

In the Matter of Arbitration Between:

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**TOWNSHIP OF MONTGOMERY**

"Employer,"

- and -

**PBA LOCAL 355 (SUPERIORS)**

"Union."

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Docket No. IA-2004-104

**INTEREST ARBITRATION  
DECISION AND  
AWARD**

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Township:**

Steven S. Glickman, Esq.  
Ruderman & Glickman

**For the SOA:**

Daniel Sweetser, Esq.  
Lozier, Lazzaro & Sweetser, PC

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425. Parties to this impasse are the Montgomery Township PBA Local 355, Superior Officers Association [the "SOA"] and the Township of Montgomery [the "Township"]. The Township and the SOA are parties to a collective negotiations agreement [the "Agreement"] that expired on December 31, 2003. The bargaining unit consists of two (2) Lieutenants. Pre-arbitration mediation sessions were conducted but the impasse remained, causing the dispute to proceed to formal interest arbitration.

An interest arbitration hearing was held on November 18, 2005. The record was closed on February 1, 2006 upon receipt of post hearing briefs.

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

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

## **THE LAST OFFERS OF THE PARTIES**

### **The Township**

1. **Duration**

The Township proposes a contract term effective January 1, 2004 through December 31, 2007.

2. **Salaries**

The Township proposes a salary increase of two (2.0%) percent effective January 1, 2004; a two (2.0%) percent salary increase effective January 1, 2005; a two and one-half (2.5%) percent salary increase effective January 1, 2006; and, a salary increase of two and one-half (2.5%) percent effective January 1, 2007.

3. **Overtime**

The Township proposes that effective upon the issuance of your Award, Lieutenants be exempt from, and therefore ineligible for, overtime compensation.

### **THE SOA**

1. **Term of contract:** 4 years

2. **Salary Adjustment:** 7% effective January 1, 2004 to bring the members up to par with the average pay for lieutenants in neighboring municipalities.

3. **Annual Salary Increase:** 4% per year.

4. **Vacation Days:** An additional 9 days per year to bring them up to par with the neighboring municipalities.

5. **Personal Days:** 1 additional day per year.

6. **On Call Pay:** 7% per year.

7. **Longevity Pay:** 5% at 15 years, 10% at 20 years up to a maximum of \$10,000 per year.

8. **Cafeteria Plan:** An additional \$1,000 per year.
9. **NJ PBA Convention:** One member permitted to attend up to 5 days without being charged for leave.

### **BACKGROUND**

The Township is located in the southern portion of Somerset County. It has approximately 18,000 residents living in a land area of 32.62 square miles. There are 30 employees in the police department including two (2) Lieutenants, eight (8) Sergeants, three (3) Detectives and seventeen (17) Patrol Officers. The Patrol Officers, Detectives and Sergeants are represented in a separate bargaining unit under a collective negotiations agreement effective January 1, 2004 through December 31, 2007. This proceeding solely concerns the two Lieutenants who are in a separate bargaining unit of superior officers. The superior officers' agreement expired on December 31, 2003. The Township employs a Police Director and does not employ a Police Chief nor a Captain. The Police Director position, while a managerial executive, is a civilian position. Thus, the Lieutenant position is the highest ranking law enforcement position in the department.

Substantial demographic evidence was submitted into the record. The data is relevant because much of the parties' presentations deal with internal comparability within the Township and external comparability within the County. The Township is one of 21 municipalities in Somerset County. Nineteen of the

municipalities within the County have paid police departments. Two of the municipalities, Millstone Borough and Rocky Hill Borough, do not maintain police departments. Within Somerset County, the Township ranks 3<sup>rd</sup> in land area (32.62 square miles), 18<sup>th</sup> in persons per square mile (535.9), 6<sup>th</sup> in population (17,481), 8<sup>th</sup> in per capita income (\$48,699) in 1999, 7<sup>th</sup> in median value for single family homes (\$348,500) in 2000, 6<sup>th</sup> in net taxable valuation (\$3,040,033,805) in 2004, 6<sup>th</sup> in state equalized value (\$3,655,427,363) in 2004. Its effective tax rate of 2.187 ranks 6<sup>th</sup> in the County in 2005. There were 212 crimes reported in 2004, a rank of 5<sup>th</sup> in the County. Of these crimes, 4 were classified as violent, a rank of 10<sup>th</sup> within the County.

Substantial evidence was also submitted into the record concerning comparable salaries and benefits in other police departments. The Township and the SOA agree on the relevance of the comparability criterion but do not agree on the weight to be given to the comparisons that each have argued from. The Township contends that all of the municipalities in Somerset County are relevant for comparison purposes while the SOA emphasizes three county municipalities, Bridgewater, Franklin and Hillsborough and also Princeton Borough, a neighboring Mercer County municipality. Because these four municipalities sit close to Montgomery, the SOA asserts that they present a better comparison than the more "distant county municipalities."

A series of events occurred early in 2000 prompting unique circumstances that have significance to some of the issues at impasse. At that time, the Township had a Chief of Police. The Chief took a leave of absence but then separated from employment shortly thereafter. In the absence of a Chief, his duties were temporarily assigned to the two Lieutenants. The Lieutenants received an additional 10% of base pay in compensation as of March 10, 2000. The 10% additional compensation was based upon an application of the Township's Personnel Policy Manual rather than on a provision of the labor agreement. The additional compensation was to remain in effect until the Lieutenants were relieved of the temporary assignments. When a new Chief of Police was hired in December of 2000, the additional duties ceased as well as the additional 10% of base pay in compensation. The new Chief then resigned in March 2001. This prompted a return to the temporary assignment of some of the Chief's additional duties as well as the additional 10% in compensation until such time that the temporary duties were to cease. The Township hired a Police Director on July 9, 2001. The Township then adjusted the Lieutenants' salaries to remove the additional 10% in compensation because the temporary duties ceased.

