

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Arbitration Between:

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**COUNTY OF BURLINGTON,  
BURLINGTON COUNTY SHERIFF**

“Public Employer,”

- and -

**FRATERNAL ORDER OF POLICE, LODGE 166**

“Union.”

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2009-102

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the County:**

Alan Schmoll, Esq.  
Carmen Saginario, Esq. on the Brief  
Capehart & Scatchard

**For the Union:**

James M. Mets, Esq.  
Brian J. Manetta, Esq.  
Mets, Schiro & McGovern

Pursuant to a petition to initiate compulsory interest arbitration filed by the FOP Lodge 166 [the "FOP"], I was designated to serve as interest arbitrator by the New Jersey Public Employment Relations Commission. The FOP is a party to a collective negotiations agreement [the "Agreement"] with the public employer, the Sheriff of Burlington County [the "Sheriff"] and the County of Burlington [the "County"] which expired on December 31, 2008. For the purpose of identifying this collective or joint employer, reference will only be made to the "County" but the use of that term shall include the Sheriff. The negotiations unit consists of forty-eight (48) rank and file Sheriff's Officers, seven (7) Sergeants and one (1) Lieutenant.

This proceeding has a somewhat unique history. Direct negotiations commenced in 2008 followed by two mediation sessions in 2009 with a previously appointed interest arbitrator. Subsequently, I was appointed to replace the originally appointed arbitrator. Pursuant to that appointment, pre-interest arbitration mediation sessions were held in Mount Holly, New Jersey on July 20 and October 19, 2011. Although the number of issues in dispute were narrowed during the mediation sessions, the impasse remained. In the meantime, an interest arbitration award issued on August 19, 2011 between the County and PBA Local 249 covering County Corrections Officers. Because mediation efforts were not successful, an interest arbitration hearing was then scheduled on January 19, 2012. Final Offers were submitted prior to hearing. At

the January 19, 2012 hearing, an additional attempt at voluntary resolution as made but was unsuccessful. After discussion with the parties, they stipulated to the development of a record of the proceeding as accurately summarized in the County's brief:

1. FOP 166 would submit the transcript of the testimony of its financial expert, Joseph Petrucelli (both direct and cross-examination) taken in the County of Burlington v. PBA Local 249 Corrections Officers interest arbitration as well as the report of Petrucelli marked as Exhibit U-2 in the PBA 249 arbitration. (This interest arbitration resulted in an award by Arbitrator Timothy Hundley for the corrections officers dated August 15, 2011, of 2.5% for 2009, 2.0% for 2010, and 1.5% for 2011.)
2. FOP 166 would submit a report by its financial expert analyzing the ability of the County to compensate Sheriffs officers represented by POP Local 166 in this matter under the Collective Bargaining Agreement which expired December 31, 2008.
3. The County and Sheriff would submit the testimony of Human Resources Director Daniel Hornickel which was taken in the most recent PBA 249 interest arbitration.
4. The County and Sheriff would submit a certification regarding the financial issues surrounding the parties' positions in the FOP Local 166 matter.
5. Arbitrator Mastriani would determine whether a hearing and/or additional testimony is necessary.

Because I deemed the record to be comprehensive, no additional testimony was required. The parties filed post-hearing briefs and reply briefs with additional certifications. The record was closed upon receipt of the last submission on September 1, 2012.

## **FINAL OFFERS**

The statute requires each party to submit a last or final offer prior to hearing. I have set forth below the last or final offer of each party.

### **LAST OFFER OF THE FOP**

#### **1. ARTICLE VI. SALARIES**

##### **A.**

<u>Step</u>	<u>Current</u>	<u>1/1/09</u>	<u>1/1/10</u>	<u>1/1/11</u>	<u>1/1/12</u>
Pre PTC		\$29,000	\$29,000	\$29,000	\$29,000
Step 1	\$38,020	\$39,161	\$40,335	\$41,545	\$42,792
Step 2	\$40,360	\$41,571	\$42,818	\$44,102	\$45,426
Step 3	\$42,449	\$43,722	\$45,034	\$46,385	\$47,777
Step 4	\$44,507	\$45,842	\$47,217	\$48,634	\$50,093
Step 5	\$49,134	\$50,608	\$52,126	\$53,690	\$55,301
Step 6	\$53,813	\$55,427	\$57,090	\$58,803	\$60,567
Step 7	\$62,000	\$63,860	\$65,776	\$67,749	\$69,782
Senior Step	N/A	\$68,650	\$70,709	\$72,830	\$75,015

On January 1 of each year, an officer shall move horizontally on each step, on his anniversary date, an officer shall move vertically on each step.

The step guide shall survive the expiration of the contract.

Senior step requires a minimum of 9 years of PFRS service credit. The senior designation shall be designated by the wearing of two hashmarks on the officer's uniform sleeve.

<u>Step</u>	<u>Current</u>	<u>1/1/09</u>	<u>1/1/10</u>	<u>1/1/11</u>	<u>1/1/12</u>
Sgt. 1	\$65,720	\$72,768	\$74,952	\$77,200	\$79,516
Sgt. 2	\$69,440	\$76,887	\$79,194	\$81,570	\$84,017
Lt. 1			\$83,946	\$86,464	\$89,058
Lt. 2	\$73,606	\$86,114	\$88,697	\$91,358	\$94,099

A first step Sgt. Shall maintain a 6.0% differential above senior step; a second step Sgt. Shall maintain a 12% differential above senior step; a First Step Lt. shall maintain a 6% differential above a Second Step Sgt. And a Second Step Lt. shall maintain a 12% differential above a Second Step Sgt.

- B. D. Officers assigned to the K-9 unit and those who are EMT certified shall receive a \$4,000.00 and \$2,000.00 per annum stipend, respectively. The stipend shall be paid in the first pay of January for the preceding year for the K-9 stipend. If an officer is not assigned to the K-9 unit for a full year, he shall receive the stipend based on a 1/12<sup>th</sup> pro-ration. That is, for each month or part of a month he serves in the K-9 Unit, he shall receive 1/12<sup>th</sup> of the stipend. The EMT stipend shall be paid in the first pay period of January of each year. If an officer receives his EMT certification after the first pay period in January, he shall receive the first stipend within 30 days of his presentation of proof to the Sheriff and thereafter, the first pay period of each January.

2. ARTICLE VIII – OVERTIME

- A. Replace paragraph E with: Whenever an Officer is required to appear in Court as a result of a job related incident, other than during such Officer's regular duty hours, such Officer shall be compensated at the overtime rate for a minimum of 4 hours. Officers shall be allowed to leave once their testimony or participation in the case is completed. Officers shall provide seven (7) days notice if available. However, if such notice is not available, the officer shall notify the Sheriff or designee as soon as reasonably possible. Court overtime shall not be counted towards equalization.
- B. Replace paragraph G with: Overtime compensation shall be granted for any time worked outside the regular shift (i.e., the number of work hours in a workday) as set forth under Article VII, Paragraph B with the exception of a change in an Officer's regular shift pursuant to Article VII, Paragraph C.
- C. Replace paragraph I with: Whenever any Officer is called to work on the Officer's off duty time after signing off for the day, the Officer shall be paid or receive compensatory time off at the officer's election subject to the provisions of Paragraph "L" and at the overtime rate for a minimum of four (4) hours or for actual time worked, whichever is greater.
- D. Replace paragraph J with: The overtime rate shall be one and one-half (1 ½) times the regular hourly rate for the particular Officer involved for all overtime worked other than

as set forth in Paragraph "K". The hourly rate shall be computed as follows: The annual salary of the employee shall be divided by the number of working days per year, the product of which shall be divided by eight (8).

3. ARTICLE XI – SICK LEAVE

- A. Add new paragraph L: Each Officer shall have the option to cash-in up to 35 days of accumulated, unused sick leave annually. To be eligible, the officer must maintain a minimum of 50 days of accumulated sick time and shall provide the County with 30 days' notice prior to April 1 of his intent to cash-in sick time. Payments shall be made in the first pay period of June after notice of cash-in at the Officer's hourly rate of pay in effect at the time he elected to cash-in.
- B. Add a new paragraph M: Officers shall also be paid the following sick time incentive payments:
  - 1. 0 sick days in a calendar year \$1000.00
  - 2. 1 sick day in a calendar year \$800.00
  - 3. 2 sick days in a calendar year \$600.00

4. ARTICLE XII – INJURY AND DISABILITY LEAVE

- A. Replace paragraph B with the following: Any employee who is disabled for a period of more than five (5) consecutive working days as a result of an occupational injury or illness directly related to the unique duties and responsibilities of a Sheriff's Officer shall be granted a leave of absence with full pay for the entire period of disability; however, such leave of absence is limited to a maximum period of one (1) year from the date of injury or illness. In the event that five (5) or more sick days are charged against the employee, said sick days shall be returned and credited to the employee's sick leave bank. A disability determination panel (DDP) consisting of the Freeholder Director, or designee, the Sheriff, 2 FOP bargaining unit members, and a mutually agreed upon neutral third party member chosen by the Sheriff and the FOP shall determine whether an injury is directly attributable to the unique duties of a Sheriff's Officer. The determination made by the panel shall be binding. Payment for such disability shall not be in addition to Workers' Compensation Benefits. This paragraph shall not be applicable to, and specifically excludes any claims, filings, or conditions which were made or existed prior to the date of execution of this

Agreement. Deadlocks shall be submitted to arbitration pursuant to Article XXX.

5. ARTICLE XVIII – FAMILY LEAVE

Replace with: Family leave as set forth in N.J.S.A. 34:11B-1 et seq. and the Federal Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq. shall be available to all employees covered under this Agreement pursuant to the terms of those acts. Officers shall not be required to, but may at their option, use paid leave time prior to or concurrent with FMLA/FLA. In addition, an officer may not be involuntarily placed on FMLA/FLA.

6. ARTICLE XXIV – RETIREMENT

- A. Replace paragraph B with: Employees who have retired prior to December 5, 1994, with twenty-five (25) years or more of credited service in a State or locally operated pension system and at least 10 years of service to Burlington County shall have his/her (including dependent coverage) Hospital, Surgical and Major Medical or Health Maintenance (HMO) benefits premium paid by the County. The Employer shall pay up to the same amount toward HMO coverage that it contributes toward basic coverage for each such retiree. Any additional cost for HMO coverage or coverage for eligible dependents shall be the sole responsibility of the retiree. If an employee is eligible for Medicare "A" and "B", Medicare shall become primary coverage and the County plan, secondary.
- B. Replace paragraph C with: Any Officer who has retired, or retires after December 5, 1994, and who qualifies for paid health benefits (including dependent coverage) upon retirement based upon twenty-five (25) or more years of credited service with Burlington County as set forth in paragraph B above, shall receive the health benefits plan in effect for the negotiations unit at the time of his/her retirement. Any subsequent changes in the health plan which are negotiated between the parties for the employees in the unit will also apply to those Officers who have retired after the effective date of this Agreement. If an employee is eligible for Medicare "A" and "B", Medicare shall become primary coverage and the County plan, secondary. The County shall continue its current practice of payment of full coverage for the first ninety (90) days following the date of retirement regardless of the number of years of service.

7. ARTICLE XLV – TERM AND RENEWAL

January 1, 2009 through December 21, 2012.

**LAST OFFER OF THE EMPLOYER**

1. ARTICLE IV – DISCRIMINATION AND COERCION  
[Agreement 12/3/2008]

Add/Clarify to include: sex, age, nationality, race, religion, marital status, political status, political affiliation, sexual orientation, gender expression (as defined under NJ State law), national origin, color, handicap, union membership, union activities, or the exercise of any concerted rights or activities or any other legally protected class.

(New): The Association and the Employer shall continue to discourage bias, prejudice and bigotry, and foster understanding of others in the workforce regardless of race, creed, color, national origin, sexual preference, gender and its expression, age, or physical condition.

2. ARTICLE VI – SALARIES<sup>1</sup>

1/1/2009: 2.5% across the board  
1/1/2010: 2.0% across the board  
1/1/2011: 1.5% across the board

3. ARTICLE VII – WORK SCHEDULES

Par. B. Change 7:00 a.m. to 6:00 a.m.

4. ARTICLE VIII – OVERTIME

Par. A. Add phrase “by unit assignment” after the words “distributed equally and by seniority.”

Par. B. Eliminate and re-label remaining paragraphs.

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<sup>1</sup> In its August 2, 2012 post-hearing brief, the County offers argument in support of its request for the arbitrator to issue an award in a percentage amount that is less than what it proposed as its final offer. In response, the FOP urges rejection of the County's request. Their positions on this issue will be addressed in detail in the discussion of salary section of the award.



(New) Par. N. Officers assigned to the K-9 unit will receive an additional two (2) ours of pay weekly, at the overtime rate, for off-duty care of their canine partners and for answering telephone inquiries. All off-duty K-9 service call outs must be approved by the Unit Supervisor. Upon arrival, the officer will be compensated at the appropriate rate based upon the number of hours worked in the work week that the time was earned. The Sheriff shall retain the discretion to select officers to whom to assign K-9 duties. [Agreement 12/3/2008]

5. ARTICLE XXI – UNIFORM ALLOWANCE

Par. C – Delete “Summer Hat” and “Winter Hat” and replace with “Hat with rain cover”; change “double handcuff case” to “single handcuff case”; correct “name tag, gold” from (officer) to (superior); Delete “holder, badge: I.D. Model 7208, safariland” and replace with “ID holder”; Eliminate all references to “safariland”; Change “Vest, safariland hyper-light, level III A” to “Vest, Level III, as determined by the Sheriff.” [Agreement 12/3/2008]

6. ARTICLE XXII – HEALTH BENEFITS

A. Health Benefits: Family Hospital, Surgical and Major Medical or other benefits shall be available for all full-time employees on the first of the month after three (3) months of service pursuant to the following provisions:

1. All employees shall be covered by a non-contributory comprehensive County self-funded medical, optical and prescription plan to include co-pays as follows:

	Doctor's Visits	Prescription Generic	Brand Preferred	Brand Non- Pref.
01/01/09:	\$20.00	\$0.00	\$30.00	\$45.00

Additionally, visits to the emergency room will have the following co-pays: \$50.00

Pre-certification and second opinion deductible for non-compliance shall be \$500.

The annual deductible for using out-of-network providers shall be \$400 for single coverage and \$600 for family coverage.

After the first 90 days a prescription has been filled, all maintenance medications (with the exception of insulin for

diabetics) must be filled via Mail Order (examples of maintenance medications include high blood pressure, cholesterol, kidney and heart medications, etc.). Mail Order medications for a 90 day supply shall cost one-and-a-half times (1.5x) the applicable retail co-pay indicated above.

All prescription medications must be processed through a pharmaceutical clinical case management program through the prescription third-party administrator (TPA). As a pre-condition to using the prescription benefits plan, all employees must sign a HIPAA compliant release enabling the health benefits third-party administrator to share protected health information (PHI) with the prescription benefits TPA.

A copy of this plan shall be provided to each employee. In the case of a husband and wife working for the County, the employee with the earliest hire date shall be listed for coverage and the other spouse will not have separate coverage. If, for any reason, the subscriber has/his coverage terminated, the spouse shall be added immediately. The children dependents of the employee shall be covered until the end of the month in which they reach the age of 19, or if the dependent (as evidenced by being claimed on the employee's Federal income tax), is in school as a full-time student, until the end of the month in which they reach the age 23. Employees must submit a copy of their Federal 1040 tax form and information from the school that demonstrates that the child is still a dependent and still in school.

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F. IRS plans (New)

The County will continue to provide the opportunity for employees to set aside a portion of their pre-tax salary into an IRS Section 125 account to be utilized for unreimbursed medical and dependent care expenses. [Agreement 1/19/12]

7. ARTICLE XXIV – RETIREMENT

- A. Each employee in the classified service who has been granted sick leave shall be entitled upon retirement to receive a lump sum payment as supplemental compensation for each full day of earned and unused accumulated sick leave which is credited to him on the effective date of his retirement.

1. The amount of the supplemental compensation payment shall be computed at the rate of one half (1/2) of eligible employee's daily rate of pay for each day of earned and unused accumulated sick leave based upon the average annual compensation received during the last year of his employment prior to the effective date of his retirement. Lump sum supplemental compensation payment shall be made in compliance with N.J.S.A. 11 A: 6-19.
2. Payment shall be made in January next following the date of retirement provided the employee has given his Department Head written notice of retirement at least six (6) months prior to date thereof. Failure to give such notice shall result in a delay of payment to the second January next following the day of retirement. In emergent or unusual circumstances, such notice may be waived.

B. All employees who have retired or who shall retire with twenty-five (25) years or more of credited service to Burlington County shall be covered by a comprehensive, County self-funded, medical plan. Prior to being eligible for the benefits as listed in paragraphs B and C of this article, all retirees who are sixty-five (65) years or older must be carriers of Medicare A & B. Twenty-five (25) years of service, for the purposes of health benefits in retirement, shall include a minimum of twenty years of full-time service, with the last five years of service being full-time. Any leaves of absence without pay that, collectively, are in excess of twelve months shall not count toward the twenty-five years needed for health benefits to be paid for by the County in retirement, provided, however, that any FMLA leave, any military leave and or any workers' compensation leave shall count toward the twenty-five years.

C. The County shall continue its current practice of payment of full coverage for the first ninety (90) days following the date of retirement regardless of the number of years of service. If an employee has taken a leave of absence in the twelve months preceding retirement, the employee shall have coverage for the difference between the amount of leave previously taken and the 90 days heretofore described.

8. ARTICLE XXXIII – BILL OF RIGHTS

New Par. 10. Add language to the effect, "Sheriff's Officers questioned as witnesses in departmental investigations shall not have a right to a union representative or legal counsel. If during questioning the employee becomes a target of a departmental investigation, he or she shall be entitled to protections afforded in Paragraphs 1 - 9 above."

### **BACKGROUND**

The County of Burlington has forty (40) member municipalities. The County Administration Building and its Court facility where a majority of unit employees work are located in Mount Holly. The County has 450,000 residents and has grown by approximately 60,000 residents between 1990 and 2010. In 2010, the mean household income was \$92,523 and the median household income was \$76,258.

The FOP Lodge 166 Sheriff's Officer's Unit is one of nine County bargaining units. The other units are as follows: PBA Local 320 (Prosecutor's Sergeants and Lieutenants), PBA Local 320 (Prosecutor's Detectives and Investigators), PBA Local 249 (Corrections), PBA Local 249 (Superior Corrections Officers), the Assistant Prosecutor's Association, CWA Local 1034 (Highway Supervisory Members), CWA Local 1036 (County employees), CWA Local 1036 (Prosecutor's Office Clerical) and CWA Local 1034 (Superintendent of Elections Members).

As previously stated, the Sheriff's office employs forty-eight (48) rank and file Sheriff's Officers, seven (7) Sergeants and one (1) Lieutenant. The scope of

the office's responsibilities is broad. The Sheriff's Department is divided into two major parts: the Administrative Division and the Operations Division. The Administrative Division is overseen by the Under Sheriff. Within the Division are the Special Investigations Unit, the Civil Process Unit and the Community Services Unit. The Civil Process Unit Administers foreclosures, sheriff's sales, summonses and complaints and writs of execution and waivers, while the Community Services Unit administers home security, defensive driving, youth programs and senior programs. The Operations Division is overseen by the Sheriff's Officer Chief. The Courts Unit includes courtroom security, prisoner transportation, security screening, training, emergency response teams, community policing, emergency medical conditions, domestic violence and the youth development camp. The Warrant Unit administers child support, fugitive, internal affairs and K-9. The Sheriff's Officer Chief also oversees the Divisions many committees that include traffic safety, anti-terrorism, gang prevention and law enforcement liaison.

The Sheriff's Department provides security to five buildings: (1) the County Administration Building in Mount Holly, (2) the Courts Facility in Mount Holly, (3) the Olde Historic Courthouse in Mount Holly, (4) the Human Services Building in Westhampton and (5) the 50 Rancocas Building in Mount Holly. The majority of unit members serve in the Courts Division. This Division is responsible for the safety and security of all persons in the Burlington County Complex. Unit members provide security screening at the entrances of the four

(4) court buildings in the complex as well as in each criminal courtroom. In addition, FOP unit members in the Courts Division are responsible for transporting prisoners to and from court and provide security to the County's Human Services Building. The Sheriff's Emergency Response Team, which consists of officers specially trained to respond to active shooter or hostage situations, is also part of the Courts Division.

Virtually all of the issues in dispute are economic in nature as that term is defined by statute. They include salaries, overtime, sick leave, injury and disability leave, family leave, retirement health benefits, work schedules, uniform allowance and health benefits. Non-economic issues include the bill of rights, duration and discrimination and coercion provisions. The parties engaged in several stipulations. They are set forth in the Discussion section.

The evidentiary submissions of the parties are broad in scope. The factual submissions that concern raw budgetary data are not in substantial dispute but there are sharp disagreements as to their interpretation and application to the issues in dispute. The most significant areas of disagreement center on how the County's finances impact upon the economic terms that should be awarded and on comparisons of wages and benefits received by unit employees compared to those performing similar work in comparable jurisdictions and to those employed by the County of Burlington.<sup>2</sup> The parties

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<sup>2</sup> In the summary of the parties' positions, I have not addressed all of the statutory criteria nor arguments with respect to individual items that extend beyond the main issue of salary. The arguments and evidence with respect to those items will be set forth individually in my analysis and award on each individual issue.

also disagree on what jurisdictions should serve as the basis for performing the most relevant and accurate analysis of comparability. For the purpose of placing the parties' evidentiary submissions in proper context, I will provide a brief overview of their major points of contention.

### **Position of FOP Lodge 166**

The FOP contends that its proposal for 3% across the board wage increases for years 2009, 2010, 2011 and 2012 serves the interests and welfare of the public because Sheriff's Officers have historically been underpaid, are one of the lowest paid sheriff department units in the state and expertly provide for the safety and security of the County's residents. It contends that its proposal would improve the morale of a highly productive workforce that performs many critical law enforcement services to the public while the County's proposal would destroy the morale of unit members and create instability in employment by compelling highly trained Sheriff's Officers to look elsewhere for employment. The FOP also notes that wages have been eroded by legislation enacted after the expiration of the last labor agreement that required additional payments and contributions by unit members towards the PFRS pension system and health insurance. The FOP also sees the additional contributions towards health insurance as enhancing the County's existing favorable financial condition and as additional support for the County's ability to finance the FOP's wage proposal. The FOP offers substantial evidence in support of its contention that the County is financially able to support the wage increases sought by the FOP within the

statutory limitations on its ability to raise revenue, and without adverse financial impact on the governing body, its residents and taxpayers. The County, in its submission, sharply disputes the FOP's conclusions about the state of its finances.

