

In the Matter of Interest Arbitration Between:

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**TOWN OF NEWTON**

"Public Employer,"

- and -

**PBA LOCAL 138 &  
PBA LOCAL 138 SOA**

"Associations."

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket Nos. IA-2002-043 and IA-2002-044

**Before  
James W. Mastriani  
Interest Arbitrator**

Appearances:

**For the Town:**

William E. Hinkes, Esq.  
Hollander, Hontz, Weaver, Hinkes & Pasculli

**For the Associations:**

Charles E. Schlager, Esq.  
Loccke and Correia

The Town of Newton [the "Town"] and the PBA Local 138 [the "PBA"] are parties to a collective negotiations agreement covering patrol officers. The Town of Newton [the "Town"] and the SOA [the "SOA"] are also parties to a collective negotiations agreement covering superior officers with the rank of Sergeant (1 and 2), Lieutenant and Captain. These Agreements extended through December 31, 2002. An impasse developed between the Town and the PBA and SOA resulting in the submission of the disputes to interest arbitration pursuant to the rules of the New Jersey Public Relations Employment Commission. The parties agreed to consolidate these impasses into a single proceeding. Reference to issues relating to both the PBA and the SOA in this decision shall be to the Associations and individual issues unique to each shall be to either the PBA or the SOA. In accordance with the rules of PERC, I was designated to serve as interest arbitrator.

Three pre-interest arbitration mediation sessions were held. These efforts did not produce a voluntary agreement leading to the convening of formal hearings. Testimony, documentary evidence and certifications were offered by all parties. Testimony was given by Captain Donald Donofrio, SOA negotiating committee member, Patrolman Neil Casey, President of the PBA local unit, Camille Furgiuele, Township Manager, Eileen Kithcart, Municipal Treasurer and Vincent Foti, Financial Consultant for PBA Local 138. Post-hearing briefs were

filed by each party, the last of which was received on September 4, 2003. At that time, the hearing was deemed closed.

The Town and the PBA have offered testimony and substantial documentary evidence in support of their last offers. Each presentation was expert and comprehensive in nature, fulfilling each party's statutory obligations. The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the above 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.

### **BACKGROUND**

The Town of Newton is one of twenty-four (24) municipalities located in Sussex County. County headquarters are located in Newton. The County is predominantly rural in nature with a population of 144,166 and Newton is sixth in the County in population at 8,244. While Newton has a small population it has a large daily influx of motorists due to the many pass through road networks and citizens partaking in services offered by the County. PBA testimony describes the Town as having an "urban flair" as law enforcement frequently encounters behaviors more commonly associated with urban rather than rural settings. The testimony of Captain Donofrio and Patrolman Casey details the context of law enforcement work in Newton. At hearing, the Town acknowledged the competence and professionalism of its police force. There are sixteen (16) patrol officers in the PBA unit and six (6) superior officers in the SOA unit.

In 2002, the Town had a total tax rate of \$3.52 and the municipal tax rate was 0.706 of the total or 20% of the total tax levy. The municipal tax rate has been relatively stable, having increased by less than \$0.09 over the five year

period including 2002. Police expenses in 2002 were \$2,047,842, or 36% of the Town's annual budget of \$5,693,731. This percentage has remained constant over the last several years. The Town's assessed valuation is \$360 million and has remained somewhat level. The tax collection rate has increased to 98.05% in 2002. The Town has a consistent track record of regenerating surpluses with much of the surplus being used to support the succeeding annual budgets. Its projected surplus balance for 2003 is \$104,407. A free balance of approximately \$20,000 remains from the 2002 budget.

Wide-ranging testimony was offered by both parties. PBA and SOA testimony centered on the increasing police activity in Town with calls for service increasing by an average of 7% in each of the last several years. The Associations see the Town's population and economic development as expanding placing stress on a small department which has not increased in size. The testimony also reflects the view that the nature of the work is more difficult than in surrounding rural towns. The Associations also point to their salaries which are set below the municipalities of Sparta, Vernon Township and Byram Township. The Town's testimony reflects budgetary concerns due to a large senior citizen population with lower income levels and a general population with median household income of \$41,667 compared with Vernon Township at \$67,566, Sparta at \$89,835 and Bryam Township at \$81,533. The Town maintains a philosophy of keeping taxes as low as possible although it has little

control over school taxes which have risen the most in both dollar and percentage terms.

Virtually all of the issues in dispute are financial and economic in nature. The Associations' primary arguments are directed towards salary comparables while the Town has primarily argued that the Associations' proposals will have negative financial impact on the governing body, its taxpayers and residents.

Against this general backdrop, the parties have presented their final offers. At hearing, the PBA and the SOA presented the final offers which were subsequently revised at the conclusion of the hearing. I list all of the final offers.

### **THE TOWN OF NEWTON**

#### **SOA**

1. Term of Contract: 2002, 2003 and 2004.
2. Clothing Allowance: \$100 increase per man for each of the three contract years from the current \$700 allowance.
3. Sick Leave Payout on Retirement: No change from current contractual provisions.
4. Compensatory Time (in lieu of overtime): No allowance for optional compensatory time.
5. Wages: 3% per year, plus \$1,000 increase for Captain and Lieutenant.
6. Longevity: No change in structure for current employees; eliminated for new hires.

## PBA

1. Term of Contract: 2002, 2003 and 2004.
2. Clothing Allowance: \$100 increase per man for each of the three contract years from the current \$700 allowance.
3. Donated Leave: Discretionary; not to be codified.
4. Meal/Mileage Allowance: No change – no allowance.
5. Wages: 3% per year, plus \$250 increase per man per year for 5<sup>th</sup> step only; Academy rate of \$28,000 for new hires.
6. Longevity: Revise 10% eligibility from 25 years to 24 years, otherwise no change in structure for current employees; eliminated for new hires.

## PBA FINAL OFFER

1. Term: Three (3) year contract
2. Clothing Allowance

Increase to \$1000 per contract year  
2002 \$1000  
2003 \$1000  
2004 \$1000

New hires to receive additional \$500 to be used toward uniform expenses or employees will be reimbursed for their required academy gear as determined by the Basic Police Training class that they are attending. (Prospective)

3. Longevity: earn 10% at 24 years (parity with SOA contract)
4. Meal/Mileage Allowance:

An employee shall be reimbursed at the rate of \$0.31 per mile for personal vehicle use. Other direct travel expenses such as tolls and parking will be reimbursed in full upon presentation of proper receipts. Whenever possible, a Town-owned vehicle shall be used instead of a personal vehicle. Meal expenses for other than normal duty related



requirements shall be reimbursed upon presentation of proper receipts to the following maximum allowance:

Breakfast - \$10.00  
Lunch - \$15.00  
Dinner - \$20.00

5. Donated Leave Program:

The employer will establish a donated leave program consistent with the provisions provided for in N.J.A.C.: 4A:6-1.22.

6. Salary:

Adjustment to top step in 2002 to be comparable with similar agencies, 5% increase per contract year for step 2, 3, 4 and 5; and create an academy rate of \$28,000 for new hires.