On February 24, 2003, the SOA grieved the Township's decision to remove the 10% adjustment in compensation. When the matter was not resolved, the SOA submitted the grievance to arbitration. The Township contested the arbitrability of the grievance asserting that it was untimely. The

grievance arbitrator rejected the Township's arbitrability claim finding that the time period between July 9, 2001 and February 24, 2003 concerned mutual attempts to resolve the grievance and that, in any event, the issue represented a continuing violation. Although the grievance arbitrator found the grievance to be arbitrable she limited the date of any potential remedy to the February 24, 2003 grievance. The grievance arbitrator went on to find that the Lieutenants were continuing to perform law enforcement duties that had been reserved to the Chief because the Police Director did not, by law, have police powers and, by virtue of past practice, the Lieutenants were therefore entitled to an additional 10% of their base salary as compensation for the performance of such duties. The Township sought to vacate the arbitration decision in Superior Court. Prior to a decision being rendered by the court, the parties settled the litigation according to the following terms. The Lieutenants would continue to receive the additional 10% of base pay as compensation from January 2004 to May 2005 and would then receive a 7.5% of base pay as compensation from May 2005 to July 2007. As of July 7, 2007, the additional compensation would terminate. The settlement agreement further defined the job duties, assignments and responsibilities of the Lieutenant for future purposes.

The SOA asserts that the extra compensation in the settlement of the lawsuit are issues unrelated to the issues in this interest arbitration proceeding. However, the SOA addresses the issue in its arguments as it relates to an examination of the comparability criterion. The SOA points out that the

Township's exhibits that deal with "internal comparison/overtime" grossly overstate the compensation that Lieutenants receive because the total amount of compensation displayed on the exhibits include the settlement adjustments that eventually will terminate. For example, the 2004 figure of \$134,642 for one Lieutenant's "salary/overtime" figure and the other Lieutenant's figure of \$111,722 include overtime and the 10% adjustment to base pay that will eventually terminate. The SOA points out that the base salary for Lieutenants is only \$93,068, the same level that it was in 2003, the last year of the prior Agreement. The SOA contends that the Township should not be allowed to inflate their compensation level for the purposes of drawing comparisons within the Township and with other municipal departments. For comparison purposes, the SOA urges that the base pay of \$93,068 is the accurate compensation figure and that the additional compensation through July 2007, cannot be used for comparison purposes because the additional compensation is not within their contractual base pay and it will terminate in July 2007. The SOA contends that when the base salary for Lieutenants is compared with its comparison group (Bridgewater, Franklin, Hillsborough and Princeton Township), their base salary is \$3,360 below these departments during 2003 and the disparities will continue to grow if the Township's salary proposal is adopted.

I note that there appears to be some linkage between the parties' positions on some of the proposals that have been made in this proceeding to the issues present in the aforementioned litigation. The Township has paid



overtime for 2004 and 2005. Prior to that, the parties Agreement did not provide for paid overtime. The Township proposes that the Lieutenants be exempt from, and therefore ineligible for, overtime compensation effective upon the issuance of this award. The Township's argument in support of this proposal is set forth in its post-hearing brief as follows:

The Township has proposed the elimination of overtime eligibility for SOA bargaining unit members. In addition to how overtime compensation skews the total compensation given to SOA bargaining unit members as reviewed above, the history behind the Township's proposal is equally, if not more, important (Township Exhibit Book, Tab 3).

The history behind the Township's proposal is well illustrated in the Certification of Township Administrator Donato Nieman, and therefore will only be summarized in this brief.

In 1993, Lieutenants were not eligible for overtime compensation, but received a small lump sum stipend in lieu of overtime. This small stipend ended in 1993.

Based upon the SOA's representation that Lieutenants did not perform managerial functions and, therefore, pursuant to the Fair Labor Standards Act, would not be exempt employees, the Township agreed that effective January 1, 1998, Lieutenants would be eligible for overtime. However, in 2003, these same SOA bargaining unit members changed their position, arguing that they were performing managerial functions and entitled to additional compensation pursuant to the collective bargaining agreement! This representation, coupled with the testimony of these same SOA bargaining unit members, manifested itself in the aforementioned grievance arbitration award, which led to the stipulation of settlement (T-49) and additional compensation for these SOA bargaining unit members.

It is the Township's position that the SOA bargaining unit members cannot have it both ways. They cannot be eligible for overtime compensation pursuant to the Fair Labor Standards Act if they are managerial employees, and they cannot receive contractual compensation for performing additional duties if they are not acting

as managerial employees and eligible for overtime compensation pursuant to the Fair Labor Standards Act.

The Township's argument is buttressed by the October 14, 2005 opinion rendered by the United States Department of Labor (Township Exhibit Book, Tab 3). The duties for Police Lieutenants outlined in that opinion letter parallel the job duties being performed by the SOA bargaining unit members as represented to the Township and the grievance arbitrator by those same SOA bargaining unit members. Since these SOA bargaining unit members have been awarded pay for performing managerial functions, they are not eligible for overtime compensation pursuant to the Fair Labor Standards Act. Since the SOA bargaining unit members were contractually granted overtime compensation because of their contrary representation that would have made them eligible for overtime compensation pursuant to the Fair Labor Standards Act, and since that representation no longer holds true, these employees should no longer be entitled to receive overtime compensation.

For these bargaining unit members to continue to receive overtime compensation while receiving compensation for performing duties that render them exempt from overtime compensation pursuant to the Fair Labor Standards Act is inequitable, unreasonable, and unwarranted. Therefore, the Township submits that at least while SOA bargaining unit members receive additional compensation for performing managerial duties, they should not be entitled to overtime compensation as well.

