

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

MERCER COUNTY PROSECUTOR,

“Public Employer,”

and

**MERCER COUNTY PROSECUTOR’S
OFFICE PBA LOCAL 339,**

“Union.”

**INTEREST
ARBITRATION
DECISION & AWARD**

Docket No. IA-2014-079

**Before
Robert C. Gifford, Esq.
Arbitrator**

Appearances:

For the Employer:

Joseph M. Hannon, Esq.
Genova Burns

For the Union:

Richard D. Loccke, Esq.
Loccke Correia

On March 31, 2014 the County Prosecutor's Office ["County"] filed a Petition to Initiate Compulsory Interest Arbitration. On June 25, 2015, I was appointed through random selection from PERC's Special Panel of Interest Arbitrators to serve as interest arbitrator. The law requires that I issue an Award within 45 days of my appointment.

The parties initially agreed to have the interest arbitration hearing conducted on July 20, 2015. On July 2, 2015, I confirmed the July 20th hearing date via electronic correspondence. On July 7, 2015, I notified the parties that final offers were due on or before July 13, 2015. On July 13, 2015, the County submitted a final offer that included, among other items, salary and a term of three (3) years. On July 15, 2015, the PBA requested an adjournment of the July 20th hearing. Later that day, the parties stipulated through electronic correspondence that the sole issue to be heard and decided was salary. Based upon this stipulation, I agreed to reschedule the hearing for July 29, 2015. Subsequent to the rescheduling of the hearing, Counsel for the PBA indicated in an electronic correspondence that "the sole issue is Wages over a term of the contract". A definitive contract duration was not expressed.

On July 29, 2015, an interest arbitration hearing was held at the County Administration Building in Trenton, New Jersey at which time the parties were afforded the opportunity to argue orally, examine and cross-examine witnesses

and submit documentary evidence into the record. The parties provided post-hearing briefs on or before August 3, 2015, whereupon the record was declared closed.

FINAL OFFERS OF THE PARTIES

The County's Final Offer as Presented in Writing on July 13, 2015

ECONOMIC

1. **Term of Agreement:** Three years, commencing January 1, 2014 through December 31, 2016.
2. **Wages:**

Effective January 1, 2014: 0% with steps.

Effective January 1, 2015: 0% with steps.

Effective January 1, 2016: 2.4% with steps.
3. **Accumulated Sick Leave Payout**

Article 7.5 – Amend to provide for the payment of accumulated sick time up to a maximum of \$15,000
4. **Holidays**

Article 12 – combine Lincoln's Birthday and Washington's Birthday into President's Day.

NON-ECONOMIC

- Article 7.6 – deleted and amended to provide the following:
 - The County agrees to provide a Dental Insurance Program to eligible Employees as follows: (1) Basic Dental coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance. The County will pay all of the costs of the basic dental program. Employees shall be responsible for any additional costs associated with the Premium Dental Program or the Eastern Dental Program in excess of the cost for basic coverage.

**The PBA's Final Offer as Presented Orally at the Interest
Arbitration Hearing on July 29, 2015**

1. Term of Agreement – four (4) years – January 1, 2014 through December 31, 2017.
2. Wages.
 - A. Effective January 1, 2014 - Zero (0) Pay Rate Change;
 - B. Effective January 1, 2015 - Zero (0) Pay Rate Change;
 - C. Effective January 1, 2016 – 3.5% Change on the Pay Schedule;
 - D. Effective April 1, 2017 – Two Percent (2%) Increase on the Pay Schedule.

BACKGROUND

PBA Local No. 339 represents the County Prosecutor's Rank and File Detectives/Investigators. The parties' prior Agreement was effective from January 1, 2010 through December 31, 2013. [Exhibit E-2].

There were 41 bargaining unit members as of December 31, 2013. The County presented a spreadsheet indicating that the amount expended for total base salary for 2013 as including salary and longevity to be \$3,741,091. [See Ex. E-5]. The PBA during the interest arbitration hearing held on July 29, 2015 did not challenge the County's calculations of the total base salary figure for 2013, the roster as it existed as of December 31, 2013, or the manner in which the County credited bargaining unit members for their longevity and step movement.

I have thoroughly reviewed the evidence that was presented during the proceedings. Given the strict time constraints under the statute I have extracted significant portions of the legal arguments from the parties' briefs rather than providing a general summary herein.

The County's Position¹

LEGAL ARGUMENT

POINT I

THE ARBITRATOR SHALL CONSIDER ONLY THE COUNTY'S FINAL OFFER

Pursuant to N.J.A.C. 19:16-5.7, "[at] least two days before the hearing, the parties shall submit to the arbitrator and to each other their final offers on each economic and noneconomic issue in dispute." Per direction of Arbitrator Gifford, the parties were to submit final offers no later than July 13, 2015, seven days prior to the first hearing date (July 20, 2015). The County complied with this request. The hearing was rescheduled for July 29, 2015. The Union did not submit a final offer until July 29, 2015 at the hearing, to which the County objected.

The Union's Final Offer was not submitted in accordance with the interest arbitration rules and thus should be rejected as to wages and term of contract. Only the County's Final Offer should be considered.

POINT II

A REVIEW OF THE COMPETING FINAL OFFERS DEMONSTRATES THAT THE PROSECUTOR'S FINAL OFFER IS MORE REASONABLE UNDER THE STATUTORY CRITERIA OF THE INTEREST ARBITRATION ACT AND IN FACT OFFERS THE

¹ The County's position was taken from pages 12-28 of its Brief.

**MAXIMUM AWARD PERMITTED BY LAW AND
FACTORS THE INTERESTS OF THE TAX PAYERS.**

The County's Final Offer is extremely fair and reasonable. The County's position in this proceeding is based mainly on the statutory 2% base salary cap, the financial circumstances of the County and the comparatively good position, in terms of wages, of the Prosecutor Investigators as compared to similarly situated employees in other County Prosecutor offices. Each area will be discussed in greater detail in the specific discussions of the nine factors. The financial factors will be discussed first as those issues are most important in this matter.

A. The County's Final Offer of Salary is Within the Statutory 2% Base Salary Cap

The only economic issue before the Arbitrator is consideration of the wage offer. The principal focus of this issue is whether the County's offer is in compliance with the 2% interest arbitration "hard cap."

Prior to a full analysis of the 2% calculations, it must be noted that the parties have agreed that the first two years of the collective negotiations agreement are two zeroes. This agreement by the parties, whether or not the Union's offer is fully considered, should be awarded as both parties express a desire to have any wage increases prospective and not retroactive.

As defined by the legislation, N.J.S.A. 34:13A-16.7(b):

An arbitrator shall not render any award...which, on an annual basis, increases base salary items by more than 2.0 percent of the

aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

The parties have agreed that the individuals set forth in E1 are the 41 collective bargaining unit members for the Union as of December 31, 2013. Accordingly those individuals were utilized in determining the base salary for 2% purposes for the monies received in 2013, i.e. the twelve months preceding the expiration of the collective negotiations agreement between the parties.

As defined by the interest arbitration legislation, "base salary" means:

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

N.J.S.A. 34:13A-16.7(a). In determining the total base salary for calendar year 2013 – the twelve months preceding the expiration of the collective negotiations agreement – the County utilized the actual salary paid to the 41 bargaining unit employees in 2013 as well as the County longevity received by each employee. The total 2013 final cost with longevity was \$3,741,091. As such, the County can increase in increment and wages by 2% of \$3,741,091, or \$74,822.

The Union has argued for breakage within the unit due to retirements and other individuals leaving the unit. However, Commission case law has rejected the use of breakage and instead, has held that the unit as it exists at the end of the prior collective negotiations agreement must be considered for the term of the entire next collective negotiations agreement. In Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 58 NJPER 380 (¶116 2012), PERC found:

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

... We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs.

As such, while the Union has argued that individuals who have left the County since the expiration of the successor contract, i.e. January 1, 2014 should not be included in future calculations, the holding in New Milford stands for the complete opposite proposition. Therefore, the unit as it existed on December 31,

2013 must be considered for the duration of the successor collective negotiations agreement for purposes of calculating the 2% cap.

With these principles in mind, an analysis of E5, the County's cost-outs of its proposal, show that its Final Offer comes barely within the 2% cap.

2014

As previously explained the total cost for 2013 base salary items was \$3,741,091, which leaves \$74,822 for increases. The cost of increments for bargaining unit members receiving a salary guide increase or a longevity increase is \$35,100, or 0.94% increase from the 2013 base. As a result, \$39,722 is available for raises going forward in 2014.

