STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

COUNTY OF UNION

Employer

-and-

FOP LODGE 103
(SHERIFF'S SUPERIOR OFFICERS)

Employee Organization

Interest Arbitration Decision -and- Award

Docket No. IA-2010-118

Before
Timothy A. Hundley
Interest Arbitrator

<u>Appearances</u>:

<u>For the Employer</u>:

Kathryn V. Hatfield, Esq.
Bauch Zucker Hatfield LLC

<u>For the Employee Organization</u>:

Marc D. Abramson
Labor Relations Consultant

The County of Union ("County" or "Union") and FOP Lodge 103 (Superiors) ("FOP") were parties to a negotiated agreement covering the January 1, 2005 through December 31, 2009 time period. The FOP is the exclusive representative of all of the County's Sheriff's Superior Officers, including sergeants, lieutenants, and captains.

Beginning in December 2009 and continuing thereafter, the parties engaged in negotiations for a successor agreement but were unable to reach a voluntary settlement. On June 18, 2010, the FOP filed a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission ("PERC"). On July 19, 2010, PERC appointed me interest arbitrator pursuant to *N.J.A.C.* 19:16-5.6(d) and the parties' mutual selection. Accordingly, this case is governed by the interest arbitration procedures in place on July 19, 2010. *L.* 2010, *c.* 105, which took effect on January 1, 2011, establishes new interest arbitration procedures and timelines for petitions filed on or after that date. *See L.* 2010, *c.* 105, §4 and *PERC's Frequently-Asked Questions, Interest Arbitration Procedures (March 14, 2011).*

On October 19, 2010, I conducted joint mediation sessions that narrowed or resolved some issues. However, the impasse persisted. Therefore, a formal interest arbitration hearing was held on April 11, 2011, May 23, 2011, and

September 28, 2011. At the hearing, the FOP and the County examined and cross-examined witnesses and introduced numerous exhibits into evidence. Post-hearing briefs were received by November 16, 2011 and the record was closed on that date.

The pre-2011 version of *N.J.S.A.* 34:13A-16f(5) called for an interest arbitrator to issue an award within 120 days of selection or assignment. However, the statute also permitted the parties to agree to an extension. Pursuant to this latter provision, the County and the FOP have agreed to extend the time for issuing an award to February 3, 2012.

The pre-2011 version of *N.J.S.A.* 34:13A-16d(2) also provided that the terminal procedure was conventional arbitration, absent the parties' mutual agreement to an alternate procedure. The parties here have not agreed to an alternative method of submission and this dispute therefore will be resolved by conventional arbitration.

N.J.S.A. 34:13A-16f(1) requires that each party submit a final offer. The County and FOP final offers are as follows.

COUNTY'S FINAL OFFER

1. Article IV: Salaries

Section 1

1/1/2010	0%
1/1/2011	1%

1/1/2012 1%

Section 2

In order to maintain a bi-weekly basis for paycheck distribution, effective January 1, 2010, a rotating bi-weekly pay day schedule shall be implemented whereby the pay day will be changed in each successive year as follows:

2010:	Friday
2011:	Monday
2012:	Tuesday
2013:	Wednesday
2014:	Thursday

This cycle will continue every five (5) years

When the pay day occurs on a holiday, paychecks or direct deposits will be issued on the day prior to the holiday.

2. **Article V: Pension and Welfare - Modify as follows**

1. Effective one month following the award, prescription co-payments shall be as follows:

<u>Retail</u>

$20.00 co-pay per prescription for name brand where generic is available.

$15.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

$6.00 co-pay per prescription for generic.

<u>Mail</u>

$15.00 co-pay per prescription for name brand where generic is available.

$10.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

$5.00 co-pay per prescription for generic.

The above co-pays shall apply to both retail pharmacy purchases (up to thirty (30) day supply) and a ninety (90) day supply through mail order.

2. <u>Drug Plan Utilization Modification</u>

   (a) Enhanced Concurrent Drug Utilization Review (Refill too soon/stockpiling).

   (b) Preferred Drug Step Therapy Generic or Preferred Name Brand first) limited to PPI, SSRI and Intranasal steroid drugs.

   (c) Clinical Intervention (Statement of medical necessity from MD) limited to Anti-Narcoleptic Agents, Weight Loss and Anti-Neoplastic Agents.

   The restriction on flow through of prescription co-payments to the Major Medical portion of the health insurance coverage shall be continued.

3. Officers who receive fully paid retirement benefits under the 2005 through 2009 CNA shall be provided with the Medco Rx or an equivalent plan. The plan shall provide for free mail order prescriptions and 30% co-pay for retail. It is understood that in order to provide the Medco Rx plan, the base Health Plan will be converted from CIGNA ROAP7 to CIGNA ROAP3.

4. Effective January 1, 2011, the Third Party Administrator (TPA) will be eliminated and the County will no longer reimburse employees for any out-of-network charges.

5. Effective January 1, 2011, emergency room co-pays shall be $25.00 per visit (to be waived if admitted).

6. <u>Premium Contribution Amounts</u>:

   Any contribution to health care that is mandated by statute shall replace the contributions set forth in Section 3, paragraph (e)(4).

FOP's FINAL OFFER

1. **Salary**

   1/1/2010 2.0%
   1/1/2011 2.25%
   1/1/2012 2.50%

   Senior Officer Pay: Increase each classification by $210.00.

   Emergency Responder Certification: $1,000.00 and training completed on County time.

2. **Work Hours**

   Article 10, Section 1: Reduce work week from 42.5 hours to 40 hours per week.

3. **Article 20**

   Add: Any substantial change to uniform/clothing will be at the County's expense.

4. **Health Benefits**

   Article 5, Section 6: Provide paid prescription plan upon retirement.

In addition to agreeing on a contract term of January 1, 2010 through December 31, 2012, the County and the FOP have stipulated to several contractual changes that are set forth in the Discussion and Analysis section of this award, under "Stipulations."

STATUTORY FACTORS

I am required to resolve this dispute based on a reasonable determination of the issues, giving due weight to those statutory factors set forth in *N.J.S.A.* 34:13A-16g deemed relevant. The nine statutory factors are as follows:

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

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C:34:13A-16.2); provided, however 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, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62[1] (C40A:4-45.45), 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 such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

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[1] In July 2010, N.J.S.A.40A:4-45.45 was amended by *L.* 2010, *c.* 44.

BACKGROUND

This interest arbitration involves Union County and the approximately 49 Sheriff's Superior Officers who are assigned to the County's courthouse and certain other locations (FOP Binder 1, Tab 7, Exhibit 28).[2] The County is located in northern New Jersey; is home to approximately 522,541 residents; and is comprised of 21 constituent municipalities, including Elizabeth and Union City (FOP Binder 1, Tab 3; County Binder, Tab E-1). Elizabeth and Union City are classified by the New Jersey Department of Community Affairs (DCA) as a "major urban" and "urban 15" center, respectively (FOP Binder 1, Tab 4). The New Jersey State Police 2009 Report on "Crime in New Jersey" explains that, taken together, the 15 urban centers in New Jersey have historically accounted for 18% of the State's population and approximately one-third of its crime (FOP Binder 1, Tab 4, p. 104).

The Moody's rating agency has described the County as having substantial tax base and a strong business environment (County Binder, Tab E-1). For many years, Union has been one of only seven New Jersey counties to enjoy a Moody's "Aaa" rating, the highest available designation (FOP Binder 1, Tab 3; County Binder, Tab E-1). As of March 27, 2011, Moody's retained the Aaa rating but

[2] This tab consists of the report of Raphael Caprio, the FOP's financial expert. It will hereafter be referred to as "Caprio Report." Many of the parties' exhibits are collected into binders, which are subdivided into several sections; the citation to these exhibits reflects that organization. Other County and FOP exhibits were submitted individually and will be referred to as Exhibit C ___, for County Exhibits, and FOP Exhibit ___, for FOP exhibits.

placed the County on "negative outlook" due to concerns about diminishing surplus funds and the slowing growth of property values.

In March 2011, the Board of Chosen Freeholders introduced a $482,202,495 budget that, in the words of the County's budget message, was able to meet the State-mandated CAP because County officials had "been working hard for a number of years to make that happen" (Exhibit C-1, sheet 2; sheet 3A). The budget message extensively detailed the reforms that are embodied in the "Union County Toolkit", including wage freezes; employee health benefit contributions; elimination of positions through layoffs and attrition; reduction of overtime; refinancing of debt; initiatives to spark economic development; shared services agreements; and the creation of new revenue sources such as the County's new juvenile detention center, which provides beds for Bergen County's juvenile detention population (Exhibit C-1, sheet 2; sheet 3A).

The 2011 budget reflects that, as of 2011, taxes accounted for 60.38% of the County's total budget. For 2002 through 2010 that figure ranged from 53.6% to 59.8% (Exhibit C-1, chart following sheet 3B). Out of the aggregate of all property taxes assessed in Union County municipalities during 2010, the State Division of Taxation reports that 17.6% of the total collected was allocated toward the support of County government. School districts received 48.1%, while 34.3% was distributed to municipalities (Caprio Report, Exhibit 8). DCA calculates a slightly higher percentage of total property taxes (18.14%) as going toward Union County government, a percentage figure that ranks as the 13th highest among the State's 21 counties. The average 2010 property tax bill in Union County was $8,941, the fifth highest in New Jersey (Caprio Report, Exhibit 10). Between 2006 and 2010, the average property tax bill in Union County increased by 19.98%, the sixth highest increase in the State (Caprio Report, Exhibit 11).

The 2011 budget reflects the wide range of diverse services provided by the County through such departments as Public Works and Facilities; Runnells Specialized Hospital; Public Safety; Engineering; Public Works and Facilities, Parks and Community Renewal; and Correctional Services. The Sheriff's Office is of course another such entity, and it is constitutionally and statutorily charged with appointing sheriff's officers to provide court security; prisoner transportation; service of process; and ballistics identification. *See N.J.S.A.* 40A:9-117.6.

Consistent with these mandates, the Union County Sheriff's Office includes a courthouse security division that annually produces over 20,000 prisoners in Union County courts. Also part of the Sheriff's Office are: a transportation unit that transfers prisoners to hospitals and other correctional institutions; a fugitive unit charged with apprehending individuals who are the subject of Union County bench warrants; an extradition and rendition unit that prepares the paperwork necessary to secure the return of fugitives to New Jersey; and a domestic violence unit that serves temporary restraining orders on domestic violence defendants (FOP Binder 1, Tab 3).

In addition, the Sheriff's Office maintains a K-9 Search & Rescue Unit and an Identification Bureau that processes all persons arrested by County sheriff's officers. The Identification Bureau assists local law enforcement agencies in the processing of crime scenes, fire investigations, and the identification of suspects in criminal investigations. The Bureau includes within it a major crime unit; a fire investigation unit; and a high tech/security infrastructure unit (FOP Binder 1, Tab 3). Finally, the Sheriff's Office offers special services such as a gun safety program; the voluntary fingerprinting of school age children; a Project Lifesaver program for seniors; and the Sheriff's Labor Assistance Program (SLAP) whereby non-violent offenders who have been sentenced to work details are supervised by sheriff's officers.

The primary issues in this proceeding are wage increases and health benefits, with the County and the FOP each urging that the nine statutory criteria weigh in favor of their respective positions on these issues. The County and the FOP have submitted comprehensive briefs and exhibits in support of their positions and the record includes, among other items, the 2011 County budget; the report of the FOP's financial expert, Raphael Caprio; recent interest arbitration awards and PERC-compiled settlement data; contracts pertaining to other County employees;

federal and state data on the cost of living; and information on private and public sector salaries and wage increases.

Caprio testified on behalf of the FOP and Marc D. Abramson, the FOP's labor relations consultant, offered a factual presentation. The County's witnesses were Lawrence Caroselli, the County's retired Director of Finance; Bibi Taylor, the County Treasurer and the current Director of Finance; and Joseph L. Salemme, the County's Labor Relations Consultant. In addition to this information and testimony, I take arbitral notice of the October 2011 PERC Interest Arbitration Salary Analysis posted on the PERC website.

Recent legislation also has a bearing on this proceeding. *L.* 2010, *c.* 44, was approved July 13, 2010 and amended *N.J.S.A.* 40A:4-45.44 to 45.47, to reduce the property tax levy cap for school districts, counties and municipalities from 4% to 2%. The Act states that it "shall be applicable to the next local budget year following enactment." In addition, *L.* 2010, *c.* 2 ("Chapter 2"), directs that all employees of counties and other local units shall pay 1.5% of their base salary as a contribution toward health insurance premiums. It took effect on May 21, 2010, except for employees covered by a collective negotiations agreement in effect on that date. For those employees, the statute applies once the contract expires.

