

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

**In the Matter of the Interest Arbitration Between:**

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**TOWNSHIP OF LAKEWOOD,**

**Employer,  
-and-**

**LAKEWOOD TOWNSHIP  
SUPERIOR OFFICERS ASSOCIATION,**

**Employee Organization.**

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**Interest Arbitration  
Decision  
-and-  
Award**

**Docket No. IA-2007-046**

**Before  
Timothy A. Hundley  
Interest Arbitrator**

**Appearances:**

**For the Employer:**

**Steven Secare, Esq.  
Secare, Delanoy, Martino & Ryan**

**For the Employee Organization:**

**Richard D. Loccke, Esq.  
Loccke, Correia, Schager, Limsky & Bukosky**

The Township of Lakewood (“Employer” or “Township”) and the Lakewood Township Superior Officers Association (“SOA”) were parties to a collective negotiations agreement that expired on December 31, 2006. After engaging in negotiations for a successor agreement, the parties reached an impasse and, on January 2, 2007, the Association filed a petition with the Public Employment Relations Commission (“PERC”), requesting the initiation of compulsory interest arbitration pursuant to *N.J.S.A. 34:13A-14 et seq.* I was mutually selected by the parties in accordance with *N.J.A.C. 19:16-5.6* and on January 29, 2007, I was appointed interest arbitrator by PERC.

Pre-arbitration mediation sessions were held on April 27, 2007 and May 29, 2007, but the impasse persisted. Accordingly, a formal interest arbitration hearing was held on August 14, 2007, at which time both parties examined and cross-examined witnesses and introduced numerous exhibits into evidence. The parties submitted post-hearing briefs by October 1, 2007, and the record was closed on that date. While *N.J.S.A. 34:13A-16f(5)* calls for an interest arbitrator to issue an award within 120 days of selection or assignment, the statute also permits the parties to agree to an extension. The Township and the Association have agreed to extend the time for issuing an award to December 21, 2007

*N.J.S.A. 34:13A-16f(1)* requires that each party submit a final offer. The parties’ final offers are as follows.

## TOWNSHIP'S FINAL OFFER

1. **Contract term** – The Township proposes a four-year term contract from January 1, 2007 through December 31, 2010.
2. **Wage Increase** – The Township proposes an annual across-the-board wage increase of 3.5% for each of the four contract years.
3. **Medical Benefits** – The Township proposes a change in the prescription co-pay from \$1.00 to \$5.00 for generic drugs and \$20.00 for brand name prescriptions. The \$20.00 co-payment would apply if the physician does not specify that the brand name must be used.

## SOA'S FINAL OFFER

1. **Contract Term** -- The SOA proposes a four-year term contract from January 1, 2007 through December 31, 2010.
2. **Wage Increase** – The SOA proposes a five percent (5%) annual wage increase on January 1<sup>st</sup> of each year of the four-year contract.
3. **Article XIII, Holidays** – The SOA proposes that the compensation for 14 paid holidays be folded into officers' base pay.
4. **Article XVIII, Longevity** – The SOA proposes the addition of one more plateau on the longevity schedule so as to provide a benefit of an additional two percent (2%) (total ten percent (10%)) on the first day of the twenty-fourth (24<sup>th</sup>) year of service.

5. **Hours** -- The SOA proposes for front line sergeants only that they receive their work schedule consistent with the PBA, *i.e.*, four ten-hour days per week, with holidays and personal days counted in 10-hour blocks.

6. **Article XXI, Salary Differential** – The SOA proposes that the current Detective Bureau differential be modified from the current One Thousand Dollars (\$1,000.00) to two percent 2% of the Supervisor’s base pay then serving as a detective.

7. **Article II, Superior Officer Rights** – The SOA proposes that a new section be added to this Article as follows:

The Employer shall permit the President of the SOA to conduct business of the SOA during duty hours without loss of pay provided said business shall not diminish the effectiveness of the Police Department or require the recall of another supervisor to bring the Department to its proper level of effectiveness.

The employer shall permit Association representatives to attend conventions consistent with *N.J.S.A. 40A:14-177*.

8. **Maternity/Paternity Leave** (new Article) the SOA proposes the addition of the following language as a new Article in the contract:

- A. Female Police Officers shall advise the Employer of a pregnancy. The rights of a female Police Officer shall include but not be limited to the following provisions:
  - 1. The female Police Officer shall be permitted to work her normal duties so long as such work is permitted by a doctor’s note. The doctor shall be a physician of the female Police Officer’s own choosing.
  - 2. In addition to the other provisions of this Article, the female Police Officer shall be permitted to use accumulated sick time, compensatory time off and any other accumulated time benefits which she may have during the period of her pregnancy and the period following childbirth.

3. Upon return from maternity leave the Officer shall be returned to work without loss of seniority or benefits and shall be returned to the same position as worked prior to utilizing leave.
  4. The female Police Officer shall at all times be kept at full benefits and shall be considered as on active duty for all computation purposes.
  5. Upon return to active duty status, the female Police Officer shall be placed in the same position which she held before departing for maternity status.
- B. Both male and female Police Officers shall be permitted such time and such terms and conditions as are provided under the Federal Family Leave Act and the New Jersey Temporary Disability Benefits Law.

### **STATUTORY FACTORS**

I am required to resolve this dispute based on a reasonable determination of the issues, giving due weight to those statutory factors set forth in *N.J.S.A.* 34:13A-16g deemed relevant. The nine statutory factors 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) Comparisons 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 that 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 P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a 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 of 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 a proposed local budget.

(7) The cost of living.

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

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by Section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

### **BACKGROUND**

This proceeding involves the 26 superior officers – deputy chiefs, captains, lieutenants, and sergeants – in the Township’s 123-member police department. The Township itself is a 25.5-square mile Ocean County community that is situated at the confluence of several major highways including Route 9, Route 88 and four Garden State Parkway exits. According to State and U.S. census figures, Lakewood is the fastest growing municipality in the State and, among New Jersey’s 566 municipalities, it ranks 14<sup>th</sup> in total population. Township documents indicate that the jurisdiction’s rapid growth has contributed to traffic congestion and delays, as well as a tremendous increase in calls for police service. In 1984, there were 8,028 calls for service. By 2006, that figure rose to 91,748.

The Township is home to several senior citizen communities, as well as the Kimball Medical Center; Georgian Court University; and Beth Medrash Govoha, the largest Orthodox Jewish yeshiva in the world, with a projected enrollment of 5500 students. Many of the Township’s newer residents are senior citizens or members of Lakewood’s burgeoning Orthodox Jewish community, which has its own housing subdivisions and businesses. While Deputy Chief Charles Smith stated that these

communities do not have a high level of crime, he added that the presence of the yeshiva triggers “extreme concern” about security issues.

