

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

**COUNTY OF HUDSON**

**-and-**

**Docket No. IA-2014-004**

**HUDSON COUNTY SHERIFF'S OFFICERS  
PBA LOCAL 334**

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Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the County:

Scarinci & Hollenbeck, attorneys  
(Sean D. Dias, of counsel)

For the PBA:

Lindabury, McCormick, Estabrook & Cooper, attorneys  
(Eric Levine, of counsel)

Witnesses:

Cheryl Fuller, County Finance Director  
John Inagaki, County Budget Officer  
Patrick M Sheil, County Labor Relations Director  
Andrew Conti, Undersheriff

Joseph Petracelli, PBA Local 334 Financial Analyst  
Cielo M. Gutierrez, Sheriff's Officer  
Toni Ann Sisk, FOP Lodge 127 President  
Joel Gotera, Sheriff's Officer  
Jason Occhipinti, PBA Local 334 President

**INTEREST ARBITRATION AWARD**

On October 21, 2013, the County of Hudson filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over a successor collective negotiations

agreement with Hudson County Sheriff's Office PBA Local 334. The previous agreement expired on December 31, 2012.

On November 13, 2013, I was appointed to serve as the interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 45 days of my appointment with no provision for any extensions.

An interest arbitration hearing was held on December 3 and December 5, 2013 at the Offices of the County Labor Counsel. Both parties were offered testimony and documentary evidence. The record included more than 230 exhibits. The hearing record was held open for the County's submission of an additional list of unit employees showing their date of hire for purposes of longevity calculations; the County's submission of a certification in lieu of testimony concerning one of the PBA's final offers which was amended at hearing; and the PBA's submission of an amended exhibit (PBA-2). All submissions were received by December 11, 2013 and the hearing concluded on that date. At hearing, both parties submitted Final Offers and calculations of their respective proposals. Post-hearing briefs were filed by December 13, 2013 and the record closed on

that date.<sup>1</sup>

On December 2, the County filed a Petition for Scope of Negotiations Determination (Docket No. SN-2014-046) with the Public Employment Relations Commission, asserting that five of the PBA's proposals are not mandatorily negotiable and therefore, may not be submitted to the interest arbitrator.<sup>2</sup> PERC determined that the Petition was not eligible for the Commission's expedited processing to permit a decision before the issuance of this award. N.J.A.C. 19:16-5.7(i) requires that I decide the negotiability issues.

#### **FINAL OFFERS OF THE COUNTY**

##### **Contract Duration:**

Five (5) years effective January 1, 2013 through December 31, 2017.

a. January 1, 2013 through December 31, 2013 -  
Effective January 1, 2013, salary level movement only with no percentage increase to the salary levels.  
(Total percentage increase of salary level movement is 5.45%)

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<sup>1</sup> Upon receipt of the County's amended employee list showing employees' dates of hire for longevity purposes, a question arose with regard to the correct date of hire to be used for counting length of service towards longevity. The County's list included "Sheriff's hire date" and a different date as the "original hire with County". Twenty-three employees had a break in service from their original hire date to their hire date with the Sheriff's office. Then contacted the parties to solicit a stipulation as to whether the original date of hire would be used, or the break in service would be subtracted from the calculation. The parties were unable to agree on a stipulation. I therefore infer, based upon common sense that the break in service would not be counted towards longevity credit, but rather, the total time the employee worked for the County would be bridged together for purposes of counting longevity credits.

<sup>2</sup> The PBA objected to the County's Scope of Negotiations Petition as being untimely filed. This is a matter better left to PERC's jurisdiction.

January 1, 2014 through December 31, 2014 - No salary level movement. 0% increase to a member's base salary. Increase in starting salary <sup>3</sup> in accordance with attached salary guide.<sup>4</sup>

January 1, 2015 through December 31, 2015 - No salary level movement. 0% increase to a member's base salary. Increase in starting salary in accordance with attached salary guide.

January 1, 2016 through December 31, 2016 - No salary level movement. Effective January 1, 2016, 2% increase to a member's base salary.

January 1, 2017 through December 31, 2017 - No salary level movement. Effective January 1, 2017, 2.15% increase to a member's base salary.

New employees hired after December 31, 2013 - Salary levels in accordance with attached salary guide. There will be no salary level movement on the guide throughout the contract.

The County proposes to modify the remaining salary provisions as follows:

b. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation.

c. There will be no automatic step movement, salary level movement or automatic salary level increase

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<sup>3</sup>The County's attached salary guide actually proposed an increase in the first several steps of the guide effective in 2014. The County explained that these adjustments were necessary to avoid compression between its new proposed entry level salary and the existing first three steps.

<sup>4</sup>The PBA objected to any consideration of the County's proposed modified salary guide for 2014 as it was contained in the attachment to the final offer and not in the final offer itself. This revised salary guide was attached to an accompanied the County's final offer and referenced in the final offer. Therefore, I am satisfied that this document was part of the final offer submitted by the County.

beyond the expiration date of this Collective Negotiations Agreement, i.e., December 31, 2017. All step and salary level movement shall terminate effective upon the termination of this Collective Negotiations Agreement, i.e., December 31, 2017.

**Overtime:**

The employer asks that sick time be excluded from the calculations of overtime. It also demands that the contract language in section one be modified to delete "in excess of any eight (8) hours per day."

**Holidays:**

Amend the article to provide as follows:

Notwithstanding the foregoing, the County reserves the right, at its discretion, to adjust the holiday schedule herein to conform to that promulgated by the State of New Jersey.

**Insurance:**

The County proposes to amend the existing contract language to the following:

- a. The insurance and health benefit levels as provided in State Law shall remain in effect.
- b. Prescription drugs: the prescription drug program is currently with the New Jersey Health Benefits Program. The County program shall be provided for the eligible employee, family and spouse, as set forth and defined by law.
- c. The County shall provide health coverage currently through the New Jersey Health Benefits Program. The County program shall be provided for the eligible

employee, family and spouse, as set forth and defined by law.

d. The County shall continue the basic County dental program, which shall be at a benefit level of the current plan. The County basic dental program shall be provided for the employee, family and spouse, as set forth and defined by law. The County and Union shall cooperate to secure State approval for the implementation of an employee-paid upgrade in the current dental insurance plan. Such upgrade will be at a no expense to the County. If implemented, the County will exert its best efforts to assure that Employee payments for the dental upgrade are treated as pre-tax income.

e. The County shall continue its present life insurance program benefit level of \$5,000.00.

f. A. The parties agree that the County shall have the unilateral right to select the insurance carrier, the program and/or to self-insure in its sole and absolute discretion. Any dispute dealing with the selection of insurance carrier, program, or decision to self-insure shall not be subject to the Grievance Procedure. No reduction in benefit level shall result.

f. B. Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over any such changes. However, as a participating SHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and/or benefit level in this agreement will be adjusted to reflect the change. The County will not be liable for any such change in benefit level or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, or an individual employee of the County from filing an appropriate challenge against the State for any such change. The County will provide notification of any such changes to the Union and employees. This provision covers all plans

under the New Jersey State Health Benefits Programs including but not limited to healthcare, prescription drugs, etc.

g. Add new section to reflect that employee contributions towards health care insurance benefits shall be made in accordance with applicable law. This amount may change from time to time based upon changes in legislation. The County has no input into or control over any such legislative changes. Accordingly, when such a change is made under law this agreement will be adjusted to reflect any change in contribution rate. The County will not be liable for any such change, or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union or an individual employee of the County from filing an appropriate challenge against the State for any such legislative change. The County will provide notification of any such changes to the Union and employees.

h. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation.

**New Article - Training:**

The County proposes to add the following provision:

Officers who receive training shall be obligated to remain in the employ of the County for a period of three (3) years after the training is complete or shall be responsible to refund to the County the cost and expenses of any training provided.

**Stipends:**

The County proposes that the EMT stipend will be increased to \$2,000 and the RN's stipend will be increased to \$3,000.

**Pittman Schedule:**

The County proposed to modify Section II (D) of the Pittman MOA to increase the overtime threshold from 80 hours to 86 hours.

**Article VI - Work Hours:**

The County proposes to delete the existing Section C and replace it with the following:

The Sheriff or his/her designee may schedule work hours to effectively run the operation of the Sheriff's Office.

Further the County proposes to modify the language in Section D to read as follows:

The Sheriff may reschedule with 96 hours' notice. The Sheriff will first consider volunteers. In the event of an emergency the Sheriff shall have the right to reschedule without giving notice. In all instances the final decision on rescheduling is in the sole discretion of the Sheriff or his/her designee.

The County also proposed to delete Sections E, G, H and I.

**Claims Adjustment:**

The County proposes the following new language:

Section 1. When an employee's personal property is damaged or lost as a result of an incident arising out of or incidental to the lawful performance of his or her duties as a Sheriff's Officer, the County shall reimburse the employee for the replacement value of the property, except as follows:

A. The County shall only be liable for loss or damage to jewelry or watches up to \$100.00.

Section 2. A claim for any such loss or damage must be reported to the County, in writing, within five (5) days of the loss or damage.



Section 3. At the County's option, an employee submitting a claim under this Article may be required to submit three (3) estimates in support of the claim. In such cases, the County shall reimburse the employee for the lowest estimated value of the claim.

Section 4. Employees who receive full or partial reimbursement from a third party, including insurance, for a claim paid pursuant to this Article must reimburse the County for any amount of money received from the third party.

**Off-Duty Work:**

The County proposes to increase the pay rate for off duty details from \$40.00 to \$45.00 effective upon Freeholder ratification for non-County funded jobs. The County proposes to further increase the rate to \$50.00 effective January 1, 2015 for non-County funded jobs. Additionally, the County proposes no change in the rate for officers performing off-Duty work for any Hudson County autonomous agency (i.e., Hudson County Schools of Technology, Hudson County Improvement Authority, etc.).

**Detail Days:**

The County proposes a contract provision that "detail days" will cease to exist and this will be a normal assignment or a volunteer (non-paid) assignment.

**Detective Assignments:**

The County proposes the following contract provision:

Detective 1 - Should any current Detective 1 be removed from the assignment as a Detective 1, the total allotment of Detective 1 assignments shall be reduced by that number until a maximum of 30 Detective 1 positions is achieved in the Department as a whole.

The maximum number of Detective 2 assignments will be nine (9).

**FINAL OFFERS OF THE PBA**

**Term of Agreement:**

3 years (01/01/2013 - 12/31/2015)

**Wages:**

2013 - Step increases frozen and no percentage increase;

2014 - All officers to receive step movement effective October 1, 2014; salary increases effective October 1, 2014 as follows: Step 6 - 1.25% increase; Step 7 - 1.25% increase; Step 8 - 1.25% increase; and Step 9 - 3.0 increase;

2015 - All officers to receive step movement effective October 1, 2015; salary increases effective October 1, 2015 as follows: Step 6 - 2.75% increase; Step 7 - 2.75% increase; Step 8 - 2.75% increase; and Step 9 - 3.25% increase.

Longevity, Detective Stipends, EMT/RN Stipends, and Clothing Allowance to remain at 2012 levels during the above three year term.

**New Hire Salary Guides Commencing on January 1, 2014:**

Step	2014	Step	2015
1	\$30,139.00	1	\$30,139.00
2	\$32,458.00	2	\$32,458.00
3	\$35,935.00	3	\$35,935.00
4	\$40,572.00	4	\$40,572.00
5	\$43,471.00	5	\$43,471.00
6	\$47,534.85	6	\$48,842.06
7	\$55,164.04	7	\$56,681.05
8	\$59,272.76	8	\$60,902.76
9	\$63,381.49	9	\$65,124.48
10	\$75,251.50	10	\$77,538.72
11	\$87,121.52	11	\$89,952.97

**Educational Incentive/Tuition Reimbursement:**

The PBA proposes to modify the current language to provide that educational reimbursements are paid to unit members without the County withholding any taxes, if any, which may be due. Additionally, the PBA proposes to streamline the process by providing for reimbursement requests to be submitted directly to the County (a person designated by the County) and not through the Sheriff's Office.

**Article XIV - Vacation:**

The PBA proposes to modify the current language to provide that all unit members shall be entitled to utilize their entire allotment of vacation days on January 1 of each year.

**Article III - Clothing Allowance:**

The PBA proposes to modify the current language to reflect that the economic cost and impact of any uniform or work-related gear/equipment change, alteration, modifications, or other adjustment shall be paid by the County of Hudson.

**Article III - Clothing:**

The PBA proposes to modify the current language to reflect that if officers' personal equipment, such as watches, cell phones, wedding bands and eyeglasses, are damaged during the course of employment, such items shall be replaced at the expense of the County to a maximum amount of \$300.00 per item, without the County withholding any taxes, if any, which may be due.

**New Section - Transfer Procedure:**<sup>5</sup>

The PBA proposes to establish a uniform procedure for selection of unit member(s) for any transfer between the Operations Division and Court Division (other than based on unique or specialized skills required for same), as well as establishing a minimum time period for the County to provide advance notice to any unit members of such transfer(s).

**Article I - Recognition Clause:**

The PBA proposes to modify the language to include Sheriff's Investigator's within the definition of Sheriff's Officers comprising PBA Local 334.

**Article VI - Work Hours:**

The PBA proposes to permanently incorporate the current Pittman schedule into the collective bargaining agreement.

**New Section - Use of County Facilities:**

The PBA proposes adding language providing that all unit members shall be entitled to use any exercise/gym/recreation facilities located or operated in any County buildings free of charge.

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<sup>5</sup>At hearing, the PBA President clarified that this proposal is intended to apply the transfer procedures currently in effect for the Patrol Division as set forth in the 2011 "Pittman Schedule MOA" to all other divisions of the Sheriff's Department. That is, officers could only be transferred between assignments on a voluntary basis except in the event of an emergency. I deemed this to be an amendment to the PBA's Final Offer. The record was held open until December 11 to permit the Employer an opportunity to respond to the amended proposal with documents and/or certifications in lieu of testimony. No further submissions were received.

**New Section - Off Duty Employment:**

The PBA proposes to add the following new provision to the contract:

- a. Establish a procedure to provide that PBA Local 334 and its unit members shall be afforded equal opportunity with other law enforcement agencies to engage in off duty employment within Hudson County, without restriction based on location of or source of funding for such employment opportunities;
- b. Establish hourly rate for work at (i) \$60/per hour weekdays 7:00 a.m. until 5:00 p.m.; and (ii) \$75/per hour for holidays, weekends, and weekdays from 5:00 p.m. until 7:00 a.m.;
- c. Officers shall be paid for a minimum of four hours for any off duty employment. For off duty employment of four or more hours but less than eight hours in duration, Officers shall be paid for a minimum of eight hours;
- d. The PBA shall be responsible for negotiating with vendors and scheduling/assigning officers to off-duty employment.
- e. The PBA shall be responsible to negotiate rates with vendors and be allowed to establish different rates than those set forth herein in section 12(b) on a case by case basis should circumstances dictate.

**New Section - Seniority:**

The PBA proposes to establish a vacation bidding procedure within the Court Division based on "Seniority", which shall be defined in identical fashion as it is defined in the Pittman Sidebar dated April 4, 2011 and as agreed to between the County and the Hudson County Sheriff's Superior Officer's F.O.P. Lodge 127. In the event that the vacation day(s) requested will occur

within seven (7) days of the request, the vacation request shall be awarded on a first come, first served basis. All vacation requests shall be submitted no less than twenty-four (24) hours before the requested vacation day(s).

**New Section - Off Duty Police Action:**

The PBA proposes to include language reflecting that as all Sheriff's Officers are on-duty twenty-four (24) hours a day, should an officer take action on his/her time off which would have been taken by an officer on active duty, it shall be considered police action. Such officer(s) shall have all rights and benefits concerning such action as if they were on active duty.

**Article VIII - Overtime:**

The PBA proposes to modify the current language to reflect that in the event of a department-wide recall, should any officer(s) be held over beyond his/her scheduled shift and thereby receive overtime, and such officer(s) is/are required to remain on duty continuously and into his/her next scheduled shift, such officer(s) shall continue to be paid overtime until completion of the officer's next scheduled shift.

**Leaves:**

The PBA proposes to modify the current language to reflect that officers who are on military leave, sick leave, extended sick leave, and training shall not be considered by the County in

determining to grant or deny vacation requests.

**Grievance Procedures:**

The PBA proposes to expand the definition of "grievance" to include any and all disputes between the County and the PBA or its members.

**STIPULATIONS OF THE PARTIES**

The parties stipulated the following facts:

1. Officers who are eligible for step movement on the salary guide receive such step increases in January following their anniversary date of service. However, pursuant to Article 44 of the contract, employees hired after October 1 of any given year will not move on the step guide until the following January.
2. Officers were not given step increases in 2013.
3. Officers who reach the next benchmark of service pursuant to the longevity schedule are advanced on the longevity guide on the following January.
4. Longevity increases were awarded in January, 2013.
5. The parties agree to the accuracy of the employer's list of unit employees, submitted on November 25, 2013 (C-3). The parties stipulate that Officer Jennifer Vernaglia was promoted out of the bargaining unit effective January 24, 2013.
6. The parties stipulate that longevity payments are based upon the employee's original date of hire with the County.

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**Demographics:**

At just under 47 square miles, Hudson County is the smallest county in New Jersey but is also the most densely populated, with 13,731 residents per square mile. It is located across the Hudson River from Manhattan, and is considered part of the New

York metropolitan area. It is bordered by Passaic County, Essex County and Union County. Its largest city is Jersey City, which is also the County seat.

The County of Hudson is a peninsula bounded by Newark Bay, the Passaic and Hackensack Rivers on the west, the Hudson River and New York City on the east, the Kill Van Kull on the south (separating the City of Bayonne and Staten Island, New York) and Bergen County on the north. The County consists of twelve municipalities: Jersey City, Bayonne, North Bergen, Union City, West New York, Kearny, Harrison, Secaucus, Guttenberg, Weehawken, East Newark, and Hoboken.