**SOA FINAL OFFER**

1. Term: Three (3) year contract
2. Wages: 4-5% increase per year with 10% difference between Sgt. and Lt. and Lt. and Captain
3. Clothing Allowance: \$200 increase for 2002, 2003 and 2004
4. Sick Leave Retirement Reimbursement: 50% upon retirement

**REVISED FINAL OFFERS OF THE PBA AND SOA**

At the conclusion of the hearing, the Associations decided to submit revised final offers pursuant to a procedural understanding reached during the hearing. Subsequent to hearing, the Associations presented a revised final offer along with a cost-out of its proposals. The revised final offer reads as follows:

1. Increase all Steps in 2002 by 4.5%
2. *On December 31, 2002 at 11:59 p.m., the Wage Guide is modified to reflect two (2) additional steps at the top of the Guide for patrolmen, Steps 6 and 7 which will be applicable to all officers.*
3. Another new Step is created for Academy/Probationary employees to be effective for a twelve (12) month period. This Step will be \$28,000 and will remain fixed for the duration of the contract term.
4. First Step through Fifth Step are equalized to reflect a \$5,151 differential between each Step.
5. The Sixth Step reflects the 2002 Top Step of \$60,034 plus the clothing allowance of \$700.
6. The Seventh Step reflects the 2002 Top Step of \$60,034 plus the 2002 clothing allowance of \$700 and the comparability adjustment of \$3,325.
7. The Second Sergeant Step reflects the difference between First Sergeant and Top Step Patrol (Seventh Step).
8. The First Sergeant Step reflects the 2002 First Sergeant's Step of \$69,146 plus the 2002 clothing allowance of \$700 and the comparability adjustment of \$3,100.
9. The Lieutenant Step reflects the 2002 Lieutenant's Sergeant Step of \$72,803 plus the 2002 clothing allowance of \$700 and the comparability adjustment of \$4,925.
10. The Captain Step reflects the 2002 Captain's Step of \$76,983 plus the 2002 clothing allowance of \$700 and the comparability adjustment of \$6,630.
11. Effective January 1, 2003, the current longevity guide will be revised from:

<u>Years of Service</u>	<u>Percentage</u>
Entering the 5 <sup>th</sup> year of service through the 9 <sup>th</sup> year of service	- 2.00%
Entering the 10 <sup>th</sup> year of service through the 14 <sup>th</sup> year of service	- 4.00%
Entering the 15 <sup>th</sup> year of service through the 19 <sup>th</sup> year of service	- 6.00%
Entering the 20 <sup>th</sup> year of service through the 23 <sup>rd</sup> year of service	- 8.00%
Entering the 24 <sup>th</sup> year of service through retirement	- 10.00%

to the following schedule:

Entering the 1 <sup>st</sup> year of service through the 14 <sup>th</sup> year of service	-	0.00%
Entering the 15 <sup>th</sup> year of service through the 19 <sup>th</sup> year of service	-	1.75%
Entering the 20 <sup>th</sup> year of service through the 23 <sup>rd</sup> year of service	-	3.00%
Entering the 24 <sup>th</sup> year of service through retirement	-	6.00%

12. Effective January 1, 2003, the current clothing allowance provision in the contract will be eliminated from the contract.
13. The Borough will purchase this initial clothing and equipment requirements for new officers.
14. On January 1<sup>st</sup> in 2003, 2004, 2005 and 2006, all ranks and the Seventh Step on the wage guide will be increased by four and one-half (4.5%) percent. During the same time period, all other steps will be increased by four (4.0%) percent.
15. The term of this Contract shall be from January 1, 2002 through December 31, 2006.
16. The PBA seeks an increase to the Mileage/Meal Allowance.
17. The PBA seeks to include in the provisions of this contract, the language under N.J.A.C. 4A:6-1.22 – Donated Leave Program.
18. The PBA seeks to revise the years of service for receiving the top longevity to 24 years of service.
19. The SOA seeks an increase to the Sick Leave Reimbursement upon Retirement as set forth under Article 14 to 50%, an increase to the current 35%.
20. The SOA seeks parity with the PBA, by proposing language to be included in the contract to permit Superior Officers the option to take overtime in either cash or compensatory time.

### **POSITIONS OF THE PARTIES**

The Associations and the Town have submitted extensive argument and evidence in support of their respective positions. I will set forth a concise summary of their presentations.

## THE ASSOCIATIONS

The Association first addresses N.J.S.A. 34:13A-16g (1), the interest and welfare of the public. The Associations indicate that the Town has “an urban flair”. The Associations maintain that the Town has experienced recent growth and has attracted additional traffic due to the vast development surrounding Newton. According to the Associations’ witness Captian Donofrio, service calls have increased 7% annually since 1993. The Associations point out that the Town ranks third among Sussex County municipalities in the total crime index at 18.00 per 1,000. Despite this fact, the number of officers in the patrol unit has not changed since 1993. The Associations maintain that these factors, among others, have lead to a significant increase in work activity and the work load. For these reasons, the Associations contend that their proposals reflect the need for proper reward for their law enforcement services in order to further the interest and welfare of the public.

Addressing N.J.S.A. 34:13A-16g (2) and (3), the Associations contend the following municipalities are within their comparable group – Andover, Byram, Franklin Boro, Hamburg, Hardyston, Hopatcong, Ogdensburg, Sparta, Stanhope, Stillwater, and Vernon. The Associations compared their 2001 base wage rates, longevity and clothing allowances for top step patrolmen, sergeants, lieutenants, and captains with the municipalities they believe are comparable:

**Chart #1 – Top Step+Longevity+Clothing (Patrolman)**

<u>Municipality</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Sparta	\$76,379	\$79,580	\$83,122
Vernon	\$69,362	\$72,442	\$75,662
Byram	\$69,296	\$72,339	\$75,255
Andover	\$68,181	\$70,611	\$73,428
Hopatcong	\$67,183	\$69,888	\$72,807
Franklin	\$66,148	\$69,111	\$72,211
Hardyston	\$64,616	\$68,109	
Stanhope	\$64,660	\$67,189	\$69,819
<b>NEWTON* - \$63,894</b>			
Ogdensburg	\$62,349	\$64,191	\$66,087
Hamburg	\$60,556	\$62,673	
Stillwater	\$41,474	\$43,029	\$45,525
<b>AVERAGE</b>	<b>\$64,508</b>	<b>\$67,196</b>	<b>\$70,435</b>

\* Newton's figures are based upon existing 2001 levels of compensation

**Chart #2 – Top Step+Longevity+Clothing (Sergeant)**

<u>Municipality</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Sparta	\$86,297	\$90,586	\$94,610
Vernon	\$76,207	\$79,595	\$83,137
Byram	\$74,169	\$77,415	\$80,461
Andover	\$73,536	\$76,549	\$79,590
<b>NEWTON*- \$73,489</b>			
Hopatcong	\$73,024	\$75,968	\$79,146
Franklin	\$72,661	\$75,922	
Ogdensburg	\$71,438	\$74,258	\$77,190
Hardyston	\$69,347	\$73,084	
Stanhope	\$69,288	\$72,032	\$74,884
Hamburg	\$62,140	\$64,323	
Stillwater	\$45,104	\$46,795	\$49,432
<b>AVERAGE</b>	<b>\$70,558</b>	<b>\$73,321</b>	<b>\$77,306</b>