The Township is also the site of the Lakewood Industrial Park and a 185-acre Cedarbridge Corporate Campus, which is under construction. The State has designated Lakewood an Urban Aid municipality and the Township contains the State’s largest urban enterprise zone. The Township’s 1999 income figures, as compared with the corresponding County averages, are shown below.

	<u>Township</u>	<u>County</u>
1999 Median Household Income	\$35,634	\$46,443
1999 Median Family Income	\$46,962	\$51,921
1999 Per Capita Income	\$16,700	\$23,054

### **TOWNSHIP’S POSITION**

The Township contends that the statutory criteria, particularly those pertaining to the financial impact of an award, the public interest, and the CAP law, strongly favor the adoption of its offer. It maintains that while its proposal would ensure that SOA members kept pace with their counterparts in adjoining communities, the SOA’s own offer would propel unit members onto a faster track and increase the salary, longevity, and holiday pay costs for this unit by \$1,570,921 over the four-year term. The Township urges that such increases would cripple its budget. It stresses that it is

not a wealthy community and maintains that its economic fortunes have declined over the past several years.

### **Financial Impact**

The Township emphasizes that compared with other County municipalities, Lakewood ranks last in median household income, having experienced a 6.5% decline in inflation adjusted income between 1989 and 1999. It highlights that the number of Township residents living below the poverty level is 15.7%, three times the County average, and it observes that 25% of all County residents on public assistance live in Lakewood.

With respect to its budgetary and financial condition, the Township points out that between 2000 and 2006, its year end fund balance decreased each year from a high of \$15,924,961 in 2000 to a low of \$9,710,127 in 2006. In addition, the percent of the fund balance used in the next year's budget increased from 48.5% in 2000 to 78% in 2006 (and a high of 81% in 2004). At the same time, the amount required to be raised by taxation increased as follows:

2004	\$20,037,698.69
2005	\$23,841,799.51
2006	\$31,016,934.80
2007	\$35,269,360.95

Similarly, the Township maintains that the phased-in reinstatement of employer Police and Fire Retirement System (PFRS) contributions, beginning in 2004, has imposed a substantial burden on the Township, beginning with a \$190,324

contribution in 2004 and continuing with escalating contributions for ensuing years of \$470,306 in 2005; \$ 910,251 in 2006; \$1,454,579 in 2007; and \$2,216,356 in 2008.

As a result of these and other financial pressures, the Township points out that it decreased its capital fund budget for the current year by \$828,598. In addition, it was required to increase its appropriation for the reserve for uncollected taxes, due to a decline in the tax collection rate from 97.16% in 2004 to 94.75% in 2006.

### **CAP Law**

In urging award of its final offer, the Township also highlights the CAP law, *N.J.S.A. 40A:4-45.1a et seq.*, which generally limits increases in expenditures to 2.5% or the cost of living, whichever is less. Expenditures may be increased by 3.5% if the cost of living adjustment (COLA) exceeds 2.5% and a municipality has also passed an ordinance authorizing an increase to the 3.5% level. The Township explains that it has passed such an ordinance and has advanced an economic proposal – 3.5% increases – that is consistent with the Legislature’s intent. It asserts that the award of any higher increases would require it to cut services and increase taxes. It adds that while its employer pension contributions are now “outside the cap”, they will go inside the cap in 2008. Finally, the Township asserts that, as a result of the new 4% tax levy cap that takes effect in 2008, it will be more difficult for it to increase spending.

## **Comparisons; Overall Compensation**

Turning from its economic circumstances to the specifics of its final offer, the Township maintains that its proposal for 3.5% wage increases is reasonable in light of the relatively low level of inflation and an existing overall compensation package that is more than comparable to that in other municipal police departments. It urges that the “excessive” increase demanded by the SOA would be counter to the public interest and would undermine the morale of non-uniformed units in the Township, which have settled for much lower increases. In this vein, the Township’s Exhibit S shows that for calendar years 2004 through 2007, Lakewood civilian units generally settled for wage increases below 4%. Thus, AFSCME and non-union employees received 3.25% for 2004; 3.5% for 2005; 3.75% for 2006; and 3.35% for 2007. PW 469 received increases of 3.5%, 3.75% and 4% for 2004, 2005, and 2006, respectively. And an EMT unit agreed to 3% raises for 2004 through 2006 and a 3.25% increase for 2007.

By contrast, Township Exhibit S and Joint Exhibit 5 indicate that the SOA received 4% increases for 2004 through 2006 and that the PBA received 4% increases for 2004 through 2008. Township Manager Frank Edwards testified that, for the last ten years, the PBA and SOA have received parallel treatment in terms of salary and benefits.

In urging adoption of its prescription co-pay proposal, the Township maintains that the new co-pays would have a minor impact on SOA members but would result in a four-year savings of almost \$70,000. It also notes that all of the Township's civilian employees are subject to a prescription co-pay of 5%.

The Township recognizes that being a Lakewood police officer is a difficult job and it acknowledges that the number of police service calls have increased significantly over the past decade as the Township's population has expanded. However, it contends that these factors do not justify the economic package that the SOA seeks. The Township maintains that superior officers do not respond to service calls and it states that the Township's population increase has been largely attributable to segments of the community that are not heavily involved in crime – senior citizens and Orthodox Jews.

### **SOA'S POSITION**

The SOA counters that such statutory factors as the public interest, the lawful authority of the employer, the financial impact of the award and comparisons with other employees all favor award of its offer. In so urging, the SOA emphasizes that the Lakewood Police Department has maintained an exceptionally high level of productivity and professionalism during a period – 1984 through 2006 – when calls for police service rose over 1000%. The SOA maintains that there is no question but that the Township's tremendous growth will continue, and it underscores that the

123-member department has kept pace with significant increases in both serious crimes and routine law enforcement demands, despite having only slightly more than the 100-plus sworn personnel that were on staff in the early 1980s.

At the hearing, Deputy Chief Smith testified that the Lakewood Police Department has high morale and an excellent rapport with the community. He stated that other departments look at Lakewood “with awe” because no other town faces the problems that Lakewood does. In particular, he noted that the department has regular communication with the New Jersey State Police and works with a team that helps stem criminal activity by members of the “Blood” and “Latin Kings” gangs. The SOA adds that the department has instituted many new services and programs, such as the ongoing “Bagels, Lox, & Cops” dialogue with representatives of the Township’s Orthodox Jewish population. In addition, the SOA notes that many of its members have advanced education from top institutions such as Rutgers, Northwestern, and the FBI National Academy.

