

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Arbitration Between:

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**MORRIS COUNTY SHERIFF'S OFFICE  
(BUREAU OF CORRECTIONS)**

"Public Employer,"

- and -

**PBA LOCAL 298**

"Union."

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Docket No. IA-2007-084

**INTEREST ARBITRATION  
DECISION AND  
AWARD**

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the County:**

Fredric M. Knapp, Esq.  
Knapp, Trimboli & Prusinowski, LLC

**For the PBA:**

Donald B. Ross, Esq.  
Lindabury, McCormick, Estabrook  
& Cooper, P.C.

PBA Local 298 [the "Union" or the "PBA"] and the Morris County Sheriff's Office [the "County"] are parties to a collective bargaining agreement [the "Agreement"] which expired on December 31, 2006. After direct negotiations between the parties reached an impasse, the dispute was submitted to interest arbitration pursuant to N.J.S.A. 34:13A-14 and N.J.A.C. 19:16. Thereafter, I was designated to serve as arbitrator by the New Jersey Public Employment Relations Commission.

I conducted three pre-interest arbitration mediation sessions with the parties in an effort to assist them in arriving at a voluntary settlement. Although the issues were narrowed, several key items remained in dispute, necessitating the convening of formal interest arbitration hearings. Hearings were held in Morristown, New Jersey on April 30, May 1 and June 24, 2008. At the hearings, the County and the PBA argued orally and submitted a substantial amount of documentary evidence in support of their respective final offers. Testimony was offered by Corrections Officer Leon Pollison, Corrections Officer Donald Delvecchio, Undersheriff Ralph McGrane, Corrections Officer Rodney Furby, Allison Stapleton, Manager, Office of Labor Relations and Glenn Roe, Director of Finance and County Treasurer. In addition to the testimony received in this proceeding, the parties have stipulated to the inclusion of testimony that was taken during a prior proceeding involving the County of Morris and Morris County Sheriff's Office, PBA Local 151, Docket No. IA-2007-019. Each party filed a post-hearing brief. The record was closed on or about February 1, 2009.

## **FINAL OFFERS OF THE PARTIES**

### **PBA Local 298**

1. Term of Contract: 5 years commencing on January 1, 2007 and ending December 31, 2011.
2. Wages:  
  
2007 – 4.8%  
2008 – 4.9%  
2009 – 5.0%  
2010 – 5.1%  
2011 – 5.2%
3. "Correction Officer Days" – All officers shall receive four (4) non-cumulative Correction Officer days per year (i) in time off or (ii) at the option of the officer, in cash at their regular daily rate of pay. If taken in time off, these days shall be treated as personal days for purposes of utilization.
4. Personal Days – Two additional personal days. Modify contract language to provide that officers shall be permitted to utilize personal days upon verbal notice at least one and one-half hours before the commencement of the shift.
5. Holidays – If an officer works on a holiday, he/she shall receive time and one-half for regular holiday hours worked and double time for overtime. Add Easter and the day after Thanksgiving as holidays.
6. Convention Leave – Incorporate statutory language (including number of officers permitted to attend) in contract.
7. Sick Leave
  - a. Clarify definition of a "sick occurrence" as "one or more eight (8) hour days related to the same illness, injury or cause for the officer's absence from work."
  - b. Increase payout of unused sick time at retirement to a maximum of \$20,000.

- c. Implement a sick leave incentive program under which officers who have accumulated at least 240 hours of sick time shall have the option of "selling back" any such excess time at 75% of its value each year.
8. Grievance Procedure – Amend to permit the filing of a grievance and submission of same to arbitration involving discipline where the penalty is a written reprimand or greater.
9. PBA Office – The Employer shall provide an office for the sole and exclusive use of the PBA within the Correctional Facility.
10. Agency Shop – Add an agency shop clause to the contract permitting the PBA to change representation fees in lieu of dues as permitted by, and accordance with NJSA 34:13A-5.5 et seq.

### **Morris County Sheriff's Department**

1. Duration – Three years covering 2007, 2008 and 2009
2. Schedule A – Salary Guide

	2007	2008	2009
Entry	\$39,050	\$40,416	\$41,851
After 1 Year	\$40,700	\$42,166	\$43,701
After 2 Years	\$43,600	\$45,166	\$46,801
After 3 Years	\$46,800	\$48,466	\$50,201
After 4 Years	\$50,000	\$51,766	\$53,601
After 5 Years	\$53,516	\$55,382	\$57,317
After 6 Years	\$58,089	\$60,055	\$62,090
After 7 Years	\$63,779	\$65,845	\$67,980
After 8 Years	\$69,479	\$71,645	\$73,880
After 9 Years	\$75,479	\$77,745	\$80,080

3. Schedule C – Health Care Contributions

	2007	2008	2009
<b>Medallion</b>			
Single	\$20.94	\$25.13	\$30.16

Parent/Child	\$39.36	\$47.23	\$56.88
Family	\$55.44	\$66.53	\$79.84
<b>HMO Blue</b>			
Single	\$8.95	\$10.74	\$12.89
Parent/Child	\$16.33	\$19.60	\$23.52
Family	\$24.58	\$29.49	\$35.39
<b>Wraparound</b>			
Single	\$11.70	\$14.04	\$16.85
Parent/Child	\$21.85	\$26.22	\$31.46
Family	\$30.94	\$37.12	\$44.54

4. Article 32 – Uniform Allowance

No increase in uniform allowance

5. Article 12 – Health Benefits – Surgical Insurance, Section 1

HMO Blue - \$10.00 co-pay for office visits upon execution of the agreement. Effective January 1, 2009, \$15.00 co-pay for specialist and increase eye glass lens reimbursement to \$100.00

Medallion – Effective January 1, 2009, increase co-pay to \$20.00 , increase deductibles to \$300/\$600. Add \$100.00 eye glass lens reimbursement.

Upon execution of the Agreement, co-pays shall be \$5.00 for generic, \$10.00 name brand and \$15.00 for formulary prescriptions. Effective January 1, 2009, two (2) co-pays for a three-month supply by mail order.

For those employees who retire on or after January 1, 2009, the following changes to ~~retiree~~ health insurance shall be made:

a. HMO Option

- i. \$10.00 co-payment for office visits
- ii. \$15.00 co-payment for visits to specialists
- III. \$50.00 co-payment for emergency room visits

b. Wraparound or equivalent

- I. \$500.00 deductible
- c. Prescription (available under HMO Option only)
  - i. \$5.00 for generic
  - ii. \$10.00 for brand name
  - iii. \$15.00 for non-preferred.

Employees hired after January 1, 2009, who retire and meet the criteria for County paid health insurance will receive a plan for the employee only. Employees hired after January 1, 2009, who meet the requirements for County paid health insurance will have the option to add their eligible dependents to the plan at the expense of the retiree. Consistent with existing practice, Medallion is not provided to retirees under any circumstance.

6. Article 8 – Vacation, Section 3, page 11

Amend the language as follows:

Any vacation or portion thereof, which is not taken or granted because of the pressure of work may be taken during the next calendar year. No employee shall have an accumulation on December 31<sup>st</sup> of any given year, which exceeds the hours entitled to during the previous 18 months of employment. There will be no exceptions or extensions granted to this policy.

7. Article 15 – Personal Leaves, Section 2, Military Leave.

The contract will follow the County policy.

8. Article 15 – Personal Leaves, Section 5, Other Leaves, page 22

Modify second sentence as follows:

The employee shall submit a written request to the supervisor at least fourteen (14) days in advance stating the reason for the request, and the time required. [no leave without pay]

9. Article 18 – Bulletin Boards, page 25

Amend the language as follows:

The Sheriff shall permit the Association reasonable use of designated bulletin boards located in work areas for the posting of notices concerning Association business and activities, provided any such notices shall not contain malicious, inflammatory or anonymous material. **The designated bulletin board shall not be located where it can be viewed by the public. The president or the vice president of the PBA Local 298 shall initial all postings prior to their placement on the designated bulletin boards.** [emphasis in original]

10. Compensatory time (new)

Effective upon execution of this contract, employees may not accumulate more than eighty (80) hours of compensatory time at any time.

Employees having accumulated more than eighty (80) hours of compensatory time shall be permitted to retain their existing bank of such time but may not accrue any additional compensatory time. The Sheriff reserves the right to require employees to take compensatory time off.

