

In the Matter of Arbitration Between:

TOWN OF HARRISON

"Public Employer,"

- and -

HARRISON PBA LOCAL 22

"Union."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2004-105

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Town:

Robert E. Murray, Esq.
The Murray Law Firm

For the PBA:

Ed Markowski, President
PBA Local 22

The Town of Harrison [the "Town"] and Harrison PBA Local 22 [the "Union"] are parties to a collective negotiations agreement [the "Agreement"] commencing January 1, 2002 and extending through December 31, 2004. The Agreement covers all uniformed employees in the police department of Harrison below the rank of Chief. This includes Patrolman, Sergeant, Lieutenant, Captain and Deputy Chief.

During the course of their negotiations for a new Agreement, the parties agreed to reopen the current Agreement for 2004 in addition to negotiating terms extending through December 31, 2006 [Jt. Ex. #2]. After an impasse developed, the parties jointly submitted their dispute to interest arbitration in accordance with the rules of the New Jersey Public Employment Relations Commission. Thereafter, pursuant to the mutual agreement of the parties, I was designated by the New Jersey Public Employment Relations Commission to serve as arbitrator.

I held an interest arbitration hearing in Harrison, New Jersey on May 12, 2004, at which time the Town and Union argued orally, presented testimony and documentary evidence. The record remained open for the submission of additional exhibits. Each party made written post-hearing submissions. The record was closed on August 1, 2004.

As required by statute, the Town and the PBA submitted the following last offers on the issues in dispute.

FINAL OFFER OF THE PBA

Effective immediately:

- Police Captain salary adjusted to equal current Police Deputy Chief salary
- Police Lieutenant salary adjusted to equal current Police Captain salary
- Police Sergeant salary adjusted to equal current Police Lieutenant salary
- Field Training Officer salary adjusted to equal current Police Sergeant salary
 - The Field Training Officers will be those five employees who scored highest on the 2001 Police Sergeant's exam, excluding the one Sergeant who was promoted.
- Survivor's Benefits for all employees
- Steady Work Shift for Patrol Division (3 on/ 3 off, 9.5 hour days)

Effective January 1, 2005:

- All Patrolman, regardless of seniority, receive twenty vacation days per year.
- All employees receive an additional two vacation days per year.
- Unlimited Sick Leave for all employees. Discontinuation of payment for unused Sick Leave.
- Two year maximum accrual of vacation time. Discontinuation of payment for unused vacation days.
- Five (5%) percent salary increase for all employees on January 1, 2005 and January 1, 2006
- .25 percent increase for NCIC/SCIC Certification for all employees on January 1, 2005 and January 1, 2006.

FINAL OFFER OF THE TOWN

1. The current Collective Bargaining Agreement (CBA) is to be extended for two (2) years through December 31, 2006.
2. The wage increases for police personnel should be consistent with the determination that you issued as the Arbitrator in connection with the Harrison Fire Department. Specifically, wages would increase 4.0% effective January 1, 2005 and an additional 4% effective January 1, 2006. The contract would expire December 31, 2006. With respect to the other economic modifications that you provided in that Award to the Fire Department, said increases

and changes should be introduced to the Police Department in precisely the same manner.

3. With respect to survivor benefits for retired Police Officers, they should be consistent with the resolutions and ordinances of the Town of Harrison and provide such benefits as have been provided for the Fire Department and all other employees.
4. There should be no change in any of the time off benefits in the current agreement; this includes vacation, personal days and all other such benefits.
5. Vacation time must be capped at no more than a two (2) year maximum. An individual officer would not be able to bank any vacation time beyond a two (2) year maximum. Payment for unused vacation days should be discontinued.
6. If the Arbitrator accepts the PBA's proposal to change the sick leave provision from its current set number and reintroduce the statutory provision (commonly referred to as unlimited sick leave), the Arbitrator must discontinue payment of sick leave that has been unused at the time of retirement. This change would be consistent with the first day of any other change with respect to sick leave entitlement. Further, any such change as proposed by the PBA, if granted by the arbitrator, should be on a trial basis. That is, that on the basis of one (1) year experience, the Town of Harrison, in its sole and absolute discretion, would have the opportunity to revert back to the set number of sick leave days. It would be envisioned that the Town of Harrison could make this decision in December of 2005 and/or again in December 2006. It would be envisioned that the opportunity to make this reversal would then mean that banks would be reconstructed from existing data and reflect the actual sick leave use in any year in which the unlimited was in effect.
7. With respect to the shift proposal from the PBA, the Town of Harrison believes that the shift determinations must remain totally within the parameters of the Chief of Police. It is the Chief of Police as the executive and professional of the department who must make this final decision. If there were to be any modifications to the work shift schedule in the patrol division, any such change under no circumstances would either reduce the amount of actual work time on an annual work chart or result in an unintended increase of vacation time. In other words, if the work schedule were changed, the same total number of work hours would have to be reflected in any new annual work chart. Further, the amount of time entitlement for vacation or any other such item reflecting time

measured by days would have to be recounted to reflect that the days now were longer. Thus, there could not be any additional vacation time, simply because a vacation day might be a greater number of hours.