### **Comparisons**

Against this backdrop, the SOA contends that, in evaluating unit members terms and conditions of employment vis-a-vis those of other employees, *see N.J.S.A. 34:13A-16g(2)*, the primary “universe of comparison” should be the contract for the PBA rank-and-file unit, where the Township agreed to 4% annual increases for 2005 through 2008, a \$500 increase in the Detective Stipend, a \$100 boost in the clothing

allowance, a revised work schedule, and several non-economic improvements of value to the PBA. The SOA points out that a non-supervisory police detective now receives a \$1,500 annual allowance -- greater than the \$1,000 stipend earned by his SOA counterpart. Similarly, the SOA notes that the PBA contract codifies the work schedule of four, ten-hour days and guarantees that holidays and personal days will be counted in 10-hour blocks.

The SOA argues that these disparities should be corrected because good order, discipline, and the public interest require that this unit have a compensation package equivalent to that of the PBA unit. It adds that it is essential to maintain an incentive for promotion given that, by law, a department's superior officers must be appointed from among its rank-and-file officers. Finally, it highlights that PBA and SOA members belong to an integrated department and work together every day on all elements of police business.

With respect to other employee groups, the SOA has submitted 12 law enforcement contracts for calendar years 2007 through 2009. The agreements pertain to municipal patrol and superior officers in Ocean and other counties as well investigators and sheriff's officers employed by the Ocean County Prosecutor and Ocean County Sheriff. The SOA notes that the average increases in these contracts-- - 4.19% for 2007, 4.05% for 2008 and 4.11% for 2009 -- are more supportive of its position than that of the Township. Moreover, it contends that the five contracts

submitted by the employer actually support the SOA's case better than the SOA's own exhibits, since the employer submissions show average increases of 4.11% for 2007, 5.5% for 2008; and 3.9% for 2009 and 2010.

Similarly, the SOA asserts that the settlements pertaining to the Township's civilian units "establish one more support" for its position. It notes that while the record shows that these units generally settled for increases below 4% for 2004 through 2007, the PBA received 4% throughout that period and the SOA received 4% adjustments for 2004 through 2006. The SOA contends that this negotiations history supports 4% increases for the SOA in this proceeding because it shows that the Township's civilian units have consistently received less than the two police units, which in turn have been treated identically.

In contrast, the SOA minimizes comparisons with private sector employees, citing the vast differences between their employment conditions and those of police. The SOA notes that police officers do not enjoy the protection of New Jersey's wage and hour law and are not covered by the 40-hour work week set forth in the federal Fair Labor Standards Act. It adds that, unlike private employees, police officers are subject to a plethora of statutes that, *e.g.*, establish minimum qualifications for hire; mandate New Jersey residency; govern promotional examinations in civil service jurisdictions; set minimum and maximum ages for initial employment; and require retirement by age 65. The SOA also points out that police officers are subject to

stringent statutory training and re-training requirements, but maintains that the most significant difference between police officers and all other employees is that police officers generally have an obligation to act as law enforcement officers at all times, regardless of whether they are on duty. Finally, it urges that while national and global trends affect the private labor market -- and have a depressing effect on wages -- local comparisons are most relevant with police wages.

### **Financial Impact; CAP Law**

With respect to the financial impact and cap law criteria, the SOA's position is that these factors also support an award along the lines that it has proposed. It recognizes that *N.J.S.A.* 34:13A-16g(5) and (9) require consideration of the expenditure and tax levy caps imposed by *N.J.S.A.* 40A:4-45.1a *et seq.* and *N.J.S.A.* 40A:4-45.44 *et seq.* However, it emphasizes that the Township's 2007 budget is more than \$700,000 below its expenditure cap limitation. While the SOA realizes that this figure does not represent cash to be spent, it maintains that it shows the Township's fiscal stability.

In addition, the SOA cites the following data as indicative of the Township's financial health: its debt load of 1.4% of budget vs. the 3.5% permitted by law; the Township's ability to regenerate surplus, as evidenced by the Results of Operations Sheet in its annual financial statements; and the fact that in both 2005 and 2004 the Township had a substantial unexpended balance of appropriation reserves. The SOA

also contends that the Township continues to have high fund balances, a strong tax collection rate and an exceptionally high ratable base – the highest among all 33 Ocean County municipalities.

Within this financial context, the SOA maintains that its proposal would have an extremely small, almost imperceptible impact on taxpayers. It notes that only 26.1% of the local tax levy is used for municipal purposes and that the total base pay of this unit (\$2,866,266) is only .02% of that levy. The SOA maintains that for a hypothetical taxpayer who pays \$6,000 per year, the cost of this unit is \$133.93 annually. Finally, the SOA emphasizes that the total costs of municipal law enforcement are offset by grants related to homeland security, drunk driving enforcement, the safe and secure communities program, a body armor replacement fund, and the receipts from the Lakewood Municipal Court, most of which are the result of police activity.

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

In concluding its presentation, the SOA addresses *N.J.S.A. 34:13A-16g(8)*, which requires an arbitrator to consider “the continuity and stability of employment including seniority rights” and such other factors ordinarily or traditionally considered in determining wages, hours and employment conditions in public and private sector negotiations. It contends that this factor imports the private-sector concepts of “area standards” and the “going rate” which in turn support its wage

position. It also argues that *N.J.S.A.* 34:13A-16g(8) favors the award of its proposal for a holiday pay fold-in, which it characterizes as a common benefit that allows for more work days for experienced officers. Similarly, it contends that its “Superior Officers Rights” proposal is a basic non-economic item enjoyed by the PBA and most other negotiations units. It also maintains that the maternity/paternity provision is appropriate for consideration in this proceeding.

Finally, the SOA contends that its longevity proposal is a minimal impact item that would pertain only for the brief period before an officer retires but after he or she attains 24 years of service. On the other hand, it rejects the Township’s “attack on longstanding health care benefits”, arguing that in setting forth its concerns with increased health care costs, the employer fails to note that it receives significant annual health benefit refunds -- \$533,932 in 2006.

### **DISCUSSION AND ANALYSIS**

My consideration of the parties’ proposals is governed by *N.J.S.A.* 34:13A-16g and pertinent Court and PERC decisions. I am required to reach a reasonable determination of the issues, giving due weight to those statutory factors judged relevant to the resolution of this dispute. I must indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. My opinion and award must set forth the reasons for the results reached.

In addition, I note that *N.J.S.A.* 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. Accordingly, I have been guided by the decision-making principles that are typically used in deciding interest arbitration disputes. One such principle is that the party proposing a change in an employment condition bears the burden of justifying such change. I have applied that principle to all the proposals in this proceeding.

Similarly, while I have evaluated the merits of each individual proposal, my award reflects the precept that an arbitrator must consider the totality of changes to be made to the existing agreement, as well as the cost and impact of the overall economic package. *N.J.S.A.* 34:13A-16d(2) itself incorporates this latter concept by requiring that the arbitrator separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine criteria in *N.J.S.A.* 34:13A-16g.

There are both economic and non-economic issues in this case.