\* Newton's figures are based upon existing 2001 levels of compensation

**Chart #3 – Top Step+Longevity+Clothing (Lieutenant)**

<u>Municipality</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Sparta	\$86,587	\$90,226	\$94,250
Vernon	\$83,738	\$87,466	\$91,362
Hopatcong	\$79,930	\$83,165	\$86,657
Franklin	\$77,627		
<b>NEWTON* - \$77,336</b>			
Byram	\$75,729	\$89,338	\$92,861
Andover	\$73,010	\$79,954	
Hardyston	\$71,092	\$76,360	
Hamburg	\$60,309	\$63,684	
<b>AVERAGE</b>	<b>\$75,485</b>	<b>\$80,978</b>	<b>\$91,282</b>

\* Newton's figures are based upon existing 2001 levels of compensation

**Chart #4 – Top Step+Longevity+Clothing (Captain)**

<u>Municipality</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Sparta	\$95,081	\$99,083	\$103,509
Vernon	\$92,022	\$96,123	\$100,408
Hopatcong	\$86,529	\$90,024	\$93,795
<b>NEWTON* - \$81,735</b>			
Hardyston	\$76,065	\$80,182	
<b>AVERAGE</b>	<b>\$86,286</b>	<b>\$91,353</b>	<b>\$99,237</b>

\* Newton's figures are based upon existing 2001 levels of compensation

According to the Associations, in order to move up into the top five paid departments in the County, all officers would have to receive 7.5% increases with additional increases of 2% to Lieutenants and 8.5% to Captains. The Associations point out that officers in other law enforcement agencies with which the Town has working relationships, such as the State Troopers and the County's sheriff's officers, corrections officers, and prosecutor's detectives, have all received salary increases of at least 4% across the board from 2000 through 2003 (through 2004 for State Troopers and detectives). The Associations indicate that the average increase in total compensation for the Sussex County law enforcement contracts was 4.3% per year for 2002 through 2004. According to the Associations, their proposals would move the officers only ahead of Stanhope and Hardyston.

The Associations presented comparison charts for longevity and clothing allowance. Based upon their analysis, the average longevity is 2.25% of base salary for 5-9 years of service, 4.2% for 10-14 years of service, 6.0% for 15-20 years of service, and 7.5%-8% for 21 or more years of service. As for clothing

allowance, the average was \$1,065 compared to the Associations' allowances of \$700. According to the Associations, their proposals are consistent with the current trend of bargaining units who reduce their longevity benefits in exchange for an upward adjustment in base salary. The Associations note that their proposals to eliminate the clothing allowance until an officer's sixth year of employment will reduce the Town's liability and will simply appear later as an adjustment to base salary.

The Associations maintain that a comparison of demographics is critical in this case and present the following chart:

**Chart #7 – Demographics (Year 2000)**

<b>Municipality</b>	<b>Population</b>	<b>Land Area (Sq.Mi.)</b>	<b>Persons/Sq.Mi.</b>	<b>Median Income</b>
Vernon	24,686	68.39	361	\$72,609
Sparta	18,080	37.39	484	\$100,658
Hopatcong	15,888	10.96	1,450	\$73,277
Byram	8,254	21.07	391	\$89,500
<b>Newton</b>	<b>8,244</b>	<b>3.10</b>	<b>2,659</b>	<b>\$56,848</b>
Hardyston	6,171	32.09	192	\$72,199
Andover	6,033	20.18	299	\$78,439
Frankford	5,420	34.11	159	\$69,449
Stillwater	4,267	27.12	157	\$71,563
Stanhope	3,584	1.87	1,917	\$73,203
Hamburg	3,105	1.16	2,676	\$64,774
Ogdensburg	2,638	2.28	1,157	\$70,521
<b>Average</b>	<b>8,864</b>	<b>16.14</b>	<b>549</b>	<b>\$74,390</b>

Based upon the chart above, the Associations indicate that the Town's population is 7% below the average and has a land mass 81% below the average of the comparables. According to the Associations, the Town's recent growth will raise its median wage which was 24% below the average in 2000.

As for comparisons of police officers to employment in the private sector, the Associations contend that private sector comparisons are not entitled to significant weight due to the unique qualifications, duties and responsibilities of a police officer, their obligation to act as law enforcement officers at all times and given the strict statutory regulations under which officers must perform.

The Associations also present the contracts for the Town's teachers and civilian employees for comparison. The Associations point out that the civilian employees received an annual wage increase of 3.5% for the terms of their agreements. The Associations compared the Town's step patrolmen to teachers at the Bachelor's degree plus 20 credit level. The Associations indicate that those teachers in the 2001-2002 school year earned \$71,057 – earning 11.2% more than the top step patrolmen while working only 9 months each calendar year. For these reasons, the Associations maintain that this comparative evidence supports their proposals.

Addressing N.J.S.A. 34:13A-16g (4), stipulations of the parties, the Associations indicate that the only stipulation the parties' made was that officers would receive top longevity pay entering their 24<sup>th</sup> year of service.

With respect to the lawful authority of the Town, the Associations refer to the testimony of the parties' financial experts, Camille Furgiuele - the Town's Manager, and its financial consultant Vincent Foti. The Associations indicate that



Furgiuele's testimony revealed that even with the Town's use of only a 1.16% Cap, it was nevertheless able to create a "significant" Cap bank of \$255,000 in 2001 and \$101,000 in 2000. The Associations point out that the Town has an additional 3.84% of Cap available but has elected not to use it. The Associations also emphasize that the Town had cost savings due to the fact that it did not have to contribute to pension costs for the past three (3) years.

With respect to the financial impact on residents and taxpayers, the Associations place great emphasis on Foti's testimony that the Town can afford wage increases beyond its three percent (3%) offer. According to his analysis of the Town's financial condition, Foti indicates that the Town's results of operations have been positive since 1999 - \$516,678 in 1999, \$549,893 in 2000, \$563,794 in 2001, and \$696,224 in 2002. Further, the Town's budget has been in excess of \$5 million since 1999, and its realized revenues exceeded anticipated revenues by \$146,180 in 1999, \$124,983 in 2000, \$159,721 in 2001, and \$274,828 in 2002. According to Foti, this "clearly demonstrates that the Town of Newton has the ability to generate additional revenues and has the ability to replenish their Surplus." Foti referred to the "Reports of Audit" and pointed to the Town's fund balance surplus from 1997 to 2002:

**Chart #9 – Fund Balance (Surplus)**

<u>Year</u>	<u>Balance</u>	<u>Used in Budget</u>	<u>Percentage Used in Budget</u>
1997	\$583,487	\$495,000	85%
1998	\$539,571	\$450,000	83%
1999	\$595,329	\$475,000	80%
2000	\$670,124	\$475,000	71%
2001	\$748,182	\$670,000	90%
2002	\$774,406	\$670,000	87%

With respect to tax increases, Foti testified that the rating agencies prefer tax rate increases of a few points each year so that the cost can be more readily absorbed. The Associations presented the tax rates for 1999 through 2002:

**Chart #10 – Tax Rates**

<u>Year</u>	<u>Municipal</u>	<u>County</u>	<u>School</u>	<u>Total</u>
1999	.646	.528	1.896	3.07
2000	.690	.550	1.980	3.22
2001	.695	.617	2.028	3.33
2002	.706	.654	2.160	3.52

Foti notes that the Town's tax collection rate greatly exceeds the State average (98.05% in 2002 compared to 93%), and that the Town has a strong tax levy of which only 20%-22% has been allocated to the municipal budget from 1999 to 2002.

