

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between:

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**TOWNSHIP OF EAST BRUNSWICK**

“Employer,”

- and -

**FOP LODGE 98 (SOA)**

“Union.”

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2003-092

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Township:**

Brian W. Kronick, Esq.  
Genova, Burns & Vernoia

**For the SOA:**

Stephen C. Richman, Esq.  
Markowitz & Richman

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, pursuant to a petition filed by the East Brunswick Superior Officers Association, FOP Lodge 98 [the "SOA"] and the Township of East Brunswick. The Township and the FOP are parties to a collective negotiations agreement [the "Agreement"] covering Sergeants, Lieutenants and Captains. This Agreement covered the period January 1, 2000 through December 31, 2002. An impasse developed between the Township and the SOA resulting in the submission of the dispute to interest arbitration pursuant to the rules of the New Jersey Public Relations Employment Commission. I conducted pre-arbitration mediation sessions on October 21, December 22, 2003 and July 30, 2004 between the Township and the SOA. Because the impasse remained, the dispute proceeded to formal interest arbitration.

A formal interest arbitration hearing was held on August 4, 2003 at which the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from Captain Kenneth O'Connor, Chairman of the SOA negotiating committee and L. Mason Neely, Chief Financial Officer for the Township. Post hearing briefs were submitted by both parties on or about October 15, 2004 as well as replies which were received on November 8, 2004.

The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party.

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.

### **Final Offer of FOP Lodge 98**

1. **Wage Increase:**

2003	4.0%
2004	4.0%
2005	4.0%
2006	4.0%

2. **Uniform Allowance:**

2003	\$950
2004	\$1,000
2005	\$1,050
2006	\$1,100

Uniform allowance to be added to employee's base salary as of 1/1/04

3. **Compensatory Days:**

From 10 to 15

## **Final Offer of the Township**

### **A. Article IV – Holidays**

- i. Reduce number of additional days of straight time pay added to SOA members' salary to 16
- ii. Reduce maximum number of holidays that may be worked by SOA members from 12 to 9.

### **B. Article VI – Longevity**

Amend the Longevity scale as follows: "All employees hired after July 1, 2004, shall receive the following longevity: 2% at the end of the 7<sup>th</sup> year; 4% at the end of the 11<sup>th</sup> year; 6% at the end of the 16<sup>th</sup> year and 8% at the end of the 21<sup>st</sup> year."

### **C. Article VIII – Uniform Reimbursement**

Leave Uniform allowance at \$950.00 for each year of the contract.

### **D. Article X – Compensatory Time Off**

- i. Reduce amount of compensatory time off granted from ten (10) days to five (5) days.
- ii. Change the formula for calculating pro-rated number of days per month of service when an employee is promoted to the rank of Sergeant from 0.83 days per month to 0.41 days per month.
- iii. Add the following language: "It is expressly understood that any employee working the Township Fourth of July celebration is not entitled to any additional compensation."

### **E. Article XIV – Health Benefits**

- i. Increase deductibles to \$500.00 and \$1000.00.
- ii. Increase Prescription co-payments to \$10.00 generic, \$15.00 brand and \$25.00 premium.

F. **Article XVI – Compensation**

The Township proposes that for the titles of Sergeant, Lieutenant and Captain, the salary guide shall reflect two steps for each position.

- i. Effective January 1, 2003, 3.25% across the board wage increase.
- ii. Effective January 1, 2004, 3.25% across the board wage increase.
- iii. Effective January 1, 2005, 3.25% across the board wage increase.
- iv. Effective January 1, 2006, 3.25% across the board wage increase.

G. **Article XXI – Duration of Agreement**

The Township is seeking a minimum of a four-year agreement.

**BACKGROUND**

The SOA represents all superior police officers in the Township. There are 26 superior officers averaging 21 years of seniority as of May 19, 2004. There is 1 Deputy Chief (who also serves as Police Director), 4 Captains, 10 Lieutenants and 11 Sergeants. East Brunswick Township is one of 25 municipalities within Middlesex County. 47,000 of the County's 760,000 residents live in the Township. Due to its geographical location, there is substantial daily activity within the Township's borders. The New Jersey Turnpike interchange 9 intersects with Route 18, creating substantial daily vehicle activity. Although the Township is primarily residential in nature, there is

substantial commercial activity including major shopping malls, several hotels and conference facilities. The Township is experiencing growth. Its residential population has increased by 35% since 1970 and there has been a similar increase in the pupil population in its public schools.

As of 2000, the per capita income in the Township was \$33,286, a rank of 4<sup>th</sup> out of 25 Middlesex County municipalities where the average was \$26,535. In 2003, the annual tax rate for real property in the Township was 6.22 per \$100 of assessed value. The municipal portion of this rate was 1.10 or approximately 18% of the total rate. The Township's equalized valuation in 2003 was \$4,840,064,058. This statistic has shown a consistent increase as evidenced by this valuation being calculated at \$3,701,324,547 for the year 2000. When the assessed value is broken down by classification of real property in percentage terms, it reflects 72.6% residential, 19% commercial, 5.6% industrial and 1.6% apartment and 1.2% vacant land. The Township consistently collects over 98% of its tax levy.

The Township's police budget was approximately \$11 million in 2003, representing approximately 30.1% of the total municipal budget. In 1998, this figure was 28.1%. There are 91 sworn law enforcement officials in the police department. This includes 1 Deputy Chief, 4 Captains, 10 Lieutenants, 11 Sergeants and 65 Patrol officers as of February 23, 2004. The total figure of 91 has not increased since 1991. A roster introduced at hearing reflects that as of

May 2004, that there was a total of 26 officers with a total base pay of \$2,441,655 representing an average superior officer base pay of \$93,910. The average length of service for superior officers is 21 years.

