

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between

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**COUNTY OF HUDSON / OFFICE OF THE PROSECUTOR**

"Public Employer"

-and-

**PBA LOCAL NO. 232**

"Union."

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Docket No. IA-2009-059

**INTEREST ARBITRATION  
DECISION AND  
AWARD**

**Before  
James W. Mastriani  
Arbitrator**

**Appearances:**

**For the Employer:**

Sean D. Dias, Esq.  
Scarinci & Hollenbeck, LLC

**For the Union:**

Donald B. Ross, Esq.  
Lindabury, McCormick, Estabrook  
& Cooper, PC

PERC  
2011 DEC 19 1 A 10:44

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving the Hudson County Prosecutor's Office [the "Employer" or "County"] and PBA, Local 232 [the "PBA"]. Pre-arbitration mediation sessions were held on December 22, 2009 and May 11, 2010. The issues were narrowed but the impasse remained. Because a voluntary agreement could not be achieved, a formal interest arbitration hearing was held on July 8, 2010, at which time the parties argued orally, examined witnesses and introduced documentary evidence. Witnesses testifying at the hearing included Detective Sean Patrick O'Leary, President of the PBA, Special Investigations Michael A. Signorile. In addition, certifications were received from Cheryl G. Fuller, Director of Finance and Administration for the County, Raphael H. Caprio, Ph.D., Financial Certification, Wade Frazee, previous Director of Finance and Administration for the County, Chief of Staff David Porter, and Director of Labor Relations Patrick Sheil. The record of hearing was closed on February 11, 2011 and post-hearing briefs were submitted by both parties, the last of which was received on or about April 11, 2011.

### **FINAL OFFERS OF THE PARTIES**

The County and the PBA submitted the following final offers:

#### **PBA LOCAL 232**

1. Term of Contract - January 1, 2009 to December 31, 2013.

2. Wages –

Effective January 1, 2009, 6% across the board for Detectives at top Step and 3% across the board for Detectives who have not yet reached top Step.

Effective January 1, 2010, 6% across the board for Detectives at top Step and 3% across the board for Detectives who have not yet reached top Step.

Effective January 1, 2011, 4.5% across the board.

Effective January 1, 2012, 2.9% across the board.

Effective January 1, 2013, 2.9% across the board.

3. Senior Officer Differential

All Detectives who are eligible under the language of the current contract shall receive Senior Officer Differential as provided therein.

4. Layoffs

In the event layoffs become necessary, all layoffs shall be in the inverse order of seniority with the most junior detective being the first to be laid off.

5. Insurance for Retirees

Language to be added which would provide that upon retirement, each Detective shall retain and be entitled to the level of insurance benefits which were in effect at the time of retirement throughout his retirement.

6. College Credits:

Increase each Step in the current contract by one-half percent (1/2%).

7. Equipment Allowance:

Each Detective shall receive an annual equipment allowance of \$900, effective January 1, 2010.

8. Sick Time

Upon retirement, each Detective shall be entitled to a payment of up to \$15,000 for all accumulated and unused sick time.

\* Based upon an agreement to permit revision of final offers prior to the close of record, the PBA proposed two additional contract years at 2.9% in each year.

### **Hudson County Prosecutor's Office**

1. Contract Duration – Three years effective January 1, 2009 to December 31, 2011

2. Article V – Salary

- a. January 1, 2009 through December 31, 2009 – 0  
January 1, 2010 through December 31, 2010 – 0  
January 1, 2011 through December 31, 2011 – 1.5% with no automatic step movement
- b. No retroactivity.
- c. There will be no automatic salary level movement or automatic salary increases beyond the expiration date of the collective bargaining agreement.
- d. 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.

3. Article VI – Overtime

In section one, delete reference to overtime for work performed "in excess of any eight (8) hours per day." Amend section to provide that overtime shall be calculated on a weekly basis of more than forty (40) hours in a work week. Additionally, after the fifth (5<sup>th</sup>) sick day in a calendar year, sick leave days will not count as hours worked for overtime purposes.

4. Article VII – Holidays

- a. Amend section 1 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 Governor of the State of New Jersey.

- b. Add new section 4 to provide as follows:

ABSENCE BEFORE AND AFTER HOLIDAY

An employee who is absent from work due to illness the day before and/or the day following a legal holiday, shall not be paid for the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as "absent no pay" or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday is observed while he/she is employed in either status.

5. Article XIV – Insurance

- a. Add new section to provide as follows:

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 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 changed accordingly including the cost of co-payments of prescriptions to employees. The County will not be liable for any 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.

- b. Add new section to reflect the required 1.5% employee contribution to health insurance pursuant to law.

6. New Article Training

Investigators 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.

7. Article VIII – Vacation

Amend section 8 to provide that an employee's vacation leave is pro-rated in the employee's year of retirement.

8. Mandatory Direct Deposit

9. The appointment of an investigator to the title of Sr. Investigator shall continue to be within the sole discretion of the Prosecutor. The maximum number of appointments is set at twelve (12).

10. A. The assignment of County vehicles shall continue to be within the sole discretion of the Prosecutor.

B. Vehicle Use Allowance

With respect to investigators currently employed with the Prosecutor's Office, if in the discretion of the Prosecutor, a vehicle is no longer assigned to an investigator, that investigator will receive a monthly stipend of three hundred fifty (\$350) dollars. Those employees who continue to be assigned to a vehicle will not receive the monthly stipend.

Any employee hired as of July 1, 2010 will not receive the monthly stipend and the assignment of a vehicle to that employee is within the discretion of the Prosecutor. If it is determined by the Prosecutor that the employee will not have an assigned vehicle, the employee will not receive a monthly stipend.

## **BACKGROUND**

The Office of the Prosecutor employs 74 County Investigators<sup>1</sup> in this bargaining unit. The Office oversees law enforcement in the twelve Hudson County municipalities of Bayonne, East Newark, Guttenberg, Harrison, Hoboken, Jersey City, Kearny, North Bergen, Secaucus, Union City, Weehawken and West New York. The density per square mile within the County is extremely high and rises to 51,503 residents in West New York and 53,005 in Guttenberg. All of the municipalities are characterized as urban-suburban.

The organization within the Prosecutor's Office is described in the certification of Chief of Staff David Porter. There is an Investigative Division which includes the units of Homicide, Special Victims, Special Investigations, Insurance Fraud, Narcotics Task Force, Juvenile, Computer/Tech Services, Academy/DARE/Firearms Training, Municipal Task Force and Lab and Internal Affairs. Departments duties are broad and complex in scope and include, among other things, the investigation of public corruption, bank/mortgage fraud, identity theft, embezzlement, money laundering, sexual assault, child abuse, illegal narcotics, gambling and gang related activities. The Law Enforcement Complaint Unit conducts internal affairs investigation complaints filed against members of the Office and also serves as an adjunct to the Internal Affairs Units of the municipal police departments in the County, other County agencies such as the Sheriff and Corrections, as well as outside agencies such as the New Jersey

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<sup>1</sup> The Agreement defines the employees as Investigators who are also commonly referred to as Detectives.