2015

The 2014 cost of \$3,776,191 is carried forward to determine the 2% increase for 2015, or \$75,524 for increases. The cost of increments for bargaining unit members receiving a salary guide increase or a longevity increase is \$46,118, or 1.22% increase from the 2014 base. As a result, \$29,406 is left over for raises from 2015. Added to the \$39,722 from 2014 provides for \$69,128 for 2016 in addition to the 2% for 2016.

2016

In 2016, the base for 2015, \$3,822,309, is carried forward. A 2% increase for that base salary figure is \$76,446. When added to the \$69,128 left over due to no

raises in 2014 and 2015, \$145,574 is available for raises in 2016. A 2.4% increase was provided for each step of the salary guide in 2016. That increase, in addition to the step increases for salary and longevity totals \$3,969,056 for total base salary payment for 2016, which is a \$146,747 increase. As identified previously, \$145,574 was available for raises in 2016. Therefore, the County's proposal exceeds the 2% cap by \$1,173. A slight adjustment will need to be made to the County's offer in determining an award.

In contrast the Union's offer greatly exceeds the cap. A cost out of the offer was performed by David Miller and is attached to the brief. As can be seen by the charts, the unions offer exceeds the cap by \$63,216 over the four years. Accordingly, the unions offer cannot be awarded.

As can be seen from these calculations and in accordance with Commission law and the interest arbitration statute, the County's offer is compatible with the 2% hard interest arbitration cap and leaves no room for flexibility to increase the award.

B. The Interests And Welfare Of The Public Require That The County's Final Offer Be Awarded.

One of the most important factors to be considered by the Arbitrator in determining his award is the "interests and welfare of the public." N.J.S.A. §34:13A-16(g) (1); Hillsdale, 137 N.J. at 83. (E12, E14). Arbitrators historically interpreted this criterion as requiring that public safety employees be well compensated. However, in the Appellate Division's decision in the Hillsdale matter, the Court found that the public interest factor "focuses in part on the

priority to be given to the wages and monetary benefits of public employees within a budget." Hillsdale, 263 N.J. Super. at 188. "It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow." Id.

The New Jersey Supreme Court emphasized that "the public is a silent party" to the interest arbitration process, and that "an award runs the risk of being found deficient if it does not expressly consider" the public interest. Hillsdale, 137 N.J. at 82-83.

The New Jersey Legislature reinforced the ideas set forth in the Hillsdale decision, making it clear that the public interest is the most important factor through its 1996 amendments to the Act. N.J.S.A. §34:13A-16(g) (1) (hereinafter the "Reform Act"). In enacting the final version of the amendments, the Legislature stated that "it is also the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public." N.J.S.A. §34:13A-16(g). The clear purpose of the Reform Act was to create a "fundamental shift" in the interest arbitration process, putting the brakes on the interest arbitration procedure which was catapulting police and fire salaries beyond all other employees, and beyond local government's budgetary constraints. Thus, any interest arbitration award that does not make the public

welfare the primary interest, violates the clear intent of the Reform Act, and is an improper delegation of governmental powers.

The focus on public welfare is also apparent in the Legislature's passage of P.L.2007, c.62 and P.L.2010, c.44. This first legislation, P.L.2007, c.62, amended the interest arbitration statute to include a ninth factor, which required the arbitrator to consider a four percent (4%) property tax levy cap. Recognizing that the state's residents needed additional property tax relief, in 2010, the legislature passed P.L.2010, c.44, which imposes a stricter two percent (2%) cap on property tax increases. These legislative acts help address the public outcry over skyrocketing property taxes in the State and the effect that police and firefighter salaries have on such increases. Thus, in order to effectuate real reform, the arbitrator must consider these factors in determining which proposals are in the public interest.

The interests and welfare support the County's offer. It is within the 2% interest arbitration hard cap. The three year term is consistent with the Prosecutor's Superior Officer Unit and provides the County the needed flexibility to deal with the Cadillac Tax and County adjustments.

C. The County's Evidence Of The Financial Impact On The Governing Unit, Its Residents, And Taxpayers Criterion Is More Compelling And Supports An Award Of Its Final Offer.

The "financial impact" criterion, N.J.S.A. 34:13A-16(g)(6), requires an arbitrator to "consider the financial impact [of his award] on [the employer], residents...and...taxpayers, whether wealthy or poor." Borough of Hillsdale, 263 N.J. Super. at 194. The financial impact criterion does "not equate with [an

employer's] ability to pay." Hillsdale, 137 N.J. at 194. The correct application of this criterion does not require an employer to prove that it would suffer a "substantially detrimental result," or that financial difficulties would be created or worsened. Borough of Hillsdale, 263 N.J. Super. at 194. "A [public employer] should not have to demonstrate [that] it would be financially crippled before its arguments [concerning financial impact] could be found to be sufficient." Id. Rather, arbitrators must consider the effect their awards will have on other employees, and on the employer's overall budget. Hillsdale, 137 N.J. at 86. Arbitrators must consider factors such as the percentage of citizens' fixed incomes, and the impact of tax increases and other costs on each income category of residents. Borough of Hillsdale, 263 N.J. Super. at 194.

In Fox v. Morris County Policemen's Ass'n., 266 N.J. Super. 501, 516 (App. Div. 1993), the Court specifically faulted the arbitrator for failing to explain why salary increases are entitled to priority in the budget over other items, and for suggesting that any economies realized by cutting other budget costs could and should be applied to salary increases. Id. Findings regarding financial impact must be based upon record evidence, not upon the mere assumption that the employer somehow could find a way to fund the award. Id. at 517.

In this matter, evidence presented on the County's fiscal situation requires a finding in favor of its Final Offer. In fact, the Union's offer flies in the face of the interest arbitration statute as it exceeds the 2% hard cap. Since the County's

Final Offer is right within the 2% hard cap, the financial impact is clearly supported by the statute.

Accordingly, the County's wage proposal should be given serious consideration in light of the financial impact that this award would have on the County and its residents.

D. The County's Final Offer Is More Reasonable In Light Of The Lawful Authority Of The Employer.

The Appellate Division in Borough of Hillsdale interpreted the "lawful authority of the employer" criterion, N.J.S.A. 34:13A-16(g)(5), to refer to the Property Tax Cap Law and other budgetary items. Borough of Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed: "[G]iven the existence of financial constraints and budget caps...an award to police or fire departments necessarily affects other [county] employees and the entire [county] budget." Hillsdale, 137 N.J. at 86. In examining the lawful authority of the employer criterion, the Arbitrator must address the County's budget cap situation, as well as the statutory requirement that the County prepare a balanced budget each year.

In this matter, the Arbitrator must consider the effect an award would have on the entire County's budget when considering the statutory caps with which the County must comply. Certainly, there is no requirement that a County must spend to the cap. In fact, the County's final offer is entirely within the lawful authority and within all statutory caps – the 2% Salary Cap, the Appropriations Cap and the Tax Levy Cap. Surely, the County's efforts in maintaining costs and controlling rising taxes should be lauded as good

governmental policy, not disregarded on a union whose members are comparatively well paid.

Certainly, other economic factors weigh heavily in favor of the County's proposal. However, a deal that strays too far from the County's proposal will subject the County to potential cap issues. By contrast, the Union's proposal will exacerbate the County's fiscal problems by ignoring all financial constraints placed upon the County. In light of the lawful authority of the employer, the County's Final Offer is entirely within the statutory cap and therefore more reasonable.

- E. *A Comparison Of The Wages, Salaries and Conditions of Employment of the Mercer County Prosecutor Investigators To The Wages, Salaries and Conditions of Employment Of Comparable Employees Compels A Finding For The County's Final Offer.*

This factor requires the Arbitrator to make a comparison of the wages, salaries and conditions of employment of Mercer County Prosecutor Rank and File with other similarly situated public sector employees in comparable jurisdictions. The evidence presented demonstrates that Mercer County Prosecutor Rank and File employees are well positioned when compared to what other comparable employees are receiving. Additionally, the Prosecutor's offer will achieve economic and fiscal stability for the County in light of the 2.0% hard tax cap levy and the fiscal situation in the State of New Jersey.

The Mercer County Prosecutor employs forty-one (41) Rank and File Investigators as of December 31, 2013. (E1). Rank and File Investigators receive an average base pay of \$90,509 per year. (E1). County of Mercer Prosecutor

Investigators perform the traditional work of prosecutor detectives/investigators and thus, the appropriate comparison is with other County Prosecutor detectives/investigators.

1. Salaries

There can be little question that the comparability factor has undergone immense changes over the history of interest arbitration. It is apparent that the “going rate” and “parity” arguments that police and fire unions traditionally relied upon with great success in interest arbitration are no longer accepted. Borough of Hillsdale, 263 N.J. Super. 163. Specifically, arbitrators may no longer simply assume that employees are entitled to the “going rate” of other similarly situated employees, or that employees are entitled to higher percentage increases than other employees. Id. at 198.