In sum, Foti commends the Town for its financial strength. He notes that the Town is ranked 22 out of the 24 County municipalities in tax levy per capita and 9<sup>th</sup> in property values. Foti testified that the non-profit/non-taxable properties create transient traffic which brings tax revenues to the Town.

The Associations analyzed the financial costs of the parties' final proposals. According to the Associations, the Town's wage proposals if extended through 2006 would result in the following:

### Superior Officers

	2001	2002	2003	2004	2005	2006
Wages	\$341,840	\$415,696	\$434,186	\$446,821	\$459,836	\$473,241
Longevity	\$20,440	\$23,613	\$24,557	\$31,227	\$35,207	\$36,235
Clothing	\$3,500	\$4,800	\$5,400	\$6,000	\$6,000	\$6,000
<b>TOTAL</b>	<b>\$365,780</b>	<b>\$444,109</b>	<b>\$464,143</b>	<b>\$484,049</b>	<b>\$501,043</b>	<b>\$515,476</b>

### Patrol Officers

	2001	2002	2003	2004	2005	2006
Wages	\$809,624	\$822,414	\$869,748	\$935,289	\$953,580	\$1,011,653
Longevity	\$13,788	\$13,075	\$18,441	\$20,343	\$25,429	\$33,722
Clothing	\$11,200	\$12,000	\$13,500	\$15,000	\$15,000	\$15,000
<b>TOTAL</b>	<b>\$834,612</b>	<b>\$847,488</b>	<b>\$901,689</b>	<b>\$970,632</b>	<b>\$994,008</b>	<b>\$1,060,374</b>

### Total (PBA/SOA)

	2001	2002	2003	2004	2005	2006
Wages	\$1,151,464	\$1,238,110	\$1,303,934	\$1,382,110	\$1,413,416	\$1,484,894
Longevity	\$34,228	\$36,688	\$42,998	\$51,571	\$60,636	\$69,957
Clothing	\$14,700	\$16,800	\$18,900	\$21,000	\$21,000	\$21,000
<b>TOTAL</b>	<b>\$1,200,392</b>	<b>\$1,291,598</b>	<b>\$1,365,832</b>	<b>\$1,454,681</b>	<b>\$1,495,052</b>	<b>\$1,575,851</b>

The wage schedule under the Town's proposals, if extended to 2006, would break down as follows:

	2002	2003	2004	2005	2006
Captain	\$76,653	\$78,698	\$80,804	\$82,973	\$85,207
Lieutenant	\$72,653	\$74,698	\$76,804	\$78,973	\$81,207
Sergeant 1 <sup>st</sup>	\$68,153	\$70,198	\$72,304	\$74,473	\$76,707
Sergeant 2 <sup>nd</sup>	\$61,931	\$63,789	\$65,702	\$67,673	\$69,704
Fifth Year	\$59,430	\$61,470	\$63,572	\$65,479	\$67,444
Fourth Year	\$51,302	\$52,841	\$54,427	\$56,059	\$57,741
Third Year	\$46,855	\$48,088	\$49,708	\$51,199	\$52,735
Second Year	\$43,775	\$45,088	\$46,441	\$47,834	\$49,269
First Year	\$37,651	\$38,780	\$39,944	\$41,142	\$42,376
Probationary	\$28,840	\$29,705	\$30,596	\$31,514	\$32,460

The Associations broke down their wage proposals:

**Superior Officers**

	2001	2002	2003	2004	2005	2006
Wages	\$341,840	\$420,056	\$474,977	\$496,351	\$518,687	\$542,028
Longevity	\$20,440	\$23,874	\$6,116	\$12,719	\$17,355	\$18,136
Clothing	\$3,500	\$4,200	\$0	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$365,780</b>	<b>\$448,129</b>	<b>\$481,092</b>	<b>\$509,070</b>	<b>\$536,042</b>	<b>\$560,164</b>

**Patrol Officers**

	2001	2002	2003	2004	2005	2006
Wages	\$809,624	\$831,778	\$900,116	\$979,115	\$1,056,913	\$1,135,194
Longevity	\$13,788	\$13,208	\$1,171	\$1,224	\$1,279	\$4,011
Clothing	\$11,200	\$10,500	\$0	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$834,612</b>	<b>\$855,486</b>	<b>\$901,288</b>	<b>\$980,339</b>	<b>\$1,058,192</b>	<b>\$1,139,205</b>

**Total (PBA/SOA)**

	2001	2002	2003	2004	2005	2006
Wages	\$1,151,464	\$1,251,834	\$1,375,093	\$1,475,466	\$1,575,599	\$1,677,222
Longevity	\$34,228	\$37,081	\$7,287	\$13,944	\$18,635	\$22,147
Clothing	\$14,700	\$14,700	\$0	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$1,200,392</b>	<b>\$1,303,615</b>	<b>\$1,382,380</b>	<b>\$1,489,409</b>	<b>\$1,594,234</b>	<b>\$1,699,369</b>

Based upon their analysis, the composite aggregate cost in percentage terms would be:

**PBA/SOA Local No. 138 - Totals**

	2001	2006	Difference	K%	Avg%
Wages	\$1,151,464	\$1,677,222	\$525,758	45.7%	9.1%
Longevity	\$34,228	\$22,147	(\$12,801)	-35.3%	-7.1%
Clothing	\$14,700	\$0	(\$14,700)	-100.0%	-20.0%
<b>Total Compensation</b>	<b>\$1,200,392</b>	<b>\$1,699,369</b>	<b>\$498,976</b>	<b>41.6%</b>	<b>8.3%</b>

Based upon their analysis, the Associations' proposals would result in the following wage schedule:

	2002	2002 Adj	2003	2004	2005	2006
Captain	\$76,983	\$84,313	\$88,107	\$92,072	\$96,215	\$100,545
Lieutenant	\$72,803	\$78,428	\$81,957	\$85,645	\$89,499	\$93,527
Sergeant 1 <sup>st</sup>	\$69,146	\$72,946	\$76,288	\$79,658	\$83,243	\$86,989
Sergeant 2 <sup>nd</sup>	\$62,833	\$68,552	\$71,637	\$74,861	\$78,230	\$81,750
Seventh Step	\$60,034	\$64,159	\$67,046	\$70,063	\$73,216	\$76,511
Sixth Step	\$60,034	\$60,734	\$63,164	\$65,690	\$68,318	\$71,050
Fifth Step	\$60,034	\$53,828	\$55,981	\$58,220	\$60,549	\$62,971
Fourth Step	\$52,049	\$48,662	\$50,609	\$52,633	\$54,739	\$56,928
Third Step	\$47,537	\$43,497	\$45,237	\$47,046	\$48,928	\$50,885
Second Step	\$44,413	\$38,331	\$39,864	\$41,459	\$43,117	\$44,842
First Step	\$38,199	\$33,166	\$33,932	\$34,730	\$35,559	\$36,421
Probationary	\$28,000	\$28,000	\$28,000	\$28,000	\$28,000	\$28,000

The Associations contend that their proposals will save the Town \$44,935 for each newly hired officer through the guide movement, and "would provide the Town significant latitude in their fiscal planning, especially in the short-term future."