With respect to economic items, the Township proposes 3.5 % annual wage increases, along with an increase in the prescription drug co-pay, while the SOA proposes 5% annual increases together with the fold-in of holiday pay and increases in the detective stipend and longevity benefit. With respect to non-economic issues, the SOA seeks contract language changes pertaining to SOA rights,

maternity/paternity leave, and the work schedule of officers who work a ten-hour chart. Both parties propose a four year contract term, January 1, 2007 through December 31, 2010.

Pursuant to *N.J.S.A. 34:13A-16g*, I conclude that all of the statutory factors are relevant to this dispute, but that not all are entitled to equal weight. My weighing and balancing of the nine factors, particularly those pertaining to the public interest, financial impact, and comparisons with other employees, leads me to award a total economic package that is somewhat more than proposed by the Township but less than sought by the SOA. In addition, one key consideration that informs my analysis of all the proposals is the importance of maintaining a reasonable congruence between the terms and conditions of employment that pertain to the SOA and those that govern the PBA. SOA and PBA unit members are all officers in a single police department who work together on a critical shared mission. A rational compensation structure should recognize this fact and foster department cohesion. Of course, there is no statutory mandate to treat the SOA and PBA uniformly for all purposes, and comparisons with other employee groups are also relevant. However, the public interest, comparability, and continuity and stability of employment criteria all call for a careful focus on the terms that have already been established within the department. Against this backdrop, the terms of my award are as follows:

1. Term of Agreement

The term of the agreement shall be from January 1, 2007 through December 31, 2010.

2. Salary increases

4% across-the-board salary increase effective January 1, 2007.

4% across-the-board salary increase effective January 1, 2008.

4% across-the-board salary increase effective January 1, 2009.

4% across-the-board salary increase effective January 1, 2010.

Each salary increase is retroactive to its effective date.

3. Detective Stipend

The detective's stipend shall be increased from \$1,000 annually to \$1,500 annually, effective January 1, 2007.

4. Prescription Co-Pay

Effective March 1, 2008, the prescription co-pay shall be increased to \$5 generic/\$20 brand name. The \$20.00 co-payment will apply if the physician does not specify that the brand name must be used.

5. SOA Rights – The SOA's proposed contract language is awarded.

6. Work Schedule – The SOA's work schedule proposal is awarded.

**Cost of Award**

A necessary prelude to the analysis mandated by *N.J.S.A. 34:13A-16g* is a costing out of the award.

According to Township figures, the award of its prescription co-pay proposal will result in \$17,472 in annual premium savings to the Township. Thus, the awarded salary increases will be offset by that amount in 2009 and 2010. The offset

for 2008 will be \$14,560 because the new co-pay will be effective March 1, 2008 and the Township will realize ten months of premium savings.

The Township’s Exhibit I indicates that there are currently four unit members who receive an annual \$1,000 detective’s stipend. The award increases the stipend to \$1,500 annually, retroactive to January 1, 2007, for a total cost of \$6,000 per year, \$2,000 more than under the 2004-2006 agreement and an additional \$8,000 over the contract term.

For 2006, the total base compensation plus longevity for this 26-officer unit was \$3,086,220. There are no increment costs since the contract establishes a single annual salary for each rank.<sup>1</sup> Assuming no resignations, retirements, or new hires, the annual cost of salary increases under the employer’s offer, the SOA’s proposal, and the award are as follows:

	<u>Township</u>	<u>SOA</u>	<u>Award</u>
2007	\$108,018	\$154,311	\$123,448
2008	\$111,798	\$162,027	\$128,387
2009	\$115,711	\$170,128	\$133,522
2010	\$119,761	\$178,634	\$138,863

For 2008, 2009, and 2010, the employer and SOA figures assume that the total base salary for the preceding year was enhanced by the percentage amount proposed by

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<sup>1</sup> Since the longevity benefit is a percentage of base salary, I have included it in my cost calculations. While the total compensation for this unit also includes \$19,600 in “additional eligibility” entitlements, that figure is not part of my cost calculations because there are no proposed adjustments to this item and these fixed dollar amounts do not automatically increase with percentage increases in base salary.

that party; the same method was used to calculate the cost of the award. The total cost of the four annual 4% increases is \$524,220: \$68,932 more than under the employer's proposal and \$140,880 less than under the PBA's offer. In addition, as noted, the increase in the detective's stipend adds to the cost of the award, which is in turn offset by the award of the employer's prescription drug proposal. As discussed in the following analysis, I conclude that the total net annual economic changes for each year of the agreement are reasonable under the criteria listed in *N.J.S.A.* 34:13A-16g.

The wage increases are by far the largest component of the economic package. Therefore, in setting forth the rationale for the award, I will analyze the evidence on each statutory factor and describe how it relates to my decision to award 4% annual increases. With this statutory and evidentiary analysis as a foundation, I will then address the parties' other economic proposals in the context of the 16g factors. Finally, I consider the SOA's non-economic proposals.

## **SALARY INCREASES**

### **Public Interest and Welfare**

The public interest and welfare, *N.J.S.A.* 34:13A-16g(1), is a broad criterion that encompasses, at a minimum, considerations of both fiscal responsibility and the compensation package required to attract and retain a high-productivity and high-morale public safety department. It also explicitly requires consideration of the CAP

Law, *N.J.S.A.* 40A:4-45.1a *et seq.*, as does *N.J.S.A.* 34:13A-16g(5), the lawful authority of the employer. The New Jersey Supreme Court has emphatically stated that an award that does not consider the public welfare is in danger of being found deficient and, therefore, I have given this criterion substantial weight in determining salary increases. I note that while the fiscal and compensation components of this factor are sometimes in tension, in this case they each point toward increases in the 4% range.

The public has a strong interest in being served by an efficient, highly skilled and high-morale police force in which superior officers work together seamlessly with their subordinates in the PBA. Lakewood is fortunate to have such a department. Current salaries for each officer rank are competitive with those of like officers in comparable municipalities, and the department is looked upon as a model by officers in other jurisdictions. Moreover, it appears to have been extraordinarily effective in providing excellent, responsive police services in an environment of change and tremendous growth. Thus, the goal in this proceeding is to maintain department morale and productivity at its current high level, and to enable SOA salaries to remain competitive to the extent permitted by the Township's fiscal circumstances.

For 2007 and 2008, these considerations point to increases in the 4% range, given that the Township has already agreed to such raises for the PBA unit. As

noted, the Lakewood Police Department operates as a unified, integrated entity, with superior and patrol officers pursuing common objectives in a unique environment. The Township does not argue, and the record does not show, any grounds for narrowing the salary differential between superior and rank-and-file officers. In this posture, an award that resulted in the department's leadership receiving lower increases than their subordinates would have the potential to undermine department morale and cohesion, contrary to the public interest.<sup>2</sup> In addition, as discussed in the financial impact criterion, the PBA settlement reflects the Township's own judgment as to what constituted a reasonable salary determination in light of its budgetary situation.

