

In the Matter of the Interest
 Arbitration between

 COUNTY OF ESSEX, ESSEX COUNTY
 SHERIFF'S OFFICE

 -and-

 ESSEX COUNTY SHERIFF'S OFFICERS,
 P.B.A., LOCAL NO. 183

Appearances:

Genova, Burns

For the PBA

Loccke, Correia, Schlager, Limsky & Bukosky
By: Richard D. Loccke, Esquire

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D E C I S I O N

The County of Essex and Essex County Sheriff's Office (the "County" or the "Employer") and the Essex County Sheriff's P.B.A., Local 183 (the "PBA") are parties to a collective bargaining agreement which had a duration through December 31, 2007. Negotiations for a successor agreement reached an impasse and a Petition to Initiate Compulsory Interest Arbitration was filed. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in this matter.

The Arbitrator met with the parties on October 29, 2008 and January 8, 2009 in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse persisted. Evidentiary hearings were scheduled and held on: March 23, 2009; April 3, 2009; June 1, 2009; August 19, 2009; and August 20, 2009.

The parties were provided with the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was created over the course of the five days of hearing. Numerous witnesses were examined including several called to present expert testimony.

The parties have filed comprehensive post-hearing briefs addressing the issues in dispute in this interest arbitration. The briefing process was completed in March of 2010. The parties have executed a mutual agreement to extend the time, until July 31, 2010, for the issuance of the Interest Arbitration Decision and Award.

The entire record has been carefully considered. The evidence has been evaluated in light of the nine statutory criteria set forth in *N.J.S.A. 34:13A-16(g)*.

The parties failed to mutually agree to an alternate terminal procedure. Therefore, under *N.J.S.A. 34:13A-(d)(2)* the dispute shall be resolved through a determination by conventional arbitration. This resolution shall be reached through application of all of

the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute.

Statutory Criteria

N.J.S.A. 34:13A-16(g) provides as follows:

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why others are not relevant, and provide an analysis of the evidence on each relevant factor:

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C:34:13A-16.2); provided, however, that each party

shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a 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 of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and other such factors

not confined to the foregoing which are ordinarily or traditionally considered in the determinations 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).

Final Offers

PBA's Final Offer

1. Wage Increase

The PBA proposes a four (4) year contract with a 4.5% across-the-board wage increase effective on each successive January 1.

2. Article VI, Overtime

The PBA proposes a four (4) hour minimum for court appearances which would be paid at the overtime rate if the Officer is off-duty.

3. Article IX, Vacations

The PBA proposes the same vacation schedule as is presently available for rank and file members of the Essex County Prosecutor's Office.

4. Article XVIII, PBA Business

A. The PBA proposes the codification into the contract of the current practice of the PBA President being

assigned full-time to the PBA Office and attending to various PBA affairs.

B. The PBA proposes one hundred (100) tours be provided to the PBA which would represent each an individual day off without loss of regular compensation to be utilized for PBA business. The control factor on these tours would be the PBA President.

5. Parking

The PBA proposes a codification of a current practice of free parking for members' personally owned vehicles within reasonable proximity of their work location.

6. Separate Paycheck

The PBA proposes a separate paycheck procedure for retroactive monies payable upon completion of the interest arbitration proceedings. The regular pay would be as normal however the retroactive factor would be paid in a separate check.

7. Maternity/Paternity

The PBA proposes the following provision:

Female Police Officers shall advise the Employer of a pregnancy. The rights of the female Police

Officer shall include but not be limited to the following provisions:

1. The female Officer shall be permitted to work her normal duties so long as such work is permitted by a doctor's note. Upon recommendation of the female Officer's personal physician, said Officer shall be temporarily transferred to an administrative position which she is capable of performing. The doctor shall be a physician of the female Officer's own choosing.
2. In addition to the other provisions of this Article, the female Officer shall be permitted to use accumulated sick time, compensatory time off and any other accumulated time benefits which she may have during the period of her pregnancy and the period following childbirth.
3. In addition the female Employee shall be granted maternity leave without pay, for up to twelve (12) months duration and shall be returned to work without loss of seniority or benefits provided she notifies the Sheriff no later than after six (6) months of leave that she intends to return.
4. The female Officer shall at all times be kept at full benefits and shall be considered as on active duty for all compensation purposes. At all times covered by this Article the female officer shall be maintained in the pension system with the Employer paying the appropriate contributions to said system.
5. Upon return to active duty status, the female Officer shall be placed in the same position which she held before departing for maternity status.
6. At all times covered by this Article the female Officer shall be permitted to wear appropriate clothing and equipment which is consistent with her medical condition.

Male Officers - Male Officers shall be permitted ten (10) working days with full pay and benefits following the birth of their child.

Employer's Final Offer

1. Term of Agreement:

Three Years, commencing January 1, 2008 through December 31, 2010.

2. Wages:

Effective January 1, 2008: Two Percent (2.0%) increase on base pay to eligible employees who are on the payroll as of January 1, 2008 and are still employed by the County when the contract is ratified by the Board of Chosen Freeholders.

Effective January 1, 2009: Zero Percent (0%) increase on base pay.

Effective January 1, 2010: Zero Percent (0%) increase on base pay.

3. Medical Benefits:

The existing Health Insurance and Prescription Program shall remain in effect for the life of the Agreement except as follows:

A) Effective January 1, 2009 and for each year thereafter, the Prescription drug co-pays are as follows:

1. Non-Mail Order

- A. Generics - \$10.00 per thirty (30) day supply
- B. Preferred Brands and Non-Preferred Generics - \$25.00 per thirty (30) day supply.
- C. Non-Preferred Brands - \$40.00 per thirty (30) day supply.

2. Mail Order

- A. Generics - \$15.00 per ninety (90) day supply.
- B. Preferred Brands and Non-Preferred Generics - \$37.50 per ninety (90) day supply.
- C. Non-Preferred Brands - \$60.00 per ninety (90) days supply.

B) Effective January 1, 2009, and each year thereafter, the County will implement a list of drugs as directed by the County's insurance carrier that require prior authorization due to the drug's potential for serious side effects or the drug's potential for misuse or "off label" use.

C. Health Care Insurance:

Effective January 1, 2008 and each year thereafter, employees hired prior to June 16, 1993 shall pay 2% of

their pensionable salary as a contribution for health care coverage.

Effective January 1, 2008 and each year thereafter, the rate cap contained in the parties' prior Agreement, freezing contributions at 1993 rates, will be removed.

Effective January 1, 2008 and each year thereafter, employees hired after June 16, 1993 who have single coverage shall pay 2% of their pensionable salary as a contribution for health care coverage.

Effective January 1, 2008 and each year thereafter, employees hired after June 16, 1993 who have Husband/Wife, Parent/Child or Family coverage shall pay an increase percentage from twenty (20%) to twenty-five percent (25%) co-pay for dependent coverage. In addition, if the employee selects a plan that is not the County selected HMO (in 2008 HMO Blue), the employee must also contribute fifteen percent (15%) of the difference between the County selected HMO and the full cost of the selected plan. Contributions will vary based on annual renewal rates.

If an employee voluntarily waives all coverage under the County's Health Care plan and provides a Certification to the County that he/she has other health care coverage, the County will waive the 2% health care contribution for that employee for the period of time the County did not pay for health benefits for the employee.

Employees may select any health plan offered by the County. However, employees hired after the date of the arbitrator's decision shall not be eligible for Traditional coverage.

The County reserves the right to change, without negotiation, the manner in which Health Benefits are provided as long as substantially similar benefits are provided.

Mandatory second surgical opinion and pre-admission review programs will continue.

4. Work Schedule and Overtime

Effective January 1, 2009, the County may implement a 24/7 work schedule for each Division. The schedule will consist of 8 hour days with the days and times of the shifts to be determined by the Sheriff.

Overtime shall only be paid when the employee works more than forty (40) hours in a week. Paying overtime when an employee works more than eight (8) hours in a day shall be eliminated.

Eliminate provision which provides that any employee who works a weekend assignment shall receive one day off in the following week plus one-half day's pay for each day worked, or time and one-half in pay for each day worked as weekend work will be part of each assigned employee's regular shift. The only overtime paid (with the exception of extraditions) will be when an employee actually works more than forty (40) hours in a week.

Remove the following as paid holidays: Lincoln's Birthday, Good Friday, Election Day, Friday after Thanksgiving.

Positions of the Parties

Position of the PBA

The PBA presents extensive argument in support of its proposals and that argument addresses the nine statutory criteria. It contends that the PBA final offer is reasonable and should be awarded under the evidence presented.

With respect to the *Public Interest* criterion, the PBA stresses the importance of the public safety services provided by the Sheriff's Office and it asserts that those public services are provided with efficiency, productivity and high quality. It is characterized as a "full law enforcement service which has been in recent years increasing its scope of power, authority and jurisdictional service to all citizens in every municipality within the County of Essex."

Of specific note are three major transportation centers in the jurisdiction, Newark Liberty International

Airport, Port Newark and Penn Station in Newark. The PBA points out that unit employees are called upon to interact with other law enforcement agencies such as the Port Authority Police, the DEA of the Waterfront Commission, the New Jersey Transit Police and the Newark Police.

The PBA focuses on the substantial demands of the Court Division within its ranks, where 129 regularly assigned Officers perform their duties, assisted on a daily basis by borrowing officers from other divisions. The significance of the service of transporting and securing prisoners during the trial process is emphasized and the benefits to municipal governments of having the Sheriff's Office provides this function is noted. The importance of the services provided by the Bureau of Criminal Investigation and the Detective Bureau are also stressed.

In addition to establishing the significance of the services provided, the PBA points out that these services are being delivered with dramatically increased frequency, revealing activity rates that reflect great

increases in productivity. One area presented to show such increases is the activity of the Narcotics Bureau where arrests more than doubled in 2009. The Patrol Division was said to exhibit substantial productivity increases as well.

