participation in health insurance costs.

Based upon all of the above, the Township believes that its proposals are more reasonable than that of the PBA's and should be adopted in their entirety while rejecting the PBA's proposals in their entirety.

### **DISCUSSION**

The Township and the PBA have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. All submissions have been thoroughly reviewed and considered.

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess

when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq ).

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

(7) The cost of living.

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

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the

employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

In interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. I have applied that principle to my analysis of the issues in dispute. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be reached after assessing the merits of any individual issue within the context of an overall award.

The parties disagree on contract duration with the Township proposing a contract ending on December 31, 2010 while the PBA proposes one ending on December 31, 2011. An award extending through December 31, 2011 represents the more reasonable determination of the issue. I have considered the terms for the 2011 year in light of official data relevant for that year.



The issues in dispute are all economic and include salary, senior officer differential, health insurance and sick leave. I first address the Township's proposal to eliminate the present sick leave system.

The existing paid sick leave benefit is set forth in Article XIX. It provides as follows:

#### ARTICLE XIX – PAID SICK LEAVE

This benefit shall be continued as heretofore subject to department policy under the administration of the Director of the Department, the Chief of Police and the Chief Administrative Officer of the Department.

The present system of unlimited sick leave up to one year shall be unchanged.

If any Officer is out sick for seven (7) consecutive work days a doctor's note is required.

If any Officer is out sick for fourteen (14) consecutive work days the Township of Washington will send the Officer to its' own doctor, at the Township's expense.

The existing system is one unique to law enforcement. For this reason, the reference to its non-presence within the Township generally has little relevance. It does exist within law enforcement as is evidenced by two other municipalities in addition to the Township have such a system within the eleven town comparison. As the PBA notes, it exists in one form

or another in at least eighteen (18) other Bergen County municipalities. In this Township, there is a linkage between this provision and the terminal leave provision in Article XXIV. It provides terminal leave benefits through sick leave incentives wherein days can be accumulated by using less sick days. One example of this cited by the PBA is a Sergeant who has had twenty-six (26) years of perfect attendance. The Township's position, though not explicitly stated, appears to be based upon the fact that in recent years, there have been isolated examples of extraordinary use of sick leave. Three such officers were involved, one of whom it claims took 255 days of paid sick leave during 2005 and 2006 that was not job related. Due to the size of the department, sick leave usage can have a substantial impact on staffing and overtime. After due consideration of the parties' positions on this issue, I am not inclined to delete a system that has been in place for decades absent more substantial evidence that the existing system is being abused. Although the Township has made strong arguments on behalf of its position, beyond its replacement by fifteen (15) paid sick days annually, there is no suggestion of how the removal of this provision would impact upon Article XXIV which appears to exist only because of Article XIX. In order to properly evaluate the potential removal of the existing system, a comprehensive substitution must be provided that addresses all issues related to sick leave. The parties should meet and confer on this issue periodically in order to provide an objective basis to re-

evaluate the current system and to discuss its potential replacement in the future concerning all possible impacts of a change. In sum, I do not award the Township's proposal.

I next turn to the issue of health insurance contributions. The Township has established that the existing health and dental insurance benefits are broad in scope at substantial cost. The PBA notes that the total police personnel costs for group health insurance has actually declined after 2007. While projected to increase in 2009, that increase is at a cost far less than the 2007 levels, although the basis for the decline has not been shown. The PBA also notes that, at the time of the formal arbitration hearing, only 10% or so of police units in Bergen County participated in contributions towards health insurance premiums. The PBA's observations, however, are insufficient to deny the Township the ability to require employee participation. The Township correctly observes that increasing employee participation exists in the private and public sector in general and also in law enforcement. I take notice of the many settlements and awards in public safety units that reflect an identical trend. To do otherwise here would isolate the PBA unit from this trend. It is not simply a question of cost or whether the Township requires a contribution in order to balance the budget. As I have decided to award a contract in

the length of five years as proposed by the PBA, I award the following schedule of health insurance contributions:

Effective July 1, 2010, each unit employee shall make a monthly contribution towards health insurance in accordance with the following schedule:

Single-	\$20
H/W -	\$30
P/C -	\$40
Fam -	\$50

Effective January 1, 2011, the monthly contribution shall be:

Single-	\$30
H/W -	\$40
P/C -	\$50
Fam -	\$60

The Township shall adopt a 125 Plan to allow for pre-tax contributions.

The remaining issues in dispute are salaries and the senior officer differential. As is reflected in the record and by the parties' arguments, the issues both equate to base compensation. In one respect, the level of pay yielded by the senior differential is a reward for long-term service to the Township but in another sense, it can be said to reflect maximum police officer pay. On this latter point, the PBA views the time that it takes between the beginning of the eighth (8<sup>th</sup>) year of service and the eighteenth (18<sup>th</sup>) year of service as being too long to warrant the differential to be viewed as maximum police officer pay.

I am not persuaded, based upon this record, to lower the bar for eligibility by four years as proposed by the PBA. The costs of doing so for this contract term would be substantial. Without computing the roll-up costs of awarding the PBA's proposal, the costs would range between 0.75% and 1.0% for each year of the Agreement, all of which must be calculated towards net annual economic change. These monies would be directed towards three employees towards the beginning of the Agreement and reach one additional employee later in the Agreement. The effect of such award would result in the disproportionate distribution of monies to a few employees or in additional costs that could extend beyond across-the-board percentages that cannot be justified. For these reasons, I decline to award the PBA's proposal.