The SOA urges rejection of the Township's proposal to eliminate payment for overtime. The SOA addresses this issue in its post-hearing brief as follows:

The one issue raised by the Township the SOA is compelled to address is its suggestion that it be relieved of its obligation to pay the Lieutenants for their overtime. Preliminarily, the Township's request is wholly improper because the Arbitrator does not have the authority to declare federal or state overtime laws inapplicable to the Lieutenants. Such a determination may be made only by the federal/state department of labor or a court of law.

Notwithstanding this point, the SOA's members are clearly entitled to be compensated for their overtime. Whether the Lieutenants are paid at time and a half as they have been historically paid or in

some other manner, they must be paid for hours worked in excess of 40 hours per week. Bridgewater, Franklin and Hillsborough all pay their superior officers overtime at time and a half. [SOA2, SOA3 and SOA4] These are three of the top paying municipalities in the county. If these neighboring municipalities pay their Lieutenants overtime, Montgomery Township should be required to do the same.

In the Princeton Decision, the Arbitrator recognized he could not rule on the entitlement of the SOA's members to overtime under the FLSA. However, he did rule that there are a myriad of circumstances that require Princeton's superior officers to work in excess of 40 hours per week and that they should be paid for their time. Accordingly, the Arbitrator awarded the SOA an annual overtime stipend of \$3,500 in 2002 and \$4,500 in 2003.

The SOA has no objection to a fair annual stipend to compensate its members for their overtime in lieu of time and a half so long as the stipend is fair. Based on the Arbitrator's Award in the Princeton Decision, the SOA submits that a \$7,500 annual stipend is fair for 2006 and 2007.

Another issue in dispute that indirectly relates to the prior litigation is on-call pay. The SOA proposes that the Lieutenants receive on-call pay equal to 7% of their base salary. The SOA offers the following support for its position:

Lt. Harkins and/or Lt. Parker are "on call" during non work hours throughout the year, but they are not paid for their on call time. The Township does, however, provide on call pay to PBA members. It pays them four hours of overtime when they are on call regardless of whether they are called in to work. [SSOA at VII(4)] Since the Lieutenants are perpetually on call, they do not expect the same level of compensation as the PBA. However, it is not reasonable for the Township to expect the Lieutenants to be on call constantly without any compensation at all. The SOA requests annual on call pay equal to 5% of their base salary for this required state of constant readiness.<sup>1</sup>

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<sup>1</sup> The final offer of the SOA is for 7%. It appears that the reference to 5% is a typographical error.

The Township urges rejection of the SOA proposal for on-call pay. The Township argues:

The SOA's demand for seven (7.0%) percent for on-call pay raises the SOA's demands from absurd to insulting. The SOA is demanding additional compensation for duties which have always been part of the Lieutenant's job description. Throughout the State and the Country, it has always been part of the job function of a higher ranking superior officer to be on-call, especially when that officer or those officers represent the highest ranking sworn law enforcement officers in the department.

Adding "insult to injury", the SOA ignores the aforementioned seven and one-half (7.5%) percent "salary adjustment" the Lieutenants will receive through July, 2007, based upon the grievance arbitrator's decision and subsequent settlement of their litigation, where this "salary adjustment" was obtained because of their alleged additional duties. To grant this demand would constitute no less than "double-dipping".

Turning to other compensation issues, the SOA seeks substantial increases in base salary for the Lieutenants based upon its contention that they are receiving below average pay when compared with Lieutenants in neighboring municipalities. Thus, it seeks an immediate 7% salary adjustment effective January 1, 2004 prior to receiving its proposed additional 4% per year as annual salary increases. Drawing further upon comparisons with neighboring municipalities, the SOA proposes an additional 9 vacation days per year, an additional personal day per year and longevity pay pegged at an additional 5% of base pay at 15 years of service and 10% of base pay at 20 years of service up to a maximum of \$10,000 per year. The SOA submits a chart of comparative salary and benefits for the neighboring municipalities based upon the collective negotiations agreements for those municipalities that were submitted into

evidence. The chart also reflects the SOA's comments and conclusions based upon the statistics.

**Summary of Sister Agreements  
[SOA Ex. #7]**

<b>Town</b>	<b>2003 Salary</b>	<b>% Increase</b>	<b>Vacation @ 25 Yrs</b>	<b>Longevity</b>	<b>Overtime</b>	<b>Other</b>
Bridgewater	\$102,211	4%	30	No	Yes	BA 1500 MA 2250
Franklin	\$92,660	4%	30	6% @ 20 8.5% @ 24	Yes	
Hillsborough	\$95,000	4%	30s	8% @ 20	Yes	
Hopewell	\$94,079		25 plus	No	No, but accrue comp	
Princeton	\$102,000		30 @ 22	2500 @ 20	Yes	
Averages	\$97,190	4%	29	3695 @ 24	Yes	
Montgomery	\$93,000		20	None	Yes	MA 1000

**Comments:**

1. In 2003, Montgomery paid its lieutenants \$4,190 less per year than its neighboring townships. It has offered a 1% increase in 2004 which comes to \$93,930. If we adjust the \$97,190 average salary of the neighboring towns by the 4% average annual increase for those towns, the average 2004 lieutenant's salary in the neighboring townships is \$101,077. In sum, the Township's offer of \$93,930 is \$7,147 less than the average lieutenant's salary in neighboring townships.
2. The neighboring township's average annual salary increase is 4%. This average is 3% more than that offered by the Township in year 1, 2.5% more in year 2 and 2% more in year 3. The average is also what the Township agreed to in its previous contract.
3. Montgomery's SOA receives an average of 9 less vacation days than neighboring towns.
4. Montgomery has no longevity pay which results in an average loss of \$3,695 per year.