The record offered by the FOP incorporates the testimony offered by Joseph R. Petrucelli, CPA, FCPA in a prior proceeding involving the County and PBA Local 249 (Corrections Officers)<sup>3</sup> and a thirty-one (31) page Financial Report with twenty-one (21) supporting exhibits dated April 16, 2012. The FOP makes reference to Petrucelli's report in its August 3, 2012 post-hearing brief and August 31, 2012 reply brief. The main points emphasized in the Report are as follows<sup>4</sup>:

- The County has \$386,053.81 left in reserve in the Sheriff's Office salaries and wages from 2010 and \$41,479.05 from 2009.
- The County has continually regenerated surplus each year and has an available 2011 fund balance of \$5,417,030.14 after utilizing \$8,000,000.00 in the 2011 budget.
- The County's actual revenue raised by taxation is guaranteed because, by statute, the County receives its full budgeted revenue to be raised by taxation each year as reflected in the fact that the actual revenue collected from taxation is the identical amount that the County estimated revenue to be raised by taxation for calendar years 2005-2011.
- The economic impact of maintaining the Sheriff's department is small. The 2011 annual County general tax rate increase allocated to the cost of the Sheriff's department was \$0.26.

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<sup>3</sup> Petrucelli is the managing partner for PPND Accounting Services Inc.

<sup>4</sup> The points of emphasis in the report are supported by many charts and graphs referencing audited and unaudited annual financial statements, annual budgets, and analyses of spending and tax levy caps.



- The County's revenues have grown from \$138,630,000.00 to \$154,250,000.00 between 2005 and 2011.
- The County has increased its budgeted revenues by \$57,834,138.10 or 59.98% from January 1, 2000 to January 1, 2011. This represents an average annual increase of 5.45% in budgeted, estimated revenues to be raised by taxation.
- The value of the County (average taxable value) grew over 94.41% ( $\$122,890.42/\$130,168.09$ ) or an annual average of 8.583%. The average equalized home value was \$130,168.09 in 2000 and \$253,058.50 in 2011 which represents a person buying a home in the County in 2010 had an average equalized inflation factor for January 1, 2001 to January 1, 2012 of 8.583% ( $94.41\%/11$ ).
- The County has continually had appropriation revenues which arise out of spending less than budgeted and per the Audited Financial Statement as of December 31, 2010 had \$14,825,033.18 available for future spending in 2011.
- The County has continually had additional revenues it did not anticipate and per the Audited Financial Statement as of December 31, 2011 had additional revenue of \$1,354,427.17.
- Since 2006, the Sheriff's department has generated miscellaneous revenues for the County. The \$157,918.92 of sheriff's fees collected in 2011 represents 3.04% of the 2011 budgeted Sheriff's salaries and wages ( $157,918.92/\$5,202,235.00$ ).
- The County has historically generated excess results from operations. This means that there was more revenue being collected than budgeted and/or less appropriations being spent than budgeted (Unexpended Appropriations). Budgets in general are supposed to balance. In the case of the Burlington County budget, the County's 2011 excess results represents 0.78% ( $\$1,793,831.15/\$229,779,159.18$ ) less spending than budgeted and unbudgeted revenues. This indicates the budget performed well.
- The County has significant remaining borrowing ability due to its low outstanding net debt. The County has \$379,858,497.98 of net debt and a resulting net debt percentage of 0.74%. This indicates that the County has significant remaining borrowing ability in the amount of \$643,924,780.66. The County's low net debt percentage is below the statutory debt limit and therefore the County has significant statutory borrowing power available. This indicates that the County is not financially extended. In addition, the County has

maintained an Aa2 bond rating from Moody's and the County was issued an AA bond rating from Standard & Poor's on its latest bond offering.

- The County has continually had an increase in the tax base which allowed it to increase its overall tax levy. The increase in valuation within the County, based solely on application of the preceding year's County tax rate to the apportionment valuation of new construction or improvements within the County (new ratable), was \$578,161.00 in 2011 (Tab 13) and \$836,331.00 in 2010 (Tab 14). This increase in the tax base resulted in an increase to the County cap limitation calculation and allowed the County to increase the overall tax levy. The County presently has no issue with the cap limits.
- The County has reduced its tax rate for 22 years in a row. The County has also reduced the percentage of operations that are funded by taxpayers. In 2010, 68.4% of the County's operations were funded by taxpayers; while in 2011 only 67.1% was so funded.
- The total cost per resident for the estimated difference in cost proposals for the period January 1, 2009 through December 31, 2011 is \$2.95. This amounts to less than one dollar per year per taxpayer to fund the difference in Final Offers. The County can clearly afford the FOP's Final Offer, and therefore the Arbitrator must award it in its entirety.

The FOP also offers substantial evidence and argument concerning the statutory criterion that deals with comparisons of salaries and benefits and private employment in general and in public employment in the same or similar jurisdictions. I present the main portion of the FOP's submission on comparability as set forth in its post-hearing brief:

**1. Comparison to Private Employment In General**

As Arbitrator Osborn noted in Borough of Roselle Park -and- PBA Local 27 / SOA, Docket Nos. IA-2012-024, IA-2012-026 (Osborn, 2012),

[T]here is no particular occupation, public or private, that is an equitable comparison to police officers. The police

officers are unique in a variety of ways, including the potential to be called upon to uphold the law at any time, on and off duty; the ability to carry a weapon even off duty; a unique recruitment and training process; the stress and dangers of the job, and the lack of portability of police officer skills beyond a certain age and beyond a geographic region. They are frequently required to work evenings, nights and holidays. Unlike the private sector, they do not compete in a global economy, which tends to depress wages. Id. at 58.

Thus, a comparability analysis with the private sector should be given little, if any, weight. Id. Even so, there is no question that the County's proposal to FOP Lodge 166 and will not provide wages comparable to those earned by employees in the private sector.

A paper published on July 30, 2010 by The Economic Policy Institute, entitled "Are New Jersey Public Employees Overpaid?" compared the wages of private sector employees in New Jersey versus public sector employees. (Exh. D-7). The data analyzed in this paper established that New Jersey public employees, both state and local government employees, are not overpaid. Comparisons, allotting for education, experience, hours of work, organizational size, gender, race, ethnicity, and disability, reveal no significant differences between the private and public sectors in the level of employee compensation costs on a per hour basis. Id.

Public employers contribute an average 34.1% of employee compensation expenses to benefits whereas private employers devote 30.8% to benefits.<sup>17</sup> Retirement benefits also account for a substantially greater share of public employee compensation, 8.1% compared to 3.7% in the private sector. On the other hand, public employees receive considerably less supplemental pay in vacation time, and public employers contribute significantly less towards legally mandated benefits. Id.

<sup>17</sup> Given the passage of Chapter 78 regarding employer healthcare contributions, subsequent to the publication of the paper, the public employer contribution to benefits will drop below 34.1%.

Standard Earnings Equation produces the result that full time state and local employees are under compensated by 4.05% compared to their private sector counterparts. This gap becomes wider as employee's educational level increases. High school graduates earn approximately equivalent compensation packages in both the private and public sector in New Jersey. That earning cycle reverses when comparing the college educated labor force, with the private sector paying substantially higher wages than the public sector. State and local workers with some college earn 4% less than private sector workers. Private sector wage premiums jumped to 43% for a Bachelor's Degree, 41% for a Master's Degree and 94% for professional degree. Id.

When comparing private sector employers with 100 or more employees, the private sector wage disparity is further increased to 13% for some college education, 10% for an Associate's Degree, 57% for a Bachelor's Degree, 121% for a professional degree, and 55% for a Master's Degree. When you factor in better benefits and fewer average working hours in the public sector, overall compensation levels are roughly the same between the public and private sector. *Id.* In sum, when comparisons are made taking into account education, experience, hours of work, organizational size, gender, race, ethnicity, and disability, there is no significant difference between the compensation costs between private and public sector employees in New Jersey. *Id.* However, if the Arbitrator awards the County's economic proposal, FOP unit members would see their annual compensation decrease when compared to private sector employees. Accordingly, the Arbitrator must award the FOP's Final Offer to stop the growing disparity in salaries between public employees and their private counterparts.

**2. Comparison to Public Employment in the Same or Similar Jurisdictions.**

**a. Comparison to Public Employment in the Same Jurisdiction.**

Many of the FOP's proposals simply seek to obtain benefits that were provided to other County bargaining units through negotiations or Interest Arbitration. The County, on the other hand, has proposed benefits that are far less than those provided to its other units, either through negotiations or Interest Arbitration.

The maximum salary for a rank and file Sheriff's Officer employed by the County in 2008 was \$62,000. In County of Burlington -and- P.B.A. Local 249, IA-2009-115 (Hundley, T., 2011), Arbitrator Hundley conducted a thorough analysis of the internal comparability of law enforcement units within Burlington County. *Id.* at 108. In 2008, the top salary for Prosecutor's Detectives and Investigators was \$83,500. *Id.* The County voluntarily negotiated wage increases of 3.0% in 2009 and 2.9% in 2010. *Id.* at 109. Prosecutor's Detectives and Investigators were awarded further wage increases of 0.5% in 2011, 1.25% in 2012 and 2.0% in 2013, despite the County's proposal to freeze all wages. County of Burlington -and- PBA Local 320, IA-2012-016 (Harris, J., 2012).

The top salary for a Prosecutors Sergeant in 2008 was \$92,520 and the top salary for a Prosecutor's Lieutenant was \$104,742. *Id.* at 108. The County voluntarily agreed to wage increases of 3.47% to 3.52% for this group in 2009 and 2.89% in 2010. County of Burlington -and- P.B.A. Local 249, IA-2009-115 (Hundley, T., 2011).

The FOP's wage proposal is certainly in line with the voluntary agreement the County entered into with its Prosecutors Investigators, Detectives and Superior Officers. Indeed, when the percentages that were voluntarily given to the Prosecutor's unit are applied, the actual dollar amount

increase dwarfs the actual dollar amounts that the FOP seeks for its unit members under the 3% proposal.

The FOP has sought 3.0% wage increases across the board for each year between 2009 and 2012. (Joint Exh. 1). The FOP also seeks a senior step, which, if granted, will not raise top pay for unit members to the 2008 top pay for Prosecutors Detectives and Investigators. See County of Burlington -and- P.B.A. Local 249, IA-2009-115 (Hundley, T., 2011), at 108-9. The proposed wage increases for Sheriff's Sergeants and Lieutenants in 2012 will similarly not reach levels enjoyed by Prosecutor's Sergeants and Lieutenants in 2008. Id.

The County's proposed wage increases are simply not comparable to what it voluntarily negotiated with Prosecutor's Investigators and Detectives for 2009 and 2010. Here, the County has proposed a 2.5% wage increase for 2009, as opposed to its negotiated 3.0% wage increase for rank and file Prosecutor's Investigators and Detectives and 2.0% for 2010, as opposed to 2.9% for the Prosecutor's unit. See Id. Awarding the County's wage proposal will increase the growing disparity in wages between these two units.

The disparity in wages between Superior Sheriff's Officers and Superior Prosecutor's Officers is even greater. Despite maintaining similar titles and performing similar duties, Superior Prosecutor's Officers are paid much higher salaries than Superior Sheriff's Officers. For example, a top paid Prosecutor's Sergeant in 2008 earned \$92,520. Id. at 108. The FOP's proposed top salary for sergeants in 2012 is \$84,017, or approximately \$1,000 more than a top paid rank and file Prosecutor's Detective. Id. With regard to Lieutenants, the pay disparity is even greater. The top salary for a Prosecutor's Lieutenant was \$104,742 in 2008, while the proposed top salary for a Sheriff's Lieutenant in 2012 is \$94,099. (Joint Exh. 1).

The County may argue that FOP unit members are not similar to Prosecutor's Officers and therefore should not receive similar salaries. This argument is undercut, however, by the County's own arguments. In County of Burlington -and- P.B.A. Local 249, IA-2009-115 (Hundley, T., 2011), the County argued that County Corrections Officers were dissimilar to Prosecutor's Officers because "the duties and qualifications of the position are vastly different, with detectives assuming wide-ranging responsibility for investigating crimes, apprehending suspects and filing criminal charges." Id. at 50. The County adds that "detectives must generally hold a four-year college degree or have significant experience as a municipal police officer; further they must attend agency training at the full police academy." Id.

Like Prosecutor's Detectives, Sheriff's Officers must attend agency training at the full police academy.<sup>18</sup> FOP unit members must also take additional training specifically for Sheriff's Officers.<sup>19</sup> In addition, and much like Prosecutor's Detectives, FOP unit members must take the basic firearms course and maintain their firearms qualification.<sup>20</sup> Like

Prosecutor's Detectives, Sheriff's must perform dangerous law enforcement activities such as serving warrants, investigating crimes and policing the community. (Exh. C-2). They perform many of the duties of municipal police officers and in fact are often assigned to supplement municipal police departments in the County. Thus, it is beyond cavil that FOP unit members should be compared to Prosecutor's Officers.

<sup>18</sup> *Agency Training for the Basic Course for Police Officers and Basic Course for Class II Special Law Enforcement Officers*, available at <http://www.state.nj.us/lps/dcj/njptc/agency.htm>.

<sup>19</sup> *Agency Training for Sheriff's Officers*, available at [http://www.state.nj.us/lps/dcj/njptc/manuals/16\\_sheriff.pdf](http://www.state.nj.us/lps/dcj/njptc/manuals/16_sheriff.pdf).

<sup>20</sup> *Basic Course Firearms Manual*, available at <http://www.state.nj.us/lps/dcj/njptc/basic.htm>.

Similarly, the County's own arguments show why Sheriff's Officers should not be compared with Corrections Officers. While the FOP acknowledges that Corrections Officers perform a tremendously difficult and demanding law enforcement job and are at the top of their field as professional, the County advanced an argument that the duties of Corrections Officers are limited to guarding incarcerated individuals. County of Burlington -and- P.B.A. Local 249, IA-2009-115 (Hundley, T., 2011), at 50. However, the duties of Sheriff's Officers, as set forth above, are much farther reaching. Accordingly, any argument that Sheriff's Officer's must be compared to Corrections Officers must be dismissed out of hand.

Arbitrator Hundley also analyzed the numerous contracts the County has with its non-law enforcement employees, and found that CWA unit members received wage increases of 4.1% in 2009 and 4.0% in 2010. *Id.* at 110. Thus, even non-law enforcement employees have received voluntary wage increases that far exceed the County's proposals. Accordingly, the Arbitrator must award the FOP's Final Offer.

Awarding the County's Final Offer will result in FOP unit members losing ground financially to other bargaining units within the County. The County has voluntarily provided wage increases in excess of those sought by the FOP to both law enforcement and non-law enforcement units alike. Accordingly, the Arbitrator must award the FOP's Final Offer.

## **b. Comparison to Similar Jurisdictions**

### **i. Wages**

The salaries of FOP Lodge 166 unit members must be compared to Sheriff's Officers salaries in similar counties, as well as municipal police officers within Burlington County. As set forth below, the salaries earned by FOP unit members are less than the salaries earned by many similarly situated Sheriff's Officers and much less than municipal police officers in the County. Accordingly, the Arbitrator must award the FOP's Final Offer.

In County of Burlington -and- P.B.A. Local 249, IA-2009-115 (Hundley, T., 2011), Arbitrator Hundley determined that Atlantic, Burlington, Cape May, Cumberland, Gloucester, Ocean and Salem Counties have historically

been considered part of southern New Jersey. Id. at 111. As set forth below, FOP unit members are among the lowest paid Sheriff's Officers in southern New Jersey. Only Cumberland County Sheriff's Officers earn less. (See Exh. H-30, submitted herewith). Salaries in southern New Jersey are generally lower than salaries in the northern part of the State. For example, Sheriff's Officers in Bergen County earned \$98,076 in 2008, \$102,146 in 2009 and \$106,385 in 2010, wages that far exceed even the top paid southern New Jersey Sheriff's Officer in those years. (Exh. H-2). Thus, Burlington County Sheriff's Officers fall towards the bottom of salaries for Sheriff's Officers in New Jersey. Awarding the FOP's Final Offer will keep unit members' salaries from dropping further in comparison with other Sheriff's Officers throughout the State.

In 2008, FOP unit members at the top of the salary guide earned \$62,000. (Exh. A-1, Art. VI, p. 6). Ninth step Sheriff's Officers in Atlantic County earned \$65,467, which includes \$1,200 in Senior Pay. (Exh. H-1, Art. IX, p. 23-24). In addition, each officer is entitled to between \$800 and \$2,500 in longevity, beginning in the sixth year of employment. Id. at p. 64. Top paid Sheriff's Officers in Cape May County earned \$66,210 in 2008. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In addition, Sheriff's Officers in Cape May receive a pay increase of between 2% and 14% of their salary in longevity payments beginning in their fifth year of employment. Id. at Art. 18, p. 46. In Gloucester County, top paid Sheriff's Officers earned \$63,539 in 2008. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). In addition, Gloucester County Sheriff's Officers received a longevity increase of between 2% and 8% of their base salaries beginning in the seventh year of employment. Id. Eighth step corrections officers in Ocean County received \$83,324 in 2008, with Senior Officers receiving \$84,824. (Exh. H-14, Art. 4, p. 2, App. A, p. 21). In addition, Sheriff's Officers in Ocean County receive longevity of between 3% and 8% of their salary beginning in the seventh year of employment. Id. at p. 11. Sheriff's Officers in Salem County earned \$71,000 at top pay in 2008, while Corporals earned \$73,000.<sup>21</sup> Only Sheriff's Officers in Cumberland County may have earned less than FOP unit members. The Cumberland County Sheriff's Officer CNA expired in 2006 and no successor contract is available. Top step officers in Cumberland County earned \$48,000 in 2006. (See Exhibit H-30).

<sup>21</sup> CNA available at

[://www.perc.state.nj.us/publicsectorcontracts.nsf/Contracts%20By%20Employer/60FA1FE2CD6522DA852572DB006786EE/\\$File/Salem%20Cty%20Sheriff's%20Office%20and%20Salem%20Cty%20Shrfs%20Offrs%20Assn%202006.pdf?OpenElement](http://www.perc.state.nj.us/publicsectorcontracts.nsf/Contracts%20By%20Employer/60FA1FE2CD6522DA852572DB006786EE/$File/Salem%20Cty%20Sheriff's%20Office%20and%20Salem%20Cty%20Shrfs%20Offrs%20Assn%202006.pdf?OpenElement).

FOP Lodge 166 Sergeants earned \$65,720 with less than two years experience in 2008, while those with more than two years experience earned \$69,440. (Exh. A-1, Art. VI, p. 6). In 2008, Sheriff's Sergeants in Atlantic County earned \$72,341. (Exh. H-1, Art. IX, p. 24). Sergeants in Cape May earned \$71,267 in 2008. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). Sergeants in Gloucester County earned \$69,709 in 2008. (Exh. H-8, p. 44). Sergeants in Ocean County earned \$92,870 in 2008.<sup>22</sup>

<sup>22</sup> CNA available at

<http://www.perc.state.nj.us/publicsectorcontracts.nsf/Contracts%20By%20Employer/476A>

FOP Lodge 166 Lieutenants earned \$73,606 in 2008. (Exh. A-1, Art. VI, p. 6). Sheriff's Lieutenants in Atlantic County earned approximately \$79,577.51 in 2008, plus longevity ranging from \$800 to \$2,500. Sheriff's Lieutenants in Cape May earned \$76,267 in 2008, plus additional longevity payments of between 2% and 14% of base salary. (Exh. H-32). Lieutenants with less than twenty (20) years of service in Gloucester County earned \$79,953 including longevity in 2008; those with more than twenty (20) years of service earned \$81,654. (Exh. H-33A). Lieutenants in Ocean County earned \$102,000 in 2008. (See Exh. H-34).

<sup>23</sup> No salary information is available for Sheriff's Lieutenants employed by Atlantic County in 2008. However, their 2007 salary is \$79,430 (Exh. H-31B), and the average salary increase for arbitration awards in 2008 was 3.73%. See [http://www.state.nj.us/perc/NJ\\_PERC\\_Salary\\_Increase\\_Analysis\\_IA\\_1993.01.01\\_-\\_2012.04.30.pdf](http://www.state.nj.us/perc/NJ_PERC_Salary_Increase_Analysis_IA_1993.01.01_-_2012.04.30.pdf).

Thus, FOP Lodge 166 unit members have been earning less than their contemporaries since 2008. Indeed, many Sheriff's Officers receive longevity payments, which FOP members do not enjoy. Awarding the FOP's Final Offer will not get them out of the bottom three doldrums, but will ensure that the developing chasm between FOP salaries and the next lowest southern New Jersey County does not continue to grow. Awarding the County's Final Offer, however, will create an even greater pay disparity.

Pursuant to the FOP's Final Offer, Sheriff's Officers at Step 7 would earn \$63,860 in 2009, with Senior Officers earning \$68,850. (Joint Exh. 1). If the County's Final Offer were awarded, however, top paid officers would only earn \$63,550. (Joint Exh. 2). The FOP's proposal is more in line with the salaries received by Sheriff's Officers in other Counties in 2009. Ninth step officers in Atlantic County earned \$68,086 in 2009, which includes \$1,200 in Senior Pay. (Exh. H-1, Art. IX, p. 24). In addition, each officer is entitled to between \$800 and \$2,500 in longevity, beginning in the sixth year of employment. Id. at p. 64. In Cape May County, top paid Sheriff's Officers earned \$69,118 in 2009. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In addition, Sheriff's Officers in Cape May receive a pay increase of between 2% and 14% of their salary in longevity payments beginning in their fifth year of employment. Id. at Art. 18, p. 46. Top paid Sheriff's Officers in Gloucester County earned \$65,445 on January 1, 2009 and \$66,754 on July 1, 2009. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). This amount does not include the 2% to 8% longevity increase received by Sheriff's Officers in Gloucester County. Id. Top paid Sheriff's Officers in Ocean County earned \$86,657 in 2009, while Senior Officers earned \$88,157. (Exh. H-14, Art. 4, p. 2, App. A, p. 21). In addition, Sheriff's Officers in Ocean County receive longevity of between 3% and 8% of their salary beginning in the seventh year of employment. Id. at p. 11. Top paid Sheriff's Officers in Salem County earned \$73,556 at top pay in 2009, with Corporals earning \$75,628. (Exh. H-16, Art. 33). Thus, awarding the FOP's Final Offer would allow the unit to keep pace with the increases enjoyed by other Sheriff's Officers in southern New Jersey,



while awarding the County's Final Offer would create a larger gap between FOP unit members and other Sheriff's Officer units.

The FOP has proposed increases to Sergeant pay in 2009. (Joint Exh. 1). First Step Sergeants shall earn \$72,768, while Second Step Sergeants will earn \$76,887. Id. The County has proposed that First Step Sergeants will earn \$67,363, while Second Step Sergeants will earn \$71,176. (Joint Exhibit 2). In 2009, Sheriff's Officer Sergeants in Atlantic County earned \$75,575, plus additional longevity payments amounting to \$800 to \$2,500 in additional salary. (Exh. H-1, Art. IX, p. 24). Sheriff's Officer Sergeants in Cape May earned \$74,768 in 2009. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In addition, Sheriff's Officers in Cape May receive a pay increase of between 2% and 14% of their salary in longevity payments beginning in their fifth year of employment. Id. at Art. 18, p. 46. Sergeants in Gloucester County earned \$71,865 in January 2009 and \$73,302 in July 2009. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). This amount does not include the 2% to 8% longevity increase received by Sheriff's Officers in Gloucester County. Id. Sheriff's Officer Sergeants in Ocean County earned \$96,585 in 2009, plus an additional 3% to 8% of salary as longevity payments. (See fn. 15). The salary increases proposed by the FOP compare more favorably to the salaries enjoyed by Sheriff's Officer Sergeants in other Counties within southern New Jersey. Accordingly, the Arbitrator must award the FOP's Final Offer.