Finally, *L.* 2011, *c.* 78, signed on June 28, 2011 ("Chapter 78"), requires that employees of counties and other local units pay a statutorily-fixed percentage of the premium cost for their health benefits coverage. The applicable percentage depends on the employee's salary and the type of coverage chosen and is phased in over four years. The statute also increases the Police and Fire Retirement System (PFRS) employee contribution from 8.5% to 10% of the employee's base salary.

The following is a summary of the County's and the FOP's arguments.

COUNTY'S POSITION

The County vigorously argues that an analysis of the nine statutory factors firmly demonstrates that its own economic package reflects current fiscal realities. By contrast, the County insists that the FOP's entire economic proposal is based on an unsupported contention that the County can afford the demanded across-the-board increases, which would cost the County substantially more over the contract term than its own offer. I start by reviewing the County's analysis concerning salary and related issues, and then detail its position with respect to its proposed modifications of the health benefits article.

SALARIES

Public Interest and Financial Considerations

The County begins its discussion of the statutory criteria by recognizing that the public interest is best served by a professional and efficient group of Sheriff's Officers. At the same time, it stresses that a governmental entity cannot reduce essential services merely to satisfy the economic demands of one group of employees. The County also cautions that, in costing out economic proposals, an arbitrator must consider all items in a compensation package, including salary increases, increments, benefits, and other stipends and allowances.

Against this backdrop, the County underscores that the FOP's proposed salary, EMT stipend, and senior officer proposals would cost the County at least $300,000 more over the contract term than would the County's own wage proposal. The County writes that, large as this figure is, it does not include any increased employer pension contributions; nor does it account for any rise in health care premiums. In insisting that it cannot afford the union's proposed economic package, the County highlights the following developments.

- County contributions into the PFRS have increased by approximately 22% between 2008 and 2010.
- Mandated costs – salaries, pensions and health insurance – increased approximately $18 million in 2011. Health insurance costs alone climbed 18% in 2011.
- Salaries/Wages for County employees have increased by $6.0 million in 2011, despite the fact that non-contractual employees have not received ANY wage increase over the past three (3) years.
- The law enforcement units who have settled contracts for 2010-2012 agreed to NO wage increases in 2010.
- Aid from the State of New Jersey decreased by $10.5 million in 2011.
- Revenues associated with retaining State prisoners at the County Jail decreased by $3.0 million from 2009 to 2011.
- Revenues from the County Clerk's office fell from a high of over $12 million in 2005 to $6.0 million in 2011.

- The County's ratable base declined from $78 billion to $71 billion over the past few years.
- Medicare payment rates for nursing facility services provided by Runnells were reduced by the State and have created a $7.5 million revenue gap in 2011.

The County reasons that the foregoing statistics alone show that the public would not be served by an award that exacerbates its already precarious financial position. Indeed, the County asserts that Caprio's testimony, and the FOP's own exhibits, militate against the excessive increases sought by the union. For example, it notes that while Caprio concluded that the FOP's 2% proposed increase in 2010 would add "only" $100,000, the County states that this amount is significant in the context of its tight budget. The County also observes that Caprio did not address the impact of all County employees receiving 2% increases for 2010.

In underscoring its budgetary constraints, the County cites the testimony of Caroselli, who explained that the County has been in precarious economic shape for the past few years and, during the last decade, has had to rely increasingly on property taxes. Caroselli also detailed how the County faced a $23 million deficit when it began preparing the 2010 budget, explaining that the gap was closed only when the County increased taxes by $13 million and appropriated a larger than usual portion of surplus funds ($24.25 million) as revenue in the 2010 budget. The

County highlights Caroselli's position that an award above 0% for 2010 would require an emergency appropriation.

In concluding its financial arguments, the County emphasizes that Caroselli reviewed Caprio's report and determined that it painted a much brighter picture of the County's economic condition than what really exists. The County points out that Caroselli ascertained that Caprio's 2011 projections for locally generated miscellaneous revenues were inaccurate, given that those numbers have actually declined and no surplus is projected for 2011. Similarly, the County observes that Taylor echoed Caroselli's concerns. Specifically, Taylor pointed out that Caprio did not take into account the impact of non-realized revenues from Runnells and Delaney Hall. The County also cites Taylor's view that, in order to deal with the projected 2012 deficit, the County will likely have to undertake pre-layoff actions such as a hiring freeze and a freeze on filling vacancies.

Comparisons with Other Employees

The County acknowledges that it is important that the FOP receive salary and benefits commensurate with those of sheriff's officers in comparable counties. However, it contends that it is equally important that the arbitrator be mindful of the increases or lack thereof received by other County employees. Indeed, the County underscores that such a focus is mandated by *N.J.S.A.* 34:13A-16g(2).

At the hearing, Salemme outlined the long-term negotiations history of the County's law enforcement units, stating that the superior officers in the Sheriff's, Corrections, and County Park Police units have traditionally received virtually identical across-the-board increases, a point memorialized in Exhibit C-3, which details settlements arrived at with these groups for 2001 through 2009. Salemme explained that one exception to this pattern occurred when an interest arbitrator awarded the County Park Police slightly higher across-the-board increases than were received by the other units.[3] Salemme stated that these superior officer units have received additional salary enhancements if they agreed to a specific trade-off or concession. In that event, the County the calculated the dollar value of that trade-off and added this figure to unit members' base salary. Further, the base salary of officers in the various SOA units has been adjusted upward when formerly separate items of compensation were "rolled-in" to that base salary.

By way of example, Salemme described how in 2002 this unit agreed to add an additional 18 minutes to every officer's work day, and unit members received an extra $1,486 in return (Exhibit C-3). Similarly, the Corrections Superiors' salaries were enhanced when clothing allowance and holiday pay were rolled into base pay in 2003 (Exhibit C-3), just as the clothing allowance was rolled into base salary for this group in 2008 (Exhibit C-3). Exhibit C-3 identifies other examples

[3] It appears from a review of the interest arbitration awards posted on PERC's website that the variation occurred in 1999 and/or 2000, as a result of an award issued in 2002.

of these types of adjustments and, further, Salemme stated that such trade-offs were present in the most recent round of settlements for the 2010-2012 negotiations cycle.

Preliminarily, Salemme testified that settlements have been reached with both the rank-and-file and superior officer units of the County Park Police (PBA Local 73 and 73A), as well as the rank-and-file corrections officers (PBA 199).[4] Salemme recounted how the three noted units agreed to across-the-board increases of 0% for 2010; 2.25% for 2011; and 2.5% for 2012— as well as the prescription drug changes offered to this unit, and a $210 enhancement in senior officer pay. In addition, the County Park Police agreed, effective January 1, 2010, to fold-in 112 hours of holiday time at straight time, thereby resulting in an enhancement of their base salaries over and above those flowing from the across-the-board increases (County Binder, Tab E-2). Salemme added that the corrections officers rank-and file agreed to include in their base salaries both holiday pay and the clothing allowance, meal money, and shift differentials that had previously been remitted separately (FOP Binder 2, Tab 2). In addition, in exchange for the PBA agreeing to a new salary guide for new hires, the County agreed to add $870 to the maximum base salary for corrections officers, effective December 1, 2012 (FOP Binder 2, Tab 2).

[4] This unit and the Corrections Officers Superiors unit still have open contracts.

Against this backdrop, the County urges that there is patently no basis for awarding the FOP any wage increase for 2010. The County contends that its exhibits, as well as Salemme's testimony, clearly establish that the two County police units and the Corrections Officers rank-and-file unit all received 0% increases in 2010. In addition, the County points out that all unorganized employees were subject to a wage freeze in 2010. Further, no represented employees received a wage increase for that year unless their contract had been negotiated well before the onset of the County's economic crisis.

For calendar years 2011and 2012, the County rejects any contention that the FOP should receive the same increases that were negotiated with the County Police and Corrections Officers. The County reasons that Caroselli, Taylor, and Salemme all testified that the County's financial condition is much worse than when those settlements were reached. Stated another way, the County asserts that if the other law enforcements units were in negotiations now, they would not be offered increases of 2.25% for 2011 and 2.5% for 2012.

With respect to comparisons with other sheriff's officers in New Jersey, the County observes that while the FOP has prepared exhibits comparing unit members' benefits to those of officers in Hudson, Essex, Morris, Somerset, and Middlesex counties, it has not submitted any information concerning the geographic, socio-economic, or financial characteristics of those jurisdictions that would allow the arbitrator to conclude that they are comparable to Union County. In any case, however, the County maintains that the FOP exhibits in fact demonstrate that FOP members enjoy top tier benefits vis-à-vis those received by their counterparts in other counties.

In continuing its focus on comparability data, the County asserts that private sector wage data also supports the award of its salary proposal, given that the latest PERC private sector wage report shows a 2% decrease in average private sector wages in Union County between 2008 and 2009 (County Binder, Tab E-1). The County adds that while the FOP may reject such comparisons, the interest arbitration statute requires them.

Cost of Living and Continuity and Stability of Employment

The County also maintains that the cost of living criterion supports its own wage offer and counsels against the FOP's salary, EMT, and senior pay proposals. It comments that the CPI for urban wage earners in the New York-Northeastern New Jersey region was 1.5% for the 12 months ending in December 2010, a figure that includes medical care (County Binder, Tab E-1, BLS December 2010 News release). The County opines that its offer is very reasonable when evaluated together with CPI data, especially since the County absorbs a large component of unit members' health care costs.

Similarly, the County contends that the continuity and stability of employment in the Sheriff's office is excellent and will remain so under its wage offer. By contrast, it posits that the continuity and stability of employment in the County as a whole would be jeopardized if this unit were awarded an increase for 2010. The County remarks that "it would be unfair to create the impression that these employees suffered so that the FOP might prosper."

Finally, the County rejects the FOP's position that it should be awarded higher salary increases because of State legislation requiring phased-in premium contributions for health benefit coverage. The County reasons that the goal of the legislation was to afford some relief for counties and municipalities — a goal that could not be achieved if wages were increased to offset the new contributions.

Health Benefits

The County describes its prescription drug proposals as an attempt to afford it some relief from the ever escalating costs associated with this benefit. It states that it is seeking only minimal changes to the existing cost structure, commenting that increases in prescription co-pays are not new to interest arbitration. The County underscores that its proposals will have little impact on these sheriff's superior officers, who have an average salary of $96,460. It also points out that the proposed changes have been accepted by both unrepresented employees and the County Police and Corrections officers.

Within this framework, the County maintains that all of the statutory factors, including the public interest and the continuity and stability of employment, favor award of its proposals. It observes that the turnover rate in this unit is extremely low, adding that the FOP did not proffer any evidence that officers would leave the County if the proposed changes went into effect. By contrast, it urges rejection of the FOP proposal for paid prescription coverage upon retirement, noting that the County's proposal offers this benefit to those officers who are eligible for fully paid retirement benefits.

Other County and FOP proposals

The County urges that the statutory criteria also support the award of its pay day proposal. It characterizes this proposal as reasonable and states that it has been agreed to by every other negotiations unit. It maintains that the FOP offered no documentary or testimonial evidence that would warrant rejection of the proposal.

Similarly, the County argues that the FOP's proposal to reduce work hours should be rejected, given that several years ago this unit received additional monies in exchange for an increase in work hours. It comments that to decrease work hours without reducing wages would be giving the FOP "something for nothing."

Finally, in addition to what it terms as the unwarranted costs of the FOP's EMT and senior pay proposals, the County emphasizes that other units achieved enhancements of senior pay only in conjunction with their acceptance of a 0%

wage increase for 2010. The County also notes that there is no basis to grant the EMT proposal when unit members are not required to have this certification.

FOP'S POSITION

The FOP emphatically argues that the statutory factors favor the award of its final offer, which the union asserts is designed to prevent a widening of the differential between this unit and the County Police and the County Corrections Officers SOA units. The FOP strongly maintains that the record demonstrates that the County has the ability to pay for the FOP's wage and other proposals, but is simply unwilling to do so.

The FOP stresses that the 0%, 1%, 1% package that the County has presented to this unit is substantially less than that agreed to with other employee groups, which received a 2.25% raise in 2011 and a 2.5% increase in 2012, along with other economic benefits. It suggests that award of the County's package would come close to destroying the inter-relationship among the County's law enforcement units, because it would result in sergeants, lieutenants, and captains in this unit being paid far less than their counterparts in the County Police unit.

The FOP also repeatedly draws attention to recent State legislation mandating a phased-in schedule of health benefit premium contributions for all of New Jersey's public employees. A cornerstone of the FOP's position is that, because the County is already "enjoying the legislative giveback insurance reform," the arbitrator should reject the County's prescription co-pay proposals and award the FOP's retiree prescription proposal. The FOP also suggests that the statutorily-required premium contributions weigh in favor of its proposed salary increases and its other economic proposals.

I start by reviewing the FOP's discussion of the statutory criteria as they relate to the issue of across-the-board salary increases. I then summarize its statutory analysis with respect to the health benefits and other proposals in this proceeding.