The estimated 2012 population of Hudson County is 652,302 ranking fourth in the State (PBA-II-2). There were 249,028 households within the County (PBA-II-4). The 2012 median household income for residents \$57,539; while the median family income was \$60,383 (PBA-II-4). The mean household income in the County was \$81,426 (PBA-II-4); while the mean family income was \$84,766 (PBA-II-4). The per-capita income in 2012 was \$50,033 (PBA-II-6; 10). In 2012, the percentage of Hudson County residents below the poverty level was 16.4%, or 104,677 of the 637,632 total population (PBA-II-3).<sup>6</sup>

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<sup>6</sup> Source data for this statistic is the 2010-2012 American Community Survey 3-Year Estimate; this total population estimate differs slightly from the 652,302 referenced earlier in this paragraph (source: U.S. Census Bureau 2012 Population Estimates).



In 2012, the average home price in Hudson County was \$341,819 versus \$173,214 in 2000. The average equalized home value was \$270,206 in 2012 and \$153,138 in 2000. The eleven-year average is a strong indicator of change in value.

The U.S. Department of Labor Bureau of Labor Statistics "Regional and State Employment and Unemployment -- January 2013" report showed the unemployment rate as "little changed." New Jersey had the third highest unemployment rate at 9.5%. (C-22)

The June 2013 fact sheet from the Bureau of Labor Statistics shows that the unemployment rate in Hudson County is over ten percent (10%), which is well above the national average. New Jersey's unemployment rate continues to exceed the national unemployment rate. (C-21)

**Sheriff's Department Organizational Structure:**

The Sheriff's Department is headed by the Sheriff. Reporting to the Sheriff is Undersheriff Andrew Conti. Reporting to the Undersheriff are levels of superior officers, then the Sheriff's officers. The Department also employs investigators and civilian employees. According to PBA President Jason Occhipinti, the Department currently employs 158 sheriff's officers, down from 179 sheriff's officers at the end of 2012. 14 officers quit or retired in 2012, and, as of the date of the hearing, 26 more retired or terminated their service in 2013.

The Sheriff's office consists of the Operations Division, Weights and Measures Division, Courts Division and Administration Division. Reporting to the Undersheriff of Operations is the Patrol Unit, the Detective Bureau, and the Bureau of Criminal Investigation. There is also an Office of Internal Affairs that reports to the Sheriff. According to Occhipinti, the Table of Organization calls for 210 sheriff officer positions.

In 2006, the County abolished its County-operated police department and transferred the patrol duties to the County Sheriff Patrol Division. There are 75 sheriff officers in the Court Division and the remainder of officers is assigned primarily to the Detective Division and Patrol. Since then, its Patrol Division is responsible for patrolling the County parks and roads within the County's 12 municipalities. The County has negotiated Inter-Local Services Agreements (PBA-9 through PBA-20) with its municipalities. These agreements give the County permission to, and responsibility for patrolling the County roads and parks within each municipality.

Calls for service to the Sheriff's patrol division come from several sources: from 911 emergency calls, calls routed from the municipality dispatch and walk-ins to the Sheriff's office. According to Occhipinti, there were approximately 27,000 calls for service, handled by the Patrol Division in 2012.

Sheriff's Officers in the Patrol Division work 12-hour

shifts on the "Pittman Schedule" (2 days on/2 days off; 3 days on/2 days off; 2 days on/3 days off). Sheriff's Officers in the Courts are responsible for security of inmates and the public in County buildings and in the courtrooms. They work an 8-hour shift, five days a week with most weekends and holidays off.

### ANALYSIS

#### Contract Duration:

The PBA proposes a successor contract of three years in length that would end in 2015; the Employer proposes a five-year agreement extending through 2017. The County maintains that its goal is to have all eight of its law enforcement contracts expire contemporaneously. To date, it has settled agreements with three of the units -- each of which is a superior officers' unit. All three of those contracts cover a five-year period 2013 through 2017. The County contends that awarding a five-year contract in this unit would further the County pattern of settlement.

The PBA argues that a three-year contract term protects the interest and welfare of the public while insuring the continuity and stability of employment by increasing morale and curtailing attrition. Occhipinti testified that the County's five-year term would be overwhelmingly negative to the PBA and lead to even more attrition. PBA contends that, with the strictures placed upon salary as a result of the 2% cap law, it seeks to

renegotiate sooner after the statute sunsets and at a time when the financial environment could be more positive. The PBA's argues that its proposed three-year contract is consistent with the principles espoused in Borough of Midland Park and Midland Park PBA Local 79, Docket No. IA-2013-013 (2013), wherein I concluded:

There was not much doubt that a longer contract provides a period of labor peace and stability which is beneficial to the parties and furthers the public interest. . . . However, both in New Jersey and nationally, we are in a period of economic uncertainty. Indeed, it is difficult to predict whether economic conditions will improve, deteriorate or remain stable. More importantly, I note that the provision of N.J.S.A. 34:13A-16.7(b), which restricts an arbitrator's award to 2% ("the hard cap"), is due to sunset in 2014. It is impossible to predict whether that legislation will be re-enacted, with or without modification, or be permitted to sunset. Because of the extreme impact of the hard cap on my ability to award a salary and benefits package which would more appropriately recognize the relevant statutory factors as set forth immediately above, I reluctantly conclude that the parties and the public interest would be better served if the parties were in a position to renegotiate the contract sooner rather than later.

The PBA asserts that, in light of the restrictions of the 2% "hard cap", entering into a long-term contract vastly diminishes the PBA's opportunity in the near future to attempt to address the member's concerns through renegotiations. A long-term freeze of members' salary guide movement -- an almost inevitable outcome of applying the hard cap over five-year contract -- would be demoralizing, according to Occhipinti, and would

contribute to further attrition.

The PBA argues that the County has offered no support for its' five-year contract term other than to point to settled superiors contracts, none of which dealt with step movement due to their inherent lack of salary schedules. It observes that, while the County would prefer to have its contracts expire contemporaneously, with twenty-two separate contracts, the County will likely be dealing with some unaligned contracts - an outcome which would cause it no harm.

On the one hand, PERC has recognized the importance of arbitrators following a pattern of internal settlements among various bargaining units of the employer's operations. "Pattern is an important labor relations concept that is relied upon by both labor and management ... deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units." County of Union, P.E.R.C. No. 2003-33, 28 NJPER 459,461 (¶33169, 2002). An interest arbitration award that does not give due weight to an internal pattern is subject to reversal and remand. County of Union, P.E.R.C. No. 2003-87, 29 NJPER 250,253 (¶75, 2003).

Here, however, recent five-year settlements with three of the County's eight sworn police units is not necessarily a pattern that I am compelled to follow, particularly in light of

the fact that all of those three units are superior officers with no step guide. Had those units gone to interest arbitration, the 2% annual increases to base salary would be within the statutory hard cap of 2%. However, in any bargaining unit where there is an increment step system, it would not be possible to maintain the 2% pattern of salary increases and still pay increments in any year of such a five-year contract. I also note that the statutory cap is due to expire in April, 2014. It imposes such a strict limit on the amount that can be awarded, that it would be unfair to the PBA members to saddle them with such a limitation for a long period after April, 2014. Of course, it is impossible to predict whether the statute will expire, be renewed as currently written, or be modified. The longer the period of compliance with the current limitations, the longer officers will be forced to either do without step movement or do without cost of living raises. Either way, employee morale will suffer and will make employee recruitment and retention problematic, leading to high turnover. The cost of training recruits, only to have them leave for better paying positions, is a waste of public resources and impacts negatively on the continuity and cohesiveness of the workforce, impairs employee morale, and is certainly not in the public interest. Further, while the economy is beginning to turn around, it is impossible to predict whether this will lead to inflationary

pressures in the next few years. For the foregoing reasons, I find that the public interest is better served by a shorter contract duration. Further, a three-year term will better enable the parties to evaluate and respond to economic conditions by renegotiating two years from now. I therefore adopt the PBA's proposal for a three-year contract, covering 2013 through 2015.

**Salary Increases/Increments:**

The County asserts that its final offer concerning salaries and increments is reasonable, supports the statutory criteria and should be awarded in its entirety. On the other hand, it contends that the PBA's offer exceeds the 2% statutory cap, exceeds the current settlement trends among law enforcement personnel, and exceeds the cost of living. The County points out that it has demonstrated extreme good faith and reasonableness by submitting a salary proposal that provides the maximum permitted under N.J.S.A. 34:13A-16.7(b). It asserts that its economic offer considers the financial impact on the governing unit, its residents and taxpayers and the public interest and welfare.

The County notes that the most recent Bureau of Labor Statistics report indicates that the CPI has increased a mere 1.0% before seasonal adjustment over the past twelve months.

It contends that the PBA's unreasonable wage proposal is nothing more than an attempt to obtain unjustifiable salary increases in an economic environment that has significantly changed for the worse over the last several years.

With regard to the statutory factor of the "stability and continuity of employment", the County observes that this criterion relates to employment issues such as layoffs, give backs, and salary freezes. Hillsdale, 263 N.J. Super. at 195. Specifically, the Appellate Division stated that arbitrators are required to consider facts such as salary structure, unemployment rates and employee turnover. Fox, 266 N.J. Super. at 51. It notes that Hudson County's unemployment rate stands at approximately eleven percent (11%), as compared with New Jersey's unemployment rate of 9.1%.

The County argues that it is unquestionable that a majority of the counties and municipalities in the State of New Jersey are facing financial difficulties. Law enforcement personnel have been laid off in New Jersey. Layoffs have also affected non-uniformed personnel. Within Hudson County, municipalities are also instituting layoffs. In June 2011, the City of Jersey City laid off 52 employees, and projected the layoffs of 56 more city employees.

With respect to the continuity of employment, the County



contends that the Union did not provide sufficient evidence to establish any significant issue of turnover of Sheriff's Officers within the Hudson County Sheriff's Department. It contends that the testimony of PBA witness Guttierrez is flawed in that she merely took a snapshot of 2012 and 2013 and concluded that fourteen employees resigned or retired on 2012 and another 27 employees resigned or retired in 2013, year to date. The County asserts that this number of employees is miniscule when compared to the full complement of Sheriff's Officers.

The County emphasizes that in its final offer it proposed several increases to the starting salary which will certainly assist in recruitment. Additionally, it is important to point out that the County did not make a proposal to eliminate longevity for new hires.

Even prior to the 2% cap restriction under N.J.S.A. 34:13A-16.7(b), there was a trend within the interest arbitration awards to include wage freezes within the salary guides, as well as applying zero percent to annual base salary.

The County contends that even under challenging economic conditions it has managed to avoid layoffs and furloughs of County employees. This is the result of prudent fiscal management. In order to continue in its financial efforts, the

County argues that it must be afforded an opportunity to contain costs and maintain its fund balance. It maintains that the PBA's final offer ignores and disregards the County's financial goals and the financial challenges faced by the County.

The County states that it is experiencing a decrease in revenues and tax ratable base, while simultaneously experiencing escalating costs. Additionally, the County's tax rate increased in 2012 and 2013. The County's tax ratables and property taxes are a primary concern for the County due to the financial impact it has on County residents. For the years 2009 through 2013, the County's Equalized Value of Property shows a decrease of \$12.4 billion dollars. The Assessed Value of Property for the same period increased by only \$136.5 million. For the year 2013, the County's Equalized Value of Property significantly decreased by \$1.5 billion. The County asserts that this is indicative of the downturn in the economy. The County points out that in 2012 its Equalized Value of Property decreased by \$4.1 billion dollars and the Assessed Value of Property decreased by \$191 million.

Further the County points out that, as a result of declining equalized values and tax levy increases, its tax rate for 2013 increased to \$5.42 per \$1,000 from \$5.12 in 2012 or an increase of \$.30 cents per \$1,000. Despite the County's efforts

to cut costs in the budget, County taxes have continued to escalate. The County maintains that this unfortunate trend of increasing taxes has continued to place a tremendous burden on its taxpayers.

The County further asserts the impact on property values is reflected in the number of tax appeals filed with the County. In 2013, 8,397 tax appeals were filed, the highest number since 1996/1997.

The County also argues that it has experienced major decreases in its resource stream. While the County acknowledges that it has thus far been able to maintain its fund balance, this will become a problem as the County moves forward. With tighter budgets and decreasing resources, the County states that its ability to regenerate fund balance will be challenged. The County avers that it has had to rely on its fund balances as a significant item of resource to support its budget and for 2012, the County released some of its current fund reserves to plan for fund balance regeneration for subsequent years and anticipated emergencies in the cost of litigations due to the dissolution of funding in its insurance reserves. The County points out that in years past and again in 2013, the County has anticipated virtually all of its fund balance in the following year as an item of revenue. Even with the use of virtually all

of the fund balance, it was necessary to significantly increase the County tax levy. County taxes have increased by \$42.9 million since 2009.

The Employer contends that it has relied on its fund balances as a significant item of resource to support the budget. Further, the County states that it annually confronts a "structural deficit", meaning that its recurring expenditures exceed its recurring revenues. For 2013, this structural Deficit continues to be about \$9 million. The County says it has addressed the structural deficit each year by the deferral of pension payments, no salary increases for non-union employees for three years (2009, 2010 & 2011), County tax levy increases and employee contributions for employee benefits.

Despite the County's efforts to seek new or enhanced revenue sources, the loss of budget revenues has been significant and has contributed to the structural deficit and the need to increase County taxes.

The County argues that its inability to regenerate fund balance will impact its operations and services. For 2011, the County used 98% of its fund balance; for 2013, the County will utilize 97% of its fund balance.

The County also asserts that it anticipates an increase in

budget expenditures. In 2013, the County's debt service payments will increase by approximately \$919,000 due to the issuance of bonds and notes to fund critical infrastructure improvements and capital needs. The County has received notice that health and prescription insurance costs will increase by 6.6% or an estimated \$2.7 million for 2014. It further points out that it has been notified of PERS increases from \$10,010,351 to \$10,721,596 for an increase of \$771,244, and PFRS increases from \$11,990,542 to \$12,075,308 for an increase of \$84,766.

The County argues that it would be financially burdened by the PBA's salary proposal which would create a flow-through cost into future years of \$2,018,363. That amount is double the County's salary proposal. Therefore, the County asserts that the Union's wage proposal is unreasonable in light of the statutory criteria.

The County maintains that its economic offer is more reasonable and should be awarded, because it provides incremental movement in the beginning of the contract followed by reasonable percentage increases in the last two years of the contract. It contends that its salary offer promotes the continuity of employment by providing incremental movement for PBA members this year. Those movements represent significant increases to officers' base salaries. By contrast, the County

asserts, the PBA's economic offer does not promote continuity, because the proposal does not provide for increment movement in 2013 and does not provide for any percentage salary increase during that year.

The PBA argues that its substantial and credible evidence overwhelmingly establishes that its proposals should be implemented by the Arbitrator and the County's proposals should be rejected.

It maintains that the County did not provide much evidence to support a justification for its proposals. It argues that offering the PBA the same terms that have been imposed upon civilian and non-unionized employees who lack negotiation power is hardly justification and fails to meet the statutory criteria. If that were the case, then there would be no need for each unit to negotiate separately or to negotiate with the County at all.

The PBA points out that both parties have essentially offered salary increases of approximately 2% annualized over different contract terms. Therefore, the PBA maintains that my focus on economic proposals should be concentrated on giving weight to the more reasonable methodology of instituting the 2% salary increases in light of the remaining statutory criteria. In other words, as both parties acknowledge that the maximum

salary increase of 2% annually should be awarded to the PBA, while the County has conceded through its proposal that a 2% award is acceptable, a review of the County's finances conclusively establishes that in the absence of the hard cap, the County would easily be able to provide multi-year salary increases well above 2%. The PBA points out the following facts, all of which establish that the County of Hudson is financially strong:

- The County has a \$1,117,420.40 reserve for salaries and other expenses of the Sheriff's Department alone in 2012. Petrucelli Report, pg. 1.
- The County has shown the ability to continually regenerate surplus year over year and has a year-end surplus balance for 2012 of \$23,099,386.89. Petrucelli Report, pg. 3.
- The County's tax revenue is statutorily guaranteed, with the County consistently collecting tax increases in excess of the statutory levy amount (2%). Petrucelli Report, pg. 5. It should be noted, as discussed below in more detail, that Cheryl Fuller confirmed this fact and that when municipalities are late in making tax payments to the County, the County assesses and collect interest

thereon, turning late tax payments into an additional vehicle to generate revenue.

- The actual cost to a taxpayer in 2012 for the cost associated with the entire Sheriff's Department (which is more than just salaries/wages) is a mere \$4.97. Petrucelli Report, pg. 6.
- The County's revenue growth has been consistent and significant, with a cumulative increase of revenues since 2006 of 30.12% and a cumulative increase in budgeted revenues raised by taxation of 67.56% since 2002. Petrucelli Report, pgs. 7-8.
- Since January 2000, annual inflation has averaged at a rate of 2.76%. Petrucelli Report, pg. 11.
- The average net residential property tax bill in Hudson County decreased by \$39.77 from 2001 to 2012. Petrucelli Report, pg. 15.
- The County continually has appropriated reserves arising out of spending less than amounts budgeted and has an unprecedented \$43,514,351.08 available for future spending in 2013. It is anticipated based on historical figures that \$3,254,231.90 of that amount could lapse into surplus in 2013. Petrucelli Report, pg. 16.



- The County has continually been able to generate additional and unanticipated revenues for the period evaluated, with the Sheriff's office generating miscellaneous unanticipated revenues since 2010. Petrucelli Report, pgs. 18-20.
- The County has tremendous borrowing ability and maintains high quality bonds ratings by Moody's and Standard & Poor. Petrucelli Report, pg. 22.
- The County has enjoyed the benefits of continually increasing its tax base and consequently its tax levy, with an increase in 2013 of \$3,597,995.00. Petrucelli Report, pg. 24.
- The County has no current issue with any applicable Cap limits. Petrucelli Report, pg. 24-27.
- Beginning January 1, 2013, PBA members have begun to contribute to the cost of their health benefits pursuant to S-2937 (also known as "Chapter 78") and by 2015, the County will recoup an estimated \$461,224.14 annually from the members of the PBA alone. Petrucelli Report, pg. 28.
- The impact of allocating breakage upon future new hires must be taken into account in any award, for the reasons set forth by Petrucelli on pg. 29 of his report. To

The PBA argues that the public interest is a broad criterion that encompasses considerations of both fiscal responsibility and the compensation package required to maintain a "high productivity and high morale" within the workforce. See Teaneck Township and Teaneck FMBA Local No. 42, 25 NJPER 450 (¶30199), 353 N.J.Super. 289 (App Div. 2002, certif. granted and further arbitration stayed 175 N.J. 716 (2002), judgment affirmed 177 N.J. 560 (2003).