The Appellate Division specifically rejected the practice of basing awards solely on the “going rate of settlement” among police and fire employees. Borough of Hillsdale, 263 N.J. Super. at 191. “Over-reliance on comparability inevitably leads (if it has not already) to what is known as ‘whip-sawing’ or a domino effect of ‘keeping up with the Jones’s.’” Id. at 191-92. Clearly, an arbitrator may no longer reflexively rely upon the “going rate” of other County settlements. The Reform Act specifically sought to curtail the skyrocketing law enforcement salaries with no relationship to other employees’ salaries. Id.

Most notably, N.J.A.C. §19:16-5.14(d) provides comparability guidelines for similar comparable jurisdictions. These guidelines include geographic data, socio-economic considerations, and financial considerations. Finally, when comparing the financial aspects of two or more jurisdictions, the regulation lists a large number of factors, including tax revenue, ratables, tax rate, tax collection, delinquent taxes, budget cap considerations, total expenditures of the department, and the department's budget as a percentage of the total county functions. N.J.A.C. §19:16-5.14(d)3.

Thus, it is important to consider these factors when making a determination in this matter. To render an award based merely on the "going rate" would contravene the express intent of the Reform Act and relevant Regulations: to curtail the skyrocketing police and fire salaries. Thus, the County's Prosecutor Investigators are not automatically entitled to the benefits received by other units at interest arbitration, nor are they entitled to higher percentage increases than other investigators.

With respect to wage comparisons, the most meaningful comparison is to other County Prosecutor Detectives/Investigators. A review of the total compensation for all NJ County Prosecutor rank and file units yields a positive picture for Mercer County Prosecutor Investigators and one that will continue to place Mercer Prosecutor Investigators in good standing if the County's Final Offer is awarded. The starting salary for Mercer County Prosecutor Rank and File

is \$61,692 in 2013, which exceeds the NJ state-wide average starting salary of \$49,740. (E44).

The top step salary of \$97,309 in 2013 for Mercer County Prosecutor rank and file is well within range of the average top step salary of \$103,867 for all NJ county prosecutor rank and file employees. (E44).

Thus, based on the foregoing, the County's Final Offer is reasonable when compared with the salaries of other County Prosecutor detectives/investigators.

2. County of Mercer Employees

Union employees fare well in comparison to their fellow County employees. Of importance is the recent Memorandum of Agreement with the Prosecutor Superior Unit, which has the same terms as the County's Prosecutor Rank and File in this matter and is within the 2% hard cap.

3. Private Employees

Mercer County Prosecutor Investigator wages far exceed employees in the private sector. (E49). For example, the mean average salary for private sector employees in New Jersey was \$61,987 in 2013 and the average salary for all employees in Mercer County was \$67,554 in 2013 while the average Mercer County Prosecutor Rank and File Officer made \$90,509 in 2013. (E49).

The Unions have not presented any evidence to dispute these comparisons.

Given the above, the Union's wage proposal is clearly excessive in light of the increases provided to private sector employees over the last several years. An award that follows the Union's wage proposal would give Mercer County investigators significantly higher wage increases than the Mercer County taxpayers who support the Prosecutor Investigators' salaries.

The County's Final Offer, coupled with the Union's already much higher salary will provide the Union with increases that allow its unit members to remain very well compensated. Therefore, the evidence on the comparability factor supports an award of the County's Final Offer.

4. Conclusion

It is clear from a comparison of the truly similar and comparable jurisdictions that Mercer County Prosecutor Investigators are compensated at a level equivalent to, and often times well ahead of their peers. The Union has failed to offer any evidence showing why Mercer County should pay its Prosecutor Investigators the increases it seeks nor can it interest arbitration cap. Instead, the County's Final Offer should be awarded.

F. The Overall Compensation Presently Received By The Employees Is Appropriate And Supports The County's Final Offer

The Arbitrator must consider the overall compensation received by the Mercer County Prosecutor detectives/investigators. N.J.S.A. 34:13A-16(g)(3). Public employees, specifically law enforcement officers, continue to receive significant pay increases while maintaining generous benefits packages. Thus,

the County must meaningfully confront the financial impact of above-average salaries and generous benefits provided to law enforcement officers and other public employees.

The average base salary for Rank and File Police Officers is \$90,509. (E1). The per capita income for Mercer County residents is \$34,844 (E10). Clearly, Mercer County Prosecutor Investigators are provided a substantially higher income than the average resident of Mercer County and not salary increase is required to maintain the investigators' substantial financial lead on the Mercer County residents - their current compensation allows them to maintain that gap for a significant amount of time. The Union's proposal would permit the unit to increase its substantial differential over the average Mercer County resident, and would require the Mercer County taxpayer to fund the increase through increased taxes. Thus, this wage differential would increase as Mercer County residents would have less disposable income due to the tax increase likely required to pay the higher Union salaries.

Thus, in terms of the overall compensation received by Mercer County Prosecutor Investigators, the County's Final Offer is more than reasonable under the statutory criteria and should be awarded.

G. Stipulations Of The Parties.

N.J.S.A. §34:13A-16(g)(4) creates "stipulations of the parties" as a factor the Arbitrator must consider. In this matter, the parties have stipulated to the following issues:

1. Article 7.1. – Amend to provide, “Employees shall contribute amounts as set forth by Chapter 78, P.L. 2011. Once full implementation is reached, the contributions shall remain at the maximum level of contribution set forth in Chapter 78, P.L. 2011 for the remainder of this Collective Negotiations Agreement, through December 31, 2016.”

2. Article 7.5 – Amend to provide for the payment of accumulated sick time up to a maximum of \$15,000.

3. Article 7.6 – Delete and amend to say: “The County agrees to provide a Dental Insurance Program to eligible Employees as follows: (1) Basic Dental coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance. The County will pay all of the costs of the basic dental program. Employees shall be responsible for any additional costs associated with the Premium Dental Program or the Eastern Dental Program in excess of the cost for basic coverage.

4. Article 12 – Combine Lincoln's Birthday and Washington's Birthday into President's Day.

H. *The Cost Of Living Factor Supports The County's Final Offer.*

Traditionally, an Arbitrator is required to review the cost of living in rendering his award. N.J.S.A. 34:13A-16(g)(7); see also N.J.S.A. 34:13A-16(g)(8) (the arbitrator must consider “other factors...ordinarily or traditionally considered in the determination of wages.”).

There have been slight decreases in the Consumer Price Index ("CPI") over the last year. (E57 through E63). For example, in October, November and December 2014, the CPI figures indicate that the cost of living remained roughly the same, with little change. Similarly, the first half of 2015 has shown slight decreases and slight increases in CPI, but remaining roughly the same. The Union has presented no evidence to suggest there will be any drastic changes in the CPI during the life of this contract.

Thus, the cost of living over the past year cannot justify the Union's excessive Final Offer and should not be considered.

I. The Police Officers' Stability And Continuity Of Employment Supports The County's Final Offer.

The "stability and continuity of employment" criterion, N.J.S.A. 34:13A-16(g)(8), concerns issues such as the likelihood of layoffs, "give-backs," and salary freezes. Borough of Hillsdale, N.J. Super. at 195. The Appellate Division interpreted this criterion to also require arbitrators to consider factors such as the employer's overall salary structure, the rate of unemployment generally, employee turnover, and the "virtual absence of unemployment among police." Fox, 266 N.J. Super. at 519.

With respect to layoffs, in May 2013 alone, employers took 1,301 mass layoff actions, involving 127,821 workers. (E53). For the first quarter of 2013, 154,374 workers were laid off for at least 31 days in mass layoff events. (E54).

However, in Mercer County, Prosecutor Investigators have significant continuity. During the last contract, the only Prosecutor Investigators who left the

department were those who retired or were promoted. (E6). This is a department that is well paid. The fact that no one leaves the department until they retire or receive a promotion is evidence of the great benefits and pay that Mercer County Prosecutor Investigators receive.

The evidence of the past and current stability and continuity of employment within the Prosecutor Investigator's unit supports the County's Final Offer as more reasonable.

J. *Statutory Restrictions Imposed On The Employer Or "The Ninth Factor" Lends Support To The County's Final Offer.*

On July 13, 2010, the Legislature passed P.L. 2010, c.44 which amends P.L. 2007, c.63, to impose a more restrictive 2% cap on property taxes for each public entity. This amended legislation was a direct response to the ever-increasing outcry from citizens and public employers alike that property taxes are simply getting out of hand. Under P.L. 2010, c.44 a public entity is restricted to a 2% cap on property taxes, with exclusions for the cost of pension contributions, health care benefits and debt service.