### **BACKGROUND**

This proceeding concerns the Morris County Sheriff's Office and PBA Local 298, an employee organization that represents rank and file Corrections Officers. During the proceeding, there were one hundred eighteen (118) Corrections Officers in the unit. By way of organization, the employees are employed in the Bureau of Corrections in the Sheriff's Office. Thus, the Sheriff's span of managerial control extends to both Sheriff's and Corrections Officers.

Local 298 is one of several law enforcement bargaining units within the County of Morris. These include a unit of forty-eight (48) Investigators in the Prosecutor's Office represented by PBA Local 327, twenty (20) Superior Officers represented independently in the Prosecutor's Office, twenty-eight (28) Superior Officers in the Bureau of Corrections, eighty-three (83) Sheriff's Officers represented by PBA Local 151, and sixteen (16) Law Enforcement – Superior Officers represented by the Superior Officer Association, eight (8) officers represented by PBA Local 203 in the Weights and Measures Department, twenty-nine (29) Park Police Officers represented by PBA Local 264 and three (3) Park Police Superior Officers represented independently.

Correction Officers work in a relatively new facility called the Morris County Correctional Facility. The Correction Officers are responsible for the security and custody of inmates and the maintenance of order in the jail. Such responsibilities are performed 24/7. In the course of performing their duties, the Correction Officers are often subject to danger, personal injury and communicable disease.

The Correctional Facility was opened in May 2000. At that time, the inmate population numbered 273. It grew to 314 in 2006 and then dropped slightly to 308 in 2007. Undersheriff McGrane noted that although the inmate population had increased, the facility experienced a 67% reduction in inmate violence since 2001. The operating expense budget for the facility was



\$2,285,000 in 2007. This was a reduction from the 2003 operating expense budget that had peaked at \$3,683,000. The reduction is attributed to the return of medical services to the control of the Facility. The County's acceptance of this recommendation in 2003 has resulted in over \$7.5 million in savings since the implementation of the initiative. As was evident from the testimony offered at the hearings, the Bureau and its Correction Officers and Line Supervisors take pride in delivering services with good order and security. The interests and welfare of the public are well served by the efficacy and productivity of the services rendered by the bureau. Overtime in 2007 was reduced to \$664,000, a 40% reduction from the \$1.1 million spent on overtime in 2003. The overall sick rate average in 2007 was 7.5 days per year, a significant reduction from the 13.5 days per year sick leave that existed in 1999. The correctional facility has also generated an increase in County revenues that have been transferred to the Treasurer's office from funds collected for the Sheriff's Labor Assistance Program, Federal Inmate Billings, State Prisoner Billings, State Criminal Alien Assistance Program, Social Security Administration, Inmate Work Release Program and Inmate Telephones.

As is evident from the last or final offers submitted by the parties, there are many economic and non-economic issues that remain in dispute. Among these include duration, health insurance, salary increases, certain fringe benefits that have economic impact, attendance policy and non-economic issues such as agency shop, the provision of a PBA office, bulletin board usage, grievance procedure, leaves of absence, vacation accumulation and compensatory time.

Much testimony and documentation was submitted on the PBA's proposal to allow grievances over minor discipline to be submitted to arbitration.

A large portion of the record was also devoted to the County's finances and its long history of the methods used to achieve internal stability and consistency among its law enforcement bargaining units.

The County prides itself on using conservative budgetary practices and the record supports the County's submission on its finances. By maintaining sufficient reserves on a consistent basis, achieving stable fund balances that allow for a substantial utilization of such funds in succeeding year budgets, healthy ratables and a sound tax structure, the County has earned and maintained a AAA bond rating for its general obligation bonds. This, in turn, has caused the County and its taxpayers to save substantial sums in interest payments on bond and note sales. Notwithstanding this positive financial posture, the County objects to the cost impact of the PBA's many economic proposals in the face of the financial concerns that were outlined in the testimony of its Treasurer, Glenn Roe. Roe quantified the PBA's salary proposal for 5% average increases and its many individual fringe benefit proposals. He concluded that they calculate to excessive sums of money that would adversely affect the County's finances.

Against this general backdrop, I will provide a summary of the parties' submissions on the issues in dispute. Because of the substantial record developed at the hearings, the overview will not be exhaustive although the entire record of the proceeding has been reviewed and considered.

### **Position of the PBA**

The PBA supports its economic proposals with evidence relating to the County's finances, an analysis of internal comparability with other law enforcement units in the County and external comparability with municipal law enforcement units within the County of Morris. Its submission on finances draws heavily upon a report from its financial expert Dr. Raphael Caprio who, after review of official budget documents in evidence, concluded that the County has the ability to fund the PBA's proposals without adverse financial impact and within its statutory obligations.

The financial indicators analyzed by the PBA's financial expert included the financial profile of the County and also municipalities within the County. Among other things, he analyzed residential property values, average residential tax bills, overall County appropriations, fund balances, appropriations within the sheriff's department, average equalized tax rates per capita income, average adjusted residential property value ratables, construction activity and bond ratings. After such review, he concluded that the County could fund the PBA's proposals without any undue impact on the governing body or residents within

the County. Moreover, he believed that it could do so without interfering with the County's statutory obligations relating to the Cap Law. According to the PBA:

This is yet another of the criteria as to which the County has failed to introduce any persuasive evidence in support of its position. The Sheriff's office represents approximately 5% plus or minus a fraction, of the total County appropriations. Nothing in the record suggests any foreseeable change in that relationship. Furthermore, nothing in the entire record suggests that an award in favor of the PBA will even remotely affect the limitations on the County imposed by NJSA 40A:45-45. In short, we urge the Arbitrator to conclude that this criterion is basically irrelevant under the facts and circumstances presented by the parties.

The PBA also submitted substantial evidence concerning comparability within the various law enforcement units that have labor agreements with Morris County and with municipal law enforcement bargaining units within the County. Based upon contracts in evidence, the PBA offers the following observations in support of its proposals. Noting that top step pay for correction officers in 2006 was \$73,279, it calculates this level of pay as being \$6,641 below the average top pay for police officers in municipal police departments in Morris County. At the same time, the PBA notes that Sergeants in the County's Bureau of Corrections receive \$90,217 at top step, a difference of almost \$17,000 and more than 23% higher in terms of rank differential between Sergeants and corrections officers. The PBA then compares Sergeant pay with average pay for Sergeants in Morris County municipal police departments and concludes that Sergeant compensation is almost 14% above the average rank differential between police officers at top step and Sergeants within those police departments in Morris County. From this, it concludes that Corrections Officers fare poorly within the

County in comparison with Sergeants who supervise them. The PBA further notes that it takes Corrections Officers nine (9) years before top step pay is reached, a figure that it contends is longer than average.

The PBA offers a summary of salary increases in all of the County's bargaining units and concludes that there is no compelling internal pattern of settlement that supports the County's final offer of approximately 3%. Instead, the only evidence that the PBA believes is relevant, but not controlling, that concerns an internal pattern is an interest arbitration award issued by Arbitrator Timothy A. Hundley between the County of Morris and Morris County Sheriff's Officers, PBA Local 51, on October 17, 2008. That award included wage increases of 4% annually for contract years 2007 through 2010, along with changes to the health insurance provision that required increased co-pays and premium contributions. An additional settlement the PBA deems relevant is one between the County of Morris and the Superior Officers Association, the unit of jail supervisors that supervises Corrections Officers in this unit. That settlement also provided for 4% annual wage increases for contract years 2007-2010 and modifications to the employee's share of health insurance costs. There, the PBA states that a Memorandum of Agreement was reached "with similar terms on salary but with insurance concessions that the PBA does not deem reasonable for its unit of corrections officers, especially in light of the Hundley Award that, as here, pertained only to non-supervisory personnel." The PBA also urges that special attention be given to the SOA Agreement where four (4) personal days

off per year are provided for Sergeants “who act as Shift Commanders.” Citing PBA testimony, the PBA asserts that all Sergeants received these personal days even though some rarely actually perform shift commander duties. The PBA also notes that the days were granted for services that it believes had previously been performed by Sergeants for years. From this, it concludes that there was no quid pro quo for the personal days and thus, they must be weighed as constituting “new money” in addition to the 4% salary increases that had also been granted in that unit. The PBA also comments on an additional distinction that exists between its unit and the SOA agreement. The PBA asserts that Sergeants receive triple-time for working on holidays, a benefit not enjoyed by the Correction Officers. These facts, in addition to its desire to reduce the 23% rank differential between Sergeants and Corrections Officers, is claimed by the PBA to favor the adoption of its last offer.