The remaining issue to be decided is salary. Because of the duration of the contract that I have awarded, a reasonable determination of the salary issue requires an application of the statutory criteria over the length of the contract term. This requires an award on the salary issue of differing levels based upon the effective dates of the salary increases. This is required because an application of the evidence on the relevant criteria produces differing results due to changes that have occurred over the time period. By way of example, the cost of living data which showed

increases during 2007 and 2008 in the range of between 3% and 4% have declined thereafter. Unemployment rates have changed in the opposite directions. The more traditional levels of unemployment that existed in 2006 and 2007 and in the early parts of 2008 increased thereafter and remain at levels approximating 10%. Official records of settlements and awards over this contract period of time have also changed. The PBA emphasizes levels at 2007 and 2008 in the range of 4% but its statistics show fewer contracts in evidence during the remaining contract period. In order to render a reasonable determination on the salary issue, the Township must accept that the evidence prior to the decline in the economy remains valid for the period of time that it addresses. The PBA must also accept that a contract containing the longer term that it seeks allows for consideration of evidence that the arbitrator can take official notice of that influence the terms of the award over that longer term. Given these observations, which are clearly factors which are ordinarily or traditionally considered in the determination of wages, I render the following determination on the issue of salary.

Effective for contract year 2007, I award a 4.0% salary increase with split effective dates. On January 1, 2007 the schedule shall be increased by 2% and by an additional 2% on July 1, 2007. I award a 3.75% increase effective January 1, 2008, a 3.5% increase effective January 1, 2009, a

3.25% increase on January 1, 2010 and conclude with a 2.5% increase on January 1, 2011.

In reaching the above determinations, I have found all of the statutory criteria to be relevant. As is commonly accepted, no one factor can be isolated and be dispositive. In particular, I find that the interests and welfare of the public to be the issue to be given the most weight. This factor requires consideration of the financial impact of an award and the statutory limitations on appropriations and taxation. Less directly, it requires consideration of the comparability evidence and the continuity and stability of employment. The costs associated with operating the police department must be balanced with consideration being given to the terms and conditions set for law enforcement officers who perform essential and dangerous functions for the purpose of protecting the public.

Despite the PBA's well articulated presentation that the Township is well run, financially stable and has the absolute means to fund its proposal, its position on the financial data provides little attention to the Borough's overall obligation to develop an overall budget that must address requirements that go beyond funding the police department. The evidence shows that the percentage of the Township's budget that go to departmental operations is, at more than 37% of its operating expenses, a

large piece of the revenue that the Township raises. This number has been increasing and if the PBA's approach were to be adopted, the amount would exceed 38% and proceed towards 39%. Even if the PBA's proposal did not require the Township to exceed its statutory limitations, this is not a standard that the Township must meet. The Township has also shown that the economy has spiraled downward during the relevant time period. Its arguments on this point have been accurate given the undisputed official evidence that exists on the state of the economy.

On the other hand, the evidence on comparability cannot be ignored and is also relevant. It does not dictate an award at the level sought by the PBA but it allows for additional consideration that goes beyond the arguments submitted by the Township. In short, an award of 4% in calendar year 2007 gives meaning to the comparability evidence that strongly suggests an award at that level for contract year 2007 after review of the salary increases received by most of the eleven municipalities that represent the base of comparability. The splitting of the increase in 2007 between the January and July dates will provide for a lower payout and place less stress on the Borough's retroactive obligations. The remaining contract years will include salary increases that give greater weight to financial impact over the length of the contract. The award represents a



total increase of 17% over five years, an average of 3.4% with an average of 2.87% in 2010 and 2011.

The costs required by the award, inclusive of salary, and longevity and holiday pay increases associated with the increased salaries, are as follows:

January 1, 2007	\$40,851
July 1, 2007	\$41,668
January 1, 2008	\$79,691
January 1, 2009	\$77,167
January 1, 2010	\$74,156
January 1, 2011	\$58,909

The structure of the existing salary schedules shall remain as in Appendix A of the parties' Agreement. The salary percentages shall be calculated off of that schedule and shall be retroactive to their effective dates. For the purposes of calculation, I have set forth the salary schedules for top step patrolman after the completion of the seventh year and the senior officer differential for patrolmen:

	1/1/07	7/1/07	1/1/08	1/1/09	1/1/10	1/1/11
Complete 7 <sup>th</sup> Year	\$88,050	\$89,811	\$93,179	\$96,441	\$99,575	\$102,064
Senior Officer Differential	\$92,460	\$94,310	\$97,846	\$101,272	\$104,567	\$107,176

Accordingly and based upon all of the above, I respectfully set forth 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**

There shall be a five-year agreement effective January 1, 2007 through December 31, 2011.

3. **Health Insurance**

Effective July 1, 2010, each unit employee shall make a monthly contribution towards health insurance in accordance with the following schedule:

Single-	\$20
H/W -	\$30
P/C -	\$40
Fam -	\$50

Effective January 1, 2011, the monthly contribution shall be:

Single-	\$30
H/W -	\$40
P/C -	\$50
Fam -	\$60

The Township shall adopt a 125 Plan to allow for pre-tax contributions.


4. Salary

The existing salary schedule shall be adjusted by the following amounts effective and retroactive to their effective dates.

Effective January 1, 2007	- 2.0%
Effective July 1, 2007	- 2.0%
Effective January 1, 2008	- 3.75%
Effective January 1, 2009	- 3.5%
Effective January 1, 2010	- 3.25%
Effective January 1, 2011	- 2.5%


The salary schedule shall be increased by the above amounts with the senior officer differential calculated by the formula set in the current Appendix A.

Dated: May 20, 2010  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey     }  
County of Monmouth    } ss:

On this 20<sup>th</sup> day of May, 2010, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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