The PBA settlement does not provide guidance for 2009 and 2010, but the public interest in maintaining a competitive compensation package weighs in favor of increases in the 4% range for those years as well, since both Township and SOA exhibits show that to be the average increase received by law enforcement officers in comparable jurisdictions and no other Township units have reached settlements for those years.

The awarded increases are also consistent with the fiscal component of the public interest, which has a strong overlap with the financial impact criterion and

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<sup>2</sup> While the Township urges that award of the SOA's proposal would create disharmony between these officers and non-police employees in the Township, I do not believe that the awarded increases will have that effect. I note the long history of the police units receiving somewhat higher raises than other employees; the absence of a consistent settlement pattern among the civilian units; and the fact that the awarded increases are lower than those sought by the SOA.

requires that a salary award be reasonable in light of the employer's financial and budgetary situation. As I discuss more fully in my financial impact analysis, the record indicates that the Township is on generally solid financial footing, although there are some areas of concern that would militate against the increases sought by the SOA. However, in the context of this overall award, including the award of the Township's prescription drug proposal, the annual 4% salary increases will not have an adverse impact on the Township, its residents, or its taxpayers.

Turning to the expenditure cap referenced in *N.J.S.A.* 34:13A-16g(1), *N.J.S.A.* 40A:4-45.1a *et seq.* limits the amount by which a municipality can increase its final appropriations over those for the preceding year. As set forth in more detail in the lawful authority section of this opinion, my award for 2007 will not cause the Township to exceed the limits imposed by the spending cap. Further, there is no evidence that the award will cause the expenditure cap to be exceeded in 2008 through 2010.

### **Comparisons**

*N.J.S.A.* 34:13A-16g(2) is a multi-faceted criterion that calls for a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees "performing similar services" and "employees generally" in (1) private employment in general; (2) public employment in general; and (3) public employment in the same or similar comparable jurisdictions. I have given this

criterion substantial weight, since a reasonable determination of a salary dispute requires an understanding of the opportunities, salaries, and working conditions that pertain in police and non-police employment. While I have carefully considered and given some weight to all the comparability evidence submitted, I believe that the most significant comparison in this proceeding is with employees performing similar services in the same jurisdiction – *i.e.*, the PBA unit.

The Township's police force is comprised of the superior officers in this unit and the patrol officers in the PBA unit. All of these police officers have responsibilities, training, and skills that set them apart from non-police employees and they work together 24/7 in furtherance of the department's often dangerous and always challenging mission of protecting the public safety. To the extent comparisons with other employees are an element in fixing this unit's compensation, unit members should be compared first and foremost with the police officers whom they supervise.

For approximately ten years, negotiated settlements between the Township and the PBA and SOA have included identical salary increases. Thus, the PBA, SOA, and Township have all helped to build a labor relations structure where salary differentials between the ranks have remained constant for a period of years. The Township has not articulated a labor relations basis for disturbing this relationship between the units, and the parties' negotiations history strongly favors giving great

weight to the settlement terms that the Township has already reached with the PBA unit for 2007 and 2008.

Thus, this element of the comparison criterion firmly supports an award of increases in the 4% range for 2007 and 2008, as do the SOA's exhibits concerning settlements with law enforcement employees. Those exhibits show increases of 4.19% for 2007 and 4.05% for 2008. Similarly, the four contracts submitted by the Township (two of which overlap with the SOA's exhibits), show increases of 4.11% for 2007 and 5.5% for 2008.<sup>3</sup>

While the PBA settlement does not offer guidance for the final two contract years, the comparability data concerning law enforcement employees in other, comparable jurisdictions also tends to supports increases in the 4% range. The SOA's data (based on six contracts) shows an average annual increase of 4.11%, while the Township has submitted one contract (Jackson Township) that contains 3.9% increases for both 2009 and 2010.

The Township emphasizes, and I have carefully considered, evidence concerning its settlements with the Township's non-uniformed units. Its Exhibit S details the settlements with its civilian units, as well as its agreement with non-union employees. For 2004, the settlements range from 3% to 3.5%; for 2005, from 3% to

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<sup>3</sup> The significance of this 2008 statistic is tempered by the fact that it was based on only two contracts, one of which shows an unusually high increase of 8.7% for 2008.

3.75%; and for 2006 from 3% to 4%. During 2007, the only year that corresponds to the instant contract term, the agreements range from 3.25% to 3.35%.

These settlements provide insight on the range of percentage increases that the Township and other employee organizations believed were necessary to maintain a competitive compensation package for non-uniformed employees and, standing alone, they would suggest lower salary increases than those that I have awarded. However, there are several reasons why I have not accorded these settlements determinative weight. First, while the awarded across-the-board increases are higher than in any of the non-uniformed settlements, the cost of my award to the employer is offset by the award of its prescription co-pay proposal, which results in annual premium savings for 2008 through 2010 equal to approximately one-half a percentage point of this unit's total compensation, bringing the effective cost of the increases below 4%. Second, this is not an instance where there is a strong internal settlement pattern for the applicable contract period: the four settlements vary from unit to unit and cover the 2004-2007 time frame. Third, as discussed earlier, I have weighted the PBA 2005-2008 settlement more heavily than that of the other units, given the longstanding negotiations history of the SOA and the PBA receiving identical increases and the labor relations and public interests in treating employees within the same department similarly.

Finally, I have also reviewed several Township exhibits that provide information on the salaries of employees in a wide range of private and public sector occupations. For example, a July 2006 document from the New Jersey Department of Labor and Workforce Development (NJDLWD) lists the average salary -- and 25<sup>th</sup>, 50<sup>th</sup>, and 75<sup>th</sup> percentile salaries -- for numerous mostly private-sector jobs in Middlesex, Somerset, Monmouth and Ocean Counties. The positions run the gamut from physicians, chief executives and education administrators to construction, clerical, production, farming, and protective service workers. In addition, a December 2005 table prepared by the federal government lists the mean and median earnings of a broad range of state and local government workers in the Philadelphia-Wilmington-Atlantic City-PA-NJ-DE-MD geographic area. Finally, an excerpt from the NJDLWD 2003 Annual Report includes employment information concerning Lakewood itself. It lists the average salary of a Township resident employed in the private sector as \$34,791, while Township residents employed by the federal or local government have average wages of \$49,933 and \$44,918, respectively.

These exhibits, taken together, illustrate that members of this unit, the leaders of the Township's police department, are very well compensated in the context of the overall labor market. However, that circumstance is appropriate in light of the training, skills, and responsibilities of these individuals. The Township recognizes that unit members have a difficult, demanding job and it does not propose major

adjustments to their compensation. Thus, the above-noted exhibits are of limited guidance in determining what percentage increases are appropriate to ensure that the Township can continue to attract and retain high-caliber superior officers. Accordingly, I have given this evidence minimal weight.