When considering this cap limitation, it becomes even clearer that the County's Final Offer is the only offer which would permit the County to fund salaries and to remain under the cap. Thus, the County's budget and Final Offer included only what the County could afford to pay its Prosecutor Investigators. (E4, E7-E8).

As previously argued, the Union's proposed wage increases would exceed the County's cap. For the term of this contract, the 2% property tax cap

will make it even more difficult for the County to provide increased salaries while remaining within the property tax cap. Consequently, the County cannot raise taxes to fund Prosecutor Investigator salaries.

After considering the ninth factor, the Arbitrator should award the County's Final Offer as it is the only offer which will allow the County to sustain its financial stability without violating the Property Tax Cap Law.

POINT III

THREE YEAR TERM SHOULD BE AWARDED

Irrespective of the arguments in Point I, the Union's offer of a fourth year should be rejected. As an initial matter, the Union's calculations for a fourth year is not within the 2% hard cap. Therefore, the Union has not put forth a proposal for the fourth year within the required parameters. Second, the Union presented no evidence as to why a fourth year should be considered. In contrast the County put forth testimony explaining the need for a three-year term. For instance, the Superiors Unit of Prosecutors Detectives recently settled at a three year term from 2014 to 2016. As such, the continuity with this group is of paramount importance. Other factors such as the expiration interest and hard cap at the end of 2017, and the imposition of the Cadillac Tax under the Affordable Care Act beginning in 2018, all provide for the needed flexibility and future negotiations for the County to adjust to these issues.

In short, the County's offer on this issue is reasonable and should be awarded.

The PBA's Position²

INTRODUCTION

This is an Interest Arbitration proceeding which was commenced by the filing of an Interest Arbitration. Prior to the filing of the Petition and subsequent to its filing the parties engaged in extensive negotiation and mediation. Interest Arbitrator designee Robert C. Gifford also conducted mediation which was successful to the extent that all issues were resolved with the exception of wage rate and term. The parties, by consent and with the direction of the Arbitrator conducted a full and complete Interest Arbitration hearing on Wednesday, July 29, 2015. At hearing both parties were represented by counsel and had a full opportunity to present evidence and offer testimony in support of their respective positions. At the end of the hearing both parties reserved the right to file a Post-Hearing Memorandum based upon the evidence which was introduced at hearing. The within document represents the filing made on behalf of the employee organization.

The PBA has presented a position for the Arbitrator's consideration consisting of a four (4) year term (January 1, 2014 through December 31, 2017) with increases as follows:

Effective January 1, 2014 - Zero (0) Pay Rate Change
Effective January 1, 2015 - Zero (0) Pay Rate Change

² The PBA's position was taken from pages 1-25 of its Brief.

Effective January 1, 2016 – 3.5% Change on the Pay
Schedule

Effective April 1, 2017 – Two Percent (2%) Increase on the Pay
Schedule

The public employer position was presented in written form in its Booklet marked
as *Tab No. 4*.

REVISED STATUTORY CRITERIA

1. The interests and welfare of the public. Among the items the Arbitrator or panel of Arbitrators shall assess when considering this factor are the limitations imposed upon the Employer by P.L. 1976, c.68 (C.40A:4-45.1 *et seq.*).
2. Comparison of the wages, salaries, compensation, hours, and conditions of employment of the Employees involved in the arbitration proceedings with the wages, salaries, compensation, 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., c. (C.) (now pending before the Legislature as this bill); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the Arbitrator's consideration.
 - (b) In comparative private employment.
 - (c) In public and private employment in general.
3. The overall compensation presently received by the Employees, inclusive of direct wages, salary, vacations,

holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

4. Stipulations of the parties.
5. The lawful authority of the Employer. Among the items the Arbitrator or panel of Arbitrators shall assess when considering this factor are the limitations imposed upon the Employer by P.L. 1976, c.68 (C.40A:4-45.1 *et seq.*).
6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the Public Employer is a county or a municipality, the Arbitrator or panel of Arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax: a comparison of the percentage of the municipal purposes element or in the case of a county, the county purposes element required to fund the employees contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services (b) expand existing local programs and services for which public monies 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).

INTEREST AND WELFARE OF THE PUBLIC

The central theme in the Interest Arbitration proofs as well as the basic element of understanding of a County Prosecutor's Office in New Jersey is that the work and resultant costs of a Prosecutor's Office are not part of the problem, rather they are part of the solution. A Prosecutor's Office does not cost money to the public. A Prosecutor's Office saves money for the public. But for the personnel, skill levels, expertise, training, special equipment and unique legal authority of the Prosecutor's Office, the local law enforcement entities would have a much greater workload and would have to be greater in both size of force and equipment available. The Prosecutor's Office in Mercer County saves money for the local jurisdictions within the County of Mercer. But for the Prosecutor's Office the many specialties, many of which are only infrequently used by an individual town, would have to be the subject of preparation, training and necessary equipment to fulfill the law enforcement mission and the public service. The Prosecutor's Office in Mercer County, in addition to their pre-eminence in legal authority, jurisdictional power and unique link to State Government, keep the costs of local law enforcement down. There is a direct savings to the citizens of Mercer County due to the presence, expertise and legal authority of the Mercer County Prosecutor's Office. The sworn members of the Mercer County Prosecutor's Office are not employees of the County of

Mercer. The clear case law establishes their employment relationship to be directly with the Prosecutor whose authority runs directly to the Attorney General of the State of New Jersey. The law is clear on the Employer-Employee relationship between the Prosecutor of a County and the sworn Investigative staff of said Prosecutor. The chain of authority, both operational and fiscal does not run from the Prosecutor through the Board of Freeholders. The Prosecutor is an individual entity and *sui generis* in the law enforcement hierarchy. All powers, authority, direction and responsibility run directly through the County Prosecutor.

The Mercer County Prosecutor's Office personnel form an integral part of the law enforcement community at the State and County level. Many of the roles and specific services provided by this office are unique to this operation and *sui generis* in the field of law enforcement. The employee organizations established through testimony and exhibits the unique nature of Prosecutor Office service within the law enforcement community and the day-to-day working relationship with other Police agencies at the Federal, State and Local level. One of the main purposes of the testimony and proofs introduced at hearing was to establish, not only the most important public service rendered by this office, but, the specific and unique universe of comparison appropriate for application of the statutory criteria.

A primary consideration in evaluation of these sworn Detective/Investigator staff of a Prosecutor's Office under New Jersey Law is

that such employees are not County employees. Here, the bargaining unit Employees are direct Employees of the Prosecutor. The Prosecutor is a constitutional Officer under New Jersey Law and is completely separate and apart from County government. The Prosecutor chain of command runs to the Attorney General of the State of New Jersey. As such the County government does not control Prosecutor operations and cannot control any aspect of the operational authority of the Prosecutor.

The Supreme Court of New Jersey has issued specific opinions regarding the Office of the Prosecutor and has specifically spoken to the issue of Prosecutorial autonomy and the special laws applicable to the Office of the Prosecutor. One such case was the decision of the New Jersey Supreme Court in the case of *In re Application of Bigley*, 55 N.J. 53 (1969). In that case the Supreme Court rejected the argument of a County Freeholder Board that it had final authority on expenditures within the Prosecutor's Office. After reviewing the law back to the 1800s Chief Justice Weintraub wrote as follows:

Hence we conclude under N.J.S.A. 2A:58-7 a judicial officer, now the Assignment Judge for the County, continues to have the final and conclusive authority to approve expenditures beyond the appropriations. The remaining question is whether the statutes dealing with Assistant Prosecutors, County Detectives and County Investigators were intended to negate this overriding authority as to such personnel.

With respect to County Detectives and Investigators, the 1951 revision, N.J.S.A. 2A:157-1 et seq., which fixes the number of such positions, clearly provides in Section 19 (N.J.S.A. 2A:157-19), that the statute shall not be construed 'to limit the power of any Prosecutor, duly conferred upon him by law, to incur expenses in the

detection, arrest, indictment and conviction of offenders against the criminal laws of this state.' Thus the Legislature expressly disavowed an intent to restrain the basic statute of 1874 under which the Prosecutor may go beyond the budget appropriations with the approval of the Assignment Judge. State v. Winne, 12 N.J. 152, 166-167 (1953). In re Bigley, supra., p. 59.

The Freeholders are not the governmental body in control of the Prosecutor's Office. It must be noted that the above quoted decision of the Supreme Court of the State of New Jersey was a unanimous decision with the decision itself being written by the Chief Justice of the New Jersey Supreme Court. The definition and clarity of the law in New Jersey on the subject could not be more clear. Employees in this bargaining unit are Employees of the Prosecutor. It is the Prosecutor that sets the mission and policy of the Prosecutor's Office. The Freeholder Board is not in the chain of command and has no role whatsoever in the investigative direction of the Office.