The PBA contends that, when seeking to satisfy this prong of the statutory criteria, consideration should be given to both insuring the general welfare of the public and for providing equitable compensation to those officers who protect and serve the general public. It argues that its salary proposal satisfies this prong in that it conforms to the 2% "hard cap" while addressing the impact of that cap on the members of the PBA. Moreover, the PBA argues, as both parties agree upon awarding the PBA what amounts to a 2% annual salary increase, little time needs to be spent justifying awarding the maximum allowed under the "hard cap".

Further, the PBA's asserts that its salary proposal recognizes that in light of terribly low morale and an ever increasing rate of attrition, the prospect of multiple salary schedule movement freezes would be devastating to its membership and in turn to the citizens of Hudson County. The PBA's position is that it is clearly in the interest of maintaining unit stability and morale to pay all eligible members some measure of their increment during the term of the next collective bargaining agreement consistent with the ruling in Borough of Midland Park and Midland Park PBA Local 79, Docket No. IA-2013-013 (3/28/13).

The PBA maintains that employee morale was at an all-time low and that the major concern of its membership during the negotiations is the prospect of long term salary guide movement freezes. Any salary guide movement freeze other than the limited one proposed by the PBA would have a detrimental impact on the provision of services to the public as more officers would look to leave the employ of the Sheriff's Department, further depleting their already short-staffed ranks. As Occhipinti explained, despite having a table of organization calling for 201 sheriff's officers, the department is currently staffed with only 158 officers, which is even fewer than when the negotiations commenced.

The PBA asserts that its salary proposal would serve the

interest and welfare of the public as it would stabilize the morale of the PBA, and would help stem the tide of attrition, leading to a stable productive union. See Teaneck Township.

#### **STATUTORY CRITERIA**

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

It should be noted, pursuant to the above language, that the 2.0% cap, or the amount that an award cannot exceed, is not tied directly to contract terms but rather to:

[T]he aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

In addition, 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 (9) that 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.

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

The Arbitrator's award must address all nine statutory criteria, identify the criteria found to be relevant, analyze all of the evidence pertaining to the relevant criteria, and

explain why any remaining criteria were deemed irrelevant. "A reasoned explanation along those lines should satisfy the requirement for a decision based on those factors that are judge relevant." Borough of Hillsdale and PBA, 137 N.J. 88 (1994). Any economic offers that are clearly unreasonable in light of the statutory criteria must be rejected.

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. It is widely acknowledged that in most interest arbitration proceedings, no single factor can be determinative when fashioning the terms of an award. This observation is present here as judgments are required as to which criteria are more significant and as to how the relevant evidence is to be weighed.

In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire

award. I am also required by statute to determine the total net annual economic cost of the terms required by the Award.

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among those factors that interrelate and require the greatest scrutiny in this proceeding are the evidence on internal comparability [N.J.S.A. 34:13A-16g(2)(c)], the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] and the County's statutory budget limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]; and the impact upon continuity and stability of the bargaining unit, including employee morale and turnover.

In applying the statutory criteria and the above considerations to the facts and the parties' arguments in this matter, I have considered the following relevant facts:

**BUDGET:**

The Hudson County's Director of Finance and Administration, County Treasurer and Chief Financial Officer Cheryl Fuller, submitted a certification in December of 2013. In this certification Fuller maintains that Hudson County annually confronts a "structural deficit", meaning that the County's recurring expenditures exceeds its recurring revenues. For



2013, the structural deficit continues to be about \$9 million. Fuller states that it has addressed the deficit each year by taking various measures including the deferral of pension payments, no salary increase for non-union employees for three years (2009, 2010, and 2011), annual County tax levy increases and employee contributions for employee benefits. (C-72)

The PBA maintains that Fuller conceded that the "structural deficit" has historically been present in the annual budgets and has consistently been dealt with as part of the County's ordinary operations.

Despite its efforts to seek new or enhanced revenue sources, such as the housing of U.S. Marshal and ICE detainees, the loss of other budget revenues has been significant and has contributed to the structural deficit and the need to increase County taxes. For the years 2008 through 2012, the Constitutional Officers' revenues have decreased by \$2.4 million. Interest on investments is down \$2.2 million and Added and Omitted Taxes is down \$3.5 million. Other revenue losses include Prosecutor PILOT Initiative of \$802,000 and leasing of the County Correctional Center of \$1.15 million, which was completely eliminated in 2011. (C-72)

Fuller states that a significant issue in the County is the down turn in the economy which has resulted in major decreases in its resource stream. Moreover, it has been able to maintain

its fund balance, although she sees this as a problem as the County moves forward. Fuller states that with its tighter budgets and decreasing resources, the County will not have the ability to regenerate fund balance. In fact, she maintains that the County has relied on its fund balances as a significant item of resource to support its budget; for the years 2008, 2009, 2010, 2011, and 2012, the County used 98% of its fund balance; for the year 2013, the County will utilize 97% of its balance. In years past and again in 2013, the County has anticipated a major percentage of its fund balance in the following year as an item of revenue. Even with the use of virtually all of its fund balance, it was necessary to significantly increase the County tax levy. Fuller states that the County released some of its current fund reserves to fund balance regeneration for subsequent years and anticipated emergencies in the cost of litigation due to the dissolution funding in its insurance reserves. Fuller concludes her certification by stating that in lieu of the foregoing and the County's declining fund balance source, it must gradually decrease the amount of fund balance used to support its budget. (C-72)

Appropriations:

The County anticipates an increase in budget expenditures. For 2013, the County's debt service payments will increase by approximately \$919,000 due to the issuance of bonds and notes to

fund critical infrastructure improvements and capital needs. In addition, the State of New Jersey has continued to reduce the reimbursement formula for County-operated Psychiatric Hospitals. The reimbursement rate stood at 90% of cost and is currently at 85% of cost, resulting in a loss of \$1.1 million in revenue.

(C-72)

The chart below provides Hudson County's 2013 Adopted Budget Summary by Total Appropriations, Less Anticipated Revenues, and Amount to be Raised by Taxation: (C-73)

<b>Hudson County 2013 &amp; 2012 Approved Budgets</b>		
<b>Summary of Approved Budget</b>	<b>2013</b>	<b>2012</b>
Total Appropriations	495,224,925.86	501,782,972.96
Less Anticipated Revenues	(194,904,125.86)	(210,686,497.96)
<b>Amount to be Raised by Taxation - County Purpose</b>	<b>300,320,800.00</b>	<b>291,096,475.00</b>

The following chart reflects 2013 appropriations by budget categories: (C-73)

<b>Hudson County 2013 &amp; 2012 Approved Budgets</b>			
<b>Summary of Approved Budget</b>	<b>2013</b>	<b>2012</b>	<b>Increase (Decrease)</b>
Total Appropriations	495,224,925.86	501,782,972.96	(6,558,047)
Less Anticipated Revenues	194,904,125.86	210,686,497.96	(15,782,372)
<b>Amount to be Raised by Taxation - County Purpose</b>	<b>300,320,800.00</b>	<b>291,096,475.00</b>	<b>9,224,325.00</b>
<b>Appropriations:</b>	<b>2013</b>	<b>2012</b>	<b>Increase (Decrease)</b>
Legislative, Executive & Finance	16,133,688	15,367,292	766,396
Insurance	49,289,006	47,203,000	2,086,006
Constitutional Offices	23,546,020	23,552,798	(6,778)

Judiciary	1,137,583	1,422,726	(285,143)
Regulation	29,944,142	29,234,368	709,774
Parks & Community Services	8,565,072	8,505,851	59,221
Roads & Public Property	33,044,808	32,635,606	409,202
Health & Human Services	67,807,929	65,410,207	2,397,722
Family Services	55,526,829	53,454,914	2,071,915
Corrections	67,160,419	66,802,976	357,443
Education	35,853,643	34,894,522	959,121
Debt Service	23,396,940	22,472,330	924,610
Statutory Expenditures	38,590,397	38,295,494	294,903
Judgments	100	100	0
Capital Improvements	29,558,806	29,563,515	(4,709)
Other	938,470	1,054,959	(116,489)
<b>Sub-Total</b>	<b>480,493,852</b>	<b>469,870,658</b>	<b>(10,623,194)</b>
Grants	<u>14,731,075</u>	<u>13,955,664</u>	<u>775,411</u>
<b>Total</b>	<b>495,224,927</b>	<b>483,826,322</b>	<b>(11,398,605)</b>

Pension Contributions:

Fuller states that given the condition of the State Pension system, the County anticipates a sizable increase in its cost for 2014 (C-72). Previously the Sheriff's Department contributed 8.5% of its pensionable salaries towards PFRS. The PBA contends that with the mandatory 10.0% contribution of its pensionable base salaries, a 1.5% increase, that the average additional contribution in 2013 per member of the PBA Local No. 334 is estimated to be \$921 annually or \$77 (\$921/12 rounded) per month. (PBA-PFA, Tab 24)

Revenues:

In 2010, the fund balance in the beginning of the year was \$24,528,532 of which the County utilized \$24 million as surplus revenue in the 2010 budget. This left an available fund balance

of \$528,532. In 2010, the County regenerated \$24,531,014 of fund balance and ended the year with a regenerated fund balance of \$25,060,546. This enabled the County to stabilize the tax levy while complying with the Chapter 62 laws of 2007's tax levy cap. (PBA-PFA, Tab 3)

In 2011, the fund balance in the beginning of the year was \$25,060,546 of which the County utilized \$24.5 million as surplus revenue in the 2011 budget. This left an available fund balance of \$560,546. In 2011, the County regenerated \$27,491,052 of fund balance and ended the year with a regenerated fund balance of \$28,051,598. This enabled the County to stabilize the tax levy while complying with the Chapter 62 laws of 2007's tax levy cap. (PBA-PFA, Tab 3)

In 2012, the fund balance in the beginning of the year was \$28,051,598 of which the County utilized \$23.5 million as surplus revenue in the 2012 budget. This left an available fund balance of \$4,637,686. In 2012, the County regenerated \$18,461,700 of fund balance and ended the year with a regenerated fund balance of \$23,099,387. This enabled the County to stabilize the tax levy while complying with the Chapter 62 laws of 2007's tax levy cap. (PBA-PFA, Tab 3)

In 2012, the County did not receive a revenue source for "Contracts and Commitments Cancelled". In 2011, the County received \$11,189,535 and in 2010, the County received \$6,669,846

from this revenue source. Therefore, the 2012 excess results of operations were less than 2011 and 2010 levels. (PBA-PFA, Tab 3)

In 2013, the fund balance in the beginning of the year was \$23,099,387 of which the county utilized \$22.5 million as surplus revenue in the 2013 budget. After utilizing \$22.5 million as surplus revenue the county had a remaining fund balance of \$599,387. (PBA-PFA, Tab 3)

In the years past and again in 2013, the County has anticipated a major percentage of its fund balance in the following year as an item of revenue. It contends that even with the use of virtually all of its fund balance, it was necessary to increase the County tax levy. The County states that taxes have increased \$42.9 million since 2009. (C-72)

Appropriation and Encumbrance Reserves:

The 2012 Audited Financial Statement reflects appropriation and encumbrance reserves in the amount of \$43,514,351. The Union states that the 2012 appropriation reserves in the amount of \$40,333,486 are available to lapse into surplus in the second budget year (2014) after generated and that the County's encumbrance portion of the reserves, if cancelled, in the amount of \$3,180,865 could be used to fund the PBA's Local No. 334 requested proposal. (PBA-PFA, Tab 8)

The PBA states that the County has continually had appropriation reserves resulting from the County spending less

than it budgeted. An analysis of the lapsed balances for the period 2006 through 2012 indicates that, on average, 91.51% of the appropriation/encumbrance reserves balance has lapsed to surplus. It asserts that utilizing the historical average the County could recognize \$3,254,232 ( $\$5,907,119 \times 91.51\%$ ) of surplus in 2013. (PBA-PFA, Tab 8)

The Union avers that the County has historically generated excess results from operations. In 2012, the County generated \$18,461,700 from excess operations. It maintains that the County was collecting more revenue than budgeted and/or less appropriations being spent than budgeted (unexpended appropriations). It further contends that in the case of the Hudson County budget, the County's 2012 excess results represent 3.63% ( $\$18,461,700 / \$508,169,452$ )<sup>7</sup> less spending than budgeted/unbudgeted revenues. It asserts that the County's budget performed well. (PBA-PFA, Tabs 3; 4)

Miscellaneous Revenues Not Anticipated (MRNA):

The PBA maintains that the County has continually received revenue from sources not anticipated in the budget or raised by taxation. This revenue is available for budget appropriations in future years. Hudson County's MRNA has increased for the years 2006 through 2012 by 27.03%. For 2012, MRNA was

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<sup>7</sup> The \$18,461,700 (Tab 3) reflects the 2012 Operations Statutory Excess to Fund Balance divided by the total 2012 Statement of Revenues realized (Tab 4).

\$5,150,754. In 2012, the largest miscellaneous revenue realized but not anticipated was from the State Criminal Alien Assistance Program at \$1.6 million; whereas, the smallest revenue realized but not anticipated was from copy fees. In addition, some of the MRNA (\$567,515) was attributed to County salary refunds and mental health administration, miscellaneous receipts, and numerous others not listed here. The County's Sheriff's Department generated \$62,366 of the 2012 MRNA. (PBA-PFA, Tab 10)

The PBA maintains that the County could have anticipated additional miscellaneous revenue from local sources in the amount of \$6,329,122. Excluded from this total is local revenue from interest on investments and deposits.

Federal and State Grants and Aid:

The Union maintains that the County has demonstrated its ability to obtain grant revenues to reduce taxation as evidenced by the \$31,794,888 of grants realized in cash in the 2012 budget year. It asserts that in addition to grants that are anticipated when the budget is adopted the County has the ability to fully fund appropriations which can later be reimbursed as Chapter 159 Grants are received during the budget year. For 2012, the County anticipated \$13,838,237 in Federal and State grants and aid. During 2012, an additional \$17,956,650 (\$31,794,888 - \$13,838,237) of grant revenue was realized through the Chapter 159 procedures. For 2013, the



County has added \$24,580,599 of anticipated grant revenues to the budget through the Chapter 159 procedures. (PBA-PFA, Tab 17)

Taxation:

Hudson County's total property tax allocation for 2012 represented 23% of the total tax bill. The municipal's 46% and the School's 31% represent a combined total of 77% of the total tax bill. (PBA-PFA, Tab 6) Fuller testified that the County is statutorily guaranteed to collect 100% of its fully budgeted revenue to be raised by taxation each year. Ultimately every municipality had paid their respective taxes to date and those that paid late were assessed and paid interest to the County.

The PBA contends that the County has continually had an increase in the tax base which allowed it to increase its overall tax levy. It states that the increase in valuation within the County, based solely on application of the preceding year's County tax rate to the apportionment valuation of new construction or improvements within the County (new ratable), was \$2,046,878 in 2012 and \$3,597,995 in 2013. This increase in the tax base resulted in an increase to the County cap limitation calculation and allowed the County to increase the overall tax levy. (PBA-PFA, Tabs 14, 15)

The County has grown from equalization property values of \$22,920,027,265 on January 1, 2000 to \$55,240,401,037 as of January 1, 2012. This growth is a 141.01% increase in County

value. The PBA avers that this increase in value provides the County will additional revenues that can be raised through taxation. (PBA-PFA, p. 23) A comparison between 2013 Total General Revenues (\$495,224,926) and the Amount to be Raised through Taxation (\$300,320,800) indicates that anticipated taxation accounts for 60.6% of the County's total revenues. (PBA-PFA, Tab 3)

The County's 2012 Total Assessed Value is \$22,106,214,215; therefore, the value of one tax point (\$.01) to the municipal tax rate will raise an additional \$2,210,621. (PBA-PFA, Tab 5) For 2012, the average valued residential property in the County was \$123,187 resulting in an average additional annual residential property tax cost of \$12.32; the PBA maintains that in order to raise an additional \$2,210,621 (one tax point) by taxation, the annual residential property tax would increase by \$12.32. (PBA-PFA, p.6-7) The average net residential property tax bill within the County decreased by \$39.77 (\$6,945.22 - \$6,905.46) from 2011 to 2012. The County's portion of the net residential property tax bill increased by \$41.03. (PBA-CFA, Tab 5)

The PBA maintains that the County's budgeted revenue growth raised by taxation has increased by \$121,093,749 since January 1, 2001 (\$300,320,800 - \$179,227,051) or 67.56% per year (PBA-PFA, p.8).