BACKGROUND

The Town of Harrison is a small municipality located in the western portion of Hudson County. The Town has approximately 14,500 residents within its land area of 1.22 square miles. The Town's real property valuation is broken down into 51% residential, 13% commercial, 30% industrial and 4% from apartments. The Town has virtually no vacant parcels of land. The Town falls within the definition of a "distressed city". This allows for assistance from the Division of Local Government Services for municipalities who face severe fiscal conditions and who need support in order to resolve ongoing fiscal problems. The Town has a household median income of approximately \$42,000, a median family income of approximately \$50,000 and a per capita income of approximately \$20,000. The Town urges attention be paid to the financial resources of the Town and to give considerable weight to the Town's designation as a "distressed city" when considering the PBA's financial demands.

As of May 1, 2004, the police department consisted of 2 Captains, 8 Lieutenants, 10 Sergeants, and 29 Patrolmen. There are five patrol squads and the department maintains officers assigned to Special Operations, Community Police/Dare/School Resource, Traffic Safety Bureau, Detective Bureau/IAD/

Juvenile and the Hudson County Prosecutor's Task Force. The department is active with the uniformed crime reporting (UCR) data reflecting the greatest crime activity in the classifications of robbery (21), assault (113), burglary (61), and motor vehicle theft (123). The PBA urges that substantial weight be given to salary comparisons in other police departments in Hudson County which it believes reflects that its unit members are under-compensated for the type of activities undertaken by its department when compared with other municipalities within the County.

POSITIONS OF THE PARTIES

There are a substantial number of issues in dispute as reflected in the last offers of each party. I proceed to a general summary of the arguments and evidence offered by the parties in support of their respective positions on the disputed issues. Although the Town and the PBA make reference to all of the statutory criteria, the Town's arguments emphasize financial impact on the Town, its residents and taxpayers and the PBA's arguments emphasize comparability and the continuity and stability of employment of its law enforcement personnel.

The Town

The Town submits a vast array of financial data including Annual Financial Statements (AFS) and municipal budgets for fiscal years 2002, 2003 and 2004. In addition, the Town has submitted into evidence, a Report on Examination of

Accounts for the year 2002 from its independent auditor providing detailed accounts and summary of virtually all of the Town's financial activities. The Town contends that "These documents demonstrate that the Town of Harrison does not have the financial wherewithal to provide the salary increases sought by the PBA at this time. Therefore, any economic adjustment in money or time, must be tempered by the arbitrator to reflect the serious realities."

The Town also contends that significant weight must be paid towards pattern of settlement. In particular, the Town points to the issuance of an interest arbitration award in the fire department of 4.0% per year for 2005 and 2006 and that the guidelines in that award should be followed. The Town asserts that there is no basis to exceed that determination and urges rejection of the PBA's demand for 5% per year. Pointing to the PBA's argument that promotions be made within the police department, the Town seeks the denial of any such demand citing limitations on its ability to promote placed upon the department by the State of New Jersey. The Town seeks rejection of the PBA's proposals to equate the Lieutenant and Captain salary to that of police Captain and Deputy Chief respectively citing the excessive costs associated with this proposal.

The Town acknowledges the salary comparisons the PBA has made with other police departments in the County but rejects the PBA's demand for 5% salary increases because the comparability data shows that the Town has maintained its relative standing with neighboring departments even if existing

salary levels do not reach those of neighboring apartments. The Town concludes that an award essentially following the fire department resolution would maintain the position of police officers when compared to their colleagues in the relevant geographic area.

The Town seeks denial of the PBA's proposal to increase the 0.50% payment for NCIC/SCIC certification citing the position of the New Jersey Division of State Police that this payment should not extend to all unit employees.

The Town also presents evidence with respect to private sector wage comparisons and submits that the private sector wage increases do not support additional pay raises beyond that which otherwise would be set by the Harrison Fire settlement. The Town makes similar argument with respect to cost of living data.

The Town makes reference to the PBA's proposal modifying any of the PBA's proposal changing time off benefits in the areas of vacation and sick leave. In particular, it opposes the proposal for an unlimited sick leave program. The Town opposes this proposal but contends that, if the current program is modified, the sick leave payment on retirement benefit must be terminated effective with any change made to the sick leave program. Further, the Town urges that a trial period would have to be adopted to provide for review if any change is made.

The Town also makes specific reference to the respective proposals concerning vacation. The Town argues that "with respect to unlimited vacation accrual, the State of New Jersey has called to the town's attention the fact that there is a restriction as a matter of law to not more than two years accumulation of unused vacation entitlement. The State of New Jersey has directed the Town of Harrison to pursue this in the negotiations, and consequently the Town of Harrison has made the request that it has in these sessions. Given the requirement of the Town to cooperate with the State of New Jersey through the Distressed Cities program, the Arbitrator is urged to assist the Town of Harrison and find in our favor on this matter."