The police department is busy having received over 43,000 calls for service in 2003, compared with 21,115 in 2000. The department responded to 3,267 traffic accidents and issued over 16,000 summonses in 2003. There were 492 DWI arrests in 2003, the highest number in the state. The department received a \$69,750 grant for this purpose. The Township has had a total crime rate of 23.3 per 1,000 population in 2002, a rank of 8<sup>th</sup> within the County. The department offers a multitude of functions including a swat team, underwater search and recovery team, a youth services counseling program, an outreach program entitled the Project 18 Unit, a school resource officer program and a DARE unit. The department's Chief Operating Officer is the Police Director who also serves as a Deputy Chief. The department operates without a Chief of Police.

Against this general backdrop, the Township and the SOA offer the following arguments in support of their respective positions. Because these arguments are broad in scope, I will review them in summary fashion.

## **POSITIONS OF THE PARTIES**

### **The SOA**

The SOA asserts that the interests and welfare of the public will be served by the superior officers receiving a fair contract with equitable wage increases. The SOA points to the substantial law enforcement activity that exists within the Township as reflected in the large number of calls for service and number of summonses issued. The SOA believes that the public is well served by the supervisory efforts of the superiors who are also charged with the responsibility to ensure that patrol officers act in accordance with high professional standards during routine traffic stops and other law enforcement efforts. The SOA seeks to avoid low morale and turnover in its ranks by awarding its proposals. Further, the SOA points to evidence reflecting that the Township is receiving high quality law enforcement protection at one of the lowest per capita costs in the County. For example, the Township's police cost per homeowner was \$213 in 2001 compared to the average police cost per homeowner in the County at \$220. The SOA points to a number of comparably sized municipalities (such as Perth Amboy and New Brunswick) whose spending in 2001 was in excess of \$300 per homeowner.

The SOA contends that the superior officers wages and conditions of employment lag behind superior officers employed in similarly situated jurisdictions. The SOA urges that comparisons be drawn between East Brunswick and Sayreville, Edison, Woodbridge and New Brunswick. In support



of this argument, the SOA compares crime index ratings, population and salaries and benefits in those jurisdictions. The SOA submits comprehensive analysis and charts reflecting that East Brunswick's superior officers are not compensated as well as those in other jurisdictions when taking many variables into consideration including the number of hours worked and adjusting relative compensation based upon hourly rates. The SOA further points out that superior officers do not receive paid overtime.

Also in support of its comparability argument, the SOA submits an analysis of percentage wage increases granted to other municipalities in Middlesex County. These communities include Carteret, Cranbury, Dunnellen, Edison, Jamesburg, Metuchen, Middlesex Boro, Monroe, New Brunswick, North Brunswick, Old Bridge, Perth Amboy, Piscataway, Sayreville, South Amboy, South Brunswick, South River and Woodbridge. According to the SOA, the average percentage salary increase for these jurisdictions in 2003 was 4.66% when including the Middlesex County Prosecutor's office. The SOA continues this line of argument when examining increases granted in 2004, 2005 and 2006 reflecting increases of more than 4%. In contrast, the SOA labels the 3.25% increase proposed by the Township as paltry. The SOA also points to increases received in East Brunswick by public school administrators, some who have salaries in excess of superior officers and who are scheduled to receive increases of 4.54% in 2004-2005 and 4.52% in 2005-2006.

The SOA asserts that its economic proposals are not substantially more than the Township's and are within the Township's financial abilities. The SOA calculates the parties' differences in the following manner. In 2003, the total cost of the FOP's proposal is \$2,774,349, or only \$20,007 more than the cost of the Township's proposal. In 2004, the cost is \$2,891,723, or \$41,558 more than the Township's offer. In 2005, the cost is \$3,010,638, exceeding the Township's proposal by \$64,705. Finally, in 2006, the cost is \$3,137,532, or \$89,531 more than that offered by the Township. The total 4 year cost of the FOP's proposal is \$11,813,842, or only \$215,401 more than the total value of the Township's proposal.

The SOA contends that its proposals, if adopted, would not compel the employer to exceed its lawful spending limitations. The SOA submits evidence that the Township's budget in 2003 and 2004 were within the limits set forth by the Cap law and that the costs of its proposal can be accommodated despite amendments to the Cap law providing for a maximum 2.5% increase in the budget from one year to the next. The SOA also urges rejection of the Township's argument that the superior officers consume a larger share of salary costs than other Township personnel pointing to the critical role the superiors play in crime fighting as well as their skill, experience and value to the community.

The SOA contends that the Township is in excellent financial shape with a median family income of \$86,863, the fourth highest in the County. The SOA points to charts reflecting that over 34% of East Brunswick households have incomes in excess of \$100,000. The SOA asserts that the Township has an excellent value base as reflected in the total assessed value of its residential, commercial and industrial properties. Referring to budget documents, the SOA asserts that the Township has consistently been able to generate surpluses and has consistently under-spent the money it has appropriated annually. The SOA also refers to the Township having a low general tax rate ranking it 22 out of 25 municipalities, property values which have increased over \$3.6 billion since 1982, a tax collection rate of 98.76%, a AAA bond rating and a low per capita debt as evidence of financial health.