The FOP has proposed raising salaries for Lieutenants to \$86,114 in 2009. (Joint Exh. 1). The County, however, seeks to raise Lieutenants salaries to \$75,446.15. (Joint Exh. 2). Lieutenants in Atlantic County earned a projected \$82,561.67 in 2009, plus longevity. (See fn. 16). Lieutenants in Cape May County earned \$79,768 in 2009, plus substantial longevity increases of up to 14% of base salary. (Exh. H-32). Lieutenants with less than twenty years of service in Gloucester County earned \$83,448 in 2009 inclusive of longevity, while Lieutenants with more than twenty (20) years of service received \$85,022 with longevity. (Exh. H-33A). Lieutenants in Ocean County earned \$106,080, plus longevity, in 2009. (Exh. H-34). The FOP's proposed salary increases merely keep pace with other Superior Sheriff's Officers' salaries throughout southern New Jersey, and therefore, the Arbitrator must award the FOP's Final Offer.

The FOP has proposed a 3.0% wage increase for 2010, which would raise top salaries to \$65,776, with Senior Officer pay increasing to \$70,709. (Joint Exh. 1). The County's Final Offer, however, would result in salaries of only \$64,821 in 2010. (Joint Exh. 2). Top paid Sheriff's Officers in Atlantic County earned \$69,447.72 in 2010, inclusive of Senior pay. (Exh. H-1). In addition, each officer is entitled to between \$800 and \$2,500 in longevity, beginning in the sixth year of employment. Id. at p. 64. Sheriff's Officers at top pay earned \$72,082 in Cape May in 2010. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In addition, Sheriff's Officers in Cape May receive a pay increase of between 2% and 14% of their salary in longevity payments beginning in their fifth year of employment. Id. at Art. 18, p. 46. Top paid Sheriff's Officers in Gloucester County earned

\$68,757 on January 1, 2010 and \$70,132 on July 1, 2010. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). This amount does not include the 2% to 8% longevity increase received by Sheriff's Officers in Gloucester County. Id. Top paid Sheriff's Officers in Ocean County earned \$88,390 in 2010, with Senior Officers earning \$89,890. Ocean County -and- PBA Local 379, IA-2011-014 (Glasson, R., 2012) at 131. In addition, Sheriff's Officers in Ocean County receive between 2% and 6% of their salary as longevity after fifteen years. Id. Top paid Sheriff's Officers in Salem County earned \$76,204 in 2010, while Corporals earned \$78,351. (Exh. H-16, Art. 33).

The FOP has proposed an increase in the Sergeants wages in 2010. (Joint Exh. 1). Pursuant to the FOP's proposal, First Step Sergeants will earn \$74,952 in 2010, while Second Step Sergeants will earn \$79,194. Id. Pursuant to the County's proposal, First Step Sergeants will earn \$68,710.26 in 2010 and Second Step Sergeants will earn \$72,609.72. (Joint Exh. 2). In 2010, Sergeants in Atlantic County \$77,087. (Exh. H-31A, submitted herewith). In addition, Sergeants in Atlantic County received longevity payments amounting to \$800 to \$2,500 in additional salary. (Exh. H-31A, Art. IX, p. 24). Sheriff's Officer Sergeants in Cape May earned \$78,408 in 2010. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In addition, Sheriff's Officers in Cape May receive a pay increase of between 2% and 14% of their salary in longevity payments beginning in their fifth year of employment. Id. at Art. 18, p. 46. Sergeants in Gloucester County earned \$75,501 in January 2010 and \$77,011 in July 2010. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). This amount does not include the 2% to 8% longevity increase received by Sheriff's Officers in Gloucester County. Id. While the Ocean County Sergeants do not have a current CNA, if we assume the salary the increases awarded to the rank and file in Ocean County -and- PBA Local 379, IA-2011-014 (Glasson, R., 2012) of 2.0%, Ocean County Sheriff's Sergeants would earn \$98,516.70 in 2010.

The FOP has proposed instituting a two-step salary guide for Lieutenants in 2010. (Joint Exh. 1). Pursuant to this proposal, Lieutenants at Step 1 will earn \$83,946, while Lieutenants at Step 2 will earn \$88,697. Id. The County has proposed a wage increase that will bring Lieutenants' salaries to \$76,577.84. (Joint Exh. 2). Lieutenants in Atlantic County earned \$85,533 in 2010, plus longevity in the amount of \$800 to \$2,500. (Exh. H-31A). Lieutenants in Cape May County earned \$83,408, plus up to 14% longevity in 2010. (Exh. H-32, submitted herewith). In Gloucester County, Lieutenants with less than twenty (20) years experience earned \$86,786 including longevity in 2010, while those Lieutenants with over twenty (20) years on the job earned \$88,423. (Exh. H-33A, submitted herewith). The Ocean County Superior Officer's CNA expired in 2010 and the parties are currently in Interest Arbitration. However if the 2009 base wage of \$106,080 is multiplied by the average salary increase of all awards for 2012 (1.82%), Lieutenants salary would increase to \$108,010.66. (See Exh. H-34, submitted herewith).

The 2010 wage increases proposed by the FOP merely allows the unit to keep pace with other Sheriff's Officer bargaining units in southern New

Jersey. Awarding the County's Final Offer will simply enlarge the growing chasm between FOP unit members and the next highest paid Sheriff's Officers in the southern part of the State. Accordingly, the Arbitrator must award the FOP's Final Offer.

The FOP has proposed a salary of \$67,749 in 2011, with a Senior Step of \$72,830. (Joint Exh. 1). The County, on the other hand, has proposed a salary of \$65,793.32. (Joint Exh. 2). Top paid Sheriff's Officers in Atlantic County earned \$70,489.44 inclusive of senior pay in 2011. (Exh. H-1). In addition, each officer is entitled to between \$800 and \$2,500 in longevity, beginning in the sixth year of employment. Id. at p. 64. Top paid Sheriff's Officers in Cape May earned \$75,165 in 2011. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In addition, Sheriff's Officers in Cape May receive a pay increase of between 2% and 14% of their salary in longevity payments beginning in their fifth year of employment. Id. at Art. 18, p. 46. In Gloucester County, top paid Sheriff's Officers earned \$72,236 in January 2011 and \$73,681 in July 2011. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). This amount does not include the 2% to 8% longevity increase received by Sheriff's Officers in Gloucester County. Id. Top paid Sheriff's Officers in Ocean County earned \$90,158 in 2011, while Officers on the Senior Step earned \$91,658. Ocean County -and- PBA Local 379, IA-2011-014 (Glasson, R., 2012) at 131. In addition, Sheriff's Officers in Ocean County receive between 2% and 6% of their salary as longevity after fifteen years. Id. Top paid Sheriff's Officers in Salem County earned \$78,947 in 2011, while Corporals earned \$81,172. (Exh. H-16, Art. 33).

The FOP has proposed increasing Sheriff's Officer Sergeant salaries to \$77,200 at Step 1 and \$81,570 at Step 2 for 2011. (Joint Exh. 1). The County, however, seeks only to increase salaries to \$69,740.91 at Step 1 and \$73,698.87 at Step 2. (Joint Exh. 2). Sergeants in Atlantic County earned \$78,239.25, in addition to substantial longevity payments of between \$800 and \$2,500. (Exh. H-1). Sheriff's Officer Sergeants in Cape May earned \$82,194 in 2011. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In addition, Sheriff's Officers in Cape May receive a pay increase of between 2% and 14% of their salary in longevity payments beginning in their fifth year of employment. Id. at Art. 18, p. 46. Sergeants in Gloucester County earned \$79,321 in January 2011 and 80,907 in July 2011. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). This amount does not include the 2% to 8% longevity increase received by Sheriff's Officers in Gloucester County. Id. Assuming a 2.0% raise in Ocean County, Sergeants there would earn \$100,487.03 in 2011. See Ocean County -and- PBA Local 379, IA-2011-014 (Glasson, R., 2012) at 131.

Concerning Lieutenants, the FOP has proposed raising salaries to \$86,464 at Step 1 and \$91,358 at Step 2. (Joint Exh. 1). The County has proposed raising salaries to \$77,726.51. (Joint Exh. 2). In Atlantic County, Lieutenants earned \$89,033 in 2011, plus longevity payments. (Exh. H-31A). In Cape May County, Lieutenants earned \$87,194, with up to an additional 14% in longevity. (Exh. H-32). In Gloucester County, Lieutenants earned \$105,440 in 2011, with longevity rolled into base pay.

(Exh. H-33B). The projected salary for Ocean County Sheriff's Lieutenants is \$109,976.45 (arrived at by multiplying the projected 2010 salary by 1.82%). (See fn. 17).

The FOP has proposed seventh step salaries of \$69,782 in 2012 with a Senior Step of \$75,015. Top paid Sheriff's Officers in Atlantic County will earn \$71,546.78 in 2012. (Exh. H-1). In addition, each officer is entitled to between \$800 and \$2,500 in longevity, beginning in the sixth year of employment. Id. at p. 64. Top paid Sheriff's Officers in Cape May will earn \$78,372 in 2012. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In addition, Sheriff's Officers in Cape May receive a pay increase of between 2% and 14% of their salary in longevity payments beginning in their fifth year of employment. Id. at Art. 18, p. 46. Top paid Sheriff's Officers in Gloucester County earned \$75,891 on January 1, 2012 and \$77,409 on July 1, 2012. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). This amount does not include the 2% to 8% longevity increase received by Sheriff's Officers in Gloucester County. Id. Top step Sheriff's Officers in Ocean County will earn \$91,961 in 2012, while Officers on the Senior Step will earn \$93,461. Ocean County -and- PBA Local 379, IA-2011-014 (Glasson, R., 2012) at 131. In addition, Sheriff's Officers in Ocean County receive between 2% and 6% of their salary as longevity after fifteen years. Id. While the Salem County Sheriff's Officer CNA does not extend through 2012, if the unit was awarded the average increase of 1.82%,<sup>24</sup> Sheriff's Officers would earn \$80,383.84 in 2012, while Corporals would earn \$82,649.33. (See Exh. H-16, Art. 33).

<sup>24</sup> PERC maintains a report of the current average wage increases, available at [http://www.state.nj.us/perc/NJ\\_PERC\\_Salary\\_Increase\\_Analysis\\_IA\\_1993.01.01\\_-\\_2012.04.30.pdf](http://www.state.nj.us/perc/NJ_PERC_Salary_Increase_Analysis_IA_1993.01.01_-_2012.04.30.pdf)

In 2012, the FOP has proposed wages of \$79,516 for First Step Sergeants and \$84,017 for Second Step Sergeants. (Joint Exh. 1). In Atlantic County, Sheriff's Officer Sergeants will earn \$78,358 as of April 1, 2012, in addition to longevity payments. (Exh. H-1). Sheriff's Officer Sergeants in Cape May earned \$85,182 in 2012 in addition to substantial longevity payments. (Exh. H-5, Art. 15, p. 42, Att. A, p. 65). In Gloucester County, Sergeants earned \$83,334 in January 2012 and \$85,002 in July 2012. (Exh. H-8, Art. V, p. 9, Sched. A, p. 43). This amount does not include the 2% to 8% longevity increase received by Sheriff's Officers in Gloucester County. Id. Assuming a 2.0% raise in Ocean County, Sergeants there would earn \$102,496.77 in 2012. See Ocean County -and- PBA Local 379, IA-2011-014 (Glasson, R., 2012) at 131.

For 2012, the FOP proposes a salary increase to \$89,058 for Step 1 Lieutenants and \$94,099 for Step 2 Lieutenants. (Joint Exh. 1). Sheriff's Lieutenants employed by Atlantic County will earn \$90,814 in 2012, plus longevity of up to \$2,500. (Exh. H-31A). In Cape May County, Lieutenants will earn \$92,882 in 2012, plus up to 14% in additional longevity. (Exh. H-32). In Gloucester County, Lieutenants will earn \$107,549 in 2012. (Exh. H-33). The projected increase for Ocean County Lieutenants is \$111,978.

The Arbitrator must award the FOP's wage proposal in its entirety. As set forth above, the FOP unit is woefully underpaid compared to similarly situated Sheriff's Officers. Even in the unusual instance where the FOP's salary is higher than another unit, that unit receives longevity payments that increase salary. The FOP receives no such longevity payments. (See Exh. A-1). Granting the FOP's proposal will allow FOP members to maintain their relative standing and not drop any further in the Sheriff's Department salary rankings. Granting the County's offer, on the other hand, will broaden the gaps between FOP members and other Sheriff's Officers. Accordingly, the Arbitrator must award the FOP's Final Offer.

Sheriff's Officers may also be compared to municipal police officers. See County of Monmouth -and- PBA Local 314, IA-2009-073 (Hartigan, T., 2011). Both groups undergo similar training and fight crime in similar communities. Id. An analogous comparison was made in Rutgers -and- F.O.P. Lodge 62A, 24 NJPER (¶29195 1998). In that case, the employer argued that the only appropriate comparison that the interest arbitrator should make in comparing the compensation packages of its campus police was to other campus police officers. However, the arbitrator ruled, and the Commission confirmed, that it was more appropriate to compare Rutgers Police Officers to police officers in other Middlesex County municipalities. He concluded that Rutgers Police Officers worked in circumstances "much more comparable" to municipal police than those of police officers at other State colleges and universities. He further concluded that the Middlesex County municipalities presented a range of policing conditions similar to those on the three Rutgers campuses and that they provided the most relevant comparability data under the component of N.J.S.A. 34:13A-16(g)(2)(c).

The Commission found that the arbitrator appropriately compared Rutgers officers to the municipal police officers in Middlesex County. It rejected Rutgers contention that the Commission's comparability guidelines, N.J.A.C. 19:16-5.14, require that Rutgers Police be compared only with those at other State colleges and universities. Thus, the Arbitrator should compare PBA Local 108 unit members with municipal police officers employed by municipalities within Union County as well as other Sheriff's Officers.

When compared to municipal police officers working within the County, the FOP's Final Offer is a reasonable and fair compromise. Sheriff's Officers serve the same communities as municipal police officers and undergo similar training. Accordingly, their pay should be in line with the pay of municipal police officers. However, as shown below, FOP members earn far less than many municipal police officers employed in municipalities within Burlington County.

The Burlington County Sheriff's Department shares services with several municipalities surrounding the County seat of Mt. Laurel. Municipal police officers in these locales earn substantially higher salaries than FOP unit members. For example, in Florence Township, top paid officers will earn salaries of \$83,509 in January 2011 and \$83,927 in July 2011, inclusive

of holiday pay. (Exh. H-35, submitted herewith). In addition, officers receive between 1% and 4% of their salary as longevity, beginning in the fourth year of employment. Id.

Top paid officers hired prior to May 1, 2010 in Evesham earned \$92,856.72, while Senior Officers earned \$97,498.74 in 2010. (Exh. H-36, submitted herewith). In 2011, top paid officers received \$94,713.85, while Senior Officers earned \$99,448.71. Id. In 2012, top paid officers earned \$97,318.49 while Senior Officers earned \$102,183.55. Id.

In Cinnaminson, top paid officers earned \$80,854 in 2009, \$80,854 in 2010, \$82,875 in 2011 and \$84,947 in 2012. (Exh. H-37, submitted herewith). In addition to salaries, officers are entitled to longevity payments amounting to an additional 4% to 10% of base salaries. Id. Top paid officers in Burlington Township earned \$93,315 in 2011 and \$95,181 in 2012. (Exh. H-38, submitted herewith). In Willingboro, top paid officers earned \$81,500 in 2009, while Senior officers earned \$83,600. (Exh. H-39, submitted herewith). In 2010, top paid officers earned \$85,500 while Senior Officers earned \$87,700. Id.

As set forth above, municipal police officers earned significantly more than even Superior Officers in the FOP unit. Therefore, the Arbitrator must award the FOP's salary proposal to prevent the pay disparity from growing.

### **Position of the County and Sheriff**

The County contests the findings of the FOP's financial expert and his interpretation of the evidence and as submitted its own budgetary profile. In this regard, it points to the Certification of Acting Chief Financial Officer Marc Krassan contending that the County's findings and conclusions of the financial evidence are "wholly contradictory" to the findings offered by the FOP. Pointing to exhibits it has submitted into the record, the County cites Krassan's testimony that the County has experienced declining fund balances, declining revenues, decreasing assessed property values and ratables and increased reliance by the County on outside funding sources. According to Krassan, these circumstances have led

the County to engage in spending cuts, layoffs, decreases in the tax levy and County tax rate, and salary and hiring freezes.

The County also responds to the FOP's submission on its finances:

...[T]he main thrust of the PPD report is that the County has the ability to raise taxes to pay for salary increases for Sheriff's officers and also has other means available (e.g., "surplus" and grants) to fund the exorbitant salary increases sought by FOP 166. The PPD Report highlights "Reserves" in its text as though these "reserves" are summarily available to fund the salary increases proposed by FOP 166.

This is simply not the case. At the end of a calendar year, accounting entries are made to transfer certain balances and deficiencies to the "County Fund Balance." These include excess revenues, revenue deficiencies and remaining unexpended balances of prior year reserves. As expected, excess revenues and unexpended reserves increase fund balance, while revenue deficiencies (i.e., revenues less than the amount anticipated and budgeted) negatively impact/decrease fund balance.

Due to this overall analysis of "fund balance," one cannot assess or single out, as the PPD Report does, a single component that impacts fund balance to argue that a single component supports the viability of potential salary increases. On the contrary, the benchmark must be the fund balance itself: including both positive and negative impacts.

Krassan points out an example of how the PPD Report inappropriately attempts to rely upon one component of the "fund balance" to support the demanded salary increases. In the last paragraph on page 3 of the report, PPD suggests that \$14.825 Million of appropriation and encumbrance reserves would lapse into fund balance and therefore, fund the salary increases sought by FOP 166.

This statement is grossly misleading. As stated above, appropriation and encumbrance reserves are components that favorably increase fund balance. However, the fund balance is also negatively impacted by revenue deficiencies. In summary, by referring to the \$14.825 Million reserves (only), the PPD Report is only providing one "part" of the equation.

In fact, as recently as 2011, only \$1.8 Million was added to the fund balance at year end; not the \$14,825,000 suggested in the PPD Report.

While use of fund balances is a funding source available to the County to fund its annual operations, it is also important to note that the amount of a public entity's fund balance is one of the more important metrics of a

rating agency's credit rating determination. A fund balance that is too low can negatively impact the County's credit rating and subsequently increase the cost future borrowings. The County's fund balance for 2009 through 2011 was at the low end of the range recommended by rating agencies. (see, e.g., Hundley Award p. 100).

As such, a delicate consideration of the maintenance of adequate fund balance and the other components that factor into a rating agency's determination of the County's financial credit rating must be regularly conducted to ensure a continued investment grade rating. Thus, Krassan certifies that the wholesale use, as the PPD report suggests, of declining fund balances to fund salary increases is not only imprudent, but is downright dangerous in the financial climate the County faces today.

In 2007, total County revenues were \$263.4 million. As stated above, since 2007, revenues have decreased over \$33 million to \$229.8 million and projected 2012 revenues are expected to further decrease. Nevertheless, the PPD Report states that "the County has enjoyed continued revenue growth..." Not only is this statement misleading, but the corresponding data contained in the subsequent chart (page 7) addresses revenue raised by taxation only; the analysis conveniently ignores the total revenue figures which have steadily declined.

Krassan also notes that the PPD chart on page 7 completely and conspicuously omits key data points between 2006 and 2010, which, had they been plotted, would show that County revenues peaked in 2007 and have remained on a downward trend ever since. PPD narrative also suggests that salary increases for FOP 166 should be tied to County revenue growth. While creative in concept, if this approach were applied to total revenues, members of POP 166 would have earned less in 2011 than they would have in 2005. See PPD Report at page 20 which reflects total revenues of \$234 Million in 2005 and \$229 Million in 2011.

As for the Suggestion by the PPD Report that the County's receipt and potential use of federal and state grant funds can pay for the raises sought by FOP 166, Krassan confirms, and it is significant, that during the County budget development, only those grants for which an award letter has been received can be included in the annual budget. Any grants that are awarded subsequent to the adoption of the annual budget are recognized through Chapter 159 procedures, wherein both revenues and associated expenses are adjusted to reflect the award of a grant. The majority of grants received by the County are done through Chapter 159 due to the timing of the receipt of award letters. Krassan concludes: "simply stated, there are no grant awards to fund the salary increases requested by Local 166."

Nor can special emergency statutes be utilized as a means to find the demanded salaries. The use of such financing instruments when a true emergency does not exist would be both irresponsible and result in creating even greater budget challenges in future years.



Krassan further notes that the PPD report (at page 10) suggests that a Sheriff's Officer needs to earn \$63,721.57 in 2011 to qualify for the same house in which he needed to earn \$48,680.27 in 2000. However, according to the US Department of Labor, Bureau of Labor Statistics, \$48,680.27 earned in 2000 has a buying power of \$63,589.03 in 2011.

Much of the PPD Report is dedicated to a discussion and analysis of the hypothetical increase in revenues that could be generated by increasing taxes by the maximum amount permitted by the tax levy law. As such, the PPD Report repeatedly suggests that the County use these hypothetical and allowable tax increases to pay for raises for FOP 166. However, as is succinctly and accurately stated in the Hundley Award (p. 126): "excess CAP potential represents taxation authority not cash on hand". Thus, while the County has the authority to increase taxes, it also has the obligation to deliver public services at a reasonable cost and be extremely sensitive to tax increases when its citizens are already financially stressed.

Krassan concludes by indicating that the record shows that the County has, recognizing the current state of the economy and the impact the fiscal climate has had on its residents, declined to engage in an exercise wherein its budgets are balanced on the backs of the rather, the County has made every attempt to cut spending, maximize potential revenue, and to hold taxes as stable as possible. [emphasis in original].

The County emphasizes the following points with respect to its 2012 budget:

The County's 2012 Budget will similarly avoid tax increases to provide property tax relief. In this regard, the 2012 Budget, introduced on July 11, 2012, provides for:

- A budget that cuts the amount to be raised by taxation for the fifth year in a row, that cuts spending for the fourth year in a row, and that reduces the county tax rate for the 22nd year in a row.
- The tax levy, or amount to be raised by property taxes, will decrease. The tax levy will be reduced for the fifth year in a row; this year by the sum of \$6,200,182. The amount of tax dollars required to run County government has now decreased \$14,750,000 since 2007.
- The County tax rate will decrease. Despite another major decrease in ratables, the tax rate is decreasing from the final 2011 rate of 0.3096 per \$100 of equalized valuation to 0.3091. The rate remains at an historical low.