Based upon all of the above, the Town urges that its last offer be adopted in its totality.

The PBA

The PBA urges that great weight be given to the continuity and stability of employment statutory criterion citing substantial turnover of police officers within the department. In support of evidence it has submitted on this factor, the PBA makes the following argument:

Since 1995 the Harrison Police Department has experienced a significant employee turnover rate. In the past nine years, sixteen employees, of the 56 employee department, have left the agency for positions within other law enforcement agencies. Of those

sixteen employees, the Town of Harrison assumed the costs of training fourteen of them.

In more recent times, the Town has had difficulty in recruiting new employees. Although the Town sought to recruit employees from the Hudson County Sheriff's Office, via the Intergovernmental Transfer Program, both the Town and the PBA have learned that a job within the Harrison Police Department is not enticing to Sheriff's Officers who have significantly less earning potential.

Through our contacts in various agencies, and specifically the Hudson County Sheriff's Office, the PBA has realized that our low starting salary, numerous salary steps, limited vacation allowance and tumultuous work schedule are the primary reasons for the apparent lack of interest in employment within the Harrison Police Department.

As a result of the aforementioned, our department has been operating below its recommended staffing for quite some time. Without corrective action, the Town will continue to incur overtime expenses, operate with diminished manpower, and remain unable to attract the most desirable employees.

With respect to salary, the PBA contends that its salaries compare unfavorably with those in surrounding Hudson County municipalities. For comparison purposes, the PBA points to the existing salary schedules contained in the Agreement. In particular, the PBA emphasizes the patrol officer maximum salary of \$65,182 which compares favorably only to the municipality of East Newark which has few police officers. For this reason, the PBA seeks increases of 5% annually. The existing schedule reads as follows:

Effective 1/1/04

<u>Title</u>	<u>Salary</u>
Deputy Chief	\$99,232
Police Captain	\$84,384
Lieutenant	\$80,237
Sergeant	\$74,525

Patrolman: Hired Before 07/01/01

Begin Year One	\$27,500
Begin Year Two	\$46,631
Begin Year Three	\$49,814
Begin Year Four	\$52,555
Begin Year Five	\$57,738
Begin Year Six	\$59,668
Begin Year Seven	\$65,182

Patrolman: Hired After 07/01/01

Begin Year One	\$27,500
Begin Year Two	\$38,379
Begin Year Three	\$46,631
Begin Year Four	\$49,814
Begin Year Five	\$52,555
Begin Year Six	\$57,738
Begin Year Seven	\$59,668
Begin Year Eight	\$65,182

Effective 1/1/94, all unit employees with NCICSCIC Certification shall receive a differential of .25%. Effective 1/1/95 that differential shall be increased to .50%.

The PBA also submits that its superior officers are poorly paid when compared to other superior officers in the County. In support of this contention, the PBA submits the following chart depicting salary comparisons for its superior officers.

2004 Salaries for Police Superiors for all Hudson County Municipalities

Town/City	Sergeant	Lieutenant	Captain
Bayonne	\$73,290.00*	\$84,282.00*	\$96,925.00*
East Newark	\$65,390.00	\$68,963.00	\$73,058.00
Guttenberg	\$75,221.00*	\$86,693.00*	\$99,481.00*
Harrison	\$74,525.00	\$80,237.00	\$84,382.00
Hoboken	\$78,520.00*	\$89,351.00*	\$108,305.00*
Jersey City	\$85,206.00	\$94,068.00	\$102,718.00
Kearny	\$75,778.00*	\$88,262.00*	\$99,264.00*

North Bergen	No Data Available	No Data Available	No Data Available
Secaucus	\$90,761.00*	\$99,750.00*	\$108,746.00*
Union City	\$83,427.00	\$95,994.00	\$110,333.00
Weehawken	\$78,210.00	\$89,944.00	\$103,432.00
West New York	\$74,071.00	\$86,666.00	\$101,402.00

*3.5% utilized for purpose of comparison, refer to attached charts for more info.

The PBA also contends that there are inequities in the salary levels for superior officers when compared with the salaries paid for fire officers both within the Town of Harrison and also throughout Hudson County. The PBA argues that, for this reason, a change is warranted to move the salary level for Lieutenant rank to the salary level of the Captain rank and the salary level of the Captain rank to that of Deputy Chief. In its view, rank comparisons should also be made between the Police Captain rank with Fire Deputy Chief, Police Lieutenant with Battalion Chief and Police Sergeant with Fire Captain. When rank comparisons are made within the Town of Harrison, the PBA concludes that its superior officers are not paid on a comparable basis.

The PBA also proposes compensation for police officers who provide training within the department. The PBA further contends that it is appropriate that each of the five existing squads have a Field Training Officer designated to serve in this capacity. Although the emphasis for this designation is on training without supervisory authority, the PBA seeks compensation equivalent to the difference between Sergeant and top step police officer.