The SOA urges adoption of its proposal to increase the amount of compensatory days from 10 days to 15 days. Currently, superior officers receive 10 compensatory days in lieu of receiving paid overtime. The SOA points to Captain O'Connor's testimony that superior officers are often needed, outside of their normally scheduled hours, to report to a crime scene, respond to emergency or cover a shift for an absent superior officer. The SOA believes that the amount of time now provided is "woefully inadequate." The SOA further contends that an increase is warranted based upon an internal comparability analysis. The SOA compares itself to the PBA who received five compensatory days in their prior agreement. Because the PBA receives paid overtime, the

SOA asserts that they have been placed in an inequitable and arbitrary situation. In its view, the SOA is only asking for the same increase in compensatory days as that which was received by the PBA.

The SOA supports its proposal to increase the uniform allowance by pointing out many Middlesex County municipalities who provide more generous clothing allowances than East Brunswick. The SOA further proposes that the amount provided be eliminated and a like amount be placed in base salary.

The SOA urges rejection of the Township's proposals to increase prescription drug co-payments and health insurance deductibles. The SOA refers to the proposed increases as harsh and unwarranted. In addition, the SOA asserts that the Township's proposed increase in prescription co-pays, substantially exceeds the co-pays that exist in other police departments in Middlesex County. According to the SOA, the average co-pay is \$4.57 for generic prescriptions, and \$8.21 for brand-name/preferred prescriptions.

The SOA objects to the Township's proposal to reduce the longevity scale for new hires. The SOA contends that the rates proposed are at variance with those provided to superior officers in comparable jurisdictions and further, that if the proposal is adopted, the SOA would be left with a three tier scale of longevity depending upon the hire date of the officer.

## The Township

The Township indicates its officers compare well in the County when the average SOA salary increases in the County are considered. The Township maintains its proposal is "extremely reasonable" given its officers have the highest number of holidays and potential vacation days in the County and rank high in personal and sick days. The Township maintains that the SOA has failed to support its wage proposal. The Township refers to many interest arbitration awards in support of its position that the economic package proposed by the SOA.

Citing private sector, the Township indicates that its officers "have fared far better" than private sector employees. The Township points out that some private sector settlements have included wage freezes for a portion of the contract along with increases in the 2%-3% range.

Addressing the financial impact criterion, the Township summarizes "a number of difficult fiscal problems and financial challenges" it faces:

- Increased Property Tax Rates: L. Mason Neely testified at the SOA arbitration hearing regarding increased property taxes and that property tax supports 43% of the entire budget. (SOA Transcript, p. 49).
- Employee Health Care Benefits: The costs related to employee health care continue to rise at a dramatic rate. Medical claims

paid in East Brunswick have increased from \$1,377,367 in 1997 to \$2,788,006 in 2003. (T-21).

- State Extraordinary Aid: Although the Township had never reached such aid in the past, the Township was able to obtain \$600,000.00 in extraordinary aid. (T-19). This amount, one of the highest in New Jersey, clearly indicates the financial strain placed upon the Township.
- Employee Pension System: While there has been an abatement on municipal contributions to pension funds, it is important to consider that these payments still must be made. This is simply a deferred liability and will add to the financial strain placed upon the Township of East Brunswick.
- Fund Balance: East Brunswick's Chief Financial Officer, L. Mason Neely, testified at the arbitration hearing that the fund balance as of December 31, 2003 was approximately \$540,000.00 (T-17). Mr. Neely also testified at the SOA arbitration hearing that the Township held back less than \$500,000.00 resulting in a figure amounting to less than one-half (1/2) of one (1) percent of fund balance. (SOA Transcript p. 49). This figure was considerably lower than the fund balance of \$7,000,000.00 in 1997. (T-17). Mr. Neely testified that the dwindling fund balance resulted from the fund being used to stabilize the tax rate and pay for the cost of governmental service. (Transcript, p. 133-134). Mr. Neely also testified that when the Township appropriated the balance from 2002 in the budget of 2003 they appropriated \$3,500,000.00 carrying forward approximately \$500,000.00 of fund balance. (PBA Transcript p. 134).
- Per Capita Cost of Police Functions: The per capita cost of police functions has increased dramatically from comprising 28.140% of the budget in 1998 to 30.106% in 2003. This increase equates to an additional cost of \$1,718,262.00. (T-20).
- SOA as a Percentage of the Total Wage Base (T-1a): Mr. Neeley testified that the SOA as a percentage of the total wage base constitutes 14.55% of the total wages paid in the 2004 budget. (T-19) (SOA Transcript p. 52). However, the SOA as a unit represents only 3.8% of the total number of people on the payroll. (T-19) (SOA Transcript p. 52). Even when the SOA unit is viewed in the context of full time personnel, the SOA constitutes only 4.26% of the total number of personnel, but 14.55% of the pay, which is grossly disproportionate. (T-19)

(SOA Transcript p. 52). If the Township's offer were accepted, the SOA would receive 11.404% of the allowable growth within the cap limits which is \$784,926.28. (T-19) (SOA Transcript p. 52). However, if the SOA's offer were accepted, they would receive 13.69% of the allowable growth within cap limits (T-19) (SOA Transcript p. 52). As Mr. Neely testified, the SOA's proposal places a disproportionately heavy demand upon the expenditure limitation far exceeding the SOA's relationship to the total number of personnel within the town. (T-19) (Transcript p. 53). Given the new legislation amending the Cap law, regardless of what figure is arrived at regarding salary increases, the Township will have an extremely difficult obstacle to face in 2005 and 2006.

The Township points out that property taxes account for the vast majority of its revenues and that awarding the PBA's proposal would compel a larger tax increase. The Township anticipates that any increase in expenditures would result in an increase in property tax. The Township maintains the SOA failed to present evidence revealing how the Township would raise the revenue necessary to fund increased expenditures. Coupled with the fact that the Township will once again begin to fund police pension contributions which could amount to over \$886,000 annually, any additional unforeseen cost in salary will place considerable financial pressure upon the Township.