Transit Police and the Port Authority Police Department. Some of the units, include investigators from other municipalities who serve on an “on loan basis,” typically for a one year period and they are paid by their respective municipality rather than by the Prosecutor. Twelve investigators are assigned “in-court” to assist the Assistant Prosecutors in matters related to criminal trials.

Substantial evidence was introduced concerning the crime rate in the County and its impact on an Investigator’s workload. Evidence on these issues was submitted by both parties and includes the New Jersey Attorney General Uniform Crime Report for 2003 and 2008, testimony from PBA President O’Leary who has served as a Homicide Specialist, and the certification from Chief of Staff Porter. Additionally, the parties conducted a tour of the County in the presence of the arbitrator pointing out areas where crime and violent crime is commonly committed. In their respective post-hearing briefs, the parties make argument on this area of evidence and reach somewhat different conclusions. Nevertheless, no one has disputed President O’Leary’s testimony that the Office has investigated an average of approximately 40 homicides per year over the last few years and that a sex crime investigator’s workload rises at times to 200. According to O’Leary, the investigators in Hudson County are unique in that they take total control of an investigation in all geographic areas within the County that involve homicides and sex crimes. President O’Leary emphasizes that when the quantity and quality of activities are considered, the Investigators are inadequately paid in comparison to virtually all such county units within the State



of New Jersey, as well as law enforcement officers employed by municipalities within the County of Hudson.

The evidence that has been emphasized in this proceeding centers mainly on wage comparisons between unit employees and the Prosecutor's Investigators and the Detectives and Investigators employed by other County Prosecutor's offices within the State of New Jersey, comparisons between the County's offer and the increases already provided for in collective bargaining agreements between the County and Sheriff's Officers and Corrections Officers during contract years, the finances of the County as reflected in its official budget documents, the impact of the terms of a new contract on the County and the taxpayers and the statutory limitations placed upon the County with respect to its ability to appropriate and/or tax its residents.

Additional evidence on remaining statutory criteria was offered into evidence by the Union and the County in expert and comprehensive fashion. The extensive nature of those submissions do not allow for an exhaustive summary of all of the evidence, although the entire record has been thoroughly reviewed and considered. The submissions include, but are not limited to salary and benefit comparisons between unit employees with law enforcement units in all of the municipalities within Hudson County, similar comparisons with Detectives and Investigators in all other counties, internal comparisons between unit employees with other law enforcement and non-law enforcement units

representing employees employed by Hudson County, cost of living data, private sector wage comparisons, unemployment rates, interest arbitration awards and voluntary settlements, crime statistics, comparative demographic data, general and effective tax rates for Hudson County municipalities and budgetary data involving the County's tax ratables, property taxes, property valuations, tax levies, tax appeals, fund balances, changes in revenue, sources and amounts, budget expenditures, debt service and foreclosure filings.

In addition, there are many other issues in dispute beyond the main issue of salary, some of which are economic and some of which are non-economic. These include layoff procedures, retiree insurance, college credits, equipment allowance, terminal leave, overtime calculations, holiday pay eligibility, health insurance, training, vacation accumulation, direct deposit, assignment of vehicles and vehicle use allowance. Evidence relating to these issues was submitted through documents, testimony, certifications, as well as through formal post-hearing submissions.

The PBA contends that the evidence on internal and external comparability present a "most compelling case for an award of its salary proposals." Pointing to labor agreements and charts, it submits that the Investigators are ranked last in mean salary and second to last in median salary in the State of New Jersey. Specific attention is drawn to a \$40,000 difference in mean salary in Bergen County, \$18,000 in Essex County, \$28,000 in Union

County and \$6,000 in the County of Passaic. The PBA points to the existing salary schedule and compares it with others within the State:

Appendix A-5  
2008

<u>Step</u>	
Starting	\$31,000
1	31,950
2	33,047
3	35,619
4	43,214
5	47,929
6	51,858
7	55,786
8A	66,535 (Jan. 1) 77,000 (July 1)
8	77,000
Sr. Investigator	80,850

\*2007 Step 8 is eliminated.

\*Those at Steps 4, 5, 6 and 7 in 2007 will move to new Steps 4, 5, 6 and 7 in 2008.

\*Those at Step 8 in 2007 will move to 2008 Step 8 and increase to \$66,535 on the first full pay period on or after 1/1/08 and increase to \$77,000 on the first full pay period on or after 7/1/08.

\*Those at Step 9 in 2007 will receive a 3.52% increase and move to new Step 8.

Based upon labor agreements in evidence, the PBA points out that its salary maximum is below most levels within the State of New Jersey and substantially behind the counties of Bergen, Camden, Essex, Mercer, Middlesex, Monmouth, Morris, Ocean Somerset and Union. The PBA also proposes that all Detectives should receive the Senior Investigator Pay that is provided for in the salary schedule after Step 8. This would require the lifting of the cap of 12

Investigators who are eligible for this title and the discretion of the Prosecutor on who shall advance to this step of the salary schedule.

The PBA also urges that a comparison be made between the County's offer and salary increases other law enforcement units have received within Hudson County. One such agreement is one between the County and PBA Local 334 representing Sheriff's Officers covering contract years 2008 through 2012. That agreement called for an annual 6% increase at top step and an annual 3% increase for all other steps. Longevity was increased by \$100 at each step of the schedule and clothing allowance was increased by \$100 in each year of the first four years of the agreement. The Union notes that investigators receive no clothing allowance and that longevity for the Sheriff's Officers now exceeds that paid to the Investigators. The second agreement referred to is between the County and PBA Local 109 representing Corrections Officers. That agreement contained a term from 2004 through 2009. The 2009 contract year is the first contract year for the Investigators. In 2009 the Correction Officers received a 4% increase and a 4% increase in 2008 caused Correction Officers to exceed Investigator salaries at top step in 2008 by \$1,714.