In sum, I conclude that the comparability evidence, particularly that pertaining to the settlement with the PBA unit, favors 4% annual salary increases in the context of an overall economic package that allocates most improvements to salary increases and includes a prescription co-pay increase that partially offsets the cost to the employer of those increases.

### **Overall Compensation**

The overall compensation criterion, *N.J.S.A.34:13A-16g(3)*, requires the arbitrator to consider all the economic benefits received by the employees involved in the proceeding, including direct wages, vacations, holidays, excused leaves, insurance, pensions and medical benefits. It thus directs a focus on all employee benefits, not just the items that are at issue in the proceeding.

Viewed from this perspective, it is evident that the Township's superior officers enjoy a comprehensive compensation package that includes, in addition to competitive salaries, vacation, sick leave, fully paid insurance coverage, and a longevity benefit. This package generally compares favorably with that received by the PBA, employees in other Township units, and police officers in other jurisdictions

– as well as with salaries and benefits in the overall public and private sector marketplaces. Aside from the detective’s stipend, which is addressed later, there are no deficits in the unit’s economic package, and no benefits that warrant a downward adjustment.

Within this framework, the unit’s overall compensation structure favors a moderate economic package that includes salary increases in the average range and, as discussed in more detail later, award of the prescription co-pay proposal.

### **Stipulations**

*N.J.S.A.* 34:13A-16g(4) requires the arbitrators to consider the stipulations of the parties. There are no express stipulations in this case but both parties propose a four-year term. I consider that item to be a stipulation and award a four-year agreement from January 1, 2007 through December 31, 2010.

### **Lawful Authority of the Employer; Statutory Restrictions on the Employer**

*N.J.S.A.* 34:13A-16g(1) and (5) mandate consideration of the lawful authority of the employer, including the limitations on appropriations imposed by *N.J.S.A.* 40A:4-45.1a *et seq.*, commonly know as the CAP law. *N.J.S.A.* 34:13A-16(g)(9), similarly directs analysis of the statutory restrictions imposed on the employer, including the tax levy cap enacted in 2007. *See L. 2007 c. 62.* Both of these CAPS were designed to help control the costs of local government and limit increases in the

local property tax. I discuss each CAP in turn and conclude that the award will not run afoul of the limitations that they impose.

*N.J.S.A. 40A:4-45.1a* limits the amount by which a municipality can increase its total final appropriations from the previous year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA). It does not limit any particular line item, only total appropriations. For 2004 through 2007, the permitted increase was 2.5%. In addition, however, a municipality may by ordinance choose to increase the COLA percentage up to 3.5% and may also “bank” the difference between 3.5% and its final appropriations subject to the cap. Any “cap bank balance” provides additional expenditure authority that may be used in the ensuing two years.

The Township has passed an ordinance allowing an increase to 3.5% and the Township’s finance administrator testified that, for 2007, Lakewood’s final appropriations were \$708,722 below the statutory maximum.<sup>4</sup> Budget documents also show that the Township’s final appropriations were well below the statutory maximums for 2005 and 2006. The cap calculations for 2008 through 2010 are not yet available. However, given the Township’s pattern of budgeting below the expenditure cap, it is very unlikely that salary increases that will cost the Township approximately \$17,233 more per year than it expected to spend under its own offer would cause the Township to exceed its lawful spending authority. That is especially

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<sup>4</sup> This figure is based on a CAP limit that takes into account the additional expenditure authority provided by the 3.5% ordinance; the cap bank for the prior two years; and statutorily-permitted additions attributable to new construction.

so in light of the fact that the expenditure cap base for this growing Township may well be adjusted upward each year as a result of new construction.

*N.J.S.A.* 40A:4-45.44 through 45.47, enacted in 2007, establishes a tax levy cap in addition to the above-noted expenditure cap. The basic formula allows for a 4% annual increase in the amount to be raised, for municipal purposes, by local taxation. As with the expenditure cap, the formula is then subject to various modifications, including exceptions for certain health insurance increases. For local units with calendar year budgeting, the law takes effect in 2008. Therefore, the budget documents in the record do not include calculations for the tax levy cap. However, since I have awarded 4% salary increases, which are partially offset by the prescription co-pay portion of the award, the salary increases are not inconsistent with the 4% tax levy cap.

### **Financial Impact of the Award**

The CAP laws discussed under *N.J.S.A.* 34:13A-16g(5) and *N.J.S.A.* 34:13A-16g(9) mark out the limits of a municipality's appropriation and taxation authority. However, the legal authority to appropriate funds does not necessarily mean that a municipality has the revenues to make such appropriations. And the legal ability to raise a certain amount by taxation does not automatically signify that such a levy would be reasonable in view of a municipality's ratable base, existing tax levels, and the income of its residents. *N.J.S.A.* 34:13A-16g(6) therefore contemplates a careful

consideration of the financial impact of an award on the governing unit, its residents and taxpayers. I have accorded this criterion substantial weight, and conclude that my award will not have an adverse financial impact on the Township or its taxpayers.

The parties have submitted a plethora of financial, budgetary and demographic evidence and each side emphasizes different facets of the record. Overall, the record shows that the Township is on generally sound fiscal footing, with the evidence showing several measures of financial health but also areas of concern that point toward moderation in the total economic package and against the 5% increases sought by the SOA.

For example, Township's year-end current fund balance has declined each year since 2000 and the 2006 property tax collection rate, while still acceptable at 94.75%, declined from 97.5% in 2004. In addition, Lakewood's median and average household income are lower than the County averages, a factor that underscores the desirability of keeping the costs of municipal government under control since lower income residents are more apt to be feel the impact of tax increases. The Township's general and effective tax rates are high side compared to most other Ocean County municipalities and, like other public employers, the Township has been faced with the re-institution of employer pension contributions which totaled over \$1.4 million in 2007 and will increase to over \$2.2 million in 2008.

On the positive side, however, the Township is a growing municipality with an exceptionally strong ratable base, the highest in the County. And while there has been a decline in the Township's fund balance, the slippage has been from the extremely high level of over \$15 million dollars. The 2006 \$9.7 million fund balance is still substantial. In that vein, it is evident that, from 2000 through 2006, the Township has consistently been able to regenerate surplus and end the year with a substantial fund balance, which it has used as a revenue source to support the next year's budget. Budgets for the last three years also show that, in addition to the current operating fund, the Township has other funds and accounts that, consistent with accepted budget practices, could be used either as a direct source of funds for salary increases or as a resource for non-salary expenses.