**Conclusions:**

The Montgomery lieutenants receive an average of: (1) \$7147 less in salary per year, (2) 9 less vacation days per year and (3) \$3695 less in longevity pay per year.

The SOA offers the following argument with respect to its longevity proposal:

Montgomery does not provide longevity pay to its Lieutenants. The Township admits that 14 of the 17 Somerset County municipalities provide longevity pay. [Township's Longevity Entitlement Comparison]. The average longevity pay for county lieutenants with 20 plus years of service is about 8% of base salary. [See SOA3, SOA4, T15, T23, T33, T36, T38-39, T40, T44, T46] 8% of the lowest 2004 county salary is \$6,216. 8% of the highest 2004 county is \$8,372.40. In other words, 80% of all Somerset County Lieutenants receive between \$6,200 and \$8,400 in longevity pay. It is grossly unfair to deny this substantial benefit to Montgomery's Lieutenants.

The Township cannot offer as an excuse that it pays the Lieutenants well because it does not pay them well. Moreover, the Township's own comparison studies show that nine of the ten highest paying municipalities in the county pay longevity pay. Hence, there is no merit to such argument.

The Township urges rejection of the SOA's salary and salary related proposals. The Township contends that:

"... the SOA's demands are outlandish, unreasonable and unwarranted. These demands have no rationale relationship to either external or internal comparability, and fail to take into account the related statutory criteria of demographic comparability and the cost of living."

When addressing the issue of comparability, the SOA "cherry-picked" the municipalities it sought to utilize to support its position. The SOA considered only a relative few Somerset County municipalities, and even ventured outside of Somerset County in order to seek municipalities to favorably support its unreasonable demands based upon the comparability criterion.

On the other hand, the Township has presented documentation regarding the entirety of Somerset County. By utilizing the entire County for comparison, the Township has avoided any contention

that the Township "skewed" its data by picking only those municipalities supporting the Township's position. By utilizing the more traditional comparative data of the "county universe", without "cherry-picking" the municipalities to utilize for its comparability argument, the Township's proposals and arguments must be deemed more credible.

A Key element of the "comparability" statute criterion is "external comparability", or how the Township's employees compare to the same or similar employees in other municipalities. As stated previously, the SOA's comparative data is "skewed", while the Township's "universe" of all municipalities in Somerset County is more accurate and credible.

As demonstrated by the Township's External Comparison Data (Township Exhibit Book, Tab 2, Subtab 1), the Township's 2002 County and fourth in 2003. The new collective bargaining agreement between the Township and its patrol officers, covering the years 2004 through 2006 (SOA 1), granted patrol officers salary increases of four (4.0%) percent each year of the collective bargaining agreement. The Township's external comparison data reveals that for 2004, the Township's relative ranking was sixth. While this data shows the Township's ranking as fifth in 2005, the highest paying municipality, Bridgewater, has not yet negotiated its 2005 collective bargaining agreement. Even without Bridgewater, the Township's relative ranking for 2006 maximum salaries for police officers was sixth. Therefore, consistent with the demographic data, the Township's maximum salary for police officers ranked at the lower end of the top third of municipalities in Somerset County.

The Township also urges rejection of the SOA's proposals for nine additional vacation days. The Township makes the following argument in its post-hearing brief:

Whether this extremely absurd demand was made in "good faith" or was just a "ploy" to give the Interest Arbitrator room to partially grant the SOA's demand, neither is warranted. While it is accurate that the Township's vacation allotment is comparatively low for Lieutenants with many years of service, the Township's Lieutenants rank comparatively high in vacation entitlement with lesser years on the job (Township Exhibit Book, Tab 2, Subtab 1). Over the course

of a Lieutenant's career, the vacation entitlement "evens out", making the Township's vacation allotment competitive over an entire career. It must be noted that the vacation entitlement for Lieutenants is the same as all other uniformed members of the Township's police department.

The Township also urges rejection of the SOA's demand for longevity pay.

The SOA's demand for longevity is also unwarranted. A review of the comparative data (Township Exhibit Book, Tab 2, Subtab 1), reveals that only seven (7) out of eighteen (18) municipal police departments in Somerset County provide longevity for present employees. A vast majority of Somerset County municipal police departments have either eliminated longevity or have never provided longevity at all. In addition, Montgomery Township is the only municipality in Somerset County offering a deferring compensation plan matched by the Township up to two (2.0%) percent of the employee's salary. This deferred compensation plan, with its tax implications, more than compensates for any inaccurate perception that the Township's compensation package is comparatively insufficient in this area.

Additional proposals of the SOA include adding an additional \$1,000 per year to its Health Insurance Cafeteria Plan and a proposal for union leave to attend the State PBA Convention. This would allow for up to five days for the attendance of one member without being charged for leave. The Township opposes these proposals. The Township describes the request for an additional \$1,000 to be unsupportable because the cafeteria plan it provides is said to be unique within the County by providing \$1,000 annually for health insurance expenditures that are not eligible for reimbursement through its health insurance coverage. The Township also points to the fact that it allows the unused portion of the \$1,000 to be carried over from year to year up to a maximum of \$2,000. With respect to the union leave proposal, the Township argues that this benefit is



covered by statute and there is no need to enhance a benefit that is provided by law.

### **DISCUSSION**

The Township and the SOA have submitted comprehensive presentations including many exhibits concerning the statutory criteria. All have been reviewed and considered. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g (1) through (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.