SALARIES

Public Interest and Welfare

As a prelude to reviewing the public interest criterion, the FOP underscores that it is important to understand the full scope of Sheriff's officers' responsibilities. Toward that end, the FOP describes the several units that were set forth in the Background section to this opinion, and then provides additional detail about the job duties of individuals assigned to several of those units. Thus, the FOP explains that the Emergency Medical Response Team was organized to respond to medical emergencies that arise in the Court House complex, while the K-9 Search and Rescue Unit assists in searching buildings, locating missing persons, detecting narcotics, and participating in bomb investigations. The FOP states that the SLAP program, which was started in 1993, has saved taxpayers millions of dollars. It also describes how the Fugitive Investigation unit handles thousands of bench warrants annually, emphasizing that officers are often placed at great risk in executing these warrants.

In that vein, FOP exhibits detail how sergeants in this unit, working together with rank-and-file officers, captured a fugitive who was dangling from a fifth floor window; arrested a kidnapping and carjacking suspect by forcing entry into his home; and helped obtain custody of an Elizabeth resident charged with operating a narcotics ring (FOP Binder 1, Tab 3). FOP submissions also indicate that the Sheriff's Office has been recommended for certification by the Commission on Accreditation for Law Enforcement Agencies (CALEA), a national organization that is working in conjunction with the New Jersey State Association of Police Chiefs Accreditation Program (FOP Binder 1, Tab 3). Finally, the FOP references the 2009 Uniform Crime Report, which shows that there was an overall 11% decrease in crime in Union County between 2008 and 2009; a 14% decrease in non-violent crime; and a modest 4% increase in violent crime (FOP Binder 1, Tab 4).

Against this backdrop, the FOP emphasizes that the public interest encompasses the need for a high caliber law enforcement department, which in turn requires adequate compensation. The FOP faults the County for tying the public interest solely to the alleged economic factors confronting taxpayers, while ignoring the needs of the sheriff's officers themselves. The FOP also firmly argues that the public interest does not support a 0% increase in 2010, a point that it develops in more detail in its financial impact analysis. Instead, it insists that the County's proposal in this vein is simply a misguided policy decision on the part of County leadership.

Comparisons with Other Employees

The FOP urges that the extensive comparability data it is has presented shows conclusively that the County's salary offer would produce a serious decline in officers' morale and would undermine the public interest and welfare. It stresses that the County's offer of 0% 1%, and 1% for 2010, 2011, and 2012, respectively, is actually a negative or regressive offer when the State-mandated health benefits and pension contributions are taken into account.

The FOP continues that while it believes that bold measures are warranted to bring sheriff's officers' compensation in line with pay in comparable units, it also concedes that this is not going to happen in the "perceived economic climate." As a result, the FOP contends that it has presented what it terms is a bare bones proposal; it urges that it would be grossly unfair and inequitable not to award it.

In elaborating on the deleterious impact of the State-mandated pension and health benefits contributions, the FOP expresses its strong view that unit members should be cushioned from the escalating affect of the new legislation. The union asserts that its proposal provides some minimal "cushioning", given that the required contributions for 2011 and 2012 will reduce the FOP's salary request to .75% in 2011(2.25% minus 1.5%) and .6% in 2012 (2.5% minus 1.9%).[5]

The FOP also highlights Caprio's projections about the long term effects of the State legislation in years 2013 through 2015, at which point the contributions will be fully phased-in. The FOP observes that Caprio "plugged in" to his calculations conservative estimates concerning increases in the County's health insurance premium costs. Caprio then concluded that, depending on the type of coverage chosen, some officers will likely be paying over $11,000 toward their insurance by 2015. The FOP contends that if the County's offer is awarded, this unit would need to receive increases of 4% in 2013; 6.5% in 2014; and 9.3% in 2014 in order to be "saved harmless" from the cost shifting that will be effected by the State legislation.

Within this framework, the FOP cites a range of information which it contends both supports its own economic proposals and militates against those of the County, particularly the proposed 0% increase in 2010. For example, the FOP has submitted studies comparing the earnings and benefits received by private and public employees over the last twenty years, each of which were prompted by the fact that the recent recession has generated a new focus on government

[5] Caprio projected that this would be the percentage of total base salaries that unit members will be required to contribute to the County's health benefits costs in 2012 (FOP Exhibit 1).

compensation (FOP Binder 1, Tab 8). One report, prepared in April 2010 by the National Institute on Retirement Security, analyzes wages and benefit data from the BLS. It concludes that nationwide, "long term patterns indicate that the average compensation of state and local employees is not excessive." The report opines that the data does not warrant a reduction in average state and local wages and benefits. Indeed, the study found that, on average, local employees are paid 7.4% less than their private sector counterparts (FOP Binder 1, Tab 8, p. 3).

A second report by the Center for Economic and Policy Research, published in May 2010, similarly emphasized that, when compared with employees with similar characteristics, public sector workers actually earn less than their private sector colleagues (FOP Binder 1, Tab 8). The FOP also points to information indicating that the hourly rates of certain private sector building service workers increased 4.58% between 2010 and 2011 (FOP Binder 1, Tab 9).

With respect to other public employees in New Jersey, the FOP cites PERC data reflecting that the average increase in interest arbitration awards issued from January through April 2010 was 2.65%, while the increase in voluntary settlements during the same time period was 2.93%. It also refers to settlements involving educational employees in Union County, and includes a range of NJEA data, including a February 8, 2010 publication showing, for Union County, average increases of 4.50% for 2009-2010 and average Statewide increases of 4.34% for

2009-2010; 4.27% for 2010-2011; and 4.27% for 2011-2012 (FOP Binder 1, Tab 9). All of these figures pertain to certified and all inclusive units.

The core of the FOP's comparability argument, however, centers on the settlements that the County has arrived at with other of its negotiations unit, both in the current 2010-2012 negotiations cycle and in the past. The gravamen of the FOP's position is two-pronged. First, it denies that recent settlements support either a 0% increase for this unit in 2010, or 1% increases in 2011 and 2012. Second, it contends that the internal settlements in fact weigh in favor of its own offer.

The FOP has prepared an exhibit "2008-2013 Settlements" that lists the County's agreements with 15 other negotiations units — including four other law enforcement units — for some or all of the years 2008 through 2013. Citing this exhibit, the FOP emphasizes that this unit agreed to 0% increases for both 2006 and 2007, as did the rank-and-file and superior officer units of the County Police and the superior officers in the corrections unit (no information is listed for the corrections rank-and-file officers) (FOP Binder 1, Tab 9). In this posture, the FOP reasons that while several civilian did agree to 0% increases for 2010 and/or 2011, this circumstance is attributable to the fact that they did not receive 0% increases for 2006 and 2007. Overall, the FOP maintains that the exhibit reflects a pattern whereby most units received two 0% increases at some point during the 2006 through 2010 time frame. It adds that if the County's offer were awarded, the Sheriff's superior officers would receive 5.75% less in salary increases than CWA unit members at maximum salary.

With respect to other law enforcement units, the FOP emphatically insists that the County's offer to this unit is in no way equivalent to the settlements with the County Park Police or the Corrections Officers rank-and-file, even though those units did agree to a 0% increase in 2010. First, the FOP observes that the 2009 salaries of Sheriff's officer sergeants, lieutenants, and captains were already below those of comparable ranks in the County Park Police and Corrections SOA units (FOP Binder 1, Tab 9). It then underscores that, in conjunction with the 0% increase in 2010, the County agreed to roll in holiday pay to the Park Police superiors base salary, thus effectively adding $4,980 to their base salary. The FOP continues that if this unit is awarded a 0% increase for 2010, Sheriff's sergeants will be making $9,534 less that their County Park Police counterparts, while Captains will be making $12,498 less than their colleagues in the County Park Police. Even if a 2% increase is awarded for 2010, as the FOP proposes, the FOP states that captains in this unit will still be making $10,328 less than Park Police captains.

In addition, the FOP highlights than in 2011 and 2012, the County Park Police units, and Corrections Officers rank-and-file, all received increases of

2.25% and 2.5%, respectively, in addition to enhancements to senior officer pay. Further, corrections officers had $870 added to their base salary in 2012, in addition to the 2.5% increase.

Based on the foregoing, the FOP concludes that comparability considerations weigh strongly against award of the County's offer.

Overall Compensation

The FOP observes that the interest arbitration statute requires the arbitrator to compare the overall compensation of unit members with that received by other employees. The FOP concludes that this unit enjoys a multiplicity of benefits such as longevity, clothing allowance, vacations, personal days, and holidays that are similar to those received by other County employees. It remarks that there is no stark differentiation between Sheriff's superior officers and other County employees. However, the FOP does note that since unit members are not required to work on holidays, they do not receive the holiday pay that other law enforcement units do. It adds that the holiday roll-in that is occurring in several of these units is significant.

Financial Impact

The linchpin of the FOP's financial impact analysis is that the County "can certainly fund the FOP's economic proposals." Indeed, it characterizes the contrary testimony of County witnesses as completely lacking in credibility and tantamount to a "Chicken Little defense" of "the sky is falling." The FOP underscores the County's Aaa Moody's bond rating and questions Caroselli's statement that an emergency appropriation would be required to fund a 2% increase in 2010. In the latter regard, the FOP remarks that it would cost the County an additional $100,000, within the context of a one-half billion budget, to fund the FOP's proposal.

Caprio's report and testimony provide the underpinning for the FOP's conclusions about the County's financial stability. The FOP stresses that Caprio's findings were in turn grounded in his review of the County's Abstract of Ratables for 2006 through 2010; the County's Annual Financial Statements for 2008 through 2010; County budgets for 2008 through 2011; audits of the County budget; and recently adopted legislation. All of this data led Caprio to offer his unqualified assessment that the County had the financial resources to fund the FOP wage request without any detrimental consequences to either the County or its residents.

The FOP cites Caprio's conclusion that the County is expected to operate at approximately a $20 million surplus for 2011, as well as his statement that three-quarters of the FOP's 2% proposed increase for 2010 is "self-funded" because, beginning in or around May 2010, employees began paying 1.5% of their base salary towards their health benefits premium costs.

Caprio's report also includes numerous exhibits that illustrate the following points:

- New construction in Union County in 2010 reached totals of \$463,923,359, after falling to \$418,400,035 in 2009 (Caprio Report, Exhibit 2).
- Union County has the lowest foreclosure rate among the four most urban northern New Jersey Counties (Essex, Hudson, Passaic, Union)(Caprio Report, Exhibit 5).
- The increase in the average Union County tax bill between 2006 and 2010 is ranked sixth statewide but is lower than other urban counties (Caprio Report, Exhibit 11).
- Union County's Equalized Value of Ratables increased 13% between 2006 and 2010, with ratables stabilizing at \$75,561,098,741 in 2010 after a modest decline in 2009 (Caprio Report, Exhibit 15).
- Based on past patterns of cancellations of budget appropriations, Caprio estimated that there would likely be \$12 million in such cancellations in 2011 (Caprio Report, Exhibit 25).
- Miscellaneous Revenue Not Anticipated ranged from \$6,616,340 in 2007 to \$11,811,373 in 2010. Caprio estimates that this revenue will be \$8,750,000 for 2011 (Caprio Report, Exhibit 26).

The gravamen of Caprio's hearing testimony was that Union is a very well managed County with a budget of close to one-half billion and no "red flags" that indicate any financial impediment to funding the FOP's proposal. Caprio opined that the County was in "reasonably good shape" and could have chosen, even under the 2% CAP, to raise more revenues than it did. He expressed his view that a 2% increase for 2010 was credible in the context of the financial documentation that he had reviewed.

In a certification submitted with the FOP's post-hearing brief, Caprio commented that a $100,000 difference between the FOP request and the County's offer represents a "rounding error" of only 0.034 of one percent of the property tax levy (Certification, p.3).[6] Caprio continued that with the County expecting to operate at a surplus of over $20 million for 2011, the County is well able to fund an award of 2.0% for 2010, 2.25% for 2011, and 2.5% for 2012. Indeed, Caprio stated that the County had $289,000 more in unallocated surplus in 2011 than it did in 2010, which is in and of itself enough to fund the difference between the County and FOP proposals. Caprio estimated that the FOP proposal would cost the average homeowner approximately $0.28 per year for 2011 and 2012 (Certification, pp. 4-5).

Caprio also concluded that Union's retention of value (in terms of equalized ratables) is virtually at the State median, and he wrote in his certification that the exhibits in his original report clearly demonstrate the continual replenishment of surplus at a high and safe level (Certification, p. 4). Caprio remarked that the County has multiple sources of revenue with which to regenerate its fund balance,

[6] I admitted the document into evidence over the County's objection.

including cancellations of budgeted appropriations and miscellaneous revenues not anticipated.