Addressing its own proposal to increase prescription co-pays and medical deductibles, the Township maintains that it seeks to balance its financial burden while providing reasonable contribution levels for its employees. According to the Township, the cost of health coverage continues to escalate with no relief in sight. As of 2001, the average cost per employee increased by 11.2% from the previous year. Medical claims paid by the Township have risen from \$1,377,367

in 1997 to \$2,788,006 in 2003. The Township cites several interest arbitration awards in support of its proposal on this issue.

Addressing the cost of living, the Township indicates its superior officers have received wage increases that have greatly outpaced the Consumer Price Index. The Township points out that its wage proposal, if implemented, would be well above the twelve month unadjusted rate of change for the December 2003 CPI of 1.9%. Addressing the interests and welfare of the public, the Township contends that its proposal provides a reasonable balance between providing its employees with a competitive salary and benefits package while controlling its costs and the municipal tax rate.

With respect to its longevity proposal, the Township indicates that it seeks to place its superior officers "more in-line" with other municipalities in Middlesex County. The Township emphasizes that the new structure it proposes would not change the current structure for those currently employed by the Township.

With respect to its holiday proposal, the Township points out that its officers receive 18 holidays – the most in the County. The Township indicates that its proposal to reduce this to 16 will place its superior officers more in line with the comparables.



With respect to its proposal to eliminate five (5) compensatory days for preparation time, the Township contends its superior officers already receive a generous package of holiday time, vacation time, and compensatory time with one-half of the unit working a "4 and 2" work schedule.

For all of the above reasons, Township urges that its proposals be accepted in their totality.

### **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 Township and the SOA have forcefully articulated their positions on the issues and have offered testimony and considerable documentary evidence and argument on each statutory criterion in support of their respective positions. I have carefully reviewed, considered and weighed all of the evidence and arguments.

As stated, 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.

Initially, I observe that all of the issues in dispute are economic in nature. These include salary, uniform reimbursement, health benefits, paid holidays, the number of compensatory days and longevity. I also conclude that all of the enumerated criteria are relevant although not all are entitled to equal weight. In other words, some are entitled to more substantial weight than others.

While I must assess the merits of the disputed proposals individually, I refer to criterion N.J.S.A. 34:13A-16g(8), a criterion that directs the consideration of factors ordinarily or traditionally considered in the determination of wages and benefits. One such element requires that consideration be given to the totality of the changes to be made to an existing agreement. This consideration is consistent with the statutory requirement that the arbitrator determine whether

the total net annual economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision herein to award or to deny any individual issue in dispute will include consideration as to the reasonableness of that individual decision in relation to the reasonableness of the totality of the terms of the entire award. For example, the Township's proposal to reduce the number of holidays could reduce the economic package by approximately 1% and the SOA's proposal for five additional compensatory days could increase an economic package between 2% and 2.5%

### **Salary**

The issue of salary is the first issue that should be decided. There are many economic issues in dispute. Because the financial impact of the salary issue on the Township and the SOA is more substantial than the remaining economic issues, a decision on salary provides a framework for considering the remaining economic proposals.

The parties' proposals each seek to revise the existing salary schedule set forth in Article XVI. This schedule provides for the following salaries:

	<b>2002</b>
<b>Sergeant</b>	<b>80,472</b>
<b>Lieutenant</b>	<b>88,570</b>
<b>Captain</b>	<b>97,963</b>
<b>Deputy Chief</b>	<b>105,798</b>

The Township and the SOA have both introduced substantial evidence concerning wage comparability among police departments as well as on the financial impact of a salary award. Each has proposed a broad set of external comparables. Within these broad sets of comparables are some municipalities that I have deemed to be the most relevant for comparison purposes with the Township of East Brunswick. These are Edison, Piscataway and Old Bridge Township. These communities are all within the County of Middlesex. All are in very close geographic proximity to the Township of East Brunswick. All have common characteristics including major roadways and high commercial rates, yet each community is predominantly residential. All have strikingly similar effective tax rates:

**2003 Effective Tax Rates**

East Brunswick	2.581
Edison	2.422
Old Bridge Township	2.593
Piscataway	2.506

All, as of 2000, had similar average property taxes:

**Average 2002 Property Taxes**

East Brunswick	4,751
Edison	4,425
Old Bridge Township	3,960
Piscataway	3,960

All, as of 2000, had similar median household income:

### 2000 Median Household Income

East Brunswick	87,589
Edison	74,887
Old Bridge Township	79,599
Piscataway	75,449

All, as of 2000, had similar populations in relation to their geographic areas:

### 2000 Population

East Brunswick	46,756
Edison	97,687
Old Bridge Township	60,456
Piscataway	50,482

The crime rates among these municipalities are very similar:

### 2002 Crime Rate

	Total Crime Rate	Violent Crime Rate
East Brunswick	23.9	1.0
Edison	26.5	2.3
Old Bridge Township	17.0	1.0
Piscataway	22.3	1.5

The record also reflects that each municipality provides similar base salaries for superior officers.