The County's financial certification statement indicates that tax rates and property taxes are a primary concern for the County of Hudson due to the financial impact it has on County residents. The County tax rate for 2013 increased to \$5.42 per \$1,000 from \$5.12 in 2012, or an increase of \$.30 cents per \$1,000. Fuller states that this increase is a result of declining property values and tax levy increase.<sup>8</sup> For the years 2009 through 2013, Fuller states that the County's equalized value of property decreased by \$12.4 billion. The assessed value of property for the same period increased by \$136.5 million. For the year 2013, the equalized value of property significantly decreased by \$1.5 billion. For the year 2012, the County's equalized value of property decreased by \$4.1 billion and the assessed value of property decreased by \$191 million. (C-72; PBA-PFA, Tab 12)

As can be seen on the chart below, for the year ending December 31, 2012, the County operations were funded through taxation at a rate of 57.3%. From 2006 through 2013, County operations have been, or will be (2013) funded at an average of 55.3% per year. Therefore, half of the County's municipal

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<sup>8</sup> The Certification of Ms. Fuller (C-72) and Petrucelli's Fiscal Financial Analysis (PBA-PFA, p. 22-23), appears to capture two scenarios, i.e., the first being that from 2010 through 2012, there was a decline in equalized property values; second, the PBA's exhibit reflects the County's equalized values for only two years, 2000 and 2012, which is a significant increase in the overall equalized property values. Therefore, I can only infer that Ms. Fuller was referring to the recent decline in values for the past three years.

operations are funded by taxation. The County's 2013 operations will be funded at 60.6%. (PBA-PFA, Tab 3)

<b>Amount Raised by Taxation to Total Collected or Budgeted Revenues</b>				
<b>Year</b>	<b>Budgeted</b>	<b>Total Budgeted or Collected</b>	<b>Amount Raised Through Taxation</b>	<b>Percentage Raised Through Taxation</b>
12/31/2013	Actual	495,224,927	300,320,800	60.6%
12/31/2012	Actual	508,169,450	291,096,475	57.3%
12/31/2011	Actual	493,158,525	279,653,339	56.7%
12/31/2010	Actual	487,609,322	269,353,339	55.2%
12/31/2009	Actual	478,395,072	257,381,953	53.8%
12/31/2008	Actual	460,324,851	245,570,034	53.3%
12/31/2007	Actual	439,203,678	233,775,687	53.2%
12/31/2006	Actual	424,484,561	223,708,792	52.7%

Tax Appeals:

For the year 2010, 7,754 tax appeals were filed, 7,673 filings for 2011, 7,760 for 2012, and 8,397 for 2013. These numbers do not include tax appeals filed directly with the N.J. Superior Tax Court. The record does not include evidence of the actual outcomes of the appeals, nor their impact, if any, on the County's finances. (C-72)

Net Debt:

The County had, as of December 31, 2012, \$499,052,894 of net debt with a resulting net debt percentage of 0.86%. The County's low net debt is below the statutory debt limit and indicates that the County has borrowing power in the amount of \$660,124,582. The County maintains that in 2013, the County's

debt service payments will increase by approximately \$919,000 due to the issuance of bonds and notes to fund critical infrastructure improvements and capital needs. Fuller states that debt service increased from \$19,726,438 in 2011 to \$22,472,330 in 2012. (C-83; 84)

2% Tax Levy Cap:

N.J.S.A. 40A:4-45.4 places limits on county tax levies and expenditures. This law is commonly known as the "Cap Law" (the "Cap Law"). The 1977 Cap Law provides that the local unit shall limit any increase in its budget to 2.5% or the COLA, whichever is less, of the previous year's local unit tax levy, subject to certain exceptions. (C-121)

The provisions of P.L.2010, c.44 effective June 13, 2010 (the "Amendment"), reduces the cap to 2% and limits exclusions only to capital expenditures, including debt service, certain increases in pension contributions and accrued liability for pension contributions in excess of 2%, certain healthcare cost increases in excess of 2% and extraordinary costs directly related to a declared emergency. The Division of Local Government Services has advised that counties must comply with both the original "Cap" and the Amendment tax levy limitation, selecting the more restrictive of the two.

A county may, by resolution, increase the COLA percentage up to 3.5% [N.J.S.A. 40A:4-45.14(b)] or bank (for up to two

years) the difference between its final appropriation subject to the cap and 3.5%. Cap Banking is not automatic. A single resolution can be used to accomplish both activities: increasing appropriations and banking any unappropriated balance. Cap bank balances from 2010 and 2011 are available for use in 2012.

The Hudson County Cap Calculation reflects the "1977 Cap" Maximum County Purpose Tax After All Exceptions to be \$301,669,659.19. The "2010 Cap" Maximum Allowable Amount to be Raised by Taxation After All Exclusions is \$304,207,279.19. Since the County is legally obligated to use the more restrictive of the two caps, the amount to be raised by taxation in 2013 is the lesser amount of \$301,669,659.19. (C-121; PBA-PFA, Tab 15) The County chose not to use a COLA rate resolution in the 2013 budget.

**Consumer Price Index (CPI):**

The Consumer Price Index ("CPI"), measured by the United States Bureau of Labor Statistics ("BLS"), tracks price changes for particular commodities and services at the retail level various geographic areas.

The New York-Northern New Jersey CPI for October 2013 reflects that area prices are down 0.6 percent over the month and up 1.1 percent over the year. Prices in the New York-Northern New Jersey-Long Island area, as measured by the Consumer Price Index for All Urban Consumers (CPI-U), not seasonally adjusted,

fell 0.6 percent in October, following a 0.3-percent rise in September. The decline, the largest since December 2008, was primarily driven by lower prices for energy. Over the year, the CPI-U increased 1.1 percent, and the index for all items less food and energy rose 1.9 percent. The 12-month increase in both indexes was primarily attributable to higher prices for shelter. (PBA-II-20) The average ten-month CPI-U, not seasonally adjusted, for Hudson County in 2013 is 1.76.

Sheriff's Department Budget:

Total 2012 County salaries and wages were appropriated and modified by transfers in the amount of \$167,169,089. Total 2012 County salaries and wages paid was \$158,096,535. The 2012 Sheriff's officers' base salary paid was \$11,278,450 (\$11,278,450/158,096,535) or 7.13% of total County salaries paid in 2012. (C-73; PBA-PFA, p.32 as modified for application of 2% cap)

The actual cost to a taxpayer in 2012 for the cost associated with the entire Sheriff's Department, which is more than salaries/wages, is \$4.97. (PBA-PFA, Tabs 5, 6)

Existing Terms and Conditions:

Sheriff's officers' terms and conditions of employment are set by virtue of several agreements between the PBA and the Employer. The last full contract covered the period 2003 through 2007. The parties then signed a Memorandum of Agreement amending

and extending the contract through 2012. The full updated contract has not yet been finalized. In addition, in September 2005, the parties entered into a separate memorandum of agreement covering off-duty employment (C-125). Further, in April 2011, the PBA and the Employer signed another separate, comprehensive Memorandum of Agreement concerning the adoption of the "Pittman" work schedule for the Patrol Division (C-123).

Sheriff Sheriff's officers are paid from the following salary guide, as contained in the 2008-12 Memorandum of Agreement:

<b>Current Salary Guide</b>			
<b>Step</b>	<b>Salary</b>	<b>Incr Cost</b>	<b># EES</b>
1	30,139	2,319	3
2	32,458	3,477	2
3	35,935	4,637	0
4	40,572	2,899	34
5	43,471	3,477	32
6	46,948	7,535	19
7	54,483	8,116	11
8	62,599	21,985	6
9	84,584		71

As can be seen from the chart, 71 of the officers are at top pay, while the remaining 108 have less than eight years of service and are moving through the salary guide. Officers have been paid automatic annual increment payments pursuant to the contract, up until 2013, when the increments were not paid.



Sheriff's Officers receive longevity payments pursuant to the following schedule:

- five years                      \$400
- ten years                        \$600
- fifteen years                  \$800
- twenty years                  \$1,000
- twenty-five years            \$1,200

127 of the 179 officers receive some form of longevity, ranging from \$500 to \$1300, and three receive the maximum longevity. In addition, certain officers who are assigned to the detective division receive a stipend of \$1,300 for Detective I and \$2,000 for Detective II. There are currently 41 officers receiving a detective stipend. There are also four officers receiving a stipend of \$750 for holding an EMT certification.

Sheriff's officers are provided with the typical host of leave time and benefits, including sick leave, vacation leave, personal leave, terminal leave for unused sick leave upon retirement, and bereavement leave.

Health benefits and a prescription plan are provided to unit employees through New Jersey State Health Benefits Plan.

Beginning in January, 2013, sheriff's officers are required to contribute pursuant to Chapter 78 a percentage of the cost of insurance premiums, the percentage being based upon the amount of

their base salary and the type of coverage selected. The employee contribution will double in 2014, increase again in 2015, and then reach the full obligation in 2016.

Employees receive a clothing maintenance allowance of \$1,000 annually, which is paid to employees twice yearly. Employees also receive a modest tuition reimbursement plan for law-enforcement credits earned.

None of the Sheriff's officers' array of benefits is inordinately low, nor are they significantly above average for members of the law enforcement community. I do note that, by comparison, the longevity plan is below the average.

**Internal Comparables:**

According to County Labor Relations Director Patrick Sheil, the County has 21 bargaining units with which it negotiates labor agreements. Of those, eight are County law enforcement groups, which, in addition to this unit of sheriff's officers, include Sheriff's superior officers (FOP Lodge 127), County correction officers (PBA Local 109), corrections superiors (Local 109A), corrections internal affairs officers (FOP Lodge 196), corrections internal affairs superiors (FOP Lodge 196A), Prosecutor's detectives and investigators (PBA Local 232), and Prosecutor's superior officers (PBA Local 232A). The County has recently reached a settlement for successor agreements with three of its law enforcement superior officer groups. The Sheriff's

superior officers agreed to a five-year contract covering 2013 through 2017, and provided for across-the-board salary increases of 2.0 percent in each year of the contract (C-60). The Corrections Superiors, Local 109A, also settled on a five-year successor agreement, covering 2013-2017 which also provided for 2% increases (C-63). Prosecutor's superior officers (PBA Local 232A) also took the same 2% settlement and extended its contract through 2017 (C-65). Both of these latter two contracts were ratified by the Board of Freeholders in November 2013. It is noteworthy, however, that none of these three contracts involve a salary step guide; therefore, the 2% increase represents the both the total cost to the County and the total increase to the employees, as there are no increments to be paid.

In addition, the County's civilian employee units include the County-wide blue and white-collar unit, represented by District 1199J, a unit of professional employees, also represented by 1199J, and a unit nursing supervisors, represented by United Nurses Organization. All three of these units had contracts which expired in 2011, and it appears that none of the civilian groups have current contracts and all are in negotiations with the County.

According to County Finance Director Cheryl Fuller, the County's non-unionized employees received a 2% salary increase

in 2012, and 2% again in 2013, following a three-year wage freeze in 2009, 2010, and 2011.

As of 2013, the current top-pay salary for Sheriff's officers is \$84,585. The top pay for corrections officers is, as of 2012, \$86,446, and for officers hired after July 23, 2012, \$83,500.<sup>9</sup> Senior investigators in the Prosecutor's officers earn \$88,375 (C-66).

In summary, Hudson County's sheriff's officers' salary at the top step is relatively in line with other law enforcement groups in the County. Adding together base pay with clothing allowance, the top pay for a sheriff's officer is \$85,585 -- just \$861 below that of a correction officers with no separate clothing allowance. Further, while they are about \$3,800 below the top pay of Prosecutor's investigators, that group traditionally does earn slightly higher pay rates than other county law enforcement groups.

**External Comparables:**

The PBA and the County each supplied a selected group of contracts covering sheriff's officers in other New Jersey counties. The data, when pooled together, shows the following top pay for Sheriff's officers in ten New Jersey counties:

County	Most Recent Year	Top Pay	Notes
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<sup>9</sup> It should be noted that correction officers do not receive a separate clothing allowance.

Atlantic	2009	71,547	
Bergen	2010	106,385	
Cape May	2012	78,372	Negotiated in 2008
Gloucester	2013	81,325	Negotiated in 2009
Hudson	2012	84,584	
Mercer	2012	85,115	
Middlesex	2012	82,397	
Ocean	2012	91,961	
Sussex	2013	82,078	
Union	2013	87,915	2012 Award
	<b>Average</b>	<b>85,168</b>	

In addition, the PBA provided salary data for patrolman top base pay from five municipal police departments (PBA-I, ex.7):

<b>Top Patrolman Base Salary 2012</b>	
<b>Municipality</b>	<b>Top Pay</b>
Bayonne City	90,833
Guttenberg Twp.	86,415
Hoboken City	91,515
Hudson City Sheriff	84,584
Union City	98,013
West New York Twp.	97,117
<b>Maximum Base Average</b>	<b>91,413</b>

I am unable to discern what criteria the PBA used to select out this data from among the 12 municipalities in Hudson County. Since it is possible that the towns selected were cherry-picked from among the top paid municipalities, I ascribe only limited significance to this information.

In considering Hudson Sheriff's officers salary to that of other law enforcement groups, I conclude that they only are slightly below the State-wide average among Sheriff's officers of

\$85,168, at least from the data presented to me.<sup>10</sup>

**PERC Stats:**

The most recent salary increase analysis for interest arbitration on PERC's website shows that for the period January 1, 2013 through August 20, 2013, awards averaged 1.66% while settlements averaged 2.01%. For 2012, awards averaged 1.86% while settlements averaged 1.77%. Awards included various guide adjustments, increases to top step only; limitations on retroactivity; freezing of guide movement, and adding of steps to a guide. For those awards that were subject to the 2.0% interest arbitration cap, awarded increases averaged 1.85 in 2012, and 1.4 in 2013.

**Private Sector:**

The New Jersey Department of Labor Wage Reports, issued in September 2012 and August 23, 2013, shows that the average annual wages in the New Jersey private sector increased by 2.1% between 2011 and 2012 while the local governmental sector increased during the same period by 1.4%. The same report broken down by county shows a private sector wage decrease in Hudson County of .8% between 2011 and 2012. The same reports show that the annual wages in the State's private sector again increased between 2011-2012 by 2.1%,

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<sup>10</sup>The PBA's submission included contracts from other counties, but the data was too old to be relevant, or related to superior officer groups.

with the local government sector increasing by 1.5%.

I give almost no weight to the component of comparability with the private sector other than to observe the private sector wage increases as noted above, that New Jersey's unemployment rate is about 9.5%, and the economic recovery for still sluggish. On the one hand, public sector law enforcement officers are not subject to the same concerns as private sector workers or even public sector civilians, in that layoffs are infrequent and furloughs are non-existent. However, there is no particular private-sector occupation that is an equitable comparison to county sheriff's officers. Sheriff's officers are unique in a variety of ways, including the potential to be called upon to uphold the law at any time, on and off duty; the stress and dangers of the job, the tightly regulated recruitment and training process; and the lack of portability of public sector law enforcement officer skills beyond a certain age and beyond a geographic region. Moreover, they are frequently required to work evenings, nights and holidays.

**2% Hard Cap:**

As noted above, Section 16.7(b) of the statute limits an arbitrator to increasing base salary items by no more than 2% of the amount the County spent on "base salary items" for this unit in the base year. The statute defines "base salary" at 16.7(a):

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

I note that these provisions of the statute, when read together, prohibit an arbitrator from awarding increases of more than 2% annually to: "base salary items" -- salary provided pursuant to a salary guide"; and "salary increments", and "amount[s] provided for longevity."

In Borough of New Milford, 2012-53, 38 NJPER 340 (¶116 2012) the Public Employment Relations Commission adopted guiding principles concerning the arbitrator's responsibility in applying the 2% hard cap:

. . . we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory



definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

PERC continued its discussion of base salary:

Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

The first part of the Commission's directives in New Milford requires the arbitrator to determine the Employer's aggregate base pay costs in the base year -- specifically, the

total amount the Employer actually paid to unit employees in that year, including base pay, increment payments, longevity payments, and any other payment which the parties have considered as part of base pay.

\* \* \*

Here, the parties have produced dramatically different figures in their respective calculations of the total amount expended by the employer for base salaries in the base year, 2012.

The County produced a roster of the 179 sheriff's officers in the bargaining unit as of the end of 2012, together with their contractual base salaries (C-3). This list shows:

<b>2012 Scattergram</b>			
<b>Step</b>	<b>Salary</b>	<b>Count</b>	<b>Amt. Per Step</b>
1	30,139	3	90,417
2	32,458	2	64,916
3	35,935	0	0
4	40,572	34	1,379,448
5	43,471	32	1,391,072
6	46,948	20	938,960
7	54,483	11	599,313
8	62,599	6	375,594
9	84,584	<u>71</u>	<u>6,005,464</u>
		<b>179</b>	<b>10,845,184</b>

The County also produced exhibit C-4, which represents its calculations as to the total 2012 base salaries paid to

bargaining unit employees. This document was prepared by John Inagaki, the County's Budget Officer. Exhibit C-4 is reproduced below:

<b>2012 Base Salaries Paid</b>	
<b>Earnings Categories</b>	<b>Annual Amount</b>
Regular Salary	\$10,593,363.26
Voluntary Furlough	-325.32
Mandatory Furlough	0.00
Absence	-52,073.03
Absence Hours	0.00
Detective Stipend	62,349.84
Education	6,510.27
Adjustments	23,455.84
Longevity	88,935.21
Military	0.00
On Call	0.00
Retro Pay	6,705.97
Sick Pay	330.32
Shift	0.00
Stipend	125.00
Suspension	0.00
Vacation	47,008.33
Worker's Comp	56,895.01
Weekend	0.00
<b>Total</b>	<b>\$10,833,278.70</b>
<b>2%</b>	<b>\$216,665.56</b>
<b>X 3 Years</b>	<b>\$649,996.68</b>

Inagaki testified that he derived the "regular salary" total of \$10,593,363.26 from a total of all 2012 ADP records. Further, he explained that the subtraction for "voluntary furloughs" and "absences" were necessary because that amount represented employees' unpaid time off. However, it is unclear whether this figure included a pro-

rated salary for the five employees who started with the County in 2012 and therefore only worked part of the year. Further, Inagaki acknowledged that this total likely did not include the two employees who retired and the twelve employees who resigned during 2012 (PBA-2). When pressed for an explanation of some of the categories of additions to the total base, such as, the category "adjustments", Inagaki could not explain the meaning of those additions. The statute requires the calculation to include all base pay paid to members of the bargaining unit during 2012, which by necessity, must include a pro-rated salary for employees who only worked a partial year -- that is, those employees who left the County's employ some time during the base year, and those employees who were newly hired during the base year.<sup>11</sup> Inagaki also could not explain the basis for certain categories on the list, such as, the category "adjustments" (\$23,455) and "stipends" (\$125). His failure to adequately explain the basis for the dollar values ascribed to the categories on this list, together with the absence of any supporting documentation, makes the accuracy of C-4 suspect.

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<sup>11</sup>This concept of pro-rating pay for new hires and mid-year terminations during the base year has recently been confirmed by the Commission in Borough of Byram, P.E.R.C. No. 2013-72, \_\_\_ NJPER \_\_\_ (4/18/13).

The PBA submitted exhibit PBA-1, which is also a roster of all employees on the payroll as of the end of 2012, together with their contractual base salaries, longevity amounts, detective stipends paid, EMT/RN stipends paid, and clothing allowance. PBA-1 shows that the aggregate amount of total contractual base pay for the 179 employees on the payroll as of December 31, 2012, was \$10,845,184, that total longevity paid was \$85,300, detective stipends paid was \$58,900, and EMT/RN stipends totaled \$3,000. The PBA-1 also added \$196,900 in clothing allowance paid, but it did so at an inaccurate rate of \$1,100 per officer -- the actual contractual rate is \$1,000 per officer.