Based on these economic and budgetary trends, I believe that 4% increases represent a reasonable determination of the parties' salary dispute, especially within the context of an award that allocates all economic improvements to salary enhancements and an adjustment in the detective's stipend, the costs of which are partially offset by my award of the Township's prescription co-pay proposal. This total economic package can be accommodated within the Township's budgetary structure and the wage increases will cost the Township \$68,932 more, over the four-year term, than it had already anticipated spending under its own offer. I have also considered that, for 2007 and 2008, the Township voluntarily agreed to 4% increases

for the much larger PBA unit. That agreement is a useful measure of the Township's own view of the increases that its budget can accommodate, particularly given that the PBA agreement likely yielded a greater total dollar cost than is at issue here. In sum, the award will not have an adverse impact on the governing unit, taxpayers, or residents.

### **Cost of Living**

*N.J.S.A.* 34:13A-16g(7) mandates consideration of the cost of living, which is typically measured by the Consumer Price Index (CPI) published by the federal Bureau of Labor Statistics. The Township's Exhibit R shows that for 2005, the CPI increase for the average U.S. city was 3.8%, while the increases for the Northeast-Urban and Philadelphia-Wilmington-Atlantic City areas were each 3.7%. For 2006, the respective figures were 2.6% for the average U.S. City, 2.7% for the Northeast-Urban locale, and 3.4% for the Philadelphia-Wilmington-Atlantic City area. For the first half of 2007, Exhibit R indicates CPI increases of 1.7% for the average U.S. City, 1.8% for Northeast-Urban; and .3% for Philadelphia-Wilmington-Atlantic City. The most current figures from the BLS website indicate CPI increases, from October 2006 to October 2007, of 3.5% for Philadelphia-Wilmington-Atlantic City and Northeast Urban, and 3.1% for the average U.S. City.

I have given the cost of living some weight in setting salary increases. A salary analysis should take into account whether a unit's prior increases have allowed it to

keep pace with inflation and should also attempt to gauge whether proposed increases would likely result in the unit maintaining, decreasing or increasing its real income, a necessarily inexact exercise where a contract extends three years into the future.

During 2005 and 2006, it appears that SOA members enjoyed some increase in real income because the 4% raises that they received for those years somewhat exceeded the CPI. The 4% increases awarded herein somewhat exceed, but are within the range of, the current cost of living. They will likely enable the unit to maintain its standard of living over the contract term and perhaps realize some moderate increase in real income.

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

*N.J.S.A.* 34:13A-16g(8) directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in public and private sector negotiations. With respect to wage determinations, it incorporates two considerations, relevant to this proceeding, that were discussed under the public interest. The first is the need to maintain a compensation package that will prevent excessive turnover, thus maintaining “continuity and stability in employment.” The second is the traditional understanding that there should be a rational relationship between the compensation packages for superior officer and subordinate officers in the same department. Thus, the continuity and stability of employment, like the

public interest and comparability factors, supports wage increases for 2007 and 2008 that parallel those for the PBA unit.

### **OTHER ECONOMIC ITEMS**

The foregoing discussion of the statutory factors informs my consideration of the prescription co-pay, longevity, detective's stipend, and holiday pay proposals. The analysis specific to each proposal follows.

#### **Prescription Co-Pay**

The Borough proposes to increase the prescription co-pay from \$1 for both generic and brand name drugs to \$5 generic/\$20 brand name, if the physician does not specify that the brand name must be used. The SOA terms this proposal an attack on its health benefits package, but I conclude that the Township has met its burden of justifying this change.

This proposal is strongly supported by public interest and financial impact considerations because it would result in \$17,472 in annual premium savings to the Township, thereby reducing the cost of the overall economic package. That is a highly desirable goal given that the Township faces some financial challenges and, like all public employers, has had to shoulder greatly increased pension contributions while facing the uncertainty of a new tax levy cap.

Further, these cost savings can be achieved without diminishing the SOA's prescription drug benefit in any significant way. The \$5 generic co-pay will not have

a significant adverse impact on these well-paid superior officers and the \$20 co-pay applies only if the physician does not state that the brand name is necessary.

The PBA does not appear to have this co-pay but that circumstance does not detract from the strong merits of the proposal. The \$20 co-pay imposes some costs on those superior officers who choose to purchase a brand-name drug even when a physician concludes it is not required. That detriment is outweighed by the savings that will accrue to the Township if the proposal is implemented -- savings that also benefit unit members because they were an integral part of my decision to award 4% increases.

In light of the foregoing, the public interest is served by the award of this proposal and the Township has met its burden of justifying this change.

### **Detective's Stipend**

As noted in the discussion of salary increases, comparability and public interest considerations generally favor a rational relationship between superior and patrol officers who work together in the Township's police department. As a result of the recent PBA agreement, the detective's stipend for that unit was increased to \$1,500 annually. Thus, there is currently an anomaly whereby the detective's stipend for a superior officer -- \$1,000 -- is actually lower than that for a lower-ranking officer. Among the factors ordinarily and traditionally considered in the determination of wages is that this type of discrepancy should be corrected in negotiations.

Accordingly, the SOA has met its burden of justifying some adjustment in the stipend and I have awarded a \$500 increase in the detective's stipend for this unit, consistent with the increase received by the PBA.

However, I decline to award the SOA's proposal for a detective's stipend equal to 2% of base salary. Converting the stipend from a fixed dollar amount to a percentage of base salary would create a greater discrepancy with respect to this item than now exists between the two units. The SOA has offered no particularized grounds for introducing such a divergence, which runs counter to the goal of maintaining generally parallel terms for the PBA and SOA units.

In addition, the proposal would have some ongoing cost impact. For example, instead of the \$1,500 annual stipend that I have awarded for the contract term, the 2% proposal would result in a 2007 stipend ranging from \$1,969 to \$2,996, depending on the rank of the officer receiving it. That figure would escalate automatically each year and with each award of across-the-board increases in the future. The award of the SOA proposal is not warranted given the need for moderation in the overall economic package and my decision to allocate the bulk of economic improvements to salary increases that benefit all unit members.

### **Longevity**

The longevity benefit under the parties' 2004-2006 agreement is as follows:

4 years	2%
8 years	3.5%

12 years	5%
16 years	6.5%
20 years	8%

This schedule is identical to that in the 2005-2008 PBA agreement, and it compares favorably to the longevity benefit received by law enforcement employees in comparable jurisdictions.<sup>5</sup> While the SOA proposes to add a new longevity level – 10% of base salary after 24 years of service – it has not met its burden of showing the need for this improvement.

As discussed throughout this opinion, an unwarranted divergence in the benefits accorded SOA vs. PBA members has the potential to undermine departmental cohesion, contrary to the public interest. The SOA has not shown that it is appropriate for superior officers to receive this additional longevity benefit when PBA members do not enjoy it. The SOA's contention that the proposal would have a minimal cost impact is not sufficient to justify it.