Caprio's certification also states his conclusion that the new pension and health reform legislation will have a serious deleterious impact on FOP members' wage levels, resulting in the typical FOP 103 member with family coverage experiencing an average salary decline of 9.31% or $8,839 between "now and June 30, 2015" (Certification, p. 7). Caprio explains that this finding was arrived at by projecting an annual 8% increase in the County's health insurance premiums and then applying the statutorily mandated premium contribution formulas, which require different percentage contributions based on an employee's salary and the type of coverage he or she has selected.

After outlining this methodology, Caprio then expressed his opinion that, in light of the cost shifting imposed by the new legislation, unit members would need an average cost of living increase of 2.33% annually merely to maintain their 2011 wage levels, even without adjusting for CPI increases. Caprio also contended that while this legislatively mandated cost-shifting from the County to employees will not achieve property tax relief, it does provide a source of revenue to the County from which to fund future COLAs or wage increases.

Based on the foregoing, the FOP states that it is not suggesting that the County is overflowing with wealth — only that its economic condition is stable and better than average. It reiterates that the FOP's own proposal will result in FOP unit members receiving a net benefit of less than one percent over the three-year contract term, once the mandated health care cost shift is taken into account.

Cost of Living

In addressing the cost of living criterion, the FOP cites a 1998 interest arbitration award in which the arbitrator observed that, in periods of very high inflation, salary increases tend to lag behind the rate of inflation. However, when the cost of living is quite moderate, wage adjustments somewhat exceed the cost of living. The FOP's submission includes BLS cost of living data that shows that the CPI increased 2.1% between February 2010 and February 2011 before seasonal adjustment (FOP Binder 1, Tab 6).

Continuity and Stability of Employment

The FOP stresses that while sheriff's officers' salaries "hold no special advantage" over those of private sector employees, FOP unit members nevertheless hold positions that subject them to pressures and dangers that are not present in non-law enforcement environments. The FOP maintains that the County's proposal treats this unit differently than its other public safety employees and, therefore, would undermine the public interest by creating unwarranted disparities in law enforcement salaries.

Health Benefits and Other Proposals

The FOP firmly opposes the County's health benefits changes, emphasizing that "enough is enough" given that the County is already enjoying the benefits of legislatively mandated health insurance contributions. On the other hand, the FOP insists that its own proposal for a paid prescription plan upon retirement is reasonable in light of the noted legislative developments.

With respect to its other proposals, the FOP asserts that its senior officer proposal is well justified, given that that all other law enforcement settlements have included a $210 increase in this compensation. The FOP also contends that its proposal for a $1,000 EMT stipend is actually a counterproposal to an offer originally proffered by the County. It urges that the stipend should be awarded, in view of the fact that the certification is voluntary and is completed on County time.

Finally, the FOP asserts that its proposed reduction in the work week is fair and equitable in view of the time modifications achieved by other units. It adds that its proposal to have unused sick leave be paid quarterly in a separate check is a minor one that should be awarded.[7] It also maintains that the suggested "portal to portal" language with respect to on-call pay simply mirrors that in other County units.

DISCUSSION AND ANALYSIS

[7] The County identifies this proposal as a stipulation.

My consideration of the parties' proposals is governed by *N.J.S.A.* 34:13A-16g and pertinent Court and PERC decisions. I must indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. *N.J.S.A.* 34:13A-16g; *Cherry Hill Tp*., P.E.R.C. No. 97-119, 23 *NJPER* 287 (¶28131 1997).

In addition, I note that *N.J.S.A.* 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. Accordingly, I have been guided by the decision-making principles that are typically used in deciding interest arbitration disputes. One such principle is that the party proposing a change in an employment condition bears the burden of justifying it. I have applied that principle to the proposals in this proceeding, although I note that PERC has held that the "burden" construct has less import in evaluating salary proposals, where both sides typically propose changes; neither party seeks a continuation of the pre-award salary guide; and the award must contain a salary ruling. *Essex County*, P.E.R.C. No. 2005-52, 31 *NJPER* 86 (¶41 2005).

Similarly, while I have evaluated the individual merits of each proposal, my award reflects the precept that an arbitrator must consider the totality of changes to be made to the existing agreement, as well as the cost and impact of the overall economic package. *N.J.S.A.* 34:13A-16d(2) reflects this latter concept by requiring that the arbitrator separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine criteria in *N.J.S.A.* 34:13A-16g.

The primary unresolved issues in this proceeding are across-the-board salary increases and health benefits, particularly prescription drug co-payments. Additional issues include senior officer pay; a proposed EMT stipend; retiree health benefits; work hours; and pay check distribution. These proposals must be evaluated in the context of recent State legislation that reduced the County's tax levy CAP and increased employee premium contributions for health benefits coverage. That legislation was in turn enacted in the aftermath of a severe, almost unprecedented recession, from which the State and national economies are still struggling to recover.

In arriving at an award, I am mindful of the essential services that these unit members perform, as well as the budgetary restrictions under which the County must operate. I conclude that all of the statutory factors are relevant but that not all are entitled to equal weight. My weighing and balancing of the nine factors, particularly those pertaining to the public interest, financial impact, lawful authority of the employer, statutory restrictions on the employer, and comparisons with other employees, leads me to award a total economic package that closely mirrors the internal settlements between the County and other of its law enforcement units. My decision-making has been informed by these factual conclusions and judgments:

- While the County is well-managed and has several markers of financial strength, the record also indicates several areas of vulnerability including decreased revenues; declining State and federal reimbursements; and an increased reliance on local property taxes to support the budget. These and other factors weigh in favor of moderate salary increases.

- Internal settlements with other County law enforcement units implicate the public interest and welfare; comparability considerations; and the continuity and stability of employment. In addition, each agreement sheds light on the parties' understanding of what constituted a reasonable salary determinations in a challenging budgetary environment. Accordingly, I have given significant weight to these settlements, as well as settlements involving several of the County's civilian units.

Within this framework, the terms of my award are as follows:

1. **Salaries**

0% across-the-board salary increase effective January 1, 2010.
2.25% across-the-board salary increase effective January 1, 2011.
2.5% across-the-board salary increase effective January 1, 2012.

Each salary increase is retroactive to its effective date.

Effective January 1, 2011, Article IV, Section 3 shall be amended to increase senior officer pay for each level by $210.00

2. **Paycheck Distribution**

Article IV, Section 2 is amended to state:

In order to maintain a bi-weekly basis for paycheck distribution, a rotating bi-weekly pay day schedule shall be implemented whereby the pay day will be changed in each successive year as follows. This section shall be implemented as soon as administratively feasible after issuance of this award.

2012:	Tuesday
2013:	Wednesday
2014:	Thursday
2015:	Friday
2016:	Monday

This cycle will continue every five (5) years.

When the pay day occurs on a holiday, paychecks or direct deposits will be issued on the day prior to the holiday.

3. **<u>Pension and Welfare</u>**

Article V, Pension and Welfare, is modified to read as follows:

1. Effective one month following the award, prescription co-payments shall be as follows:

   <u>Retail</u>

   $20.00 co-pay per prescription for name brand where generic is available.

   $15.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

   $6.00 co-pay per prescription for generic.

   <u>Mail</u>

   $15.00 co-pay per prescription for name brand where generic is available.

   $10.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

   $5.00 co-pay per prescription for generic.

The above co-pays shall apply to both retail pharmacy purchases (up to thirty (30) day supply and a ninety (90) day supply through mail order.

2. Drug Plan Utilization Modification

   (a) Enhanced Concurrent Drug Utilization Review (Refill too soon/stockpiling).

   (b) Preferred Drug Step therapy Generic or Preferred Name Brand first) limited to PPI, SSRI and Intranasal steroid drugs.

   (c) Clinical Intervention (Statement of medical necessity from MD) limited to Anti-Narcoleptic Agents, Weight Loss and Anti-Neoplastic Agents.

   The restriction on flow through of prescription co-payments to the Major Medical portion of the health insurance coverage shall be continued.

3. Officers who receive fully paid retirement benefits under the 2005 through 2009 CAN shall be provided with the Medco Rx or an equivalent plan. The plan shall provide for free mail order prescriptions and 30% co-pay for retail. It is understood that in order to provide the Medco Rx plan, the base Health Plan will be converted from CIGNA ROAP7 to CIGNA ROAP3.

4. Effective January 1, 2011, the Third Party Administrator (TPA) will be eliminated and the County will no longer reimburse employees for any out-of-network charges.

5. Effective January 1, 2011, emergency room co-pays shall be $25.00 per visit (to be waived if admitted).

6. Premium Contribution Amounts:

   Any contribution to health care that is mandated by statute shall replace the contributions set forth in Section 3, paragraph (e)(4).

Cost of Award

A necessary prelude to the analysis mandated by *N.J.S.A.* 34:13A-16g is a costing out of the award. The total 2009 base compensation for the 49-member unit was $4,713,997 (Caprio Report, Exhibit 28). Assuming no resignations, retirements, or new hires, the cost of the annual across-the-board base salary increases under the employer's offer, the FOP's proposal, and the award are listed below.

	County	**FOP**	**Award**
2010	**$0**	**$ 94,280**	**$0**
2011	**$47,140**	**$108,186**	**$106,065**
2012	**$47,611**	**$122,912**	**$120,502**
Total	**$94,751**	**$325,378**	**$226,567**

For 2010 through 2012, the figures for the County and the FOP assume that the total base salary for the preceding year was enhanced by the across-the-board percentage increase that it has (or has not) proposed; the same method was used to calculate the cost of the award. The total cost of the awarded across-the-board increases is $226,567 — $131,816 more than under the employer's proposal and $98,811 less than the increases sought by the FOP.

The County and FOP final offers each assume continuation of the five or six-step salary guide for each rank, whereby sergeants move to the fourth step at the commencement of the 10th year of employment; the fifth step at the commencement of the 15th year of employment; and the sixth step at the commencement of the 20th year of employment. For lieutenants and captains, officers advance to the third, fourth, and fifth steps of their salary guides at the beginning of the 10th, 15th, and 20th year of employment, respectively. (County Binder, Tab D, Exhibit B) These salary guides are continued under the award.[8]

In addition to across-the-board salary increases, the award of an additional $210 in senior officer pay effective January 1, 2011, will cost $10,290 in 2011, assuming, for the purposes of analysis, that each unit member is eligible for that benefit. Pursuant to *N.J.S.A.* 34:13A-16d(2), I conclude that the above-noted total net annual economic changes for each year of the agreement are reasonable under the criteria listed in *N.J.S.A.* 34:13A-16g.

In placing the cost of the awarded increases in context, it is also useful to note that unit members are subject to two distinct statutory mandates that required them to pay, beginning in 2010 and 2011, health benefits costs that would otherwise have been absorbed by the County. Thus, on or about May 21, 2010, unit members were required to assume, by operation of law, a minimum contribution toward their health benefit premiums in the amount of 1.5% of their

[8] While the above-noted figures do not include the cost of officers advancing on the guide, Exhibit 28 to Caprio's report indicates that 41 of the 49 unit members did not experience any step movement between 2009 and 2011; six members advanced on their respective guides or were promoted; and two members received a lower salary in 2011 than in 2009, for reasons that are not explained. Salary guide movement for 2012 cannot be determined without detailed information about all unit members' employment history and when they will attain 10, 15 or 20 years of service.

base salary. Given the May 2010 effective date, this statute's implementation took place during the second half of 2010 and the first half of 2011 and required $70,710 in new premium contributions. Thus, while the cost of the awarded increase in 2011 exceeds that proposed by the County, during both 2010 and 2011, the County also received new employee health benefits contributions from this unit of $35,355 in 2010 and $35,355 in 2011.[9]

It is also instructive to consider the health benefits contributions that will be remitted pursuant to Chapter 78. As noted, that statute directs that as soon as administratively feasible after June 28, 2011, employees who were not covered by a negotiated agreement in effect on that date must contribute 1.5% of their base salary *or* a designated percentage of the cost of their health benefits premium, whichever is greater. The statute is phased in over four years and the annual Chapter 78 contribution depends on the type of coverage selected, the employee's salary, and the cost of the premium.

Given these variables, it is not possible to calculate the Chapter 78 contributions for this unit with precision. In addition, much of the statute's implementation will take place beyond the awarded contract term, with employees making the largest contributions in 2013-2014 and 2014-2015. Nevertheless, the first year of Chapter 78's implementation, which Caprio posits as spanning 2011

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[9] *L.* 2010, *c.* 2, §14 states that these contributions are in addition to those set forth in a negotiated agreement. Under the predecessor agreement, it appears that unit members paid between $480 and $660 per year in health benefits premium contributions, depending on their salary and type of coverage (County Binder, Tab D, p. 8).

and 2012, takes place within the term of the award, and the second year, 2012 to 2013, is partially included within it. It also appears that, especially in year two, the County will receive some additional contributions, beyond those mandated by Chapter 2, from officers who choose dependent coverage (FOP Exhibit 3).[10] However, some of the year two contributions will flow through into the next contract term.