The PBA stipulated that the categories of additions to base pay paid (stipends, longevity, etc.), as used by the County in exhibit C-4, were accurate. However, the PBA disagrees with the County subtractions for unpaid absences. In addition, the PBA argues clothing allowance should also be added into the calculation of total base pay paid, as this amount is included in employee's paychecks and is taxed. The County disagrees. Further, the PBA proposes to add the salary of Officer Jennifer Vernaglia (46,948) who was a member of the bargaining unit until her promotion on January 24, 2013. Moreover, the PBA argues that the amounts budgeted by the County for unfilled sheriff's

positions (\$1,117,420) should also be counted as part of base pay. With the above listed adjustments, the PBA arrived at a 2012 total base pay paid of \$12,620,516.75.

First, I find that the County correctly subtracted the amount of salary not paid to employees because they were on un-paid leaves of absence from their total contractual salary. By definition, the "total base pay paid" does not include amounts the Employer did not pay to an employee because the employee did not work. For this reason, it is also necessary to make adjustments to the total contract salaries, as reflected in the scattergram totals, by pro-rating amounts paid to employees hired during 2012, and employees who resigned or retired in 2012. I also find that the PBA was in error when it concluded that Officer Vernaglia should be added to the 2012 total base -- this employee is already included on C-3 and included in the scattergram total.

The statute instructs that the total base pay paid shall not be merely the contractual salary, but shall also include amounts that the parties have regularly considered as part of base pay, and shall specifically include longevity payments. Further, the fact that compensation is considered taxable does not necessarily mean that it is part of base pay. If this were the case, then all taxable

compensation, including overtime payments, would all be considered part of base pay. Generally speaking, base pay is considered the amount of compensation that is considered by the State Pension Board to be pensionable. In City of Paterson v. Paterson PBA Local 1, (decided November 27, 2013) the New Jersey Appellate Division discussed the issue of base pensionable salary as it applied to the City police officers' obligation to contribute a percentage of their "base salary" towards health care costs. In that matter, the PBA appealed the award of an interest arbitrator which, in part, required police officers to make that contribution. The PBA argued that base pay should not include such items as longevity pay, shift differential, and stipends for certain assignments. The City asserted that it correctly withheld the 1.5 % from employee's "pensionable salary" in accordance with a notice from the Department of Community Affairs Local Finance Board, which advised public employers that the 1.5% contribution should be calculated on the base pay salary on which the pension contribution is based. The Appellant Division reversed the order of the lower court and found that the definition of base pay was appropriately based upon the Local Finance Notice which defines base pay as that amount is subject to pension contributions.

Here, there is no dispute but that clothing allowance is not subject to pension contributions, nor is it included in employee's regular bi-weekly pay checks. Therefore, in accordance with the guidance provided by the Superior Court in the Paterson matter, I find that clothing allowance is not appropriately included as part of base pay paid for purposes of calculating the 2% interest arbitration cap. I will, however, accept the parties' stipulations concerning the remaining categories of compensation as listed on Employer exhibit C-4, as additions to contractual base pay.

The PBA's assertion that the total 2012 base should include amount budgeted for unfilled positions must be rejected. It is axiomatic that funds not actually spent cannot be included within the definition of "the amount the employer expended" in the base year.

Therefore, based upon the foregoing, I make the following calculations of total base pay paid to unit members in 2012:

<b>Arbitrator's Calculations of 2012 Total Base Pay Paid</b>	
<b>Total Contractual Base Pay *</b>	<b>10,845,184.00</b>
Pro-rated Adjustment of Salaries of 5 new-hires **	(97,570.00)
Pro-rated Salaries of 14 resignations/retirements ***	<u>290,929.00</u>
<b>Total Regular Salary as Adjusted for Part Year Employees</b>	<b>11,038,543.00</b>
Voluntary Furlough	(325.32)
Mandatory Furlough	0.00



Absence	(52,073.03)
Absence Hours	0.00
Detective Stipend	62,349.84
Education	6,510.27
Adjustments	23,455.84
Longevity	88,935.21
Military	0.00
On Call	0.00
Retro Pay	6,705.97
Sick Pay	330.32
Shift	0.00
Stipend	125.00
Suspension	0.00
Vacation	47,008.33
Worker's Comp	56,895.01
Weekend	<u>0.00</u>
<b>Total</b>	<b>11,278,457</b>
<b>2%</b>	<b>225,569.14</b>
<b>X 3 Years</b>	<b>676,707.42</b>
<p>* This amount was derived both from the scattergram in C-3 and the list total in PBA-1.</p> <p>** This amount was calculated by pro-rating the annual salary of the five employees who were hired in 2012. These five employees were included in the scattergram totals with their <u>full year's</u> salary.</p> <p>*** This total was calculated by pro-rating the salaries of the fourteen employees who resigned or retired during 2012 as listed on PBA-2 (revised). These employees were not included on C-3, PBA-1 or the scattergram.</p>	

Accordingly, I conclude that the total amount possible under the 2% arbitration cap is \$225,569.14 or \$679,707.42 for a three-year contract.

The Employer's cost of longevity payments is part of base pay pursuant to N.J.S.A. 34:13a-16. Therefore, going forward, the cost of increases to longevity must be taken into consideration when evaluating the application of the

2% hard cap over the contract length. The following chart shows the Employer's cost of automatic longevity increases as employees reach their next benchmark of service over the life of the contract being awarded:

YEAR	Total Cost
2013	13,500
2014	15,800
2015	<u>10,900</u>
	40,200

The parties stipulated that longevity increases were already awarded to eligible employees in 2013. Therefore, if longevity increases are to be awarded again in 2014 and 2015, a total of \$40,200 must be spent from the available 2% amount.

Here, the cost of paying employees their increments in any year of the contract would be \$588,095 -- an increase over the 2012 base (\$11,278,457) of 5.2%. Thus, it is not possible to pay employees' increments each year over the life of the contract. Indeed, on the current salary guide, payment of increments even once would deplete most of the available pot leaving only a .8% increase available to cost of living raises for the entire unit, over a three-year

period.

The County proposed paying increments in 2013 based on the current salary guide, and then freezing the guide for the life of the contract. It offered no across-the-board increase for 2013, a small adjustment in 2014 to correct low salaries in the bottom steps of its modified guide, and no increases in 2015.

The PBA proposed to freeze the salary guide and apply no percentage increase in 2013, permit step movement and award a percentage increase on the top four steps (step 6, 7 and 8: 1.25%; Step 9, 3%), both on October 1, 2014; and again provide step movement and salary increases for the top steps (Step 6, 7, and 8: 2.75%; Step 9: 3.25%) both on October 1, 2015.

In situations such as this, where it is not possible to award both increments and any real measure of salary increases, I have several alternatives available. First, I could award a freeze of the salary guide and/or longevity increases not yet paid, thus freeing up most of the potential increase money for across-the-board cost of living adjustments. Second, because the statute permits me to award increases year to year in unequal percentages, I could, in essence, borrow money from one year to fund increases in another year. Third, I could restructure the salary guide to provide a greater number of salary steps, each for a smaller increment amount.

The County's proposal includes payment of all increments in 2013 based upon the current salary guide -- at a cost of \$588,092. This is in conjunction with a zero across-the-board increase for all unit employees. The problem with this approach is that it applies increments to a guide that has a bubble between steps 7 and 8 of \$8,116, and an even larger bubble -- \$21,985 when employees go from step 8 to step 9. It also provides no increase at all for the 71 employees at the top of the guide.

The PBA's proposal provides for the payment of increments twice over the life of the contract - once in October, 2014 and again in October, 2015. In addition, it proposes to increase the top four steps each year for a total of 4% for steps 6, 7, and 8; and 6.25% for step 9. This would result in employees at the top of the guide earning \$89,952 annually by 2015. This would make sheriff's officers' top pay the highest among County law enforcement units, is out of line with the cost of living rate, salary increases for other Hudson County employees, the general settlement trends among law enforcement personnel in New Jersey as reported by PERC, and private sector wage increases generally. Most importantly, however, this proposal is untenable under the 2% hard cap.<sup>12</sup>

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<sup>12</sup> It appears that the PBA's calculations did not consider that wages and/or increments awarded in October, 2014 would have a roll-over effect of additional costs in the following year.

In considering the statutory criteria and the above factors, and applying the 2% hard cap, I award the following:

2013:

a. Guide Revisions: Effective January 1, 2013, revise the salary guide for all unit employees as follows:

2012 Salary Guide			2013 Revised Salary Guide		
Old Step	Salary	Increment Cost	New Step	Salary	Increment Cost
1	30,139	2,319	1	32,458	3,477
2	32,458	3,477	2	35,935	3,768
3	35,935	4,637	3	39,703	3,768
4	40,572	2,899	4	43,471	3,477
5	43,471	3,477	5	46,948	3,767
6	46,948	7,535	6	50,715	3,768
7	54,483	8,116	7	54,483	4,058
8	62,599	21,985	8	58,541	4,058
9	84,584		9	62,599	5,496
			10	68,095	5,496
			11	73,591	5,496
			12	79,087	5,497
			13	84,584	

b. Increases: There shall be no across-the-board salary increases in 2013.

c. Adjustments/Increments: Employees on old step 1 through old step 6 would move horizontally across the guide. That is, officers currently on old step one would move to new step 1 and have their salary increased from \$30,139 to \$32,458; officers currently on old step two

would move to new step 2 and have their salary increased from \$32,458 to \$35,935, and so forth, through step 6. The amount of their "adjustment" to transition to the new guide is equivalent to the increment amount they would get based upon the new guide, and is at least as much as they would have received in an increment based upon the old guide.<sup>13</sup> Employees at old step 7, at a salary of \$54,483, will go to new 6, at a salary of \$58,541; employees at old step 8 at a salary of \$58,541, will go to new step 10 at a salary of \$62,599; and employees at old step 9 will go to new step 13, and will retain their current salary of \$84,584.

d. Longevity: Employees who reach their next benchmark service anniversary are entitled to a longevity increase pursuant to Article IV of the contract, which amount has already been paid.

2014:

a. Increases: Effective January 1, 2014, a 2.0% across-the-board salary increase to all unit employees.

b. Increments: Freeze all employees on the salary guide at their step on the 2013 revised guide.

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<sup>13</sup> The only increment amount that was decreased in the first six steps is at step 3, and there are no current employees in step 3.

c. Longevity Increases: Eligible employees shall be entitled to longevity increases pursuant Article IV of the contract.

2015:

a. Increases: Effective October 15, 2015, a 2.0% across-the-board salary increase to all unit employees.

b. Increments: Freeze all employees on the salary guide at their step on the 2013 revised guide.

c. Longevity Increases: Eligible employees shall be entitled to longevity increases pursuant Article IV of the contract.

This award takes into account the interest of the public in ensuring the County's Sheriff's officers are sufficiently compensated so as to maintain continuity and stability of the bargaining unit, improve employee morale, reduce the loss of experienced staff through attrition, allow employees to keep pace with increases in the cost of living, and maintain comparability between the wages and benefits of Sheriff's officers and other law enforcement personnel employed by the County and the County's municipal police departments. At the same time, this award respects the County's need to maintain fiscal stability, is within the County's lawful authority to pay, and results in

minimal impact on the governing body and Hudson County taxpayers. Further, I believe that this award represents the optimal solution in applying the strict limitations of the arbitration 2% hard cap pursuant to Chapter 105.

First, it provides all employees still moving through the step guide with the full measure of their increments retroactive to January 1, 2013. Hudson County has a long history of annual increment payments to Sheriff's officers, thus creating an expectation among rookie employees that, while the starting pay is low, they will eventually and automatically progress up the salary guide to top pay. However, under these difficult economic times, and particularly under the strictures of the 2% hard cap, this expectation can no longer be met on an annual basis. Awarding eligible employees their step movement at least once during this three-year contract period, is essential to maintaining even a minimal level of employee morale and help to reduce employee attrition, thus maintaining continuity of employment within the bargaining unit. This is also true of the 2% salary increase awarded in 2014 and again in 2015. These salary increases are necessary to permit Sheriff's officers to maintain their ranking within the law enforcement community. In fact, after the second 2% increase is implemented in October 2015, the top pay for Sheriff's officers will be \$88,001. This compares favorably with the current top pay of Hudson County



correction officers, Sheriff's officers closest cousins in County law enforcement, who had a 2012 top pay rate of \$86,446. In addition, the 2% increase in 2014 and in 2015 maintains the 2% pattern set by the recent settlements with the three bargaining units of Hudson County superior officer groups. Moreover, the payment of increments in 2013, together with the modest salary increases awarded in 2014 and 2015, will enable Sheriff's officers to keep pace with the cost of living and will be in line with the recent trends of law enforcement settlements as detailed on the PERC website.

Because of the 2% hard cap, it was not possible to award increments payments and also provide employees with an equitable across-the-board increase without either restructuring the salary guide or back loading the raises at the end of the contract period, which would create an exorbitant flow-through effect into 2016. While I am aware that neither party proposed an expansion of the salary guide to 13 steps, this move was necessary to even out the guide and eliminate large bubble steps as employees approach the top end of the guide. The restructured guide will provide officers with a better hope of some increment payments in the future, although some steps are in a smaller amount and progression through the guide will take longer.

Previously, the cost of an annual increment payment was \$588,092, representing a 5.2% cost increase to the County; with

the guide restructured, the cost to the annual increment in 2013 was reduced to \$372,928. This cost reduction is of course a benefit to the taxpayers and is in the public interest. In addition, I have raised the starting pay for new recruits from \$30,139 to \$33,107, thus facilitating the Employer's ability to attract qualified candidates to the job, which also is in the public interest.

I am convinced that this award is within the County's lawful authority to pay and within its 2013 adopted budget. This is true because in 2013, the only requirement upon the Employer is to pay increments retroactive to January 1, 2013. The Employer had proposed this payment at a cost of \$588,092; the actual cost to the County of this awarded increment payment will be \$372,928, thus saving the County money over the amount it proposed for 2013. In addition, I note that in 2013, and again in 2014, the Sheriff's Department had significant savings through attrition. A combination of the salaries of the 14 officers who left the department together with the five new hires is a net savings of \$442,206.<sup>14</sup> Therefore, this award will not cause the County to exceed its tax levy cap.

**Increment Freezes Going Forward:**

The County proposes to add the following contract provision

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<sup>14</sup> While I recognize that I am not permitted to consider breakage in applying the 2% hard cap, it is a financial reality that this cost savings has a positive impact on the County's budget.

to the Salary clause:

c. There will be no automatic step movement, salary level movement or automatic salary level increase beyond the expiration date of this Collective Negotiations Agreement, i.e., December 31, 2017. All step and salary level movement shall terminate effective upon the termination of this Collective Negotiations Agreement, i.e., December 31, 2017.

It cites Arbitrator Mastriani's award in Hudson County and PBA Local 232, Docket No. AR-2009-59 (3/12/12) interest arbitration in which he stated,

I have not awarded the County's proposal for "no automatic step movement in 2011" but I do award its proposal, with modification, to add a section (c) that does not require movement on the salary schedule steps beyond the expiration of the agreement. That language will read as follows:

While the salary schedule shall, unless agreed to otherwise, remain without change upon the expiration of the agreement, salary level movement shall not occur beyond the contract expiration date of the agreement in the absence of a new collective negotiations agreement. (Exhibit C-44) (Emphasis added)

The PBA asserts that the County's proposal to sunset salary step movement should not be given any weight when considering the parties proposals. It contends that there is no justification to end the practice of automatic salary step movement, which is an express term found in Article XXX in the

most recent collective negotiations agreement.

In a recent decision in County of Atlantic, P.E.R.C. No. 2014-40, \_\_\_ NJPER \_\_\_ (11/16/13), PERC addressed the issue of continuing increment payments beyond the expiration of the contract. In that matter, PERC reviewed its previous "dynamic status quo" policy as first enunciated in Galloway Tp. Bd. of Ed., P.E.R.C. No. 76-32, 2 NJPER 186 (1976), rev'd 149 N.J. Super. 346 (App. Div. 1977), rev'd 78 N.J. 25 (1978). In Atlantic County, PERC held,

. . . in the evolution of public sector labor negotiations in New Jersey, a post expiration requirement that employers continue to pay and fund a prior increment system creates myriad instabilities in the negotiations process.

First, the economic conditions which led to the recent legislative changes of a reduced tax levy cap, and a hard cap on the growth of salary expenditures on police and firefighters which are subject to interest arbitration were unanticipated thirty years ago. These legislative initiatives, reflective of new public policies designed to control the rate of growth in government spending have significantly impacted upon the way increments are treated during negotiations.

It is in both sides' interest to have the ability to negotiate over adjustments in the number of incremental steps to be contained in a successor agreement and the dollars to be attributed to those newly negotiated steps, in light of the total dollars available.

Increments carried over from an agreement negotiated years earlier create either a mandated diversion of funds to only some members of a bargaining unit at the disadvantage to others, or an actual potential reduction of salaries to those members to whom the

expired increments have been awarded.

Accordingly, PERC held:

Thus, after thirty years of experience, we find that the dynamic *status quo* no longer fulfills the needs of the parties in that it serves as a disincentive to the prompt settlement of labor disputes, and disserves rather than promotes the prompt resolution of labor disputes. While public employers will continue to be bound by the strictures of maintenance of the *status quo*, that will be defined as a "static" rather than a dynamic *status quo*.

\* \* \* \* \*

Here, the price tag for paying the increment payments in 2013 on the old salary scale would have increased the unit's budget by 5.2%. Had the County complied with the contractual requirement to continue increments after the 2008-2012 contract expired, nearly all of the available funds under the 2% hard cap would have been exhausted, leaving little left for the any other types of increases.

Having considered both sides of this proposal, I award the following:

While the salary schedule shall, unless agreed to otherwise, remain without change upon the expiration of the agreement, salary level movement shall not occur beyond the contract expiration date of the agreement in the absence of a new collective negotiations agreement.

This provision mirrors the provision in the correction

officer's contract and therefore provides internal consistency among County law enforcement officers. More importantly, it furthers the public interest as well as the interest of both parties to not require the payment of increments prior to the parties' settlement of a successor agreement.