As for the Associations' other proposals (i.e. mileage/meal allowance, donated leave program, increase in sick leave reimbursement upon retirement), it relies upon the testimony of Captain Donofrio and Patrolman Casey. The Associations contend that their proposals were unopposed by the Town and should be awarded.

Addressing N.J.S.A. 34:13A-16g (7), the Associations place little emphasis on this criterion and consider the cost of living simply an indicator and rely more heavily on the increases in State and Local Government wages of 4.1% in 2001 and 3.9% in 2002. The Associations also submit that the cost of

compensation for union workers increased 4.2% in 2002 compared to 3.2% for non-union workers.

With respect to the continuity and stability of employment, the Associations place reliance upon considerations of "area standards" and the "prevailing rate". The Associations refer to its consideration of the criteria above, in particular, g (1), (2), (3), (5), and (6) as evidence that substantial increases in compensation are required to lift the Associations' relative standing within the County to insure that officers remain in Newton.

For all of the reasons above, the Associations request that its proposals be awarded in their entirety.

### **THE TOWN OF NEWTON**

On the outset, the Town emphasizes its opposition to the Associations' wage proposals. The Town contends that they will have a compounding, deleterious effect upon the Town's budget especially from 2004 through 2006. It calculates the additional cost of the Associations' wage proposals to be \$35,000 for 2004, \$101,000 for 2005, and \$125,000 for 2006. According to the Town, "its impact on the municipal budget over the years would cripple the Town's ability to respond to other needs for years to come." The Town cites Furgiuele's testimony that an emergency appropriation would be required if more than 3% were awarded in 2002.

In respect to the interests and welfare of the public, the Town points out that the median household income is \$41,667 and the per capita income is \$20,557. The Town indicates that it "has a significant population of older persons, and the median income of retired persons in the Town is \$14,000." The Town emphasizes that one-third of its structures and land are not taxable due mainly to County offices and the value of taxable property has been relatively flat for six (6) years.

The Town maintains that the cost of its police protection per capita at \$187 is the second highest in the County and more than one-third of its municipal budget is allocated towards that protection. The Town points out that while it continues to fund police building and equipment improvements, its commercial base of older independent shops is threatened by the development of large retail facilities and outlets outside of the Town.

Addressing N.J.S.A. 34:13A-16g (2), the Town contends that its wage proposals compare favorably to the most recent wage data from the New Jersey Department of Labor and the Bureau of Labor Statistics. In addition, the Town's non-unionized staff has received 3% increases over the last two (2) years. Furgiuele emphasized at hearing that the Town seeks 3% for all of its employees. She noted that longevity was eliminated for non-unionized new hires and seeks to eliminate the benefit for all new hires in the police department.

According to the Town, the PBA failed to support its proposed wage increases which well exceed 4.5% per year. The Town maintains that the PBA's comparison group includes municipalities which have surpluses "far in excess" of the Town's, higher income levels, and do not have the same level of non-taxable property. The Town contends that the most comparable group consists of small municipalities located within Morris County such as Chester Borough, Mount Olive, Mount Arlington, and Netcong. This comparison group as of 2001 reflects that Newton's officers are well compensated:

Municipality	Patrol	
	Entry Rate	Top Rate
Chester Boro	\$35,995	\$54,860
Mount Arlington	\$26,000	\$57,000
Mount Olive	\$30,000	\$50,892
Netcong	\$27,346	\$55,947
<b>Newton</b>	<b>\$36,554</b>	<b>\$57,449</b>

Addressing N.J.S.A. 34:13A-16g (3), the overall compensation, the Town points out that its officers receive a broad spectrum of benefits (i.e. longevity pay, health and dental benefits, etc.). The Town emphasizes that it offers its officers the opportunity to work a substantial amount of overtime and supplemental pay and submits evidence reflecting total compensation that is well in excess of base pay. The Town prefers not to provide compensatory time because employees have the ability to accrue the time into future years and it can result in the hampering of future budgets. The Town also points out that payments for accumulated sick leave also has a negative impact upon future budgets.



Addressing N.J.S.A. 34:13A-16g (5), the Town contends that the 2003 Cap calculation of 1.16% allows the Town to increase expenditures only by \$42,413 which would be wiped out by the Association's wage demand. The Town maintains that a wage increase of 3.5% in 2003 is equal to \$49,000 and this would account for the entire Cap allowance. The Town also anticipates that it will resume pension contributions in 2004 and the added substantial costs of the Associations' wage proposals for 2004 through 2006 would fully exhaust "whatever cap increase the Town would be permitted in those years."

In respect to the financial impact upon residents and taxpayers, the Town maintains that the PBA's proposed increases exceeding 4.5% per year for 2002 and 2003 would require an emergency resolution. The Town points out that its tax rates have increased 20 points per year over the last two (2) years. The Town indicates that only \$20,000 of its 2002 obligations remains free and there will be no available cash in the 2003 budget to pay for the PBA's proposed increases. The Town does not anticipate growth in its ratable base that could pay for the PBA's proposals.

Citing the cost of living, the Town indicates the CPI for 2002 was 2.2% and refers to reports that recently there have been deflationary trends. The Town points out that the PBA's wage proposal more than doubles the CPI and is unwarranted.

Addressing N.J.S.A. 34:13A-16g (8), the Town emphasizes that existing terms and conditions of employment have maintained continuity and stability of employment for its officers inasmuch as it has never laid off any officers, that there is little or no turnover and that it has had no difficulty hiring police officers.

In response to the Associations' proposals on donated leave and meal/mileage allowance the Town points out that it has policies in place that need not be reflected in the parties' Agreements. The Town rejects the Associations' accumulated sick leave proposals as they would increase the Town's financial burden. The Town also believes that its own proposal to increase the clothing allowance offers comparability in those benefits to police officers in other municipalities.

In sum, the Town contends that its proposals are reasonable and fiscally responsible and should be awarded. The Town contends that it cannot justify providing its officers with the substantial increases the Associations have demanded when its other employees have only received 3% and longevity has been eliminated for new hires.

### **DISCUSSION**

I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The Town and the Associations have fully articulated their

positions on the issues and have submitted evidence and argument on each statutory criterion to support their respective positions. The evidence and arguments have been carefully reviewed, considered and weighed.

Many issues remain in dispute including salary, other compensation related issues and some non-economic issues. I apply the commonly accepted principle that the party seeking changes in terms and conditions of employment bears the burden of establishing the need for such modifications.