The rationale for the award is set forth in the following discussion, in which I analyze the evidence on each statutory factor and describe how it relates to my decision to award the above-noted salary increases and the adjustment to senior office pay. With that discussion as a foundation, I then address the health benefits, EMT, and other proposals.

SALARIES

Interest and Welfare of the Public

The public interest and welfare, *N.J.S.A.* 34:13A-16g(1), is a broad criterion that encompasses a review of an employer's financial circumstances and an analysis of the compensation package required to attract and retain a productive and high-morale law enforcement department. This statutory factor also

[10] During year one of Chapter 78's phase-in, the 37 officers who selected dependent coverage will be required to pay 6.50% to 8.75% of an annual $25,677 family premium or 7.50% to 8.75% of an annual $24,474 premium for employee/spouse or employee/child coverage (FOP Exhibit 3; Chapter 78). These formulas translate into an annual first-year Chapter 78 obligation of $1,669 to $2,246 for family coverage or $1,835 to $2,141 for employee/spouse and employee/child coverage. The Chapter 2 obligation (1.5% of an officer's base salary) would range from approximately $1,395 to $1,754, given the 2011 and 2012 salaries for this unit. In year two of Chapter 78's phase-in, officers will be required to pay between 14% to 17.5% of the family premium and 15% to 17.5% of the premium for employee/spouse or employee/child coverage.

encompasses the public interest in labor relations stability. Further, it explicitly requires consideration of the CAP law set forth at *N.J.S.A.* 40A:4-45.1a *et seq.*

The New Jersey Supreme Court has underscored the central importance of the public interest in deciding interest arbitration disputes, *PBA Local 207 v. Bor. of Hillsdale*, 137 *N.J.* 71 (1994). Accordingly, I have given this multi-faceted criterion substantial weight in determining salary increases and ruling on the parties' other proposals. Moreover, because the "public interest and welfare" synthesizes and integrates several of the considerations enumerated in other statutory factors, my discussion of this criterion touches on some points that are addressed in more detail later in this opinion.

In resolving the parties' salary dispute, the fiscal and compensation components of the public interest must be balanced in light of the particular economic and budgetary circumstances pertaining in Union; the nature of the environment in which Local 103 members work; and the current compensation structure for this unit.

The record shows that unit members are engaged in providing a broad range of essential law enforcement services, which they perform efficiently and professionally. The continuity and stability of employment in the unit is strong; there is no evidence of turnover; and from a review of the salary roster, it appears that most if not that all unit members are receiving "senior officer pay," thereby indicating that they have been with the Sheriff's Officer for at least ten years. Further, the 2009 salary guide for this unit demonstrates that unit members are well paid vis-à-vis the County's several units of civilian employees, as is appropriate given the training and critical responsibilities of these supervisory law enforcement officers. The 2009 top-step salary was $90,801 for sergeants; $100,685 for lieutenants; and $111,377 for captains. All of these figures include senior officer pay at the 20-year level.

Sheriff's superior officers are also well paid compared to New Jersey's private sector workers, where the average 2009 salary was $54,542. Indeed, the $96,460 average salary for this unit is higher than that for any of the private sector employment categories except "finance" and "managers of companies and enterprises" (County Binder, Tab E-1).

While FOP exhibits do show that these officers are paid less than their counterparts in the County Park Police SOA and County Corrections SOA groups, that circumstance does not in and of itself indicate any deficiency in this unit's compensation package. Preliminarily, there is no evidence that there has historically been salary parity among these units. Instead, as described in more detail in my comparability discussion, the parties have negotiated identical across-the-board salary increases for the units, thereby continuing the pre-existing salary relationship among them.

Moreover, contrary to the FOP's position, I am not persuaded that the differential among the SOA units is widening because the sheriff's superior officers have been treated less favorably than the other groups. While the gap between the maximum base salaries in the various SOA units may have increased, that is attributable either to a re-configuration of compensation in the Park Police and Corrections units or to additions to base salary that were achieved in exchange for specific tradeoffs or concessions agreed to by those groups.

For example, the Park Police base salary figure increased when holiday pay was rolled into base salary in 2010 (County Binder, Tab E-2). However, that change did not enhance Park Police compensation vis-à-vis the Sheriff's officers: it simply altered the payment method for a form of compensation (holiday pay) that the Park Police had always received. The Sheriff's officers have never received this payment because they do not work on holidays. Similarly, while $2,190 was added to the Corrections Lieutenant base salary in 2008, that figure was the dollar amount equivalent of a shift commander stipend that the parties agreed to eliminate (Exhibit C-3).

With respect to tradeoffs or concessions, the Park Police SOA obtained an additional 3.5% increase in 2008 in exchange for a thirty minute increase in the work schedule (Exhibit C-3). In the current round of negotiations, $870 was added to a rank-and-file correction officer's maximum salary, as a quid pro quo for the union agreeing to a new salary guide for new hires (FOP Binder 2, Tab 2). None of these unit-specific adjustments call for equivalent modifications to the salaries of these sheriff's superior officers. Moreover, they themselves have benefitted from similar adjustments in the past.

Finally, the record includes only limited information about law enforcement salaries in other jurisdictions. While FOP exhibits reflect that some municipal police officers in Somerset and Middlesex counties are paid more these Sheriff's superior officers, there was no proffer that these jurisdictions are comparable to Union in terms of geography, demographics, or socio-economic characteristics. In any case, municipal police salaries do not provide the best benchmark for what this unit should be paid. There are profound differences in the statutory responsibilities of municipal police officers and County Sheriff's officers. In addition, the jurisdictional and funding sources of their employers are quite dissimilar.

Based on the foregoing, I conclude that the compensation package under the predecessor agreement was competitive and enabled the County to attract and retain sheriff's officers who qualified for promotion to supervisory positions. There is a strong public interest in maintaining such competitive salaries, to the extent consistent with the County's fiscal circumstances.

Turning to those circumstances, the County is well-managed; has a strong business environment; and is home to several major corporate employers (County Binder, Tab E-1). Nevertheless, its current finances are strained.

As detailed more fully in the financial impact section, there has been a significant decline in several revenue sources in recent years, coupled with increases in both health insurance premiums and mandated pension costs. For example, County Clerk fees declined from $12 million in 2005 to $6 million in 2011; Medicare payments to the County's nursing home were reduced in recent year; State aid declined by $10.5 million in 2011; and reimbursements associated with retaining State prisoners decreased by $3 million between 2009 and 2011. The County closed a 2010 budget gap only after it increased taxes by $13 million and appropriated a larger-than usual portion of its end-of-year surplus as revenue in the ensuing year's budget (Exhibit C-1, sheet 3A; Caroselli testimony).

In March 2011, Moody's assigned its highest Aaa rating to a bond issue of Union County Improvement Authority bond; it also reaffirmed that rating for all of the County's outstanding debt. However, at the same time, Moody's revised the County's outlook from "stable" to "negative" and expressed concern about the County's narrowing reserve levels and a decline in the growth of assessed value (County Binder, Tab E-1).

Finally, the economy as a whole is still emerging from a deep recession and continues to be marked by high unemployment, low inflation, a depressed housing market, and reduced tax revenues to state and local governments. These phenomena have affected the County in the form of reduced investment income and county clerk fees (Exhibit C-1, sheets 4). They also create a "perfect storm" in which the County has less budgetary flexibility than in the past while, at the same time, financially stressed citizens are more sensitive to tax increases and more concerned that the County deliver public services at reasonable cost.

The foregoing considerations do not mean that the County is without resources or some budgetary flexibility. However, they do call for moderation in awarding salary increases during this negotiations cycle.

Within this framework, I am satisfied that both the fiscal and compensation components of the public interest weigh strongly in favor of across-the-board increases of 0% in 2010; 2.25% in 2011; and 2.5% in 2012, together with a $210 increase in senior pay at all levels effective January 1, 2011. These awarded increases give significant weight to the County's budgetary constraints, as evidenced by the fact that the average annual across-the-board increase over the three-year term is 1.58%. This figure is below the average annual increase included in interest arbitration awards issued from January 2011 through October 12, 2011 (2.29%) and awards rendered in calendar year 2010 (2.39%). The 1.58%

figure is also lower than the average increases in voluntary reported settlements for 2011 (1.96%) and for 2010 (2.09%). *See PERC Salary Increase Analysis.*

I am also satisfied that these increases are in accord with the public interest because they essentially mirror the increases received by three other law enforcement units for the 2010-2012 negotiations cycle. Further, they are consistent with several internal civilian settlements.

My consideration of all of these settlements is informed by PERC's directive that arbitrators must consider evidence of settlements between the employer and other of its negotiations units, as well as claims that those settlements constitute a pattern. *Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459 (¶33169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29 *NJPER* 250 (¶75 2003). Further, arbitrators must fully articulate the rationale for any decision to deviate from an internal settlement pattern. *Union Cty.*, P.E.R.C. No. 2003-33; *Union Cty.*, P.E.R.C. No. 2003-87. The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. *Essex Cty.*

While the FOP and the County each refer to the 2010-2012 internal law enforcement settlements, neither espouses an award that tracks the settlements for all three years of the contract. However, I believe that this is the most reasonable determination of this salary dispute.

For 2010, the public interest weighs strongly against the FOP's proposed 2% increase. Caroselli characterized 2010 as an "awful" year, and it was certainly one in which the County felt the full impact of the recession in the form of declining revenues, decreased State aid, and reduced federal reimbursements. FOP and County exhibits together demonstrate that at least eight negotiations units agreed to 0% increases for 2010, including the large CWA unit, and units comprised of civilian County Jail employees, Secondary Supervisors, Union County Supervisors, and the Park Maintenance workers (FOP Binder 1, Tab 9). In addition, the County Park Police rank-and-file and SOA units, as well as the rank-and-file corrections officers group, all agreed to 0% increases in 2010, as did all non-represented employees. The sole exception to this pattern (among units that have reached agreements for 2010) is the Union County Assistant Prosecutor's Association.[11] That group received a 5% increase in 2010, which was the final year of a five-year, 2006-2010 contract that was signed in October 2007. Thus, that agreement was negotiated well before the downturn in the State and national economies (FOP Binder 2, Tab 6).

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[11] There are several other units with open contracts for 2010.

Against this backdrop, there is nothing in the nature of the FOP's existing compensation package that warrants this group receiving an increase that is 2% more than that negotiated with a broad spectrum of other County groups, including three law enforcement units. Award of such an increase would have the definite potential to discourage future settlements and undermine morale within the County.

While the FOP stresses that unit members are now bearing the brunt of legislative changes concerning health care contributions, nothing in either that legislation or the interest arbitration statute automatically entitles employees to salary adjustments that balance out the new contributions. Chapter 2 and Chapter 78 will ultimately affect all public employees statewide and, among County employees, this unit was not alone in being required to remit new Chapter 2 contributions effective on or about May 21, 2010. For example, the rank-and-file corrections officers unit did not enter into an MOA for 2010-2012 until December 2010 (FOP Binder 2, Tab 2). Accordingly, the unit was subject to Chapter 2 on or about May 21, 2010.

At the same time, I find that increases beyond those proposed by the County are warranted for 2011 and 2012. The employer's offer for those years, when coupled with the 0% increase in 2010, would result in these officers receiving an average annual increase of only 0.66% per year – a figure that is well below PERC data and the increases received by the other County groups that agreed to a 0% increase in 2010. Increases at this level would have the potential to erode unit members' standing vis-à-vis other County employees.

In addition, and as addressed in more detail later in this opinion, financial considerations do not necessitate increases at the level proposed by the County. I conclude that, within an annual budget of over $482 million, the County has some budgetary flexibility to fund across-the-board increases, and enhancements to senior officer pay, that will exceed the increases proposed under its own offer by $69,215 in 2011 and $72,891 in 2012.

This judgment is supported by the 2010-2012 law enforcement settlements, which were negotiated in May and December 2010, a time period when Caroselli testified that the County was experiencing budgetary pressures. The settlements are thus indicative of the increases the County itself believed it could fund, even during a period of fiscal stress. *Compare Essex* (noting that interest arbitrators have considered that internal public safety settlements reflect the parties' own distillation of the statutory factors).

The corrections officers' settlement has particular salience because it would appear to trigger a monetary obligation that exceeds that imposed by this award. By way of comparison, the base salary of this unit ($4,713,997 in 2009) is substantially less than the "salaries and wages" line item for the Department of

Corrections ($30,338.024 in 2010; $31,423,016 in 2011) (Exhibit C-2, sheet 19), the bulk of which is presumably attributable to the rank-and-file group, with whom the County has entered into a agreement that parallels this award.