The PBA has proposed changes to existing vacation benefits. The current vacation benefit is referenced in Article VIII of the Agreement as follows:

ARTICLE VIII – VACATIONS

A. The Town shall maintain its existing vacation policies for the period January 1, 2002 through December 31, 2004.

Policemen	6 work days after six months of service
(new hires hired after 1/1/98)	12 work days after 2 full years of service
	17 work days after 5 full years of service
Policemen	20 work days per annum
Sergeant	21 work days per annum
Lieutenant	22 work days per annum
Captain	23 work days per annum
Deputy Chief	24 work days per annum

B. Longevity Vacation:

One (1) additional work day per annum for every five (5) years of service

C. Addendum to be inserted.

The first point of the PBA's proposal is to add an additional two vacation days per year to the existing schedule. The PBA also proposes that all patrolmen, regardless of seniority, receive 20 vacation days per year. This would be accomplished by eliminating the contractual reference to new hires hired after January 1, 1998 who currently receive a schedule ranging from 6 to 17 work days depending upon length of service. The PBA acknowledges that if its proposals are awarded the amount of vacation time for accrual must be limited to two years.

The PBA also seeks modification of the existing sick leave program. That program is contained in Article X of the Agreement and provides for the following:

ARTICLE X – SICK LEAVE

Every employee shall be entitled to sick leave, with pay for reasons of sickness or disability on the following basis:

- A. During the first year of employment, one and one-quarter ($1\frac{1}{4}$) workday of sick leave for each completed calendar month of service.
- B. After one (1) full year of employment, fifteen (15) workdays of sick leave, in each calendar year.
- C. Unused sick leave shall be cumulative without limit as per Civil Service.
- D. During the month of March of each year, the Police Department shall furnish written notice to each member a full accounting of all used and unused sick leave as of December of the preceding year.
- E. Effective January 1, 1987, each employee, upon retirement, shall be entitled to time off with pay, or in a cash lump sum at the employee's option, prior to his retirement, of one-half ($\frac{1}{2}$) of his accumulated sick leave.
- F. 1. Effective January 1, 1990, a member retiring with fifteen thousand (\$15,000) dollars or less of terminal leave pay shall be entitled to this payment in one (1) lump sum upon retirement. However, if the retiring member's terminal leave pay is greater than fifteen thousand (\$15,000) dollars, he/she shall receive three (3) equal and annual installment payments: the first installment will be upon retirement; the second installment will be paid one year after the effective date of retirement; and the third installment will be paid a year after the second installment. There will be no interest added. Provided further that in no event shall the first payment be less than \$15,000.00. If the member dies, the sick leave benefit shall be payable to the spouse or the estate in the same manner as

outlined above. The maximum payment for terminal leave shall not exceed an individual's one year annual salary, except that this limitation shall not apply to employees who had attained twenty-five (25) years of service as of January 1, 1996.

2. Effective at 12:59 p.m., December 31, 2002, each employee shall, upon their retirement, be entitled to time off with pay, or a lump-sum cash payment at the employee's option prior to his retirement, 95.75% of one-half ($\frac{1}{2}$) of his accumulated sick leave. If a retiring employee's terminal pay is \$15,000 or less, he will be entitled to this payment in one (1) lump sum cash payment upon retirement. However, if the terminal leave pay is greater than fifteen thousand (\$15,000) dollars, then the retiree shall receive three (3) equal cash installments: the first installment will be upon retirement; the second installment will be paid one (1) year after the effective date of retirement; and the third installment will be paid one (1) year after the second installment. There will be no interest added. Provided further that in no event shall the first payment be less than \$15,000.00. If the member dies, the sick leave benefit shall be payable to the spouse or the estate in the same manner as outlined above. The maximum payment for terminal leave shall not exceed an employee's one year annual salary, except that this limitation shall not apply to employees who had attained twenty-five (25) years of service as of January 1, 1996.
- G. Effective at 12:59 p.m., December 31, 2002, the retiring employees' entitlement to one-half ($\frac{1}{2}$) of their accumulated sick leave as set forth above shall be reduced to 95.75% of the actual amount and will not exceed fifteen thousand (\$15,000.00) per year. All other elements of this program as set forth shall be continued.
- H. Absences due to line of duty or work-connected injury will not be charged against the sick leave provided in Paragraphs A, B, C, D, E, and F.
- I. Upon the death of an active member, the Town shall pay to the spouse or estate, the monetary value of all earned unused vacation, personal days, sick time and holiday pay.

Specifically, the PBA seeks a modification of the sick leave program to discontinue the set amount of paid sick leave now provided and, in its place, provide for an unlimited sick leave program. The PBA acknowledges that if this were awarded it would result in a discontinuation of payment for unused sick leave as contained in Article X. Those amounts of accumulated sick leave would be placed in a bank or put on the side in the event that the parties are to ever revert back to a sick leave provision which sets the number of sick days.