- The total budget is being decreased. The actual spending is being decreased by more than \$ 17.1 million from the 2011 adopted budget. This reflects a total decrease of \$33,932,872 since 2007.
- The budget reflects significant savings from the sale of a major asset (Buttonwood Hospital). As a result, the County will escrow approximately \$8 million of the sale proceeds to retire existing debt on the facility.
- Under the rate of \$0.3091 per \$100 of assessed valuation, the owner of a house assessed at \$190,000 (equalized value) would pay \$587.29 in 2012, slightly less than in 2011. This represents a total drop of approximately \$145 over the past three years.
- The County tax rate remains at its lowest level since prior to 1962, and has now remained the same or been bowered for 32 consecutive years.
- Decreases in salaries and wages. This category is decreasing \$6,345,433, or 8.2 percent, and is reflective of salary freezes and reductions in force, including partial year savings from staff reductions attributable to the sale of Buttonwood Hospital to a private Operator.
- Decreases in other expenses. Overall, other expenses are decreasing \$10,401,975, or 9.5 percent.
- Renewal of the reimbursement agreement with the Burlington County Bridge Commission which provides \$3 million earmarked for the maintenance and repair of County bridges and bridge feeder roads.
- Continued contributions to debt service by Burlington County College (\$2,508,091), the Burlington County Institute of Technology (\$2,000,000), and the Burlington County Special Services School District (\$300,000).
- The active employee level funded by the County's current operating budget at the end of 2011 was 1,467. The 2012 budget anticipates reducing this number by year's end to 1,070 through projected layoffs and realignments.
- The County remains under a hiring freeze. Accordingly, recommendations for new positions, or requests to fill vacated positions, will continued to be evaluated by the Freeholders' personnel committee, to determine if the

position represents an essential need or is critical to the Operation of the County.

Exhibits C-27 and C-28 contained in County Binder 91 (Press Release re: Budget and Proposed 2012 Budget).

In addition to Krassan's certification, the County points to the Certification of Daniel Hornickel, County Director of Human Resources as to both its finances and its negotiations history in other County units. Hornickel testified to layoff notices that the County has issued between 2008 and 2012 and the displacement of 310 employees in 2012 who had been employed at Buttonwood Hospital, the County's long-term care/psychiatric facility that the County has sold. Including the Buttonwood Hospital employees, Hornickel indicated that the County has reduced its workforce from over 2,100 employees as of January 1, 2008 to under 1,500 in 2012. In contrast, no Sheriff's Officers have been laid off. Hornickel also addressed the results of collective negotiations between the County and other bargaining units:

Hornickel further confirms that with regard to the County's Final Offer (dated March 1, 2012, Exhibit J-2), the County proposed to furnish the unit with raises of 2.5%, 2.0% and 1.5%, respectively, for the periods of 2009, 2010 and 2011, and that this proposal was consistent with what was either negotiated or awarded to the two P.B.A. Local #249 units (Corrections, Superiors), greater than the tentative award issued to another unit (P.B.A. Local #320, Prosecutor's Investigators), and greater than the proposal being offered to the County's largest bargaining unit. (CWA).

The County's proposal, from a percentage perspective, may appear to be lower than what the four C.W.A. Local 1036 units received for 2009 and 2010 (4.0% yearly). However, two facts are of consequential importance here: first, the CWA agreements were all negotiated well prior to the nation's financial recession, and second, no civilian workers are paid (like the Sheriff's officers) pursuant to a "step-based" salary guide. In other words, CWA workers received either a flat dollar adjustment or a percentage increase to their prior year's salary, unlike the Sheriffs'

Officers who receive a salary step increase on top of the proposed across-the-board adjustments to the step guide.

The County also offers evidence and argument with respect to the comparability criterion and concludes that in addition to the financial evidence, its proposal is more reasonable than the proposal of the FOP with regard to comparability. Its submission on this point states as follows:

**1. Comparison to Private Employment (in general)**

The United States Department of Labor, Bureau of Labor Statistics has reported that wages and salaries for private industry workers for the 12-month period ending December, 2011, increased 1.6 percent. Exhibit C17 (BLS Employee Cost Index Report December, 2011). For the twelve month period ending December, 2010, private industry wages and salaries increased 1.8 percent. Exhibit C-18 (BLS Employee Cost Index Report December, 2010).

For the period 2009 through 2010, data compiled by the New Jersey Department of Labor and Workforce Development ("NJLWD") indicates that the average annual private sector wages increased statewide by 2.2%. Exhibit C19 (NJ Annual Wages Report 2009 and 2010). It is significant that without the disproportionate increases of 5.7% in Hudson County and 5.2% in Mercer County, the average wage increase for this period would be 1.3%, which is consistent with United States Department of Labor statistics indicating private industry wage and salary increases of 1.4% for the 12-month period ending December, 2009. Exhibit C-20 (BLS Employee Cost Index Report December, 2009).

Moreover, in the eight counties historically considered part of South Jersey (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem), the average wage increase for the private sector was 1.8% for the region for this time period.

These national, statewide and regional private sector wage figures, which demonstrate an average private sector wage increase of 1.5% between 2009 and 2011 (the years at issue here), are in stark contrast to the 3.0% demanded by FOP for the 2009 contract year (and succeeding years). Indeed, these statistics render the County's offer of 2.5%, 2.0%, and 1.5% for the years 2009, 2010, and 2011 palpably reasonable, if not generous.

It is also noteworthy that the average annual statewide private wage during the period 2009 through 2010 was between \$54,542 and \$55,742. Exhibit C-19. For this same time period, assuming implementation of the County's proposed 2.5% first-year increase, the annual wage of Sheriff

officers for 2009 would be \$55,131, which is "in-line" (and actually exceeds the 2009 average wage) with the private sector wages (which salaries will increase by 2% and 1.5% in successive years). Under the FOP's proposal, however, the 2009 average wage would be \$56,367.00, which is 3.3% greater than the New Jersey private sector wage of \$54,542 for that year. Exhibit C-9.

Notwithstanding this glaring inconsistency with private sector trends, FOP is likely to contend that the same report shows that average annual wages in Burlington County increased 3% from 2009 to 2010, thereby justifying its 3% demand in the first and succeeding years of the contract. This argument ignores, however, that the same report shows that the average annual wage in Burlington County for the same time period increased from \$47,462 to \$48,967, which average wages are 16% less than the demand being made by the FOP for that time period.

Stated another way, were the FOP to be awarded the 3% increase as demanded, the average Sheriffs officer would be making 16% more (between 2009 and 2010 alone) than the average private sector worker in Burlington County; an untenable and indefensible situation given the struggles of the taxpayers of Burlington County.

It is also instructive that for the preceding period (2008 through 2009; the last year of FOP's contract when they enjoyed salary increases), there was actually a decrease of .7% in the average annual private sector wage (from \$54,932 to \$54,542), with Burlington County "enjoying" a mere .7% increase for that same time period. FOP Exhibit D1.

In any event, based upon New Jersey data alone, for the two-year period 2008 through 2010 (which covers the period during which FOP seeks a 3% increase in addition to ongoing horizontal and vertical step increases), average private sector wages increased only 1.5%: one hundred percent less than the raises sought by the FOP in this matter.

Based upon the foregoing, the demands by FOP for 3% across-the-board increases, in addition to the annual vertical and horizontal movement on the salary guide which result in actual gross contractual increases of 11.76% (2009), 9.25% (2010), 7.16% (2011), and 7.0% (2012), is clearly out-of-step with national as well as private sector wages in New Jersey and the South Jersey region in particular.

## **2. Comparison to Public Employment (in general).**

The State Department of Labor reports submitted herewith as Exhibit C19 and FOP Exhibits D1 and D2 indicate that the average salary increases for government workers were 2.2% for the period 2008 through 2009 and remained at 1.6% (average of federal, state and local) for the period 2009 through 2010. Similar data for the years ending December 2010 and December 2011 show the same trend.

United States Department of Labor statistics for the twelve-month period ending December, 2011 indicate that wages and salaries increased 1% for that time period, and for year ending December 2010, public sector wages increased 1.2%. Exhibits C-17 and C-18. (BLS Employment Cost Index Reports December 2010 and December 2011).

An external resource that provides both specific and general data regarding public employment is the U.S. Department of Labor's National Compensation Survey for the Philadelphia-Camden-Vineland City (PA-NJ-DE-MD) for both 2009 and 2010. These two surveys provide insight into the present dispute.<sup>9</sup> Exhibit C-21 (National Compensation Surveys 2009 and 2010).

<sup>9</sup>The 2009 Survey was published by the US Dept. of Labor in October of that year and the average reference month is January 2009. The 2010 Survey was published in October 2010 and the average reference month is January 2010. The relevant pages are attached hereto for the arbitrator's ease.

According to the October 2009 Survey (Table 13, p. 56), the median hourly earnings for all workers in all types of government service was \$25.47 per hour, \$988.00 per week and \$49,167.00 per year (based on 1,772 mean annual hours). For the October 2010 Survey (Table 13, p. 54), the hourly median wage was \$25.79 per hour, \$996.00 per week and \$50,419.00 per year.<sup>10</sup> These two surveys also provide median figures for the specific occupations of "protective service occupations" which include "bailiffs, correctional officers, and jailers" (akin to sheriff's officers). The 2009 Survey reflects a median hourly wage of \$21.66 per hour for these employees (Exhibit C-21, p. 56) which, multiplied by 2080 hours per year, yields an annual salary of \$45,058.00.

<sup>10</sup> The US Dept. of Labor's earnings statistics include straight time hourly or salaries paid to employees, including incentive pay, cost -of-living adjustments and hazard pay if applicable. Excluded are premium pay for overtime, vacations, holidays, non-production bonuses, and tips. The mean is computed by totaling the pay of all workers and dividing the number of workers, weighed by hours.

Parenthetically, it is noteworthy that the 2010 survey reflects the same median hourly wage as 2009, which indicates that these types of officers' salaries were static year over the year due to, among other things, the economic crisis and government's efforts to control costs to provide tax relief.

The County's offer for the year 2009, which yields an average salary of \$55,130 (\$26.50 hourly), exceeds the survey's median wage for this classification of employee for 2009 by 22%. Similarly, for 2010, the County's salary proposal vastly exceeds the survey data, yielding an average salary of \$58,048 (average hourly wage of \$27.90 per officer); and for 2011, the County's proposal yields an average salary of approximately \$60,500 (\$29.08 per hour). In contrast, FOP's salary proposals would equate to an average annual salary of \$56,368 in 2009 (\$27.00 hourly), \$60,300 in 2010 (\$29.00 hourly), \$64,248 in 2011 (\$31.00 hourly), and \$68,948 in 2012 (\$33.00 hourly).

Again, given the trends in compensation to these "protective service" employees, the County's offer for the years 2009, 2010, and 2011 is practical, reasonable, and worthy of approval.

**3. Comparison of Employment in the Same or Comparable Jurisdictions and Other Jurisdictions.**

The final "sub-factor" for the arbitrator's review is the comparability of the parties' proposed wages and conditions to those in the same jurisdiction or comparable jurisdictions. While the roles and functions of sheriff's officers differ from those of the members of the three New Jersey State Troopers unions, it is, as an initial matter, noteworthy that the New Jersey State Police, a statewide organization of law enforcement officers, who work (and live) in each of the 21 counties in the State including Burlington, settled a contract in 2012 that provides for an average increase of 1.875% over a four-year period (2012: 0%; 2011: 2.25%; 2010: 2.5%; 2009: 2.750/o); increases that are actually less than the 2% average being offered by the County to the sheriff's officers here. Exhibit C-23 (Article re: NJSP).

It is also instructive that the County's offer to the Sheriffs' officers here, made at a time when the County's financial position has not improved whatsoever and at a time when the County is in the midst of a hiring and salary freeze imposed in 2008 (Exhibit C-3A and Exhibit C-24 (Articles re: 2012 County Budget)), mirrors the award of Arbitrator Hundley in the County of Burlington and PBA Local 249 (216 rank and file corrections officers) matter entered on August 15, 2011 (Docket No. IA-2009-1 15): agreement for years 2009 through 2011 with increases of 2.5%, 2.0%, and 1.5%, respectively.

Of equal significance is that the County's proposed salaries for sheriff's officers would result in Sheriffs Officers' salaries' exceeding **NINETY PERCENT** of Burlington County's entire unionized workforce. Exhibit C-7. This includes sheriff's officers' earning more than the 216 rank and file County corrections officers and the 1007 members of the Communications Workers of America. There can be no legitimate dispute that the County's generous salary proposals will continue to confer financial rewards upon the sheriff's officers that exceed those conferred (or to be conferred) upon the vast majority of the County workforce. See also, Hundley award at pages 109-110 re: maximum salaries of County CWA workers with titles connected to public safety which shows that Burlington County's offer places the sheriff's officers' maximum salaries at pace, if not greater than, those particular workers (e.g., juvenile detention center officers, fire instructors, public safety communicators).

FOP 166 will no doubt conveniently argue that the Sheriffs officers' salaries lag significantly behind the salaries for County Prosecutor's Detectives and Investigators. The County acknowledges that the average salary of the rank-and-file county detectives, holding 4 different degrees of title, exceed the average salaries presently and proposed to be paid to Sheriff's officers. It must be noted however, that the qualifications for the

positions of Prosecutor's Investigators and Detectives are vastly different than that for a Sheriff's officer. Generally, County Detectives must hold a four-year college degree in order to be considered for employment or have significant experience as a municipal police officer." County detectives must also attend a standard agency training (full police academy) and remain continually qualified to carry weapons. The County also submits that the nature of a county detective's job is far different than that of sheriff's officers.<sup>12</sup>

<sup>12</sup> Testimony of Daniel Hornickel, Director of Human Resources.

County Detectives are responsible to investigate crimes, apprehend suspects and file criminal charges while Sheriff's officers have a wide variety of responsibilities which differ greatly from county detectives, both in scope and in expertise.

The record also shows that the County's offer of 6% over three years greatly exceeds current Burlington County offers to its largest bargaining unit (3.25% over four years which was accepted by the State CWA union), the Communication Workers of America Locals 1034 and 1036, which comprises 72% of the County workforce. Exhibit C-22 (News Articles re: CWA negotiations).

FOP's proposed increases are also unrealistic and astronomical in light of the fact that the average salary increase for all interest arbitration awards between January 1, 2011 and December 31, 2011, was 2.05% (1.87% for settled contracts). Exhibit C-15 (PERC Salary Analysis); January 1, 2012 through April 30, 2012 average was 1.82% (Exhibit C-16, excerpt from Osborn Interest Arbitration Award June 12, 2012). Awards subsequent to April 30, 2012 (see PERC website) have, for the contract years at issue here, consistently been in the range of between 0% and 2.25% (e.g., July 2, 2012, PERC Docket No. 1A2012-043: 2% in 2010 and 1.5% in 2011 (less than Burlington County's offer here)).

The salary increases proposed by the FOP are also unreasonable and inequitable in light of the relevant data relating to recent arbitration awards relating to County Sheriffs. For example, in March, 2012, Arbitrator Hundley awarded the Atlantic County Sheriff's officers (Docket No. IA-2010-071) a three year contract (2010-2012) with increases of 2%, 1.5%, and 1.5%, respectively (Exhibit C-33); the Union County Sheriffs (Docket IA-2012-037) were recently awarded increases of 0% in 2010 (step guide increases only), 2.25% (2011 through July, 2012), 2% (2013) and 2% (2014), while the Ocean County Sheriffs (Docket IA-2011-14) were awarded 0% (step guide increases only in year one), with 2% increases for years two, three, and four.

FOP 166 has submitted (as exhibits) over 20 different collective bargaining agreements and/or arbitration awards purportedly in support of their demands for a 3% across the board increase. The agreements and/or awards submitted by FOP 166 cover the periods 2005 through 2013. While one may be tempted to rely on these agreements for guidance in the within matter, such reliance would be misplaced since



there is no context provided whatsoever with respect to these records. One has no way of ascertaining the context of the negotiations which resulted in these agreements; one has no way of knowing the fiscal condition of the 18 counties "represented" in these agreements; nor does one have any way of knowing what concessions were made by the parties which may have resulted in the settlements. One thing is certain: each county represented by each of the agreements is different in terms of population, geography, income, cost of living, tax base, ratables and property values, fiscal condition, and income levels. As such, the majority of comparative information that may be gleaned from the FOP's Exhibits 111 through H20 is not instructive here.

FOP 166 is also likely to rely upon the unsubstantiated and sometimes inaccurate data contained in its Exhibit G1 (compensation, by county, of "top paid sheriff's officers for the years 2008 through 2011) to argue in favor of its 3% across the board demand. In summary, and as will be shown below, the information contained in that exhibit cannot be reasonably relied upon in this matter.

First, comparing the salaries of Burlington County sheriffs' officers to those in the northern New Jersey counties is neither valid, realistic, nor appropriate. See, Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super 163 (App.Div.1993), aff'd in part, rev'd in part, and remanded on other grounds, 137 N.J. 71(1994), wherein the New Jersey Supreme Court noted that undue emphasis was placed on (a) comparisons with police salaries in other jurisdictions (i.e., the "going rate") and (b) the ability of public entities to pay that "going rate." Moreover, without a record of similar sized populations, tax-based budget comparisons, property value and ratable comparisons, cost of living comparisons, and other necessary data, pure "number" comparisons among Sheriff's officers' salaries statewide fails to comply with the statutory and regulatory requirements here (including those found in N.J.A.C. 19:16-5.14(d)) and should be rejected summarily. Simply stated, FOP 166 has failed to submit any evidence demonstrating a legitimate comparison between the Burlington County Sheriffs' Department and any other, and particularly those not geographically located near Burlington County. Without such proofs, the unsubstantiated salary figures provided by FOP should be rejected as a basis for comparison.

Third, the information in Exhibit G-1 is, in many instances, unreliable if not downright misleading. By way of example, Exhibit G-1 indicates that the "top paid sheriff's officer" in Burlington County for 2008 is earning \$62,000 (which is accurate if one does not include Sergeants and Lieutenants in that "mix", who earned upwards of \$73,000 in 2008). The Exhibit further represents, in comparing Burlington to other New Jersey counties, that the "top paid sheriff's officer" in Atlantic County for that same year is \$72,341. Thus, based upon the representations contained in Exhibit G-1, one would logically conclude that the top paid rank and file sheriff's officer in Atlantic County earned \$72,341 while the top paid rank and file officer in Burlington County earned \$62,000.

What Exhibit G-1 conspicuously fails to disclose is that the Atlantic County salaries represented therein for each and every year shown (2008 through 2011) are the salaries of Sergeants, not the salaries of the rank and file sheriff's officers as depicted for the Burlington figures. FOP Exhibit G-1 also conspicuously ignores that the "top Burlington County Sheriff's officer" earned \$73,606 in 2008 (albeit a Lieutenant, but a represented Sheriffs officer nonetheless). The bottom line: the figures contained in Exhibit G-1 are, in many instances, incomplete, suspect and have limited value.

The collective bargaining agreements provided by FOP 166, as well as records relating to recent arbitration awards, are not, however, totally without value. For example, a review of the recently-settled contract between the Gloucester County Board of Chosen Freeholders and Gloucester County Sheriffs Local 122 shows that those parties settled a contract covering the five-year period 2009 through 2013 which provides for 2% per year increase for rank and file officers. FOP Exhibit H8. Similarly, Burlington County's offer to its sheriff's officers (in the same geographical region as the Gloucester officers) averages 2% per year over the term of the County's three-year proposal.

A review of salaries paid to Atlantic County Sheriffs officers, another southern New Jersey agency, is also instructive here. FOP Exhibit H14. While FOP 166 would suggest that Burlington County's officers are vastly underpaid as compared to Atlantic County officers (which guide has more steps than Burlington's), the Atlantic County contract (FOP Exhibit H14) and the March, 2012 award by Arbitrator Hundley demonstrates that Burlington County Sheriff's officers actually make more money in a shorter period of time than their counterparts in Atlantic County. The below chart, which depicts data for 2009 alone, evidences this fact.

	Atlantic	Burlington Offer
Step 1	\$31,500	\$32,287
Step2	\$35,500	\$41,369
Step3	\$37,450	\$43,510
Step 4	\$39,000	\$45,620
Step 5	\$42,325	\$50,362
Step6	\$45,235	\$55,158
Step7	\$47,940	\$63,550
Sgt.		\$67,363
Sgt.	\$75,575	\$71,176
Lieut.		\$75,446

The years 2006 through 2008 were no different. For example, viewing Step 3 only for "Burlington vs. Atlantic": 2006: \$39,246 vs. \$35,800; 2007: \$41,116 vs. \$36,350; and 2008: \$42,249 vs. \$36,900. For each of these years, every Burlington County sheriff's officer in steps one through seven (similar to Cumberland County) earned significantly more than their counterparts in the same steps in Atlantic County; and, again, given the County's proposals, that trend is likely to continue.

Moreover, a review of the negotiated increases in the Atlantic County agreement (at page 24) shows that the across-the-board percentage increases in the salary guide for the period 2006 through 2009 averaged between 1.3% and 1.5%; a trend which is not likely to end given the fiscal condition of the state.

A review of the salary structure for the Cumberland County Sheriff's officers, who earn substantially less than Burlington County's Sheriff's officers, is also instructive. Exhibit C-29. Cumberland County's rank and file officers "max out" in 2009 at \$53,994, while Burlington's officers at a lower step earned \$62,000 a year earlier (2008); and, under Burlington County's proposal, officers would attain a salary of \$63,550 (and, in fact, reach that step at a more rapid pace since Cumberland has nine steps to Burlington's seven). The same holds true for 2010, where Cumberland County officers would attain a maximum of \$56,154 versus Burlington's at \$64,821. Note that these figures were conspicuously absent from FOP's submissions in support of its demands.

As an aside, but similarly (as a result of an interest arbitration award entered late last year), sheriff's officers in affluent Hunterdon County "max out" at \$57,500 (2009), \$58,500(2010), and \$60,000 (2011) and only when they reach step 11. This is in stark contrast to Burlington's officers whose salaries are accelerated (seven steps) and who attain the \$60,000 mark much sooner at step 7. FOP Exhibit H19 (Hunterdon County Interest Arbitration Award).

Recent interest arbitration awards (on or about May 17, 2012) with respect to law enforcement officers in nearby Cumberland County are also instructive here (Dockets IA-2012-028 and 029). In those matters, the arbitrator awarded a 6% increase in the five year period covering 2011 through the end of 2014 (an average of 1.2% per year); an award which is less than the offer being made by the County to the sheriff's officers.

## **DISCUSSION**

I have carefully reviewed and thoroughly considered the evidence submitted into the record by the County and the FOP in support of their respective positions as well as their arguments concerning the application of the statutory criteria.