The PBA asserts that the Sheriff's Department is losing highly qualified Officers to law enforcement jobs elsewhere, due to a compensation package that "is not sufficient to maintain a career path." It argues that the Employer is bearing the expense of training and provided experience to Officers it cannot retain because compensation levels are not competitive. It suggests that the record reflects that 30 Officers have left to take law enforcement jobs with other employers who pay more. Many of these are said to be with municipalities in Essex County.

The PBA contends that the County residents "receive exceptionally fine law enforcement services from this dedicated body of sworn Officers." It insists that "every effort should be made to enhance and retain this workforce."

The PBA addresses the *Comparability* criterion by initially pointing out that the "exceptional levels of productivity" and expanded functions in a time of reduced staffing exist in an environment of compensation levels that do not compare favorably with the Officers' peers. It cites base pay as "one of the lowest in northeastern New Jersey among all law enforcement agencies", drawing a comparison with numerous municipal departments, the Port Authority Police and Sheriff's Officers in three other counties, Bergen, Mercer and Monmouth.

The PBA characterizes the comparison standard, considering total compensation, encompassing the *Overall Compensation* criterion along with elements of comparability, as revealing that "the greatest single benefit shortfall exists for the Sheriff's Officers in Essex County in that they do not have longevity as a benefit." It describes longevity as a common benefit throughout the law enforcement community in northeastern New Jersey and statewide, included is a basis for this view noting a statewide comparison of Sheriff's Officers' contracts. The PBA asserts that there are no offsetting

benefits to justify the "shortfall" of no longevity for employees hired after December 31, 1974.

The PBA also compares the various Sheriff's Officers' contracts with respect to holidays, personal days and uniform allowance benefits. It notes that the uniform benefits for this bargaining unit lag behind the comparison group.

The PBA charts the base wage increases in a number of law enforcement jurisdictions which it deems comparable. This chart reflects the percentage increases of wage rates in 2008, 2009, 2010 and 2011 for the jurisdictions selected. These include municipalities, four county sheriff's departments and the Port Authority police. The selected chart computes an average wage increase of 4.094% for 2008; 4.423% for 2009; 4.078% for 2010; and 4.083% for 2011. It argues that this data more than supports the wage increase proposal of the PBA.

The PBA insists that there is no basis for support of the health insurance benefit reductions sought by the Employer. It claims that the Employer effectively seeks

a "forfeiture" of the medical benefits, based upon "its own whim and caprice."

The PBA maintains that comparisons with employees in the private sector are not the best comparisons available. It notes that there are special statutory elements to employment in law enforcement that make it unique and particularly different than private employment. It initially notes specific exemptions and special treatment in U.S. Fair Labor Standards Act, providing for deviations from the standard 40 hour work week within the wage and hour laws. It also notes that New Jersey State wage and hour laws are not applicable to law enforcement personnel. Additionally, statutory qualification, residency and age requirements and restrictions are cited as a basis for differentiation. Lastly, the PBA asserts that the "greatest differentiation between Police Officers and private employees generally is the obligation to act as a law enforcement Officer at all times of the day, without regard to whether one is on duty status within the State or not."

The PBA points out that there are no *Stipulations* of a substantive nature. It finds this criterion not to be meaningful in the determination of the most reasonable resolution of the issues in dispute.

The PBA addresses the *Lawful Authority, Financial Impact* and *Statutory Restrictions* criteria with a merged discussion asserting that these factors establish "absolutely no prohibition nor any other problems" with respect to the implementation of the PBA's final offer package.

It seeks to place the fiscal issues in perspective by establishing that the cost of each 1.0% increase in wages is approximately \$242,758 in a budget with revenues in excess of \$662,000,000. The PBA calculates that each 1.0% of salary increase represents 0.03% of the overall budget. Similar calculations would be true for the proposed 2009 budget with revenues of \$674,890,690.

The PBA claims that the record contains no concern expressed by any Employer witness as to the CAP Law limitations. It maintains that the levy CAP limit was

not reached and that there was no CAP impediment documented.

The PBA stresses that unit employee activities actually produce revenue, noting confiscations and fines. Emphasis is placed upon Homeland Security and OEM grants which brought in millions of dollars in revenue to the County. This money was managed and administered through the Sheriff's Office.

The PBA maintains that the county tax rate and its debt service are both "extremely low." It specifically notes that the tax rate has declined in each and every year from 2004 through 2008. Further, the debt service is below one-quarter of the legal limit of two percent. The PBA characterizes this low debt service as "a barometer of fiscal health and strength."

The PBA charts a period of annual increases in revenues from 1998 through 2008 that are steady and consistent. It expresses the belief that this measure of fiscal strength "indicates the ability to regenerate surplus."

The PBA focuses directly upon the testimony of the County Treasurer, drawing attention to testimony in previous interest arbitration proceedings in which this witness testified to an inability of the County to afford certain wage increases eventually awarded by two different arbitrators in those proceedings. That testimony included predictions of drastic impact including layoffs. The PBA points out that the Treasurer admitted that those awards were eventually paid and that other bargaining units were given the same increases voluntarily by the County.

The PBA assails the Employer's efforts to cost out the PBA proposals with respect to its impact upon other bargaining units rather than just the one involved in this impasse. It raises issues about the propriety of this approach. The PBA emphasizes the evidence of the "unique" nature of this bargaining unit and its various public service functions. It ascribes the Employer's broad approach to costing out the proposals to "political purposes."

The PBA acknowledges that the *Cost of Living* data is "not a high number at this point due to the general economy." However, it urges a finding that this is not a "prohibition to an award of the PBA Position." The PBA cites the NJ Department of Labor documentation, published by the Public Employment Relations Commission as reflecting a 4.3% wage increase in the private sector, 3.8% in Essex County. With respect to this criterion, the PBA argues that the Consumer Price Index is "just a barometer and one of many indicators."

The PBA asserts that the *Continuity and Stability of Employment* criterion includes the private sector standards of "area standards" and "prevailing rates" which are, it suggests, strongly supportive of the PBA proposals. This aspect calls for some merger of criteria as the comparisons set forth under the second criterion are equally applicable as prevailing rates and area standards.

The PBA insists that its proposal to provide for a minimum court appearance time is supported by the record. It points out that Officers may be called upon to commute

substantial distances only to find court proceedings resolved or adjourned. In such cases the Officer is compensated only for the time spent in court. The PBA submits that the Employer recognizes the existence of the problem but has not done anything about it.

The PBA maintains that its proposal for full release time for the PBA President is nothing more than the codification of an existence past practice of many years standing. Similarly, the proposal with respect to the provision of free parking also seeks to codify a long-standing practice. The PBA states that the existence of the practice to provide free parking was confirmed through the testimony of the County's own witness.

The PBA supports its proposal for a separate check for retroactive pay with the explanation that there are numerous calculations which are easier for employees to compute in a separate check. It cites prior difficulties arising from the last two interest arbitration awards as a reason for this proposal. It also suggests that another unit was given the benefit of a separate check.

The PBA emphasizes the fact that the schedule proposal advanced by the Employer is not new to the parties' negotiations. It notes that such a proposal was put forth in the previous interest arbitration where a "joint scheduling committee" was established by award. The PBA asserts that no effort was made by the Employer to avail itself of the committee for two years in order to address the issue of schedules. It stresses that the evidence presented in this proceeding is just as vague and general as that which failed to support the proposal in the previous contract. It emphasizes the fact that "no specific schedule was provided and no specifics of the problem were established or developed." The PBA voiced a willingness to meet with the Employer as envisioned in the Award of the previous Arbitrator to address the issue of schedules.

The PBA concludes that its position is more reasonable under the record presented. It seeks an award of its final offer to resolve the impasse herein.

Position of the Employer

The County contends that its Final Offer is the more reasonable and it asserts that the evidence and statutory criteria compel that that Final Offer be awarded. It maintains that the record presented "mirrors the economic reality facing all levels of government and the communities they serve."

In addressing the various statutory criteria, the Employer urges that those involving the financial considerations of the employer be given "special consideration." The County points to the increasing unemployment rate in the State and the County itself a significant factor for consideration. It also places great emphasis on a substantial "revenue shortfall" as the basis for its proposals. It characterizes the PBA's Final Offer as "unreasonable." The County describes its own Final Offer as "reasonable, rational and the only possible choice under the statutory criteria."

The Employer reiterates its objection to narrative testimony provided by the PBA President, accompanying a

power point presentation. It acknowledges the ruling of the Arbitrator that any element of that testimony that is argument, rather than evidence, shall have no probative value, but it opines that the "narrative does not constitute valid competent evidence and should be given little evidentiary weight in this proceeding." The County also reasserts its Motion to Dismiss the Interest Arbitration Petition, contending that the PBA failed to make a *prima facie* presentation of evidence in support of its proposals.

The Employer raises an initial legal argument that the issue of wage increases is not properly before the Arbitrator. This contention is based upon the belief that the matter is statutorily preempted, rendering it not arbitrable. The County claims to have complete authority to "set employee wages and compensation." It suggests that, because these statutes "speak in the imperative" that they preempt application of the interest arbitration statute. It further argues that the New Jersey State Constitution reinforces this claimed preemptive effect. It concludes that the arbitration

over economic terms must be restrained as a matter of infringement of managerial prerogative.

The County stresses that the consideration of the *Public Interest* criterion is "one of the most important factors" in an interest arbitration proceeding. It contends that the PBA's Final Offer is not in the best interests of the public. It expresses the belief that the PBA proposed salary rate increases would strain existing tax burdens in an uncertain economic environment. It suggests that other services will be reduced or eliminated "while Sheriff's Officers will continue to be overcompensated." The Employer maintains that the public interest will be served through the implementation of its Final Offer "protecting the County's precarious financial stability" within further tax increases or reliance upon the diminishing fund balance.