### **Term of Contract**

The Town has proposed a three-year agreement terminating December 31, 2004 while the Associations revised final offer would provide a term of five years, terminating December 31, 2006. I conclude that the interests and welfare of the public will be served by a new collective negotiations agreement which extends through December 31, 2005. The parties have developed a record providing relevant evidence which allows for a determination through 2005. This contract duration will promote efficiencies and stability by not requiring the parties to immediately return to the process of negotiation.

### **Donated Leave Program**

The Associations propose language in the Agreement reflecting a Donated Leave Program as stated in N.J.A.C. 4A:6-1.22. This program is

authorized by the State of New Jersey and would allow officers to donate sick time to other officers who do not have sufficient sick time to cover an illness. The Town seeks rejection of this proposal based upon the testimony of Furgiuele. According to Furgiuele, the Town maintains a policy allowing for the donation of time to employees who are in need of additional sick leave. The testimony is that it is a voluntary program and that the Town has allowed for sick leave donation on several different occasions. Furgiuele further testified that she recommended to the governing body not to codify the policy within the Agreement based upon a study performed by the Chief of Police. She testified that "we felt that what we have in place is sufficient. And if people want to donate their time, the town does not object to it."

The Town's fear of placing this policy into the Agreement is unfounded. As testified to, the policy is voluntary and the governing body has decided to permit donation under all circumstances which have been presented to it. There is no evidence of any denial. The incorporation of this policy into the terms of the collective negotiations agreement cannot remove the Town's discretionary authority unless the language so states. Police officers have a right to notice of the terms of this policy and to have that policy reflected in their Agreement. I award a new contract article with a heading Sick Leave Donation Program and to have the language of that article reflect the terms of the Town's policy with the addition of language stating that "any such requests shall not be unreasonably

denied.” The Town shall submit language to the Associations within thirty (30) days of this Award.

### **Compensatory Time**

The PBA and the SOA have similar provisions concerning overtime at Article 11 and Article 13 respectively. A major exception is that Section D in the PBA Agreement allows patrolmen to opt for the receipt of compensatory time rather than overtime pay as long as the patrolman “not carry over more than fifteen (15) hours of compensatory time from one calendar year to the next.” The SOA proposes that this option be accorded to its members.

The Town seeks rejection of this proposal. The Town’s main objection as expressed in the testimony of Furgiuele who fears that compensatory time could be accrued and become excessive in cost upon retirement. A review of the PBA overtime provision, however, reflects that a patrolman’s option to receive compensatory time carries with it a limitation that more than fifteen hours cannot be carried over from one calendar year to the next calendar year. This limitation offsets the concern of the testimony. The presumption of uniformity between the bargaining units on this issue is strong, particularly in light of Captain Donofrio’s testimony that sergeants are allowed to utilize the same practice as what exists in contract form in the PBA Agreement. Accordingly, I conclude that the SOA has met its burden on this issue and the option which exists in the PBA Agreement shall be extended to the SOA effective January 1, 2005.

### Meal/Mileage Allowance

The Associations propose that:

An employee shall be reimbursed at the rate of \$0.31 per mile for personal vehicle use. Other direct travel expenses such as tolls and parking will be reimbursed in full upon presentation of proper receipts. Whenever possible, a Town-owned vehicle shall be used instead of a personal vehicle. Meal expenses for other than normal duty related requirements shall be reimbursed upon presentation of proper receipts to the following maximum allowance:

Breakfast -	\$10.00
Lunch -	\$15.00
Dinner -	\$20.00

The Town proposes no change to the meal/mileage allowance.

These issues are currently covered by Town policies. According to Furgiuele, these policies allow for \$0.20 per mile and for reimbursement to employees for costs associated with meals upon the submission of receipts. In support of its proposal, the Associations cite the testimony of Officer Casey that unit members do not get reimbursed for meals when they go to certain schools. Furgiuele testified that Casey's testimony was not accurate:

I was surprised that Officer Casey said he wasn't reimbursed because many times they are out, at least I know that this past week or two when all of our superior officers were at a conference, they submitted their receipts and we paid them for whatever cost was associated with meals. And that has always been our policy as well. I assume that was going on with everyone. And if it is not, it should be. That is something that we do. But we do not give a per diem.

We don't give money ahead of time. Give us the receipts ... We will reimburse according to what you pay.

Reimbursement and/or allowance for mileage and meals are clearly terms and conditions of employment. There is a strong statutory preference for such issues to be reduced to writing in collective negotiations agreements and many do so. With respect to mileage, many agreements also include such a provision.

The Agreement in the Township of Byram provides language which is clear and unambiguous on the issue of mileage which is reasonable and sets clear standards. I award it here.

When an employee covered by this Agreement is required to leave the Town on official business, the Town shall attempt to provide a Town vehicle. If such vehicle cannot be provided, and if the employee shall be required to use his personal vehicle in any job-connected capacity, he shall be entitled to an allowance of twenty-two and one-half (22.5¢) cents per mile.

That agreement also provides that the employee reimbursed for tolls and parking in connection with the performance of official business while out of town. Language providing such reimbursement is also awarded.

With respect to reimbursement for meals, Furgiuele's testimony, as set forth above, establishes that the Town's policy is to reimburse employees

according to what they pay. Implicit in this policy is that such expenses be reasonable. In lieu of a maximum meal allowance, I award the following:

Reasonable meal expenses for other than normal duty related requirements shall be reimbursed upon presentation of proper receipts. Reimbursement shall be required when an employee is required by the Town to attend a law enforcement school.

The provisions on mileage and meal allowance shall be effective January 1, 2005.

#### **Clothing Allowance**

The Associations currently receive a clothing allowance in the amount of \$700 annually for clothing purchase and maintenance. Initially, the PBA proposed an immediate increase to \$1,000 and for this amount to remain for the term of this Agreement. The SOA proposed an increase of \$200 per year. In response, the Town has proposed to increase the existing clothing allowance by \$100 in each of the three years, thereby modifying the allowance to \$1,000 effective January 1, 2004.

In its revised final offer the Associations have proposed to eliminate the current clothing allowance provision in the contract effective January 1, 2003 in conjunction with its revised salary proposal which would incorporate the \$700 clothing allowance into base pay.



I do not award the Associations proposal given the reasonableness of the Town's proposal on this issue and in light of the present payment which is comparably low. Because I have awarded a contract duration through December 31, 2005, I award an additional \$100 adjustment in 2005. The \$400 increase to the existing clothing allowance would increase the allowance to \$1,100 which approximates the average clothing allowance payment among the eleven (11) Sussex County municipalities cited by the Associations. It is a fair and reasonable increase to the existing clothing allowance which is now well below average. The proposal to eliminate the allowance and place its sum into base pay is a concept which the parties can revisit during negotiations for the next Agreement.

### Longevity

In its final offer at hearing, the PBA proposed that its longevity program be equivalent to that provided in the SOA Agreement. In pertinent part, the SOA agreement states the following at Article 8.