### Top Step Base Pay

	2002	2003	2004	2005	2006
<b>Sergeant</b>					
East Brunswick	80,472				
Edison	78,640	81,706	84,974		
Piscataway	78,938	80,795	84,892	89,186	93,685
Old Bridge Township	74,558	77,465			
<b>Lieutenant</b>					
East Brunswick	88,570				
Edison	88,304	91,747	95,416		
Piscataway	85,959	88,881	93,388	98,112	103,062
Old Bridge Township	81,487	84,186			
<b>Captain</b>					
East Brunswick	97,963				
Edison	99,177	103,044	107,165		
Piscataway	96,727	100,016	105,087	110,403	115,973
Old Bridge Township	87,487	90,899			
<b>Deputy Chief</b>					
East Brunswick	105,798				

Recent salary adjustments among these municipalities have been within a very narrow range:

### Percentage Increases

	2003	2004	2005	2006
East Brunswick				
Edison	3.9	4.0		
Old Bridge Township	3.9			
Piscataway	3.9	3.9	3.9	3.9

This data suggests that a salary adjustment be provided within the range of these comparables when applying N.J.S.A. 34:13A-16g(2)(c). However, any final determination must be subject to a review and application of the remaining criteria as well as to how the remaining economic issues in dispute are resolved.

On this latter point, the salary that might represent a reasonable determination of the salary issue standing alone, might not be appropriate after considering the economic impact of an award on other economic proposals impacting on the total net economic value of the award.

When all of the criteria are applied to the salary issue, the evidence clearly points to a determination above that proposed by the Township but below that proposed by the SOA. In reaching this conclusion I have considered all of the criteria as well as the disposition of the remaining issues which potentially would impact upon total annual net economic change. I award increases of 3.9% effective on January 1, 2003, January 1, 2004, January 1, 2005 and January 1, 2006.

As stated above, increases at this level are compatible with recent salary adjustments for superior officers in the municipalities of Edison, Old Bridge and Piscataway. These increases are also consistent with the average PBA salary increases in the County which the Township has calculated as 3.84% for 2003, 4.0% for 2004, 3.86% for 2005 and 3.9% for 2006. I have also examined the evidence with respect to internal comparability. The data for 2003 and 2004 is more relevant and there is no evidence of negotiated increases beyond 2004. During this time, the Township and the Municipal Employees Association reached an agreement averaging 3.7%.

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\*\* Includes a 0.5% six month increase prior to the commencement of the 2003 agreement.



**Municipal Employees Association – Negotiated Agreement**

<b>1/1/03</b>	<b>7/1/03</b>	<b>1/4/04</b>	<b>Average Increase</b>
<b>3.00%</b>	<b>0.75%</b>	<b>3.65%</b>	<b>3.725%</b>

Although this salary award is higher by 0.2%, there is nothing in the record which would require identical treatment for all Township employees. The Township has put forth a pattern of settlement argument but within that argument the Township acknowledges that reasonable deviations may exist which would not compromise pattern of settlement. Further, the Township acknowledges that an award of its final offer would diminish the relative standing of its superior officers within the comparison group within the County, a result which I conclude would be unreasonable after considering the totality of the relevant evidence.

The Township has established that an award granting the overall position of the SOA could have adverse financial impact on the Township because the additional days sought by the SOA would substantially increase the financial impact to the Township. The economic value of 5 days paid but not worked would be approximately 2% above the 3.9% awarded. This could exacerbate the tax burden of taxpayers who have seen a municipal tax rate increase of 35% since 1998. The Township may also have to begin funding its PFRS contributions after having received a “pass” over the last several years. I have also considered the fact that the Township’s annual fund balances are considerably lower in 2003 than in previous years. Also weighing against an award of the entire economic proposal of the SOA is the cost of living data and

the absence of any interruptions in the continuity and stability of the Township's police officers.

The terms of this Award will not compel the Township to exceed its statutory spending limitation, commonly referred to as the Cap Law, N.J.S.A. 34:13A-16g(5). The Township used a very low Cap formula of 1%, waiving the additional 4% which it could have expended if it had decided to use the maximum of 5%. The difference is an amount of \$1,362,440. Using the 1% figure, the Township nevertheless appropriated less with the lowest flexibility it adopted. The difference between the Cap amount available (\$35,447,550) and the amount appropriated within Cap (\$35,278,661) is \$168,889. Utilizing salary breakdowns submitted by the Township as of May 19, 2004 reflecting an average base salary of SOA members as \$93,910, the Award represents additional costs above the Township's proposal in the amount of \$15,261 in 2003, \$31,612 in 2004, \$49,113 in 2005 and \$67,825 in 2006. These figures are calculated based on the annual difference between an award of 3.9% and an award of the Township's proposal of 3.25% over the four years of the agreement. Clearly, the salary terms of the Award are within the Township's lawful spending authority.

The Township has also submitted argument concerning legislation that amended N.J.S.A. 40A:4-45.2. This legislation limited the Cap amount from that previously allowed. The Township's Cap has established that its flexibility has been reduced by the legislation. But the terms of the Award nevertheless can be

expended without compelling the Township to exceed its Cap. The Township has prudently administered its finances in the past by voluntarily adopting Cap levels well below the reduced maximum of 2.5% provided by the recent legislation and has the authority within this new maximum to fulfill its salary obligations without exceeding the newly amended Cap.

The budgetary evidence in the record also reflects that the salary terms of the Award can be funded without adverse impact on the governing body, its residents and taxpayers. The Township has administered its finances in a responsible manner as evidenced by its Moody's credit rating of "AAA". The Township's fund cash balance as of December 31 was over \$11 million and its capital fund cash balance was over \$9 million. The Township's real property tax collection rate has consistently been between 98% and 99%. The Township's ability to regenerate surplus is evidenced by the fact that its results of operations have averaged over \$3 million per year. The Township has also experienced an unexpended balance of appropriation reserves of almost \$230,000 per year during the last three years. The terms of the salary award, coupled with minimal additional net annual economic change is also consistent with the interests and welfare of the public. Clearly, the Township and the SOA each view this criteria differently based upon the respective views that the result should be either more or less than what I have awarded. However, the interests and welfare of the public are furthered by an award reconciling the parties sharp differences on all of the economic issues after due consideration of the Township's budgetary

plans, internal and external comparability, cost of living and the continuity and stability of employment of employees in the police department.