The role of the sworn Investigative staff in a law enforcement community, or for that matter even on individual law enforcement activity, is not one of assistance only but one of leadership. The powers of a Prosecutor's Office are preemptive and the ultimate decision of how and what services and equipment as well as personnel and fundamental case handling are all prerogatives of the Prosecutor's Office. This refers to all jurisdictions within the County, here the County of Mercer.

An essential consideration in reviewing a Prosecutor's Office, specifically in consideration of the hierarchy of command and investigative power and

further with respect to creating a universe of comparison, is that the Prosecutor is indeed the "Chief Law Enforcement Officer in the county.". The powers of the County Prosecutor preempt local law enforcement. The role of local law enforcement is subordinate to the role of a Prosecutor. If one is to consider the New Jersey Constitution, the Office of Prosecutor is created therein. The word "Municipality" does not appear in the New Jersey Constitution. Municipalities are created by an act of the Legislature. The Legislature itself was created by the Constitution.

Overview and supervision are elements of the preemptive power of the Prosecutor's Office.

COMPARISON OF COMPARABLE LAW ENFORCEMENT UNITS

In considering this criteria one must also consider the nature of work and the type of work environment in which law enforcement salaries are presented to the bargaining unit. One may take arbitral notice that Mercer County is not like all other counties in the State of New Jersey. Of the twenty-one (21) counties in New Jersey only a few are comparable with the inner-city challenges and urban environments to meet in providing essential service. The parties have presented a substantial amount of data on the record with respect to comparable wages among Prosecutor's Offices in New Jersey however it is submitted that the Counties with urban centers and similar work environments to

these Prosecutor's personnel include Bergen County, Essex County, Middlesex County and Camden County. This string of counties running from northeastern New Jersey and the doorstep of New Jersey down to Camden on the doorstep of Philadelphia. It is respectfully submitted that even the Employer's focusing on such issues as population density, unemployment and general economic statistics in its proofs underscores the similarity between Mercer County, Essex County and Camden County. Notably Union County was left off both parties' lists as they do not have a contract since that which had a term through 2012. Of the urban counties then one may question as to where Mercer County fits in a comparison study.

Chart No. 1 on the following page is based on the proofs in evidence illustrating the relative positioning of the Mercer County Prosecutor's Investigator among the Investigator's peers in the noted counties.

CHART NO. 1

COMPARABLE PROSECUTOR'S OFFICE TOP INVESTIGATOR BASE RATES

	2014	2015	2016	2017
Bergen County	\$134,057	\$136,068	\$138,109	
Essex County	\$99,570	\$101,562	\$103,593	\$105,665
Middlesex County	\$111,335	\$113,933	\$115,833	

Camden County	\$105,247	\$106,615		
AVERAGES	\$112,552	\$114,545	\$119,178	
Mercer County Prosecutor's PBA Last Offer Position	\$97,309	\$97,309	\$100,715	\$102,729
Mercer County Prosecutor's PBA Last Offer Compared to Established Averages	(\$15,243)	(\$17,236)	(\$18,463)	

Clearly identified is the last place position of the Mercer County Prosecutor's Investigator base pay among the Investigator's peers listed. Further, the line identified as "Mercer County Prosecutor's PBA Last Offer Position" is set forth in actual dollars generated at Top Step Pay Rate for each of the four (4) years proposed. The first and second year have no wage rate change as zero (0) change is the Proposal. There is reflected a 3.5% change in 2016 and a factored two percent (2%) change in the last year. Notably the number reflected (One Hundred Two Thousand Seven Hundred Twenty-Nine Dollars (\$102,729)) reflects the base pay rate effective April 1, 2017 and not the full rate paid that year. It is actually a higher amount reflected than will actually be paid. The last line on **Chart No. 1** is captioned "Mercer County Prosecutor's PBA Last Offer Compared to Established Averages" and it reflects not only a continued last place position

but a continuing and increasing shortfall against average. No one can say that this PBA is seeking to even catch average. In fact the Last Offer Position acknowledges a vesting of relative positioning over the term of the four (4) year contract.

Chart No. 2 on the following page reflects the wage rates set forth in **Chart No. 1** on the preceding page but here expressed in percentages of change. The Arbitrator is requested to take notice that virtually every law enforcement agency, County, Municipal or State, has some people moving in Steps. While the Employer stresses the cost of Steps in this case, it provides no proofs with respect to the cost of Steps in other work environments where the contracts are in evidence. One may reasonably assume that each of the numbers reflected on **Chart No. 2** on the following page is a base rate increase which is in addition to certain Step costs not calculated nor presented at hearing by the Employer.

CHART NO. 2

COMPARISON PROSECUTOR'S OFFICE INVESTIGATOR RATES OF BASE RATES

	2014	2015	2016	2017
Bergen County		1.5	1.5	
Essex County	2	2	2	2

Middlesex County	2	2	2.5	
Camden County	1.3	1.3		
Mercer County SOA	1.9	1.9	1.9	
AVERAGES	1.8	1.74	1.975	2
Mercer County Prosecutor's PBA Last Offer Position	0.0	0.0	3.5	1.5*
Mercer County Prosecutor's PBA Last Offer Compared to Established Averages	-1.8%	-1.74%	+1.52%	- 0.5%

* Factored Amount Based on Delay Start

Chart No. 2 above reflects the pay rate changes for Top Step Investigators in the comparable Prosecutor's Offices. Once again, the striking shortfall from average is noted as to the Mercer County Prosecutor's PBA Last Offer. In the first year, 2014, the PBA is willing to take no change on the rate schedule which results in a falling back in position of -1.8%. In the second year while the average is 1.74% the PBA in this case is willing to take no change which is 1.74% below average. In the third year, 2016, the average is 1.975% and the PBA is seeking a 3.5% increase. This is 1.52% above the average. In the fourth year, with only one (1) Prosecutor's Office having established a pay rate, one can see the cost of

the increase is actually below average. The cumulative shortfall from averages over the first three (3) years (1.8%, 1.74% and 1.52% increase) is -2.52%. The PBA Position is clearly justified by both **Chart Nos. 1** and **2** above. The pay rates will continue to be last per **Chart No. 1** and the rates of increase will be significantly below average over the four (4) year term pursuant to **Chart No. 2**. Again, it is stressed that all of these agencies may be assumed to have some people in Steps. Absent that information from the Employer there can be no inference in that regard except the comparisons noted above.

As the sole issue with respect to economic change is the rate schedule, the PBA will not at this point discuss the numerous other benefits that these other Prosecutor's Offices have such as the preferred work chart in Bergen County or the longevity programs and other benefits, specifically Senior Officer Differential, in these comparables. Suffice it to say an Award of the PBA's Last Offer Position in this case will ensure a continued last place position.

The Employer counters in the general sense with other Mercer County employees. In the first instance, there is no other Mercer County employee like the Mercer County Prosecutor's Investigator except the Mercer County Prosecutor's Investigator supervisor. That contract has been settled and has been ratified by both parties. The contract with the Mercer County Prosecutor's Office and the SOA, a parallel unit, was marked into evidence and reflects a wage rate change of 1.9% per year in each of three (3) years. It is clear that once again that this amount far exceeds the Last Offer Position presented as a

wage rate change for the PBA. The Employer attempts to counter by saying that the Prosecutor's SOA had not Step Movements except that it omits to say that most of them are senior in office and virtually all have significant longevity benefits which all rise the base rate increase as they are percentage generated. All of those Officers in the Mercer County Prosecutor's Office SOA who have longevity receive an increase in the value of the percentage calculated longevity netting a gross net change well in excess of two percent (2%). It will be hard to find a most close comparable than the Investigator's supervisor working side-by-side, perhaps at the next desk to the Prosecutor Investigator in the same County.

STIPULATIONS OF THE PARTIES

The stipulations of the parties' issue is relevant in this case as the parties have stipulated to several contract changes therefore removing them from the arbitration process. Those changes include a reduction in sick leave benefits for future Employees, combining of holidays resulting in one (1) less holiday for all Employees, an acknowledgement of continued payment of the maximum rate into the health care contribution through the contract term, and a modification of dental insurance sought by the Employer. Each of these have some negative economic impact. The PBA acknowledges that it has agreed to these changes. The PBA however requests the Arbitrator to take note that these are changes

and evidence of forbearance and reduction in benefits made during negotiations. One specific change for example is the reduction of one (1) holiday. The value of the holiday is four-tenths of one percent (0.4%) (one day divided by annual work obligation). The other changes have negative impacts but it is acknowledged that they are difficult to accurately calculate.