The issues in dispute are primarily economic in nature including salary adjustment, salary, overtime, vacation and personal days, on-call pay, union leave, longevity, and health benefits. There are no non-economic issues in dispute as that term has been defined. The merits of each proposal will be reviewed individually. They must also be considered in the context of the totality of changes to be awarded. I refer to criterion N.J.S.A. 34:13A-16g(8), a standard that directs the consideration of factors ordinarily or traditionally considered in a determination of wages and benefits. One such element requires that consideration be given to the totality of the changes to be made to an existing agreement. This consideration is consistent with the statutory requirement that the arbitrator must determine what the total net annual economic changes are for each year of the agreement and whether they are reasonable after applying the relevant criteria. Thus, any decision herein to award or deny any individual economic issue in dispute will include consideration as to the reasonableness of the individual issue awarded in relation to the terms of the entire award.

Based upon the positions advanced by the parties and the evidence submitted in support of those positions, the statutory criterion that is the most relevant in making a reasonable determination of the issues is a comparison of the wages, salaries, hours and conditions of employment of the Lieutenants with

those of other law enforcement employees within the Township and those within the county's and contiguous municipalities [N.J.S.A. 34:13A-16g(2)]. The interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] is always relevant but its application in this instance is more limited to how the terms of this award would impact upon the police services to be delivered to the Township and provide an overall framework for terms that are internally consistent with the departments operations. The overall compensation presently received by unit employees [N.J.S.A. 34:13A-16g(3)] is relevant to the extent that there is a relationship between those terms and the comparability evidence relied upon by the parties. The continuity and stability of employment does not appear to be a significant factor given the size of the unit and the seniority of the two employees [N.J.S.A. 34:13A-16g(8)]. There is no evidence nor any argument that the terms of the award or the positions of the parties would compel the Township to exceed its lawful authority [N.J.S.A. 34:13A-16g(5)]. The financial impact of the award on the governing unit, its residents and taxpayers [N.J.S.A. 34:13A-16g(6)] will not be an adverse impact due to the size of the negotiating unit that limits the amount of expenditures necessary to fund a new agreement. The cost of living [N.J.S.A. 34:13A-16g(7)], while tending to support the Township's position, is of little consequence in rendering a determination on the issues in dispute given the parties emphasis on internal and/or external comparability.

The statutory criterion that I believe is entitled to the most weight herein is the internal comparison and relative relationships between the Lieutenants and

the Sergeants and Police Officers who are employed by the Township. This does not exclude consideration of other evidence such as comparable terms for Lieutenants in other municipalities as is emphasized by the SOA. However, during this contract term, that evidence is less compelling than the terms that have existed and have been recently set for the vast majority of law enforcement personnel within the department. The Lieutenants unit is not a new negotiating unit and there are existing relationships between them and others in the department that should not be dramatically disturbed. The adoption of either party's final offer would do just that and would therefore be unreasonable.

The simple fact is that the Township employs Lieutenants, Sergeants and Patrol Officers who all work in the same law enforcement environment, have similar skills and training, and interact on a round the clock basis for the common goals of providing for the health, safety and welfare of the Township's residents and property. The relative terms and conditions of employment for those who work within the department must first be considered in the setting of new terms. Otherwise, internal conflict and discord would arise by splitting one group from another within their own professional community of interest. Professional identity within one department should not be undermined by linking one set of law enforcement personnel to different municipal departments or different governmental agencies when the most apt comparison at hand falls within one's own political subdivision. Thus, while the arguments and evidence that fall beyond the Township of Montgomery must be thoroughly considered and

evaluated on their own merits, the greater weight must be given to the terms that have been set within the department. This conclusion does not compel the setting of identical terms on all issues between the Patrol Officers, Sergeants and Lieutenants. The evidence does reflect that the Lieutenants, as the highest ranking law enforcement officers in the Township, have some demands placed upon them that are unique to their role and must be compressed. With this background in mind, I proceed to decide the individual issues in dispute.

### **Duration**

The Township and the SOA each propose a contract term effective January 1, 2004 through December 31, 2007. I received their proposals as a stipulation pursuant to N.J.S.A. 34:13A-16g(4). The duration of the new agreement shall be January 1, 2004 through December 31, 2007.

### **Cafeteria Plan**

The Agreement now provides for a Comprehensive Health Benefit Plan, a plan commonly referred to as a "cafeteria plan." The plan provides for the following benefit:

- A. 1. The Township shall provide reimbursement of any actual expenditures by an employee on behalf of himself or his dependents for one or more of the following, provided that the expenditures are not eligible for reimbursement through insurance coverage.

- a. Dental services;
  - b. Optical services;
  - c. Prescription drugs; and
  - d. Premium costs for dental and disability insurance.
2. The maximum annual reimbursement shall be \$1,000.00.
- B. The employees shall be allowed to carry over unused portions of their cafeteria plan allowance from year to year up to a maximum of \$2,000.00.

The SOA proposes that the maximum annual reimbursement be raised from \$1,000 to \$2,000. The existing plan, as it states, provides cash for expenditures that are not reimbursable under the broad health insurance plan that the Township provides. The agreements in evidence reflect that the Township is unique in providing such a plan. The PBA agreement provides reimbursement up to \$1,000 with a \$2,000 carry-over limit. Insufficient justification has been presented to increase the maximum annual reimbursement for this unit. Accordingly, this proposal is denied.