A final element that must be considered in connection with the public interest is the CAP established by *N.J.S.A.* 40A:4-45.1a *et seq.* This CAP limits the amount by which a County may increase its tax levy over that in the preceding year to the lesser of 2.5% or a federally-prepared cost of living adjustment. As explained in the lawful authority section of this opinion, my award will not cause the County to exceed the limits imposed by *N.J.S.A.* 40A:4-45.1a *et seq.*

For 2010, the award is the same as the County's offer and will thus not present a CAP problem. For 2011, the award is $69,215 more than the employer's offer. However, even if the additional monies cannot be found within, for example, appropriated reserves for salary increases, the award will not cause the County to exceed its maximum tax levy CAP under *N.J.S.A.* 40A:4-45.1a , since the amount to be raised by taxation in 2011 ($291,168,537) was well below the CAP established by *N.J.S.A.* 40A:4-45.1a. The County's 2012 CAP calculations are not in the record but there is no evidence that an award consistent with internal settlements will cause the County to exceed its maximum tax levy for that year.

Comparisons with Other Employees

N.J.S.A. 34:13A-16g(2) is a multi-pronged factor that calls for a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees "performing similar services" and "employees generally" in (1) private employment in general; (2) public employment in general; and (3) public employment in the same or similar comparable jurisdictions. The record includes data on all of the above-noted categories of employees, some of it focusing on the percentage increases received by different groups and some of it detailing actual employee salaries and benefits. Overall, I have carefully considered all of this information and given the comparability criterion significant weight.

In applying the comparability criterion to a determination of 2010-2012 salary increases, it is useful to start with a review of the unit's existing salary structure. How it compares with the compensation of similarly situated employees is critical to assessing what if any future adjustments should be awarded.

Unit members are well paid compared to private sector employees in New Jersey and, indeed, the $96,460 average salary for the unit is higher than for all private sector employment categories except finance ($97,368) and managers of enterprises ($124,784) (County Binder, Tab E-1). Average private sector wages in 2009 for Union County were $58,041, while the average government worker in

New Jersey (including, State, federal, and local workers) earned $55,173 (County Binder, Tab E-1).

The officers involved in this proceeding are also more highly compensated than most other County employees, including units comprised of counselors and teachers in County penal institutions; non-supervisory employees employed in a broad range of maintenance, clerical, computer, accounting and craft positions; and public works and facilities supervisors (FOP Binder 2). This differential is warranted given the critical responsibilities of these superior officers, and the dangers that many of them face in performing their duties.

At the same time, the current compensation and benefit structure is not one that unreasonably or disproportionately rewards superior sheriff's officers vis-à-vis other County employees. For example, the salary ranges for the County's secondary supervisors (including titles such as Training Supervisor, Coordinator of Social Services, Administrative Supervisor of Income Maintenance and Assistant Administrator) are close to those of this unit, with top 2009 salaries from $96,874 to $106,338 (FOP Binder 2, Tab 8).

While the maximum salaries for this SOA group are less than those in the County Park Police and Corrections SOA groups, that differential has existed at least since 2005 (FOP Exhibits Binder 1, Tab 9). Further, as adverted to in the public interest discussion, it appears that any widening of the gap between maximum base salaries in this and the other SOA law enforcement units is attributable to either: (1) recent agreements to roll holiday pay or other pre-existing forms of compensation into the base salary of the police and corrections groups or (2) additions to salary that were received in exchange for specific concessions (County Binder, Tab E-2).

As to the salaries of superior Sheriff's Officers in other New Jersey counties, the record provides little insight. An interest arbitration award involving the Somerset County SOA Sheriff's Department officers indicates that, for 2009, the salaries were $89,811 for sergeants; $98,771 for lieutenants; and $113,563 for captains (FOP Binder 2, Tab 10). Thus, the 2009 sergeant and lieutenant top salaries for this unit were slightly higher than these figures; the maximum $1111,377 Union County Captain salary was below that in Somerset. However, the FOP made no proffer concerning whether Somerset was comparable to Union in terms of demographics or socio-economic considerations, so the information is of little relevance to this proceeding.

Overall, it appears that the existing compensation and benefit structure for this unit is competitive and has enabled the County to retain an experienced group of superior officers in the Sheriff's Department. No special salary adjustments are warranted, and increases that track those received by the County Park Police units, and the rank-and-file corrections officers, will appropriately maintain the salary relationship among the various County negotiations units.

The cornerstone of my analysis is that the County has traditionally engaged in "pattern" bargaining, and has been successful in achieving virtual uniformity among its law enforcement units in terms of the across-the-board salary increases received. Exhibit C-3 shows that in each year between 2001 and 2009, the County and the unions representing the SOA law enforcement units agreed to identical across-the-board increases, with some variations tied to additional work hours or the elimination of a stipend. The underlying MOAs explicitly acknowledge these tradeoffs and also document the increases noted in Exhibit C-3 (County Binder, Tab E-2). In addition, FOP exhibits illustrate that, for 2006 through 2009, the across-the-board increases received by the rank-and-file Sheriff's, Park Police, and Division of Weights and Measures units paralleled one another and those of the corresponding SOA units (FOP Binder, Tab 9). Caroselli's uncontradicted testimony made this point as well. In sum, the County's negotiations history underscores that the County and its law enforcement unions have long recognized that labor relations stability and morale is strengthened if employees who perform similar services receive reasonably consistent across-the-board increases, albeit with room for variations that respond to issues or problems in a particular unit.

Against this backdrop, I find that the three law enforcement settlements arrived at for the 2010-2012 negotiations cycle should be accorded significant weight. Accordingly, the awarded across-the-board increases of 0% for 2010; 2.25% for 2011; and 2.5% for 2011 are strongly supported by the fact that identical increases were included in the settlements with the two Park Police units and the rank-and-file corrections officers. The three settlements also unequivocally support the $210 adjustment to senior officer pay for this unit given that the three settlements all included this enhancement. The senior pay adjustment is particularly warranted because the Sheriff's Superiors, Park Police Superiors, and Park Police and Corrections rank-and-file agreements for 2005 through 2009 each included identical dollar amount payments for 10, 15, and 20 years of service (County Binder, Tab E-2; FOP Binder 2, Tab 2). The agreements thus reflect an intent by the County and the respective unions that this benefit would be uniform across these four (and perhaps other) law enforcement groups.[12]

[12]Not all aspects of the 2010-2012 law enforcement settlements are pertinent to this unit. Section 6 of the MOA for the Park Police, pertaining to including holiday pay in base salary, is not applicable to the SOA Sheriff's officers, who do not work holidays and do not receive holiday pay (County Binder, Tab-E-2). Similarly, section 4 of the corrections officers MOA has no application here. It adds $870 to the maximum base salary effective December 2012, in exchange for the PBA's agreeing to a new salary guide for new hires. There is no comparable basis for awarding this unit an additional adjustment to base salary in 2012. Finally, the corrections officers received "$1293 and the value of 10 holidays added to base pay in 2011", in addition to the increase of 2.25%. Again, the holiday pay provision is not relevant to this unit, and Caroselli explained that the $1293 represented the roll-in of shift differential, meal money, and the clothing allowance.

The County's settlements with several civilian units are also generally supportive of the awarded increases. FOP exhibits indicate that the County has entered into the following agreements:

	2008	2009	2010	2011	2012	Date Signed
Teamsters Local 102, Cty. Jail		3.00%	0%	0%	3.00%	8/17/2010
2010 Civil Service Ass'n, Council 8	0%	3.00%(includes shift & weekend differential) Plus $500 Bonus	0%	3.00%(includes shift & weekend differential)		6/12/2009
Teamsters Local 102 Secondary Supervisors	3.00%	0%	0%	3.00%		4/1/2010
County Park Foreman's Ass'n	0%	3.00% Plus $500 Bonus	0%	3.00%		9/4/2009
Park Maintenance Union	3.00%(includes shift & weekend differential)	0%	0%	3.00%(includes shift & weekend differential)		12/8/2010
Union County Supervisors	0%	3.00%(includes shift & weekend differential) Plus $500 Bonus	0%	3.00%(includes shift & weekend differential)		2/11/2010
CWA		3.00%	0%	0%	3.00%	10/15/2010

[FOP Binder 1, Tab 9; FOP Binder 2, Tabs 4, 5, 7, 8, 9, 10, 11]

The foregoing chart illustrates that the County and the various unions representing civilian employees all engaged in negotiations during the June 2009 through December 2010 time frame, a period when the State and national economies were suffering the severe effects of the financial downturn. They arrived at agreements that not only included 0% increases for 2010, but also included a 1.5% average annual increase over the three or four year contract term.

While the percentage increases are differently configured than in the law enforcement settlements, the overall economic packages are similar to that awarded here.

Overall, the above-noted comparisons with other County employees militate against the increases sought by the County. Award of the County's final offer would result in a deterioration in this unit's relative standing vis-à-vis other County employees, a circumstance that is not warranted from a comparability standpoint.

At the same time, award of a 2% increase for 2010 is also not justified from a comparability perspective, given that the current compensation and benefit structure for this unit is competitive. Moreover, I am not persuaded that a 0% increase for 2010 is unwarranted because this unit agreed to 0% increases in 2006 and 2007, whereas the civilian units did not. First, the County's other law enforcement groups also received 0% increases in 2006 and 2007, yet three of those group settled for 0% increases for 2010. Second, the record does not reflect the increases received by many civilian units for the entire 2006 through 2012 time frame. An FOP exhibit does include this information for the CWA unit, and it shows that the average annual increase for the seven-year period (2006 through 2012) was 2.25% for employees not at maximum salary and 2.5% for employees at maximum. These figures are within the range of the average annual 2.10%

increase that these superior officers will receive, by virtue of this award, for the same time frame.

With respect to the increases received by public safety employees statewide, the awarded increases are lower than, but within the range of, those increases, particularly for voluntary reported settlements. Thus, the average increase in awards issued from January 2011 through October 12, 2011 was 2.29%, while that included in awards rendered in calendar year 2010 2.39%. For 2011, the average increase in voluntary reported settlements is 1.96%, while for 2010 the figure was 2.09%.

The most recent Statewide data on private sector wages shows a -0.7% decline. While that figure does correspond closely to the County's proposal, the data is for one year only and is insufficient to balance out all of the other information that calls for adjustments along the lines of those received by other County units.

Finally, I have reviewed the NJEA "Trendsetter" exhibits that the FOP has submitted. These publications detail the across-the-board increases received by educational employees throughout the State for the 2008-2009 through 2012-2013 academic years (FOP Binder 1, Tab 9). Some of the reports show average increases in the 4.50% to 5.00% range for certified and support staff employees.

However, this information is of limited relevance to this proceeding given the profound differences between counties and school districts.

Further, consistent with the traditional practice in the education community, the reported percentage increases include the increment costs associated with salary guides that have many more than the five or six steps that pertain for this unit (FOP Binder 1, Tab 9). Finally, many of the reported settlements were arrived at in 2008, before public employers in New Jersey began to feel the impact of the downturn in the State and national economies. Thus, the NJEA data does not weigh in favor of higher increases than I have awarded. I add that the most recent educational data submitted by the FOP indicates average increases, for new reported settlements, of 2.34% for 2010-2011; 2.91% for 2011-2012; and 2.93% for 2012-2013 (FOP Binder 1, Tab (March 10, 2011 Trendsetter, p. 18).

Overall Compensation

The overall compensation criterion, *N.J.S.A.*34:13A-16g(3), requires the arbitrator to consider all the economic benefits received by the employees involved in the proceeding, including direct wages, vacations, holidays, excused leaves, insurance, pensions and medical benefits. It thus directs a focus on all employee benefits, not just the items that are at issue in the proceeding.

Viewed from this perspective, unit members enjoy a comprehensive compensation and benefit package that includes vacation, holidays, sick leave, personal days, PFRS membership, and full medical coverage. As the FOP notes, this compensation structure is similar to that enjoyed by other County employees. While this unit does not receive the holiday pay that other law enforcement officers do, the FOP recognizes that this circumstance is attributable to the fact that sheriff's officers do not work on holidays. Thus, the lack of holiday pay is not an omission that needs to be addressed.

I have also considered that unit members' contractual benefits package has unquestionably been diminished by both Chapter 2 and the more recently enacted Chapter 78. The latter statute raises the employee's PFRS contribution from 8.5% to 10% of base salary and both enactments mandate employee health benefit contributions. These statutory health benefits contributions exceed those required under the predecessor agreement, which were $55.00 per month or $660 per year.

Nevertheless, as adverted to in the public interest discussion, nothing in either the new legislation or the interest arbitration statute entitles employees to salary adjustments that balance out the new statutorily mandated contributions. Further, these health benefit changes will eventually apply to all New Jersey public employees, while the pension changes will be effectuated for all public safety workers. In this posture, the legislative changes will not materially affect unit members overall compensation vis-à-vis other public sector employees in New Jersey.