<u>Amount Equal To</u>	<u>Years of Cumulative Service</u>
2%	5
4%	10
6%	15
8%	20
10%	24

The PBA Agreement has the identical schedule to the SOA with the exception that the 10% longevity payment is paid upon 25 years of cumulative service rather than 24. The PBA seeks a change in its Agreement from 25 years to 24 years. The Town offers a proposal identical to what the PBA initially proposed. The Town also proposes to eliminate longevity benefits for all new hires. In its revised proposal, the PBA proposed, effective January 1, 2003, that the longevity schedule be revised to the following schedule.

<u>Amount Equal To</u>	<u>Years of Cumulative Service</u>
0.0%	1-14
1.75%	15-19
3.0%	20-23
6.0%	24

The Associations' revised proposal on longevity is an integral part of its proposal to dramatically alter the existing salary schedule by providing additional salary steps, the fold-in of clothing allowance and the payment of "comparability adjustments" in various amounts at various steps and ranks. The reductions in the longevity percentages are offset by the additional steps and comparability adjustments which substantially increase base pay.

I do not award either the Associations' revised longevity proposal or the Town's proposal to eliminate longevity for new hires. With the exception of the top tier of the two tiered schedule in Sparta, no police department in Sussex County enjoys a better longevity schedule than Newton at the top step. There is

no justification to alter this schedule in any manner other than to modify the PBA Agreement to reflect the receipt of 10% at 24 years similar to the SOA provision. This change will provide consistency in the Agreements between the PBA and the SOA and is a desirable result promoting the continuity and stability of employment. The Town's proposal to eliminate longevity for new hires is not consistent with modifications made within the County and, in any event, is not warranted after comparing the total compensation package of unit members to those employed in the more populated municipalities in the County. The comparability evidence outweighs the fact that this payment has been eliminated for new hires for the Town's non-law enforcement employees. Accordingly, I award no change to the SOA longevity provision and I award a modification to the PBA longevity schedule to reflect the following schedule effective January 1, 2003:

<u>Amount Equal To</u>	<u>Years of Cumulative Service</u>
2%	5
4%	10
6%	15
8%	20
10%	24

**Sick Leave Payout on Retirement**

Provisions for the taking of accumulated sick leave exist at Article 17 of the PBA Agreement and Article 14 of the SOA Agreement. Each provision, in pertinent part, states:

- F. Upon eligibility for full retirement or disability retirement, pursuant to the Police and Fire Retirement System, individuals covered by this Agreement will be reimbursed for sick time as follows:

<u>Years of Service With the Town</u>	<u>Percentage of Sick Time</u>
10 years	5% of accrued sick time
15 years	10% of accrued sick time
20 years	15% of accrued sick time
25 years	35% of accrued sick time

The Associations seek to increase the current 35% level for sick leave reimbursement upon retirement to 50%. The Town seeks rejection of the proposal. The main emphasis of Association testimony on this point is to bring the Town in line with other departments in the County. The record reflects that some police departments in the County receive a greater benefit while some receive less. It is significant that the Associations' Agreements place no cap on the sum to be provided from the yield of unused sick days back to the Town upon retirement. In contrast, some departments, such as Hardyston and Hamburg, have caps on the dollar amounts, which is a form of limitation which does not exist in the Town of Newton. Thus, the benefit received in Newton increases as a result of each salary increase and is not capped. I conclude that insufficient justification exists for an increase in the percentage of unused sick days to be applied towards the terminal leave benefit and the Associations' proposal is denied.

## Salary

The Town and the Associations sharply disagree on the amount of salary increases which should result from these negotiations. After review of all of the credible, relevant evidence, I am compelled to conclude that neither party's final offer represents a reasonable determination of the salary issue. I also conclude that the salary adjustments should be made to the salary schedule in its present form rather than adopting the dramatic changes to that schedule proposed by the Associations.

The costs of the Associations' revised salary offer would cause adverse financial impact on the governing body, its residents and taxpayers. Despite the credible testimony of the Associations' financial expert that the Town is in better financial condition than the Town suggests and my conclusion that the Town must fund the salary issue at costs exceeding what it has proposed, the amount which the Town would be required to raise to fund the Associations' proposals are significantly more than the Town can responsibly absorb. Although there are cost offsets in the Associations' proposals for future employees, the costs of its proposal exceed \$100,000 in 2005 beyond what the Town has anticipated with additional costs beyond this level in 2006. Budget data reflects that the Town consistently regenerated surplus at levels between \$450,000 and \$670,000 between 1998 and 2003 but the Town also has extensively relied upon surplus balances to support each annual budget. For example, this fiscal tool has resulted in surplus balances of only \$88,919 in 2002 and \$104,407 in 2003.

While the Town's financial concerns and needs must be taken into consideration, its proposal falls below that which should be provided to maintain the relative standing of the police department among other larger Sussex County municipalities and to improve that standing within its fiscal abilities. Foti's testimony is credible that the Town has stability and financial strength by virtue of its ability to regenerate surplus and its ability to receive miscellaneous revenues "in lieu of payments." Foti's testimony also points out the Town's success in collecting taxes which improved to over 98% in 2002. Although the Town does support many County facilities from which it receives no revenue, there is evidence of sharp increases in building permits reflecting that the Town will be realizing additional revenues in the future from economic development.

I conclude that a reasonable determination of the salary issue consistent with the evidence presented is to structure increases along the following guidelines. The Academy/Step 1 salary level should be split into a six month academy step followed by Step 1 through Step 5. The Academy step presently at \$36,554 is reasonable and shall remain unchanged throughout the term of the Agreement. Retroactive to January 1, 2002 and extending through calendar year 2005, there shall be two increases annually to Steps 1 through 4. These adjustments shall be 2% on each January 1 and July 1 for each contract year. This results in a salary rate increase of 4.04% to each of these steps on an annual basis with a payout of 3.02% in the first year and succeeding years plus

an additional 1% annual payout after 2002 as a result of the annual flow-through caused by the split rate increase. In order to improve the Town's salaries relative to other Sussex County municipalities, I adopt the same structure for increases at Step 5, the maximum step, but at rate increases of 2.25% on each January 1 and July 1 for each contract year. This results in a salary rate increase of 4.55% to Step 5 on an annual basis with a payout of 3.38% in the first year and succeeding years with an additional 1.13% annual payout after 2002 as a result of the annual flow-through caused by the split rate increase. For the ranks of Sergeant 1 and 2, I award the identical salary increases and structure as awarded to top step Patrolmen at Step 5. An examination of the rank differentials for Lieutenant and Captain reflects a much smaller differential between these ranks and Sergeant compared to the differential between top step Patrolmen and Sergeant 2, the rank to which each Sergeant advances after one year of service. This inequity has also been recognized by the Town. Because of this inequity, I award an adjustment of \$1,000 to the existing rates for the Lieutenant and Captain ranks prior to the application of the identical salary increases and structure as awarded to top step Patrolmen and the Sergeant ranks. When these adjustments are made to the 2001 salary levels, the following salary schedule is created.