The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) which I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.

- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

In addition to the statutory criteria, in interest arbitration proceedings, I am guided by the following principles that I typically set forth in interest arbitration

decisions. The party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. No proposed issue by either party can be deemed presumptively valid without justification supported by the statutory criteria. If this were not the case, parties could frivolously propose demands, without evidentiary support, especially given the liberty afforded by conventional arbitration to make an unlimited number of proposals without fear of adverse consequence. Any decision to award or deny any individual issue in dispute must include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be reached after assessing the merits of any individual issue within the context of an overall award.

I next address the merits of the testimony and the evidence presented by the parties at the hearing as they relate to the individual issues that the parties have placed before me for determination.

### **Duration**

The County has proposed an agreement commencing January 1, 2009 through December 31, 2011. The FOP has proposed a contract duration commencing January 1, 2009 through December 31, 2012.

In the abstract, the FOP's proposal on contract duration would normally be persuasive given the fact that the contract to be awarded will result in an already expired agreement. However, an award through 201 would also result in an immediate return to the bargaining table. I must consider the fact that an award issued between the County and PBA Local 249 covering corrections officers that coincides with the duration of the County's final offer here. The record in this proceeding did not close until September 1, 2012. The 2012 budget evidence was based mainly on projections for 2012 and beyond. While those projections appear to be an accurate indication of what the results would probably be for the entire budget year, the record shows substantial fluctuation and trends that cause uncertainty as to the extent to which the County has the ability to absorb additional labor costs for that year. Because an immediate return to the bargaining table is required under each offer, I award the contract duration proposed by the County to allow negotiations for the successor contract to occur under budgetary certainty for 2012 and 2013 and other factors that may be relevant for the disposition of those negotiations. Accordingly, the contract duration shall be January 1, 2009 through December 31, 2011.

## **Stipulations**

N.J.S.A. 34:13A-16(g)(4) authorizes the parties to submit stipulations into evidence and to have the stipulations incorporated into the terms of the award. In this matter, the parties have done so and have submitted the stipulations into the record as Joint Exhibit #3. The stipulations to be awarded are as follows:

1. **ARTICLE II – DUES CHECK OFF AND AGENCY SHOP**

Delete paragraph B4

2. **ARTICLE IV – DISCRIMINATION AND COERCION**

Add/Clarify to include: sex, age, nationality, race, religion, marital status, political status, political affiliation, sexual orientation, gender expression (as defined under NJ State law), national origin, color, handicap, union membership, union activities, or the exercise of any concerted rights or activities or any other legally protected class.

(New): The Association and the Employer shall continue to discourage bias, prejudice and bigotry, and foster understanding of others in the workforce regardless of race, creed, color, national origin, sexual preference, gender and its expression, age, or physical condition.

3. **ARTICLE XXI – UNIFORM ALLOWANCE**

Modify paragraph C to delete "summer hat" and "winter hat" and replace with "hat with rain cover." Change "double handcuff case" to "single handcuff case." Correct "name tag, gold," from "(Officer)" to "(Superior)." Delete "holder, badge, I.D. Model 7208, Safariland" and replace with "ID holder." Eliminate all references to "Safariland." Change "Vest, Safariland hyper-light, level III A" to "Vest, Level III, as determined by the Sheriff."

4. **ARTICLE XXII – HEALTH BENEFITS**

The County will continue to provide the opportunity for employees to set aside a portion of their pre-tax salary into an IRS Section 125



account to be utilized for unreimbursed medical and dependent care expenses.

5. ARTICLE XXX – GRIEVANCE AND ARBITRATION PROCEDURES

Replace paragraph C3 with: "Representation: At Steps 1-4 of the grievance procedure, the grievant shall be entitled to be represented by a representative of the Association."

6. ARTICLE XXXIX – OUTSIDE EMPLOYMENT

Replace with the following: "Every employee planning to engage in employment outside of his or her official duties shall submit in writing the name or names of his or her prospective Employer to the Sheriff. No discrimination will be shown in the approval or disapproval of requests to undertake such employment. Written approval must be received from the Sheriff, and such approval shall not unreasonably be withheld."

ARTICLE VIII – OVERTIME

Both parties have advanced proposals concerning the overtime provision as is currently set forth in Article VIII. The existing contract provision provides for the following:

- A. Except as specified in Paragraph "D" hereinbelow, all overtime shall be distributed equally and by seniority, whenever practicable, from a list maintained by the Sheriff's Department for the Officers covered by this Agreement who have been certified by the Police Training Commission and those Officers employed prior to the enactment of the Police Training Act of 1968 provided that such Officers qualify annually in the handling of their weapons.
- B. Except as provided in Paragraph "D" hereinbelow, all extradition duty shall be distributed equally and by seniority from the list described in Paragraph "A" hereinabove.
- C. Whenever overtime is refused by an Officer, such overtime shall be offered to the next Officer whose name appears on the seniority list described in Paragraph "A" hereinabove and the Officer refusing shall not be considered for overtime until every other Officer on said list shall have thereafter been offered the

opportunity for overtime. When an Officer works any overtime detail on the weekend (12:00 AM Saturday to 12:00 AM Monday) and is asked to work another overtime detail in the same weekend, said Officer shall not be charged with an overtime refusal if said Officer elects not to work the second detail.

- D. Whenever overtime is required on a given assignment, said overtime shall be offered first to the Officer already working on that job assignment at the time, and the remaining Officer or Officers shall be placed in their respective positions on the list and thereafter personnel shall be selected by seniority as set forth in Paragraph "A" through "C", inclusive, hereinabove.
- E. Whenever an Officer is required to appear in Court as a result of a job-related incident occurring while on duty, other than during such Officer's regular duty hours, such Officer shall be compensated at the overtime rate. Officers shall provide seven (7) days notice if available. However, if such notice is not available, the officer shall notify the Sheriff or designee as soon as reasonably possible.
- F. When upon completion of a full shift an Officer is required to work a full second shift, he should also be entitled to a second one-half hour meal break on the second shift. Overlapping shift shall be considered as full shifts.
- G. Overtime compensation shall be granted for any time worked outside the regular shift as set forth under Article VII, Paragraph B with the exception of a change in an Officer's regular shift pursuant to Article VII, Paragraph C.
- H. Whenever an Officer is required to work through such Officer's normal one-half hour lunch, the Officer may request a later lunch break. The granting of such a request shall be at the discretion of the Sheriff if the workload permits. If an Officer's request is not granted by the Sheriff, he shall be compensated at the overtime rate pursuant to paragraph L of this Article.
- I. Whenever any Officer is called to work on the Officer's off duty time after signing off for the day, the Officer shall be paid or receive compensatory time off at the Officer's election subject to the provisions of Paragraph "L" and at the overtime rate for a minimum of two (2) hours or for actual time worked, whichever is greater.
- J. The overtime rate shall be one and one-half (1 1/2) times the regular hourly rate for the particular Officer involved for all overtime worked other than as set forth in Paragraph "K" hereinbelow. However, sick time shall not be considered as time worked. The hourly rate shall be computed as follows: The annual

salary of the employee shall be divided by the number of working days per year, the product of which shall be divided by eight (8).

- K. The overtime rate for any time worked on a holiday as defined in Article VIII of this Agreement shall be one and one-half (1 1/2) times the regular hourly rate for the particular Officer involved, provided, that no such Officer shall suffer loss of any holiday pay or credit for any such time worked.
- L. Any Officer who works "overtime" as defined in this Article shall be compensated at the Officer's election either in cash or in the form of compensatory time off under the following conditions:
  - 1. An officer may accrue up to a maximum of one hundred thirty (130) hours of compensatory time at any one time. All hours accumulated above one hundred thirty (130) hours compensatory time, shall be paid. Any unused or accrued compensatory time remaining at the end of the calendar year shall be paid; except that at the request of an officer, subject to the approval of the Sheriff or designee based upon the needs of the Department, accumulated compensatory time may be carried into the following year.
  - 2. Requests for the use of accrued compensatory time shall be submitted in writing to the Sheriff no later than forty-eight (48) hours prior to the time the compensatory time is to be taken.
  - 3. Requests for the use of accrued compensatory time shall be granted unless such time off interferes with the proper and efficient operations of the Sheriff's Office.
- M. In recognition of flexible schedules of Sheriff's Officers assigned to the Civil Process Unit, the Warrants Unit, Special Investigations Unit and the Fugitive Unit, the entitlement to overtime compensation shall accrue after completion of eight (8) hours of paid service, other than sick leave, in any work day and/or forty (40) hours of paid service, other than sick leave, in any work week.
- N. If an Officer is required to be on "standby", the Officer will receive one (1) hour of overtime for every twenty-four hours, or portion of 24 hours, on "standby".

The FOP proposes several changes to Article VIII – Overtime. The first change is to replace paragraph E with the following:

Whenever an Officer is required to appear in Court as a result of a job related incident, other than during such Officer's regular duty hours, such Officer shall be compensated at the overtime rate for a minimum of 4 hours. Officers shall be allowed to leave once their testimony or participation in the case is completed. Officers shall provide seven (7) days notice if available. However, if such notice is not available, the officer shall notify the Sheriff or designee as soon as reasonably possible. Court overtime shall not be counted towards equalization.

This proposed change would provide a minimum of four (4) hours of overtime for officers who are required to appear in court in contrast with the existing provision which only permits overtime compensation for hours in which officers are required to appear. The FOP submits that this will improve morale for a workforce that is underpaid and provide some reward for the inconvenience of being required to appear in court outside regular duty hours.

The FOP's second proposed change would replace paragraph G with the following:

Overtime compensation shall be granted for any time worked outside the regular shift (i.e., the number of work hours in a workday) as set forth under Article VII, Paragraph B with the exception of a change in an Officer's regular shift pursuant to Article VII, Paragraph C.

The FOP contends that this proposal is for the purpose of "clarifying" the eligibility requirements for when officers are entitled to overtime. It asserts that the clarification is necessary because the County is not paying unit members at the overtime rate until the unit member has exceeded 40 hours in workweek. By adding the proposed language (i.e., the number of work hours in a workday), the

officer would then be entitled to overtime for hours worked beyond the regular shift/schedule in an officer's workday rather than in a work week. The FOP contends that the existing manner in which Section G is being applied is inconsistent with the existing language in Section G and that the awarding of this clarification would avoid costly grievances and arbitration.

The FOP's third proposed change would replace paragraph I with the following:

Whenever any Officer is called to work on the Officer's off duty time after signing off for the day, the Officer shall be paid or receive compensatory time off at the officer's election subject to the provisions of Paragraph "L" and at the overtime rate for a minimum of four (4) hours or for actual time worked, whichever is greater.

This proposed change would provide that officers who are required to report to work when they are not scheduled would receive a minimum of four hours rather than the current minimum of two hours. According to the FOP, its proposed change would represent an additional offset to the severe inconvenience of being called in to work when an officer is not scheduled to work and that the increased minimum would reduce the impact of that inconvenience.

The FOP's fourth proposed change would replace paragraph J with the following:

The overtime rate shall be one and one-half (1 ½) times the regular hourly rate for the particular Officer involved for all overtime worked other than as set forth in Paragraph "K". The hourly rate shall be

computed as follows: The annual salary of the employee shall be divided by the number of working days per year, the product of which shall be divided by eight (8).

This proposed change would delete reference to existing language stating that "sick time shall not be considered as time worked". According to the FOP:

Allowing sick time to count towards the calculation of overtime will increase the morale of the unit and therefore must be awarded. It is simply inequitable for an FOP unit member that happens to be ill on one day in the beginning of his tour and is then called in to work on a weekend will not receive overtime payments for the time worked. Permitting sick time to count as time worked towards overtime provides an incentive for officers to work additional hours if needed. Moreover, it will increase the morale of the unit if officers are not penalized for using their sick time.

The County urges the denial of all of the FOP's overtime proposals. In particular, it claims that it would be inequitable to pay an officer one-half of a day's pay when the officer is required to appear in court or be called in outside normal work hours, even if the officer is only required to spend 30 minutes attending to such duties. It also objects to including sick time as "time worked" for the purposes of overtime as being contrary to public policy and to present payments and eligibility that are awarded to the vast majority of the County's workforce.

The County also proposes modifications to Article VIII – Overtime. Its first proposal is to modify paragraph A by adding the phrase "by unit assignment" after the words "distributed equally and by seniority." According to the certification of Hornickel, "the County and Sheriff propose in the first paragraph to

conform the language to the parties' practice in an effort to make overtime opportunities more equitable between the specialized units and the Courts division."

The FOP seeks the denial of the County's proposal to modify paragraph A. According to the FOP, overtime is now divided equally and by seniority "and should remain that way for equitable purposes". It further notes that the County has the prerogative to make overtime assignments in the event that there is a need for "specialized" overtime.

The County also proposes to eliminate paragraph B and re-label the remaining paragraphs in Article VIII. The purpose of this proposal has not been specifically addressed by either the County or the FOP. However, it appears that paragraph B would be rendered unnecessary in the event that the County's proposed modification to paragraph A is awarded.

The County also proposes to add language that would become a new paragraph N. That language would provide the following:

Officers assigned to the K-9 unit will receive an additional two (2) hours of pay weekly, at the overtime rate, for off-duty care of their canine partners and for answering telephone inquiries. All off-duty K-9 service call outs must be approved by the Unit Supervisor. Upon arrival, the officer will be compensated at the appropriate rate based upon the number of hours worked in the work week that the time was earned. The Sheriff shall retain the discretion to select officers to whom to assign K-9 duties.

According to the County, the above language represents the County's reasonable proposal for compensating officers who accept canine (K-9) responsibilities. The FOP offers the following statement in response to the County's proposed new paragraph N:

The County has also proposed, and has noted an agreement, concerning a new Paragraph "N" to the overtime provision. (Joint Exh. 2). This provision will provide K-9 officers an additional two (2) hours of overtime pay weekly for off-duty care of their canine partners and for answering telephone inquiries. Id. The FOP does not dispute this provision as long as it is in addition to the salary provision providing a stipend for K-9 officers as set forth above. To the extent that the provisions conflict, the FOP maintains that its stipend proposal be awarded.

#### Award

The FOP has provided justification for some modification to Article VIII(E). Currently, there is no minimum payment for requiring an officer to appear in court outside of that officer's regular duty hours. Under this existing provision, the inconvenience of being called in could far outweigh the compensation provided under circumstances where the call-in is for a very brief period of time. The FOP has proposed that there be a minimum of four hours. It has not justified the minimum number of hours that it has proposed, especially in light of Article VIII(I) which provides for a minimum of two hours or for actual time worked, whichever is greater, when an officer is called in to work for duties other than court on the officer's off duty time. Accordingly, I award a modification to paragraph E that provides for a minimum of two (2) hours compensation at the overtime rate if an officer is required to appear in court other than during such officer's regular duty hours. I also award language with some modification that would allow an officer



to leave once his or her testimony or participation in a case is completed. I award additional language to that sentence that would add terms that would allow the officer to leave subject to the approval of the supervising officer or the Prosecutor in the event that no supervising officer is present. I do not award the proposed change that court overtime not be counted towards equalization. There is no supporting evidence in the record that would justify any change in the current process that calculates the equalization of overtime.

Based upon the above, I award a new paragraph E to replace the existing paragraph E effective as of the date of this award as follows:

Whenever an Officer is required to appear in Court as a result of a job related incident, other than during such Officer's regular duty hours, such Officer shall be compensated at the overtime rate for a minimum of 2 hours. Officers shall be allowed to leave once their testimony or participation in the case is completed subject to the approval of the supervising officer or the Prosecutor in the event that no supervising officer is present. Officers shall provide seven (7) days notice if available. However, if such notice is not available, the officer shall notify the Sheriff or designee as soon as reasonably possible.

I do not award the FOP's proposal to replace paragraph G with language that would require overtime compensation for hours worked outside the regular shift in a workday. I accept its representation that the County has not paid unit members at the overtime rate until the unit member has exceeded forty (40) hours in a workweek. The FOP has contended that the County has been violating paragraph G by not providing overtime in a manner that is consistent with the FOP's proposal. For this reason, it asserts that its proposal is a

clarification of the already existing language that the County has been violating. A careful evaluation of Article VII(B) and (C), in light of the practice, does not support the FOP's contention that the County has been violating Article VIII(G). Although Article VIII(G) does reference Article VII(B), a fair reading of these and other provisions in their totality reflects an ambiguity as to when overtime shall be provided. Article VII(B) does make reference to a regular schedule but its stated intent is to provide discretion to the Sheriff to make schedule changes between 7:00 a.m. and 8:00 p.m. upon seven (7) calendar days notice. Article VII(C) requires the granting of overtime for all hours worked outside of a change in an employee's regular shift but only when the employer cannot comply with the seven (7) day notice provision. While the language in Article VIII(G), standing alone, may be susceptible to the interpretation offered by the FOP, there is no clear and unambiguous language requiring that overtime be granted for working beyond the number of work hours in a workday. Given the existence of an ambiguity, the current practice cannot be found to violative of the Agreement and the "clarification" to this language as sought by the FOP must be denied.

I also do not award the FOP's proposal to modify Article VIII, paragraph I. The main purpose for the proposed change is to increase call-in pay from two (2) hours at the overtime rate to four (4) hours at the overtime rate. Under the existing provision, an officer is paid beyond two (2) hours at the overtime rate for actual time worked in the event that it exceeds two (2) hours. The officer is thereby guaranteed additional compensation beyond the two (2) hours of

overtime in the event that more than two (2) hours are worked. I also note that the existing provision is consistent with Article XII paragraph E of the collective bargaining agreement between the County and PBA Local 249, the Corrections Officers unit. I find that insufficient justification has been provided for the proposed change and accordingly, it is denied.

I also do not award the FOP's proposal to modify Article VIII, paragraph J. Its proposal would delete the reference in the existing paragraph J that sick time not be considered as time worked for overtime purposes. The FOP contends that the existing terms can yield inequitable results when an officer has had to take a sick day but then works on a weekend day. Despite this perception that an inequity exists, the existing scheme that exempts paid sick leave for overtime eligibility purposes has been established policy both in the Sheriff's office and in the Corrections department. (See Article XII, paragraph B of the PBA Local 249 Agreement). Insufficient justification has been provided for a change in this policy and the existing contract language. The proposal is denied.

The County has proposed to modify Article VIII, paragraph A by adding the phrase "by unit assignment" after the words "distributed equally and by seniority." The County asserts that this would provide for more equitable distribution of overtime between the specialized units and the courts division. The FOP does not share the County's view that the existing provision results in an inequity for the employees it represents. In addition, the County has

presented no evidence that its proposal would further operational efficiency or otherwise would advance governmental policy. Accordingly, the County's proposal is denied. Because the County's proposal to modify paragraph A has been denied, there is no basis to eliminate paragraph B and to re-label the remaining paragraphs in Article VIII.

The County has proposed a new paragraph N that would provide an additional two (2) hours of pay weekly, at the overtime rate for off duty care by officers assigned to the K-9 unit for their K-9 partners and for answering telephone inquiries. The FOP voices no objection to this proposal. It appears that this provision was the subject of mutual agreement during negotiations, although it does not appear in the parties' stipulations set forth in Joint Exhibit #3. The FOP notes that it has an additional proposal concerning stipends for those officers assigned to the K-9 unit. That issue will be decided separately from this issue. Because there is mutual agreement on the language set forth in the County's proposal, it is awarded and will become a new paragraph O, rather than paragraph N effective as of the date of this award. The language awarded states the following:

Officers assigned to the K-9 unit will receive an additional two (2) hours of pay weekly, at the overtime rate, for off-duty care of their canine partners and for answering telephone inquiries. All off-duty K-9 service call outs must be approved by the Unit Supervisor. Upon arrival, the officer will be compensated at the appropriate rate based upon the number of hours worked in the work week that the time was earned. The Sheriff shall retain the discretion to select officers to whom to assign K-9 duties.

## ARTICLE XI – SICK LEAVE

The parties are currently subject to a multifaceted sick leave program as is currently provided in Article XI. The existing provision states:

- A. Full-time employees shall be entitled to the following sick leave with pay.
  - 1. New employees shall receive one (1) working day's sick leave credit for the initial month of employment if he/she begins work on the 1st through the 8th day of the calendar month. Employees who begin work on the 9th through the 23rd day of the month shall receive one-half (1/2) working day's credit for that month. Employees who begin work after the 23rd day of the month shall not receive any paid sick leave for that month. All such time shall be credited on the 1st day of the following month.
  - 2. After the initial month of employment and up to the end of the first calendar year, employees shall receive one (1) working day credited the first day of the next month for each month of service. After completion of one (1) year of service, each employee shall be eligible for fifteen (15) sick days for each year of service.
- B. Sick leave may be taken as credited. Although each employee is credited with fifteen (15) sick days after the first calendar year, sick time is earned at one and one-quarter (1 1/4) days per month for purposes of computing time owed to the County in the event an employee should leave prior to the completion of that calendar year and, having used all credited sick time. When the employee leaves the County service and at the end of each calendar year, deductions will be made from an employee's pay if more sick leave has been taken than has been earned.
- C. Paid sick days shall not accrue during a leave of absence without pay.
- D. An employee who exhausts all accumulated paid sick days in any one (1) year shall not be credited with additional paid sick leave days until the beginning of the next calendar year.
- E. Sick leave is defined to mean absence of an employee from duty because of personal illness by reason of which the employee is unable to perform the usual duties of his position, or exposure to contagious disease or quarantine. Sick leave may also be requested for the following reasons:

1. Attendance, for a reasonable period of time, upon a member of his/her family who is seriously ill and requiring the presence of such employee. Written documentation regarding the serious illness and/or the need for the presence of the employee may be required. Family is defined as spouse, parents, children, grandparents, or anyone residing in the same household. For good cause shown, upon request and approval of the Sheriff or Undersheriff, this definition of family may be expanded.
  2. Up to five (5) working days may be requested for a death in the immediate family to include spouse, parents, parents-in-law, children, grandparents, or siblings. Upon request and approval of the Sheriff, this definition may be expanded.
- F. If an employee is absent for five (5) consecutive working days for any of the reasons set forth in the above rule, the appointing authority shall require acceptable medical evidence on the form prescribed.
- G. If it is reasonably suspected that the employee is abusing the sick leave privilege, the Sheriff may require the employee seeking leave to submit proof of illness. If the sick leave is not approved, the employee will suffer loss of pay for such time.
- H. An employee who does not expect to report for work because of personal illness for any of the reasons included in the definition of sick leave hereinabove set forth shall notify his immediate supervisor, by telephone or personal message prior to the commencement of the normal work day. If an employee does not report as stated above without just cause, as determined by the Sheriff, such employee will suffer loss of pay.
- I. Sick leave claimed by reason of quarantine or exposure to contagious disease shall be approved upon presentation of the certificate of the local department of health, and in cases of death in the family, upon such reasonable proof as the appointing authority shall require.
- J. Employees who have exhausted their sick leave benefit and who wish to substitute vacation, personal leave or any other compensable time shall make such request to the Sheriff who may approve such request based upon merit.
- K. An employee shall not be reimbursed for accumulated sick leave when leaving the County service except for retirement, as provided for in Article XXIV Retirement.