The Union disputes the County's position that its financial difficulties are so severe that it is unable to offer greater than a 0%, 0% and 1.5% increase in 2009, 2010 and 2011 respectively. The Union submits that the financial data reflects that the County's finances are sufficiently healthy and that its final offer

can be awarded without adverse financial impact on the County. It relies upon the submission of its financial expert, Dr. Raphael Caprio. The PBA highlights some of Dr. Caprio's conclusions which are set forth as follows:

- The County's percentage increase in property values from 2005 through 2009 was a staggering 166.35%, ranking second in the entire State of New Jersey
- Total tax distribution as a percentage by County from 2007 to 2009 actually decreased by nearly a full point and, despite its urban characteristics and need for more County services than suburban or rural counties, Hudson County ranks 10<sup>th</sup> in the state.
- Hudson County ranks second among all New Jersey counties in the percentage of property values and thus potential tax revenue from non-residential categories.
- Again, despite its urban characteristics, population density and high crime rate in certain areas such as Jersey City, the average sales price of a home in 2009 ranked Hudson County 9<sup>th</sup> in the state.
- Compared with the regional urban counties of Bergen, Essex and Union, Hudson County has consistently imposed the lowest taxes on its residents by a wide margin. Moreover, the annual and cumulative increases in the average residential tax bill has increased at a lower rate (annually and totally) than any other County in this group every year between 2005 and 2008.
- In 2009, Hudson issued more building permits in terms of dollar value (despite the "economy" about which we all hear so much) than all other counties except Bergen. In 2008, Hudson ranked third in that category.
- Despite changing economic conditions in the economy at large, the surplus generated by Hudson County has remained strong and consistent since 2006. There is absolutely no indication of a change in that important financial category as we move into 2011.

- Importantly, as shown on page 19 of Dr. Caprio's report, the County has with great consistency since 2006 over-budgeted and thus created a deliberate surplus. Given that track record, there is no sign of change in the future and for the first two years of the contract at issue here, ample financial capacity to fund the award sought by the PBA. The same trend applies with respect to the category described by Dr. Caprio as "Miscellaneous Revenue Not Otherwise Budgeted." In this connection, see page 21 of his report which demonstrates graphically and persuasively that the County's surplus generation has remained on an upward trend every year since 2006.
- Among the most revealing of all Dr. Caprio's findings relates to the property tax levy cap. As shown on page 22, the County's tax levy for 2010 was \$10 million **below** the allowable state Cap! [emphasis in original]
- Given all of the foregoing, the utter financial insignificance of the dollars involved in this proceeding is beyond reasonable dispute. As Dr. Caprio indicates, each percentage point in wage increases for **all 74 Detectives** is worth approximately \$47,000 – in total! Further, a **million dollar** increase in spending would cost the average residential property owner in Hudson County \$5.74 per year. See page 27. [Emphasis in original]

The PBA urges that the County's non-economic and concessionary proposals be rejected. It describes such proposals as "Draconian" and without any evidentiary support in contrast with its own that it believes will further the continuity and stability of employment. The PBA cites President O'Leary's testimony that trained and talented Detectives have left the office in such amount to constitute a "virtual exodus." It asserts that its proposal will stem the tide of loss and provide the Prosecutor with the added ability to hire and retain additional personnel.

The County contends that the comparability data must be viewed in the context of changing economic conditions faced by all governmental units within the State of New Jersey. The County offers a series of interest arbitration awards and settlements reflecting declines in rates of salary increase and wage freezes commencing in 2009, the first year of the agreement with PBA Local 232. The County views that its posture with other bargaining units in the current atmosphere is more relevant than labor agreements that were struck in its other law enforcement units many years ago.

The County also cites the certification of its Director of Labor Relations who has represented that the County's negotiations position with other law enforcement units is similar to what it has proposed in this proceeding, including two years of a wage freeze and the freezing of all automatic steps. The County points out that the Union has ignored the cost of salary increases through step movement in 2009, 2010 and 2011 that in 2009 ranged from 7% to 38% for those eligible to receive steps. The County calculates the costs of the respective proposals, including step movement as follows: "Under the County's proposal for 200, total salary percentage cost is 7.67%. The PBA offer for 2009 has a total salary cost of 13%. In 2010, the salary costs for the County is 4.89%, while the PBA's costs are 10.42%. (Exhibit C-146). For 2011, the salary costs for the County is a 1.5%, while the PBA's costs are 9.94%. The three year total salary costs under the PBA proposal is 37.2%. (Exhibit C-146)."

The County observes that when comparability is considered, the benefits that are provided to the Investigators must be considered. In support of this observation, it notes that unit employees receive 15 days sick leave, life insurance, a \$10,000 maximum payout of terminal leave, 20 to 25 vacation days, educational benefits up to 1.25% of base salary, a longevity schedule up to \$1,100 and that they did not contribute towards health insurance prior to legislation.

The County disagrees with the PBA's assessment of its finances and of the economic climate in general. It makes the following presentation in support of this position:

The County's economic offer considers the financial impact on the governing unit, its residents and taxpayers and the public interest and welfare, as it must recognize and is impacted by the National, State and County's bleak economic conditions caused by the greater economic turmoil not seen since the Great Depression. The County's unemployment rate is approximately eleven (11%) percent. (Exhibit C-94 and Exhibit C-103). From April 2007 to April 2010, the unemployment rate has doubled in only three years within Hudson County. (Exhibit C-104) For Hudson County, the net private sector wage change from 2008 to 2009 was a decrease of -1.18%.

Under challenging economic conditions, the County 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 must be afforded an opportunity to contain costs and maintain its fund balance. The PBA's Final Offer ignores and disregards the County's financial goals and the financial challenges faced by the County.

The Director of Finance and Administration, County Treasurer and Chief Financial Officer for the County, Wade Frazee, submitted a Financial Certification. (Exhibit C-134) Mr. Frazee held the



position since October, 2001. Previously, he served as Deputy Director of Finance from September, 1998 to September, 2001; served as Acting Comptroller for the County from January 1, 1988 to September, 1988 and was Division Chief, Accounts and Controls from November, 1975 to December, 1987. (Cert., Frazee, paragraph 1) As reflected by his extensive financial duties and responsibilities, he is fully familiar with the County's financial condition and circumstances. (Cert., Frazee, paragraph 2)

In addressing criteria 16g(6), an Interest Arbitrator places emphasis, among other things, on a public entity's revenue sources, costs and tax ratables. The County is experiencing a decrease in revenues and tax ratable base, while simultaneously experiencing escalating costs. Additionally, the County's tax rate increased in 2010.