Based upon all of the above, I award annual increases of 3.9% effective and retroactive to January 1, 2003, January 1, 2004, January 1, 2005 and January 1, 2006.

### **Health Insurance**

The Township has proposed changes to Article XIV – Health Benefits. The first proposal is to increase the insurance deductible from \$150 for single coverage to \$500, and \$300 for family coverage to \$1,000. The second portion of the proposal is to increase prescription co-pay on all generic prescription drugs from \$3.00 to \$10.00, and to increase prescription co-pay on all brand name prescription drugs from \$5.00 to \$15.00. The Township also proposes a new category defined as “premium” drugs at a co-pay of \$25.00. The SOA urges rejection of these proposals.

The Township contends that its present health insurance program is generous and has become increasingly expensive. Medical claims paid by the Township have risen from \$1,377,367 in 1997 to \$2,788,006 in 2003. The present plan contains no co-pays for health insurance premiums and the Township is not proposing any co-pays for premiums despite its assertion that

there is mounting evidence that employee contributions have become more prevalent in the private and public sectors generally. The Township also points to the fact that it maintains a no cost mail-in prescription benefit and that the existing co-pay for prescription drugs at \$3.00 for generic and \$5.00 for brand names is one of the lowest in Middlesex County. The Township further argues that its health insurance proposals are reasonable when considering the attractive salaries and level of benefits it offers to its police officers.

I am persuaded that the Township has sustained its burden to modify these portions of its health insurance plan, although not to the extent that it has proposed. Modifications are warranted given the substantial increases in claims the Township has paid for providing medical, dental and prescription benefits. A prescription drug co-payment program of \$5.00 for generic drugs and \$10.00 for name brand drugs is a reasonable increase in these co-payments and is generally consistent with the vast majority of labor agreements in evidence. The Township has also established that it has borne the burden of significant cost increases in this program and the interest and welfare of the public will be served by having the Township's police officers participating in this reasonable modification. Similar reasoning persuades me to modify health insurance deductibles from \$150 for individuals and \$300 for family to \$250 and \$500 respectively. These modifications are not harsh given the overall wage and benefit package currently provided by the Township. These modifications shall be effective as soon as is practicable but no earlier than January 1, 2005.

## **Clothing Allowance**

The SOA has proposed a uniform allowance payment of \$950 in 2003, \$1,000 in 2004, \$1,050 in 2005 and \$1,100 in 2006. The Township, while recognizing that the existing benefit is \$75 below the median and \$70 below the average in Middlesex County, contends that the SOA has not established entitlement to additional payments or shown that the existing allowance is insufficient. Presently, Article VIII – Uniform Reimbursement provides for the payment of \$950 per year. The SOA contends that the existing level of payment is low in comparison to other municipalities in the County. The SOA also notes, in addition to its request for an increase, that the record establishes a basis for the inclusion of this sum as an equity adjustment in salary as an offset for any removal of the allowance itself. The SOA proposes that this occur effective January 1, 2004. Captain O'Connor testified that the SOA has requested, and the Township has consented, to a deferral of the 2004 uniform reimbursement pending a determination on the SOA's proposal.

I have reviewed the totality of evidence on this issue, including the Township's chart on allowances in 19 Middlesex County communities as well as the benefit levels in the municipalities of Edison, Old Bridge, and Piscataway. With respect to these latter communities, the record reflects the following benefits:

### Uniform/Clothing Allowance

	2002	2003	2004	2005	2006
East Brunswick	950				
Edison	*	*	*		
Old Bridge Township	950	1000			
Piscataway (Cleaning)	100	150	200	250	300
Piscataway (Maintenance)	1050	1050	1050	1050	1050

\*In base pay

The Piscataway benefit includes both the cleaning and maintenance allowance which raises the allowance to \$400 above that currently received in East Brunswick. The Old Bridge allowance was increased to \$1,000 in 2003, the last year of the existing agreement. The allowance in Edison has been removed in favor of its inclusion in base pay. Woodbridge has apparently followed this modification. A reasonable determination of this issue is to deny the SOA's proposal for an increase in the allowance and to remove this payment as presently constituted in the Agreement in favor of its inclusion into the base pay for superior officers. Because this sum has not been paid out in 2004, the effective date for this change shall be January 1, 2004. This inclusion shall occur prior to calculating the across-the-board increase for 2004. This will cause a small cost to be borne by the Township due to roll up costs but at a level within the costs it would have borne if the clothing allowance had been increased as suggested by the evidence. The Agreement shall be modified to reflect this change including the inclusion of language stating that "each superior officer shall continue his or her responsibility to maintain uniforms and equipment in accordance with the standards of the department."

## **Longevity Pay**

The Township proposes to amend the longevity schedule for employees hired after July 1, 2004 to provide as follows:

2% at the end of the 7<sup>th</sup> year  
4% at the end of the 11<sup>th</sup> year  
6% at the end of the 16<sup>th</sup> year  
8% at the end of the 21<sup>st</sup> year."