COMPARISON OF THE POSITIONS OF THE PBA AND PUBLIC EMPLOYER

The first issue addressed is the term of contract. The PBA seeks a four (4) year contract with a term of January 1, 2014 through December 31, 2017. At the point of Interest Arbitration hearing the parties are already more than one and a half (1½) years into the contract proposed. If three (3) year contract were to be proposed the parties will be back negotiating this time next year. With due respect to all, this is not reasonable. The parties have been negotiating for over a year and a half (1½) as they commenced in the fall of 2013 and have still not reached resolution. If a three (3) year contract were awarded again it would put the parties in virtual constant negotiation for a period of years with little or no respite. This is not a good use of public employee or public employer time, effort, energy or money.

The clear public policy of the State of New Jersey is to provide for labor peace and the avoidance of economic and public waste. The public policy is clearly stated in the PERC statute at N.J.S.A. 34:13A-2 as follows:

It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

The PBA candidly acknowledges that it is trying to induce the Employer, and now the Arbitrator into a four (4) year deal so as to avoid the cost and diversion of constant confrontational negotiation.

The parties had negotiated and exchanged Proposals on a four (4) contract during collective bargaining and through mediation. It was at Interest Arbitration when a final proposal was to be submitted that the Employer rolled back to a three (3) year proposal. As proof of this the PBA submitted an Employer prepared document drafted by the office of David Miller, Deputy Administrator of the County of Mercer, who testified at hearing. The document, *PBA-2*, has at the top; of the last sheet the Employer's four (4) year cost out of Step Movements. On cross-examination at hearing Deputy Administrator Miller

acknowledged that this document *PBA-2* was in fact prepared by his office and was submitted as a part of the negotiation process. He also admitted to the accuracy of the numbers that his office had prepared. How then can one say that it was not in the contemplation of both parties that a four (4) year contract term was appropriate if the Employer itself was preparing four (4) year projections and cost-outs to be submitted and handed across-the-table during negotiations? Clearly, a four (4) year term was in the contemplation of the parties during negotiations and mediation. The PBA is not suggesting nor in any way seeking to break the acknowledged confidence of the mediation process or details of same. It cannot be denied however that throughout the process commencing at direct bargaining a four (4) year deal was in the wind. There can be no question that a four (4) year term is best for all. Even the Employer would be best served by locking in the higher rate of medical premium contribution which, if not resolved through a four (4) year deal would be opened to bargaining in fifteen (15) months.

The Employer's calculations and base statistics upon which those calculations were founded are flawed. While the arithmetic calculations are likely correct, the foundation upon which those calculations are based is incorrect. A key example which was acknowledged by Employer witness Deputy Administrator Miller at hearing was that the people listed as Employees in the bargaining unit were incorrectly calculated on the Salary Charts. In the Employer Booklet at *Tab 5* are sheets which successively captioned "Active

Employees" with showing changes for 2014, 2015 and 2016. In each chart for each of these three (3) years the exhibits stated to have been prepared by witness Miller at hearing carry forward as the first Employee on the list Edmond Kemler. It is significant as Edmond Kemler is show to be getting a twenty-five percent (25%) raise in increases with steps in the first year, 5.28% in the second year and 7.63% in the third year. These increases calculated in dollars are for 2014 - \$13,049.00, for 2015 - \$3,409.00 and for 2016 - \$5,095.00. These are substantial numbers of dollars which were used in the calculations done by Mr. Miller. There is only one problem. Mr. Kemler does not work here and has not worked here since 2014. All of the numbers noted above are incorrect. These are the largest percentage and largest dollar increase in steps in the three (3) years calculated by Mr. Miller. They are all wrong. All of his numbers have to be adjusted downward. Mr. Miller's Charts significantly overstate the cost of Step Movement.

Mr. Miller's calculations of the cost of Step Movement also leave one to question the accuracy of his exhibits and calculations following therefrom. On the first sheet of *Tab 5* of the Employer exhibit is Mr. Miller's calculation of the Step increase for 2014 and 2015, each with no general wage increase. On the last sheet of *PBA-2* are the same calculations prepared by Mr. Miller, pursuant to his own testimony, for years 2014, 2015 and beyond. For the document at *Employer Exhibit T-5* at hearing the cost of Step Movement with no general raise for 2014 was 0.94%. Earlier on *Exhibit T-2* he stated it was 0.88%. For the year

2015 the original calculation on *PBA-2* was 1.11% whereas that increased to 1.22% on the *Employer Exhibit T-5* introduced at hearing. Equally perplexing is the calculation at Mr. Miller's submission at hearing at *Tab 5* where he states the cost for 2016 was 3.84%. When questioned on cross-examination he said that this was actually including the general wage increase proposed by the Employer as part of its Last Offer. That may be however the numbers do not equate again. If the cost for 2016 is 3.84% with an inclusion of a 2.4% across-the-board increase then the increase in step cost would be the difference between 3.84% total cost and the 2.4% increase proposed. The net is 1.44%. Once again we have an overstatement in the documents submitted at hearing compared to the earlier document prepared by Mr. Miller during the negotiation process where he stated it was only 1.3% step cost in 2016 (See *PBA-2*). Mr. Miller's numbers are all over the place. There is no consistency. If there is any consistency it is that he is consistently incorrectly listed the census of people to be considered. He is only consistent in his inconsistency.

Mr. Miller's calculations are inaccurate with respect to the census of Employees to be included for calculation purposes. Having a proper census identified and grouping calculated upon which wage rates may be assessed is essential. In the 2016 sheet of active Employees (*Employer Tab 5*) there is included four (4) members, three (3) of whom retired and one (1) who was promoted out of the bargaining unit during the earlier years. He is using a different statistical base. Even the Employer acknowledges these people have

left. The Employer's acknowledgment is found at *Tab 6* with a sheet showing people who have separated from the bargaining unit. Clearly this was prepared by someone else, apparently by County Counsel and not Mr. Miller. The data is inconsistent and not reliable.

The PBA has noted the Step costs set forth at *PBA-2* for years 2014 through 2017 which appear to be accurate with the exception of Kemler who never got a Step increase although it is included in all their calculations. The amount that these calculations may be corrected by is clearly established in the Employer's own records as to Kemler by just seeing what the amount is stated for Kemler which was never paid. Kemler's Step Movements costs are carried by the Employer as follows:

For 2014 - \$13,049

For 2015 - \$3,409

For 2016 - \$5,095

The total error as to Kemler alone is Twenty-One Thousand Five Hundred Fifty-Three Dollars (\$21,553) in increases but much more in cumulative impact. Kemler would have received the first increase of Thirteen Thousand Forty-Nine Dollars (\$13,049) in 2014 which, would have been paid in the three (3) years of the Miller calculations for a total of Thirty-Nine Thousand One Hundred Forty-Seven Dollars (\$39,147). The second increase of Three Thousand Four Hundred Nine Dollars (\$3,409) would have been paid in years 2015 and 2016 for a total of Six Thousand Eight Hundred Eighteen Dollars (\$6,818) and the final increase on Mr. Miller's charts for 2015 would have been paid once in the amount of Five

Thousand Ninety-Five Dollars (\$5,095). Thus, with respect to former member Kemler who never finished the Academy Mr. Miller's calculations are off by Fifty-One Thousand Sixty Dollars (\$51,060). This is significant. Referring back to PBA-2 one can see the net annual values of Step Movement in dollars as calculated by Mr. Miller himself in each of the four (4) years. The mistake with respect to Kemler is greater than the total Step cost in three (3) of the four (4) years and only a few hundred dollars below it in the fourth year. Mr. Miller's inaccurate data have a significant impact on Step cost by reducing the net impact of said changes.

One may next consider the parameters of arbitral authority in this matter. This may be considered in several ways. First, the PBA suggests that the "Building Block" method of assessment shows that an Award of a twenty percent (20%) cost over four (4) years is within statutory parameters. If the hypothetical Award provided for a two percent (2%) increase in each year it would take twenty percent (20%) to fund it. The first two percent (2%) gets paid four (4) times, the second two percent (2%) three (3) times, the third two percent (2%) twice and the last two percent (2%) once. The total is twenty percent (20%). The total cost of the PBA Position, again using "Building Block" analysis, is nine percent (9%). This is calculated by no change in years one and two with a 3.5% change effective in year three (3) therefore paid twice and a two percent (2%) increase paid once in the last year. In point of fact the last two percent (2%) is only 1.5% net and is really 8.5% but the PBA will acknowledge nine percent (9%). Thus the

PBA's Proposal for change is less than one-half ($\frac{1}{2}$) the amount available by statute.