**Statutory Compliance (Salary Article):**

The County proposes to add the following language to the salary article:

b. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation.

I view this provision as unnecessary. It is axiomatic that the parties will abide by any enacted law that impacts on terms and conditions of employment. There is no need to add this language to the contract. The proposal is denied.

**Stipends (New Article):**

The County proposes that the EMT stipend will be increased to \$2,000 and the RN's stipend will be increased to \$3,000.

The stipends first became part of the contract in 2008. The 2008-2012 Memorandum of Agreement provides at Sections 12 and 13:

Create an EMT stipend of \$750 for the number of officers who the Sheriff designates. This stipend will continue for as long as the officer maintains their certification and the Sheriff keeps the Officer in this

assignment. The number of positions will be set at 12. This number may be increased or decreased at the discretion of the Sheriff.

Create an RN stipend of \$1,000 for one officer who the sheriff designates. This stipend will continue for as long as the officer maintains their certification and the Sheriff keeps the Officer in this assignment.

The PBA's final offer included maintaining all stipends at their existing rate for the length of the successor agreement.

The County proposes to increase the EMT stipend to \$2,000 and the RN's stipend to \$3,000. These stipend rates were first established in the 2008-12 Memorandum of Agreement and are \$750 for the EMT stipend and \$1,000 for the RN stipend. There are currently four EMTs, each being paid \$750 stipend per officer for a total of \$3,000. The County's proposal would increase the cost of EMT stipends to \$2000 each for a total increase of (for current EMTs) \$5,000. There are currently no RNs being paid a stipend; therefore, there is no cost increase for this component of the proposal.

The PBA has not accepted this offer, and has not offered an explanation of its objections to it. Neither party addressed the stipend amounts in their respective briefs. This proposal is awarded as modified below:

Effective January 1, 2014, EMT stipends shall be increased from \$750 to \$1,000 annually. Effective January 1, 2014, RN stipends shall be increased from \$1,000 to \$3,000 annually.

**Overtime:**

Both parties have made proposals to modify the contractual overtime provisions in Article VIII. The 2003-2007 Agreement provides at Article VIII - Overtime:

- A. Overtime shall be paid at the rate of time and one-half, for any work performed in excess of eight (8) hour shift, forty (40) hour work week.
- B. Holiday Work will be compensated at time and one-half rate.
- C. If any Officer is required to perform work on his or her lunch period, he or she shall be compensated at a time and one-half rate, for such time worked.
- D. Overtime vouchers shall be submitted within five (5) work days after the date overtime is worked.
- E. Employees do not waive past overtime claims unpaid or the subject of pending litigation.
- F. The County shall pay all employees for appearance in Municipal Court, Superior Court, Juvenile Court, Grand Jury and ABC Proceedings while off duty time and one half (1 ½) with a four (4) hour minimum. The employee shall submit in writing all time spent at the appearance to the officer in charge. Employees may not be retained for the purposes of obtaining minimum of four (4) hours if the appearance requires less time.
- G. When the need for overtime occurs in a particular unit within a division of the Sheriff's Office, it shall be accomplished by members of that unit where possible. If the need for overtime cannot be met by members of that unit, it shall be filled by members of the division.
- H. In emergent situations, where overtime cannot be filled by members of the division, it shall be assigned out of division with the approval of the



Sheriff or his designee.

- I. Unit and division commanders shall make all attempts to keep overtime equitable, i.e., use of a rotating list when possible.

The 2008-2012 Memorandum of Agreement provides at Section

VIII:

Annually all but the first five days of sick shall be removed from the calculation of overtime. The County commits to review on a case by case basis when a member is out sick for major illness the exclusion of that sick time from this policy.

The employer proposes to modify the 2018-12 MoA by excluding all sick time from the calculations of overtime. It also demands that the contract language in section one, be modified to delete "in excess of any eight (8) hours per day." Further the County proposes to amend Section 2 (D) of the "Pittman Agreement" to increase the threshold of overtime payments from 80 to 86 hours in each bi-weekly pay period.

The PBA proposes to modify the current language to reflect that in the event of a department-wide recall, should any officer(s) be held over beyond his/her scheduled shift and thereby receive overtime, and such officer(s) is/are required to remain on duty continuously and into his/her next scheduled shift, such officer(s) shall continue to be paid overtime until completion of the officer's next scheduled shift. The PBA also seeks to add a provision that would permit an employee to be compensated in compensatory time off rather than cash payment for

overtime worked.

First, I do not intend to award the County's proposal concerning the exclusion of all sick leave from the calculation of overtime. The County has not identified any particular problem it has with sick leave abuse in this bargaining unit. Nor has it explained what positive effect this proposal will have on the public interest or the continuity and stability of the bargaining unit. Further, it has not pointed to any comparable provision in any other County bargaining unit or any other law enforcement group. Most importantly, it has not provided any cost data to indicate what the County will save if this proposal is awarded. This proposal, if adopted, would unfairly penalize employees from overtime payments based upon even a modest use of their contractual sick leave benefit. The proposal is denied.

With regard to the County's proposal to eliminate the eight hour per day threshold for overtime calculations, this proposal would appear to have the effect of eliminating any daily overtime. This proposal must be denied as it is not justified by the record evidence. However, I do note that the current contract language providing for overtime after eight hours in a day, stands in contrast with the provisions in the Pittman MOA which provides for a twelve hour work day. Accordingly, the contract will be modified to insert into section A, "except as modified by the Pittman MOA, overtime shall be paid for hours

worked in excess of any eight (8) hours per day." The same must be said for the remaining County proposals to change the overtime thresholds. Quite simply, the County has not demonstrated that these proposals support any of the statutory criteria, nor is there any indication of the financial impact on the unit members or cost savings to the County. The proposals to change the overtime threshold are denied.

The PBA contends that, in recognition of sheriff's officers extraordinary, round the clock efforts in times of natural disasters or other situations that necessitate a department-wide recall, it is only fair to reward these officers with overtime pay for the entire period. The PBA asserts that such payment would benefit employee morale.

I find that the PBA's proposal to require overtime payments continuously when there is a department-wide recall is also not sufficiently supported by the evidence to permit me to evaluate the benefit to the employees or the potential cost to the County. The Union's assertion that the cost of additional manpower during Hurricane Sandy was paid for through FEMA money was not proven by evidence.

I recognize that sheriff's officers, and many other law enforcement personnel, must have put in an extraordinary number of hours of almost continuous duty time during the disastrous effects of Hurricane Sandy. However, they were compensated for

their time at the overtime rate for time works beyond their regular hours. The time they were on duty during regular hours was fairly compensated at their regular straight time, as they would have been on duty during those times anyway. I am not inclined to modify the contract language to provide extra compensation for employees working their regular hours. The PBA proposal is denied.

The PBA also proposes to modify the overtime clause to permit employees a choice of being paid for overtime hours in either cash payment or compensatory time off. The County argues that Sheriff's officers do not need any more time off from work.

Generally, the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, requires an employer to pay a non-exempt worker who exceeds specified maximum hours at an "overtime" rate one and one-half times the worker's regular rate. 29 U.S.C. § 207(a). Cash payment is the required default method for compensating an employee who works overtime when a collective negotiations agreement has not specifically permitted another method, i.e. compensatory time.

First, any comp time payment for overtime would be based upon 1.5 times the hours worked, just as the cash overtime rate is. The County's concern that replacing an officer who takes a comp day is unfounded. Sgt. Sisk testified that

overtime in the patrol division is practically non-existent, as the Employer does not have a minimum staffing requirement. Second, it appears that the Employer has a practice of temporarily reassigning staff from one division to another to cover absences. Third, my award will give the County discretion to approve or reject a requested comp day depending upon whether granting such a request would impinge upon its ability to staff its operations.

To the extent that the County is also concerned about officers accruing a substantial bank of comp time which would have to be cashed out at later date and a higher pay rate than what would have been paid when the time was earned, my award will address that concern by requiring employees to cash out their unused comp time by year's end. This awarded language is identical to that contained in the County corrections local award.

I have carefully considered the respective arguments of both parties on this issue. I award the following:

Officers will be compensated for all overtime worked at the overtime rate of 1.5. Such compensation may be in the form of cash payment or compensatory time, at the sole discretion of the officer. Officers may take compensatory time off upon approval by management's designee. The decision to grant a comp time request shall be based upon whether minimum staffing levels are met, but may not be unreasonably denied. Officers may accrue a maximum of 40 hours of renewable compensatory time per calendar year. Any compensatory

time not used by December 31 of the year in which it is earned shall be paid to the employee at the December 31 rate of pay in January of the subsequent year.

**Holidays (Article VII):**

The County proposed changes in the Holiday article. The 2003-2007 Agreement provides:

The Sheriff shall retain the right to require employees covered by the terms of this Agreement to report to work for regular duties, special projects, training, reduction in backlog work, or other assignments during the period of Court recesses.

The employer proposes to add the following language to the Holiday article:

Notwithstanding the foregoing, the County reserves the right, at its discretion, to adjust the holiday schedule herein to conform to that promulgated by the State of New Jersey.

Holidays are not enumerated anywhere in the contract. It was generally acknowledged at the hearing that the Sheriff's court division follows the courts calendar of holidays. HR Director Patrick Sheil testified that the County is concerned that the Governor might change the State's officially designated State holidays, such as Good Friday. If the State eliminates a holiday, then the Courts are in operation and the sheriff's officers are needed. I grant the County's proposal to the extent that, if the State exchanges one designated holiday for another (such as Lincoln's Birthday for the day after

Thanksgiving), then the Sheriff's officers holiday will conform to the State's designated holidays. However, in no event will the total number of holidays currently enjoyed by sheriff's officers be reduced. If the State reduces the number of designated holidays and sheriff's officers are required to work, then such work will be done on an overtime basis in accordance with Article VIII. The proposal, as modified, is awarded.

**Insurance (Article XV):**

The County proposes to replace the existing contract language with the following:

- a. The insurance and health benefit levels as provided in State Law shall remain in effect.
- b. Prescription drugs: the prescription drug program is currently with the New Jersey Health Benefits Program. The County program shall be provided for the eligible employee, family and spouse, as set forth and defined by law.
- c. The County shall provide health coverage currently through the New Jersey Health Benefits Program. The County program shall be provided for the eligible employee, family and spouse, as set forth and defined by law.
- d. The County shall continue the basic County dental program, which shall be at a benefit level of the current plan. The County basic dental program shall be provided for the employee, family and spouse, as set forth and defined by law. The County and Union shall cooperate to secure State approval for the implementation of an employee-paid upgrade in the current dental insurance plan. Such upgrade will be at a no expense to the County. If implemented, the County will exert its best efforts to assure that Employee payments for the dental upgrade are treated as pre-tax income.

e. The County shall continue its present life insurance program benefit level of \$5,000.00.

f. A. The parties agree that the County shall have the unilateral right to select the insurance carrier, the program and/or to self-insure in its sole and absolute discretion. Any dispute dealing with the selection of insurance carrier, program, or decision to self-insure shall not be subject to the Grievance Procedure. No reduction in benefit level shall result.

f. B. Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over any such changes. However, as a participating SHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and/or benefit level in this agreement will be adjusted to reflect the change. The County will not be liable for any such change in benefit level or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, or an individual employee of the County from filing an appropriate challenge against the State for any such change. The County will provide notification of any such changes to the Union and employees. This provision covers all plans under the New Jersey State Health Benefits Programs including but not limited to healthcare, prescription drugs, etc.

g. Add new section to reflect that employee contributions towards health care insurance benefits shall be made in accordance with applicable law. This amount may change from time to time based upon changes in legislation. The County has no input into or control over any such legislative changes. Accordingly, when such a change is made under law this agreement will be adjusted to reflect any change in contribution rate. The County will not be liable for any such change, or the impact of any such change. In addition no grievance or complaint against the County



challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union or an individual employee of the County from filing an appropriate challenge against the State for any such legislative change. The County will provide notification of any such changes to the Union and employees.

h. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation.

Add new section:

Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over such changes. However, as participating SDHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and/or benefit level in this agreement will be changed accordingly including the cost of co-payments of prescriptions to employees. The County will not be liable for any such change or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, an individual employee or the County from filing an appropriate challenge against SHBP for any such change. This paragraph applies to any programs under the SHBP, for example, the prescription drug program.

New Section: Employee Health Care Insurance contributions in accordance with Chapter 78, P.L. 2011.

Section 15.4: Amend to: The County shall provide the N.J. State Prescription Drug Program.

The County asserts that its insurance proposal is designed

to "standardize" the insurance provisions in all of its contracts. It notes that the language above is identical to the insurance provision awarded to the FOP Lodge 127 unit via Arbitrator Mastriani's award. It is also similar to language I awarded to the correction officers group and the corrections superiors group.

The PBA argues that the County provided no factual basis for changing the insurance language other than Shiel's testimony that it was modeled after several arbitration awards previously issued. The PBA points out that Sheil acknowledged that the current proposal is materially different from the Mastriani award (C-44), which did not seek to replace an entire section as the County proposed here.

The County's proposed language is a significant departure from the language in the 2003-2007 contract, and necessarily so. Yet, it is also an expansion of the language awarded by Arbitrator Mastriani in the FOP 127 award. Further, if the County's proposal to replace the entire insurance clause with the new language were awarded, it would eliminate the Section F of the current article which provides for benefits for retirees. The record here does not establish a basis for eliminating this paragraph.

Some of the proposed language changes the County seeks, such as the contractual acknowledgement of, and notice

requirement for, mandatory contributions to health care premiums. Other provisions, such as the language acknowledging the parties' obligations to abide by legislated changes in the law, and changes required by New Jersey State Health Benefits Program, are mainly restatements of the parties' legal requirements. However, I will amend the existing contract language to better conform to that contained in the Mastriani award for FOP 247, and still maintain existing language where appropriate. I award the following:

Revised Article XV:

- a. The insurance and health benefit levels as provided in State Law shall remain in effect.
- b. Prescription Drugs: the prescription drug program is currently with the New Jersey Health Benefits Program. The County program shall be provided for the eligible employee, family and spouse, as set forth and defined by law.
- c. Health Benefits: The County shall provide health coverage currently through the New Jersey Health Benefits Program. The County program shall be provided for the eligible employee, family and spouse, as set for the defined by law.
- d. Dental: The County shall continue the basis County dental program, which shall be at the benefit level of the current plan. The County basis dental program shall be provided for the employee, family and spouse, as set forth and defined by law. The County and the Union shall cooperate to secure State approval for the implementation of an employee-paid upgrade in the current dental insurance plan. Such upgrade will be at no expense to the County. If implemented, the County will exert its best efforts to assure that employee payments for the dental upgrade are treated as pre-tax income.

d. Life Insurance: The County shall continue its present life insurance program benefit level at \$5,000.

e. Carrier Selection: The parties agree that the County shall have the unilateral right to select the insurance carrier, the program and/or to self-insure in its discretion. Any dispute dealing with the selection of insurance carrier, program, or decision to self-insure shall not be subject to the grievance procedure. No reduction in benefit levels shall result.

f. Retiree Benefits: The County shall pay the costs of medical insurance coverage (currently under New Jersey State Health Benefits Plan) for employees who retire with at least twenty-five years of credited service in a State or locally administered retirement system excepting employees who elect deferred retirement, but including employees who retire on a disability pension based on fewer years' of service. Employees cannot change their medical coverage immediately prior to retirement under State Health Benefit Plan rules and regulations.

g. Benefit Changes: Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over any such changes. However, as a participating SHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and/or benefit level in this agreement will be adjusted to reflect the change. The County will not be liable for any such change in benefit level or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, or an individual employee of the County from filing an appropriate challenge against the State for any such change. The County will provide notification of any such changes to the Union and employees. This provision applies to all plans under the New Jersey State Health Benefits Programs including but not limited to healthcare, prescription

drugs, etc.

g. Employee Contributions: Employee contributions towards health care insurance benefits shall be made in accordance with applicable law. The County will provide notification of any such changes to the Union and employees.

This language will retain the existing benefits under the expired contract and modify the clause only to the extent necessary to recognize statutory changes and required contributions.

**Training (New Article):**

The County proposes to add the following provision:

Officers who receive training shall be obligated to remain in the employ of the County for a period of three (3) years after the training is complete or shall be responsible to refund to the County the cost and expenses of any training provided.

Sheil testified that the County's intent with this proposal is to prevent situations where employees obtain the benefits of some specialized training at the County's expense, only to then market their newly acquired skills to another employer. The County asks that, in such situations, it have a method to recoup the costs of training.

The County argues that, with such an investment in costs, its proposal is reasonable. Sheriff's Officers derive a job related benefit with the training that is provided to them by the County. A similar provision exists with respect to "tuition" reimbursement for Sheriff's Officers (Exhibit C- 2,

Memorandum of Agreement). Arbitrator Mastriani awarded "tuition reimbursement" language in the FOP 127 arbitration. In Matter of Interest Arbitration between County of Hudson Department of Corrections and PBA Local 109 (Corrections Officers), IA-2012-046, the arbitrator sets forth, in part:

Except for employees who retire or are laid off, officers who receive training shall be obligated to remain in the employ of the County for a period of three (3) years after the training is complete or shall be responsible to refund to the County the cost and expenses of any training provided. Any training cost not repaid at the time of termination may be deducted from any accrued but unpaid balances, including but not limited to vacation time and holiday time.  
(Exhibit C-46)

The PBA contends that this new provision should not be awarded. It observes that sheriff's officers are not permitted to opt out of training - certain training is mandatory. It also maintains that if an employee is nearing retirement, he/she would be stuck reimbursing the Employer for the cost of his salary during any extended period of training, thus discouraging his retirement. In addition, the PBA points out that the employer also benefits from the employee receiving training. I decline to award this proposal. The County correctly notes that this identical language was included in the correction officers interest arbitration award in 2012. However, I awarded

the provision because the parties agreed to add it to the contract. In addition, the County cites similar contract language with regard to tuition reimbursement, as well as the award by Arbitrator Mastriani in the FOP Lodge 127 matter, both concerning repayment of tuition money upon an employee's termination within three years of the payment. However, these clauses involve tuition reimbursement -- the employee has a choice as to whether to submit a request for tuition reimbursement to the County for payment in the first instance. This is not true with regard to mandatory training. Moreover, the County has not pointed to any other contract with its employees which has such a provision.