The PBA urges that its proposal for binding arbitration for minor disciplinary grievances be awarded based upon its belief that there is a statutory premise for its proposal, that it will impose a degree of internal justice within the facility, that arbitration would be more expeditious and cost effective than the courts and because its proposal is consistent with terms set forth in bargaining units which are comparable including the corrections supervisory unit. The PBA offers lengthy and detailed argument in support of its position on this issue in its post-hearing brief:

It is no secret that the PBA is deeply committed to its proposal for binding arbitration of minor discipline where the penalty is a written reprimand or greater. The statutory premise for this proposal is contained in N.J.S.A. 34:13 A-5.3 which provides as follows:

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Except as otherwise provided herein, the procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L. 1968, c.303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S.53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year.

The evidence presented by the PBA (and indeed Undersheriff McGrane's own remarkable testimony) overwhelmingly support the inclusion of a provision allowing binding arbitration of minor discipline as part of the grievance procedure. In particular, when applying the relevant statutory criteria to this proposal, namely the impact on the continuity and stability of the workforce, internal and external comparability, and the impact on the Employer, if any, it is abundantly clear that the PBA has met the necessary burden to justify awarding its proposal.

The underlying rationale for the PBA's proposal was summarized by the testimony of Corrections Officer Leon Pollison, the member of the PBA's Executive Board who process grievances. As Officer

Pollison testified, the current process of reviewing discipline is simply unacceptable and unworkable, let alone too expensive and time-consuming. Without binding arbitration, aggrieved officers are left with a relatively ineffectual grievance procedure, where the reviewers have well-worn rubber stamps, and an appeal to the New Jersey Superior Court with its obvious downsides. See Tr-1, page 20, lines 21-25, page 21, lines 1-25. The concern among PBA members is so pervasive that, as Officer Pollison testified, more than one member has advised him that he will not exercise his statutory right to challenge discipline due to the process that is currently in place. Tr-1, page 32, lines 17-22; page 34, lines 11-22.

Exhibit P1-30 evidences the vast majority of discipline handed out is in the form of written reprimands, meaning that the form of discipline most commonly being used and which is more likely to be abused based on its frequency of use is not being challenged because of the time and cost concerns. In other words, officers are foregoing an opportunity to challenge discipline they believe to be improper, unfair, or inequitable because it takes too long and costs too much. The impact on the morale of the officers is obvious as they are not utilizing rights they possess to challenge questionable discipline because of a burden that is attendant to the current process. By providing for a more expeditious and cost effective method of resolving these disputes through arbitration, the morale of the officers can and will improve. That is a legitimate and laudable goal in the context of the statutory criteria.

The concept of internal and external comparability strongly supports the PBA's position. What exacerbates the PBA's concern over not being able to arbitrate minor discipline is that the correction supervisors in the SOA, who obviously work in the same facility as the members of the PBA every day, are entitled under their contract to arbitrate minor discipline. Article 8 of the SAO collective negotiations agreement provides that if a grievance, including the imposition of discipline, is not settled before Step 4, the dispute can be submitted to PERC for arbitration. See Exhibit C-8. Much to his chagrin, Undersheriff McGrane is well aware of this fact. Tr-1, page 138, lines 23-25; page 139, lines 1-2; page 192, lines 20-23. This begs the question: why is a process that the County has granted to the SOA members not acceptable for the rank and file officers with whom they work and whom they supervise on a daily basis? Worth reiterating at this juncture is the fact that this is the same SOA to whom the County granted -- voluntarily and before an interest arbitration hearing an award -- 4% increases across the board and multiple personal days without receiving any "new value" for those days. Invoking the County's



mantra, is a "pattern" emerging here? We urge the arbitrator to rectify these inequities.

Other substantial law enforcement agencies in the Northeast have fashioned their own grievance procedures to allow arbitration of minor discipline, such as the New York State Correction Officers Policemen's Benevolent Association. Under Article 8 of the NYCOPBA's collective bargaining agreement, all disciplinary matters may be arbitrated before the New York Public Employment Relations Board. See Exhibit P1-29. Likewise, support for the arbitrability of all disciplinary matters is found in an interest-type arbitration award obtained by the Pennsylvania State Troopers' Association. See Exhibit P1-28.

Clearly, the evidence submitted by the PBA proves that its proposal is not a novel one, not even within Morris County Correctional Facility. Yet, it remains a proposal that Undersheriff McGrane arbitrarily refuses to accept -- and we emphasize the word *arbitrarily*. He offers no substantive reason for his position other than to assert that somehow arbitrating minor discipline sends an undefined (and in truth undefinable) "Broad" message throughout the Correctional Facility if an officer who is disciplined challenges it through arbitration, and that allowing arbitration will result in a groundswell of arbitral filings. There is no evidence in the record to substantiate either of these objections. The latter argument was dismissed during the hearing at which time the Arbitrator observed that the evidence showed that the Morris County Superior Officers did not rush to arbitration for every single event of discipline imposed despite having that option in their grievance procedure. Tr. 1, page 193, lines 10-11. The truth is that the Undersheriff lacks any true experience to support the former argument. While the County attempted to discredit the PBA's witness about their lack of experience with minor discipline and the timing of same, the glaring truth is that Undersheriff McGrane has virtually no experience with arbitration upon which he could base his objection. He has participated in only one arbitration during his ten years with Morris County related to discipline of a superior officer that was presided over by Susan Osborn. Tr. 1, page 175, line 25 page 176, lines 1-16; page 177, lines 22-24. While he was employed by the New York Department of Corrections, officers lacked the ability to arbitrate. Tr. 1, pages 11-14. When discussing the timing and cost of arbitration, the Undersheriff admitted that he does not really know how long it would take or how expensive it would be. Tr. 1, page 133, lines 14-25. What then is his reason for resisting this proposal?

The Undersheriff's true motivation can be gleaned from his testimony, which shows that he wants to impose swift discipline with little time for officers to challenge his actions. Under the current system, despite the time periods for grievance review under the contract, Undersheriff boasts that theoretically discipline can be imposed within a week of the offense. Tr. 1, page 134, lines 4-12. As the Undersheriff stated: "the officer knows it's over. It's over. It's a relatively short period of time. Of course, some take longer than other, but relatively, it's a short period of time and it's more effective when the discipline is done and over with." Id. It is the Undersheriff's view that "[w]hen a minor discipline occurs, you get rid of it as quickly as you can." Tr. 1, page 138, lines 6-7. Curiously, this testimony does nothing to help the County's position. In truth, its capriciousness supports the PBA and demonstrates why a more efficient method of review *must* be granted to the PBA -- binding arbitration.

While the Undersheriff relies on some amorphous but negative "message" being sent to members of the PBA if arbitration is made available, the fact remains that the discipline he imposes is always served before any appeals are completed. Tr. 1, page 135, lines 1-15. If he imposes the discipline prior to any grievance or court appeal, then what message is truly being sent to the PBA? If the discipline is overturned and the penalty removed from an officer's record, the fact remains that a penalty was imposed. Apparently, he claims that the message being sent is that if an officer challenges discipline, every officer in the jail will know of the discipline imposed regardless of any challenge through arbitration. Tr. 1, page 196, 11-25; 198, lines 10-20. If the implication of this argument is that there may be some negative impact on the PBA's members, the PBA is more than prepared to assume that risk.

As noted above, statutory authority exists for the proposition that arbitration of minor discipline is mandatorily negotiable. N.J.S.A. 34:13A-5.3. There can be little dispute that the current judicial system is backlogged with too many cases, and this is not a new phenomenon. One scholar noted over thirty years ago that "[t]he courts cannot handle all of the load now, and even if they could handle all of it well, the judicial process is too slow and too costly. Courts are better at setting principles and establishing procedures in test cases. Private mechanisms need to carry the bulk of the caseload if the whole dispute-settling process is not to break down with serious consequences. This is one of the great lessons to be derived from the handling of grievances in industrial relations." Kerr, More Peace -- More Conflict, in Arbitration -- 1975, Proceedings of the 28<sup>th</sup> Annual Meeting of NAA, 8, 14 (Dennis &

Sommers eds., BNA Books 1976). In short and in truth, adding arbitration to the disciplinary review process will best serve the interests of employer and employee alike.

Finally, no evidence has been presented to show that allowing arbitration of minor discipline would adversely affect the County or limit its authority in any meaningful way. The testimony presented demonstrates what we all know from experience -- there is more efficiency, fewer procedural hurdles, and less formal discovery under the arbitration process than by utilizing the courts, which in turn means arbitration will likely have a positive financial effect on both the County and the PBA.