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. (Cert. Frazee, paragraph 5) For the years 2005 through 2009, the County's Equalized Value of Property shows an increase of \$27.3 billion dollars. The Assessed Value of Property for the same period increased by only \$1.3 billion. For the year 2009, the County's Equalized Value of Property only increased by \$1.9 billion and the Assessed Value of Property increased by only \$1.3 billion dollars. This is indicative of the down turn in the economy. (Cert. Frazee, paragraph 5) To further illustrate this fact for the year 2010, the County's Equalized Value of property decreased by \$1.9 billion dollars and the Assessed value of Property increased by only \$18.3 million. (Cert. Frazee, paragraph 5)

The County Tax Rate for 2010 increased to \$4.10 per \$1,000 from \$3.83 in 2009 or an increase of \$.27 cents per \$1,000. This increase is as a result of declining Equalized Values and Tax Levy Increase. (Cert. Frazee, paragraph 5) Despite the County's efforts to cut costs in the budget, County taxes have continued to escalate. This unfortunate trend of increasing taxes has continued to place a tremendous burden on our taxpayers. For 2005, the County tax levy increased by \$6.2 million, and 2006, the tax levy increased by \$10.6 million, 2007, the tax levy increased by \$10.1 million, 2008 the tax levy increased by \$11 million. Since 2005, the County has been forced to increase County taxes by \$62.5 million. (Cert. Frazee, paragraph 10) Another indication of the economic downturn and the impact on property values is reflected in the number of tax appeals filed with the County. For the year 2010, 7,754 tax appeals were filed. Not since 1996/97 has this number of tax appeals been filed. This number does not include tax appeals

filed directly with the NJ Superior Tax Court. (Cert. Frazee, paragraph 6)

A significant issue the County must deal with is the down turn in the economy, which has resulted in major decreases in the County's resource stream. To this point, the County has been able to maintain its fund balance, but this will become a problem as the County moves forward. (Cert. Frazee, paragraph 14) With tighter budgets and decreasing resources, the County will not have the ability to regenerate fund balance. (Cert. Frazee, paragraph 14) The County has had to rely on its fund balance as a significant item of resource to support its budget. In years past and again in 2010, 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 \$62.5 million since 2005. (Cert. Frazee, paragraph 14)

The County actually confronts a "Structural Deficit", meaning that the County's recurring expenditures exceed its recurring revenues. (Cert. Frazee, paragraph 7) For 2010, this Structural Deficit continues to be about \$12 million. The County has addressed the Structural Deficit each year by the deferral of pension payments, no salary increases for non-union employees for three years (2008, 2009 & 2010), County tax levy increases and employee contributions for employee benefits. (Cert. Frazee, paragraph 7)

The County further contends that its other economic and non-economic proposals are fair and reasonable and should be awarded. It submits that it has provided adequate reasoning and support for these proposals based upon its needs for cost containment and, in certain instances, its desire to have similar terms that exist in other law enforcement units that it negotiates with.

The County urges rejection of the PBA proposal that a Senior Officer Differential replace the Senior Investigator title as an automatic step on the salary schedule. According to the County, the senior investigator title was negotiated to

be an appointed title and not an automatic step. It relies upon the certification of Porter who testified that the purpose of the title was to recognize an Investigator for his service when that Investigator may not be slated to be promoted to the rank of a superior officer. According to Porter, the Chief of Investigations would recommend a candidate, a committee would review the recommendation and the Prosecutor, in his sole discretion, would then assign a Senior Investigator title to that particular Investigator. The County further argues:

Additionally, from the execution of the memorandum of agreement, wherein the Senior Investigator title was created, no Investigator was automatically moved to the salary of a Senior Investigator after obtaining ten (10) years of law enforcement experience with at least four (4) years of experience with the Prosecutor's Office. (Cert. Porter, paragraph 11) In fact, there are Investigators in the Prosecutor's Office who have (10) years of law enforcement experience and four (4) years of experience with the Prosecutor's office who were not moved to the salary of the Senior Investigator title. (Cert. Porter, paragraph 11) An Investigator only moves to the salary level of a Senior Investigator upon appointment by the Prosecutor. Additionally, there is an understanding between the Prosecutor's Office and PBA Local 232 that the maximum number of appointments to the Senior Investigator title is capped at twelve (12). (Cert. Porter, paragraph 10) The PBA provided no testimony to contradict the certification of David Porter regarding the Senior Investigator title.

### **DISCUSSION**

As stated above, the parties have offered substantial evidence and argument in support of their respective positions on the disputed issues. I am required to make a reasonable determination of those 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).

While I find all of the statutory factors relevant, no single criterion is determinative when fashioning the terms of an award. In my evaluation of the evidence, I note that the party proposing a change in an employment condition bears the burden of justifying the proposed change. I must also consider the

reasonableness of any individual issue in relation to the terms of the entire award.

### **CONTRACT DURATION**

The County has proposed a three year agreement commencing January 1, 2009 and expiring on December 31, 2011. The PBA has proposed a five year agreement commencing on January 1, 2009 and expiring on December 31, 2013. Based upon the evidence in this proceeding, I conclude that a four year agreement that expires on December 31, 2012 to be the most desirable length for the agreement. The record reflects that the PBA Local 384 agreement in the Sheriff's Office expires on December 31, 2012 as well as the agreement between the County and FOP Lodge No. 127 that represents superior officers in the Sheriff's Office. There are no other labor agreements in the County that go beyond 2012. The interests and welfare of the public are served by an agreement that contains consistent expiration dates with those that are already in place, thus allowing for negotiations in all units to occur simultaneously based upon the evidence available to all at that time. Thus, the award herein will not represent a lead contract that extends into contract years beyond those that already are in place. Accordingly, the contract duration shall be from January 1, 2009 through December 31, 2012.

## **ARTICLE VII – HOLIDAYS**

The County offers a two part proposal with respect to holidays. The first is to amend Section 1 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 Governor of the State of New Jersey.

The reference to “the foregoing” in the County’s proposal is an enumeration of 13 paid holidays in section 1 of Article VII. The County has offered little justification to award it the sole discretion to change the existing contractual holiday schedule. Moreover, its proposal falls outside of existing practice or any other contract provision that exists within all of its law enforcement units. Accordingly, this proposal is denied.

The County also proposes to add a new Section 4 to Article VII. The County’s proposal would place certain requirements on an employee’s eligibility to receive holiday pay. An employee on a leave of absence without pay or carried on the payroll as “absent no pay” would not receive holiday pay. An employee who was ill the day before and/or the day following a legal holiday would not receive holiday pay unless the employee has accrued sick leave, or has requested vacation time or produces a doctor’s certificate. While the PBA objects to this proposal, it has not presented any evidence that would cause this part of the County’s holiday proposal to be deemed unreasonable. The eligibility requirements proposed by the County are reasonable and do not cause the

forfeiting of holiday pay due to an illness that the employee can verify. Accordingly, this part of the County's proposal is awarded and Article VII, Section 4 shall include the following:

#### ABSENCE BEFORE AND AFTER HOLIDAY

An employee who is absent from work due to illness the day before and/or the day following a legal holiday, shall not be paid for the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as "absent no pay" or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday is observed while he/she is employed in either status.

#### ARTICLE VI – OVERTIME

The County proposes to change the existing language regarding the calculation and eligibility for overtime. It proposes to delete reference to overtime for work performed "in excess of any eight (8) hours per day." It also proposes to provide that overtime shall be calculated on a weekly basis of more than forty (40) hours in a work week. In addition, it proposes that sick leave days will not count as hours worked for overtime purposes after the fifth (5<sup>th</sup>) sick day in a calendar year. The PBA urges rejection of all of these proposals.