Further, the County has not provided any cost analysis of data concerning how often this situation occurs, how much such training costs, or what the potential cost savings might be if the proposal were awarded. Accordingly, the proposal is not sufficiently justified so as to be awarded.

**Work Hours (Article VI):**

The County proposes to delete the existing Section C and replace it with the following:

The Sheriff or his/her designee may schedule work hours to effectively run the operation of the Sheriff's Office.

The 2003-2007 Agreement provides at Section C:

Flexible Work Hours: The Sheriff or his designee may

schedule work hours as follows:

Second Shift: May start at any hour between 7 a.m. and 11 a.m. The shift will be of eight (8) hours duration. Any time worked in addition to the eight hours will be compensated at a time and one-half rate.

Third Shift: May start at any hour between 2 p.m. and 4 p.m. The shift will be of eight (8) hours duration. Any time worked in addition to the eight hours will be compensated at a time and one-half rate.

Further the County proposes to modify the language in Section D to read as follows:

The Sheriff may reschedule with 96 hours' notice. The Sheriff will first consider volunteers. In the event of an emergency the Sheriff shall have the right to reschedule without giving notice. In all instances the final decision on rescheduling is in the sole discretion of the Sheriff or his/her designee.

The 2003-2007 Agreement provides at Section D:

The Sheriff may reschedule with 48 hours' notice by asking for volunteers. If there are no volunteers then the Sheriff shall reschedule by order. In the event of an emergency, the Sheriff shall have the right to reschedule without giving notice.

The County also proposed to delete Sections E, G, H and I.

The 2003-2007 Agreement provides at Sections E, G, H and I:

E. Choice of tours will be determined on a volunteer basis and shall be made within the unit.

G. The work schedule for the Municipal Transportation Squad shall be five (5) days of work, followed by two (2) days off, followed by five (5) days of work, followed by three (3) days off (5/2 - 5/3 work schedule). Effective July 1, 2011 (or the beginning of the next work cycle immediately thereafter) Sheriff's Officers assigned to the Patrol Bureau shall work for the same schedule as the Municipal Transportation Squad.



The 2008-2012 Memorandum of Agreement provides at Section 16:

Re-opener for the negotiations on the elimination of the 5/2 - 5/3 schedule effective the day after ratification.

H. Members in the Patrol Division and the Municipal Transport division will receive a compensation day in lieu of overtime when a holiday falls on a regularly scheduled workday.

I. There is no Section I in the Agreement or the Memorandum of Agreement.

The PBA also made a proposal to modify the work hours' clause to permanently incorporate the current "Pittman" schedule into the collective bargaining agreement.

The County argues that its proposals are reasonable. The County points out that the increase in the notice to officers regarding rescheduling to 96 hours is a benefit to officers.

In essence, the County seeks to eliminate the set work hours within the contract (Section C) and replace it with a clause that will allow management to dictate work hours. In addition, the County seeks to eliminate the provision that choice of tours will be on a volunteer basis within the unit. It also apparently seeks to eliminate the language describing the work schedule for the Municipal Transport Squad and language that would put the Patrol Bureau on the same 5/2 schedule. Further, the County seeks to eliminate the clause that permits

patrol officers and municipal transport officers to receive a compensation day in lieu of holiday overtime. The County has not adequately justified this proposal nor explained why the proposal would support any of the statutory criteria. I award the County's proposal with regard to the 96 hours' notice to employees and Section D will be modified as follows:

The Sheriff may reschedule with 96 hours' notice by asking for volunteers. If there are no volunteers then the Sheriff shall reschedule by order. In the event of an emergency, the Sheriff shall have the right to reschedule without giving notice.

I also direct that the second sentence of Section G, which concerns that Patrol Bureau work schedule, be eliminated and that the provisions of the Pittman MOA concerning work hours be incorporated into the contract.

The PBA proposes to incorporate the existing Pittman schedule for the Patrol Division into the contract and to make the schedule permanent. It argues that this proposal advances the public's interest and welfare and has the most wide-felt impact on the bargaining unit. The PBA notes that the County has already adopted the Pittman Schedule in the FOP 127 Memorandum of Agreement (PBA-I-4), thereby providing an opportunity for department-wide consistency on the issue if this proposal is awarded to the PBA. Occhipinti testified that, by all accounts, the Pittman schedule is an enormous success. Because officers on Patrol have a 24-hour presence in the

County's communities they are available to take far more calls than in the past. In fact, Occhipinti testified that calls have risen from 11,000 calls per year to 27,000 calls per year following the implementation of the Pittman schedule. Further, according to the testimony of both Occhipinti and Sergeant Sisk, overtime levels have dramatically decreased following implementation of the Pittman schedule, and in fact, overtime in the Patrol Division is now practically nonexistent.

In light of the foregoing, I award the PBA's proposal to incorporate the Pittman work schedule into the master contract and eliminate the provisions that characterize the schedule as temporary or experimental as well as the provisions that allow the County and/or the Sheriff the unilaterally terminate the schedule. I award this proposal, first, because the schedule has been effective in permitting a greater police presence on the streets and in reducing overtime costs. Secondly, the officers in the Patrol Division are apparently very satisfied with working the Pittman schedule; thus, this is a benefit to employee morale and enhances the continuity of the bargaining unit. Moreover, the positive impact of the schedule on police services is an obvious benefit to the public interest. The schedule has been in effect now for 32 months. The fact that the Sheriff has not sought to exercise management's right to

terminate the schedule, nor have quarterly review meetings to review its effectiveness been held, are good indicators that management is satisfied with the schedule. Finally, permanently implementing the Pittman schedule for the Sheriff's officers will provide consistently within the Sheriff's Department, as the County has already incorporated the Pittman schedule into the Superior Officers' agreement for 2013-2017. Accordingly, the PBA's proposal concerning the Pittman schedule is awarded.

**Claims Adjustment (New Article):**

The County proposes the following new language:

Section 1. When an employee's personal property is damaged or lost as a result of an incident arising out of or incidental to the lawful performance of his or her duties as a Sheriff's Officer, the County shall reimburse the employee for the replacement value of the property, except as follows:

A. The County shall only be liable for loss or damage to jewelry or watches up to \$100.00.

Section 2. A claim for any such loss or damage must be reported to the County, in writing, within five (5) days of the loss or damage.

Section 3. At the County's option, an employee submitting a claim under this Article may be required to submit three (3) estimates in support of the claim. In such cases, the County shall reimburse the employee for the lowest estimated value of the claim.

Section 4. Employees who receive full or partial reimbursement from a third party, including insurance, for a claim paid pursuant to this Article must reimburse the County for any amount of money received from the third party.

The PBA also has a proposal (as a modification of Article III, Clothing) concerning the issue of damage to officers personal property while on duty. More specifically the PBA proposes the following clause:

If officers' personal equipment, such as watches, cell phones, wedding bands and eyeglasses, are damaged during the course of employment, such items shall be replaced at the expense of the County to a maximum amount of \$300.00 per item, without the County withholding any taxes, if any, which may be due.

Although both parties have made a proposal to add this benefit to the contract, I have no authority to award such a benefit. N.J.S.A. 34:13A-16.7(b) prohibits me from awarding any new economic benefit. This would be a new economic benefit. There is no exception in the statute for the arbitrator to award a new benefit in circumstances where the parties seemingly agree to a new benefit but disagree over the terms. Accordingly, this benefit cannot be awarded.

#### **Clothing Allowance (Article III): Uniform Changes**

The PBA proposes to modify the current language to reflect that the economic cost and impact of any uniform or work-related gear/equipment change, alteration, modifications, or other adjustment shall be paid by the County of Hudson.

N.J.S.A. 34:13A-16.7(b) prohibits me from awarding any new economic benefit. This would be a new economic benefit.

However, I do award the following:

In the event that the Sheriff determines to make changes, modifications, or additional to the sheriff's officers' uniform, the parties will continue the current practice of negotiating over the cost and impact of such changes.

**Off-Duty Work (New Article):**

Both parties have made proposals concerning off-duty details. The County proposes to increase the pay rate for non-County funded off duty details from \$40.00 to \$45.00 effective upon Freeholder ratification. The County proposes to further increase this rate to \$50.00 effective January 1, 2015. The County asks that the rates for off duty details for County-funded entities <sup>15</sup> remain unchanged. In addition, the County demands that detail days be eliminated and that such details be part of sheriff's officers normal assignments or be done on a non-paid, volunteer basis.

The PBA proposes to add the following new provision to the contract:

- a. Establish a procedure to provide that PBA Local 334 and its unit members shall be afforded equal opportunity with other law enforcement agencies to engage in off duty employment within Hudson County, without restriction based on location of or source of funding for such employment opportunities;
- b. Establish hourly rate for work at (i) \$60/per hour weekdays 7:00 a.m. until 5:00 p.m.; and (ii) \$75/per hour for holidays, weekends, and weekdays from 5:00 p.m. until 7:00 a.m.;

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<sup>15</sup> The County's proposal identified this rate as contained in "Section 1. F" of the Off Duty MOA. There is no Section 1. F.; I infer that the County meant Section 2. F.

c. Officers shall be paid for a minimum of four hours for any off duty employment. For off duty employment of four or more hours but less than eight hours in duration, Officers shall be paid for a minimum of eight hours;

d. The PBA shall be responsible for negotiating with vendors and scheduling/assigning officers to off-duty employment.

e. The PBA shall be responsible to negotiate rates with vendors and be allowed to establish different rates than those set forth herein in section 12(b) on a case by case basis should circumstances dictate.

\* \* \* \*

Off-duty work is controlled by a separate Memorandum of Agreement between the parties (C-125) signed September 2, 2005. It provides in relevant part,

. . . The following procedure shall be followed in order for any Off-Duty Sheriff's Officers to be employed, . . . by either a governmental or non-governmental unit or entity where the officer will be required to either wear the Department's uniform or carry the Department's weapon or both:

. . . B. All compensation for off-duty jobs in which bid specifications have been advertised after September 1, 2005, (with the exception of those outlined in Paragraph 2F) shall be paid through the County of Hudson at the rate of \$40.00 per hour and then at the rate of \$60.00 per hour for: 1) off-duty work in excess of 8 consecutive hours; 2) nighttime work (work outside the hours of 6am to 5pm) and 3) off-duty work on Saturdays, Sundays and Holidays, plus the County's administrative fee. The County will establish the administrative fee annually. The officer's off-duty job rate is paid less all mandatory taxes and deductions.

. . . D. Should any officer perform Off-Duty work for any Hudson County autonomous agency (i.e., Hudson County Schools of Technology, Hudson County Improvement Authority, etc.), the Off-Duty rate shall be at the rate of \$40.00 per hour and \$60 per hour for: 1) off-duty work in excess of 8 consecutive hours; 2) off-duty work on Saturdays, Sundays and Holidays, plus the County's administrative fee. There shall be no nighttime differential for this work.

The County asserts that its proposed increase in the rate of pay for off-duty work is reasonable, and with the exception of the increase in the rate of pay, the agreement should not be changed. The County opposes the PBA's demands to equalize the off duty assignments among other law enforcement officers and to assume control of the assignments. The County asserts that the allocation of off-duty work under the PBA's proposal would conflict with the Inter-local Services Agreements (ISA's) entered into between the County and its municipalities, which includes coverage of traffic regulation within the municipalities.

I award the County's proposal to increase the rate for non-County funded off duty assignments to \$45 per hour, effective for vendor contracts signed hereafter, and to further increase that rate to \$50 per hour effective January 1, 2015. This proposal increases the rate by 12.5% over the existing rates and an additional 11% in 2015. While this appears at first glance



to be a large percentage increase, it must be remembered that the off duty rates have remained constant for the last eight years. Therefore, I deem this proposal fair, reasonable, and in the interests of the unit members and the public. The PBA's proposal to increase the weekday rate to \$60 per hour (for County funded and non-County funded jobs) is a 50% increase which I find excessive. However, the PBA's proposal to increase the rate for evening, weekend, and holiday rates has some merit. Previously, there was a \$20 differential between the weekday rate and the weekend/holiday rate. To maintain this differential, I award an increase in the weekend/holiday rate from \$60 per hour to \$65 per hour. I decline to extend a higher rate to evening work as many of these Sheriff's officers already view working evenings as part of their regular work schedule.

Although the County has proposed to maintain the current \$40 per hour rate for County funded off duty work, the PBA has proposed to increase this rate to \$60 per hour. I note that this rate has also not increased since the parties' signed the 2005 memorandum of agreement. Previously, the rate for off duty assignments was the same, whether the work was funded through the County or through a private vendor. There is no basis to create two different rates which are solely dependent upon the source of the funding for the assignment. Therefore, I award

the same increases for County funded jobs as was awarded above for non-County funded jobs.

The PBA's proposal to assume control over assignments of the off duty work and its proposal to equalize assignments among other law enforcement personnel must both be rejected. Both proposals are impractical and impinge upon management's rights to assign work. Therefore, this part of the PBA proposal is rejected.

**Detail Days:**

The County demands that detail days be eliminated and that such details be part of sheriff's officer's normal assignments or be done on a non-paid, volunteer basis. In the past, "detail" days were the label attached to parade duty. The practice was that the employer would first seek volunteers for this duty, and the duty was performed on an overtime basis. However, this practice has recently been eliminated. The current practice is now that the parades are part of the employee's normal assignment or officers may volunteer to participate on an un-paid basis.

Because the County's proposal mirrors the current practice, I will incorporate that practice into the parties' agreement. The County's language is awarded.

**Detective Assignments:**

The County proposes the following contract provision:

Detective 1 - Should any current Detective 1 be removed from the assignment as a Detective 1, the total allotment of Detective 1 assignments shall be reduced by that number until a maximum of 30 Detective 1 positions is achieved in the Department as a whole. The maximum number of Detective 2 assignments will be nine (9).

The 2008-2012 Memorandum of Agreement provides at Section

14:

The County agrees to create a Detective 2. The Detective 2 assignment will be at the discretion of the Sheriff. As with the detective assignment, the Sheriff, at his/her sole discretion, may assign officers to this assignment or remove them. The stipend for Detective will be increased to \$1,300. The stipend for Detective 2 will be \$2,000.

The number of Officers in these titles will be decided upon by the Sheriff and at his sole discretion may be increased or reduced.

I view this proposal to limit the number of detectives in each grade as an unnecessary addition to the contract. The contract already gives the Sheriff discretion on the number of detective 1 and detective 2 positions. Moreover, an employer has a non-negotiable right to decide how many positions to fill in any event. It does not need to negotiate this provision with the Union. This proposal denied as unnecessary.

**Educational Incentive/Tuition Reimbursement (New Article):**

The PBA proposes to modify the current language to provide that educational reimbursements are paid to unit members without the County withholding any taxes, if any, which may be due. Additionally, the PBA proposes to streamline the process by

providing for reimbursement requests to be submitted directly to the County (a person designated by the County) and not through the Sheriff's Office.

The 2008-2012 Memorandum of Agreement provides as Section 5:

The County will provide tuition reimbursement for courses taken to advance unit members to a degree in Criminal Justice or related degree. The program will review for approval 6 credits per semester at HCCC rate. The courses must be requested in advance and will be reimbursed upon successful completion with a B or higher grade.

The employee will be committed to a minimum of three years of continued service as a Sheriff's Officer with the County or must reimburse the County for the full cost of tuition.

The PBA argues that the Educational Incentive/Tuition Reimbursement proposal would actually increase County revenue by removing the cost of paying taxes from the County, while streamlining the reimbursement process by eliminating duplicative bureaucratic review. Occhipinti testified that currently, officers must have their courses approved by Internal Affairs prior to taking the course, then submit the course for approval of Internal Affairs again after the course is taken. Occhipinti testified that this proposal would eliminate the duplicative layer of approval and speed up the reimbursement payment to officers. The PBA also contends that the County should not be treating educational reimbursements as wages, subjecting both the officer and the County to payroll taxes on

such payments. The PBA states that such reimbursements are excludable from gross income under either section 62 or 127 of the Internal Revenue Code. These sections provide,

Section 62: Accountable Plans: Under Section 62 of the Code, these educational reimbursements should not be included in your employees' wages because the educational expenses meet the following criteria: (1) the reimbursed education expenses are job-related; (2) the employees substantiate the expenses to their employer; and, (3) excess reimbursements or allowances are returned to the employer within a reasonable amount of time, in the event that any excess reimbursement is ever paid by the County. I.R.C. § 62(c); Treas. Reg. § 1.62-2.

Section 127: Educational Assistance Programs: Pursuant to Section 127 of the Code, an educational assistance program generally allows employees to exclude reimbursements (up to \$5,250 per year) from gross income for education expenses that are not job-related. I.R.C. § 127(a)(1)-(2).

It appears that Section 127 applies to the sheriff's officers' educational reimbursement benefit, provided the employer has a written plan; the plan may not offer other benefits that can be selected instead of education; assistance does not exceed \$5,250 per calendar year; and the plan does not discriminate in favor of highly compensated employees. If these conditions are met, then Section 127 applies, even if the courses are not job related. If the reimbursement plan is excludable from taxable wages, then employees (as well as the County) are paying taxes on that money needlessly.

However, I am not a tax expert. It is not my role to

determine whether the tuition reimbursement plan as set forth in Article meets the qualifications of the IRS regulations. I direct that the County administration investigate whether this is the case and advise the Union within 60 days of the date of this award.

It appears that the PBA's claim with regard to the double layer of employer verification being unnecessary is valid. The County did not refute Occhipinti's testimony concerning this. However, it also appears that the County has a management right to decide what procedures it wishes to employ to verify the employee's request for tuition reimbursement. Therefore, I will not direct that the County modify its current practice regarding tuition reimbursement verification and approval.

**Vacation (Article XIV):**

The PBA proposes to modify the current language to provide that all unit members shall be entitled to utilize their entire allotment of vacation days on January 1 of each year.

The 2003-2007 Agreement provides at Article XIV - "Vacations" that employees receive a vacation allotment of one day per month in their first year of employment and then a range of 15 to 25 days up to 24 years of service, and thereafter one additional day for each additional year of service.