Additionally, we ask that the Arbitrator draw on his vast experience with grievance/disciplinary arbitration when considering whether the process will present any negative consequences to either party in this proceeding. Our view, which we believe the Arbitrator will share, is that the relief sought by the PBA will result in a classic "win-win." Moreover, the Arbitrator will have taken an important step (which only you can take) in eliminating a significant inequality and hardship for these officers.

Among the more fundamental precepts of the PERC interest arbitration decisions is that which requires that the party proposing a change must justify the same. In this instance, the PBA has provided ample justification for the change in the collective bargaining agreement. All that the PBA is seeking is the same right that its supervisors possess, to have disciplinary dispute evaluated and, if necessary, adjudicated in a manner that takes less time and results in less costs than pursuing the same relief through the Superior Court. The Undersheriff was unable to present any factual basis for opposing this proposal, largely due to his lack of experience with arbitration.

In summary, the PBA has proven that there will be a positive impact on the morale of its members, who are toiling (or worse, perhaps suffering) under the current system. The statutory criterion of comparability undeniably weighs in the PBA's favor, due to the arbitration provision contained in the SOA's agreement, let alone the overwhelming practice elsewhere in the private and public sectors of which the Arbitrator may take arbitrator's notice. Finally, the record is clear that there will be no negative impact on the County if arbitration is awarded, only a positive one in terms of the cost savings to be achieved. Consequently, the PBA respectfully requests that its proposal be adopted by the arbitrator. Indeed and in fact, justice and fairness compel such a result.

The PBA contends that its final offer is in greater harmony with the statutory criteria than is the County's. It notes that the interests and welfare of the public factor encompass the need to maintain high productivity and high morale in departments such as Corrections where the public's health, safety and welfare is implicated. The PBA recognizes that fiscal responsibility also fits within this criterion and asserts that it has shown that the PBA's position on wages and benefits falls well within the County's financial abilities. The PBA characterizes the County's position as including meager wage proposals, unjustifiable and limiting contract terms and excessive insurance givebacks. These proposals are said to ignore the relationship that exists between this unit and sheriff's officers and the corrections superiors. The PBA contends that no justification exists for the County to propose less of a wage increase than it implemented for other law enforcement units.

The PBA further contends that its proposals are also justified by comparisons to law enforcement units employed by municipalities within Morris County. Extensive comparability evidence was submitted on this point. The evidence, according to the PBA, demonstrates that top step salaries for the correction officers do not compare favorably with municipal police departments in the County and result in unit employees received several thousand dollars less. The PBA believes that the County's wage proposals ignore the evidence the PBA has introduced on both internal and external comparability.

While arguing that private employment comparisons are not relevant, the PBA notes that its wage proposal is closer to the record evidence showing increases in private sector wages than the offer made by the County. Notwithstanding this, the PBA asserts that there is no accurate private sector comparison with correction officers who, unlike most private sector jobs, perform their duties 24 hours a day, are subject to around-the-clock call-in, wear uniforms and subject themselves to injury or death on each shift that they work. The PBA further contends that the overall compensation factor supports its position over the County's. It believes that the County has not justified its demand for deep insurance concessions or a contract of limited duration that it contends contains inadequate wage increases. On the other hand, the PBA argues that it has established that the overall compensation paid to correction officers is substandard when measured against municipal law enforcement contracts and the internal agreements that the County has struck with its sheriff's officers and corrections supervisors.

Turning to the continuity and stability of employment factor, the PBA contends that its proposals would have a more positive impact on employees and the department because it includes more reasonable salary increases, the inclusion of binding arbitration for minor disciplinary grievances and because the County's proposals would have a negative impact on the morale of correction

officers where there is, traditionally, a higher rate of employee turnover because of the difficult nature of the job and the dangers inherent in working within the jail.

The PBA offers its rationale for the awarding of several of its other proposals. The PBA seeks the awarding of its proposal concerning personal or "correction officer" days. According to the PBA:

The County granted four (4) such days to the SOA sergeants who supervise PBA members. This grant was made on a non-cumulative basis, commencing (it appears) in 2008. As noted earlier, the record is clear that sergeants did not agree to any additional duties in return for these days and that many perform no duties "as shift commander", referenced in the Memorandum of Understanding and the collective negotiations agreement in Article XXIV, Section 4. While the PBA concedes that this has been a matter of contention between the SOA and the County, there can be no doubt that no "new value" was given by the SOA in return for these personal days. No one on behalf of the County has suggested otherwise. If the principle of "Pattern" has any real merit, we urge the Arbitrator to grant the same personal days to the members of the PBA. The label placed on these matters little; the need for parity matters a lot. SOA Sergeants got the equivalent in PBA dollars of 4.92% across the board on top of their nearly unbelievable rank differential *plus* these days; PBA members deserve nothing less in terms of personal days.

Turning to its proposal concerning payment for holidays, the PBA points to the Superior Officer Association that is said to reward Sergeants with triple-time for holidays. The PBA notes that the County has provided no reasonable basis to justify the difference that exists on this benefit between the two units. The PBA also seeks the adoption of its convention leave proposal noting that the existing agreement provides for fewer than the statutory number of PBA days and that its proposal addresses and resolves this inequity. The PBA also seeks

the adoption of its proposal to require the County to provide a reasonable amount of office space to conduct PBA business noting that the County can easily accommodate this proposal. The PBA also seeks the adoption of its agency shop proposal noting that it has been decades since the legislature authorized the negotiability of the representation fees in lieu of dues provision and that the County has offered no evidence as to why this proposal should not be awarded.

### **Position of the County**

The County's position in this proceeding is based upon several main arguments. Its urges that "pattern bargaining" be given substantial weight because of prior reliance on pattern of settlement as an important principal that has guided its overall labor relations policy. It contends that if greater benefits in the form of wages and health insurance were awarded to PBA Local 298, a domino effect could result where other units would demand similar benefits thereby causing substantially greater costs to the County. It would also result in undermining labor relations stability and promote poor morale in its workforce elsewhere. A further concern expressed by the County is that the financial impact of awarding the PBA's proposals could undermine its AAA bond rating, thereby increasing debt payments and taxes. Such an award could also affect the County's fund balance which has been stable and used, in part, to balance each year's budget. Notwithstanding these arguments, the County urges that consideration be given to the onset of the severe recession in the arbitrator's analysis of the economic issues. The County acknowledges that the record in

this proceeding closed before the recession fully impacted the State of New Jersey, although it seeks to credit Treasurer Roe's testimony that the PBA's proposals, if awarded would conflict with budgetary evidence showing declining revenues.

In support of its economic proposals, the County offered the testimony of Allison Stapleton, the County's Manager of Labor Relations. The core of her testimony is that the PBA, without justification, seeks an Award that ignores the principal of internal pattern. She testified that the County, at least since the early 1990s, has proposed the same economic and health benefits packages to all of its uniformed negotiations units. Relying on testimony and documents in the record, the County provides detailed support for this position in its post-hearing brief:

That continuity in negotiations has been and continues to be vital in ensuring stability in labor relations and costs to the County across the County's negotiations units. See, Exhibit E-61. Other arbitrators conducting similar interest arbitrations have relied upon "Pattern Bargaining". PERC has affirmed these awards. The Appellate Division most recently affirmed the soundness of this practice in Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge 39, Docket No. 2005-083, P.E.R.C. No. 2007-33 (2007).

Here, the Employer's economic proposal mirrors the terms already implemented in several of the County's other negotiations units. There are twenty-two (22) negotiations units within the County; eight (8) law enforcement units; and fourteen (14) civilian units. See, Exhibit E-61; T-2 7:18-21. As stated, supra, the County practices pattern bargaining during negotiations with all of its units to the extent possible.



For example, with respect to health insurance contributions, the County introduced employee cost-sharing for health insurance for all of its health plans several years ago. See, Exhibit E-61. This was negotiated with every negotiations unit. T-5 108:3-5. In 2002, the County negotiated a new payroll deduction formula with the civilian employees units, which included a 5% contribution by the employee of the total premium cost for the Medallion Plan, and a 3% contribution by the employee of the total premium for the Wraparound and HMO Blue Plans. See, Exhibit E-61; T-5 110:1-3.

With respect to the law enforcement units, the County negotiated the same payroll deduction formula as was negotiated with the civilian units, with the exception of an annual 20% increase in premium contribution for 2003 through 2006. T-5 112:5-10. This exception applied to all law enforcement units. Moreover, all law enforcement units including the Morris County Sheriff's Office, Bureau of Corrections, Morris County Prosecutor's Office and Morris County Sheriff's Office, Bureau of Law Enforcement; have agreed to this payroll deduction formula. T-5 112:11 - 113:10.