I do not award the County's proposal to shift overtime eligibility to hours in excess of forty (40) hours per week as opposed to the existing obligation to provide overtime in excess of any hours performed after an eight (8) hour shift. The County's proposal is consistent with the overtime system in Corrections but it



is well recognized that overtime in Corrections occurs far more frequently and is more substantial than in law enforcement generally. The County's proposal is also inconsistent with the contractual requirements in the Sheriff's Office as set forth in the PBA Local 334 agreement and the FOP Lodge No. 127 agreement. Moreover, there is insufficient evidence that the amount of overtime received by the Investigators is excessive due to the existing contract language. Accordingly, the first part of the County's proposal and the second part of the County's proposal are denied.

The second County's proposal is to have sick leave days not count as hours worked for overtime purposes after the fifth sick day in a calendar year. This proposal is not unreasonable and is consistent with the language in the PBA Local 334 and FOP Lodge No. 127 agreements and promote consistency. Accordingly, I award the County's proposal as follows: Sick leave days will not count as hours worked for overtime purposes after the fifth (5<sup>th</sup>) sick day in a calendar year.

### **INSURANCE FOR RETIREES**

The PBA has proposed that language should be added to the agreement which provide that upon retirement, each Detective shall retain and be entitled to the level of insurance benefits which were in effect at the time of retirement throughout his retirement.

The existing agreement contains no specific reference to retiree health benefits. More than likely, retiree health benefits are provided under terms similar to other County law enforcement agreements that requires the employer to pay the premiums for "currently existing coverage."

Given the absence of any provision in any agreement stating that retiree coverage is guaranteed at the exact same level of benefits in effect at retirement throughout the retirement period, I decline to award this proposal for this unit.

### **EQUIPMENT ALLOWANCE**

The PBA proposes that each Detective receive an annual equipment allowance of \$900, effective January 1, 2010. The County asserts that investigators are provided with equipment and such equipment is replaced by the County when appropriate. It further objects to the cost of the PBA's proposal at an annual amount of \$66,000. PBA testimony counters that investigators are routinely paid for work related items such as flashlights, holsters, "raid" jackets and other such equipment. The PBA has, in part, met its burden on this issue. The occasional cost of a required item should not solely be borne by the Investigator. The cost of the PBA's proposal, however, has not been justified, especially in the prior absence of such an allowance. A reasonable annual equipment allowance of \$250 shall be provided for all investigators, effective January 1, 2012.

## **VEHICLE USE**

The County has proposed to alter the existing arrangement concerning the assignment or provision of vehicles to investigators. In short, it proposes a procedure under which when a vehicle can be removed, it would be offset by a \$350 monthly stipend and employees who are hired after July 1, 2010 would not receive a monthly stipend even if a vehicle is not assigned.

The Agreement is silent on the issue of vehicles but the record clearly reflects that investigators receive a vehicle upon hire which has been viewed as a condition of employment. Thus, the issue is in large part one of compensation as is recognized in the County's proposal to provide compensation upon the removal of a vehicle.

According to the County, its proposal is a cost containment tool. It points to the testimony of Cheryl G. Fuller, the Deputy Director of Finance and Administration for the County. She has direct knowledge of the costs associated with the vehicles used by the investigators as well as the taxable value of the vehicle to an investigator. According to Fuller, for 2009, maintenance costs totaled \$98,074, labor costs were \$197,782 and fuel costs were \$127,879. Cost of insurance claims for the vehicles totaled \$17,400. The Investigator monthly taxable value per vehicle is \$275.90. The County further asserts that the Prosecutor already has the discretion regarding the use and assignment of

vehicles and that a monthly stipend is a reasonable compensation offset if a vehicle is withdrawn from an investigator.

Based on the record before me, I do not award the County's proposal. Instead, I award a joint committee on vehicle use and compensation to discuss the issue and, if possible, to offer recommendations for any policy change that would be effective either during or upon the expiration of the Agreement.

This issue is complex and the record is insufficient for an award that can bring it to a fair and reasonable conclusion. It is clear that it is an issue that affects compensation. The comparability data regarding salary shows that these investigators are not well compensated in comparison to others in comparable counties such as Essex, Union, Passaic and Bergen. The use of a vehicle has been shown to be a consideration upon hire. Thus, if a vehicle is withdrawn, the compensation offset is a significant matter that must be addressed. The County's proposal falls short of providing equitable consideration and must be rejected. The withdrawal of a vehicle impacts upon many issues that have not been adequately addressed that would allow this arbitrator to award a sum that satisfies the cost questions and impacts that have been raised but not answered. In the event that the joint committee is unable to make mutually acceptable recommendations, at the very least the evidence it produces concerning cost impacts on the investigators will allow for a more accurate assessment of what a monthly stipend should be that would be a reasonable compensation offset to an

investigator. Thus, I deny the proposal and defer the actual mechanics of the joint committee's operations to the parties.

### **VACATION**

The County has proposed language that would amend Section 8 to provide that an employee's vacation leave is pro-rated in the employee's year of retirement. Currently, pursuant to Article VIII(2), employees in their final year of calendar service already receive vacation a prorated basis. The County has not established a sufficient basis to amend the language and accordingly, it is denied.

### **INSURANCE**

The County has proposed language that would add to Article XIV. The first part of the language, as proposed, would clarify the rights of the parties when the County's program is administered by the State Health Benefits Plan. The proposal would provide consistency with benefit levels provided to other law enforcement units and avoid fragmentation and conflict when the terms of the Plan are revised. Accordingly, the proposal is awarded as follows:

- a. Add new section to provide as follows:

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 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 changed accordingly including the cost of co-payments of prescriptions to employees. The County will not be liable for any 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.

The second part of the proposal addresses the County's obligation to have employees make contributions to health insurance that are required by law. The proposed language, which would be Article XIV(b), addressed the law that required contributions in the amount of 1.5% of base salary that investigators were required to pay pursuant to P.L. 2010, Ch 2 effective May 21, 2010. Shortly after the submission of post-hearing briefs in this case, Senate Bill 2937 was enacted in June 2011 that could alter the legal requirements. Thus the County's proposal, which mirrored the law at that time, must be awarded and accompanied by language reflecting what the County's current statutory obligations may be. Accordingly, I award the following as Article XIV(b):

- b. Base salary contributions towards the cost of health care insurance benefits shall be governed in all respects by the terms set forth in Senate Bill 2937.

## **TRAINING**

The County has proposed to add a new article to the Agreement that concerns training. It proposes the following:

Investigators 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.

The PBA urges rejection of this proposal.