The County asserts that the *Comparability* criterion requires a comparison of wages and conditions of employment of the Sheriff's Officers with: "other employees of Essex County, other public sector employees

and private sector employees in general." It claims that the Essex County Sheriff's Officers are "well positioned" with all these comparisons. It also asserts that the bargaining unit employees "receive far better compensation than other employees in comparable public sector jurisdictions."

The initial comparison presented by the Employer is with other law enforcement personnel employed by the County: Corrections Officers, Corrections Sergeants and Prosecutor's Detectives and Investigators. The County asserts that the current base pay of \$74,238 is greater than that for Corrections Officers and Sergeants and only "slightly behind the Prosecutor's Investigators" which is \$84,920.

The County insists that the department has at no time had difficulty filling vacancies for Sheriff's Officers and that no turnover problem exists. It maintains that "the tasks performed for the pay received are an excellent balance."

The Employer points out that the application of the comparability criterion "has undergone immense changes over the history of interest arbitration." It has, according to the County, transcended the concept of a "going rate" or "parity" as the driving force in arbitration determinations. The County claims that the zero increase it proposes is not without precedent. The Employer takes specific note of a zero percent increase awarded recently in a case involving the State of New Jersey and the State Corrections Officers unit. It also cites the deferral of wages ordered in this unit in an award issued in 2004. Further, the County cites a zero increase in a 1997 award involving this Sheriff's Officers bargaining unit.

The County draws comparisons among Sheriff's Officers on a statewide basis and calculates that the bargaining unit members enjoy a salary rate well above the average for the position in other counties. The Employer claims that its proposal "seeks to maintain that equivalency" while the PBA proposal would push salary rates ahead of other jurisdictions. It also points out

that unit members reach the top rate salary in fewer years than average for other Sheriff's Officers.

The Employer assails the PBA's efforts to compare the Sheriff's Officers with municipal police. It characterizes that comparison as irrelevant. The County advances the argument that the size and geography of the jurisdictions "are not sufficiently similar." It further contends that the municipal officers do not perform "substantially the same services as Essex County Sheriff's Officers." The County notes that it finds the consideration of municipal contracts objectionable.

The County claims that the Sheriff's Officers compare favorably to other Essex County employees, generally. It notes that non-unionized employees have received zero wage increases for 2008 and 2009; pointing out that a 2.0% offer has been made to this unit in 2008. It also identifies certain furloughs that have been implemented and the layoff of some employees in the Prosecutor's Investigators group, where a furlough was not agreed upon. The County maintains that other organized employees have a history of waiting until the

Sheriff's Officers contract has been completed prior to achieving settlements with similar terms.

The Employer addresses private sector wage comparisons, asserting that its offer is comparable to that data. Further, it insists that the PBA proposal for annual 4.5% increases is "clearly excessive."

With respect to the *Overall Compensation* criterion, the County contends that the Sheriff's Officers receive a very good base salary and "a wide array of economic benefits." It specifically notes that there are competitive leave benefits, extensive education benefits, and an excellent pension benefit. The Employer acknowledges the lack of longevity benefits and insists that further increases in pay through longevity would be inappropriate.

The Employer notes that there are no *Stipulations* in the record. Therefore it does not address that statutory criterion.

With respect to the *Lawful Authority* criterion, the County notes that its 2009 proposed budget reflects a "modest 1.8% increase over the prior year." It claims that this budget includes a \$14 million increase in the property tax levy, which is equal to the 4.0% cap limit. It argues that there is substantial evidence supporting the selection and awarding of its Final Offer. It claims that an award of any excess funds would "need to come from the 2010 budget."

The County describes the evidence it presented under the *Financial Impact* criterion as "more compelling" and it asserts that that criterion supports an award of the County's Final Offer. The Employer claims that real estate taxes in the County are already very high and that circumstances dictate a need for strict financial planning.

The Employer points out the concerns expressed by bond rating services about the County's financial prospects. It particularly discusses issues relating to the decrease of the fund balance in the last two years. The County emphasizes the desirability of maintain the

improved bond rating levels recently achieved. It expresses concern that the overall economic situation jeopardizes those important prior gains. It stresses the importance of fiscal discipline and structural balance.

The County asserts that it "has little control over revenue sources except for the tax levy." It claims that over 50% of its revenues are from taxes and that that levy has risen steadily over the last nine years. The Employer worries that other revenue sources will experience a substantial shortfall, specifically noting that the realized revenue from real estate transfer fees in 2008 was much lower than that anticipated. Further, the anticipated revenue from that same source in 2009 is even lower. The tremendous loss in revenue from the interest on investments is also emphasized as well as a decline in State aid. The inability to generate revenues in excess of that anticipated is said by the County to place great stress on the fund balance as it cannot be regenerated at adequate levels.

The Employer argues that the *Cost of Living* criterion supports the County's Final Offer. It

acknowledges that the 2008 Consumer Price index experienced a 3.9% rise but stresses that the economic downturn has left the June 2009 increase at only 1%. The County argues that its wage increase offer of 2.0% in 2008; 0.0% in 2009; and 0.0 in 2010; is consistent with the economic trends, including the cost of living.

The County contends that the *Stability and Continuity of Employment* criterion is supportive of its Final Offer. It claims that "Sheriff's Officers experience low turnover and long-term job stability." It suggests that the evidence reveals a consistent turnover rate, since 1999, with retirement representing the primary reason for leaving employment. It cites the average seniority for a Sheriff's Officer, approximately eleven years, as evidence of employment stability.

Under the *Statutory Restrictions* criterion, the Employer revisits a discussion of the tax levy cap of 4.0%. It emphasizes that Sheriff's Officers salary and benefits fall within the limits of this restriction.

The County argues that the additional items it proposes (in addition to salary) are reasonable. Specifically, it addresses the three year proposed term, health care contributions, prescription drug changes, work schedule revisions and holiday reductions.

Similarly, the Employer characterizes the other items proposed by the PBA as unreasonable. The particular issues discussed include: overtime; vacations; PBA business; parking; separate paycheck for retroactive payments; and maternity/paternity language. The County argues that the party seeking such changes "has the burden of demonstrating the rationale for the change." It claims that the PBA has not met that burden.

The County concludes that its Final Offer "is the only appropriate offer when considering the statutory criteria." It seeks an award ordering the implementation of that offer in its entirety as resolution of the impasse at issue herein.

Discussion and Analysis

The parties have not been able to reach a voluntary resolution of the issues in dispute in this interest arbitration. The voluntary settlement of contract negotiations is always the preferred method of reaching resolution. Consistent with the purpose and intent of the interest arbitration statute, the Arbitrator worked with the parties to assist them in reaching a voluntary resolution.

The Arbitrator explained to the parties that they are well-served by extending their efforts toward a voluntary resolution because that process resolves disputes more swiftly, less expensively and without creating any perception of winners and losers. Further, it is through a voluntary resolution that the parties to an interest arbitration can maintain control over the terms and conditions of employment without the need to have them fixed by a neutral, third party. For reasons that are not clearly apparent to the Arbitrator, the parties were unable to make any progress at all toward

bridging their differences through direct or mediated negotiations. The impasse left no option under the statute other than to have a final and binding determination made herein.

The issues in dispute are substantial, important items relating to the very core of the terms and conditions of employment. They include: the duration of the contract; wages; overtime; health and prescription benefits; vacations; PBA business; parking; retroactive payment checks; maternity/paternity benefits; work schedules; and holidays. There are meaningful changes sought by each party and the clear and significant importance of their resolution resounds in the presentations by both sides.

The parties have presented their arguments, specifically addressing the criteria set forth for consideration in the interest arbitration statute. The Arbitrator has considered each and every criterion and the following is a discussion of the application of each of the criteria to the package forming the resolution of the dispute awarded herein.

The **Interest and Welfare of the Public** is always a relevant criterion in resolving an interest arbitration dispute. There are numerous elements to the public interest factor but the Arbitrator believes that this initial criterion is always worthy of substantial weight in determining the most reasonable resolution of the parties' dispute. Consider that the services rendered by the employees at issue are a particularly important aspect of providing for the public safety. The County's ability to attract, retain and promote qualified Sheriff's Officers has an impact on the quality of life of its residents, measured in terms of safety and in the effectiveness of the Sheriff's Department.

Fiscal responsibility is another component of the public interest that is directly relevant to the considerations in this interest arbitration. The public interest elements of the CAP Law must also be examined. Additionally, the morale of employees and the impact of this contract in the context of the overall labor relations process in Essex County are important considerations in relation to the public interest.

In the case at hand there are several particularly important elements of the public interest at play. The Arbitrator finds that the public interest criterion is worthy of the greatest measure of weight in deciding the issues in dispute in this impasse. Of immediate importance is the recognition that the Sheriff's Department has served the public well. The Sheriff's Officers are well-trained, experienced and professional. The Employer acknowledges that they perform at a very high level, and the record includes evidence of increasing efficiency and productivity in the Department. It is important that the County be able to attract and retain highly qualified personnel for this Department in order to maintain its high performance level. This must be achieved with fiscal responsibility in full balance with the delivery of other county services to the public.

The top level salary rate for an Essex County Sheriff's Officer is \$74,238, dating from January 1, 2007 when that rate was last adjusted. The relative position of that rate, among the comparable Sheriff's Departments in New Jersey [particularly northern New Jersey] had

remained steady for at least four years, through the expiration of the prior contract. This level of compensation is clearly not among the highest for Sheriff's Officers but it has been sufficient to attract and retain highly qualified employees.

Indeed, the Director of Administrative Services for the Sheriff's Department, Don Brown, testified that turnover has not been a problem issue for the Department. He explained that the unit averaged a significant measure of seniority, at 11 or 12 years of service. This witness further testified that there has been no trouble filling vacancies, noting the existence of numerous qualified applicants.