These new contracts began in 2005 and they include a three (3) tier prescription plan and a \$10 co-payment for HMO Blue, along with some increased deductibles. See, Exhibit E-61, T-5 113:11-17. According to Ms. Stapleton, all law enforcement units in the County currently have the same level of health insurance contributions. T-5 118:19-25.

Historically, for approximately 18 years, the contracts for PBA Local 151 (Sheriff's Office) and for PBA Local 298 (Corrections Bureau) have had exactly the same salary guides. See, Exhibit 26. The County has also consistently applied its salary proposals across all of the law enforcement negotiations units. Id. With respect to this uniformity, the Employer's proposal for PBA 298 is the same salary guide proposal that Park Police PBA Local 264 has already agreed to. Id. It is also identical to what had been offered to PBA Local 151 by the Sheriff's Office. Id.

Almost without exception, the County has and continues to maintain uniformity in its proposals with the civilian and law enforcement negotiations units. As a means of illustration, Exhibit 26 provides a historical analysis comparing all Morris County Law Enforcement groups' wages. Also see, Exhibit 27. This uniformity is vital to the stability of labor relations within the County and for the furtherance of its fiscal and budgetary policies.

This principal has also been relied upon by other arbitrators and affirmed by PERC. See, Somerset County, supra; County of Essex County Sheriff's Officers PBA Local 183, Docket No. IA-2006-052 (2006), aff'd (App. Div. January 25, 2008). An arbitration award that grants increased benefits to a single negotiations unit would jeopardize the stability of the County's work force and undermine current and past negotiations with other units. It is unlikely and very probable that the other units may demand similar increases.

In addition to the testimony, County Exhibit 27 provides an analysis of the differentials that exist, in dollars and percentages, between Morris County Sheriff's Officers and Sergeants, Morris County Corrections Officers and Corrections Sergeants, and Morris County Park Police and Sergeants during the years 2003 through 2006. The figures show consistency in the County's approach in negotiations among its other law enforcement units.

In respect to the economic issues in dispute, the County has provided substantial documentary evidence and testimony from Morris County Treasurer and Finance Director Glenn Roe. Roe expressed several concerns over the potential impacts of an award that adopted the PBA's proposals, especially in years 2009 and 2010 because of declining revenues. He testified that the County has consistently maintained a stable fund balance that has allowed the County to maintain a AAA bond rating and available funds to pay for emergencies. He expressed a concern that the PBA's proposals, and the impact of those costs if pursued by all the law enforcement units, could jeopardize the fund balance and the AAA bond rating resulting in much higher labor costs and loss of reserves that are necessary to offset the effects of recession. Roe also

testified that the PBA's proposals could undermine the County's policy to anticipate the level of financial risk elements that are beyond the County's control. One such concern is the possibility of a reduction in federal funding. Another has been the loss of revenue at Morris View, the County-run nursing home which has experienced a decrease in residents from 390 to 250. He testified that the County has experienced a revenue loss from this trend which he attributed to the shifting of Medicaid funding from long-term institutional care to home-based and community programs. An additional concern expressed by Roe is that the County may be faced with having to fund, through the creation of a reserve, the costs that would offset future increases in healthcare benefit costs. In the past, the County has maintained a "pay as you go" policy for retiree health benefit and pension benefit costs. However, projected trend rates for these benefits have been increasing and he anticipates that these costs will become a larger portion of the County's budget in the future. He testified that the County's health insurance consultant projected a 13% increase in such costs in 2008 over the \$31 million for healthcare benefits in 2007. An additional factor addressed by Roe is the fact of revenue loss from a declining housing market. He referenced the increase in house auctions, foreclosures and sales. Roe attributed a \$5 million decline in the County's fund balance at the end of 2008 to a \$2 million drop in investment income and an over \$4 million decrease in revenues from home sales and mortgage refinancing. Roe also noted that the County's budget in 2008 needed to be calculated based upon a 2.5% appropriations cap rate while complying with a new law imposing a maximum annual tax levy of 4%. An

additional relevant factor cited by Roe was the County's obligation with respect to pension contributions. He projected a significant increase in such contributions between 2009 and 2010 and that the appropriation for these funds must be raised within its cap.

The County urges rejection of the PBA's various economic proposals in addition to its urging that the PBA's wage and health insurance proposals be denied. One such proposal concerns the PBA's request to provide Correction Officer Days. It contends that:

[T]he "Correction Officer Days" that have been proposed by the PBA would be excessive to the economic package offered to the other units. The PBA contends that because there is a Memorandum of Agreement between the Corrections Superior Officers, which includes the Sergeants, and the County, which provides for Corrections Sergeant's Days, the Corrections Officers are entitled to a similar benefit. However, this provision was agreed to in light of the fact that the Sergeants, unlike corrections officers, are not compensated when they serve in a higher rank, specifically as acting shift commanders. Essentially, this agreement was completed as a "leveling out" provision to put the Corrections Sergeants in the same position as members of the other units.

As testified to by the PBA's witness, Officer Pollison, when a correction officer performs a job duty that is outside of his normal duties, the officer is paid what is known as "out of title" pay. T-1 69:16-24. This is a rarity.

In contrast, Sergeants are often asked to perform as "shift commanders". In fact, they do so as often as twice a week. T-1 71:8-12. Moreover, to emphasize the fact that this is a provision unique to the Sergeants; Lieutenants, who are covered by the same CBA, do not have "Lieutenants Days" and are compensated directly for performing "out of title" duties if they serve in a higher rank. T-1 73:6-7.

The County also urges the denial of the PBA's proposal that correction officers receive two additional personal days. The County submits that Corrections Officers already receive a generous allowance of leave time and that the awarding of this proposal would be inconsistent with the current economic environment and negatively affect the County's budgetary goals. The County offers similar reasons for the rejection of adding Easter Sunday and the day after Thanksgiving as paid holidays. According to the County, the proposal also runs afoul of the pattern bargaining principal because no other agreement considers these days to be holidays and to award them here would result in all other unions seeking the same benefit. According to the County:

The PBA proposes to add both Easter Sunday and the day after Thanksgiving as paid holidays. Again, in the interests of Pattern Bargaining, no other collective negotiations agreement within the County of Morris considers these days to be "holidays" thus requiring pay for all employees. See, Exhibits 8, 9, 10, 11 and 12. Rather, as demonstrated by the Employer's proposal, there are special provisions that compensate employees who work on these days. The employer's practice regarding these days is financially more acceptable and promoted continuity amongst the units. Therefore, the PBA's proposal must be denied.

The County objects to the PBA proposal to increase the payout for unused sick time at retirement to \$20,000. The County points out that the amount sought is significantly above the maximum payout that exists in labor agreements county-wide. To increase this sum beyond the existing amount of \$12,000 would deviate from the other units and be detrimental to the overall fiscal budget of the County because the other units would insist on the same benefit increase. The County also urges denial of the PBA's proposals with respect to the sell-back of

sick time and the modification of the County's sick leave policy for similar reasons.

The County also seeks the rejection of the PBA's proposal concerning PBA office space. The PBA's proposal would require the Correctional Facility to provide an office for the exclusive and sole use of the PBA. According to the County, it would agree to provide space when it is available. However, the County argues that it must have the power to amend such provision if space constraints make the situation impossible or impractical.

The County offers vigorous argument in support of its position that the PBA's proposal for the arbitration of minor disciplinary grievances must be rejected. The County relies mainly upon the testimony of Undersheriff McGrane that the arbitration of this type of grievance would detrimentally affect the efficiency of the jail. The County submits the following argument:

Undersheriff Ralph McGrane, an extremely experienced Corrections Administrator with over 35 years work in Corrections, testified that most matters at Corrections Facilities involving discipline can be considered minor. T-1, 129:4. Minor discipline is a formal written reprimand or a suspension/fine of five working days or less. See, Exhibit 29A, p. 5. At the MCCF, most incidents involving minor discipline result in a written reprimand. See, Exhibit 29. In fact, of the 348 reported minor discipline cases involving Correction Officers from 2001 through 2007, 231 of them were written reprimands. Id. Written reprimands represent over 66% of minor discipline matters and almost 65% of discipline overall.