The County contends that the investments that it makes for training should be returned to the County if an investigator leaves employment with the County because they derive a job related benefit from the training that is lost upon their departure. Such costs for law enforcement training directly assist and improve an investigator's ability to perform tasks that are more directly related to job responsibilities on a continuing basis. The record reflects that investigators perform tasks that are highly skilled and require continued training. The investigator and the County both benefit from such training. To require reimbursement for these costs could have a negative impact on an investigator's desire to be trained. Accordingly, I deny the County's proposal.

### **MANDATORY DIRECT DEPOSIT**

The County has proposed to establish a program wherein compensation for unit members be directly deposited into a financial institution and to have such deposited compensation made immediately available to them on pay day. such program is reasonable, is consistent with the County's objective to establish such a program on a county-wide basis and is administratively efficient while allowing immediate access to compensation. Accordingly, it is awarded as follows:

The County shall have the authority to establish a program in which all bargaining unit officers' compensation will be directly deposited into a financial institution and immediately available to officers on payday, at no cost to officers.

### **COLLEGE CREDITS**

Currently, investigators receive an annual incentive of .75%, 1.0% and 1.25% of annual salary for an Associate's Degree, Bachelor's Degree and Master's Degree respectively. The PBA proposes an increase of ½% at each step. It cites the importance and value of continued higher education and need for greater incentive to achieve higher degrees.

After review of the parties' respective positions on this issue, I decline to award the proposal. It has not been shown that an increase in the incentive will further the purpose of this provision. Moreover, the emphasis on economic



change is more appropriately directed towards modifications in the Agreement's salary schedules. Accordingly, the proposal is denied.

### **LAYOFF**

The PBA proposes that in the event layoffs become necessary, all layoffs shall be in the inverse order of seniority with the most junior detective being the first to be laid off. Its main argument in support of the proposal is that it is patterned after civil service law and regulations which should serve as a reasonable model in the absence of any existing layoff rights that are applicable to investigators. The County responds that the proposal would impair the County Prosecutor's ability to appropriately address any necessary layoffs based upon economy and efficiency and interferes with his prerogatives.

While theoretically, more senior investigators may have a reasonable claim for preference based upon years of service, the diversity of skill requirements and services that are required in the Prosecutor's Office, as reflected in all of the testimony, simply does not allow for a layoff procedure to be based solely upon seniority. Accordingly, as this proposal is worded, it is denied.

### **SICK TIME UPON RETIREMENT**

The PBA has proposed that upon retirement, each Detective shall be entitled to a payment of up to \$15,000 for all accumulated and unused sick time.

Currently, Article XII provides that an investigator shall receive a cash payment calculated at the rate of one (1) day's pay for each two (2) days of unused annual accumulated sick leave, not to exceed ten thousand (\$10,000.00) dollars maximum. The County opposes this proposal citing the fact that terminal leave under the Prosecutor Superior Officer's agreement is \$10,000, the same amount as in the Sheriff's Officers agreement. It is argued that a granting of the proposal would cause a ripple effect within the County among the law enforcement units and that the existing \$10,000 amount is reasonable.

I do not find sufficient justification has been presented under all of the circumstances to award the proposed increase in terminal leave and accordingly, it is denied.

### **SALARY**

The issue most central to this impasse is salary. The parties' positions substantially differ. The PBA proposes:

Effective January 1, 2009, 6% across the board for Detectives at top Step and 3% across the board for Detectives who have not yet reached top Step.

Effective January 1, 2010, 6% across the board for Detectives at top Step and 3% across the board for Detectives who have not yet reached top Step.

Effective January 1, 2011, 4.5% across the board.

Effective January 1, 2012, 2.9% across the board.

Effective January 1, 2013, 2.9% across the board.

The County proposes:

- a. January 1, 2009 through December 31, 2009 – 0  
January 1, 2010 through December 31, 2010 – 0  
January 1, 2011 through December 31, 2011 – 1.5%  
with no automatic step movement
- b. No retroactivity.
- c. There will be no automatic salary level movement or automatic salary increases beyond the expiration date of the collective bargaining agreement.
- d. 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 have already awarded a contract duration of January 1, 2009 through December 31, 2012. Thus, I will consider the record of the salary in that context.

In addition to the across the board proposals, an additional issue has been proposed by the PBA concerning Senior Officer Differential. This is a reference to the last step of the salary schedule which references the title of Senior Investigator. The PBA proposes to replace the Senior Investigator title to that of Senior Officer Differential. This proposal is directed more towards improving the compensation levels for experienced investigators rather than infringing upon the Prosecutor's discretion. The title of Senior Investigator appears after the \$77,000

– Step 8 level and calls for a salary of \$80,850 as shown in the 2008 salary schedule as follows:

Appendix A-5  
2008

<u>Step</u>	
Starting	\$31,000
1	31,950
2	33,047
3	35,619
4	43,214
5	47,929
6	51,858
7	55,786
8A	66,535 (Jan. 1) 77,000 (July 1)
8	77,000
Sr. Investigator	80,850

\*2007 Step 8 is eliminated.

\*Those at Steps 4, 5, 6 and 7 in 2007 will move to new Steps 4, 5, 6 and 7 in 2008.

\*Those at Step 8 in 2007 will move to 2008 Step 8 and increase to \$66,535 on the first full pay period on or after 1/1/08 and increase to \$77,000 on the first full pay period on or after 7/1/08.

\*Those at Step 9 in 2007 will receive a 3.52% increase and move to new Step 8.

The PBA has established that the investigators' compensation scheme does not compare favorably among virtually all relevant comparisons. Indeed, a lengthy analysis of this data is not necessary to support this conclusion inasmuch as the labor agreements submitted by both parties that are in evidence clearly reflect this.

Among the counties most comparable with the Hudson County Prosecutor's Office are the prosecutors' offices in Bergen, Essex and Union counties. They are in geographical proximity and are reasonably close in density and in crime statistics. While geographically distant, Mercer, Middlesex and Camden counties also share similarities in density and crime statistics. All of these counties provide compensation schemes that substantially exceed that in Hudson County. Variations in wealth appear, but it cannot be argued that all of the above counties are not closely comparable to Hudson especially when counties such as Warren, Morris, Monmouth, Cape May and Somerset, have less comparable indicators in common yet also have salary levels that also exceed Hudson. The data reflects the following:

**COUNTY PROSECUTOR'S OFFICES**

	<b>2008 Maximum Base Salaries</b>
Essex	\$87,298
Bergen	\$110,238
Union	\$88,766
Hudson	\$77,000
Hudson Compared to Average	(-\$18,434)
Monmouth	\$117,000
Mercer	\$87,102
Middlesex	\$102,793
Morris	\$83,716
Camden	\$94,100
Hudson	\$77,000
Hudson Compared to Average	(-\$19,942)

The above comparisons are not a new phenomenon. The relationships have developed over many years. Thus, any argument for reasonable equality in

the short term would be without merit, nor is there any basis to conclude that compensation schemes among all counties should be similar. But, in simple terms, the County's proposal of 0%, 0% and 1.5% coupled with an increment freeze, absent a financial emergency which, on this record I do not find, must be deemed unreasonable. If awarded, it would cause the comparisons between Hudson and virtually all other county prosecutors' offices to significantly widen during 2009, 2010 and 2011 off of a comparative base that is already unfavorable. For example, a 2008 gap of only \$6,700 between Morris and Hudson would, in 2010, widen to \$12,000.