### **Vacation**

The SOA proposes that the Lieutenants receive an additional 9 days of paid vacation per year. In support of its proposal, the SOA refers to municipalities such as Bridgewater, Franklin, Hillsborough and Princeton who provide a maximum of thirty (30) vacation days. The Township urges rejection of this proposal for two reasons. The first is that the existing vacation schedule is

the same for Lieutenants as it is for Sergeants and Patrol Officers. The second reason offered by the Township is that the current schedule, while providing for fewer vacation days at its highest level, compared with other municipalities, "evens out" because it provides for a greater number of vacation days at earlier levels than most other municipalities; for example, an employee receives seventeen (17) days after five (5) years of service and twenty-one (21) days after fifteen (15) years of service.

I have considered the SOA's emphasis on vacation benefit levels in other departments. While these levels appear higher than the Township's at the maximum level, I decline to depart from a uniform benefit level than what has been set within the Township. This proposal is denied.

### **Personal Days**

The SOA proposes that the Lieutenants receive an additional day of personal leave. Currently, the benefit level is two days of administrative personal leave in each calendar year, the same benefit as in the PBA agreement. Insufficient justification has been presented to increase the current provision. Accordingly, this proposal is denied.



## **Longevity**

The SOA has proposed that the Lieutenants receive longevity pay. The Agreement currently does not provide for longevity pay. This is consistent with the PBA Agreement for Patrol Officers and Sergeants that also does not provide longevity pay. The SOA's main argument is that longevity pay exists in fourteen (14) municipalities in Somerset County. The Township responds that only seven (7) municipalities provide longevity for present employees because a vast majority of County departments have either eliminated longevity or have never provided longevity at all. The Township also points out that Montgomery Township is the only municipality in the County to offer a deferred compensation plan that provides for a Township match of salary deferrals up to 2% of an employee's salary regardless of length of service.

In evaluating the merits of this proposal, I give substantial weight to internal comparisons. The Township's Patrol Officers and Sergeants do not have longevity pay under their agreement that expires on December 31, 2007. To award this proposal would break the salary relationship between the Lieutenants and other members of the department by rewarding two of the department's employees based solely on the length of their service while the vast majority of the departments Police Officers would remain unrewarded. I have considered the SOA's argument that many other County departments have a longevity program. However, some, such as Bridgewater and Hopewell do not and some

have eliminated this benefit for new hires. After considering all of these facts, I do not award the SOA's proposal on longevity.

### **NJ PBA Convention**

The SOA proposes that one of its Lieutenants be permitted to attend up to 5 days to attend NJ PBA conventions without being charged for leave. The Township seeks rejection of this proposal asserting that leave for attendance at such conventions is covered by statute. No evidence has been presented that shows the need for a contractual benefit that is not consistent with the benefit that is now mandated by statute. Accordingly, this proposal is denied.

### **Salary and Salary Adjustment Proposals**

The salary and salary adjustment proposals of the SOA must be considered in a single analysis because each proposal directly deals with Lieutenant base salary. The SOA has proposed annual salary increases of 4% per year while the Township has proposed a salary increase of two (2.0%) percent effective January 1, 2004; a two (2.0%) percent salary increase effective January 1, 2005; a two and one-half (2.5%) percent salary increase effective January 1, 2006; and, a salary increase of two and one-half (2.5%) percent effective January 1, 2007.

In addition to the across-the-board salary proposals, the SOA has proposed a 7% salary adjustment to base pay effective January 1, 2004. Its main contention is that this salary adjustment is required to bring the members up to par with the average pay for lieutenants in neighboring municipalities. The SOA acknowledges that this proposal, if awarded, would modify base pay prior to its proposed annual salary increases of 4%.

Because the Township and the SOA rely primarily upon internal and/or external comparability, I have set forth below the existing salary schedule for Patrol Officers and Sergeants employed by Montgomery Township as well as comparative salary charts for Patrol Officers, Sergeants and Lieutenants for all County municipalities whose agreements are in evidence. I have placed an asterisk next to the municipalities in the County that the SOA seeks to be compared with. The SOA also draws a connection to Princeton Borough because of its proximity to Montgomery.

#### **Schedule A-2**

##### **Employees Hired on or after January 1, 1999**

Step (Patrol Officer)	Effective 1/1/04	Effective 1/1/05	Effective 1/1/06
1 <sup>st</sup> Year of Service (Trainee 1 <sup>st</sup> 6 mos.)	\$36,458	\$37,917	\$39,483
1 <sup>st</sup> Year of Service (Trainee 2 <sup>nd</sup> 6 mos.)	\$43,959	\$45,717	\$47,546
2 <sup>nd</sup> Year of Service	\$50,001	\$52,001	\$54,081
3 <sup>rd</sup> Year of Service	\$56,044	\$58,285	\$60,617
4 <sup>th</sup> Year of Service	\$62,085	\$64,568	\$67,161
5 <sup>th</sup> Year of Service	\$68,126	\$70,851	\$73,685
6 <sup>th</sup> Year of Service	\$74,169	\$77,135	\$80,221

(Sergeant)			
1 <sup>st</sup> Year of Service	\$79,456	\$82,634	\$85,940
2 <sup>nd</sup> Year of Service	\$82,545	\$85,847	\$89,290

### **Lieutenant Maximum Salary**

	<b>Municipality</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
1.	Manville	\$98,377	\$102,312	\$106,404	\$110,660
2.	Bridgewater*	\$98,280	\$102,211		
3.	Montgomery	\$93,068			
4.	North Plainfield	\$91,945	\$95,623	\$99,448	
5.	Bernardsville	\$91,423	\$94,898		
6.	Bernards	\$91,278	\$94,883	\$98,678	\$102,625
7.	Franklin*	\$90,160	\$104,655	\$109,113	\$113,727
8.	Warren	\$86,745	\$90,215	\$94,343	\$98,637
9.	Somerville	\$86,506	\$89,967	\$94,375	
10.	Watchung	\$84,732	\$88,321		
11.	Branchburg	\$83,359	\$89,392	\$92,744	\$101,399
12.	Green Brook	\$82,924	\$86,400	\$90,000	
13.	Bound Brook	\$79,679	\$82,866	\$86,181	\$89,628
14.	Raritan Borough	\$74,903	\$77,899	\$81,015	\$84,256
15.	South Bound Brook	\$72,600	\$77,700	\$82,062	\$86,686