The current minor discipline procedure includes an internal grievance process. First, the officer is provided an opportunity to speak with his immediate supervisor regarding the incident. See,

Exhibit 29A, p. 6. The Supervisor must then bring the matter to the attention of the Division Commander. Id. The Division Commander must give the Supervisor authorization to proceed with the discipline. The Supervisor then writes a disciplinary report and submits it to the Division Commander for review. Id. Upon completion of an investigation, the Division Commander then forwards the report to the Warden. Id. If the Warden agrees with the discipline that is recommended, he will approve the report and have the Administrative Lieutenant serve the officer with all the necessary papers. Id. The Bureau Chief must approve any discipline resulting in a suspension. Id. At 7. Moreover, throughout the process, the officer is informed of all charges and is given an opportunity to respond at all stages. Id.

If the employee remains unsatisfied with the result, he has the option to follow the grievance procedure outlined in the PBA contract. See, Exhibit 29A, p. 10. Specifically, the first step is an appeal to the Chief. T-1 130:3-5. If that is unsatisfactory, the officer can take the matter to the Sheriff, then to the County Administrator and finally, if they are still not satisfied, they have the option of bringing the matter to Superior Court. T-1 130:3-8. It also should be noted that the Chief reviews all disciplinary actions. T-1 130:11.

What the PBA is proposing is that these matters should include arbitration as the terminal procedure. As Undersheriff McGrane testified, currently, an officer will know of the discipline within a few short days of the incident. Finality of minor discipline matters is very important to the day-to-day running of the facility. T-1 138:14 - 139:7. Adding lengthy arbitration to a process, which already works and is effective would do nothing but prolong the process and detrimentally impact the operations of the facility as testified by Chief McGrane.

Our Courts have described jails as "tinderboxes". Bowden v. Bayside State Prison (Dept. of Corrections), 268 N.J. Super 301 (App. Div. 1993). Any decision that would adversely affect the disciplinary process could only lead to turmoil and disaster. Therefore, the PBA's proposal must be denied.

In addition to addressing the interests and welfare of the public and the financial impact criteria, the County submits that its proposals are more in line with the remaining statutory criteria. The County submits that the average

percentage change for local government employees in 2006 and 2007 was 2.8% and 4.6% and 4% for manufacturing production workers in New Jersey from 2005 to 2007. With respect to other County correction officers, the County notes that the PBA would receive almost \$4,000 more than the State average if its 2007 and 2008 wage proposals were to be adopted. The County also disputes the applicability of comparisons with municipal police officers. The County also calculates that its wage proposal at 3% is more consistent with the cost of living adjustments that were calculated by the Social Security Administration at 3.3% and 2.3% for 2007 and 2008 respectively.

### **DISCUSSION**

The County and the PBA have submitted substantial documentary evidence and written argument in support of their respective last offers. The record testimony of Corrections Officer Leon Pollison, Corrections Officer Donald Delvecchio, Undersheriff Ralph McGrane, Corrections Officer Rodney Furby, Allison Stapleton, Manager, Office of Labor Relations and Glenn Roe, Director of Finance and County Treasurer on the disputed issues has been reviewed as well as the record from the prior PBA Local 151 proceeding that has been incorporated into the record of this proceeding. All submissions have been thoroughly reviewed and considered.

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)



that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when

considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq ).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

In interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis to

modify an existing provision, to delete that provision or to add a new term to the Agreement. This principle has been applied to my analysis of the issues in dispute. The proposing party must go beyond merely seeking a change in the absence of providing sufficient evidentiary support. Any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the awarding of any single change can reasonably impact upon the resolution of other issues. Put another way, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award. All of the statutory criteria are relevant in evaluating the merits of this dispute although I have not given the same weight to all of them.

A proper analysis of the issues, and the application of the statutory criteria to those issues, must, as a starting point, address the parties' arguments as to whether there is a pattern of settlement that applies to this bargaining unit and, if so, whether such pattern indicates that adherence to its terms represents a reasonable determination of the issues. This is so because evidence of pattern of settlement can implicate several of the statutory criteria, including the interests and welfare of the public, internal comparisons between an employer's negotiations units, the continuity and stability of employment and the weight to be given to these criteria.

The “wheel” with respect to the internal pattern of settlement standard need not be reinvented here in light of the substantial precedent that exists in cases where the application of that principle was challenged, reviewed and decided<sup>1</sup>. The legal framework for this principle explicitly exists in N.J.S.A. 34:13A-16g(2)(c), N.J.A.C. 19:16-5.14(c)(5) and in case law that has reviewed, interpreted and applied the principle. On this latter point, specific reference was made by PERC, in *County of Union v. Union County Corrections Officers, PBA Local 999*, PERC No. 2003-33, to encompassing N.J.S.A. 34:13A-16g(8) as a relevant factor to consider within the pattern of settlement principle:

[A]s a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. In that vein, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units.

Putting aside the parties' well articulated arguments concerning pattern of settlement, I have carefully reviewed the factual foundation of this dispute to evaluate whether there is an objective basis to conclude whether a pattern does, in fact, exist.<sup>2</sup> Neither party's wage proposals are consistent with internal settlements that have been negotiated between the County and its various

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<sup>1</sup> Among these, See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008). See County of Union I, P.E.R.C. No. 2003-33, 28 N.J.P.E.R. 459 (¶ 33169 2002) and County of Union II, P.E.R.C. No. 2003-87, 29 N.J.P.E.R. 250 (¶75 2003). Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999). County of Essex and Essex County Sheriff and Essex County Sheriff's Officers, PBA Local 183, 31 NJPER 41 (2005). See also, Rutgers, The State University, P.E.R.C. No. 99-11, 24 NJPER 421 (¶ 29195, 1998), City of Clifton, P.E.R.C. 2002-56, 28 NJPER 201 (¶ 33071, 2002).

<sup>2</sup> Merely because a party's proposals are inconsistent with an established pattern, does not defeat the factual predicate that there has been a pattern. Nor, when a party's position is alleged to mirror a pattern in the absence of same, such claim cannot create a pattern where none has existed.

bargaining units. I have examined those resolutions. In certain non-law enforcement units<sup>3</sup>, the contract terms run through 2008 and reflect increases ranging between 3.75% and 4.1%. Terms for other non-law enforcement units varied from this range and are somewhat more difficult to quantify. For example, the Sheriff's civilian unit received 4% for employees who were off-guide and 3% for the others from 2005 through 2007. In a unit representing employees in the office of Temporary Assistance, the County and CWA Local 1040 moved employees who had been placed on the salary schedule up one step for each of the 2006, 2007, 2008 contract years with additional increases of 0.5% for 2006 and 2% for 2007 on each step. Off-guide employees received 2% increases each year. I next turn to the law enforcement units. In law enforcement, Weights and Measures employees represented by PBA Local 203 received 8% annual increases during the term of their 2005-2007 contract. The County also negotiates two contracts with its Park Police employees. PBA Local 264 negotiated 3% increases for 2007 and 2008. However, in prior years substantially higher wage increases were negotiated: 10.37% for 2003; 6.15% for 2004; 5.79% for 2005; and 5.5% for 2006. In a Park Police Superior Officer unit, increases of 3.13% and 2.31% were negotiated for contract years 2007 and 2008, but these raises were on top of negotiated increases of 7.4% for 2004; 6.89% for 2005 and 6.57% for 2006. It is apparent that the County offered substantially higher wage increases in 2003, 2004, 2005 and 2006 in these units in order to bring unit salaries up to the Sheriff's Officers and Corrections Officers

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<sup>3</sup> See labor agreements between the County of Morris and Morris Council (Supervisors' Unit) No. 6A, IFPTE – Morris Park Commission and Teamsters Local 469 – Morris View and CWA – Morris View and District 1199J – Morris View and Morris Council (Supervisors) No. 6A.

at the conclusion of the 2006 contract. In 2007 and 2008, the wage increases of approximately 3% were provided as part of this six year contract.

More recent terms have been struck between the County and a unit of Corrections Superior Officers and between the County and PBA Local 151. This Superior Officer Association represents supervisors who supervise the Corrections Officers represented by Local 298. There, an agreement on salary increases provided for 4% in 2007, 4% in 2008, 4% in 2009 and 4% in 2010 as reflected in a signed memorandum dated January 7, 2008. On October 17, 2008, an interest arbitration award was issued between the County and a unit of Sheriff's Officers represented by PBA Local 151. That award covered the same contract duration as the Corrections Superior Officer agreement, January 1, 2007 through December 31, 2010. The Agreement also provided for 4% across-the-board salary increases effective on January 1 of each contract year.