The PBA seeks increases in payments for NCIC/SCIC certification in the amount of 0.25% on January 1, 2005 and January 1, 2006. The current payment is 0.50%. The PBA points out that the amount of this payment is comparable to the amount of the EMT stipend received in the fire department which was recently increased by 0.25% in 2005 and 2006. According to the PBA, it simply seeks comparable increases.

The PBA also proposes that a bill of rights provision be incorporated into the Agreement. The PBA contends that such provisions are common in law enforcement agreements and that the absence of this type of provision in its Agreement deprives its members of procedures guaranteeing due process.

The PBA also proposes to change the current work schedule. That schedule consists of three days on, two days off with 8 hour days worked on rotating shifts. The PBA proposes that the patrol division have steady shifts with

three days on, two days off with 9.5 hour days. The PBA contends that its proposed work schedule will result in operational and administrative efficiencies while promoting the work and welfare of police officers by having more regular days off. The PBA acknowledges that if such change were made, a conversion for paid time off would be necessary on a no gain, no loss basis.

The PBA proposes that it receive survivor's benefits. The PBA points to an existing Town ordinance providing for this benefit as well as its inclusion in the recent award for firefighters.

DISCUSSION

I have carefully reviewed and thoroughly considered the arguments and evidence submitted into the record by the Town and the PBA in support of their respective positions. The Town and the PBA have offered testimony and considerable documentary evidence in support of their last offers.

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

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

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

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

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

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

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

(4) Stipulations of the parties.

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

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

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

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

I will now address the merits of the testimony and the evidence presented by the parties at the hearing as they relate to the issues which the parties have placed before me for determination.

The PBA has proposed that there be a Bill of Rights provision in the Agreement. There is merit to this proposal. This type of a provision is common in many law enforcement agreements. Any such provision should be reasonable

and should provide the police officer with procedural rights set forth in the Agreement. Any such rights should not intrude on the Town's ability to conduct meaningful investigations on any matter under investigation. Keeping these principles in mind, I award the following:

- A. Any employee who is being questioned by a Superior Officer on a matter, which could lead to the discipline of said employee, shall, at his/her request, have the right to have a PBA representative present during such questioning.
- B. Any employee who is or may be the subject of a criminal investigation or recipient of criminal charges shall be given all rights due to any and other citizen under the same circumstances.
- C. The questioning of an employee shall be done at a reasonable hour, preferably when the employee is on duty. An employee who is called into work on his off-duty time or held over his regular work shift at the request or order of a Superior Officer in order to answer any sort of job-related questions, or to be present or participate in any sort of disciplinary proceedings, said employee shall be compensated in accordance with the overtime provisions of this Agreement.
- D. If a verbatim record is being made of the questioning, either via stenographer, court reporter, or electronic recording device, the employee shall be so informed and shall be permitted, upon his request, to have a copy of said record.
- E. Nothing shall be placed in an employee's personnel file without the employee having been notified; having received a copy of said material; and having signed the original document to be so placed. Said signature does not represent the employee's agreement with the content thereof, but is merely indicative that this provision has been complied with prior to such placement. The employee shall have the right to attach to and have become considered as part of the original document, such response or rebuttal as the employee may deem as necessary.

The PBA has proposed a change to the existing work schedule. I have considered the PBA's evidence and argument from which it concludes that a change to a steady shift, three on/three off work schedule with a 9.5 hour workday in the patrol division, would produce operational and administrative efficiencies as well as benefiting police officers with additional days off. I have also considered the Town's position opposing the change proposed by the PBA.

I decline to award this proposal because I do not find the record evidence on this issue to be sufficiently comprehensive to enable me to award or reject this proposal. Instead, I find that the interests of the parties as well as the public will be served by the convening of meetings between the PBA and the Chief of Police to allow for good faith review of the PBA's proposal. Such review would allow for a broader analysis of all relevant considerations including any impact on the administration and operation of the police department. Consideration would include whether the work schedule should be changed and if so, if there should be a one year trial period, the standards for review of any work schedule change during this period and whether paid time off should be recalculated on a no gain/no loss basis. The meetings should commence no later than January 1, 2005 and conclude no later than June 30, 2005.

The PBA has proposed that the terms and conditions of the Town's policy on survivor's benefits be granted. The elements of the Town's policy directly and intimately affect unit personnel and there is merit to the PBA's proposal that this

policy, as practiced under Town ordinance, be implemented as it has for other Township employees.

The PBA has proposed a 0.25% increase for NCIC/SCIC Certification for all employees on January 1, 2005 and January 1, 2006. This payment is currently set at 0.50%. Given the fact that a similar payment amount exists in the fire department for EMT and that similar increases were awarded in the fire department over this identical time period, there is merit to awarding the economic portion of this proposal. However, the record reflects that the payments to all employees for this type of certification may not be consistent with the view of the New Jersey Division of State Police that this payment not be automatically extended to all unit employees. Because the record reflects that the intent of this payment is to encourage and maintain efforts towards keeping firearm and protective equipment at maximum levels, contractual reference to NCIC/SCIC Certification payment shall be deleted and, in its place, this payment shall be incorporated into a firearm and protective equipment maintenance provision.