The above evidence must be balanced in recognition that the compensation and benefits for this unit, in a comparison of Sheriff's Officers within the closest geographic region (reflecting the immediate labor marketplace), are on the lower end of the competitive range. [This focus will be discussed in greater detail under the Comparability criterion.] Further, there is an even greater shortfall comparing the compensation and

benefits of this unit of employees with local municipal police departments, where some Sheriff's Officers typically migrate when openings occur.

The PBA presented testimony, by its President Chris Tyminski, that 30 members of the bargaining unit had left since 2006, as of the date of his testimony, March 23, 2009. He identified 25 of those employees as having accepted new law enforcement employment. Of the 25, four had joined the Essex County Prosecutor's Office, one the State Police and 20 had joined municipal police departments, mostly in Essex or Morris counties.

Further, the PBA President testified that in that same time frame the Sheriff's Department had hired 57 new Sheriff's Officers of whom 7 had already left. However, on cross-examination, the PBA President admitted that there is no difficulty in replacing those leaving for employment elsewhere. He acknowledged that there are numerous applicants for vacancies in the Sheriff's Officer position.

There is clearly an inefficiency in steady, abundant turnover. The expenditure of funds to train and provide experience to a Sheriff's Officer is most effective when the Employer can then gain the services of an experienced employee, able to handle the job with knowledge and understanding, for a career. An experienced work force also reduces the pressure upon supervision, allowing supervisory ranks to be more efficient.

There is sufficient evidence in this record to raise some concern about maintaining compensation within the competitive range. It is possible that the proposals of the County might allow those levels to erode and drop out of a reasonable range. It is also true that the salary rate increases proposed by the PBA are greater than those necessary to maintain compensation within a reasonable range. The wage increases ordered herein are designed to prevent the loss of reasonably competitive compensation levels, serving to protect against the inefficiency of abundant, steady turnover. There is a clear public interest in attracting and retaining highly qualified Sheriff's Officer's.

The element of the public interest related to fiscal responsibility must be a balancing factor upon the need to remain competitive in the compensation of unit employees. Of particular concern in the record at hand is evidence relating to the revenue trends in the immediate and near future.

The County Treasurer, Paul Hopkins, presented a very credible basis for the concerns noted above. Of initial focus with respect to revenues, was a June 2009 report from Moody's Investors Service [Exhibit C-27] that expressed concern over the "weakening of economically sensitive revenues", further indicating that a continued deterioration in the fund balance "could place negative pressure on the County's rating" [bond rating]. The Treasurer testified that the bond rating is a "barometer of the County's overall financial health." He also explained that the bond rating affects the County's access to capital markets.

Mr. Hopkins further testified that the County issued tax anticipation notes in March of 2009, to "bridge the timing difference between the receipt of revenues and

disbursements that need to be made." The County had not had the need to use tax anticipation notes since 2004, according to the County Treasurer. This witness, noting stable fiscal years in 2006 and 2007, noting that there has now developed a difficulty in replacing surplus drawn upon as a revenue source. Specifically, he identified \$18.5 million dollars of surplus drawn down of which the Treasurer anticipated a regeneration of only about one-half or \$9.0 million.

The tax levy makes up a little over 50% of the County's revenue and it was increased by \$14 million or 4.0% in 2009. There is a significant concern that certain other elements of the revenue stream will not perform as anticipated. First of all, the realty transfer tax was anticipated to generate \$11.3 million in 2008 and the actual result received was only \$7.9. This \$3.4 million shortfall led to the budgeting of only \$6 million anticipated for 2009. This source of revenue has seen a dramatic decline over the last several years as a result of the weakness in the real estate market. Similarly, the interest on investments, another major revenue source, was anticipated to be \$4 million in 2008

and the actual amount was only \$1.5 million received. This led to the reduced figure anticipated in the 2009 budget. The current trend of low interest rates has eroded this source of revenue for the County.

The moderate wage increases awarded herein are based upon the public interest in fiscal responsibility. Although the comparability criterion might suggest and support higher wage increases than those awarded, that indication must be balanced by the clear and convincing evidence raising concerns over the declining sources of revenue for the County budget.

The PBA contends that two of its proposals seek to "codify" long existing practices with respect to free parking for unit members and for release time for the PBA President. The County has raised some questions as to whether the specific language proposed by the PBA truly reflects the existing practices and it further questions whether any problems have arisen over these issues, suggestion no need to address them at this time. While the record appears to reflect the current nature of the free parking practice, it was unclear to the Arbitrator

exactly what the circumstances of the practice are for the PBA President and this made for an insufficient basis to codify the terms in this contract for that proposal.

The Arbitrator finds that there is a public interest in establishing certain parameters in the contract for one of these two areas, free parking as currently provided. The Employer expresses no need or intent to change the status quo, nor any problem with the status quo. In order to avoid future disputes or litigation, should another administration seek to make changes (for example, charge for parking) away from the negotiations table, the Arbitrator finds that referencing the existence of this established practices is reasonable and in the public interest. Therefore, the Award herein shall set forth that the contract shall reference the existing practices with respect to free parking for unit employees.

The public interest criterion is also the most compelling with respect to the schedule change proposal presented by the County. The Employer made a similar proposal in interest arbitration for the prior contract.

At the time that dispute was resolved through the issuance of an award, in November of 2007, Arbitrator James Mastriani ordered:

[T]he formation of a joint scheduling committee to meet and discuss the feasibility of any proposed change to the existing work schedule including its implementation and administration and any compensation related issues.

The record confirms that this committee has never met nor has the Employer ever attempted to generate a meeting of the committee. No overtures at all have been advanced toward following through upon the Arbitrators' order, providing a vehicle for mutual efforts to consider any adjustment of the schedules. This absence of effort to follow up on the proposal and ultimate order addressing the schedule issue in the last contract impasse is a strong commentary on the importance of the issue.

Sheriff Fontoura confirmed for the record that the non-court employees in the bargaining unit work a variety of work charts. This is not a simplistic issue. The schedule expert, Michael Walker, presented by the County to testify as to the need for the change in the contractual schedule language admitted on cross-

examination that the Paterson experience where management and labor interacted to rework the schedule has had a positive impact on public service. The public interest is served by reiterating the prior arbitrator's order establishing a joint committee, hoping that the Employer will actually bring the issue before that body. The parties will then mutually address the schedule issues.

The evidence presented includes a broad spectrum of data relating to the **Comparability** criterion. This evidence relates to comparisons with the private sector, in general [note that there are no employees who perform the same or similar functions in private employment]; with the public sector, in general; with employees performing the same or similar functions with comparable employers; and with other employees of the County of Essex.

The most commonly used tool for comparing private sector wages in New Jersey for the purpose of interest arbitration is New Jersey Average Annual Wages survey, compiled by the Department of Labor and Workforce Development and published by the Public Employment

Relation Commission for use in interest arbitration proceedings. Indeed this survey is specifically referenced in the statute at *N.J.S.A. 34:13A-16.6*.

The survey data for the last two years available, 2007 and 2008 reveals a downward trend in private sector wages in the State. The total private sector change from 2006 to 2007 was calculated at 4.3% compared with the 2007 to 2008 total change for private sector wages of an increase of 2.5%. The data broken out for Essex County is somewhat more pointed. The change in private sector wages from 2006 to 2007 in Essex County produced a 3.8% increase while the same calculation for the period of 2007 to 2008 established only a 0.9% increase in private sector wages. While the figures themselves may be open to some questions when it comes to variations and direct application to the issues at hand, the downward trend is clear and unmistakable.

The record has been populated with anecdotal pieces relating to numerous specific labor relations incidents in the private sector. It is difficult to determine the weight to attribute to this somewhat tangential trail of

items about collective bargaining in various other settings. However, as a whole the body of evidence presented does prove that there is a downward trend in private sector contract negotiations and that element has been given meaningful weight in the determination herein.

As noted earlier, the comparisons with the private sector are limited in that there are no employees in the private sector performing the same or similar functions as the Sheriff's Officers at issue herein. The Arbitrator finds that the most relevant comparisons are with other Sheriff's Officers, especially those in geographically proximate counties. However, it is important to note that the record establishes that the members of this bargaining unit perform a broad spectrum of police duties and many of those functions are identical to those performed by municipal police officers. In point of fact, Sheriff Fontoura expressly stated in his testimony, referring to his department:

It's a top notch law enforcement agency, it's a police agency. It's what it is. It's just called Sheriff's because we're constitutionally required to, but to me there is no difference between a Sheriff's Officer and a police officer. [emphasis added]

This suggests that some comparisons may properly be drawn with all comparable law enforcement units with respect to wages and terms and conditions of employment.

It is worth noting at this point that the Employer objected to the submission of evidence of municipal police contracts, offered by the PBA as comparison evidence under the second criterion. The basis for the objection was relevancy. That objection was overruled at hearing. It is hard to comprehend the purpose of the objection to comparisons with other law enforcement employees under the statutory language. The Sheriff testified that they perform the same or similar functions. The statutory language expressly identifies those performing the same or similar functions as a proper basis for comparison. They are to be compared with those performing the same or similar functions with employees of: the same jurisdiction; of comparable jurisdictions; or in public employment, generally. Although comparisons with other Sheriff's Officers may warrant the greatest weight under this criterion, comparisons with law enforcement officers in other

jurisdictions is also worthy of consideration and due weight.