Section A of Article VI – Longevity Pay, currently provides as follows:

All employees who were a member of SOA prior to January 1, 2000, shall be entitled to longevity compensation as follows:

### **Additional Compensation Percentage of Gross Salary**

4% at the end of the 5<sup>th</sup> year and start of the 6<sup>th</sup> year  
6% at the end of the 9<sup>th</sup> year and start of the 10<sup>th</sup> year  
8% at the end of the 14<sup>th</sup> year and start of the 15<sup>th</sup> year  
10% at the end of the 19<sup>th</sup> year and start of the 20<sup>th</sup> year  
12% at the end of the 24<sup>th</sup> year and start of the 25<sup>th</sup> year  
14% at the end of the 29<sup>th</sup> year and start of the 30<sup>th</sup> year

Employees who become members of the SOA on or after January 1, 2000 shall be entitled to longevity compensation as follows:

4% at the end of the 5<sup>th</sup> year and start of the 6<sup>th</sup> year  
6% at the end of the 9<sup>th</sup> year and start of the 10<sup>th</sup> year  
8% at the end of the 14<sup>th</sup> year and start of the 15<sup>th</sup> year  
10% at the end of the 19<sup>th</sup> year and start of the 20<sup>th</sup> year  
12% at the end of the 24<sup>th</sup> year and start of the 25<sup>th</sup> year



The Township contends that it is reasonable to award its longevity proposal, pointing out that its proposed schedule would not affect current members of the department. The Township also contends that its proposed schedule is more in line with more longevity schedules provided by other municipalities in the County. The SOA urges rejection of this proposal pointing out that the current longevity schedule is similar to comparable municipalities and also that it and the Township mutually recently agreed to a revision in the schedule effective January 1, 2000. The SOA contends that it would not be reasonable to have a three tiered longevity schedule in its contract.

I am not persuaded that the Township has presented sufficient justification to award its longevity proposal. A review of the comparable communities reflects that the SOA longevity schedule is not unreasonable. Moreover, there is merit to the SOA argument that a third tier of longevity within such a short time period is not reasonable.

### **Compensatory Time Off**

The Township and the SOA have each proposed a change to Article X – Compensatory Time Off. The changes sought are contained in Section A and Section B of Article X which now state:

Section A. Each employee will be granted ten (10) days compensatory time off, non-cumulative and to be taken in units of full or half days. Days granted on

January 1<sup>st</sup> of each year will be provided in lieu of overtime worked in the preceding year.

Section B. Any employee promoted to the rank of Sergeant will not receive comp days until January 1 of the following year. On January 1, the employee will receive a pro-rated number of days based upon the following formula .83 (eighty-three hundredths) days per month of service at the rank of Sergeant during the previous year.

The Township seeks to reduce the amount of compensatory time off specified in Section A from 10 days to 5 days. The Township also seeks to modify Section B by changing the formula for calculating pro-rated number of days per month of service when an employee is promoted to the rank of Sergeant from 0.83 days per month to 0.41 days per month. The Township also proposes to add language stating "It is expressly understood that any employee working the Township Fourth of July celebration is not entitled to any additional compensation." The SOA urges rejection of the Township's proposals and proposes to modify Section A by increasing the amount of compensatory time off granted from 10 days to 15 days.

I first address the proposed modifications to Section A. Captain O'Connor's testimony establishes that superior officers have received 10 compensatory days for at least the almost thirty years that he has been employed. Captain O'Connor also testified that when a superior officer is called in when he or she is not on duty, extra pay is not provided and that the compensatory days, in part, are consideration for not receiving overtime pay.

Captain O'Connor also testified that superior officers who work in the patrol division (12 out of 25) report for duty 30 minutes earlier than the start of a shift in order to prepare patrolmen who stand roll call 15 minutes prior to their shift and that the compensatory days, in part, are also consideration for the preparation time spent prior to the commencement of each shift.

SOA testimony in support of the additional 5 compensatory days it seeks is based upon two points. The first point is that it does not believe 10 compensatory days sufficiently cover the amount of time spent for which superior officers to not receive additional pay. The second point is that the Township and the PBA agreed to include a provision in their prior agreement granting police officers 5 compensatory days. Given the fact that the rank and file police officers receive overtime pay which superiors do not and also have more favorable conditions with respect to call-in and roll call, the SOA is seeking an equivalency by adding 5 more days to the existing 10 days it now receives.

The Township seeks to reduce the amount compensatory days off from the 10 days now provided to 5 days. In the Township's view, the 10 days now provided are unreasonable because they are intended to compensate superior officers for extra time they may be asked to work regardless of whether they actually work. The Township points to the fact that half of the bargaining unit is not in the patrol division and does not supervise roll call. The Township further

contends that the superior officers already have a generous amount of paid time off under the terms of the Agreement.

After due consideration of the parties' respective positions on this issue, I conclude that neither party has met its burden to change the existing provision in the Agreement concerning compensatory time. The record reflects that the inclusion of the provision was over thirty years ago and is now based upon providing consideration for not receiving paid overtime, call-in pay and preparation time for patrol roll call. There is insufficient evidence that the status quo on this issue should be altered. It may be that some superior officers work more time above their normal shift than others but no convincing basis has been provided to disturb the historical balance between additional work requirements for the unit as a whole and paid time off granted to the unit as a whole. An additional consideration is the level of increases awarded to base pay which provide a more substantial overall wage and wage related package for all superior officers. Accordingly, I deny the SOA's proposal to increase the number of compensatory time off by 5 days and the Township's proposal to decrease the number of compensatory time off by 5 days.

I further conclude that the Township has not sustained its burden to justify the modification it seeks to Section B or to grant the inclusion of the new language it has proposed with respect to the July 4 holiday.