In any case, it appears that the proposal could entail substantial costs and could affect up to 16 out of 26 unit members by the end of the contract term.<sup>6</sup> An additional 2% of salary in 2007 would range from \$1969 to \$2996, depending on the rank of the eligible officer, and from \$2215 to \$3370 by the end of the contract term. If all eligible officers were sergeants, the cost of the benefit would be \$15,752 in

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<sup>5</sup> Among the contracts included in the record, only a few have a benefit that reaches the 10% level, and some of those schedules are less beneficial than is Lakewood's to officers at the lower end of the schedule.

<sup>6</sup> The Township states that in 2007, eight employees would be eligible for the benefit; in 2008 and 2009, 13 would be eligible; and by 2010, 16 officers would be eligible.

2007; \$26,637 in 2008; \$27,703 in 2009; and \$35,248 in 2010, or \$105,340 over the contract term. Even if some of the eligible unit members retired, the cost of the new benefit would still be substantial and well outside the financial parameters of my award.

For the foregoing reasons, the SOA's longevity proposal is denied.

### **Holiday Pay**

The 2004-2006 agreement recognizes 13 holidays, paid at straight time, and one holiday, Easter Sunday, which is paid at time and one-half. The PBA agreement includes the same holidays.

The SOA proposes that each officer receive an amount equal to 14 holidays, paid at straight time, which would be rolled into his or her base salary. I conclude that the SOA has not met its burden of justifying this proposal.

The PBA unit does not have the holiday pay fold-in that the SOA seeks, so that internal comparability and public interest considerations favor retention of the existing holiday benefit. While the SOA urges that many jurisdictions have folded holiday pay into base pay, the threshold basis for comparison is with other members of the Township's own police department. Absent a demonstrated basis why superior officers should have this benefit when rank-and-file officers do not, I decline to award it.

The SOA's holiday pay proposal is denied.

## **NON-ECONOMIC PROPOSALS**

The SOA seeks three contract language changes: a new section in the Superior Officers Rights article; a new Maternity/Paternity Leave article, and a modification of the contract section pertaining to work hours. My analysis of these proposals is guided primarily by two queries. First, has the SOA demonstrated a need for the desired change? Second, would award of the proposal further the goal of achieving a reasonable consistency between the terms and conditions of employment for PBA and SOA unit members? The latter concept implicates public interest and internal comparability considerations. However, such factors as the financial impact of the award, overall compensation, and the cost of living are not relevant to the review of these proposals.

### **Superior Officer Rights**

The SOA seeks inclusion of a paragraph that would allow the President of the SOA to conduct SOA business during duty hours without loss of pay, provided such activity would not diminish the effectiveness of the department or require the recall of another supervisor to “bring the Department to its proper level of effectiveness.” The SOA proposal would also state that the Township “shall permit Association representatives to attend conventions consistent with *N.J.S.A. 40A:14-177*.”

The authorization for the SOA President to conduct union business while on duty mirrors a provision in the PBA agreement and the Township does not object to

it. The proposal contains adequate protection to ensure against interference with departmental operations and it is awarded.

The second portion of the superior officer rights proposal is not included in the PBA agreement, but it simply states the statutory right of Association representatives to attend conventions “consistent with *N.J.S.A. 40A:14-177.*” That statute requires employers to allow such attendance, but includes limitations on the number of representatives who may attend. The parties’ agreement effectively incorporates *N.J.S.A. 40A:14-177*, but it is useful to include a reference to the statute in the agreement. Accordingly, the SOA’s superior officer rights proposal is awarded in its entirety.

### **Maternity/Paternity Leave**

The SOA seeks a new, several paragraph article governing maternity and paternity leave. Among other things, the article would state that a pregnant officer shall be permitted to work her normal duties so long as permitted by her physician. The proposed language also states that both male and female officers shall be permitted time off as provided under the federal Family Leave Act and New Jersey’s Temporary Disability Benefits law.

The PBA agreement does not include such an article and federal and state laws provide ample protection for pregnant employees and male officers applying for paternity leave. The SOA has not asserted that the Township has failed to comply

with these laws. In the absence of such a history, I conclude that the SOA has not met its burden of justifying the proposed change. Moreover, the statutes and regulations that govern pregnancy and maternity/paternity leave are extensive and complex and the proposed article may not fully set forth employee and management rights and responsibilities. For that reason as well, I decline to award this proposal.

### **Work Hours**

The SOA proposes to codify the work schedule for front-line sergeants who, like rank-and-file officers, currently work four ten-hour days per week. The SOA also seeks to memorialize the current practice, acknowledged by Edwards at the hearing, whereby sergeants working 10-hour charts have their holiday and personal days counted in 10-hour blocks. The Township does not object to these changes and it is reasonable to have the SOA agreement memorialize these items, just as the PBA agreement does for that unit. Accordingly, the SOA has met its burden of justifying this proposal. Article X, Section I shall be amended to state:

Front-line sergeants only shall work four ten-hour days per week, consistent with the PBA schedule. Persons working the ten (10) hour work schedule shall have holidays and personal days counted in ten-hour blocks.

## AWARD

1. **Term of Agreement:**

There shall be a four-year agreement effective January 1, 2007 through December 31, 2010.

2. **Salary:**

The salary for each rank shall be adjusted by the following percentages:

4% effective January 1, 2007

4% effective January 1, 2008

4% effective January 1, 2009

4% effective January 1, 2010

Salary increases shall be retroactive to their effective date.

3. **Prescription Drug Co-Pay**

Effective March 1, 2008, the prescription co-pay shall be \$5.00 for generic drugs and \$20.00 for brand name prescriptions. The \$20.00 co-payment will apply if the physician does not specify that the brand name must be used.

4. **Detective's Stipend**

Article XXI, Salary Differential shall be amended to state that Superior Officer Association members assigned to the Detective Bureau shall receive an annual stipend of \$1,500, retroactive to January 1, 2007.

5. **Superior Officer Rights**

Article II shall be amended to include the following two additional provisions. The Employer shall permit the President of the SOA to conduct business of the SOA during duty hours without loss of pay provided said business shall not diminish the effectiveness of the Police Department or require the recall of another supervisor to bring the Department to its proper level of effectiveness. The Employer shall permit Association representatives to attend conventions consistent with *N.J.S.A. 40A:14-177*.

6. **Hours**

Article X shall be amended to add the following language:

Front-line sergeants only shall work four ten-hour days per week, consistent with the PBA schedule. Persons working the ten (10) hour work schedule shall have holidays and personal days counted in ten-hour blocks.

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

Dated: December 20, 2007  
Princeton, N.J.

*Timothy A. Hundley*  
\_\_\_\_\_  
Timothy A. Hundley  
Arbitrator

State of New Jersey        }  
County of Mercer         }ss:

On this 20<sup>th</sup> day of December 2007, before me personally came and appeared Timothy A. Hundley 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.

*Virginia G. Hundley*  
\_\_\_\_\_  
Virginia G. Hundley  
Notary Public of New Jersey  
My Commission Expires 6/22/2010