What emerges from all of the foregoing, as well as in the evidence concerning longstanding history, is a factual framework that, at minimum, reflects the existence of an internal pattern of settlement with respect to wages and also health insurance between rank and file Sheriff's Officers and Corrections Officers. It also appears that such pattern extends to the superior officer units in the Office of the Sheriff. These conclusions are compelled for the following reasons. The collective bargaining agreements for both the Corrections Officers and the Sheriff's Officers clearly show that there has been consistency between

the two units in the payment of top step base salaries. In each unit, top step pay was \$73,279 for contract year 2006. This was the expiration year for both contracts. More significantly, for approximately 18 years prior thereto, the contracts for PBA Local 151 (Sheriff's Office) and for PBA Local 298 (Bureau of Corrections) have had the exact same salary schedules. These unique facts do not reflect coincidence or mere happenstance. It can reasonably be concluded, based upon the County's own acknowledgement with respect to pattern bargaining in these two units, that the identical salary terms between these two units over such an extended period of time is a result flowing from the County's strong and successful goal of maintaining salary uniformity between these two units. A resolution with one unit has caused conformity with the other.<sup>4</sup>

Moreover, the County entered into a voluntary agreement with the Corrections Supervisors, some nine months prior to the PBA Local 151 award that was given substantial weight in the PBA Local 151 matter. It must also be given substantial weight with respect to salary terms for PBA Local 298. These superior officers directly supervise the corrections officers represented by Local 298. They also receive top step salaries (based upon 2006 terms) that are 23% higher than the top step salaries received by the correction officers. This is the same salary differential that existed between the Sheriff's Officers and Sheriff's Superior Officers. The objective to compress this differential was rejected in the Local 151 proceeding. It is one of the major reasons that PBA Local 298 has

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<sup>4</sup> This finding does not foreclose a party from seeking to deviate from that pattern. The merits of such a claim would be dependent upon meeting a burden that the continuation of that pattern is no longer warranted.

expressed in support of its salary proposals of 4.8%, 4.9%, 5%, 5.1% and 5.2% over contract years 2007 through 2011 because, similar to the claim made by the Sheriff's Officers, the view of Local 298 is that the 23% differential is simply too high and not justified. As stated above, this very rationale (to compress the 23% differential) was also advanced by the Sheriff's Officers and was rejected by the arbitrator in the PBA Local 151 Award. There, the Sheriff's Officers also sought higher increases to compress the salary differential between the officers and the sheriff's superior officers which had also reached 23%. What these facts demonstrate is that there has been consistency in these relationships and their structure, not only directly between Sheriff's Officers and Corrections Officers, but also between the rank and file officers in each of these units and their superior officers. The linkage in salaries between these bargaining units is conscious and inescapable leading to the conclusion that internal comparability and settlement patterns between these units does, in fact, exist and has been the driving force in the maintenance of labor peace and stability as successfully sought and achieved by the County. These units, for obvious reasons, share a close community of interest in that the Bureau of Corrections is within the organizational structure of the Office of the Sheriff, there is integration in the work between Sheriff's Officers and Corrections as well as in the supervision of the rank and file.

Having found the existence of this pattern, the next question is whether there should be adherence to this pattern with respect to a salary award for PBA



Local 298. I initially note that neither the County nor PBA Local 298 has proposed a salary determination that is consistent with the results of either PBA Local 151 and the Sheriff's Superior Officers Association. The County's position seeking 3% increases is based upon maintaining consistency in the proposals it made in ongoing negotiations with all units in the Sheriff's Office rather than what eventually emerged as the results of those negotiations. The first agreement to emerge was in January 2008. A voluntary agreement was reached between the County and the Corrections Superior Officer's Association resulting in 4% wage increases for contract years 2007 through 2010 along with increased health insurance contributions for the Superior Officers. The second agreement to emerge was with PBA Local 151 in October 2008, resulting in 4% wage increases for contract years 2007 through 2010. This was by way of an Award that was accepted by both parties. It was implemented along with other contract terms that included increased health insurance contributions for Sheriff's Officers.

In this proceeding, the County has maintained its 3% offer while PBA Local 298 has maintained a demand for increases averaging 5%. The parties have maintained these positions notwithstanding the fact that negotiations have concluded in the bargaining units where there has been a longstanding pattern. The County has sought to defeat the PBA's claim for more than the pattern would offer. In addition, the County offers argument in its post-hearing written submission that even the results of the pattern should not be awarded:

[S]ince the close of the record, the national economy has suffered a severe recession unprecedented in our current era. It would be irresponsible for the arbitrator to ignore these consequences in rendering his award. We are, of course, cognitive of the award rendered by Arbitrator Hundley in IA-2007-019 for Morris County Sheriff's Officers PBA Local 151. Normally, such an award would weigh towards a "pattern effect." However, given the severe decline in the State, National and World economic condition, that cannot be the case at this time.

PBA Local 298, on the other hand, seeks greater salary increases than the pattern would provide. Its main arguments in support of 5% increases, on average, are based upon its objectives to close the differential with the correction superior officers and improve its relative salary standing among municipal law enforcement agreements in Morris County.

The deviations sought by each party, as described above, are not supported by reasonable justification while adherence to the longstanding salary pattern is clearly warranted. Assuming that this award would set the same contract duration that exists for PBA Local 151 and the SOA, the adoption of the County's salary proposal, notwithstanding its acknowledgement that the pattern would normally apply, would result in a 4% negative differential between these Corrections Officers and the Sheriff's Officers where, for almost twenty years, no differential has existed. The adoption of PBA Local 298's proposal would place the Sheriff's Officers at a 4% negative differential with the Corrections Officers. PBA Local 151 would then seek to catch up to Local 298 in the future and also to obtain the same improved salary differential with its own supervisors that PBA Local 298 would have achieved in corrections.

I reject each party's approach that would result in either a higher or lower wage increase and also, the PBA's approach that would preserve its health insurance provision without increases in co-pays or insurance contributions. A result that deviates from the longstanding internal relationships between Sheriffs Officers and Corrections Officers would foster labor relations instability by discouraging future settlements because the element of unpredictability would loom over the heads of the negotiators. A unit would be hesitant to settle for fear that a unit who, as here, has been in a tandem relationship, could achieve a better deal than a result that would normally have been foreclosed due to a prior resolution. If a differential were achieved due to the ignoring of a pattern, the potential would exist for the destruction of morale that could affect the continuity and stability of employment in the unit that received less.

Beyond the consequence of instability, the disruption in the longstanding relationships due to a higher award could come at substantial cost to the County. Its ability to seek and obtain collective bargaining results as it so successfully has done in the past, based upon internal settlement patterns, could vanish as well as the cost containment that flows from predictability.

This arbitrator is keenly aware of present economic circumstances and the County's desire to alter what it defines as the "pattern effect" due to developments that have occurred after the close of the record of this proceeding. I view its position as one where it believes that it has met a burden to alter the

potential result caused by adherence to a pattern. Despite its thoughtful and well expressed reasons for deviation, I do not sustain its position. Under the facts and circumstances of this case and the record developed at hearing, I find that insufficient justification exists to either diminish salary terms that the County recognizes would normally be awarded because of pattern or to award higher salary terms sought by PBA Local 298 that would eviscerate the settlement pattern.

The PBA's salary proposals are without merit and must also be rejected. They are not supported by the public interest and welfare criterion. Its proposals ignore the internal settlement pattern and there is no reasonable basis to award salary increases that would place the Correction Officer salary schedule above the schedule that has been set for Sheriff's Officers. While the record does not reflect that the cost of such an award would, in and of itself, force the County to run afoul of its cap law and tax levy cap obligations. The ripple effect of a 5% award would extend throughout the County's law enforcement units and would severely impair the County's ability to meet its budget priorities in the future. The PBA's salary proposals are also not justified by other statutory criteria. The proposals are well above the average annual increase in voluntary settlements and awards throughout the State of New Jersey and in Morris County. Further, I do not find that a basis exists to compare correction officer salaries in Morris County to salary schedules that exist in municipal police departments for municipalities within Morris County. The record clearly reflects that internal

comparisons within law enforcement units that have labor agreements with the County have been given more weight by the parties in their wage determinations than external comparisons that include municipal police departments. The work of this unit, while law enforcement in nature, also differs from that of municipal police officers, and is more closely aligned with the overall responsibilities within the Office of the Sheriff. Although the record does not show that salary increases for County bargaining units have been governed by the increases in the CPI, the PBA's salary proposals far exceed the CPI data and are totally unsupported by such evidence. The PBA has also not presented a claim, nor any evidence, that an award at the level it seeks is necessary to prevent excessive turnover.