Another set of comparables in the record are the law enforcement units within the municipalities in Hudson County. These municipalities have some relevance because the duties and responsibilities of County investigators closely parallel, if not exceed, those performed in those municipalities and because these municipalities are, in the main, the funding source for the County's operations. Moreover, the record reflects that the County Prosecutor assumes responsibility from those municipalities for many types of major crimes that are committed within the County. The record also reflects that there has been attrition within this unit to these municipalities. Testimony attributes relative compensation as the reason. Direct compensation comparisons are complex because most of the municipal law enforcement agreements contain longevity schemes between 10% and 21% which far outstrip the maximum \$1,100 longevity payments received by the investigators. When longevity pay is factored

into the comparisons, the maximum salaries in all of the municipalities exceed that which is paid to the investigators except for the municipality of East Newark. Even without the longevity calculations, top step pay in 2008 was higher in Bayonne (\$80,690), Hoboken (\$83,360), Kearny (\$81,658), Union City (\$83,782), Secaucus (\$89,985) and Jersey City (\$82,319). When the longevity benefits are factored in, these comparisons widen significantly.

Recognizing that the comparability criterion also embraces internal comparability, the PBA offers evidence of wage increases that the County has negotiated in the Sheriff's Office and in the Department of Corrections. Over the years that are in common here, the Sheriff's Officers received 6% increases in 2009, 2010, 2011 and 2012 at top step and 3% per year at steps below top step. In Corrections, a 4% increase was received in 2009, the last year of a five year agreement. It is apparent that the County's salary proposal of 0%, 0%, and 1.5% in contract years 2009, 2010 and 2011 would, if adopted, cause a significant deterioration in the wages for the investigators in relation to the wages for Sheriff's Officers whose top step base pay will increase from \$67,000 in 2008 to \$84,585 in 2012. Correction Officers in 2009, at \$81,863, would also bypass the salaries for investigators in that year under the County's proposal. The evidence that has been submitted by the County does not support its position that its proposal would be a reasonable determination of the salary issue and, given the high level of skills and responsibilities borne by the investigators, as well as the scope of their work, such a result would be inconsistent with the interests and

welfare of the public who depend on the expertise of the County Prosecutor's Office to promote the public's health, welfare and safety.

A review of the PBA's salary proposal reveals a similar conclusion that it cannot represent a reasonable determination of the wage issue. Despite establishing that there are unfavorable comparisons with other county prosecutor's offices, various municipal law enforcement units in Hudson County, as well as differences between the County's proposal with wage increases already granted within the County, the PBA's proposal seeking parity with the 6% increases the County negotiated with the sheriff's officers during the 2009, 2010, 2011 and 2012 contract years cannot be awarded. The timing of that agreement occurred prior to the changed economic and financial conditions that the County has documented had arisen after the 2008-2012 agreement was reached and has continued through the close of this record. Even assuming that equivalent increases are otherwise justified, the actual and cumulative costs of the PBA's proposal are so substantial that negative financial impact would result. In addition, the statutory constraints on taxation since that time have limited the County's flexibility to make expenditures without regard to the impact of those expenditures on its other spending requirements. This is not to say that the investigators' claim for a more equitable wage program must go unheeded, but a salary result for the investigators must be more responsive to the County's economic and financial impact concerns than the one that it has proposed.



The County's financial condition, as well as most other governmental entities, has experienced some decline but nevertheless remains stable. Its fund balance has decreased to \$23,439,454 in 2011 from \$24,532,014 in 2010. This is a substantial sum but the County has shown that its annual budget development has become dependent on the use of its surplus. Its equalized value of property also decreased by \$1.9 billion from 2009 to 2010 and by an additional 2.9 billion in 2011. The PBA's proposed 19.4% increases, un compounded, over the 2009 through 2012 contract period must be evaluated in this context rather than in the context in which it views the County's financial health as being "robust."

I am persuaded that a reasonable determination of the salary issue is one that provides annual across the board increases of 2.5% in 2009, 2.5% in 2010, 2.0% in 2011 and 2.0% in 2012 to each step of the salary schedule but in a revised salary structure, effective July 1, 2012, that lifts the limitation on an investigators' advancement to the existing Senior Investigator step while, at the same time, preserving the Prosecutor's current discretion to provide an additional salary incentive of 5% for those investigators who meet the current criteria.<sup>2</sup> This can be accomplished within the structure of the existing salary schedule. That schedule currently has eleven (11) steps including starting pay and would remain at eleven (11) steps including starting pay. Effective July 1, 2012, the Senior Investigator step would be replaced by a new Step 10, the old Step 8 would

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<sup>2</sup> Ten (10) years of law enforcement experience and four (4) years of experience with the Prosecutor's Office in an amount of no more than twelve (12) investigators at the sole discretion of the Prosecutor.

become Step 9 and the old Step 8A would become Step 8. The two step six month split at the current steps 8A and 8 would give way to annual Steps 8 and 9. All remaining steps would remain as currently configured with all steps, as the parties have defined, being annual or "automatic" steps through the salary schedule. The modification would appear as follows along with the wage increases awarded:

Old Agreement		New Agreement				
<u>Step</u>	2008	2.5% 2009	2.5% 2010	2.0% 2011		2.0% 2012
Starting	\$31,000	\$31,775	\$32,569	\$33,220	Starting	\$33,885
1	\$31,950	\$32,749	\$33,567	\$34,238	1	\$34,923
2	\$33,047	\$33,873	\$34,720	\$35,414	2	\$36,123
3	\$35,619	\$36,509	\$37,422	\$38,170	3	\$38,934
4	\$43,214	\$44,294	\$45,402	\$46,310	4	\$47,236
5	\$47,929	\$49,127	\$50,355	\$51,362	5	\$52,389
6	\$51,858	\$53,154	\$54,483	\$55,573	6	\$56,684
7	\$55,786	\$57,181	\$58,610	\$59,782	7	\$60,978
8A	\$66,535	\$68,198	\$69,903	\$71,301	8	\$72,727
8	\$77,000	\$78,925	\$80,898	\$82,516	9	\$84,166
Sr. Investigator	\$80,850	\$82,871	\$84,943	\$86,642	10	\$88,375

As previously stated, the revised salary structure would not affect the Prosecutor's discretion that the Agreement has recognized under the current schedule and with the same standards for eligibility. Rather than having this discretion appear on the salary schedule itself, the discretion will be placed in new language that would replace Article V, Section 3 as follows. Rather than require a 5% incentive, it will allow for such discretion to be exercised up to 5%. The language will read as follows:

The Prosecutor, in his or her sole discretion, may declare any investigator a "Senior Investigator" with a salary of up to 5% beyond

the salary level provided at Step 10 of the salary schedule for any investigator with at least ten (10) years law enforcement experience and with at least four (4) years experience with the Hudson County Prosecutor's Office. The number of investigators shall not exceed twelve (12) unless there is a mutual agreement between the Prosecutor and PBA Local No. 232 to exceed that number. Upon appointment, the Prosecutor shall provide written notice of the terms of that appointment to PBA Local No. 232.