The parties' positions with respect to salary and salary related issues are extensive. Among the relevant considerations are the Town's financial posture, external comparability between the Town's police department and other municipal departments within Hudson County, internal comparability between the

Town's police and fire departments and the appropriateness of the current salary schedule for unit personnel.

Comparability data among Hudson County municipalities does establish that salary levels are at the low end of the County. The only community with a lower salary structure is East Newark which, except for its geographical location adjacent to Harrison, is not otherwise comparable. The PBA asserts that a 5% increase is justified given its relative standing in the County. While this argument must be considered, more substantial weight must be given to the settlement by Award in the Town's fire department which increased salaries by 4% effective January 1, 2005 and 4% effective January 1, 2006. A 4% increase also fares well when compared to the increases for 2004 in municipalities such as Jersey City, Union City and West New York. The terms of a 4% award for 2005 and 2006 can be implemented without adverse financial impact on the governing body, its residents or taxpayers. For these reasons, 4% increases in years 2005 and 2006 are awarded.

In addition to the general salary increase, the PBA contends that certain salary modifications are warranted in the superior officer ranks given the significant differences in pay now received by those in the ranks of sergeant, lieutenant and captain in comparison with compensation received by these ranks in all Hudson County municipalities except for East Newark. In support of this

contention, the PBA offers the following chart comparing compensation levels which include base salary and longevity.

**Hudson County
2002 – 2003
Base Salary with Longevity**

Base Salary with Longevity	2002			2003		
	Sgt's Base	Lt's Base	Capt's Base	Sgt's Base	Lt's Base	Capt's Base
Bayonne City	\$68,750.00	\$79,060.00	\$90,921.00	\$70,812.00	\$81,432.00	\$93,648.00
Corrections Hudson Cty	--	--	--	--	--	--
Hudson Cty Courts	--	--	--	--	--	--
East Newark Boro	\$61,636.00	\$65,004.00	\$68,864.00	\$63,485.00	\$66,954.00	\$70,930.00
Guttenberg Twp	\$70,221.00	\$80,752.00	\$92,867.00	\$72,678.00*	\$83,752.00*	\$96,117.34*
Harrison Twp	\$68,574.00	\$73,125.00	\$78,394.00	\$71,146.00	\$76,598.00	\$81,334.00
Hoboken City	\$73,300.00*	\$83,411.00*	\$101,105.00*	\$75,865.00*	\$86,330.00*	\$104,643.00*
Jersey City	\$79,541.00	\$87,814.00	\$95,888.00	\$82,325.00	\$90,877.00	\$99,244.00
Keamy Township	\$70,741.00*	\$82,369.44*	\$92,665.00*	\$73,216.00*	\$85,278.91*	\$95,908.27
North Bergen Twp	--	--	--	--	--	--
Prosecutor's Hudson County	--	--	--	--	--	--
Secaucus Twp	\$84,727.00	\$93,118.00	\$101,516.00	\$87,692.00*	\$96,377.00*	105,069.00*
Sheriff's Hudson Cty	--	--	--	--	--	--
Union City	\$75,146.00	\$86,420.00	\$99,381.00	\$78,152.00	\$89,877.00	\$103,356.00
Weehawken Twp	\$72,310.27*	\$83,158.00*	\$95,628.82*	\$75,202.00	\$86,484.00	\$99,454.00
West New York Twp	\$69,980.00	\$80,709.00	\$94,432.00	\$71,394.00	\$83,534.00	\$97,737.00

* 3.5% adjustment used for comparison

The PBA stresses that while Sergeant pay does not compare favorably, the compensation gap widens considerably in the ranks of Lieutenant and Captain. The remedy the PBA seeks for this disparity is to move the salaries for Sergeant, Lieutenant and Police Captain up to the equivalent rate of pay currently received by Lieutenant, Police Captain and Deputy Chief. The Town opposes this proposal as unwarranted on the merits and too costly in impact.

I conclude that the PBA has established a basis for an adjustment in compensation for the ranks of Sergeant, Lieutenant and Captain given the

substantial disparity in relative salaries for these ranks throughout Hudson County. In addition, a comparison of salary rates between the superior ranks in the police and fire departments serve as a basis for an adjustment in the salary levels for the police superiors. I agree with the Town that the PBA's proposal is unwarranted and too costly in impact, but I award a less costly proposal which relies upon a direct comparison in salary between the rank of Police Captain and Fire Battalion Chief and between the rank of Police Lieutenant with Fire Captain. This adjustment shall be effective July 1, 2004. The salary of Police Sergeant shall be adjusted to the rate of pay received by the old Police Lieutenant rate also effective July 1, 2004.