The FOP proposes to add a new paragraph L and a new paragraph M to the above sick leave provision. The proposed new paragraph L is as follows:

Each Officer shall have the option to cash-in up to 35 days of accumulated, unused sick leave annually. To be eligible, the officer must maintain a minimum of 50 days of accumulated sick time and shall provide the County with 30 days' notice prior to April 1 of his intent to cash-in sick time. Payments shall be made in the first pay period of June after notice of cash-in at the Officer's hourly rate of pay in effect at the time he elected to cash-in.

The FOP's proposed new paragraph M is as follows:

Officers shall also be paid the following sick time incentive payments:

- |    |                                |           |
|----|--------------------------------|-----------|
| 1. | 0 sick days in a calendar year | \$1000.00 |
| 2. | 1 sick day in a calendar year  | \$800.00  |
| 3. | 2 sick days in a calendar year | \$600.00  |

The FOP contends that its proposals would provide an incentive for officers to work, to avoid absenteeism and to reduce overtime costs, all of which would serve the interests and welfare of the public. In its view, minor illnesses would not result in recurring sick days because officers would seek to build up the 50 day minimum that would be required to cash in sick days. Because the County currently must pay up to \$15,000 for an officer's accumulated sick leave at retirement pursuant to Article XXIV, the County would save money because officers would have fewer sick days at retirement and the cash-in that they would receive as a result of the proposal during their careers would be at a lower rate of pay than what they would receive at retirement. The FOP characterizes its proposal as one that would result in a "win-win" for both parties. Similarly, it

submits that the sick leave incentive program that would provide for a sliding scale of payments based upon sick leave usage would result in reduced absenteeism and reduced overtime costs because call-ins on overtime to replace officers would be reduced as well.

The County urges rejection of the FOP's sick leave proposal. It contends that the proposal to cash in a new sick leave and to be compensated for not using sick time is contrary to the interest and welfare of the public. The County also refers to a December 2009 report issued by the New Jersey State Commission of Investigation that frowned upon provisions that enable public employees to collect cash for unused leave while they are employed. The County further argues:

Nor can there be any showing by the union that such a provision will, in any way, create an incentive for employees not to use their sick time, that there is any "abuse" of sick time among Sheriff's officers that will be curtailed by offering them this expensive benefit, or that there is any other reason for changing the existing provision in the collective bargaining agreement which provides for payment of accumulated sick time only upon retirement. Simply stated, FOP 166's proposal in this regard should be summarily rejected.

#### Award

The FOP has proposed to add two new paragraphs (L and M) to Article XI. The FOP has advanced rationale for its two proposals but that rationale is not supported by the evidence. The record does not show that there has been excessive use of sick leave or abuse of sick time that would create a mutual



incentive to provide for either a cash-in system for annual unused paid sick leave or to provide incentive payments or bonuses to employees whose use of sick leave is in the range of 0 to 2 sick days in the calendar year. I also note that no such similar provision exists within the County's law enforcement units. Accordingly, the proposal is denied.

## ARTICLE XII – INJURY AND DISABILITY LEAVE

The parties are currently operating under an injury and disability leave provision as set forth in Article XII. The provision provides the following:

- A. Any Sheriff's Officer who is disabled because of an occupational injury or illness shall be covered by the provisions of the New Jersey Workers' Compensation law from the day of injury or illness. Said employee shall be eligible for a leave of absence for the entire period of disability. Employees on an authorized leave of absence shall be paid temporary workers' compensation benefits for the period of their disability in accordance with the eligibility criteria established by the New Jersey Workers' Compensation law. Said employee shall also receive sick and vacation leave credit during the period of their disability. However, such time shall be credited only upon the return of the employee to work. Personal leave credits shall not accrue during this period of disability.
- B. Any employee who is disabled for a period of more than five (5) consecutive working days as a result of an occupational injury or illness directly attributable to the unique duties and responsibilities of a Sheriff's Officer shall be granted a leave of absence with full pay for the entire period of disability; however, such leave of absence is limited to a maximum period of one (1) year from the date of injury or illness. In the event that five (5) or more sick days are charged against the employee, said sick days shall be returned and credited to the employee's sick leave bank. A disability determination panel (DDP) consisting of the Freeholder Director, or designee, the Sheriff and a mutually agreed upon neutral third party member chosen by the Sheriff and the Board of Chosen Freeholders shall determine whether an injury is directly attributable to the unique duties of a Sheriff's Officer. The determination made by the panel shall be binding. Payment for such disability shall not be in addition to Workers' Compensation

Benefits. This paragraph shall not be applicable to, and specifically excludes any claims, filings, or conditions which were made or existed prior to the date of execution of this Agreement.

- C. Employees returning from an authorized leave of absence as set forth in Paragraph "A" and "B" above shall be restored to their original job classification at the appropriate rate of pay with no loss in seniority, sick days or other employee rights, privileges and benefits except as modified above.
- D. Medical Verification. The Sheriff shall require that an employee receiving benefits under this Article provide adequate and acceptable certification from the County's treating physician as to the nature of the condition, injury, illness or other disability from performance of duties and treatment thereof and such demand for certification may be repeated on a reasonable periodic basis during the period of disability.
- E. In the event the coverage or benefits available to other employees under the above Plan are increased or expanded, or the County adopts a broader or more favorable plan of disability insurance for any of its employees, such increase or improvement in benefits shall also apply to all employees covered by this Agreement.
- F. The County will comply with existing Federal COBRA regulations regarding continuation of health coverage.
- G. If any employee is absent from work from 5 to 7 days arising out of an injury, disability or illness attributable to his unique duties as a Sheriff's Officer so that the said employee is not entitled to receive temporary disability benefits, the said employee shall not have any charge made against his sick leave accumulation so long as the employee substantially proves that his illness, disability or injury arose out of his/her unique duties as a Sheriff's Officer. Such determination shall be at the sole discretion of the Sheriff.

The FOP has proposed modifications to the existing provision.

Specifically, it would replace Article XII, paragraph B with a new paragraph B stating the following:

Any employee who is disabled for a period of more than five (5) consecutive working days as a result of an occupational injury or illness directly related to the unique duties and responsibilities of a Sheriff's Officer shall be granted a leave of absence with full pay for the entire period of disability; however, such leave of absence is

limited to a maximum period of one (1) year from the date of injury or illness. In the event that five (5) or more sick days are charged against the employee, said sick days shall be returned and credited to the employee's sick leave bank. A disability determination panel (DDP) consisting of the Freeholder Director, or designee, the Sheriff, 2 FOP bargaining unit members, and a mutually agreed upon neutral third party member chosen by the Sheriff and the FOP shall determine whether an injury is directly attributable to the unique duties of a Sheriff's Officer. The determination made by the panel shall be binding. Payment for such disability shall not be in addition to Workers' Compensation Benefits. This paragraph shall not be applicable to, and specifically excludes any claims, filings, or conditions which were made or existed prior to the date of execution of this Agreement. Deadlocks shall be submitted to arbitration pursuant to Article XXX.

The proposed paragraph B would change the make-up of the existing disability determination panel (DDP). The existing DDP consists of the Freeholder Director, or designee, the Sheriff and the mutually agreed upon neutral third party member chosen by the Sheriff and the Board of Chosen Freeholders. The Panel's charge is to determine whether an injury is directly attributable to the unique duties of a Sheriff's officer. The FOP proposal would change the DDP to consist of the Freeholder Director, or designee, the Sheriff, two FOP unit members and a neutral third party chosen by the Sheriff and the FOP with any deadlocks submitted to binding arbitration. In support of its proposal, the FOP makes the following argument:

The FOP's proposal is in the interest and welfare of the public. Including two (2) FOP members on the DDP will make the determination of whether an officer is in the line of duty more fair. FOP unit members have unique insights into the rigors of their profession, and can enlighten the County administration as to what is and is not an injury incurred in the line of duty. Moreover, having an FOP representative on the DDP will likely reduce the number of challenges to the DDP's rulings, which will prevent the County from having to defend against such challenges in court. This will save the County money.

Further, adding two (2) FOP members to the DDP will improve the morale of the unit. Officers can take comfort in the fact that if they are injured in the line of duty, they will have someone on the DDP looking out for their interests. Officers can also be assured that the "neutral third party" is not simply a rubber stamp for the decisions of the Director and the Sheriff. This will raise the morale of the unit and is therefore in the interest and welfare of the public.

The FOP has also proposed that in the event of a deadlock amongst the DDP, the determination of whether an injury occurred in the line of duty be referred to an arbitrator pursuant to the Grievance and Arbitration Article of the CNA. (Joint Exh. 1). In the rare event that the DDP cannot come to a conclusion, which is unlikely to occur, a neutral arbitrator should hear the matter and make a determination. Such a provision will benefit the public as it will reduce the likelihood of lawsuits challenging the DDP's determinations and will provide a less costly means of resolving disputes. Moreover, arbitration of labor disputes versus litigation is a favored policy of this State. This proposal is in the interest and welfare of the public and therefore it must be granted.

The County contends that the proposal must be denied because the FOP has not met its burden to justify the proposed change. It submits that no previous objections to the present system have been raised by the FOP during the prior decade.

### Award

The modifications sought by the FOP would change Article XII, paragraph B in two significant respects. It would modify the make-up of the disability determination panel (DDP) and create a right to arbitrate deadlocks in any DDP determinations. The existing terms set forth in Article XII – Injury and Disability Leave are comprehensive and the record does not reflect that disability determinations made by the DDP Panel, as it is presently constructed, have resulted in denials that were arbitrary, discriminatory or otherwise inequitable.

Indeed, the County asserts that there have been no disputes raised to the process or the composition of the Panel in the past. The existence of such evidence would provide the FOP with a more substantial base upon which to argue the merits of its proposal. In the absence of same, the proposal is denied.

#### ARTICLE XVIII – FAMILY LEAVE

The Agreement currently contains a family leave provision as set forth in Article XVIII as follows:

Family leave as set forth in N.J.S.A. 34:11B-1 et seq. and the Federal Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq. shall be available to all employees covered under this Agreement pursuant to the terms of those acts.

The FOP proposes to delete the existing provision and replace it with the following proposed language:

Family leave as set forth in N.J.S.A. 34:11B-1 et seq. and the Federal Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq. shall be available to all employees covered under this Agreement pursuant to the terms of those acts. Officers shall not be required to, but may at their option, use paid leave time prior to or concurrent with FMLA/FLA. In addition, an officer may not be involuntarily placed on FMLA/FLA.

The FOP notes that the existing language is silent on whether an employee can choose family leave as opposed to sick or vacation leave. Because of this, the FOP claims that the County can require officers to use paid time concurrently with leave pursuant to the FMLA and FLA. An additional complaint of the FOP is that the County has, on occasion, involuntarily placed

FOP unit members on FMLA or FLA leave. The FOP contends that its proposed language would remedy both of these areas of concern. The FOP offers the following argument in support of its proposal:

Pursuant to the FOP's proposal, an employee would be able to choose whether to use accrued leave or family leave. He or she would not be required to run both concurrently. This will increase the morale of the unit as individuals that have sufficient accrued time will not be required to exhaust their allotment of family leave. For example, an officer with a serious health condition, whose wife is pregnant, may wish to use sick or vacation time for his condition, so that he may spend the full twelve weeks of family leave when his child is born.

The FOP's proposal will allow unit members to choose when and how to utilize statutory family leave. This will raise the morale of the bargaining unit by allowing officers to determine how they apportion their accrued leave time and family leave when they or a member of their family is sick or they welcome a new child into their family.

Further, the FOP's proposal will provide unit members with some degree of control over how and when their FMLA or FLA time is used. The County will not be permitted to involuntarily place an officer on FMLA or FLA leave. (Joint Exh. 1). Such a restriction will similarly provide flexibility for officers that are ill or have a sick family member. Granting such a proposal will improve the morale of the bargaining unit. Accordingly, this proposal is in the interest and welfare of the public and must be granted.

The County urges rejection of the FOP's proposal. According to the County, the proposal would cause "an unprecedented and unique modification to the County's established FMLA leave policies which modification would render use of sick time by officers completely 'optional'." The County also objects to the proposal on the basis that it substantially deviates from all other County labor agreements.

### Award

The existing provision in Article XVIII provides contractual protection that unit employees be guaranteed all rights as are set forth in the applicable state and federal law regarding family and medical leave. The existing provision is consistent with the County's established FMLA and FLA policies. The proposal to allow officers the option to paid leave time prior to or concurrent with FMLA/FLA deviates from County-wide policy and the FOP has provided insufficient evidence as to why unit employees should be removed from that policy by providing them with an option that is not available to other County employees. Accordingly, the proposal is denied.

### ARTICLE VII – WORK SCHEDULES

The County has proposed to modify Article VII, paragraph B as it concerns the daily work schedule. The existing language states the following:

- A. The regular schedule for Sheriff's Officers shall be Monday through Friday 8:30 AM to 5:00 PM. The work day shall be eight (8) and one-half consecutive hours per day including one-half hour unpaid lunch break. The work week shall be forty (40) hours per week. Said work days shall be followed by two (2) consecutive days off except as otherwise provided in Paragraph D & E.
- B. The Sheriff in his sole discretion shall have the right, for efficiency of operations, to make changes in the starting and stopping time of the regular schedule as set forth in Paragraph B of this Article between the hours of 7:00 AM to 8:00 PM, Monday through Friday upon seven (7) calendar days notice to the affected employee.

The County's specific proposal is to change the reference in paragraph B from 7:00 a.m. to 6:00 a.m. According to the County, "this requested change reflects

that County facilities are open to employees at 6:30 AM; Sheriff's Officers must complete a walk through inspection prior to permitting employees access." The FOP urges denial of the County's work schedule proposal. According to the FOP:

[T]he County has failed to support its proposed schedule change, and therefore it must not be awarded. A party proposing a major work schedule change has the burden of justifying it. Teaneck Tp. and Teaneck FMBA Local No. 42, 25 NJPER 450 (¶30199 1999), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd, 177 N.J. 560 (2003). Work schedules should not be changed by an arbitrator without strong reasons. Id., City of Clifton, 28 NJPER 201 (¶33071 2002), County of Burlington, IA-2009-115 (Hundley, T., 2011) at 135.

The only evidence provided by the County in support of this proposal is one paragraph in the Certification of Daniel Hornickel. (See, Certification of Daniel Hornickel, ¶15). This paragraph states, in full, "[t]he County and the Sheriff propose to change the wording of Par. B., Art. VII (Work Schedules) to reflect a start time of 6:00 AM instead of 7:00 AM. This requested change reflects that County facilities are open to employees at 6:30 AM; Sheriff's Officers must complete a walk through inspection prior to permitting employee access." Id. This evidence is simply insufficient to support a work schedule change.

"PERC has emphasized that before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions." County of Burlington, IA-2009-115 (Hundley, T., 2011) at 134. Here, the County has failed to provide any evidence concerning the fiscal, supervision or managerial implications of the proposal. It has only averred that Sheriff's Officers must walk through the building prior to employees appearing for work in the morning. The County omits relevant facts to support its position, including whether or not any employees are actually in the Courthouse at 6:30 AM when it opens for the day. Without this support, the County cannot justify its need to change the start times for certain employees.

Moreover, the County's proposal will reduce employee morale. The language of Article VII(B) allows the Sheriff to change any unit members reporting time to 7:00 AM upon seven (7) calendar days notice. (Exh. A, Art. VII(B), p. 7). If the Arbitrator awards the County's proposal and that time is changed to 6:00 AM, FOP unit members could encounter childcare issues, as many daycare centers are not open at 6:00 AM. Further, the morale of the unit will be damaged by providing the Sheriff



with the unfettered discretion to make certain unit members appear at work when they do not wish to be there.

### Award

The existing language in the Agreement creates a regular schedule for Sheriff's Officers between 8:30 a.m. and 5:00 p.m. but also provides the Sheriff with discretion to make changes in the starting and stopping time of the regular schedule so long as they are between the hours of 7:00 a.m. to 8:00 p.m. The County proposes to expand upon the discretionary hours by removing 7:00 a.m. and replacing it with 6:00 a.m. The basis for the requested change is the County's claim that its facilities are open to employees at 6:30 a.m. Assuming the accuracy of the County's claim, no evidence has been provided reflecting that employees enter the facilities at 6:30 a.m. and are thereby deprived of the walkthrough that Sheriff's Officers perform prior to permitting employees access to the facilities. For this reason, it cannot be determined what the operational basis actually is for the request to broaden the Sheriff's discretion to require a shift that commences at 6:00 a.m. It must be assumed, absent any evidence to the contrary, that the commencement of work at 7:00 a.m. instead of 6:00 a.m. has not, in the past, created a potential or actual security issues that would be resolved by awarding the County's proposal. Accordingly, on this record, I deny the County's proposal.

## ARTICLE XXII – HEALTH BENEFITS

The County has proposed to modify Article XXII – Health Benefits. The existing co-pay structure is as follows:

	<i>Doctor's visits</i>	<i>Prescription/ Generic</i>	<i>Prescription/ No Generic Avail.</i>	<i>Prescription/ Brand</i>
01/01/06	\$15.00	\$8.00	\$12.00	\$25.00
12/01/07	\$20.00	\$10.00	\$15.00	\$30.00

The County's proposal is as follows:

- A. Health Benefits: Family Hospital, Surgical and Major Medical or other benefits shall be available for all full-time employees on the first of the month after three (3) months of service pursuant to the following provisions:

1. All employees shall be covered by a non-contributory comprehensive County self-funded medical, optical and prescription plan to include co-pays as follows:

	Doctor's Visits	Prescription Generic	Brand Preferred	Brand Non- Pref.
01/01/09:	\$20.00	\$0.00	\$30.00	\$45.00

Additionally, visits to the emergency room will have the following co-pays: \$50.00

Pre-certification and second opinion deductible for non-compliance shall be \$500.

The annual deductible for using out-of-network providers shall be \$400 for single coverage and \$600 for family coverage.

After the first 90 days a prescription has been filled, all maintenance medications (with the exception of insulin for diabetics) must be filled via Mail Order (examples of maintenance medications include high blood pressure, cholesterol, kidney and heart medications, etc.). Mail Order medications for a 90 day supply shall cost one-and-a-half times (1.5x) the applicable retail co-pay indicated above.

All prescription medications must be processed through a pharmaceutical clinical case management program through the prescription third-party administrator (TPA). As a pre-condition to using the prescription benefits plan, all employees must sign a HIPAA compliant release enabling the health benefits third-party administrator to share protected health information (PHI) with the prescription benefits TPA.

A copy of this plan shall be provided to each employee. In the case of a husband and wife working for the County, the employee with the earliest hire date shall be listed for coverage and the other spouse will not have separate coverage. If, for any reason, the subscriber has/his coverage terminated, the spouse shall be added immediately. The children dependents of the employee shall be covered until the end of the month in which they reach the age of 19, or if the dependent (as evidenced by being claimed on the employee's Federal income tax), is in school as a full-time student, until the end of the month in which they reach the age 23. Employees must submit a copy of their Federal 1040 tax form and information from the school that demonstrates that the child is still a dependent and still in school.

According to the County, its health benefits proposal would mirror the benefit contribution structures that are required for all other bargaining units and non-represented employees. In support of its proposal, it submits the following argument:

For the doctor's visits and prescription program, all other County employees pay a \$20 copay to see the doctor, but receive generic prescriptions absolutely free, while paying \$30 for brand or \$45 for non-preferred drugs. Mandatory mail order for maintenance drugs at 1.5 times the retail copay (generics are still FREE) is also the norm throughout the County.

CWA workers and non-represented employees were the first to change to the new Rx copay structure. In 2008 when the changes were implemented, the generic utilization rate was a dismal 48%. As of the beginning of 2012, the use of generics had climbed to 72%. With the two P.B.A. Local #249 units just coming on to the new copay structure in January of this year, the County expects to see an even higher generic utilization rate in 2012. The changes in the copay structure have enabled the County to effectively manage its prescription program. Expenses have

remained rather flat over the past four years at approximately \$4.1 million after rebates.

The FOP seeks rejection of the County's health benefits proposal. It offers the following argument in support of denial:

The County has the audacity to seek changes to FOP members' health benefits, despite the fact that unit members must now pay up to 35% of the cost of the premium. These changes are not in the interest and welfare of the public, and must be denied. The County seeks to increase co-pays and impose a healthcare contribution in excess of the statutorily required 1.5% of base pay contribution. These changes will destroy the morale of an already underpaid negotiations unit, and must be denied.

The County seeks to increase co-pays for brand preferred and brand non-preferred drugs. Currently, FOP members pay \$15.00 for brand name drugs when no prescription is available and \$30.00 when a generic is available. (Exh. A-1, Art. XXII(A)(1)). The County seeks to classify brand name drugs into preferred and non-preferred brands, and increase the co-pay to \$30.00 for preferred brands and \$45.00 for non-preferred brands. (Joint Exh. 2). These co-pays are in excess of those participating in the State Health Benefits Plan.<sup>5</sup> The County also seeks to double the co-pays for emergency room visits.

<sup>5</sup> Local employees who participate in the State Health Benefits Plan prescription program pay \$10.00 for a 30 day supply and \$15.00 for up to a 90 day supply of a name brand drug. See N.J. State Health Benefits Program Employee Prescription Drug Plan Member Handbook, Plan Year 2011 at [www.state.nj.us/treasury/pensions.com](http://www.state.nj.us/treasury/pensions.com)

The County has offered a 2.5% wage increase in 2009, 2.0% in 2010, and 1.5% in 2011, all of which will be reduced, at a minimum, by 1.5% in 2010 as a result of mandatory healthcare contributions. In addition, wages are further reduced by the additional 1.5% that officers are required to contribute to their pensions. Thus, at the end of the County's proposed contract period, FOP unit members will be making at the most 3.0% more than they earned in 2008 or 1.0% per contract year when the 3.0% deductions are factored in. Once the FOP bargaining unit begins paying increased premiums pursuant to P.L. 2011, c. 78, this amount will be further reduced. This proposal will not boost the morale of bargaining unit members, and is therefore not in the interest and welfare of the public.