The County provides a comparison of the top salary of Sheriff's Officers from all 21 counties in the state. This is a valid, broad comparison group but it does present some limitations in application. The Employer ranks the counties by top salary for the years 2004 through 2007 (the last year under the expired contract). Essex County Sheriff's Officers are ranked 7th among the 21 counties. However, Passaic County and Morris County Sheriff's Officers are not ranked because their 2007 rates were not available at the time of preparation. It is significant to note that those jurisdictions had higher salary rates for Sheriff's Officers in the prior years than those in Essex. That would drop the ranking to 9th for this unit. Among the northern counties of the state only Hudson, Sussex, Warren, Somerset and Hunterdon have lower salaries than Essex County Sheriff's Officers. Of these, only Hudson is geographically proximate to Essex and only Hudson has an urban component, as does Essex.

Consider the chart below, as presented by the Employer, and it is easy to recognize that rather than above average for the most relevant comparisons, the top salary rate for Essex County Sheriff's Officers is in the lower quadrant of the most relevant comparison group.

County	2004	2005	2006	2007
Bergen	83,916	87,273	90,677	94,304
Monmouth	70,000	74,180	79,637	82,343
Ocean	71,398	74,075	78,538	84,620
Union	70,814	73,647	76,593	79,657
Middlesex	66,664	71,411	73,910	76,896
Mercer	66,786	70,102	73,081	76,187
Essex	65,998	68,637	71,382	74,238
Somerset	65,846	68,480	71,219	74,068
Camden	64,992	67,592	70,296	73,107
Salem	47,000	52,500	60,000	65,000
Sussex	54,282	57,505	60,579	63,723
Cape May	49,882	54,607	57,338	63,210
Hudson	57,425	59,580	61,637	63,208
Atlantic	52,868	55,000	60,528	62,949
Warren	52,254	56,177	58,284	60,470
Hunterdon	52,550	54,361	56,535	58,796
Gloucester	51,561	55,381	56,765	58,185
Cumberland	42,540	44,670	48,000	49,920
Passaic	72,171	75,779	79,568	n/a
Morris	67,679	70,479	73,279	n/a
Burlington	50,747	52,777	n/a	n/a

Average	60,827	64,010	67,892	69,882
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The northern New Jersey jurisdictions, especially those most geographically proximate to Essex County are more relevant because they share more common demographic factors and they more closely represent the labor market in which the Employer operates.

The record also reveals that the Sheriff's Officers in Bergen, Middlesex, Union, Mercer, Monmouth and Warren counties have contracts covering the year 2008. The range of the top step salary increases are from a low of 3.75% to a high of 4.8%.

County	2008 Salary	2008 Increase
Bergen	98,076	4.00%
Monmouth	85,431	3.75%
Middlesex	79,972	4.00%
Mercer	79,425	4.25%
Union	78,240	4.80%
Warren	62,738	3.75%

This is the most relevant comparison evidence in the record for the year 2008.

It is valuable to draw a comparison between the Essex Sheriff's Officers and other law enforcement personnel within the Essex County government. Among rank and file units consider the following current top salary rates:

Prosecutor's Investigator (PBA 325) -	\$84,920
Corrections Officer (PBA 382) -	72,182
Sheriff's Officer (PBA 183) -	74,238

There are obvious differences, reflecting an historical relationship among the positions. The record reflects evidence that these rates have been increased in a parallel setting over the course of numerous contracts.

The PBA has presented a selective group of municipal police contracts drawn from municipalities in Essex County and from some neighboring communities in Hudson and Morris Counties. The PBA's Chart No 10 presents an array of salary increase rates that range in value from 3.75% to 4.5%; having a modal and median value of 4.0%. Similar figures are also placed in evidence for 2009.

The evidence presented by the PBA that there has been some steady movement of Sheriff's Officers to police officer jobs in municipal departments makes the municipal

comparison more relevant than otherwise might be the case. That evidence emphasizes that there is some competition in the labor market for law enforcement officers and that the career path can cross lines from county to municipal employment.

The County has presented evidence comparing the Sheriff's Officers' salaries to all other county employees [Exhibit C-97], including non-law enforcement units and unrepresented employees. The data reveals that the salary levels of unit members appear very reasonably positioned, with respect to maximum rates and average unit salaries.

The comparability criterion supports wage increases higher than those awarded herein. That is at least partly due to the fact that the evidence in the record for comparison purposes is not as current as the evidence relating to the financial issues. The financial data reflects economic concerns, especially related to revenues, that are clearly not reflected in the comparison evidence which includes contracts concluded prior to the emergence of the recent difficult economic

factors established by the Employer. Indeed, the trends reflected in the financial evidence strongly suggest some deepening of the concerns in, at least, the near future. Therefore, the comparison evidence has been balanced in light of those statutory criteria touching on fiscal responsibility and the financial impact on the community.

The wage rate increases awarded herein, while they are less than might have been dictated if comparability were the only criterion, are still designed to retain a sufficiently competitive compensation plan. The implementation dates are carefully designed to gain the most of the rate increases giving balance to the cash flow constraints of the budget. It is believed that the County will still be able to attract and retain highly qualified Sheriff's Officers under this collective bargaining agreement.

The **Overall Compensation** criterion analysis reveals that the terms and conditions of employment provided by the collective bargaining agreement for the Sheriff's Officers are reasonably competitive. As noted earlier, the maximum salary rate of \$74,238 is within a

competitive range, if perhaps in a lower quadrant within the most relevant comparison group. However, as the PBA correctly points out, the relative salary position is somewhat eroded when considering that the longevity benefit was discontinued for all unit employees hired after December 31, 1974. Among the other Sheriff's Officers in the state, only Burlington, Monmouth, Salem and Union Counties are without any longevity benefit. Morris County Sheriff's Officers hired after December 31, 1994 also have a contract where longevity was eliminated. Eight counties provide a percentage longevity benefit for their Sheriff's Officers.

With respect to the remainder of the benefit package: the 14 holidays represent a norm; the 3 personal days are standard; health insurance and prescription benefits are excellent; the \$550 clothing allowance amount is below average but within a competitive range; and the vacation benefit is competitive. Specifically, the vacation benefit provides:

- 12 days after 1 year
- 15 days after 5 years
- 20 days after 12 years
- 25 days after 20 years

This benefit level compares well, at about standard measure, when looking at other Sheriff's Officers units around the state. However, the PBA emphasizes that this benefit falls well short of the vacation plan provided to Essex County Prosecutor's Investigators who receive three weeks after one year; four weeks after ten years; and five weeks after 15 years of employment.

It is interesting that there are variations of vacation benefits among Essex County law enforcement units. The Corrections Officers working at the Jail have the same vacation schedule as the Sheriff's Officers. Those at the Jail Annex have a different, somewhat better plan. While the Prosecutor's Investigators have a better benefit than the Sheriff's Officers, the Superior Officers in that office, as well as those in the Sheriff's office, share the exact same vacation schedule as the Sheriff's Officers. The vacation benefit is reasonable as it currently exists and the record at hand does not convince the Arbitrator to improve it in this contract.

An analysis of the overall compensation of unit employees would not be complete without pointing out the existence of the contractual Development Fund. This contract component has an annual value of \$350 per employee and it is unique to Essex County contracts. Although there is no proposal to alter that item in these negotiations, it is significant to acknowledge its existence in relation to the overall picture of terms and conditions of employment. This is especially true in light of the PBA's argument with respect to the absence of longevity.

The fourth criterion, the **Stipulations of the Parties** is not applicable to the impasse presented herein. There were no substantive stipulations offered or agreed upon by the parties.

The **Lawful Authority** criterion has been addressed by both parties. There is reliable, credible evidence that the 2009 budget was drawn within the tax levy limitations of the CAP Law, as had been achieved in the 2008 budget. The Employer suggests that any award requiring an expenditure beyond the 2009 appropriations would require

an emergency appropriation in response. However, the PBA points out that the items at issue herein represent a very small measure of the \$662,199,754 budgeted for 2008 or of the \$674,980,690 budgeted for 2009.

The Employer emphasizes that there will be an historical ripple effect from the salary increases awarded herein to other bargaining units. The PBA decries that argument as improperly strapping it with the weight of the cost for other units. The Arbitrator has only jurisdiction for the unit at hand and cannot apply the criteria to those other employees, especially since there is no evidentiary record with respect to the impasse in any other bargaining unit. However, when considering a criterion such as the lawful authority criterion, the Arbitrator must consider, at least subjectively, that there will be costs attributable to the new contracts in other bargaining units. That does not assume that those costs are definitively predictable herein; they are not. Each other impasse shall be resolved in its own context. However, the small (proportionally) cost of the increases herein cannot be assumed to be the only further costs resulting from new

terms and conditions of employment for the Employer. It would unrealistic to do so.

The PBA correctly asserts that the evidence presented with respect to the CAP Law by the County Treasurer did not establish a basis to conclude that the award herein faces any conflict with the lawful authority of the Employer. The 2008 and 2009 budgets are in evidence and they have been prepared and approved within the lawful authority of the Employer. The Arbitrator has carefully considered those budgets and the implications for 2010 as well in structuring the economic costs of the package awarded herein. The resolution of the impasse provided in this interest arbitration poses no conflict with the lawful authority of the Employer.

In order to properly assess the **Financial Impact** criterion, it is first necessary to calculate the cost of the economic package to be awarded. Each party has presented its methodology for costing out the proposals and the Arbitrator has drawn from both of their methods.

The 2007 base salary figure for the bargaining unit of 359 employees is \$25,054,390. The 2.0% across-the-board component of the Employer's offer would have a cost factor of \$501,088 and the same calculation for the PBA's proposal of 4.5% would be \$1,127,448. Note that each of these proposals were to be implemented effective January 1, 2008. The 2008 negotiated salary increase component of the package awarded herein is 2.85%, effective January 1, 2008. That cost equals \$714,050 when computed on the 2007 unit base salary \$25,054,390.