### **Sergeant Maximum Salary**

	<b>Municipality</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
1.	Bridgewater*	\$90,480	\$94,099		
2.	Manville	\$88,426	\$91,963	\$95,641	\$99,467
3.	Franklin*	\$82,143	\$95,420	\$99,555	\$103,834
4.	Bernardsville	\$81,956	\$85,070		
5.	North Plainfield	\$81,336	\$84,589	\$87,973	
6.	Bernards	\$78,766	\$81,878	\$85,153	\$88,559
7.	Hillsborough*	\$77,768			
8.	Branchburg	\$77,525	\$80,626	\$86,448	\$94,515
9.	Watchung	\$77,030	\$80,311	\$83,724	
10.	Warren	\$76,740	\$79,809	\$83,522	\$87,382
11.	Montgomery	\$76,370	\$82,545	\$85,847	\$89,280
12.	Green Brook	\$76,014	\$79,200	\$82,500	
13.	Somerville	\$75,223	\$78,232	\$82,065	
14.	Bedminster	\$74,734	\$81,463	\$84,916	\$88,514
15.	Bound Brook	\$72,123	\$75,008	\$78,008	\$81,129
16.	Far Hills	\$70,731	\$73,996	\$79,369	\$82,543
17.	Raritan Borough	\$70,319	\$73,132	\$76,057	\$79,099
18.	Peapack-Gladstone	\$69,871	\$72,841	\$75,754	
19.	South Bound Brook	\$67,600	\$72,700	\$77,062	\$81,686

### Patrol Officer Maximum Salary

	<b>Municipality</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
1.	Bridgewater*	\$77,027	\$80,109		
2.	Manville	\$75,272	\$78,283	\$81,414	\$84,671
3.	Bernards	\$73,882	\$76,800	\$79,872	\$83,067
4.	Montgomery	\$71,316	\$74,169	\$77,135	\$80,221
5.	Bernardsville	\$71,105	\$73,807		
6.	North Plainfield	\$70,727	\$73,556	\$76,498	
7.	Branchburg	\$70,438	\$73,256	\$76,003	\$83,096
8.	Franklin*	\$70,143	\$76,978	\$80,422	\$83,987
9.	Watchung	\$70,027	\$72,828	\$75,741	
10.	Green Brook	\$69,104	\$72,000	\$75,000	
11.	Far Hills	\$68,731	\$71,996	\$74,876	\$77,871
12.	Bedminster	\$68,563	\$74,556	\$77,549	\$80,651
13.	Somerville	\$68,385	\$71,120	\$74,605	
14.	Hillsborough*	\$67,331			
15.	Warren	\$67,034	\$69,715	\$73,544	\$77,526
16.	Peapack-Gladstone	\$66,992	\$69,840	\$72,633	
17.	Bound Brook	\$66,563	\$69,226	\$71,995	\$74,874
18.	Raritan Borough	\$65,780	\$68,411	\$71,147	\$73,993
19.	South Bound Brook	\$62,400	\$67,080	\$71,105	\$75,371

The SOA places great emphasis on the higher salaries paid to Lieutenants in communities such as Bridgewater, Franklin, Hillsborough and Princeton (Township and Borough) citing their geographical proximity to Montgomery. As further support, the SOA points out that supplemental compensation such as longevity is absent in Montgomery, a fact that aggravates the disparity.

The Township opposes the SOA's proposal for salary and salary adjustments. The Township asserts that the SOA has "cherry picked" certain municipalities for comparison while the Township "universe" of all county municipalities is more accurate and credible. The Township asserts that the Township's relative ranking for its police officers is fifth or sixth within the County and is at the lower end of the top third of the municipalities in Somerset County.

The Township further contends that the Lieutenants rank within the County was third in 2003 and would be fifth in 2004 and seventh in 2005 if the Township's proposal were awarded. These relative placements, the Township argues, would be consistent with the relative ranking of its police officers and also consistent with the relative demographic comparability data in evidence when Montgomery is compared to other municipalities within the County.

The SOA has premised many of its arguments upon a Borough of Princeton award issued by this arbitrator on March 30, 2003. It seeks enhancements to salary and salary related benefits comparable to what was awarded in that matter. As I have already found, the most substantial weight with respect to comparability in this proceeding must be given to internal comparisons. The terms set in the Borough of Princeton are relevant but must be given less weight. It should be noted that in the Borough of Princeton, internal comparisons between the Lieutenants and Captain to other police personnel were given substantial weight. I set forth below the language awarded in that case that applied that principle:

I first address the several issues proposed by the SOA which seek terms and conditions of employment which would exceed the benefit levels contained in the rank and file PBA agreement. N.J.S.A. 34:13A-16g(2.c) is a relevant factor in considering the SOA's proposals. This factor requires consideration of terms and conditions of employment "in public employment in the same ... jurisdiction". There is merit to the Borough's contention that it would be detrimental to the Borough to set benefit levels which ignore the terms of the PBA Local 130 agreement. I reach the same conclusion which I set forth in the previously issued recommended award.

Although increased benefit levels for superior officers beyond that of police officers is not necessarily inconsistent with the statutory criteria, I conclude that these issues should be resolved at uniform benefit levels regardless of rank. This is especially applicable in this instance where the superior officers are negotiating their initial agreement.