### Award

Each party has submitted strong argument as to why its position should be awarded. The evidence that predominates is that which is shown in the County's

submission as it relates to internal comparability and financial impact. The record reflects that its labor agreements with PBA Local 249 (Corrections) and the Prosecutor's Detectives and Investigators and their supervisors (PBA Local 320) have, at minimum, the co-pay structure the County has proposed. The three CWA units for non-law enforcement personnel that collectively represent the largest contingent of county employees are also subject to these terms. It is significant that generic prescriptions are offered at no cost in an effort to generate greater use of this lower cost prescription option. The employee co-pay for a generic prescription would be reduced from \$10.00 to zero. The FOP's contention that health insurance contributions are already taking a larger bite of take home pay for employees who are not highly paid when compared to most of the County Sheriff's Departments in the State of New Jersey is noted and has been considered but does not dictate a contrary result. In addition to cost savings, there are favorable impacts caused by maintaining uniformity in the main components of the County's health insurance program. These include administrative efficiency, cost and uniformity of benefits which contributes to internal stability and harmony among the County workforce. These facts override the FOP's concerns and further the interest and welfare of the public. The FOP's opposition, if awarded, would result in a benefit program for co-pays that is isolated from the remainder of the County and there is insufficient justification shown for an award that excludes the Sheriff's Officers from the co-pay system that is applied to the County's other employees. Accordingly, as soon as implementation is administratively feasible, I award the following:

A. Health Benefits: Family Hospital, Surgical and Major Medical or other benefits shall be available for all full-time employees on the first of the month after three (3) months of service pursuant to the following provisions:

1. All employees shall be covered by a non-contributory comprehensive County self-funded medical, optical and prescription plan to include co-pays as follows:

	Doctor's Visits	Prescription Generic	Brand Preferred	Brand Non- Pref.
01/01/09:	\$20.00	\$0.00	\$30.00	\$45.00

Additionally, visits to the emergency room will have the following co-pays: \$50.00

I also award the County's proposal to continue the pre-existing language concerning pre-certification and second opinions:

Pre-certification and second opinion deductible for non-compliance shall be \$500.

I also award the County's proposal to continue the pre-existing language concerning prescription coverage as follows:

After the first 90 days a prescription has been filled, all maintenance medications (with the exception of insulin for diabetics) must be filled via Mail Order (examples of maintenance medications include high blood pressure, cholesterol, kidney and heart medications, etc.). Mail Order medications for a 90 day supply shall cost one-and-a-half times (1.5x) the applicable retail co-pay indicated above.

All prescription medications must be processed through a pharmaceutical clinical case management program through the prescription third-party administrator (TPA). As a pre-condition to using the prescription benefits plan, all employees must sign a HIPAA compliant release enabling the health benefits third-party

administrator to share protected health information (PHI) with the prescription benefits TPA.

I decline to award the County's proposal for increases in the annual deductible for out-of-network providers. This proposal was denied in the PBA Local 249 award and there is no basis to deviate from the status quo on this issue. The subject can be pursued by the County in its negotiations for pending expired agreements for this and the other law enforcement units. For similar reasons, I also deny the County's proposal to reduce the age of children dependents from 23 to 19.

Although not in dispute, the parties' new agreement must reflect recognition of law mandating health insurance contributions that occurred after contract expiration and during their negotiations and arbitration process. Both parties acknowledge that legislation was enacted requiring unit members to contribute 1.5% of base salary towards health care benefits effective May 21, 2010 pursuant to P.L. 2010, Chapter 2 as well as P.L. 2011, Chapter 78 with an effective date of June 28, 2011 or the first pay period in July. The latter piece of legislation provides for amounts of health benefit contributions pursuant to a percentage schedule based upon a combination of the type of coverage the employee selects and the amount of base salary that employee earns. This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider the Township's lawful authority and statutory limitations. One such legal requirement is to implement Chapter 2 and Chapter

78 in accordance with their terms. The existing legislative scheme provides monies towards the County's financial obligations to provide health insurance/medical benefits. Accordingly, the Award will reflect that health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78 and Article XXII shall be modified to reflect these requirements.

#### ARTICLE XXIV – RETIREMENT

The County and the FOP each propose changes to the Retirement provision that is currently set forth at Article XXIV of the Agreement. The current provision provides for the following:

- A. Each employee in the classified service who has been granted sick leave shall be entitled upon retirement to receive as lump sum payment as supplemental compensation for each full day earned and unused accumulated sick leave which is credited to her/him, on the effective date of retirement.

The amount of supplemental compensation payment shall be computed at the rate of one-half (1/2) of the eligible employee's daily rate of pay for each day of earned and unused accumulated sick leave based upon the average annual compensation received during the last year of employment prior to the effective date of retirement, provided, however, that no such lump sum supplemental compensation payment shall exceed fifteen thousand dollars (\$15,000).

- B. Employees who have retired prior to December 5, 1994, with twenty-five (25) years or more of credited service to Burlington County shall have his/her Hospital, Surgical and Major Medical or Health Maintenance (HMO) benefits premium paid by the County. The Employer shall pay up to the same amount toward HMO coverage that it contributes toward basic coverage for each such retiree. Any additional cost for HMO coverage or coverage for eligible dependents shall be the sole



responsibility of the retiree. Prior to being eligible for this benefit all retirees who are sixty-five (65) years of age or older must be carriers of Medicare "A" and "B".

- C. Any Officer who has retired, or retires after December 5, 1994, and who qualifies for paid health benefits upon retirement based upon twenty-five (25) or more years of credited service with Burlington County as set forth in paragraph B above, shall receive the health benefits plan in effect for the negotiations unit at the time of his/her retirement. Any subsequent changes in the health plan which are negotiated between the parties for the employees in the unit will also apply to those Officers who have retired after the effective date of this Agreement. Prior to being eligible for this benefit, all retirees who are sixty-five (65) years of age or older must be carriers of Medicare "A" and "B". The County shall continue its current practice of payment of full coverage for the first ninety (90) days following the date of retirement regardless of the number of years of service.

The FOP's first proposal would replace the existing paragraph B with a new paragraph B that reads as follows:

Employees who have retired prior to December 5, 1994, with twenty-five (25) years or more of credited service in a State or locally operated pension system and at least 10 years of service to Burlington County shall have his/her (including dependent coverage) Hospital, Surgical and Major Medical or Health Maintenance (HMO) benefits premium paid by the County. The Employer shall pay up to the same amount toward HMO coverage that it contributes toward basic coverage for each such retiree. Any additional cost for HMO coverage or coverage for eligible dependents shall be the sole responsibility of the retiree. If an employee is eligible for Medicare "A" and "B", Medicare shall become primary coverage and the County plan, secondary.

The FOP's proposal would change eligibility for retirement benefits from having to have twenty-five (25) or more years of credited service with Burlington County to twenty-five (25) years of credited service within a state or locally operated retirement system and at least ten (10) years of service to the County. It would also extend the entitlement to the retirement benefit from the employee

alone to eligible dependents. The FOP notes that N.J.S.A. 40A:10-23 permits the County to legally agree to the FOP proposal. According to the FOP, unit morale would be bolstered by officers having knowledge that their dependents will be eligible for health benefits once an officer retires and that the County could benefit by opening recruitment to more experienced officers who otherwise would be deterred from having interest in County employment because of the existing requirement that an employee must have twenty-five (25) years of credited service for the County prior to earning retiree health benefits.

The County objects to the proposal as imposing extraordinary new costs for health benefits entitlements that do not presently exist for employees employed by the County. It argues:

Beyond the fact that the County is not required to provide health care coverage for retirees' dependents and spouses pursuant to N.J.S.A. 40A:10-23, this proposal would impose a substantial, unnecessary, and virtually unprecedented burden upon the County. Significantly, not one of the other 9 (nine) bargaining units in the County receives the health benefits coverage for spouses and dependents in retirement as proposed by the FOP. In fact, members of the other bargaining units receive the exact same health benefits in retirement as currently provided to members of the FOP. See, Article XXIV, Paragraph B of the existing agreement.

The FOP's second proposal would replace the existing paragraph C with a new paragraph C that reads as follows

Any Officer who has retired, or retires after December 5, 1994, and who qualifies for paid health benefits (including dependent coverage) upon retirement based upon twenty-five (25) or more years of credited service with Burlington County as set forth in paragraph B above, shall receive the health benefits plan in effect for the negotiations unit at the

time of his/her retirement. Any subsequent changes in the health plan which are negotiated between the parties for the employees in the unit will also apply to those Officers who have retired after the effective date of this Agreement. If an employee is eligible for Medicare "A" and "B", Medicare shall become primary coverage and the County plan, secondary. The County shall continue its current practice of payment of full coverage for the first ninety (90) days following the date of retirement regardless of the number of years of service.

The FOP contends that its proposal is in the interest and welfare of the public because it would increase unit morale by allowing each officer to know that he or she will receive the same health benefits for the duration of the retirement period and that these benefits would be the same as it was when the retiree left employment with the County. The proposal is said to relieve retirees of any concern that their retirement benefits would be eroded during negotiations, especially in light of the fact that the retirees are not represented by the FOP and have no say in the negotiations. The County urges rejection of the proposal as deviating from all County labor agreements as they concern retiree health benefits.

The County offers its own proposal that would modify the existing Retirement provision as set forth in Article XXIV. The County's proposal is as follows:

- A. Each employee in the classified service who has been granted sick leave shall be entitled upon retirement to receive a lump sum payment as supplemental compensation for each full day of earned and unused accumulated sick leave which is credited to him on the effective date of his retirement.
  - 1. The amount of the supplemental compensation payment shall be computed at the rate of one half (1/2) of eligible

employee's daily rate of pay for each day of earned and unused accumulated sick leave based upon the average annual compensation received during the last year of his employment prior to the effective date of his retirement. Lump sum supplemental compensation payment shall be made in compliance with N.J.S.A. 11 A: 6-19.

2. Payment shall be made in January next following the date of retirement provided the employee has given his Department Head written notice of retirement at least six (6) months prior to date thereof. Failure to give such notice shall result in a delay of payment to the second January next following the day of retirement. In emergent or unusual circumstances, such notice may be waived.
- B. All employees who have retired or who shall retire with twenty-five (25) years or more of credited service to Burlington County shall be covered by a comprehensive, County self-funded, medical plan. Prior to being eligible for the benefits as listed in paragraphs B and C of this article, all retirees who are sixty-five (65) years or older must be carriers of Medicare A & B. Twenty-five (25) years of service, for the purposes of health benefits in retirement, shall include a minimum of twenty years of full-time service, with the last five years of service being full-time. Any leaves of absence without pay that, collectively, are in excess of twelve months shall not count toward the twenty-five years needed for health benefits to be paid for by the County in retirement, provided, however, that any FMLA leave, any military leave and or any workers' compensation leave shall count toward the twenty-five years.
- C. The County shall continue its current practice of payment of full coverage for the first ninety (90) days following the date of retirement regardless of the number of years of service. If an employee has taken a leave of absence in the twelve months preceding retirement, the employee shall have coverage for the difference between the amount of leave previously taken and the 90 days heretofore described.

The County's proposal would change Article XXIV in four respects. The first change would require that the lump sum supplemental compensation for earned and unused accumulated sick leave be made in compliance with N.J.S.A. 11A:6-19. Because the current contractual limit is \$15,000, an amount similar to

what the statute currently limits, the contractual amount in the future would be subject to change based upon any amendments that are made to N.J.S.A. 11A:6-19. The County's second proposal would require that new procedural requirements be followed before FOP unit members could be provided with unused sick leave payments. Currently, officers are provided with that payment upon retirement. The County's proposal would require that payment be made in the January following retirement and that each retiring officer provide the Department Head with written notice of retirement at least six months prior to that date. In the event that the officer failed to provide such notice, he or she would be required to wait until the second January following retirement. The County's third proposal would provide certain restrictions on access to health benefits in retirement. Instead of the current eligibility requirement that a unit member have twenty-five (25) years of service with the County, the County's proposal would require that a unit member have a minimum of twenty (20) years of full-time service and the last five (5) years of service being full-time. The County would also exclude any leave of absence without pay towards the twenty-five (25) years of service if such leaves are collectively in excess of twelve (12) months. The proposal also states that if an employee has taken a leave of absence in the twelve months preceding retirement, the employee shall have coverage for the difference between the amount of leave previously taken and the 90 days heretofore described. The County's fourth proposed change would modify portions of paragraph B. It would replace existing language stating:

Employees who have retired prior to December 5, 1994, with twenty-five (25) years or more of credited service to Burlington County shall have

his/her Hospital, Surgical and Major Medical or Health Maintenance (HMO) benefits premium paid by the County.

and replace it with language stating:

All employees who have retired or who shall retire with twenty-five (25) years or more of credited service to Burlington County shall be covered by a comprehensive, County self-funded, medical plan.

The County asserts that it is merely pursuing language that is consistent with how all other County retirees, including law enforcement retirees are treated.

The FOP urges that all of the County's proposed changes to Article XXIV be rejected. It contends that the County has not provided any evidence to support its proposals and that, in any event, they must be rejected as not serving the interest and welfare of the public. The FOP asserts that the County's proposal to require lump sum supplemental payments be made consistent with NJSA 11:6-19 amounts to a circumvention of the unit's constitutional protections by ceding all authority over leave payments to the legislature and not the parties. According to the FOP, these constitutional protections prohibit the legislature from changing mandatorily negotiable terms and conditions of employment while a collective negotiations agreement is in effect. The FOP distinguishes between the County's proposal and the health insurance contributions legislation (P.L. 2010, c. 2 and P.L. 2011, c. 78) because, unlike the County's proposal on payments, those statutes became effective only upon the expiration of applicable collective negotiations agreements.

The FOP also objects to the procedural requirements that the County has advanced in order for unit members to be provided with compensation for unused sick leave. The FOP argues that:

The County's proposal will destroy the morale of the bargaining unit. Pursuant to the proposal, a unit member retiring in January will have to wait an entire year before he is paid for unused accumulated sick time. If the officer fails to notify the Department Head six (6) months prior to his retirement, he will not be paid for two full years. The County has not provided any support for this proposal. Moreover, the proposal simply amounts to a series of hoops that unit members must jump through in order to be paid for their unused accumulated sick leave. Accordingly, the Arbitrator must deny the County's proposal.

The FOP further contends that the County has not provided any support for the remainder of its proposals. It submits that there is no evidence that FOP unit members regularly take unpaid leaves of absence amounting to more than twelve (12) months or that they seek out part-time work in the last several years of their careers. Moreover, the FOP notes that the collective negotiations agreement does not appear to contemplate part-time Sheriff's Officers, thus there is no reason for the County's proposal concerning part-time employees.

#### Award

I address each party's proposals in the order laid out in the above summary of positions. The FOP seeks to replace the existing paragraph B with a new paragraph B that would allow a sheriff's officer to receive retiree coverage who has at least ten (10) years of service with Burlington County within a total of at least twenty-five (25) years or more of credited service. There is no evidence of any other collective negotiations agreement that provides for retiree coverage

after ten (10) years of service with Burlington as opposed to the current requirement that there be at least twenty-five (25) years or more of credited service to Burlington County. A similar proposal that would reduce the number of years of service with Burlington County to fifteen (15) years rather than twenty-five (25) was rejected in interest arbitration in the matter involving the County and PBA Local 249. Based upon internal comparability I deny this proposal as well as the request to expand health benefits to retiree dependents. Although there is some logic in the FOP's argument that its proposal might be more attractive to experienced law enforcement officers who seek employment with the County, there is no evidence that the County has had an inability to attract future hires or has operationally suffered by an inability to attract experienced law enforcement officers to County employment. Accordingly, this proposal is denied.

The FOP claims that its proposal to provide a new paragraph C to replace the existing paragraph C would ensure that retirees not be subject to subsequent changes in the health plan that are negotiated between the parties for unit employees. I do not award this proposal and instead award a continuation of the status quo in the existing paragraph C. This is not intended to add to or subtract from any pre-existing rights that exist under the previous agreement. any disagreements on this issue can be the proper subject of future negotiations.

The County has proposed to modify Article XXIV, paragraph A by requiring changes to the existing lump sum supplemental compensation scheme



subordinate to any future changes that are made to N.J.S.A. 11A:6-19. I do not award this proposal. The current contractual limit for such payments is \$15,000. This amount is similar to the amount that the statute currently limits. If amendments are made to N.J.S.A. 11A:6-19 that preempt Article XXIV, the existing contractual scheme would be replaced by the amount that serves to preempt Article XXIV. The County's proposal that Article XXIV be "in compliance" with the statute would be unnecessary in the event that the statute is amended to preempt Article XXIV. In the event that the statute is amended in a manner that does not preempt Article XXIV, the County may pursue negotiations seeking to make Article XXIV consistent with the statute. For these reasons, I do not award the County's proposal.

The County's second proposal would delay the payment of the lump sum supplemental compensation to the January following a retirement and require an officer to provide at least six months written notice. The absence of a notice would force the employee to wait until the second January following retirement to receive the supplemental compensation. The County has not offered detailed justification for this proposal nor has it shown that its proposal is consistent with all other law enforcement units in the County. Moreover, a similar proposal was not awarded in the interest arbitration proceeding involving PBA Local 249. Accordingly, the proposal is denied.

I also decline to award the County's proposals to amend Article XXIV, paragraph C to exclude certain leaves of absence without pay towards the calculation of twenty-five (25) years of service. In the absence of specific justification for these proposals or evidence that Sheriff's officers have abused the existing system that calculates credited service, I deny the County's proposal.

I do award language proposed by the County that would amend part of paragraph B. The proposed language is consistent with its county-wide retirement plan and that which was awarded in the PBA Local 249 unit. Uniformity among law enforcement units serves the interest and welfare of the public and provides stability within the County's law enforcement units. Paragraph B shall be amended to delete the first paragraph and in its place add:

All employees who have retired or who shall retire with twenty-five (25) years or more of credited service to Burlington County shall be covered by a comprehensive, County self-funded, medical plan.

#### ARTICLE XXXIII – BILL OF RIGHTS

Article XXXIII of the Agreement provides for a Bill of Rights. These rights are set forth in the current Agreement in paragraphs 1 through 9 as follows:

##### Departmental Investigations:

In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

1. The interrogation of a member of the department shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate

otherwise.

2. The interrogation shall take place at a location designated by the Employer or designee. Usually it will be at the Employer's office or in the location where the incident occurred.
3. The member of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the members of the allegations should be provided. If it is known that the member of the department is being interrogated as a witness only, he should be so informed at the initial contact.
4. The questioning shall be reasonable in length. Fifteen (15) minutes time shall be provided for personal necessities, meals, telephone calls and rest periods at the end of every two (2) hours.
5. No member of the department interviewed in the capacity of a witness or the subject of an investigation shall be subject to profanity or vulgar language during the course of an interview or interrogation.
6. At every stage of the proceedings, the Department shall afford an opportunity for a member of the department, if he so requests, to consult with counsel and/or his Association representative before being questioned concerning a violation of the rules and regulations during the interrogation of a member of the department, which shall not delay the interrogation beyond one (1) hour for consultation with his Association representative.
7. In cases other than departmental investigations, if an officer is under arrest or if he is a target of a criminal investigation, he shall be given his rights pursuant to current decisions of the United States Supreme Court.
8. Nothing herein shall be construed to deprive the Department of its officers of the ability to conduct the routine and daily operations of the Department.
9. Under no circumstances shall the employer offer or direct the taking of a polygraph or voice print examination for any employee covered by this Agreement, unless repealed by statute in case of polygraphs or approved for administrative investigations by the New Jersey Attorney General for voice print examinations.

The County proposes to modify Article XXXIII by adding a new paragraph 10 stating the following:

"Sheriff's Officers questioned as witnesses in departmental investigations shall not have a right to a union representative or legal counsel. If during questioning the employee becomes a target of a departmental investigation, he or she shall be entitled to protections afforded in Paragraphs 1 - 9 above."

According to the County, the language it has proposed would clarify when an officer may be accorded representation during questioning as a witness and will adequately inform officers of their rights when questioned about any incident.

The FOP urges denial of the proposal and offers several reasons in support of its denial:

This proposal must be denied as it is overbroad and could potentially violate the New Jersey Attorney General Guidelines on Internal Affairs Policies and procedures.

The Attorney General Guidelines provide that an officer that is a witness in an Internal Affairs investigation may be entitled to a Weingarten representative. Thus, the County's proposal could violate the Guidelines, and thus N.J.S.A. 40A:14-181, which requires that all law enforcement agencies in the State adopt policies and procedures consistent with the Guidelines. The Guidelines recognize that a witness being interviewed may be represented in certain instances. Accordingly, the County's proposal is overbroad and potentially illegal and must be denied.

Moreover, the County's proposal will decimate the morale of the unit. Being called into an Internal Affairs investigation is a nerve-wracking experience, whether the officer is a witness or a target. Providing a union representative or legal counsel can make an officer more comfortable. More importantly, it can prevent a witness from turning into the target of an investigation by not incriminating him or herself. Union protection raises the morale of the unit. Being denied representation will lessen the morale of the unit.

### Award

I do not award the County's proposal to bar union representatives or legal counsel from attendance during departmental investigations of Sheriff's Officers. The County's proposal would remove the protections that are provided in Article XXXIII, paragraphs 1 through 9. Article XXXIII, paragraph 6 allows for representation opportunities "before being questioned concerning a violation of the rules and regulations." The County's proposal would continue to allow for representation but only if the employee "becomes a target of a departmental investigation." The manner in which the County has phrased its proposal creates the potential for ambiguity in the event that a Sheriff's Officer is not a "target" of the investigation but is found to have violated a rule and regulation during the course of an interrogation where he or she has been denied the opportunity that presently exists to consult with counsel and/or union representative. Moreover, the County has presented no evidence showing that the existing provision has impeded its ability to investigate and/or discipline any unit employee. Accordingly, the proposal is denied.

### ARTICLE VI – SALARIES

The parties' final offers on salary are as follows. The County has proposed across the board increases of 2.5% on January 1, 2009, 2.0% on January 1, 2010 and 1.5% on January 1, 2011. The FOP's salary proposal calls for across the board increases of 3.0% effective each January 1 in 2009, 2010,

2011 and 2012. In addition, the FOP's proposal requests a new senior step and additional components such as percentage differentials for superior officers above the new senior step and stipends for the K-9 unit and certified EMTs. The specifics of the FOP's proposal are set forth below:

(A)

<u>Step</u>	<u>Current</u>	<u>1/1/09</u>	<u>1/1/10</u>	<u>1/1/11</u>	<u>1/1/12</u>
Pre PTC		\$29,000	\$29,000	\$29,000	\$29,000
Step 1	\$38,020	\$39,161	\$40,335	\$41,545	\$42,792
Step 2	\$40,360	\$41,571	\$42,818	\$44,102	\$45,426
Step 3	\$42,449	\$43,722	\$45,034	\$46,385	\$47,777
Step 4	\$44,507	\$45,842	\$47,217	\$48,634	\$50,093
Step 5	\$49,134	\$50,608	\$52,126	\$53,690	\$55,301
Step 6	\$53,813	\$55,427	\$57,090	\$58,803	\$60,567
Step 7	\$62,000	\$63,860	\$65,776	\$67,749	\$69,782
Senior Step	N/A	\$68,650	\$70,709	\$72,830	\$75,015

On January 1 of each year, an officer shall move horizontally on each step, on his anniversary date, an officer shall move vertically on each step.

The step guide shall survive the expiration of the contract.

Senior step requires a minimum of 9 years of PFRS service credit. The senior designation shall be designated by the wearing of two hashmarks on the officer's uniform sleeve.