I also find merit in the PBA's proposal to award compensation for those police officers the Town designates as Field Training Officers. Assignments to this position would benefit the welfare of the public by having a police officer per each patrol squad designated as a Field Training Officer with responsibility to assume a training role on a permanent basis. The Town is skeptical of this proposal but asserts that if such designations were made no more than four such designations should be made. The precise duties and responsibilities for this designation rests with the Town as well as the sole authority to make assignments. Given the existence of five police squads, one designation per squad for this purpose is appropriate. Designations shall be based upon the highest score a police officer receives from the 2001 written promotional exam for Sergeant. Given the significance of the assignments, there is justification for

the five designees to receive the difference in salary between patrol maximum and Sergeant effective July 1, 2004. Because of the disagreement over the number of designees the amount to be calculated shall be the aforementioned difference multiplied by four and then divided by the five designees. Thereafter, the designees shall receive the across-the-board increases awarded.

I next turn to the issue of vacation. The PBA has not established a basis to increase the maximum number of vacation days for police officers to 22 by adding 2 days to the current vacation schedule. I deny this proposal. The existing vacation program must be modified because it allows for unlimited vacation accrual and the Town has established that it is restricted by law to not allow more than two years accumulation of unused vacation entitlement. In modifying this benefit, I award a two year accrual. The current amounts of vacation accrual shall be red circled for each employee who has maintained a vacation accrual. In consideration for this modification, I award an elimination of the contractual differential by seniority which will result in all officers, regardless of hire date, receiving 20 vacation days. These changes shall be effective January 1, 2005.

The final issue concerns the sick leave program. The Agreement currently provides for a set days program. Prior to this, the Agreement contained an unlimited sick leave provision pursuant to statute. The Town does not agree with the PBA's proposal, but its objections are more closely tied to the PBA

maintaining the benefits of both an unlimited sick leave program and the current set number program. These objections can be overcome by discontinuing the payment of sick leave that has been unused at the time of retirement. With this condition, I award the PBA proposal. There should be an examination of the impact of this change to the unlimited sick leave program after one year of experience. This would allow the Town the opportunity to revert back to the set number of sick leave days based upon that experience. The Town's discretion with respect to its ability to revert back to the set number program would be sole and absolute. Because of the potential for a reversal in the sick leave programs, the current sick leave banks shall be put on the side in the event the Town reverts back to the set number per year.

In making a reasonable determination of the disputed issues, I have placed significant weight on internal comparability within the Town and external comparability with other Hudson County municipalities [N.J.S.A. 34:13A-16g(2)(c)]. These factors do not stand alone and must be balanced against the remaining statutory criteria. Clearly, a 4% adjustment in wages is consistent with increases in the fire department. The alignment of police salaries in the superior officer ranks with the salaries in the fire officer ranks allows for greater salary comparability within the Town as well as adjusting the superior officer salaries to a more comparable level for superior officers within Hudson County. The Agreements in evidence reflect disparities which will be narrowed by the terms of the Award. This latter point also addresses N.J.S.A. 34:13A-16g(8) by

enhancing the continuity and stability of employment by providing an additional incentive for police officers to remain employed by the Town. This conclusion is warranted given the record evidence reflecting that there has been a substantial turnover in police personnel. A separate but related criteria requires applying overall compensation presently received [N.J.S.A. 34:13A-16g(3)]. I have done so and conclude that this factor, coupled with the comparability evidence, warrants the salary modifications which I have awarded. These modifications are consistent with furthering the interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] which are served by providing equitable adjustments which do not cause adverse financial impact on the governing body, its residents and taxpayers [N.J.S.A. 34:13A-16g(6)] and do not cause the Town to exceed its lawful spending limitations [N.J.S.A. 34:13A-16g(5)].

The terms of the award will not compel the Town to exceed its statutory spending limitations [N.J.S.A. 34:13A-16g(5)]. The 2004 budget has an allowable appropriation within the Cap of \$19,071,000.93 based upon the Town's decision to utilize 2.5% increase in addition to carrying forward a Cap bank of \$1,408,272. While the Town elected to utilize a 2.5% spending limitation, the additional 2.5% which is legally allowable amounts to \$430,845. The overall data reflects that the Town can legally appropriate up to an additional \$652,428 over the allowable appropriation. This, of course, does not imply that the existence of these monies requires support for the economic demands of the PBA or that they can be expended on labor agreements without adverse financial impact.

However, it does establish that the Town can lawfully fund the terms of the Award. While the PBA has argued for greater increases than those awarded, the financial data reflects that an award of the PBA's demands could cause adverse financial impact. Considerations requiring that the PBA's demands not be adopted as proposed include a modest decline in assessed valuations from \$485,000,000 in 1998 to \$475,000,000 in 2002, an increase in delinquent taxes over the same time period and a higher percentage in the municipal apportionment of the total tax levy from 1998 to 2002. Also relevant, but given less weight, is the cost of living factor [N.J.S.A. 34:13A-16g(7)]. The terms are above the cost of living but are more closely tied to internal settlements within the Town which are above the CPI.