These issues include SOA proposals for longevity pay, clothing allowance, holiday pay and vacations<sup>1</sup>.

<sup>1</sup> I note that the parties' proposals on personal days correspond to that set in the PBA Local 130 agreement and shall be considered to have been agreed upon.

This principle was also applied with respect to across-the-board salary increases:

"... I conclude that the salary increases for the Lieutenants, as proposed by the Borough [of Princeton], should be set at the same percentage of increase which Police Officers and Sergeants have received in the PBA Local 130 agreement."

In this matter, across-the-board increases of 4% represent a reasonable determination of the salary issue. Identical across-the-board percentages were received by the Township's Police Officers and Sergeants. An application of this formula for Lieutenants will maintain the existing differentials between Sergeant and Lieutenant. Failure to maintain these differentials would not be in the public interest. Although the PBA settlement did not extend into 2007, an award of 4% is consistent with the average of settlements that were reached for that year and are in the record of this proceeding.

The SOA has asserted that the Township's Lieutenants do receive less compensation than Franklin, Manville, Bridgewater and Hillsborough. But their

relative county ranking to Lieutenants compared with the Township's Police Officers relative county ranking is higher and the Lieutenants in Montgomery also enjoy a higher differential between Sergeants and Lieutenants than exists in all County municipalities except for Hillsborough. The data reflects that there is a 17.25% differential in Montgomery compared with 11.25% in Manville, 8.6% in Bridgewater, 9.75% in Franklin and 11.5% in Bernardsville, and 15% in Somerville. The differential is 15% in the Borough of Princeton. This award maintains the 17.5% differential in Montgomery. The salaries for Lieutenants according to the terms of this award shall be:

2004	2005	2006	2007
\$96,790	\$100,662	\$104,688	\$108,876

In reaching the conclusion that 4% increases per year are warranted, I have considered, but rejected, the SOA's proposal for a 7.5% salary adjustment. The proposed salary adjustment would be inconsistent with the maintenance of internal comparability described above and would, without proper justification, increase the salary differentials between the Township's Sergeants and Lieutenants.

### **Overtime**

The Township proposes that effective upon the issuance of this award, Lieutenants be exempt from overtime compensation. The history of this issue has already been referred to and need not be repeated here. It suffices to say



that Lieutenants historically did not receive overtime as evidenced by prior labor agreements. Commencing in 2004, the Township and the SOA agreed to provide for paid overtime. The record reflects that Lieutenants received a substantial amount of overtime compensation in 2004 and 2005. The Township now seeks a return to the prior agreements that did not provide for overtime compensation. Its main rationale is the position taken by the Lieutenants during the litigation that they were performing duties previously performed by the Chief that, from the Township's point of view, made them exempt employees and not entitled to overtime under the FLSA. The Township submits an advisory opinion from the United States Department of Labor that it believes supports its view. The SOA vigorously objects to the Township's proposal and seeks to maintain paid overtime compensation.

A decision with respect to FLSA obligations is beyond my authority in this proceeding. The fact is that each Lieutenant has received a substantial amount of paid overtime in 2004 and 2005. While this is evidence of an overall attractive compensation package, it is also evidence that there is necessary work for Lieutenants to perform above and beyond their normal workday and workweek. As a contractual matter, I conclude that the existing Agreement requiring overtime should be maintained. Accordingly, I deny the Township's proposal.

## **On-Call Pay**

The SOA has proposed that the Lieutenants receive on-call pay equal to 7% of their base salary. The SOA submits that Lieutenants are perpetually on call and that it is unreasonable for the Township to expect them to be on call constantly without any compensation. The SOA also refers to the PBA agreement that provides for on-call pay pursuant to Article VII.G(4):

An employee placed "on call" shall receive four (4) hours overtime compensation, regardless of whether the employee is actually called in to work.

The Township urges rejection of this proposal because being on call has always been part of the Lieutenants' job description and that the highest ranking superior officer has always been required to be on call especially, as here, when the Lieutenants are the highest ranking sworn law enforcement officers in the department.

The SOA highlights the arbitration decision in the Borough of Princeton as providing for a stipend in consideration of Lieutenants and captains being on call. It seeks a similar determination here. I am not persuaded by this argument for the following reasons. In Borough of Princeton, the record reflected that Lieutenants and Captains routinely performed work and were on call, including overtime, in excess of their normal workweek without receiving any additional compensation. It was documented in that proceeding that if overtime were paid the level pay would exceed \$40,000 annually. In Borough of Princeton, a dollar

stipend was awarded because there was the absence of any financial reward for work and standby hours beyond the normal workweek. This was found to diminish the relative compensation between those superior officers and those that they supervised. In the instance of Montgomery Township, Lieutenants are receiving paid overtime. Those payments have been substantial. For these reasons, I do not find sufficient justification for the award of an on-call stipend during this contract term.

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

### **AWARD**

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

2. **Duration**

The duration of the new agreement shall be January 1, 2004 through December 31, 2007.

3. **Overtime**

The Township's proposal for the elimination of paid overtime is denied. The parties' agreement to provide for paid overtime in 2004 and 2005 shall be carried forward as a new provision in the collective bargaining agreement.

4. **Salary**

The salary schedule for Lieutenants shall be adjusted by 4% increases retroactive to the effective dates stated herein:

January 1, 2004	\$96,790
January 1, 2005	\$100,662
January 1, 2006	\$104,688
January 1, 2007	\$108,876

Dated: July 24, 2006  
Sea Girt, New Jersey

\_\_\_\_\_  
James W. Mastriani

State of New Jersey     }  
County of Monmouth    }ss:

On this 24<sup>th</sup> day of July, 2006, 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.

\_\_\_\_\_