One may also consider the costs, even using Mr. Miller's erroneous numbers from his calculation at PBA-2. In the first year, 2014, a two percent (2%) statutory amount would be offset by 0.88% for a net value unused of 1.12%. In the second year, 2015, the two percent (2%) is offset by 0.89% for a net value of 1.11%. In the third year if the two percent (2%) is offset by 1.37% there is available 0.63% and in the last year the two percent (2%) is offset by 1.3% with a remaining 0.7%. Again, using the "Building Block" analysis the first number, 1.12% attributable to 2014 is multiplied by four (4) times for a total 4.48%. In the second year, 2015 the available unused amount compared to the statutory amount is 0.89% multiplied by three (3) years for a total of 2.67%. In the third year, the difference between the statutory amount available and the amount shown in Mr. Miller's numbers is two percent (2%) less 1.12% or a 0.8% difference which is to be multiplied by two (2) for 1.74% difference. In the fourth year two percent (2%) compared to the 2017 Miller calculations of 1.3% Step cost is 0.7% which would be effective just once. The total amount of unused two percent (2%) Hard Cap differentiation over the four (4) year term (4.48%/2.67%/1.74%/0.7%) totals 9.59%. In other words, using Mr. Miller's own numbers, which having been established to be incorrect, and an overstatement there is a nine point five-nine percent (9.59%) of available wage increase money under the two percent (2%) Hard Cap.

If one attempts to correct Mr. Miller's numbers by reducing the Step cost attributable to Mr. Kemler in the first year one would subtract from Mr. Miller's (\$32,550) attributed Step cost in 2014 the amount not paid to Kemler as he left and did not even finish the Academy. That amount, pursuant to Mr. Miller's Chart at *Employer Exhibit 5* Chart of Employees in 2014 was Thirteen Thousand Forty-Nine Dollars (\$13,049). Thus the stated Step cost on PBA-2 for 2014 of Thirty-Two Thousand Five Hundred Fifty Dollars (\$32,550) should actually have subtracted from it the amount of Thirteen Thousand Forty-Nine Dollars (\$13,049) leaving a net cost for that year of Nineteen Thousand Five Hundred Seven Dollars (\$19,507). Nineteen Thousand Five Hundred Seven Dollars (\$19,507) as a correction figure for 2014 when compared to Mr. Miller's number of Thirty-Two Thousand Five Hundred Fifty Dollars (\$32,550) is 59.9%. If that factor is applied to Mr. Miller's calculation of a 0.88% cost then the actual cost of Steps should be 0.52% that first year. At that point, multiplying the four (4) years times the 0.3% differential shows the PBA's Position is virtually identical to the target figure. The PBA's Position is correct and precisely within the two percent (2%) Hard Cap limitation over the four (4) year term. Whether one uses the "Building Block" method in which case the PBA Position is significantly below the statutory funding available or the linear projection of Step costs, and using the Employer's own figures, required payments, the PBA's Position is nearly exactly within parameters.

Even if one uses the somewhat simplistic sum of the years' digits analysis the PBA total increase is 5.5% over four (4) years for an average of 1.375%. Since it is back loaded the cost is significantly less and further that the last move is delayed by a quarter of a year reduces even its impact in terms of the to 1.5%. This is truly a bargain for the Employer.

In considering the positions between the parties there is an important offset which must be stressed. The PBA in its stipulations has given up one (1) holiday. The value of a day is four-tenths of a point (0.4) (eight (8) hours divided by two thousand eighty hours ($8 \div 2,080$)). The PBA total position and cost must therefore be factored with a four-tenths percent (0.4%) reduction in cost since there is a four-tenths percent (0.4%) reduction in benefit. The Employer Offer is actually two percent (2%) and not 2.4%. The PBA Position in that last year is actually 1.1% (one and one-half factored less four-tenths of a point). This is a bargain for the Employer.

CONCLUSION

The PBA has presented a package which is within the statutory formula. It meets the two percent (2%) Hard Cap with precision and, when all adjustments are calculated such as the loss of a holiday by stipulation (value four-tenths of one percent (0.4%)) .and a delay in the start of the two percent (2%) in the final year (value of one-half percent (0.5%)) the PBA Position is appropriate for an award. The concept of a three (3) year deal versus a four (4) year deal once again heavily weighs in favor of the PBA Position for the four (4) year deal. The award of four (4) years further would be consistent with the PERC statute earlier cited, N.J.S.A. 34:13A-5.2.

DISCUSSION

I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g). The statutory criteria are as follows:

1. The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
2. Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - a. In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - b. In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995., c. 425 (C. 34:13A-16.2); provided, however 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 the P.L. 1976 c. 68 (C.40A:4-45 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 (C.40A: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 on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in 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).

All of the statutory factors are relevant, but they are not necessarily entitled to equal weight. The party seeking a change to an existing term or condition of employment bears the burden of justifying the proposed change. I considered my decision to award or deny the individual issues in dispute as part of a total package for the terms of the entire award.

Base Salary & Base Salary Cap Calculation

This Award is subject to the 2% base salary cap ["Hard Cap"] imposed by P.L. 2010, c. 105. In Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER 380 (¶ 116 2012), PERC cited standards as they relate to interest arbitration awards having to meet the 2% base salary cap requirements of N.J.S.A. 34:13A-16.7:

P.L. 2010, c. 105 amended the interest arbitration law N.J.S.A. 34:13a-16.7 provides:

- a. As used in this section:
"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided

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

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

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

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

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

PERC continued its discussion of base salary:

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

* * *

....We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with

savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs.

In the consolidated case of Point Pleasant Borough & PBA Local 158/SOA, PERC Dkt. Nos. IA-2012-018 & IA-2012-019 (December 2012), the Arbitrator concluded that he was compelled to apply PERC's standards to the facts of that case. I reached the same conclusion in Camden County Sheriff & PBA Local 277/SOA, PERC Dkt. No. IA-2013-010 (March 2013), Borough of Tenafly & PBA Local 376, PERC Dkt. No. IA-2013-018 (May 2013), Township of Mahwah & PBA Local 143, PERC Dkt. No. IA-2013-022 (May 2013), Borough of Mantoloking & PBA Local 347, PERC Dkt. No. IA-2013-022 (January 2014), Borough of Oakland & PBA Local 164, PERC Dkt. No. IA-2014-044 (May 2015), and continue to do so with respect to this matter.

PERC clarified New Milford in City of Atlantic City & PBA Local 24, PERC Dkt. No. IA-2013-016, P.E.R.C. No. 2013-82:

In New Milford, we acknowledged that parties may not always agree on base salary information and calculations. In those circumstances, the arbitrator must make a determination based on the evidence presented. * * *

Thus, we ... direct ... all public employers in interest arbitration, to provide arbitrators with the required base salary information and calculation. Such information must include, at a minimum, in an acceptable and legible format, the following information:

1. A list of all unit members, their base salary step in the last year of the expired agreement, and their anniversary date of hire;
2. Costs of increments and the specific date on which they are paid;
3. Costs of any other base salary items (longevity, educational costs etc.) and the specific date on which they are paid; and
4. The total cost of all base salary items for the last year of the expired agreement. [footnote omitted].

We further clarify that the above information must be included for officers who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guide in New Milford for avoiding speculation for retirements was applicable to future retirements only.

The County presented calculations of pensionable base salary for 2013 that consisted of salary and longevity. [See Ex. E-5]. The PBA during the interest arbitration hearing held on July 29, 2015 did not challenge the County's "arithmetic calculations" of pensionable base salary for 2013, the composition of the bargaining unit roster as it existed as of December 31, 2013, or the manner in which the County credited bargaining unit members for their longevity and step movement. Based upon the County's calculations, the amount expended on total pensionable base salary for 2013 is \$3,741,091. Based upon this figure, the annual 2% Hard Cap under the statute at the time the County's petition was filed is \$74,822. There were forty-one (41) bargaining unit members on the roster

as of December 31, 2013. The PBA emphasizes that four (4) of the bargaining unit members on the roster as of December 31, 2013 left the County's employment in 2014. The PBA contends that these individuals should not be accounted for in the calculations for the years that follow 2013. However, the PBA's claim runs counter to the standards established by the Commission in New Milford. In sum, the changes to the bargaining unit that occurred after December 31, 2013 (i.e. hires, retirements, promotions, etc.) cannot alter the method of calculation set forth in the well-established case law.

Interests and Welfare of the Public

As I expressed in recent interest arbitration awards, Arbitrators have recognized that "[t]he interests and welfare of the public [N.J.S.A. N.J.S.A. 34:13A-16g(1)] is paramount because it is a criterion that embraces many of the other factors and recognizes their relationships." Borough of Oakland & PBA Local 164, PERC Dkt. No. IA-2014-044 (May 2015), Borough of Mantoloking & PBA Local, PERC Dkt. No. IA-2013-022 (January 2014), Township of Mahwah & PBA Local 143, PERC Dkt. No. IA-2013-022 (May 2013), Borough of Tenafly & PBA Local 376, PERC Dkt. No. IA-2013-018 (May 2013) and Ocean Cty. Sheriff & PBA Local 379A (Superiors), IA-2013-002 (October 2012) citing Washington Tp. & PBA Local 301, IA-2009-053 (Mastriani 2012); see Borough of Roselle Park & PBA Local 27/(SOA), IA-2012-024, IA-2012-026 (Osborn 2012). Having considered the entire

record, the County's ability to pay, the lack of adverse impact, the interests and welfare of the public, and public sector comparability were given greater weight than other factors such as the cost of living and private sector comparability. I now review the interests and welfare criterion through the other statutory factors addressed below.