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

AWARD

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

2. **Salaries:**

Each step of the salary schedules shall be adjusted by 4% in 2005 and by an additional 4% in 2006. Prior to these dollar adjustments, the salaries for Lieutenant and Captain shall be set equivalent to the salaries for the ranks of Fire Captain and Battalion Chief set by the salary schedules in the fire department agreement effective July 1, 2004. Also effective July 1, 2004, the salary for the rank of Police Sergeant shall be set with the salary for the old rank of Police Lieutenant prior to the setting of the Lieutenant with the Fire Captain rank.

3. **Work Schedules:**

The existing work schedule shall remain in effect. The Chief of Police and the PBA shall convene in committee for good faith review of the PBA's work schedule proposal, including, if such change occurs, to consider converting the number of hours in paid time off to be commensurate with the old schedule in the event of the adoption of a new schedule and the creation of a trial period with procedures for return to the former work schedule. The meetings should commence no later than January 1, 2005 and conclude no later than June 30, 2005.

4. **Bill of Rights (New Provision):**

- A. Any employee who is being questioned by a Superior Officer on a matter, which could lead to the discipline of said employee, shall, at his/her request, have the right to have a PBA representative present during such questioning.
- B. Any employee who is or may be the subject of a criminal investigation or recipient of criminal charges shall be given all rights due to any and other citizen under the same circumstances.
- C. The questioning of an employee shall be done at a reasonable hour, preferably when the employee is on duty. An employee who is called into work on his off-duty time or held over his regular work shift at the request or order of a Superior Officer in order to answer

any sort of job-related questions, or to be present or participate in any sort of disciplinary proceedings, said employee shall be compensated in accordance with the overtime provisions of this Agreement.

- D. If a verbatim record is being made of the questioning, either via stenographer, court reporter, or electronic recording device, the employee shall be so informed and shall be permitted, upon his request, to have a copy of said record.
- E. Nothing shall be placed in an employee's personnel file without the employee having been notified; having received a copy of said material; and having signed the original document to be so placed. Said signature does not represent the employee's agreement with the content thereof, but is merely indicative that this provision has been complied with prior to such placement. The employee shall have the right to attach to and have become considered as part of the original document, such response or rebuttal as the employee may deem as necessary.

5. Survivor's Benefits:

The PBA shall be granted survivor's benefits which shall be consistent with the practice implemented pursuant to the Town's ordinance.

6. Field Training Officer:

The Town shall designate Field Training Officers, set their duties and responsibilities and have the sole authority to make assignments. The Town shall assign a Field Training Officer to each of the five patrol squads based upon the highest score achieved in the 2001 written promotional exam for Sergeant. The stipend for this assignment shall be in identical amount to the difference as it exists between patrol maximum and the sergeant rate of pay multiplied by four positions the Town had considered appropriate for this designation divided by the five positions awarded. This stipend, to be placed into base pay, shall be paid to police officers assigned as a Field Training Officer effective July 1, 2004 to be then adjusted by across-the-board percentage increases.

7. NCIC Certification:

Effective January 1, 2005 the 0.50% NCIC Certification stipend shall be deleted and replaced by a Firearm and Protective Equipment Maintenance stipend. The amount of that stipend shall be 0.75% effective January 1, 2005 and 1.0% effective January 1, 2006.

8. Vacations

Vacation Accrual - Effective January 1, 2005, the existing unlimited vacation accrual program shall be discontinued. In its place there shall be a two-year vacation accrual. The remaining aspects of the vacation program shall be kept. The current amounts of vacation accrual shall be red circled.

The differential by seniority shall be eliminated so that all officers get 20 vacation days effective January 1, 2005.

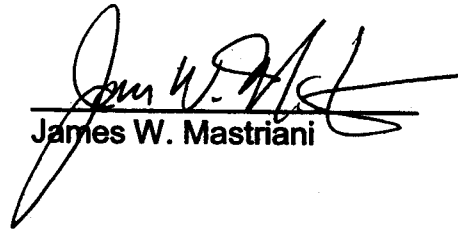
9. Sick Leave

Sick days - Effective January 1, 2005:

Eliminate current set amount benefit. An unlimited sick leave program shall be created using statutory language setting the policies. There shall be a one (1) year trial period recognizing the Town's discretion to go back to the old sick leave provision. Any such decision shall not be arbitrable.

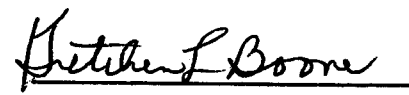
During the existence of the unlimited sick leave program no sick leave payment or terminal leave payment shall be provided which use sick days currently accrued upon retirement. The existing sick leave accruals shall be kept in a bank to be put on the side in the event the Town reverts back to the old sick leave provision.

Dated: October 30, 2004
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 30th day of October, 2004, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



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