Within this framework, the overall compensation criterion does not factor significantly into my assessment of what base salary increases to award, since there are no marked excesses or deficiencies in overall compensation that would lead me to adjust the percentage increases suggested by the other statutory factors.

Stipulations

N.J.S.A. 34:13A-16g(4) requires the arbitrators to consider the stipulations of the parties. The parties have stipulated to these points:

- Article V, Section 7: Health Benefit Buyout option shall continue to be available through 2012. This benefit shall be discontinued if the County becomes self-insured.
- Article IV, Section 3: increase the number of floating vacation days to 6.
- Article XII, Section 1: Increase the minimum call in time from three to four hours.
- Article XXII: Allow 10 days off due to death of "domestic or civil union partner" as well as "spouse and child."
- Article XI, Section 6, Overtime: Hourly rate for hospital prisoner security detail will be the regular overtime rate.
- Article XIX: Add that accumulated sick leave shall be paid out in a separate check no later than January 31st of the following year.
- Article XXVI: Contract term shall be 1/1/2010 through 12/31/2012

Lawful Authority of the Employer; Statutory Restrictions on the Employer

N.J.S.A. 34:13A-16g(1) and (5) mandate consideration of the lawful authority of the employer, including the limitations on a county's tax levy imposed by *N.J.S.A.* 40A:4-45.1a *et seq.*, commonly known as the appropriations CAP law ("1977 law"). *N.J.S.A.* 34:13A-16(g)(9), similarly directs an analysis of the statutory restrictions imposed on the employer, including specifically the new tax levy cap enacted in 2007 and amended in 2010. *See L.* 2007 *c.* 62, codified at *N.J.S.A.* 40A:4-45.44 through 45.47; *see also L.* 2010, *c.* 44. Both CAPs were designed to help control the costs of local government and limit increases in the local property tax. Counties must abide by whichever calculation results in the lower levy increase. *See Local Finance Notice No. 2008-3 (February 11, 2008) (Department of Community Affairs, Division of Local Government Services).* I discuss each CAP in turn and conclude that the award will not cause the County to breach the restrictions that they impose. I turn to the most recently enacted statute first.

For 2010, *N.J.S.A.* 40A:4-45.44 through 45.47 limited the annual increase in a local entity's tax levy to 4%, with certain expenditures excluded from the CAP. Among these were debt service; increases to replace lost State aid; and health insurance cost increases over 4% but below the State Health Benefits Program index.

For calendar year 2011, *L.* 2010, *c.* 44 lowered the above-described tax levy CAP to 2%. While Chapter 44 eliminated certain CAP exceptions it maintained add-ons for new ratables and exclusions for pension increases over 2% and health benefits increases over 2% up to the State Health Benefit Program (SHBP) increase. It also allowed a local unit to "bank" the difference between the maximum amount allowed to be raised under the levy CAP in the current year and the actual amount raised. This "levy cap balance" is not available cash but constitutes additional expenditure authority that may be used in the ensuing three years.

N.J.S.A. 40A:4-45.4, enacted in 1977, contains a different formula. It limits the amount by which a County can increase its total tax levy over that from the previous year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA). Certain items are excluded from the CAP limits including, among other items: revenue generated by applying the preceding year's tax rate to the apportionment valuation of new construction or improvements; capital expenditures; debt service; and expenditures mandated by statute or court order. In addition, a County may "bank" the difference between the actual tax levy in a given year and the amount that would have been authorized under the appropriations CAP. Under this statutory scheme, the CAP bank may be used for two years.

For 2010, the award presents no CAP issue since the award aligns with the employer's offer. For 2011, the 1977 appropriation CAP law governed, since it resulted in a lower maximum levy than did the 2% CAP (Caprio Report, Exhibit 23; Exhibit C-2, sheet 3C).

In 2011, the award calls for $69,215 more in across-the-board increases, and senior pay adjustments, than the County has proposed. As discussed in the financial impact analysis, these monies can likely be accommodated with the framework of the 2011 adopted budget of $482,202,495. However, even if the additional monies are not available in, for example, appropriated reserves for salary increases, the awarded salary increases would not require the County to breach the applicable CAP limitation, given that the County had more than $69,215 in additional CAP authority.[13] For 2012, the COLA percentage is 2.5%, subject to municipal adoption of a 3.5% ordinance, see Local Finance Notice, No. 2011-33, November 3, 2011. The tax levy CAP under the 2010 legislation remains at 2%. The Township's CAP calculations for 2012 are not in the record, but it is unlikely that the awarded increases will cause it to exceed its lawful authority, given that the award exceeds the County's offer by $72,891 and includes the same percentage increases as those set forth in the law enforcement settlements.

[13]The figures in the County's budget work sheet reflect that the County's budget was $707, 513 under the applicable 1977 CAP (Exhibit C-2, sheet 3C). Caprio's certification indicated that the County's final 2011 tax levy was $701,614 below the applicable CAP, although he identified this CAP as the 2% tax levy CAP (Certification, p. 4).

Financial Impact of the Award

N.J.S.A. 34:13A-16g(6) requires an arbitrator to consider the financial impact of an award on the governing unit, its residents and taxpayers. As such, the factor has a strong overlap with the fiscal component of the public interest and with *N.J.S.A.* 34:13A-16g(5) and *N.J.S.A.* 34:13A-16g(9), which mandate a consideration of the legal limits of a County's taxation authority. However, the financial impact criterion directs a broader inquiry than 16g(5) and (9) since the legal ability to raise a certain amount by taxation does not automatically signify that such a levy would be reasonable in view of the entity's overall financial picture. The financial impact criterion requires such an assessment and also directs an arbitrator to consider "to the extent evidence is submitted," the impact of an award on an employer's ability to initiate, expand, or maintain programs and services.

I have given *N.J.S.A.* 34:13A-16g(6) substantial weight in awarding moderate salary increases that mirror internal settlements and that are lower than those received by public safety employees statewide. I also conclude that my award will not have an adverse financial impact on the County or its residents and taxpayers.

Union County has several markers of fiscal strength, including a substantial and diverse tax base of $74.9 billion; a moderate debt burden; and a strong business environment that is supported by the County's excellent transportation access and its location within one of the largest metropolitan centers nationwide (County Binder, Tab-E-1, Moody's Analysis). Nevertheless, there is no question but that the County has faced serious financial challenges during the last few years, a situation that warrants caution in awarding salary increases.

Moody's March 27, 2011 credit analysis provides a useful lens through which to view the County's financial situation. While the agency remarked on the positive attributes that I have noted, it also concluded that the County was under financial pressure because of recent draws on, and declines in, its fund reserves. It further observed that growth in the County's tax base was expected to remain stagnant as a result of the decline in housing prices. The analysis explained that the recently assigned negative outlook "reflects significant declines in the current fund balance coupled with economically sensitive revenue and expenditure pressures."

In elaborating on these conclusions, the agency discussed at length many of the same factors that the County has highlighted, including recent declines in State aid; county clerk fees; investment income; and Medicaid reimbursements. It also expressed concern that, for 2010, the County budget appropriated $24.25 million appropriation of its fund balance, as compared to $18.5 in the prior year.

At the same time, Moody's remarked that some of the noted revenue shortfalls were offset by non-recurring revenue sources (*e.g.*, a retroactive Medicaid reimbursement). It also observed that, on the positive side, the County maintained reserves outside the current fund, including a capital surplus fund of $3.4 million and a reserved fund of $6.5 million for post-employment benefits. Overall, the agency concluded that:

> Given the pressures facing all New Jersey counties, including a slowing residential real estate market, uncertainty regarding the duration of the current economic slowdown, rising pension costs and implementation of the more stringent 2% statewide property tax cap beginning in fiscal 2011, Moody's believe the county will continue to experience budgetary pressure. Failure to match recurring expenditures with recurring revenues and augment reserves in step with budgetary growth will place downward pressure on the county's rating.
> [County Binder, Tab E-1]

Caprio's report does not paint a significantly different picture. For example, the FOP's financial expert concluded that the County's fiscal situation compared favorably to that in other urban New Jersey counties. However, that circumstance does not support increases at the level espoused by the FOP, given the strains faced by all governmental entities in New Jersey. Moreover, Caprio's own report illustrates that Union has the fifth highest average property tax bill among all New Jersey counties; experienced the sixth highest increase in that bill between 2006 and 2010; and is the County with the fourth highest number of foreclosures in the State (Caprio Report, Exhibits 5; 10; & 11). The report also shows that new construction starts have not come close to rebounding to 2006 or even 2005 levels, although there was some uptick between 2009 and 2010 (Caprio Report, Exhibit 2).

In addition, while Caprio projected that the County will likely have a current fund balance of $20 million or higher by at the end of December 2011, Taylor asserted that those estimates were over-optimistic, adding that the State had disallowed some of the County's revenue projections on that ground. In any case, it must be emphasized that the County depends on appropriating a significant portion of its end-of-year fund balance in the ensuing year's budget.

Within this framework, I have given substantial weight to the financial impact criterion and arrived at an award that tracks the County's internal law enforcement settlements and, in addition, includes average annual increases that are close to those received by many of the County's civilian units and lower than those received by public safety employees statewide. My decision along these lines is reinforced by the broader economic picture, including a current unemployment rate in the State of 9.1% (NJLWD December 15, 2011 Press Release).

Nevertheless, while the financial impact criterion strongly supports moderate increases, it does not mandate that wage adjustments be limited to those proposed by the County. Despite the assignment of a negative outlook, Moody's of course affirmed the County's Aaa rating. County representatives also cited the rating agency's analysis as evidence of its basic financial health (County Binder, Tab E-1) and I note that the amount of fund balance appropriated in the 2011 budget ($18.7 million), was well below the $24.25 million figure that had triggered Moody's scrutiny in 2010 (Exhibit C-1, sheet 35).

For 2010, the award aligns with the County's offer and includes the wage freeze that was part of the settlements with the County's three law enforcement and several of its civilian units. In addition, during the second half of 2010, the County received approximately $35,355 in new statutorily-mandated employee health benefit contributions that it would otherwise have had to absorb.

For 2011, the awarded across-the-board increases exceed the County's offer by $58,925, plus the $10,290 attributable to the enhancement of senior officer pay. This total figure of $69,215 must be evaluated in the context of an overall budget of $482,202,495.

In this regard, while it is not my role to direct how the County should fund the award, *see County of Essex,* citing *New Jersey State PBA, Local 29 v. Irvington,* 80 *N.J.* 271, 293 (1970), it is reasonable to surmise that the difference between the award and the County's offer might well be accommodated within the framework of the adopted 2011 budget by, for example, drawing on reserved appropriations. *Compare Essex* (because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund).

In addition, as in 2010, the County derived some additional budgetary flexibility from the fact that it received approximately $35,355 in new employee health benefits contributions pursuant to the first year of implementation of *L.* 2010, *c.* 2. Further, as part of the initial phase-in of Chapter 78 in the second half of 2011, superior officers with dependent coverage began to remit employee health benefits contributions that somewhat exceeded of 1.5% of base salary.

A similar analysis pertains to 2012, where the difference between the award and the County's offer is $72,891. In arriving at an award for this final contract year, I have carefully considered the County's position that 2012 will be more difficult financially than 2011. Since the 2012 budget is not yet adopted, that prediction cannot be verified on this record. Nevertheless, I am required to develop an award for 2012, particularly in view of the parties' agreement as to contract term. *Compare City of Asbury* Park, P.E.R.C. No. 2011-1, 36 *NJPER* 323 (¶126 2010) (multi-year contracts are inherent in the negotiations and interest arbitration process, even though no one can predict with assurance the exact budget circumstances a public employer will face in future years).

In this posture, I will assume for the purpose of analysis that there may be some deterioration in the County's financial position during 2012. However, it is still reasonable to surmise that the County will retain sufficient budgetary flexibility to fund the award. Again, the $72,891 figure must be evaluated in the context of a likely budget of approximately $482 million. Further, the County may well derive some additional budgetary flexibility from the escalating employee health benefit contributions required by Chapter 78. [14]

For the foregoing reasons, I conclude that the awarded increases represent a reasonable determination of the salary dispute and will not have a negative effect on the County its residents and taxpayers, or the county purposes tax.

Cost of Living

N.J.S.A. 34:13A-16g(7) mandates consideration of the cost of living, which is typically measured by the Consumer Price Index for all Urban Consumers (CPI-U) published by the federal Bureau of Labor Statistics (BLS). The parties have submitted BLS data for 2010 and 2011, and I have taken arbitral notice of the most recent December 16, 2011 BLS news release.