<u>Step</u>	<u>Current</u>	<u>1/1/09</u>	<u>1/1/10</u>	<u>1/1/11</u>	<u>1/1/12</u>
Sgt. 1	\$65,720	\$72,768	\$74,952	\$77,200	\$79,516
Sgt. 2	\$69,440	\$76,887	\$79,194	\$81,570	\$84,017
Lt. 1			\$83,946	\$86,464	\$89,058
Lt. 2	\$73,606	\$86,114	\$88,697	\$91,358	\$94,099

A first step Sgt. Shall maintain a 6.0% differential above senior step; a second step Sgt. Shall maintain a 12% differential above senior step; a First Step Lt. shall maintain a 6% differential above a Second Step Sgt. And a Second Step Lt. shall maintain a 12% differential above a Second Step Sgt.

(B) D. Officers assigned to the K-9 unit and those who are EMT certified shall receive a \$4,000.00 and \$2,000.00

per annum stipend, respectively. The stipend shall be paid in the first pay of January for the preceding year for the K-9 stipend. If an officer is not assigned to the K-9 unit for a full year, he shall receive the stipend based on a 1/12<sup>th</sup> pro-ration. That is, for each month or part of a month he serves in the K-9 Unit, he shall receive 1/12<sup>th</sup> of the stipend. The EMT stipend shall be paid in the first pay period of January of each year. If an officer receives his EMT certification after the first pay period in January, he shall receive the first stipend within 30 days of his presentation of proof to the Sheriff and thereafter, the first pay period of each January.

Prior to evaluating the disputed issue of salaries, I turn attention to the parties' procedural dispute over the County's request in its post-hearing submission to have the salary issue determined at a level below what it has proposed in its final offer. The parties have addressed this issue in their post-hearing submissions. The County submits the following argument on this point:

It is axiomatic that an arbitrator may, where there are several points of disagreement between the parties -- in this case, for example, a dispute over the amount of across-the-board increases -- evaluate the relationship among, or the combined effect of, the different proposals in arriving at an award. As such, the arbitrator may fashion an award which differs from those of the parties' final positions. See e.g., In the Matter of Borough of Pompton Lakes, Respondent, and Pompton Lakes PBA Local No. 161 (PERC No. 2008-58; Docket No. IA-2007-055) wherein PERC explained: "The PBA argues that the award violates N.J.S.A. 34:13A-16c because it differs from the Borough's final offer. However, a conventional award is not necessarily flawed if it goes outside the boundaries of the parties' positions." See also, Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (P29043 1997).

As will be demonstrated below (and supported by the testimony and documents submitted on behalf of the County of Burlington), an interest award decision in a percentage amount less than the County and Sheriff proposed as their final offer(s) is appropriate here, particularly given the interests and welfare of the public, the economy, and the budget and financial position of the County.

Since the making of its "final offer" in March, 2012, the County's financial position has had a significant impact on its decision and policy making process, requiring the County to redirect its budgeting (particularly with respect to salaries and benefits) strategies. The County's conservatism in this regard has been dictated by, among other things, shrinking fund balances, declining values of property for purposes of tax apportionment, decreasing ratables, and an economy that shows no signs of improvement. As a result, and in an effort to provide tax relief to Burlington County's citizens struggling to "make ends meet" while unemployment continues, the County has recently introduced a budget that decreases spending, decreases salaries and wages, maintains a tax rate which is at its lowest since 1962, cuts the amount to be raised by taxation for the fifth consecutive year, and decreases the tax levy.

The foregoing comes with a cost, however: hiring and salary freezes; disposition of County assets resulting in layoffs (e.g., Buttonwood Hospital); continued demands that County agencies contribute much-needed capital funds to County debt-service payments; increasing reliance on outside agencies for funding assistance; and a rethinking of its strategy with respect to overall salaries and collective bargaining negotiations.

With respect to collective bargaining, the record here shows that the County's March, 2012, offer of 6% over three years greatly exceeds current Burlington County offers to its largest bargaining unit (3.25% over four years which was accepted by the State CWA union), the Communication Workers of America Locals 1034 and 1036, which comprises 72% of the County workforce. Exhibit C22 (News Articles re: CWA negotiations).

Moreover, both the FOP's and the County's proposed increases may presently be unrealistic given that awards subsequent to April 30, 2012 (see PERC website) have, for the contract years at issue here, consistently been in the range of between 0% and 2.25% (e.g., July 2, 2012, PERC Docket No. IA-2012-043: 2% in 2010 and 1.5% in 2011 (less than Burlington County's offer here)) and, in many cases, those awards have frozen the salaries of those in the step guides and imposed the across the board increases only to those beyond the step guide (i.e., those in the steps earn the step raises only; they are not entitled, as FOP suggests here, to step and percentage raises on a yearly basis). In this regard, recent data also shows that interest arbitration awards from January 1, 2012 through April 30, 2012 averaged 1.82% (Exhibit C-16, excerpt from Osborn Interest Arbitration Award June 12, 2012).

An award along the lines of the parties' latest proposals here is also inconsistent with relevant data relating to recent arbitration awards relating to County Sheriffs (March, 2012: Hundley awarded the Atlantic County Sheriff's officers (Docket No. IA-2010-071) three year contract (2010-2012) with increases of 2%, 1.5%, and 1.5%, respectively (Exhibit C-33); Union County Sheriffs (Docket IA-2012-037) recently awarded 0% in 2010 (step guide increases only), 2.25% (2011 through July, 2012), 2%



(2013) and 2% (2014); Ocean County Sheriffs (Docket No. IA-2011-14) awarded 0% (step guide increases only in year one), with 2% increases for years two, three and four.

Given the foregoing, the County requests that the arbitrator carefully consider the financial situation facing the County and Burlington County's citizens and apply the statutory criteria embodied in N.J.S.A. 34:13A-6(g)(1) et. seq. to fashion an award which is less than that proposed by the County in March, 2012; one that is fair, reasonable (e.g., mirroring State C.W.A. settlement described above), and represents a reasoned determination based upon the factors before him, as well as the recent trends in settlements and interest arbitration awards.

The FOP offers the following response in rebuttal to the County's request for an award containing lesser terms than what it has proposed in its final offer:

The County spends a good portion of its brief arguing that the Arbitrator should award salary increases that are lower than those contained in its Final Offer. This argument is wholly inappropriate and must be dismissed out of hand. N.J.A.C. 19:16-5.7(f) provides:

... At least 10 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. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing. Id.

Here, the parties submitted their Final Offers in due course pursuant to the Administrative Code. The FOP relied upon the County's Final Offer in preparing its Exhibits and its brief. There is no evidence in the record that the County ever sought to amend or revise its Final Offer in the several years prior to the submission of briefs in this matter. Similarly, there is no evidence that the parties agreed, or the arbitrator approved, of any agreement to revise proposals following the submission of evidence. Thus, the Arbitrator must dismiss this argument out of hand and rely upon the County's Final Offer in deciding this matter.

Moreover, the County has not even proposed an alternative offer in this matter. It simply asks the Arbitrator to reduce its offer to correspond to Interest Arbitration Awards issued subsequent to April 30, 2012.

(County's Brief, p. 6). These Awards, however, have little bearing on this matter. Many of these Awards were the result of Interest Arbitrations conducted under markedly different circumstances, notably the forty-five (45) day time limit imposed by the revised N.J.S.A. 34:13A-16 and the various spending and salary caps imposed by N.J.S.A. 40A:4-45.45. Thus, the County is impermissibly attempting to place this proceeding in a context in which it does not belong. Accordingly, the Arbitrator must issue an award reflective of both parties' Final Offers. Quite simply, the County is asking the arbitrator to do what it could not do and engage in regressive negotiations. Regressive negotiating is an unfair practice under N.J.S.A. 34:13A-5.4. Had the County withdrawn its initial proposals and lowered its salary offer, it would have committed an unfair practice. The County must not be permitted to do through Interest Arbitration what it could not lawfully do through negotiations. The County is bound to its Final Offer and it may not change it in hindsight.

The County's reliance on Borough of Pompton Lakes -and- PBA Local No. 161, IA- 2007-055 (PERC No. 2008-58), is misplaced. This case does not support the County's position that an Arbitrator may fashion a salary award that is less than the employer proposed. Rather, Borough of Pompton Lakes dealt with the issue of health benefits. In that case, the Arbitrator awarded salary increases of 4.0% the first year and 4.25% for the remaining years of the CNA. Id. However, in fashioning an award concerning health benefits, the Arbitrator deviated from the parties' proposals and limited the health benefits plans available to employees. Id. After initially remanding the matter to the Arbitrator because he failed to support his award in light of the statutory factors, the New Jersey Public Employment Relations Commission confirmed the award.

Similarly, Hudson County Prosecutor – and - PBA Local 232, IA-96-178 (PERC No. 98-88), does not support the County's contention that an Arbitrator may abandon the Final Offer of one of the parties. In that case, the PBA proposed an automatic step system and 6.0% across the board raises, while the County offered 4.0% raises. Id. In his award, the Arbitrator awarded 3.0% for one year with increases in the salary guide. Id. These increases amounted to a unit-wide 5.5% salary increase, which was higher than the County proposed. Id.

Neither case cited supports the County's claim that the Arbitrator can award a salary increase that is less than the employer's Final Offer. Indeed, in Hudson County Prosecutor the Arbitrator awarded more than the County offered, but apportioned it differently. In Borough of Pompton Lakes, the Arbitrator awarded salary increases in excess of 4.0% but changed the number of health plans available to employees. Both cases are clearly distinguishable and are irrelevant to the issues here. Accordingly, the County's argument must be dismissed.

Simply because the County has offered FOP unit members step raises as well as across- the-board salary increases does not mean it can renege on its offer, even if its offer is now unfashionable. The fact that

the salary increases proposed by the County are more than the wage increases agreed to by the CWA or more than recent Interest Arbitration awards is of no moment. As set forth more fully below, the statutory criteria more fully supports the FOP's Final Offer. However, the County must not be permitted to change the playing field this late in the game. At worst, the Arbitrator must award the salary increases initially proposed by the County.

I decline the County's invitation to issue a salary award that is less than its final offer. I am guided by N.J.S.A. 19:16-5.7. This rule only permits a party to revise a final offer prior to the taking of evidence or, upon the mutual agreement of the parties, prior to the close of hearing. Neither situation occurred in this proceeding. Even assuming that an extraordinary or emergency circumstance arose after a close of record could provide justification to award a deviation from a party's final offer, the justification presented by the County for doing so does not rise to such a level. Moreover, the stability of the negotiation/arbitration process would be undermined by an award that would be above the FOP's last offer or lower than an employer's last offer. The parties are required to submit evidence based upon the last offers that they have made. They have done so here. Their ability to advocate on behalf of their last offers would be hindered by one party's unanticipated post-hearing revision of position.

I next address the merits of the salary issue. As previously set forth in the Background section of this decision, the major points of emphasis advanced by the parties center on financial and budgetary evidence and on comparability,

both internal and external.<sup>5</sup> The evidence and arguments on these points need not be restated.

The evidence in this proceeding that is the most compelling, and upon which the salary award must rest, is the significant weight to be given to the percentage amounts that were awarded for 2009, 2010 and 2011 in interest arbitration to the bargaining unit (PBA Local 249 Corrections) that I deem to be the closest comparison to the bargaining unit at issue in this proceeding. The collective negotiations agreements between the Sheriff's Office and Corrections are strikingly similar on many key compensation issues. The record reflects that the results of past negotiations between the units are also strikingly similar. There are obvious differences in the missions of each department but those differences are dwarfed by their commonalities in fulfilling criminal justice and providing security. The issue here is not one of parity but an expectation of reasonable consistency, especially in the absence of a strong basis for deviation. Indeed, prior case law emphasizes the importance of internal comparability and the tie is not only to the comparability criteria but to other statutory criteria as well such as the interest and welfare of the public, overall compensation and benefits received and continuity and stability of employment. [See Union County, PERC No. 2003-33 and PERC No. 2003-87, and Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008).]

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<sup>5</sup> Evidence has also been presented on the remaining criteria and each party contends that its final offer is consistent and required by the statutory criteria.

I am persuaded that the County's offer of 2.5% for 2009, 2.0% for 2010 and 1.5% for 2011, in addition to the step increases that eligible Sheriff's Officers have advanced to, represents a reasonable determination of the salary issue. The rationale for this result is not only grounded in the desirability to have similar results between units who have shared interests. The results are also supported by other statutory criteria as applied to the evidence that is relevant for the contract years at issue. Indeed, the County has strongly argued that the criteria requires the adoption of its final offer. There are other agreements that were entered into covering 2009 and 2010 contract years that contain increases for those years that are higher for those years that I have awarded here. But they are less relevant because the negotiations cycle in those cases (CWA and Prosecutor's Detectives and Investigators) began in 2007, prior to the deep recession that created lower revenues and ratables for the County beginning in 2009. For 2011, the record shows that the County has offered less of an increase that it has proposed here. Further, the CWA units only received across-the-board amounts because unlike here, as the County has pointed out, the CWA employees did not receive step increases that Sheriff's Officers have received in addition to the pay increases they will receive as a result of the award.

The County's urging of a lesser award than its final offer must also be viewed in a similar context. It cites with approval the interest arbitrator's analysis

in the corrections proceeding of its financial condition, its statutory taxing limitations, the cost of living data and the declining wage increases for 2009-2011 due to recession but now, after close of record, points to results elsewhere during negotiating cycles occurring later than the 2009-2011 contract period.

The simple fact here is that the salary award for 2009, 2010 and 2011 is compatible with the relevant internal comparison for those years, compatible with the County's final offer and its evidentiary submission and represents a reasonable determination of the salary issue based upon the record evidence. That record shows that the costs can be incurred within the County's budget cap and without adverse financial impact on the taxpayers and residents. Indeed, the August 2012 submission of the County was expertly argued based upon its own assessment that the costs for 2009, 2010 and 2011 would represent a reasonable determination of the salary issue with due regard for the statutory criteria deemed relevant for the disposition of the salary issue. A return to the bargaining table for contract years 2012, 2013 and beyond will necessarily focus on the evidence relating to the statutory criteria that are presented for those years. A different result than the County has proposed for 2009-2011 would cause substantial harm to the morale and wellbeing of unit employees and would not be in the public interest.

The above analysis also serves as a proper basis for concluding that the FOP's salary proposals simply cannot be awarded. It not only substantially

exceeds the internal comparisons but it does not fully consider the financial impact its proposal, if awarded, would have on the County. Its financial expert has shown that, in the past, the County experienced a long-term trend showing increasing valuations, surplus and unanticipated revenues. It did so while maintaining a long-term trend of tax reduction. The record shows that revenue expansion during that time period enabled tax reductions but the erosion of that revenue expansion starting in 2009 coupled with continued tax reduction has squeezed the County's ability to maintain the healthy balance sheets it has had in the past and it has been forced to tighten personnel costs. The FOP disagrees with the County's policy on taxation because the County has not exercised its lawful authority to increase taxes up to its lawful ability to do so. This unexercised authority is viewed as a source of untapped revenue but the arbitrator's financial analysis must be based on the abilities that exist and not on a determination directing a change in tax policy that would, in the FOP's view, enhance the County's ability to fund larger wage increases.

The FOP has established that its unit is not highly paid and indeed falls within the bottom fifth of similar units all New Jersey counties. The amounts awarded will not improve on this ranking but also will not erode the FOP's relationship with those Sheriff's Officers that are lower paid. Its maximum rank and file salary will rise from \$62,000 to \$65,793 over the three year period. It will also maintain a higher level of maximum salary than that which is paid to County Correction officers represented by PBA Local 249.

The costs of the award fall within the costs projected by the County in its evidentiary submission. They are \$284,477 in 2009, \$253,972 in 2010 and \$194,820 compared to the costs of \$359,683, \$323,390 and \$284,827 respectively under the FOP proposal. I conclude that these costs represent the maximum costs that can be borne by the County after application of the statutory criteria. For this reason, the additional salary proposals of the FOP are denied including its request to add a new senior step, create superior officer differentials above the requested new senior step, the addition of a new step for Lieutenants and a new stipend for K-9 and EMT certified personnel.

I also do not award the FOP's language proposal regarding step increases. The record shows that these costs are significant and should be considered, along with proposals for across the board increases, during negotiations for a new Agreement.

Eligibility for retroactive wage increases shall be consistent with the parties' current Agreement that states the following:

C. Retroactivity

For employees who are hired prior to the signing of this Agreement to be covered by this Agreement an employee shall have maintained continuous full-time employment up to and including the date of full execution by both parties with the exception of those employees who have retired from employment with Burlington County. Additionally retroactive compensation and benefits shall be paid to the estate of any Sheriff's Officer who has



passed away prior to the signing and full execution of the agreement.

Accordingly, and based upon all of the above, I respectfully enter the terms of this award.

### **AWARD**

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

2. **Duration** - There shall be a three-year agreement effective January 1, 2009 through December 31, 2011.

3. **Stipulations**

1. **ARTICLE II – DUES CHECK OFF AND AGENCY SHOP**

Delete paragraph B4

2. **ARTICLE IV – DISCRIMINATION AND COERCION**

Add/Clarify to include: sex, age, nationality, race, religion, marital status, political status, political affiliation, sexual orientation, gender expression (as defined under NJ State law), national origin, color, handicap, union membership, union activities, or the exercise of any concerted rights or activities or any other legally protected class.

(New): The Association and the Employer shall continue to discourage bias, prejudice and bigotry, and foster understanding of others in the workforce regardless of race, creed, color, national origin, sexual preference, gender and its expression, age, or physical condition.

3. **ARTICLE XXI – UNIFORM ALLOWANCE**

Modify paragraph C to delete "summer hat" and "winter hat" and replace with "hat with rain cover." Change "double handcuff case" to "single handcuff case." Correct "name tag, gold," from "(Officer)" to "(Superior)." Delete "holder, badge, I.D. Model 7208, Safariland" and replace with "ID holder." Eliminate all references to "Safariland." Change "Vest, Safariland hyper-light, level III A" to "Vest, Level III, as determined by the Sheriff."

4. **ARTICLE XXII – HEALTH BENEFITS**

The County will continue to provide the opportunity for employees to set aside a portion of their pre-tax salary into an IRS Section 125 account to be utilized for unreimbursed medical and dependent care expenses.

5. **ARTICLE XXX – GRIEVANCE AND ARBITRATION PROCEDURES**

Replace paragraph C3 with: "Representation: At Steps 1-4 of the grievance procedure, the grievant shall be entitled to be represented by a representative of the Association."

6. **ARTICLE XXXIX – OUTSIDE EMPLOYMENT**

Replace with the following: "Every employee planning to engage in employment outside of his or her official duties shall submit in writing the name or names of his or her prospective Employer to the Sheriff. No discrimination will be shown in the approval or disapproval of requests to undertake such employment. Written approval must be received from the Sheriff, and such approval shall not unreasonably be withheld."

4. **Article VIII – Overtime**

Paragraph E shall be replaced with the following paragraph effective as of the date of the award:

Whenever an Officer is required to appear in Court as a result of a job related incident, other than during such Officer's regular duty hours, such Officer shall be compensated at the overtime rate for a minimum of 2 hours. Officers shall be allowed to leave once their testimony or participation in the case is completed subject to the approval of the supervising officer or the Prosecutor in the event that no supervising officer is present. Officers shall provide seven (7) days notice if available. However, if such notice is not available, the officer shall notify the Sheriff or designee as soon as reasonably possible.

A new paragraph O shall be implemented as soon as is administratively feasible stating the following:

Officers assigned to the K-9 unit will receive an additional two (2) hours of pay weekly, at the overtime rate, for off-duty care of their canine partners and for answering telephone inquiries. All off-duty K-9 service call outs must be approved by the Unit Supervisor. Upon arrival, the officer will be compensated at the appropriate rate based upon the number of hours worked in the work week that the time was earned. The Sheriff shall retain the discretion to select officers to whom to assign K-9 duties.

5. **Article XXII – Health Benefits**

Effective as soon as its implementation is administratively feasible, I award the following:

A. Health Benefits: Family Hospital, Surgical and Major Medical or other benefits shall be available for all full-time employees on the first of the month after three (3) months of service pursuant to the following provisions:

1. All employees shall be covered by a non-contributory comprehensive County self-funded medical, optical and prescription plan to include co-pays as follows:

	Doctor's Visits	Prescription Generic	Brand Preferred	Brand Non- Pref.
01/01/09:	\$20.00	\$0.00	\$30.00	\$45.00

Additionally, visits to the emergency room will have the following co-pays: \$50.00

Pre-certification and second opinion deductible for non-compliance shall be \$500.

After the first 90 days a prescription has been filled, all maintenance medications (with the exception of insulin for diabetics) must be filled via Mail Order (examples of maintenance medications include high blood pressure, cholesterol, kidney and heart medications, etc.). Mail Order medications for a 90 day supply shall cost one-and-a-half times (1.5x) the applicable retail co-pay indicated above.

All prescription medications must be processed through a pharmaceutical clinical case management program through the prescription third-party administrator (TPA). As a pre-condition to using the prescription benefits plan, all employees must sign a HIPAA compliant release enabling the health benefits third-party administrator to share protected health information (PHI) with the prescription benefits TPA.

6. **Article XXIV – Retirement**

Delete first sentence of Paragraph B and add:

All employees who have retired or who shall retire with twenty-five (25) years or more of credited service to Burlington County shall be covered by a comprehensive, County self-funded, medical plan.

7. **Article VI – Salaries**

The existing salary schedule shall be adjusted by the following amounts at each step of the salary schedule effective and retroactive to each January 1 effective date for each contract year. The salary schedule shall read as follows:

**2009:**

<u>STEP:</u>	<u>2009 Salary:</u>	Effective 1/1/09 – 2.5%:
1 (Min.)	\$38,971	Sgts.: Less than 2 years exp.: \$67,363
2	\$41,369	Sgts.: 2 or more years exp.: \$71,176
3	\$43,510	
4	\$45,620	Lieutenant: \$75,446
5	\$50,362	
6	\$55,158	
7 (Max.)	\$63,550	

**2010:**

<u>STEP:</u>	<u>2010 Salary:</u>	Effective 1/1/10 – 2.0%:
1 (Min.)	\$39,750	Sgts.: Less than 2 years exp.: \$68,710
2	\$42,196	Sgts.: 2 or more years exp.: \$72,600
3	\$44,380	
4	\$46,532	Lieutenant: \$76,955
5	\$51,370	
6	\$56,261	
7 (Max.)	\$64,821	

**2011:**


<u>STEP:</u>	<u>2011 Salary:</u>	<u>Effective 1/1/11 – 1.5%:</u>
1 (Min.)	\$40,346	Sgts.: Less than 2 years exp.: \$69,741
2	\$42,829	Sgts.: 2 or more years exp.: \$73,689
3	\$45,046	
4	\$47,230	Lieutenant: \$78,109
5	\$52,140	
6	\$57,105	
7 (Max.)	\$65,793	

Dated: September 21, 2013  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey       }  
County of Monmouth       } ss:

On this 21<sup>st</sup> day of September, 2013, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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