The County Treasurer testified that there are estimated incremental step movement costs of \$457,380, \$488,752, and \$388,780 for 2008, 2009, and 2010 respectively. The cost of incremental movement does indeed represent a cost factor that increases a salary line item from one year to the next as employees move up the salary guide. It is a structural element of the pay plan negotiated over time and, in these negotiations, in place completely independent of the issues presented herein. The Arbitrator acknowledges and considers these costs, the Employer has budgeted for them as well, as an element of the terms and conditions of employment.

However, there are some aspects to incremental movement costs that must be considered on a subjective basis. First of all, these costs represent changes in the makeup and structure of the personnel in the bargaining unit. The employees experience a salary increase over time, moving through steps on a salary guide as they gain experience. Similarly, there are other changes in the personnel makeup of a bargaining unit that affect the costs to the employer. For example, the retirement or separation from service of higher paid employees to be replaced by lower paid employees, if replaced at all. This "breakage" is also a cost element, or cost reduction element, that warrants subjective consideration and frequently may offset part of the incremental cost factor.

Furthermore, in many instances the increase in the number of steps to achieve the maximum (or journeyman) rate has been a function of negotiations efforts by the employer. Employers have recognized that there is cost savings in delaying the achievement of the maximum salary step, especially in a large unit of employees where a certain measure of turnover is reasonably predictable.

Therefore, these concepts, step increment costs and breakage savings are inter-related and should be considered in tandem.

The County Treasurer testified that there was a 3.0% salary increase factor built into the 2008 budget and nothing for salary rate increases in the 2009 budget. The Arbitrator is cognizant that the 2008 salary increase provided for in this process costs a little less than the budgeted figure. That will allow the County to use some of the unexpended amount toward the 2009 salary increase costs.

The Arbitrator has found that the most reasonable resolution of the impasse at hand would include a wage freeze, with respect to across-the-board increases, for a period from January 1, 2009 through August 31, 2009. This will assist the County to address the cash flow problems it anticipates from issues relating to its revenue stream. Effective September 1, 2009, the Award herein shall order an increase in salary rates, across-the-board, of 2.75%. The effect of the freeze and delayed implementation of that 2.75% is to reduce the

cost of that increase during the 2009 budget year to less than 1%. This balancing, under the statutory criteria, provides the Employer with the ability to deal with the revenue trends, as reflected in the record.

The payout cost of this September 1, 2009 increase, calculated using the 2008 base of \$25,768,440, would equal \$236,211 for the calendar year 2009. An additional cost of \$472,421 would be rolled into the 2010 budget year as a new expense. Further, the incremental cost for 2009 would be in addition to the negotiated increase noted above.

At this point it is important to discuss the issue of health benefits and the Employer's proposal to address employees' contributions toward premiums. The County has presented a complicated and comprehensive proposal with respect to contributions to health insurance premiums. However, earlier this calendar year, 2010, the State Legislature enacted a statutory approach to health insurance contributions by public employees, see Chapter 2, P.L. 2010. The record herein otherwise would have been supportive of the establishment of a system of flat

dollar contributions, relating to the specific coverage provided each employee, rather than a percentage of salary. That would have provided the Employer with a significant measure of cost containment in the area of health insurance benefits. It is likely that this Arbitrator would have awarded such a plan. However, the State Legislature has, as a practical (rather than legal) matter, pre-empted that issue with respect to the impasse at hand. The Arbitrator believes that the legislative approach, now in effect for unit employees, cannot be reasonably reconciled with the approach that was likely to have been awarded under the record herein. Further, the 1.5% of salary contribution, provided for in the statute, is more than adequate to address the reasonable need for cost containment in the contract at hand. Therefore, the Arbitrator determines that all health insurance contributions under the contract, effective upon the implementation date of the statutory contributions, shall be consistent with those provided for by Chapter 2, P.L. 2010. This will provide the Employer with a new substantial cost containment factor in 2010.

The net annual economic change of the terms awarded herein can be summarized as follows. The 2008 cost of the across-the-board salary increase of 2.85% is \$714,050 computed on the 2007 unit base of \$25,054,390. In 2009 there is no new cost associated with the terms awarded herein until September 1, 2009, when a 2.75% rate increase generates a payout cost in 2009 of \$236,211. In 2010 there is a unit-wide cost savings to the Employer, associated with the new statutory health insurance premium contribution of 1.5%, effective May 22, 2010. This contribution, calculated initially on the 2009 base salary (as adjusted from the 2007 and 2008 base by the percentages above) generates an annualized savings of \$397,156, which must be adjusted for its time in effect. The initial amount will only apply to the period of May 22, 2010 through June 30, 2010. When salary rates are increased by 2.5% on July 1, 2010, the contribution to insurance premiums shall also increase proportionally. The period of May 22, 2010 through June 30, 2010 should generate a cost reduction for the Employer of \$45,826 for the bargaining unit. On July 1, 2010, the annualized savings (1.5% of base salary) will now equal \$407,084, providing a cost reduction over the last six months of

2010 of \$203,542. The 2.5% salary increase to be implemented on July 1, 2010 has a rate increase of \$661,926 of which the cost in 2010 will be \$330,963.

The summary of the net annual economic change calculations reveals that the net change, as a result of the terms and conditions set forth herein, totals \$714,050 in 2008. The net amount for 2009 is \$236,211. The net amount for 2010 is \$554,016, computed in consideration of the amount rolled into that year from the 9/1/09 increase (\$472,421), the new cost of the salary increase on July 1, 2010 (\$330,963) and the cost reduction as a result of the contribution to health insurance premiums at an annual rate of 1.5%, (\$249,368). The package also rolls \$330,963 as a new cost into 2011 and it rolls \$203,542 of new cost reductions into 2011. Of course calculations of this type are based upon a snapshot in time of the personnel in place on a given date. Changes in staffing, personnel movements and other changes impact on this comparative costing to affect the actual impact (up or down) of the costs in each year. This is simply the best available method under the evidence at hand.

The above calculations do not specifically compute the continuing costs of the existing step increment movement. The step movement costs, estimated by the County Treasurer, are existing contractual obligations under the prior contract and not new costs attributable to the terms awarded herein, except that they may be increased, somewhat, by the impact of an across-the-board salary increase. However, the Arbitrator has fully considered the existence of that structural cost and specifically of the Employer's estimates of its impact, varying with certain factors. Lastly, the Arbitrator takes some subjective note that there will be structural cost savings as a result of turnover and other personnel changes, which will offset at least some of the established incremental costs. The incremental movement may also change some of the salary cost calculations and also the cost reductions for premium contributions.

As emphasized during the discussion of the public interest criterion, the determination herein has placed a great deal of weight on the fiscal concerns faced by the Employer. The record clearly establishes that the County

has been quite successful over a period of time in stabilizing and improving its financial health. The focus placed on responsible fiscal policy has served to gain great strides with respect to bond ratings and to the ability to establish and regenerate reasonable fund balances. The County Treasurer testified as to troublesome trends depleting fund balance with less regeneration than experienced in recent years [see Exhibit C-34]. The Arbitrator has crafted an economic package designed to respond to the Employer's concerns with respect to its budget, and particularly its revenue stream. Some specific elements to the weakened trend in revenues warrants some specific discussion. The evidence establishes that the 2008 budget anticipated \$11.3 million as revenues from the realty transfer tax. In actuality, the amount realized was only \$7.9 million. This obviously reflects a downturn in real estate sales activity. The amount anticipated in the 2009 budget has been reduced to \$6 million. Additionally, the County Treasurer credibly explained how it has lost a tremendous portion of revenue from its investment income due to the drop in interest rates. The 2008 budget anticipated \$4

million from investment income and realized only \$1.5 million. There has also been a decline in State aid.

The package is constructed to recognize the revenue trends and to be without stress on a reasonable budget structure. The wage freeze period for 2/3 of a year is timed, from January 1, 2009 through August 31, 2009 to provide a relief from newly negotiated wage costs during this critical period. The bulk of the September 1, 2009 increase will impact on the 2010 budget where there is cost reduction as a result of the new 1.5% statutory contribution to health insurance premiums.

The PBA has established that there are elements of the revenue picture that may not be quite as problematic as the 2009 budget might initially suggest. For example, there easily will be tens of millions of dollars in grants received post-passage of the budget. Other funding comes in from Homeland Security funds (\$5 to \$8 million), results of municipal court fees (about \$5 million) and confiscations of money or property in a Sheriff's Office law enforcement operation.

The PBA also points out, through the cross-examination of the County Treasurer, that from 2004 through 2008 the County tax rate has gone down each year.

2008	-	0.3765
2007	-	0.3828
2006	-	n/a
2005	-	0.4802
2004	-	0.5138

This is indicative of the financial health and stability achieved by the County. The evidence, as documented by the PBA, reveals the continuous experience of the County's cancellation of unexpended appropriations reserves. This provides the Employer with meaningful budget flexibility that serves it well in keeping its finances stable. The economic changes awarded herein will not negatively affect that financial health and stability.

It is perhaps helpful to put the financial impact of this award in specific context. The 2008 adopted budget had a total appropriations component of \$662,199,755. The base salary, before increases, for unit employees for that year is \$25,054,390 or 3.7% of the County's planned budget expenditures. The across-the-board salary rate

increase provided for herein of 2.85% for 2008 represents \$714,050 or slightly over one-tenth (0.1%) of one percent of the budget. Given the 2/3 of a year of a wage freeze ordered for 2009, the calculation is a much smaller percentage for that year (2009) and the net increase in cost for 2010 is similar in proportion to that of 2008.

Consideration of the financial impact criterion presents concerns for the future, including the loss of revenue in key areas: real estate transfer tax; interest on investments and deposits; and state aid. However there are areas indicative of continued health as well. The low debt service figure, currently at 0.358%, is another sign of fiscal stability. The resistance to relying on one-shot revenues additional adds to long-term financial strength. Retaining the Employer's financial stability is a responsible goal and the package set forth in this interest arbitration is designed to support that goal.