Lawful Authority of the Employer/Financial Impact on the Governing Unit, Its Residents and Taxpayers/Statutory Restrictions Imposed on the Employer

N.J.S.A. 34:12A-16g(1), (5), (6) and (9) refer to the lawful authority of the employer, the financial impact of the award, and the statutory restrictions imposed on the employer. The County does not claim an inability to pay up to the applicable statutory permitted levels and has demonstrated a willingness to provide maximum increases under the Hard Cap. The increases I award herein do not exceed the maximum allowable amount permitted over a period of three (3) years. I conclude that this Award will not have an adverse impact upon the County, its taxpayers and residents, and it will not prohibit the County from meeting its statutory obligations or cause it to exceed its lawful authority. Further, this Award serves the interests and welfare of the public through a thorough weighing of the statutory criteria after due consideration to the Hard Cap.

Comparability

Private Employment

Given the unique nature of law enforcement jobs, the comparison to private employment has not been allotted significant weight in previous interest arbitration awards. There continues to be an absence of evidence to support a deviation from giving greater weight to public sector comparisons.

Public Employment in General/In the Same or Similar Jurisdictions

With respect to public employment, the parties presented comparisons of this bargaining unit to similar units in the Prosecutor's Offices other counties. [See Ex. E-45]. Comparisons were also drawn to the County Prosecutor's SOA unit. The external and internal public sector comparisons are deserving of greater weight than any private sector comparisons.

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards that were subject to the 2% annual base salary increase cap was 1.89% from January 1, 2013 through December 31, 2013, and 1.69% from January 1, 2014 through December 31, 2014. Over the same time periods, reported voluntary settlements for 2% cap

cases averaged 2.13% and 1.47%. I considered this information in rendering the final award.

I have reviewed the parties' comparisons and conclude that this bargaining unit enjoys a host of competitive economic benefits that fall within the range of those received in other law enforcement units. These comparisons were considered and weighed along with all of the other statutory factors.

Overall Compensation

The evidence in this matter, as demonstrated by the parties' exhibits and the comparisons outlined above, shows that the overall compensation received by the bargaining unit members is fair, reasonable and competitive. I conclude that this Award will serve the interests and welfare of the public given that the total base salary calculations will not exceed the Hard Cap and the term of the agreement will coincide with the SOA's.

Stipulations of the Parties

The parties agreed to include the following modifications in the successor Agreement:

1. Article 7.1. – Amend to provide, “Employees shall contribute amounts as set forth by Chapter 78, P.L. 2011. Once full implementation is reached, the contributions shall remain at the maximum level of contribution set forth in Chapter 78, P.L. 2011 for the remainder of this Collective Negotiations Agreement, through December 31, 2016.”
2. Article 7.5 – Amend to provide for the payment of accumulated sick time up to a maximum of \$15,000.
3. Article 7.6 – Delete and amend to say: “The County agrees to provide a Dental Insurance Program to eligible Employees as follows: (1) Basic Dental coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance. The County will pay all of the costs of the basic dental program. Employees shall be responsible for any additional costs associated with the Premium Dental Program or the Eastern Dental Program in excess of the cost for basic coverage.
4. Article 12 – Combine Lincoln's Birthday and Washington's Birthday into President's Day.

The Cost of Living

The most recent statistics from the U.S. Bureau of Labor Statistics' website show the following CPI for All Urban Consumers:

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2005	3.0	3.0	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.4
2006	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.2
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.8
2008	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	3.8
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.4
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	1.6
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	3.2
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.1
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.6
2015	-0.1	0.0	-0.1	-0.2	0.0	0.1							

I considered this criterion but give it little weight as it does not have an impact on the increases awarded herein that will not exceed the Hard Cap over a period of three (3) years.

Continuity and Stability of Employment

This criterion was considered in my review of the evidence. I conclude that the modifications awarded herein are reasonable under the circumstances presented and will maintain the continuity and stability of employment as best as feasible given the impact of the Hard Cap in this case.

Having addressed all of the statutory criteria I now turn to the modifications/proposals that I award.

Awarded Modifications/Proposals

Term of Agreement

The County proposes a term of three (3) years – January 1, 2014 through December 31, 2016. The Union did not concretely provide a final offer that included a definitive contract duration until the commencement of the interest arbitration hearing. At that time, the Union orally presented a final offer that included a term of four (4) years – January 1, 2014 through December 31, 2017. The County objected to the timeliness of this proposal because it was raised at the hearing for the first time. I find it significant that the collective negotiations agreement for the County Prosecutor's SOA unit is set to expire on December 31, 2016. Notwithstanding the County's procedural objection, I conclude that a term of three (3) years – January 1, 2014 through December 31, 2016 is the more reasonable proposal on contract duration. This will allow the expiration of the collective negotiations agreement for the Rank and File to coincide with the expiration date for the SOA contract. This will allow the County and the employee organizations to negotiate new contracts based upon budgetary and economic circumstances that exist at that time and all relevant statutory

criteria. The interests and welfare of the public will be served by providing labor-management stability that will be promoted by common contract durations.

Salary/Salary Guide/Cost Analysis

There were 41 bargaining unit members in 2013. Only one of those members was hired in 2013 – Edmund Kemler on January 7, 2013. There were no retirements in 2013. The County calculated the amount expended for total pensionable base salary for 2013 as including salary and longevity to be \$3,741,091. My calculations are based upon the County's representations as to how step and longevity movement take place in 2014, 2015 and 2016 for the officers on the roster as of December 31, 2013. [Ex. E-5]. Hires, retirements and departures after December 31, 2013 did not factor into my analysis.

Appendix A of the expired Agreement includes annual base wages. Set forth below are the annual base wages effective as of January 1, 2013:

Step 8 (Max)	\$97,309
Step 7	\$85,555
Step 6	\$78,729
Step 5	\$75,325
Step 4	\$71,920
Step 3	\$68,510
Step 2	\$65,101
Step 1	\$61,692
Academy Rate	\$50,348

Step movement occurs annually on July 1st in accordance with Article 6.3.

The annual Hard Cap is \$74,822. Applying the Hard Cap to this case, and having considered all of the statutory criteria, I award the following. The salary guide as structured in 2013 shall be frozen for the duration of the 2014 and 2015. Effective January 1, 2016, the steps shall be upwardly adjusted by approximately 2.31%:

Step 8 (Max)	\$99,556
Step 7	\$87,530
Step 6	\$80,547
Step 5	\$77,064
Step 4	\$73,581
Step 3	\$70,092
Step 2	\$66,604
Step 1	\$63,116
Academy Rate	\$51,510

Advancement on steps and longevity for current employees each year shall continue in accordance with the 2011-2013 Agreement.

In accordance with PERC's standards, by utilizing the same complement of officers employed by the Borough as of December 31, 2013 over a term of three (3) years, and assuming for the purposes of comparison there are no resignations, retirements, promotions or additional hires, the increases to base

salary awarded herein increase the total base salary including annual base salary and longevity:

		<u>Total Base Salary</u>	<u>Increase from Prior Year</u>
Base Year	2013	\$ 3,741,091	
	2014	\$ 3,776,191	\$ 35,100
	2015	\$ 3,822,309	\$ 46,118
	2016	\$ 3,965,557	\$143,248
	Total Increase		\$224,466

All compensation is effective and retroactive to January 1, 2014.

CONCLUSION

I conclude that the terms of this Award are in line with the maximum salary increase that is allowable by law and represent a reasonable determination of the issues.

AWARD

1. Term. Three (3) years – Effective January 1, 2014 through December 31, 2016.
2. Salary/Salary Guide/Longevity. The salary guides shall be frozen as they existed in 2013 for 2014 and 2015, with an upward adjustment of approximately 2.31% effective January 1, 2016. Advancement on steps and longevity pay shall continue in accordance with the 2010-2013 Agreement. All compensation is effective and retroactive to January 1, 2014.

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

Dated: August 10, 2015
Sea Girt, New Jersey


Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this th 10 day of AUGUST, 2015, before me personally came and appeared Robert C. Gifford 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.

Linda L Gifford
Notary Public
Expires 1-10-2016