I find that it is typical among New Jersey law enforcement groups, and for that matter, public employees generally, for

employees to be required to "earn" their vacation time in their first year of employment, but thereafter, to receive an annual allotment of leave time on the first of each year thereafter. Occhipinti testified that this is currently the practice in the Sheriff's Department that employees may take vacation leave at any time during the year, even if the days have not yet been earned. However, other Sheriff's the past have not followed this practice, but required an employee to first earn the time.

The County's concern is that employees who leave mid-year might have used more than their vacation time earned to date, and the County would have to recoup the shortage from the employee. But Undersheriff Conti testified that he believes this is currently the practice. The County presented no evidence that this has been a problem. The PBA's proposal is awarded.

In addition, the PBA proposes to modify the current language to reflect that officers who are on military leave, sick leave, extended sick leave, and training shall not be considered by the County in determining to grant or deny vacation requests.

The PBA argues that whenever there is a vacancy, either in Patrol or in the Courts, that needs to be filled, the Sheriff will simply reassign officers to fill the need. Backfilling vacancies with overtime assignments are rare. Therefore, the PBA maintains, there is no cost impact of its proposal.

The County argues that this provision is a managerial

prerogative to decide minimum staffing. This proposal is one of the issues which is the subject of the County's scope of negotiations petition.

As a practical matter, this proposal would create a potential for staffing shortages. An officer out on one of the types of leave (military, sick leave, etc.) that the union suggests should not be considered is still not there to perform his regular duties; the reason for his not being at work is really immaterial. Absent more detailed information, I cannot fully evaluate this proposal to determine whether this would create potential staffing shortages and/or impact on the Employer's ability to maintain operations or mandate overtime payments, the costs of which cannot be evaluated. This portion of the PBA's proposal must therefore be denied.

The PBA proposes to establish a vacation bidding procedure within the Court Division based on "Seniority", which shall be defined in identical fashion as it is defined in the Pittman Sidebar dated April 4, 2011 and as agreed to between the County and the Hudson County Sheriff's Superior Officer's F.O.P. Lodge 127. In addition, it proposes to add this contract language:

In the event that the vacation day(s) requested will occur within seven (7) days of the request, the vacation request shall be awarded on a first come, first served basis. All vacation requests shall be submitted no less than twenty-four (24) hours before the requested vacation day(s).



Occhipinti explained that currently, officers in the Patrol division have a well-defined procedure for selecting vacations, while the Courts division has no consistent procedures in place for selecting vacation time. The Pittman Side-Bar provides in relevant part,

III. **Paid Time Off**

- A. All paid time off . . . will continue to be approved on a first-come, first-served basis. However, in the event that multiple individuals request the same time off simultaneously, requests shall be granted on a Agency Seniority basis and, secondly, on a Patrol Seniority basis.
- B. Requests for paid time off shall be submitted with a minimum of 30 days' notice and shall not be submitted beyond 180 days in advance. . . .

\* \* \*

- D. A Patrol Seniority list as well as an Agency Seniority list shall be established and utilized accordingly.

The PBA notes that a similar provision was included in the recently agreed upon settlement with PBA Local 127, representing the Sheriff's superior officers.

The County argues that the Pittman Schedule agreement is a stand-alone agreement that cannot simply be bootstrapped to divisions within the Sheriff's Office that do not work the Pittman schedule. The officers in the other divisions work an eight-hour tour and have weekends off. The Patrol Division procedures, including vacation scheduling, are unique and cannot be blindly applied to other divisions. The County asserts that

the PBA did not produce any witness that was impacted by vacation procedures utilized by non-Patrol Division officers. Accordingly, the PBA's proposals to expand the vacation selection terms of the Pittman Agreement non-Patrol Division officers should be denied.

It is not all clear what it is the PBA is seeking by this proposal. In its written proposal, it asks to limit vacation picks to be made up to seven days before the time requested, and then on a first-come, first serve basis. The PBA does not explain how the bulk of vacation time (that not picked last-minute) would be selected. Further, I do not know how the PBA would propose to align this proposed language with that in the Pittman agreement, which provides that selections must be made at least 30 days in advance, unless management waives the time requirements. Accordingly, I award the PBA's proposal as modified below:

Vacation selection shall be done on a first-come, first serve basis. However, in the event that multiple individuals request the same time off simultaneously, request shall be granted on an agency seniority basis and secondly, based on seniority within the division. Vacation requests shall be submitted with a minimum of 30 days' notice and shall not be submitted beyond 180 days in advance.<sup>16</sup> Management retains the right in its sole discretion to waive the notice requirement on a case-by-case basis. Management similarly retains the right to cancel paid time off.

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<sup>16</sup> I have declined to expand this provision to all time off. The PBA did not make that proposal.

A seniority list shall be established within each division as well as an agency seniority list shall be established and utilized accordingly.

**Transfer Procedure (New Section):**

In its written Final Offer, the PBA proposed the following:

. . .to establish a uniform procedure for selection of unit member(s) for any transfer between the Operations Division and Court Division (other than based on unique or specialized skills required for same), as well as establishing a minimum time period for the County to provide advance notice to any unit members of such transfer(s).

On the second day of the arbitration hearing, Occhipinti testified concerning the Union's intent with regard to this proposal. Occhipinti stated that, currently officers are assigned to the patrol division on a voluntary basis only, except in the event of an emergency, pursuant to the Pittman MoA.

Occhipinti explained that what the Union seeks by its proposal, is to have the same provision apply to transfers from the patrol division to the court's division; that is, that officers may be transferred from any division to another only on a volunteer basis except in the event of an emergency.<sup>17</sup>

Occhipinti testified that if an officer is transferred to another division, he is effectively moved from a 12-hour tour to an eight-hour tour, possibly with little advance notice. Occhipinti

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<sup>17</sup> I deemed the clarification of the Union's formal written proposal as a proposed amendment to its Final Offer. I permitted the Union to so amend its Final Offer on the record; however the County objected to the lack of notice it received concerning the substantive amendment. Therefore I afforded the County four working days to submit affidavits or certifications in support of any defense it which to pose concerning the amended proposal.

testified that this is potentially very disruptive to the officer's personal life, child care arrangements, his ability to continue taking college classes, etc. The Union argues, therefore, that an officer should be entitled at least 30 days' advance notice before being transferred from Patrol to Court Division, just as is the case in Patrol.

In a related proposal, the County proposed a 96-hour notice before an officer has his shift changed. With regard to the PBA's proposal, the County contends that applying the language of the Pittman MoA to transfers from Patrol to the Courts on only a voluntary basis would impinge upon its management prerogatives. It further states that a transfer to an 8-hour shift is not complex.

I recognize the PBA's arguments that standardizing transfer procedures among all of its unit members would create fairness among unit employees, improve morale, and enhance unit continuity. However, the County has a management right to decide how to best deploy its staff to most effectively run its operations. If the Sheriff's Office develops a shortage of officers assigned to the Courts, whether it would be able to adequately fill vacancies if transfers were solely dependent upon volunteers is not adequately explained in the record. Therefore, I am reluctant to award this portion of the proposal. However, the PBA also makes a convincing argument that sudden transfers

without advance notice, from either division to the other has a potential dramatic effect upon an officer's personal life -- be it child care needs, family life, second jobs, or an officer's ability to continue taking college courses. Yet, no information was provided detailing how often employees are transferred involuntarily, nor how much notice is typically given. Further, the PBA has not produced persuasive evidence to support its proposal for 30 days' notice. The Employer has offered 96 hours' notice before a shift change. I conclude that this proposal, which I am awarding, is adequate to address the PBA's concerns about officers being transferred from Patrol to Courts Division (which, by definition is a shift change). The PBA's separate proposal to expand the Pittman MoA language concerning employee transfers to other divisions of the Sheriff's Department is denied.

**Recognition Clause (Article I):**

The PBA proposes to modify the language to include Sheriff's Investigators within the definition of the Local 334 bargaining unit. The 2003-2007 Agreement provides:

Article I - Recognition:

Pursuant to and in accordance with all applicable provisions of the New Jersey Employer-Employee Relations Act, as amended and supplemented, and the Rules and Regulations of the Public Employment Relations Commission, the Sheriff and the County recognize PBA 334 as the exclusive collective bargaining representative for the Sheriff's Officers

employed by the County of Hudson and the Hudson County Sheriff but excluding Superior Officers, managerial executives, confidential employees, non-police employees, professional and craft employees, and all others for the purpose of collective bargaining with respect to rates of pay, hours and other terms and conditions of employment.

The County asserts that this proposal is not mandatorily negotiable and therefore, may not be submitted to interest arbitration. Further, it argues that the appropriate forum for resolving issues concerning the composition of the bargaining unit is PERC's Unit Clarification procedures. In addition, the County contends that N.J.S.A. 40A:9-117(a) makes investigators "at will" employees, and therefore, the PBA's contractual rights cannot lawfully be applied to investigators. This issue is also presented in the County's Scope of Negotiations Petition, wherein it contends that the issue is pre-empted by statute, and is therefore, not negotiable.

The PBA argues that the Sheriff's investigators should be included in PBA Local 334's unit because the PBA bylaws require the Local to accept investigators as members.

I conclude that the PBA's proposal with regard to adding new titles to its unit cannot be considered in this forum. N.J.S.A. 34:13A gives PERC exclusive jurisdiction to decide the composition of a collective negotiations unit in the event of a dispute. It provides that the negotiations unit shall be defined with "due regard for the community of interest among the

employees" and the desires of the employees proposed to be added to the unit. Therefore, while the parties could voluntarily agree to the scope of the recognition clause, absent such agreement, the appropriate place to seek resolution of such disputes is with PERC's representation procedures under N.J.A.C. 19:11-1.1 et seq.<sup>18</sup> Moreover, the fact that the PBA bylaws require it to offer membership to a group of employees is not sufficient basis to add them to the unit.

I find that interest arbitration is not the appropriate vehicle to add unrepresented employees to the PBA's bargaining unit. The PBA proposal is denied.

**Use of County Facilities (New Section):**

The PBA proposes adding language providing that all unit members shall be entitled to use any exercise/gym/recreation facilities located or operated in any County buildings free of charge.

The PBA argues that there is no negative to allowing the members of the PBA to improve their physical fitness by using County-owned gym/recreation facilities at no cost to the County and it is a positive impact on the interest and welfare of the public.

The County argues that the PBA's President speculated with respect to whether gyms existed in buildings and whether the

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<sup>18</sup> PERC Rules and caselaw place certain procedural and timing requirements on such filings. See N.J.A.C. 19:11-2.7.

County controlled the buildings. The PBA President acknowledges that the Board of Trustees, not the County Board of Chosen Freeholders, manages the County Community College. The County asserts that the PBA provided very little justification for this proposal and failed to demonstrate that there was no economic cost to such a proposal. Under the statute, if this is an additional economic item not listed in the contract, it must be rejected as a new economic item.

I find that the PBA has not presented sufficient evidence to permit me to award this proposal. While it is obvious that the morale and well-being of the sheriff's officers would benefit from having fitness equipment available to them without cost, it is not clear from the record that the Hudson County Board of Freeholders owns or manages such fitness equipment or space. The only gym equipment the PBA identified on the record was said to be located in the Hudson County College, which is operated by the College Board of Trustees, not directly by the County. Presumably, then, it is not available to the County to make it available to sheriff's officers, and there is no justification for the conclusion that the equipment could be made available on a no-cost basis. If there is a cost to the County, then the proposal is unawardable under N.J.S.A. 34:13A-16.7(b), which prohibits an arbitrator from awarding any new economic benefits. The PBA's proposal is denied.



**Off-Duty Police Action (New Section):**

The PBA proposes to include language reflecting that as all Sheriff's Officers are on-duty twenty-four (24) hours a day, should an officer take action on his/her time off which would have been taken by an officer on active duty, it shall be considered police action. Such officer(s) shall have all rights and benefits concerning such action as if they were on active duty.

The PBA presented a single example of a Sheriff's officer who was accused of acting inappropriately while taking an off-duty police action. This single example is insufficient to justify such a contractual change; in addition, the rights of off-duty police officers have not been fully vetted in the record. Accordingly, this proposal is denied.

**Grievance Procedures (Article IX):**

The PBA proposes to expand the definition of "grievance" to include any and all disputes between the County and the PBA or its members.

The 2003-2007 Agreement provides at Article IX - Grievance and Arbitration Procedure:

A. A "grievance" shall be any difference of opinion, controversy or dispute arising between the parties hereto relating to the alleged violation of, interpretation or application of any of the provisions of this Agreement.

B. A grievance to be considered in this procedure must be initiated by the employee within fifteen (15) working days from the time the employee knew or should have known of its occurrence.

C. Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved employee to proceed to the next step. Failure to appeal a grievance at any step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

D. It is understood that employees shall, during and notwithstanding the pendency of any grievance, continue to observe all assignments and applicable rules and regulations of the County until such grievance has been fully determined.

STEP ONE:

The grievance shall be discussed with the employee involved and the PBA representative with their immediate supervisor designated by the Sheriff. The answer shall be in writing and made within five (5) working days by such immediate supervisor to the PBA.

STEP TWO:

If the grievance is not settled through Step One the same shall within five (5) working days be rendered to writing by the PBA and submitted to the Department Head or any person designated by him, and the answer to such grievance shall be made in writing, with a copy to the PBA within five (5) working days of submission.

STEP THREE:

If the grievance is not settled at Step Two then the PBA shall have the right within five (5) working days of the receipt of the answer to Step Two to submit such grievance to the County Personnel Director. A written answer to such grievance shall be served upon the individual and the PBA within ten (10) working days after submission.

STEP FOUR:

If the grievance is not settled through Step Three then the aggrieved shall have the right within five (5) working days to pursue all legal remedies afforded by the provisions of the Civil Service Act.

If the grievance is not settled at Step Three, then the PBA shall have the right within five (5) working days to notify the County Personnel Director of its election to submit such grievance to an Arbitrator. An impartial Arbitrator shall then be selected by Agreement through the established procedures of PERC. The Arbitrator shall have full power to hear the dispute and make a final determination, which shall be binding on both parties and the grievant. The Arbitrator does not have the right to add to, subtract from or modify this Agreement in any manner. Each party shall bear its own costs of the arbitration, except that the cost of the Arbitrator's fee shall be borne by the parties equally.

The PBA President, or his authorized representative may report an impending grievance to the County Executive in an effort to forestall its occurrence.

E. Nothing herein shall prevent any employee from processing his own grievance, provided a PBA representative may be present as observer at any hearing on the individual's grievance.

F. The employees retain all rights conferred upon them by law, including Civil Service Laws and PERC.

G. In the event an action affects a number of Officers, then the PBA may commence the grievance at the appropriate level necessary to render the appropriate relief sought.

The PBA argues that an expansion of the grievance procedure to include all disputes is both negotiable and consistent with the language of the statute. It points out that N.J.S.A. 34:13A-5.3 provides,

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of **employees may appeal the interpretation, application or violation of policies, agreements and administrative decisions**, including disciplinary determinations, affecting them, provided such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. . . . Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.  
(Emphasis Added)

The PBA maintains that, considering the broad scope of the above-cited statutory provision, its proposal to define a grievance as "any and all disputes" is not overly expansive and is within the limits defined by Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154, (1978).

Occhipinti testified that he frequently must counsel his members that their grievances cannot be submitted through the contract grievance procedure because they do not fit within the contract definition of a "grievance". This leaves members' issues unaddressed. Alternatively, Occhipinti testified, a grievance will be filed and the County will not answer the grievance.

The County contends that this PBA proposal is overbroad as it seeks to subject "any dispute" to arbitration. The County points out that, while the PBA President stated at the hearing

that the reason for this proposal is because the County did not entertain "certain items", he did not elaborate on what types of items the PBA was having difficulty grieving. The County asserts that, if the "items" were matters which fall within management's managerial prerogative then they should not be grievable. Conversely, the County asserts, the PBA already has the ability to grieve over contractual terms and conditions of employment under the current contractual grievance procedure. Therefore, the County contends, the current contractual language as written sufficiently protects the PBA's rights.

I modify the grievance definition in the contract, Article IX, Section A, to include in the definition:

. . . any provision of this agreement or terms and conditions of employment such as exist by way of past practice, and any changes in policy which impact upon employees' working conditions. However, the PBA shall not have the right to arbitrate non-contractual disputes.

This expansion of the definition of "grievance" will allow employees to have their concerns addressed and therefore will enhance employee morale. It should not be unduly burdensome on the Employer as disputes over policy changes and changes in past practice would not be subject to the arbitration procedures.

\* \* \* \*

All proposals by the County and the PBA not awarded

herein are denied and dismissed. All provisions of the existing agreements shall be carried forward except for those which have been modified by the terms of this Award.

**COST OF THE AWARD**

Cost of the Award					
Year	Guide Adjustments/ Increments	ATB Increases	Longevity Increases	EMT/RN Stipend Increases	Total Annual Cost
2013	372,928	0	14,100	0	387,028
2014	0	221,871	15,700	1,000	238,571
2015	0	<u>47,525</u>	<u>2,725</u>	<u>0</u>	50,250
	<b>372,928</b>	<b>269,396</b>	<b>32,525</b>	<b>1,000</b>	<b>675,849</b>
	<b>2% Cap Amt.</b>	676,707			
	<b>Total Spent</b>	<u>675,849</u>			
	<b>Amt. Under Cap</b>	858			

**AWARDED SALARY GUIDES**

Step	Eff 1/1/13	Eff 1/1/14	Eff 10/15/15
1	32,458	33,107	33,769
2	35,935	36,654	37,387
3	39,703	40,497	41,307
4	43,471	44,340	45,227
5	46,948	47,887	48,845
6	50,715	51,729	52,764
7	54,483	55,573	56,684
8	58,541	59,712	60,906
9	62,599	63,851	65,128
10	68,095	69,457	70,846
11	73,591	75,063	76,564
12	79,087	80,669	82,282
13	84,584	86,276	88,001

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making this award. My Award also explains how the statutory criteria factored into my final determination.

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Susan W. Osborn  
Interest Arbitrator

Dated: December 30, 2013  
Trenton, New Jersey

State of New Jersey            }  
County of Mercer               } ss:

On this 30<sup>th</sup> day of December 2013 before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.