In summary, the consideration of the financial impact criterion has convinced the Arbitrator to construct an economic package that will have no

unreasonable impact on the governing body, the residents or the taxpayers of Essex County. The evidence in the record provides no indication that the economic changes ordered herein will cause any increase at all in the tax rate nor any diminution of services.

The **Cost of Living** criterion is worthy of consideration and some meaningful weight in determining the resolution of the impasse in the case at hand. The Employer has presented extensive documentation from the U.S. Department of Labor, Bureau of Labor Statistics, to show that there has been an economic decline, measured by the cost of goods and services. The standard measure for such data has always been the Consumer Price Index (CPI).

The Employer draws particular note of Exhibit C-242, which focuses on certain changes in the CPI, measured for the New York/Northern New Jersey region of urban consumers. This index exhibits a 3.9% increase in the cost of living from January to December of 2008 but an increase of less than 1% over the first six months of 2009. This dramatic slowing of the cost of living increases is indicative of the general economic downturn

and it is reflected in the compensation package awarded herein. This serves to provide an additional basis to moderate the terms from those indicated from the comparability evidence, recognizing that those contracts used for comparison were formed in light of earlier economic circumstances. The terms awarded in this interest arbitration do reflect the impact of applying the cost of living criterion to the evidence presented.

The **Continuity and Stability of Employment** criterion focuses on various aspects of the work environment, first related to those factors promoting a career path and commitment to the retention of the work force. As discussed under the public interest criterion, this is an advantage to the employer in that it reaps the benefits of experience and training over time. It also prevents the high costs attributable to constantly having to train a work force in flux from turnover.

The record establishes that there has been a steady flow of unit members to employment in higher paying municipal police employment. However, this steady flow has not reached problematic proportions and the Employer

has been able to retain a work force with an average of 11+ years of experience. Further, the Employer expresses confidence that it has been able to attract highly qualified employees to fill the positions of those who have left for other law enforcement employment.

There are additional elements to this eighth criterion. The statutory language also addresses other factors that are "ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations." The PBA asserts that this includes the concepts of "area standards" and the "prevailing rate" of wages. The Arbitrator agrees that these are ordinary and traditional factors in the determination of terms and conditions of employment through collective bargaining. To some extent, this element of the criterion parallels the comparability criterion.

There are numerous factors relating to this impasse which pull in conflicting directions. The Arbitrator has seen fit to balance them in accordance with the statutory criteria and the evidence on the record. This task has

been complicated by the obvious nature of changing economic times where there seem to be unusually dramatic changes in conditions that are normally more stabile and predictable. The package awarded herein has looked at the trends indicated by the evidence in this record and it reflects the balance of competing interests set among conflicting indicators. The continuity and stability of employment criterion has been given significant weight in establishing that balanced package.

The **Statutory Restrictions** criterion places an unmistakable emphasis on the importance of the consideration of statutory limitations placed upon the Employer. It is worth repeating that the Arbitrator is cognizant of the CAP Law restrictions faced by the County, specifically the imposition of a levy cap. The evidence with respect to the implications of the levy cap, especially found in the testimony of the County Treasurer, has been carefully considered in the construction of the economic package awarded herein. Further, it is important to note that the evidence clearly establishes that the economic result ordered herein, as resolution of the impasse presented, will

create no negative impact on the County with respect to its ability to meet its restricted obligations under the CAP Law.

The Arbitrator finds that the difference between the parties with respect to the duration of the contract shall be resolved as proposed by the Employer, three years, from January 1, 2008 through December 31, 2010. There are a number of reasons for this determination. The first and foremost is the inadequate availability of predictable evidence for the year 2011. The record contains outstanding detailed evidence with respect to the three years awarded but it is sketchy at best for the fourth year. This is not due to any failure of the parties, it is simply due to the timing of the process and the absence of available evidence for that period of time.

The Arbitrator finds that the shorter term is particularly appropriate in this period of great economic change; some would say "turmoil." The term ordered herein will allow for greater predictability to impact the determination of economic terms for 2011 and beyond.

There may be an economic upswing that cannot be predicted at this time. In any case, the public interest criterion especially weighs in favor of the three year duration. Further the comparability and financial impact criteria demand a more developed record than the one at hand, in order to address that fourth year.

As noted earlier in this Discussion, the salary rate increases awarded herein, applied across-the-board, shall be as follows:

Effective January 1, 2008	- 2.85%
Effective January 1, 2009	- 0.0%
Effective September 1, 2009	- 2.75%
Effective July 1, 2010	- 2.50%

Retroactive payments shall be made in accordance with the effective dates set forth above.

With respect to retroactive payments, the Arbitrator finds that the PBA proposal that they be made in a separate check is found to be most reasonable. The terms of this award will present some complicated aspects to the retroactive application of the salary rate increases. The PBA is most persuasive that its members will be in better position to comprehend and review retroactive

calculations presented in a separate check. The Employer was not convincing with respect to its opposition to the proposal. The PBA's position resonated with elements of the public interest and the eighth criteria that were reasonably convincing with respect to this issue; it shall be awarded as proposed by the PBA.

The record herein established ample evidence of the financial pressure placed upon the Employer by the cost of health insurance benefits. The issue is deemed to impact the public interest, comparability, financial impact and continuity and stability of employment criteria. Had the State Legislature not intervened, the Arbitrator would have constructed a system of flat dollar contributions by all unit members receiving health benefits that would have produced substantial cost containment for the employer.

However, the statutory imposition of contributions by all employees to their health insurance premiums has changed the negotiations landscape with respect to health insurance costs. The County has already attained substantial cost containment within this contract period

and additional provisions are not now warranted. The impact of the contribution of 1.5% of base salary is quite significant. The Arbitrator determines that all health insurance contributions under the contract, effective upon the implementation date of the statutory contributions, shall be consistent with those provided for by Chapter 2, P.L. 2010. It is assumed that these contributions shall be in accordance with a Section 125 account and paid in pre-tax dollars. The Employer is provided, by operation of law, with a new substantial cost containment factor in 2010. The record otherwise would have supported the establishment of a significant level of premium contributions, albeit in a different format.

The Employer has proposed certain changes in the Prescription Drug Plan. The Arbitrator finds that the record does not support the implementation of those changes at this time. The substantial savings with respect to the health insurance component are recognized as sufficiently addressing the fiscal responsibility and financial impact factors concerning health benefits. Further, the comparison evidence presented by the County

(comparing with other Sheriff's Departments) establishes that the current prescription co-pay is solidly within the norm. In fact, the co-pay levels are at the upper end of the range. The evidence does not support any change in the prescription co-pay benefit in this contract. The current contract provision shall remain unchanged.

The record does not support the implementation of the PBA's maternity/paternity proposal. There is no evidence that this area has ever presented a problem to any unit employee. This is an element of employment where there are ample legal protections in place and absent a showing of prior problems the proposal for contractual change is found to lack sufficient basis to be implemented as part of the package herein. The evidence simply falls short of that required to accept the proposal.

The Employer presented testimony in support of its proposed change to the work schedule. This same issue was presented in the prior interest arbitration for this bargaining unit, decided November 20, 2007. It was fully

contested in that previous proceeding. The prior interest arbitrator ordered:

the formation of a joint scheduling committee to meet and discuss the feasibility of any proposed change to the existing work schedule including its implementation and administration and any compensation related issues.

The evidence presented herein clearly established that the Employer has never sought to implement the joint committee, nor ever sought to place the issue before the PBA in the years that have intervened between the issuance of the award and the submission of this case for determination at interest arbitration.

The Employer's expresses emphatic importance upon the proposal it has submitted with respect to the schedule. That emphasis is undermined by the failure to follow up on the mechanism provided by the last arbitrator for addressing the schedule. Mutual or joint efforts toward resolving schedule issues are accepted as the most effective means of gaining efficiency through schedule adjustment; they are in the public interest. The County has not used the available procedure to seek mutually agreeable adjustments and should do so prior to seeking the imposition of a change without the exercise

of reasonable efforts, as envisioned in the parties' last interest arbitration award [Exhibit P-27].

It is further significant to point out that the current practice does present evidence that some measure of flexibility has been advanced in the establishment of the current schedule structure. There is a variety of schedules worked by non-court employees. These schedules include day shifts, evening shifts, some 10-hour shifts and some 24/7 operations. The County's proposal for the change of the work schedule language is rejected for lack of evidentiary support. The committee whose formation was ordered in the prior interest arbitration award is left in place and the Arbitrator anticipates that the Employer will embark on addressing the schedule issues in that joint forum.

The PBA has presented a compelling argument for some adjustment in the overtime factor for court appearances on off-duty times. The current practice is that employees who must appear in court on their time off are paid only for the time of the appearance, even if the matter is adjourned or completed in a short time. The

PBA argues that, for a Sheriff's Officer to be required to commute to the court on a day off only to be sent home with only twenty minutes of compensation is quite unfair. The PBA seeks a minimum of four hours overtime pay for such instances and it maintains that this is the standard for the job.

The testimonial record suggests that the incidence of this type of event for bargaining unit members is not common, according to Sheriff's Director of Administrative Services. Exhibit C-85 does not support the PBA's contention that this benefit is the absolute standard among Sheriff's Officers. The evidences reveals that Bergen and Hudson Counties provide 4 hours of overtime compensation as a minimum amount when employees are required to appear in court when off duty. Further Monmouth and Passaic County Sheriff's Officers receive a two hour minimum compensation when called in off duty to appear in court. The Arbitrator finds the concept behind the PBA's proposal to be most reasonable, especially under the public interest, comparability and the eighth criteria. Given the testimony of the low incidence of such occurrences this should not pose a significant

economic cost to the Employer. The Arbitrator shall award that required appearances in court, during off-duty hours not contiguous to an employee's work time, shall be compensated at a minimum of two hours of overtime compensation. This contractual change shall become effective on September 1, 2010.