	2001	2002		2003		2004		2005	
		1/1	7/1	1/1	7/1	1/1	7/1	1/1	7/1
Academy		36,554	36,554	36,554	36,554	36,554	36,554	36,554	36,554
1	36,554	37,285	38,030	38,791	39,567	40,358	41,165	41,989	42,828
2	42,500	43,350	44,217	45,101	46,003	46,923	47,862	48,819	49,795
3	45,490	46,400	47,327	48,274	49,239	50,224	51,229	52,253	53,298
4	49,808	50,804	51,820	52,856	53,913	54,992	56,091	57,213	58,358
5	57,449	58,741	60,063	61,414	62,796	64,209	65,654	67,131	68,641

	2001	2002		2003		2004		2005	
		1/1	7/1	1/1	7/1	1/1	7/1	1/1	7/1
Sgt1	60,127	61,480	62,863	64,277	65,723	67,202	68,714	70,260	71,841
Sgt2	66,168	67,656	69,179	70,735	72,327	73,954	75,618	77,319	79,059
Lt	69,668	72,258	73,883	75,546	77,246	78,984	80,761	82,578	84,436
Cpt	73,668	76,348	78,065	79,822	81,618	83,454	85,332	87,252	89,215

The statutory criteria which are most compelling include comparability of the terms and conditions of employment of Newton's police officers and superiors with those among law enforcement personnel in Sussex County and the financial impact of the Associations' proposals on the governing body, its residents and taxpayers. The interests and welfare of the public will be furthered by the terms of an award which accommodates these factors.

The Town's proposal would diminish the comparability of its police officers with other Sussex County municipalities. The Associations seek increases which would dramatically improve these comparisons. The Associations have established that improvement is warranted but any such improvement must take the Town's financials into consideration. For example, while Vernon Township, Sparta and Byram Township exceed salaries in Newton, the total property values, the median household and per capita income and the net valuation taxable are substantially lower in Newton than in these municipalities. Annual rate increases of 4.55% at top step and 4.04% at steps one through four will improve salary levels because they are higher than average but will be implemented causing payouts which the Town can pay without adverse financial impact. The split raises will ease the impact of the annual raises awarded. Another factor which must be considered as a justification is that the demands on



the police department exceed that which a town populated by 8,244 residents normally experience due to a large influx of daily transients which helps cause a higher than average crime rate. These factors diminish the weight the Town seeks to accord to the 3% increases given to non-uniformed personnel. The total net annual costs are calculated as follows. The clothing allowance increases are \$2,200 in 2002 with an additional \$2,200 in each of the following three years. The payout for the annual salary increases approximate the cost proposed by the Town but the flow through cause by the Award into each subsequent year averages an additional \$15,000 annually causing a cumulative increase of \$60,000 including the flow through into 2006.

The award will not compel the Town to exceed its lawful spending limitations. It will further the continuity and stability of employment for Newton's law enforcement personnel by the improvements provided to base wages, clothing allowance, longevity and ancillary issues. The overall levels of wages and benefits which are currently being received will remain unaffected including the non-contributory health insurance program. Also relevant, but given less weight, is the cost of living factor. The terms are above the cost of living but not unreasonably so and are more closely related to the settlement averages among law enforcement personnel within the County.

Accordingly, and based upon all of the above, I enter the following award.

## AWARD

1. All proposals by the Town and the Associations 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. The increases in salary shall be retroactive to their effective date and received by all eligible unit employees.
3. **Duration** – There shall be a four-year Agreement effective January 1, 2002 through December 31, 2005.

4. **Sick Leave Donated Program**

There shall be a new contract article with a heading Sick Leave Donation Program. The language of that article shall reflect the terms of the Town's policy with the addition of language stating that "any such requests shall not be unreasonably denied." The Town shall forward proposed language within thirty (30) days of this Award.

5. **Compensatory Time (SOA)**

The compensatory time option which exists in the PBA Agreement shall be extended to the SOA, effective January 1, 2005.

6. **Meal Allowance**

Effective January 1, 2005 there shall be a new contract article with a heading – Meal Allowance. The language shall state that:

Reasonable meal expenses for other than normal duty related requirements shall be reimbursed upon presentation of proper receipts. Reimbursement shall be required when an employee is required by the Town to attend a law enforcement school.

7. **Mileage Allowance**

Effective January 1, 2005, there shall be a new contract article with a heading – Mileage Allowance. The language shall state that:

When an employee covered by this Agreement is required to leave the Town on official business, the Town shall attempt to provide a Town vehicle. If such vehicle cannot be provided, and if the employee shall be required to use his personal vehicle in any job-connected capacity, he shall be entitled to an allowance of twenty-two and one-half (22.5¢) cents per mile.

8. **Clothing Allowance**

There shall be a \$100 annual increase per unit member for each of the four contract years. The allowance shall be \$800 in 2002, \$900 in 2003, \$1,000 in 2004 and \$1,100 in 2005.

9. **Longevity (PBA)**

Effective January 1, 2003, the longevity schedule in the PBA unit shall be modified as set forth below:

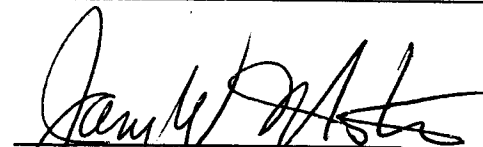
<u>Amount Equal To</u>	<u>Years of Cumulative Service</u>
2%	5
4%	10
6%	15
8%	20
10%	24

10. **Salary**

The existing salary guide shall be amended to provide an Academy Step of six months for employees hired after the date of the Award. It shall remain fixed at \$36,554. Steps one through four shall be adjusted annually by 2% on each January 1 and an additional 2% on each July 1. Step 5 shall be adjusted annually by 2.25% on each January 1 and an additional 2.25% on each July 1. Sergeant 1 and Sergeant 2 shall be adjusted annually by 2.25% on each January 1 and an additional 2.25% on each July 1. The ranks of Lieutenant and Captain shall receive a \$1,000 adjustment prior to annual adjustments of 2.25% on each January 1 and an additional 2.25% on July 1. All adjustments shall be retroactive to their effective date. The salary schedules shall be:

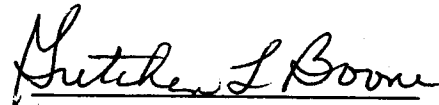
	2002		2003		2004		2005	
	1/1	7/1	1/1	7/1	1/1	7/1	1/1	7/1
Academy	36,554	36,554	36,554	36,554	36,554	36,554	36,554	36,554
1	37,285	38,030	38,791	39,567	40,358	41,165	41,989	42,828
2	43,350	44,217	45,101	46,003	46,923	47,862	48,819	49,795
3	46,400	47,327	48,274	49,239	50,224	51,229	52,253	53,298
4	50,804	51,820	52,856	53,913	54,992	56,091	57,213	58,358
5	58,741	60,063	61,414	62,796	64,209	65,654	67,131	68,641
Sgt1	61,480	62,863	64,277	65,723	67,202	68,714	70,260	71,841
Sgt2	67,656	69,179	70,735	72,327	73,954	75,618	77,319	79,059
Lt	72,258	73,883	75,546	77,246	78,984	80,761	82,578	84,436
Cpt	76,348	78,065	79,822	81,618	83,454	85,332	87,252	89,215

Dated: August 30, 2004  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey     }  
County of Monmouth    }ss:

On this 30<sup>th</sup> day of August, 2004, 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