BLS reported that the CPI increased 1.6% over the 12 months preceding January 2011 (FOP Binder 1, Tab 6), while the increase between April 2010 and

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[14] The impact of Chapter 78 in calendar year 2012 can be illustrated through the example of a sergeant selecting family coverage and earning $95,385 under the award. Assuming no increase in the County's premium, the officer would pay, for the first half of 2012, the year one Chapter 78 contribution rate of 7% of the $25,677 family coverage premium or $899 for the first half of the year. Beginning on or around July 2012, the officer would begin remitting the Chapter 78 year two contribution rate of 14.50% of the family premium or $1,861 for half a year. This amounts to a health benefit premium contribution in 2012 of $2,760 as opposed to the $1,431 contribution that would have been triggered by Chapter 2 (1.5% of the 2012 base salary of $95,385).

April 2011, was 3.2%, before seasonal adjustment. The latter figure is largely attributable to large increases in energy commodities (County Binder, Tab E-1, BLS April 2011 News Release, p. 2). As of November 2011, the seasonally adjusted percentage change for the past 12 months was 3.4%, with increases in food and especially energy coming in well above that figure (BLS December 16, 2011 News Release).

The award averages a 1.125% increase for 2010 and 2011, a figure that is below the CPI figures. However, it should be recalled that the CPI-U includes increases in medical costs (County Binder, Tab E-1, BLS April 2011 News Release, p. 2) which, even under recent legislation, are still borne largely by the County, particularly for 2010 and 2011.

On balance, I have given the cost of living criterion some weight in arriving at salary increases. This factor, standing alone, would likely point to higher increases than I have awarded. However, I have given greater weight to other factors that together point to increases in line with those included in the law enforcement settlements. These criteria include the public interest, comparisons with other employees, financial impact, and the continuity and stability of employment.

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g(8) directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in public and private sector negotiations. It incorporates two concepts that have been discussed at other points in this award. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining "continuity and stability in employment." The second principle centers on the importance of considering internal settlements, since unwarranted deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability within a jurisdiction.

When these principles are considered in the context of this case, the continuity and stability of employment criterion weighs strongly in favor of increases that align with those received by the Park Police and the corrections officers' rank-and-file units. As discussed earlier in this opinion, the FOP's proposal for a 2% increase in 2010 cannot be reconciled with the County's budgetary situation or the settlements arrived at with a diverse range of other County employees. Award of such an increase would have the definite potential to discourage future settlements, thereby undermining labor relations stability in the County.

At the same time, the County's proposal for a 2% increase over three years would also constitute a departure from the County's settlements with its law enforcement and other negotiations units, and would likely result in a deterioration of this unit's relative standing vis-à-vis other County employees. As such, the County's proposals for 2011 could jeopardize the morale and continuity and stability of employment in this unit.

Accordingly, I find that the continuity and stability of employment will be furthered by the awarded across-the-board increases and the adjustments to senior officer pay.

OTHER ECONOMIC PROPOSALS

County's Health Benefits Proposal

In proposing to modify the health benefits article, the County seeks to increase prescription co-payments; include certain drug utilization protocols in the agreement; institute a $25.00 emergency room co-payment; and continue the restriction on the flow through of prescription co-payments to the Major Medical portion of the health insurance coverage. It also proposes to eliminate the Third Party Administrator and cease reimbursements to employees for any out-of-network charges.

The FOP does not raise any particularized objections to these proposed changes but strongly objects to any diminution of contractual health benefits coverage. It stresses that these superior officers have already been significantly affected by the statutorily mandated premium contributions.

The linchpin of my analysis is that the core prescription drug and emergency room changes proposed by the County have already been agreed to by the Park Police units and the correction officers rank-and-file unit. The prescription drug and emergency room co-pay provisions have also been agreed to by the CWA, Teamsters, and Civil Service unions representing civilian employees in several other County negotiations units (FOP Binder 2). Thus, there is an established pattern of settlement with respect to the noted provisions, and a strong public interest in maintaining that pattern. This is especially so with respect to health benefits, where uniform benefits across employee groups is eminently reasonable from an administrative perspective.

I reach this conclusion even though the FOP argues that the proposed changes are inappropriate for these officers, who have already begun making the premium contributions required by Chapter 2 and Chapter 78. While this unit was immediately subject to the statutes, I am not persuaded that I should therefore depart from traditional arbitration precepts in evaluating the County's health benefits proposal. The Legislature clearly intended that there would be varied implementation dates for Chapters 2 and 78, depending on whether employees were subject to a current negotiated agreement when the statutes took effect.

Moreover, the financial impact of the County's proposed changes is relatively minor. That impact consists primarily of a $5.00 increase in brand name co-payments; a $1.00 increase for generic prescriptions; and a $3.00 increase for a 90-day mail order supply of a generic medication. How these changes would affect any individual officer cannot be predicted.

Similarly, it is not possible to quantify the financial impact of including certain drug protocols in the agreement or of eliminating reimbursement for out-of-network services. Indeed, these provisions may not have any effect on most employees. In this posture, I conclude that the FOP has not articulated a persuasive basis for deviating from an established settlement pattern on the noted prescription drug and other health benefits issues.

Two of the County's proposed changes are not encompassed by the settlement pattern that I have described. First, the County proposes to specify the prescription drug and health plan available to officers who receive fully paid retirement benefits under the 2005 through 2009 agreement. This clause is present in the corrections officers' settlement (FOP Binder 2, Tab 2), but is not included in the Park Police 2010-2012 settlements or in several of the other negotiated agreements in the record.

The presence or absence of the retiree provision appears to hinge on whether or not a unit's predecessor contract included a clause stating that an employee who retires after a certain date, and who is entitled to retiree health coverage, shall receive the health benefits plan in effect for active members of the unit. The 2005-2009 agreement for this unit does contain such a clause (County Binder, Tab D-1, p. 51), and the County's proposal simply specifies the current plan. The proposal is awarded.

Second, the County also proposes to delete the premium contribution amounts set forth in the predecessor agreement and state that the health care premium contributions shall be those mandated by statute. The inclusion of such a provision is favorable to the FOP and its absence from several other agreements is attributable to the fact that they were arrived at before Chapter 2 and 78 were signed into law. This proposal is awarded.

For the foregoing reasons, all of the County's health benefits proposals are awarded.

County's Pay Day Proposal

The County proposes to amend Article IV, Section 2, to provide for a rotating bi-weekly schedule for paycheck distribution whereby the designated payday moves one day forward in each successive year (starting with Friday in 2010), after which the cycle is repeated. The 2005-2009 agreement states that paychecks will be distributed on a bi-weekly basis.

The County explains that this proposed change is prompted by the fact that given a 365-day year, any contractual provision that establishes a single fixed payday (here, Friday) will result in a scenario whereby, every few years, there will be 27 paydays. That circumstance can in turn engender controversy about how the contractual salary should be distributed.

The County asserts that all other negotiation units have agreed to this change, and the FOP does not articulate any specific objections to the proposal. In this posture, the County has met its burden of justifying it. I will award the proposal prospectively, allowing the County to implement a Tuesday payday in 2012 as soon as the County determines that the change is administratively feasible.

FOP's Emergency Responder, Retiree Health Benefits, Work Hours

The FOP proposes a $1,000 annual stipend for officers with EMT certification, as well as prescription drug coverage for all retirees and a reduction in work hours from 42.5 to 40 hours per week. It has not met its burden of justifying these changes.

With respect to the proposed emergency responder stipend, the FOP asserts that the training for the certification is completed on County time. However, it does not appear that the training is a job requirement. Further, the record does not disclose how many officers currently have this certification and thus it is not possible to estimate the cost to the County of awarding this benefit.

In this environment of budgetary constraints, I conclude that enhancements to the unit's compensation package should be limited to across-the-board increases and adjustments to senior officer pay, which benefit a large number of unit members. This approach also requires that I deny the FOP's proposal for a fully paid prescription plan upon retirement.

Under the predecessor agreement, officers who retire after meeting certain service requirements are entitled to retiree health coverage, which includes prescription coverage. However, the FOP's proposal would seemingly extend the right to paid prescription coverage to any officer who retires, even if he or she leaves after a limited period of service and does not meet the eligibility criteria set forth in the predecessor agreement. This proposal could thus impose substantial additional costs on the County and is not warranted in view of the financial constraints that it now faces.

The FOP also seeks to reduce the current 42.5 hour work week to 40 hours, contending that it is fair and equitable in light of the time modifications achieved by other units. Preliminarily, it is not clear what time modifications the FOP is relying on. In any case, 18 minutes a day were added to officers' workload in 2002, and unit members received $1,486 in exchange for this extension. It is not appropriate at this juncture to unwind one half of this bargain. Further, the shortening of the work week and work day might well have operational implications that were not explored at the hearing and could potentially increase overtime costs. In this posture, I decline to award the proposal.

Finally, the FOP also seeks a provision stating that the County will absorb the cost of any "substantial" change in officers' uniform or clothing, as well as a clause stating that unit members shall be paid "portal to portal." The record does include enough information on these proposals to allow me to fully evaluate their operational or cost impact. I therefore deny them.

AWARD

1. **Salaries**

The following increases shall apply to each step and position in the FOP Superior Sheriff's Officers unit.

0% across-the-board salary increase effective January 1, 2010.
2.25% across-the-board salary increase effective January 1, 2011.
2.5% across-the-board salary increase effective January 1, 2012.

Each salary increase is retroactive to its effective date.

Effective January 1, 2011, Article IV, Section 3 shall be amended to increase senior officer pay for each level by $210.00

2. **Paycheck Distribution**

Article IV, Section 2 is amended to state:

In order to maintain a bi-weekly basis for paycheck distribution, a rotating bi-weekly pay day schedule shall be implemented whereby the pay day will be changed in each successive year as follows. This section shall be implemented as soon as administratively feasible after issuance of this award.

2012: Tuesday
2013: Wednesday
2014: Thursday
2015: Friday
2016: Monday

This cycle will continue every five (5) years.

When the pay day occurs on a holiday, paychecks or direct deposits will be issued on the day prior to the holiday.

3. **Pension and Welfare**

Article V, Pension and Welfare, is modified to read as follows:

1. Effective one month following the award, prescription co-payments shall be as follows:

Retail

$20.00 co-pay per prescription for name brand where generic is available.

$15.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

$6.00 co-pay per prescription for generic.

Mail

$15.00 co-pay per prescription for name brand where generic is available.

$10.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

$5.00 co-pay per prescription for generic.

The above co-pays shall apply to both retail pharmacy purchases (up to thirty (30) day supply) and a ninety (90) day supply through mail order.

2. Drug Plan Utilization Modification

(a) Enhanced Concurrent Drug Utilization Review (Refill too soon/stockpiling).

(b) Preferred Drug Step therapy Generic or Preferred Name Brand first) limited to PPI, SSRI and Intranasal steroid drugs.

(c) Clinical Intervention (Statement of medical necessity from MD) limited to Anti-Narcoleptic Agents, Weight Loss and Anti-Neoplastic Agents.

The restriction on flow through of prescription co-payments to the Major Medical portion of the health insurance coverage shall be continued.

3. Officers who receive fully paid retirement benefits under the 2005 through 2009 CAN shall be provided with the Medco Rx or an equivalent plan. The plan shall provide for free mail order prescriptions and 30% co-pay for retail. It is understood that in order to provide the Medco Rx plan, the base Health Plan will be converted from CIGNA ROAP7 to CIGNA ROAP3.

4. Effective January 1, 2011, the Third Party Administrator (TPA) will be eliminated and the County will no longer reimburse employees for any out-of-network charges.

5. Effective January 1, 2011, emergency room co-pays shall be $25.00 per visit (to be waived if admitted).

6. Premium Contribution Amounts:

Any contribution to health care that is mandated by statute shall replace the contributions set forth in Section 3, paragraph (e)(4).

5. Stipulations

The parties have agreed to the following items:

- The contract term shall be January 1, 2010 through December 31, 2012.

- Article V, Section 7: Health Benefit Buyout option shall continue to be available through 2012. This benefit shall be discontinued if the County becomes self-insured.

- Article IV, Section 3: increase the number of floating vacation days to 6.

- Article XII, Section 1: Call In: Increase the minimum call in time from three to four hours.

- Article XXII: Allow 10 days off due to death of "domestic or civil union partner" as well as "spouse and child."

- Article XI, Section 6, Overtime: Hourly rate for hospital prisoner security detail will be the regular overtime rate.

- Article XIX, Miscellaneous: Add that accumulated sick leave shall be paid out in a separate check no later than January 31st of the following year.

6. All proposals of the County and the FOP not awarded herein are denied and dismissed. All provisions of the existing collective negotiations agreement shall be carried forward except for those provisions modified by the terms of this Award.

Dated: January 17, 2012
Princeton, N.J.

Timothy A. Hundley

Timothy A. Hundley
Arbitrator

State of New Jersey }
County of Mercer }ss:

On this 17th day of January 2012, before me personally came and appeared Timothy A. Hundley to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

Virginia G Hundley
Virginia G. Hundley
Notary Public of New Jersey
My Commission Expires 6/22/2015