The Arbitrator finds that the current practice providing release time for the PBA President should continue as currently provided but that the proposed codification in the contract is not supported by the record. There is no evidence of any problems or difficulties with this element of the parties' relationship and the proposal is not compelling under the record.

There are comparative elements of the PBA's vacation proposal that present areas that warrant careful consideration. The fact is that Essex County Prosecutor's Investigators enjoy a superior vacation schedule to the members of this bargaining unit. It is unclear when this imbalance originated and it is quite unusual for county law enforcement contracts to have such

an inconsistency. While there are these persuasive aspects to the PBA's proposal, the timing of seeking improvement in vacations in the current negotiations is problematic. The economic package, as awarded, does not warrant any addition costs in the area of vacations under the current fiscal trends. The Arbitrator placed an emphasis on maximizing the ability to reasonably increase salary rates and there is no excess opportunity to also increase costs associated with an improved vacation plan in this contract. Further, other law enforcement employees of the County do receive the same contractual vacation benefits as the Sheriff's Officers, so the experience is a mixed bag. The PBA proposal with respect to improving the vacation benefit must be rejected in under the record herein.

The record reveals, through the testimony of the PBA President and the County Attorney in charge of Labor Relations, that the bargaining unit employees receive free parking for work. The PBA asserts that it only seeks to codify the current practice in the contract. The County expresses the belief that the PBA proposal, as written, seeks more than the existing practice. The PBA

insists that seeks no more. The Employer further presented testimony that there is no plan to change the parking practices.

The Arbitrator finds that it is most reasonable to award the inclusion of a reference to the existing practice of free parking in the contract, without any expansion of that benefit. This memorializes the existence of the benefit without possibly expanding on the nature of the benefit, accepting the description presented by the County Attorney in charge of Labor Relations. This element of the package is warranted by the recognition that we are in a transitional period of collective bargaining, reflecting unpredictable economic times. That recognition has driven many elements of the package herein. With respect to the parking issue, it serves the public interest to ward off any temptation an employer might have in the future to eliminate the free parking benefit as it exists, because the contract fails to reference its existence.

The County has proposed the elimination of four of the current fourteen holidays provided by the collective

bargaining agreement. There is simply no evidence that supports the implementation of this measure. The County's own document, Exhibit C-81 reveals that the range of holidays for Sheriff's Officers among the counties in New Jersey is from 13 to 15 days. Further, the most common level of benefit is 14 days, as in this contract. Additionally, the average of all the Sheriff's Officers' units is 13.8 days, almost exactly the 14 days received herein. The record provides no convincing basis for the reduction in benefits sought by the Employer, other than it would reduce its expenses. The proposal shall not be awarded herein.

At hearing, the Employer raised the argument that the issue of wages was not properly before the Arbitrator because it was "statutorily preempted." The County relies upon *N.J.S.A. 40:20-1*; *N.J.S.A. 40A:9-10*; *N.J.S.A. 40:41A-41*; *N.J.S.A. 40:41A-4*; and the New Jersey State Constitution, Article 4, Section 7, paragraph 11.

The County raises questions about the interest arbitration process that might have properly been presented before a competent court prior to the opening

of the interest arbitration hearing, in order to restrain arbitration; no such application was made. The presentation of this position before the Arbitrator, at hearing, is untimely and presented in the wrong jurisdiction, especially considering the constitutional element to the Employer's claim.

However, it is instructive to observe that the Public Employment Relations Commission ("PERC"), in reviewing an appeal of an interest arbitration award issued in August of 2004, held that although it did not have jurisdiction to hear a constitutional challenge, it could:

Note that our Supreme Court has upheld the constitutionality of the interest arbitration section of the County Improvement Authorities Law, N.J.S.A. 40:37A-96, against contentions that it violated the Equal Protections Clause and unduly delegated legislative authority. See Division 540, Amalgamated Transit Union v. Mercer Cty. Improvement Auth., 76 N.J. 245 (1978).

It is also interesting to point out that the parties to that appeal before PERC were the County of Essex, Essex County Sheriff and Essex County Sheriff's Officers, PBA Local No. 183, the very same parties to this proceeding. The key finding in this aspect of PERC's Decision

[*P.E.R.C.* No. 2005-52, (2005)] is that there is an established rule of law, set forth by the New Jersey Supreme Court, that the interest arbitration statute [*N.J.S.A.* 34:13A-16 et. sec.] is constitutional and lawful in its application to county government.

Even though the timing and forum are not appropriate, the Arbitrator has considered the County's legal argument and finds it to be without merit. The argument is nothing more than the same position presented with respect to the 2004 interest arbitration, citing a variety of statutes that do not support the preemptive proposition presented. The constitutional question is already well-settled by the aforementioned *Mercer Metro* case.

During the evidentiary hearing, at the close of the PBA's case, the County presented a motion to dismiss the interest arbitration petition. It suggested that the PBA had failed to meet its burden of proving that its proposals were reasonable under the statutory criteria, characterizing that evidence as insufficient. The motion was denied at hearing because it was simply in error, as

a matter of fact. The PBA placed a substantial number of relevant and meaningful documents in the record. These included items involving numerous aspects of the job that were related to the public interest criterion, including evidence of efficiency and increased productivity and of turnover and the retention of experienced Sheriff's Officers. There was abundant documentation provided as to comparisons with other law enforcement personnel, including Sheriff's Officers in other counties. The PBA also submitted evidence related to financial factors including evidence documenting the budgetary factors, annual financial statement, audit, tax abstract and other fiscal data. The PBA clearly presented extensive evidence relating to nearly every statutory criterion and the motion to dismiss was misplaced. It is worth noting that the appeal of the interest arbitration award issued in 2004 [see again P.E.R.C. No 2005-52] also attacked the denial of a similar motion to dismiss. PERC affirmed the ruling by the Arbitrator in that matter, denying the motion to dismiss and held:

Interest arbitration is an extension of the negotiating process, City of Clifton, P.E.R.C. 2002-56, 28 NJPER 201 (2002), and throughout the formal arbitration proceedings the arbitrator may continue to mediate and assist the parties in reaching a mutually agreeable settlement. N.J.S.A.

34:13A-16f(3). Absent such an agreement, the filing of an interest arbitration petition initiates a compulsory impasse procedure that entitles the parties to a final and binding award. Thus, interest arbitration is a labor relations process, not a civil action, and we do not believe that the Legislature intended that the process could be terminated by a motion to dismiss for insufficient evidence - or that it could proceed based only on the evaluation of one party's evidence.

Once again, there is an established basis, involving these two parties to support the denial of the motion.

The record presented by the parties in this case is enormous and complex. It involves hundreds and hundreds of documents set forth individually, in bound volumes, in numerous ringed binders and electronically, on dvd discs. Much of the documentation is primary source: budgets, audits, other financial documents, collective bargaining agreements, CPI data, and bond rating service reports. These documents are complex and substantively filled with relevant facts. The Discussion and Analysis presented herein is designed to provide a central theme to the process of evaluating this evidence in light of the statutory criteria and the issues at hand. It is impossible to present an absolute recitation of all the facts relied upon to reach the conclusions drawn. In an Interest Arbitration Decision of approximately 100 pages

it is possible to highlight the most important evidence and then apply the central concepts taken from the matter, as a whole. That is the methodology applied herein and the Award which follows is based upon the resulting determination, applying the statutory criteria to the facts in consideration of the issues at hand, giving due weight as warranted.

A W A R D

For the foregoing reasons IT IS HEREBY ORDERED that all issues in dispute at interest arbitration, in Docket No. IA-2008-098, be resolved as follows:

1. Duration

The duration of the collective negotiations agreement shall be from January 1, 2008 through December 31, 2010.

2. Wages

Wage rates of unit employees shall be increased as follows:

Effective January 1, 2008	- 2.85%
Effective January 1, 2009	- 0.0%
Effective September 1, 2009	- 2.75%
Effective July 1, 2010	- 2.50%

Retroactive payments shall be made in accordance with the effective dates set forth above.

3. Separate Retroactive Paycheck

Retroactive compensation due as a result of this Award shall be paid in a separate paycheck.

4. Health Insurance Benefits

Health insurance premium contributions under the contract, effective upon the implementation date of the statutory contributions, shall be consistent with those provided for by Chapter 2, P.L. 2010. It is assumed that these contributions shall be in accordance with a Section 125 account and paid in pre-tax dollars.

5. Prescription Benefits

The evidence does not support any change in the prescription co-pay benefit in this contract period. The current contract provision shall remain unchanged.

6. Overtime

Effective September 1, 2010, required appearances in court, during off-duty hours not contiguous to an employee's work time, shall be compensated at a minimum of two hours of overtime compensation.

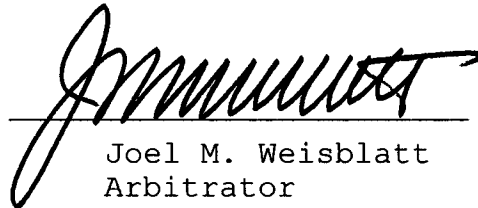
7. Parking

The contract shall include a reference to the existing practice of free parking, without any change or expansion in the existing benefit.


8. Other Proposals

The remaining proposals of both parties: the County's proposals to eliminate four holidays and to change the work schedule and the PBA's proposals for improved vacation benefits, to add language relating to the PBA President's release time and to add new maternity/paternity language, are all rejected. The current contract language shall remain unchanged with respect to these issues.

Dated: July 29, 2010
Skillman, N.J.


Joel M. Weisblatt
Arbitrator

On this 29th day of July, 2010, before me personally came and appeared Joel M. Weisblatt, 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 the same.


Attorney-at-law