## Holidays

I next consider the issues involving holidays. The existing provision involving holidays is set forth in Article IV of the Agreement as follows:

Section A. The following holidays are hereby recognized:

New Year's Day	Columbus Day
Martin Luther King Day	General Election Monday*
Lincoln's Birthday	General Election Day
Washington's Birthday	Veterans Day
Good Friday	Thanksgiving Day
Easter Sunday	Thanksgiving Friday
Memorial Day	Christmas Eve
Independence Day	Christmas Day
Labor Day	New Years Eve

Section B. If a holiday falls on a Sunday it shall be observed on the following Monday, and if it falls on Saturday, it shall be observed on the preceding Friday. If, however, Christmas Eve or New Years Eve fall on a Sunday, they will be celebrated on the preceding Friday, and if Christmas or New Years Day fall on a Saturday, they will be celebrated on the following Monday. Employees assigned to the Patrol Division shall observe holidays on the actual day of occurrence.

Section C. All SOA members shall receive 18 additional days of straight time pay added to their base salary, which shall be paid with, and become a part of, the regular bi-weekly salary for all purposes. Additionally, members shall receive one additional day off for each holiday actually worked, to a maximum of twelve (12) days. The additional days actually worked shall be posted as vacation at the time they are earned.

The Township has proposed that the number of holidays added to SOA members' salary at straight time be reduced from 18 to 16. The Township also seeks to reduce the number of holidays that may be worked by SOA members from 12 to 9. The SOA urges rejection of these proposals.

The Township contends that the reduction in the number of holidays to 16 would place the Township's superior officers more in line with the number of holidays received in other municipalities in the County such as Carteret, Edison, Monroe, Old Bridge, Plainsboro and Woodbridge. The Township refers to a chart reflecting that East Brunswick ranked number 1 in the County in the number of holidays received. The Township also contends that its proposal is reasonable when other paid time off provisions in the Agreement are considered including compensatory days, vacation days, personal days and sick days. The Township also points out that the four and two work schedule yields an additional 17 days off compared to employees who work a five and two work schedule. One-half of the SOA works the four and two work schedule.

The Township also proposes to decrease the number of days that a superior officer can receive off in the event that a superior officer works on one of the 18 holidays. The Agreement, at Article IV, Section C, now allows 12 such days off. The Township contends that each superior officer now is paid for 18 holidays that are rolled into base pay and, if they work up to 12 of these days, they also receive up to an additional 12 days off. The Township points out that

no other municipality in Middlesex enjoys a benefit of up to 12 days off when working holidays while also receiving 18 paid holidays. The Township also argues that when the number of personal days (four) are considered, as well as 10 compensatory days coupled with a vacation schedule which provides a progressive number up to 35 days, the amount of paid time off is already generous.

After due consideration of the parties' respective positions on this issue, I conclude that the Township has not met its burden to reduce the existing provision in the Agreement concerning holidays with respect to the number of holidays granted. The number of days granted are consistent with those provided in the PBA unit. However, there is merit to the Township's proposal that the number of days off to be taken in the event that a superior officer works on a holiday should be no greater than the nine (9) now granted to the PBA. Consistency with respect to the holiday provision between the PBA and the SOA is a desirable result which furthers the interests and welfare of the public and outweighs any deviation in this benefit which the SOA may believe is warranted. The impact of awarding this proposal is not substantial given the fact that in 2003, only 4 superior officers worked more than nine holidays and only 1 of 26 actually worked on 12 of the days. The existing holiday provisions, including this revision, concerning the number of paid holidays, the rolling of holiday pay into base pay as well as the number of days that can be taken off if a superior officer works a holiday all amount to an excellent existing benefit concerning holidays

ranking number one in the County. Thus, Section (C) shall be modified to reflect a maximum of 9 days.

Based upon all of the above, I respectfully issue the terms of this Award.

### **AWARD**

1. All proposals by the Township and the SOA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been voluntarily agreed to and/or modified by the terms of this Award.

2. **Duration**

There shall be a four-year agreement effective January 1, 2003 through December 31, 2006.

3. **Uniform Allowance**

The current uniform allowance of \$950 shall be eliminated effective January 1, 2004. The Agreement shall be modified to reflect this change along with the inclusion of language stating that "each police officer shall continue his or her responsibility to maintain uniforms and equipment in accordance with the standards of the department."

4. **Health Insurance**

The prescription drug co-payment program shall be increased to \$5.00 for generic drugs and \$10.00 for name brand drugs. The health insurance deductibles shall be increased from \$150 for individuals and \$300 for



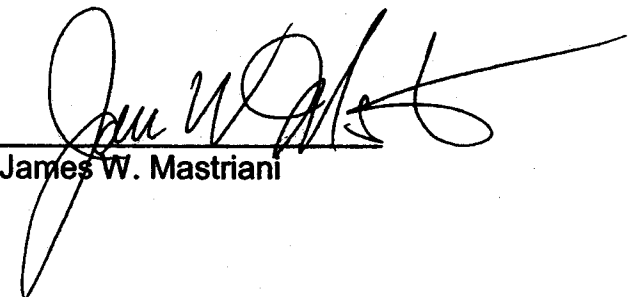
family to \$250 and \$500 respectively. These modifications shall be effective as soon as is practicable but no earlier than January 1, 2005.

5. **Salary**

Annual salary increases of 3.9% shall be made to each rank in the salary schedules effective and retroactive to each January 1 for contract years 2003, 2004, 2005 and 2006. Prior to the calculation of the January 1, 2004 adjustment, a sum of \$950 shall be added to each step of the salary schedule. The salary schedule shall read:

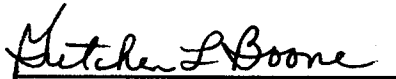
	2003	2004	2005	2006
Sergeant	83,610	87,857	91,284	98,844
Lieutenant	92,024	96,600	100,367	104,281
Captain	101,784	106,740	110,903	115,228
Deputy Chief	109,924	115,198	119,690	124,358

Dated: December 15, 2004  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey }  
County of Monmouth }ss:

On this 15<sup>th</sup> day of December, 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

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