The County also proposes to add a new section to Article V – Salary stating that 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. This proposal has merit to the extent that it clarifies the parties' requirement to abide by enactments of the New Jersey Legislature that mandatorily impact upon terms and conditions of employment. However, this language should not serve to undermine or waive a lawful bargaining obligation in the event that such legislation is phrased in a manner that does not preempt negotiations. Accordingly, I award the following language to appear as Section (7):

7. 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 unless such legislation does not preempt negotiations and creates a mandatory bargaining obligation on the parties.

As required, the financial impact of the award has been considered as well as the County's statutory limitations. On this latter point, the County is subject to

the lower of the amount dictated by the formulae set in the 1977 and 2010 caps. The adopted budget for 2011 is \$673,000 above the statutory cap thus reflecting that the County has been able to fund its financial obligations consistent with its legal requirements. The costs of the award cannot be determined with absolute precision given changes in staffing levels and turnover. However, given the parties' projection of costs, the terms of the award are substantially below the PBA's proposal and exceed the County's proposal of 0%, 0% and 1.5% by \$112,500 in 2009, an additional \$115,000 in 2010, and an additional \$65,000 in 2011. The 2012 cost over the cost of the prior years is more substantial due to the approximately twenty to twenty-five officers who would move to Step 10 at an approximate annual cost of \$100,000 in addition to the \$96,000 annual cost of the 2% increase to the salary schedule. Because of this additional cost, I have deferred the implementation of the 2012 salary award to July 1, 2012 thereby reducing the aforementioned annual costs by 50%.

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.

The terms of the award furthers the interests and welfare of the public. This criterion, which requires consideration of financial impact and statutory limitations also extends to the continuity and stability of employment which will be furthered by the awarding of modest salary increases accompanied by a guide revision that will lift top step pay for experienced investigators thereby assisting in the hiring and retention of investigators. The across the board increases are generally consistent with the cost of living data although it must be noted that the costs for salary guide revisions, as here, normally tend to exceed such data during times of lower increases but are otherwise warranted to extend a more equitable compensation scheme for investigators in the Prosecutor's Office.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

### **AWARD**

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

2. **Duration**

There shall be a four-year agreement effective January 1, 2009 through December 31, 2012.

3. **Article VII – Holidays**

Section 4 shall add the following language:

#### **ABSENCE BEFORE AND AFTER HOLIDAY**

An employee who is absent from work due to illness the day before and/or the day following a legal holiday, shall not be paid for the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as "absent no pay" or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday is observed while he/she is employed in either status.

4. **Article VI – Overtime**

Sick leave days will not count as hours worked for overtime purposes after the fifth (5<sup>th</sup>) sick day in a calendar year.

5. **Equipment Allowance**

Effective January 1, 2012, there shall be an annual \$250 equipment allowance.

6. **Vehicle Use**

The County's proposal is denied. A joint committee shall be created to study the issue of vehicles and the compensation offset in the event of their withdrawal.

7. **Mandatory Direct Deposit**

The County shall have the authority to establish a program in which all bargaining unit officers' compensation will be directly deposited into a financial institution and immediately available to officers on payday, at no cost to officers.

8. **Health Insurance**

a. Add new section to provide as follows:

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 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 changed accordingly including the cost of co-payments of prescriptions to employees. The County will not be liable for any 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.

- b. Base salary contributions towards the cost of health care insurance benefits shall be governed in all respects by the terms set forth in Senate Bill 2937.

9. **Salary**

The salaries at each step of the salary schedule shall increase by 2.5% effective January 1, 2009, 2.5% effective January 1, 2010, 2.0% effective January 1, 2011 and 2.0% effective July 1, 2012. The salary schedule shall read as follows:

<b>Step</b>	<b>2.5% 1/1/2009</b>	<b>2.5% 1/1/2010</b>	<b>2.0% 1/1/2011</b>	<b>2.0% 7/1/2012</b>
Starting	\$31,775	\$32,569	\$33,220	Starting \$33,885
1	\$32,749	\$33,567	\$34,238	1 \$34,923
2	\$33,873	\$34,720	\$35,414	2 \$36,123
3	\$36,509	\$37,422	\$38,170	3 \$38,934
4	\$44,294	\$45,402	\$46,310	4 \$47,236
5	\$49,127	\$50,355	\$51,362	5 \$52,389
6	\$53,154	\$54,483	\$55,573	6 \$56,684
7	\$57,181	\$58,610	\$59,782	7 \$60,978
8A	\$68,198	\$69,903	\$71,301	8 \$72,727
8	\$78,925	\$80,898	\$82,516	9 \$84,166
Sr. Investigator	\$82,871	\$84,943	\$86,642	10 \$88,375

A new section shall be added reflecting the discretion of the Prosecutor to appoint and compensate a "Senior Investigator." It shall state:

- d. The Prosecutor, in his or her sole discretion, may declare any investigator a "Senior Investigator" with a salary of up to 5% beyond the salary level provided at Step 10 of the salary schedule for any investigator with at least ten (10) years law enforcement experience and with at least four (4) years experience with the Hudson County Prosecutor's Office. The number of investigators shall not exceed twelve (12) unless there is a mutual agreement between the Prosecutor

and PBA Local No. 232 to exceed that number. Upon appointment, the Prosecutor shall provide written notice of the terms of that appointment to PBA Local No. 232.

A new section shall be added concerning legislation that impacts upon terms and conditions of employment:

7. 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 unless such legislation does not preempt negotiations and creates a mandatory bargaining obligation on the parties.

A new section shall be added concerning step movement:


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.

Dated: December 18, 2011  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey       }  
County of Monmouth       } ss:

On this 18<sup>th</sup> day of December, 2011, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

  
Gretchen L. Boone  
Notary Public of New Jersey  
Commission Expires 4/30/2014