Turning to the County's arguments, there is no evidence that the impact of an award that is consistent with the longstanding pattern of settlement with Sheriff's Officers would have the dire financial consequences envisioned by the County. I have given this argument full consideration but cannot sustain the County's position. There is no internal pattern on wages that extends to non law enforcement units. Any claim by any of those units would be without merit because it would not be supported by this record. Further, the financial impact is much less substantial than the County has argued. There would be a greater potential for adverse financial impact to the County if this award were to set salary terms that would be the initiator of a future pattern that would then be sought by the Sheriff's Officer unit or by the superior officers. This will not be the result here because the last effective date of a salary increase will be January 1,

2010, the same date that 4% increases will go into effect for the final contract year applicable to both the Sheriff's Officers and the superiors. The awarding of a December 31, 2010 expiration date for the Local 298 agreement will provide the same expiration date as exists for Local 151 and the Superior Officers. Thus, there can be no claim by these units that the salaries achieved here would require modifications of the terms that these parties have already negotiated. Nothing herein will hamper the County's ability from pursuing labor relations goals in the future for these units under economic and budgetary circumstances that will exist at that time.

An analysis of salary costs also reflects that the costs of funding terms that are consistent with the pattern will not cause adverse financial impact on the County, its residents and taxpayers nor cause the County to exceed its authority under the tax levy cap or budget cap. I have reached these conclusions after calculating the cost impact of a salary award that is consistent with the pattern. I start with setting forth the proposed salary schedules. The County has proposed the following salary schedule:

	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Entry</b>	\$39,050	\$40,416	\$41,851
<b>After 1 Year</b>	\$40,700	\$42,166	\$43,701
<b>After 2 Years</b>	\$43,600	\$45,166	\$46,801
<b>After 3 Years</b>	\$46,800	\$48,466	\$50,201
<b>After 4 Years</b>	\$50,000	\$51,766	\$53,601
<b>After 5 Years</b>	\$53,516	\$55,382	\$57,317
<b>After 6 Years</b>	\$58,089	\$60,055	\$62,090
<b>After 7 Years</b>	\$63,779	\$65,845	\$67,980
<b>After 8 Years</b>	\$69,479	\$71,645	\$73,880
<b>After 9 Years</b>	\$75,479	\$77,745	\$80,080

The PBA has proposed the following salary schedules:

**Corrections Officers – hired prior to 1/1/01**

Step (Yrs)	2006 Base Salary	Year 1 - 2007	Year 2 - 2008	Year 3 - 2009	Year 4 - 2010	Year 5 - 2010
8	73,279	\$76,796	\$80,559	\$84,587	\$88,901	\$93,524
7	67,379	\$70,613	\$74,073	\$77,777	\$81,744	\$85,994
6	61,779	\$64,744	\$67,917	\$71,313	\$74,950	\$78,847
5	56,189	\$58,886	\$61,771	\$64,860	\$68,168	\$71,713
4	51,716	\$54,198	\$56,854	\$59,697	\$62,741	\$66,004
3	48,300	\$50,618	\$53,099	\$55,754	\$58,597	\$61,644
2	45,200	\$47,370	\$49,691	\$52,175	\$54,836	\$57,688
1	42,100	\$44,121	\$46,283	\$48,597	\$51,075	\$53,731
Entry	37,750	\$39,562	\$41,501	\$43,576	\$45,798	\$48,179

**Corrections Officers – hired after 1/1/01**

Step (Yrs)	2006 Base Salary	Year 1 - 2007	Year 2 - 2008	Year 3 - 2009	Year 4 - 2010	Year 5 - 2010
9	73,279	\$76,796	\$80,559	\$84,587	\$88,901	\$93,524
8	67,379	\$70,613	\$74,073	\$77,777	\$81,744	\$85,994
7	61,779	\$64,744	\$67,917	\$71,313	\$74,950	\$78,847
6	56,189	\$58,886	\$61,771	\$64,860	\$68,168	\$71,713
5	51,716	\$54,198	\$56,854	\$59,697	\$62,741	\$66,004
4	48,300	\$50,618	\$53,099	\$55,754	\$58,597	\$61,644
3	45,200	\$47,370	\$49,691	\$52,175	\$54,836	\$57,688
2	42,100	\$44,121	\$46,283	\$48,597	\$51,075	\$53,731
1	39,300	\$41,186	\$43,205	\$45,365	\$47,678	\$50,158
Entry	37,750	\$39,562	\$41,501	\$43,576	\$45,798	\$48,179

An award consistent with the terms of pattern would reflect the following salary schedules:

**Corrections officers – hired prior to 1/1/01**

<b>Step (Yrs)</b>	<b>2006 Base Salary</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
8	73,279	\$76,210	\$79,259	\$82,429	\$85,726
7	67,379	\$70,074	\$72,877	\$75,792	\$78,824
6	61,779	\$64,250	\$66,820	\$69,493	\$72,273
5	56,189	\$58,437	\$60,774	\$63,205	\$65,733
4	51,716	\$53,785	\$55,936	\$58,173	\$60,500
3	48,300	\$50,232	\$52,241	\$54,331	\$56,504
2	45,200	\$47,008	\$48,888	\$50,844	\$52,878
1	42,100	\$43,784	\$45,535	\$47,357	\$49,251
Entry	37,750	\$39,260	\$40,830	\$42,464	\$44,162

**Corrections officers – hired after 1/1/01**

<b>Step (Yrs)</b>	<b>2006 Base Salary</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
9	73,279	\$76,210	\$79,259	\$82,429	\$85,726
8	67,379	\$70,074	\$72,877	\$75,792	\$78,824
7	61,779	\$64,250	\$66,820	\$69,493	\$72,273
6	56,189	\$58,437	\$60,774	\$63,205	\$65,733
5	51,716	\$53,785	\$55,936	\$58,173	\$60,500
4	48,300	\$50,232	\$52,241	\$54,331	\$56,504
3	45,200	\$47,008	\$48,888	\$50,844	\$52,878
2	42,100	\$43,784	\$45,535	\$47,357	\$49,251
1	39,300	\$40,872	\$42,507	\$44,207	\$45,975
Entry	37,750	\$39,260	\$40,830	\$42,464	\$44,162

My analysis of costs does not include the contract year 2011 that the PBA has proposed because a contract term extending through 2010 is not consistent with the settlement pattern. They also include an assumption that if the County were to make a proposal for contract year 2010 it would be consistent with its 3% proposal for contract years 2007, 2008 and 2009. The one (1%) percent



difference between the Award and the County's offer will cost the County approximately \$75,000 more than its offer in the 2007 year of the Agreement. Each succeeding year will be at new costs that are similar, but slightly more each year over the prior year's base, due to compounding. Cumulative costs will be increasingly higher due to the lower gross salaries that would be paid in the succeeding years beyond 2007 if the County's proposals were to be awarded.

I am not persuaded that the revenue declines that the County has begun to experience over the last two years of the Agreement forms a justifiable basis to award an outcome for corrections officers that would abandon a two decade practice of identical salaries within the Office of the Sheriff based upon pattern. The substantial fund balance of over \$20,000,000, more than 7% of the County's budget, provides sufficient reserves to maintain the vitality of the longstanding labor policy between 2007 and 2010 that has maintained a consistent salary structure within the Office of the Sheriff.

My award concerning salary has also considered the fact that increased health insurance contributions are part of the internal settlement pattern. Unit employees currently receive health benefits under Article XII of the Agreement. Within Article XII is a reference to Schedule C. This sets forth employee healthcare contributions. The County's health insurance proposals would result in the increase for office visit co-pays and for specialists, increased deductibles under the Medallion Plan, increased co-pays for prescription coverage, increased

healthcare contributions for the Medallion, HMO Blue and Wraparound policies. The proposals would also provide certain changes to retiree health insurance. The PBA opposes all of the County's health insurance proposals but offers no reasonable basis for such opposition. The PBA Local 151 award includes increases in employee co-pays effective January 1, 2009 and increased premium contributions effective January 1, 2010. For the reasons set forth in my analysis concerning the salary increases to be awarded, I conclude, for the reasons expressed below, that a pattern relating to health insurance has existed between PBA Local 151 and PBA Local 298 on this issue in the past and that the extension of this pattern to the PBA Local 298 unit represents a reasonable determination of this issue.

In the respective collective bargaining agreements which expired on December 31, 2006, PBA Local 151 and PBA Local 298 had virtually identical health benefit provisions. Each provision set forth three options for health insurance coverage, co-pays for prescription drugs, dental insurance with premium costs charged to the employee for dependent coverage, retiree health insurance and a Schedule C. Schedule C provides for health care contributions towards premiums for each of the three forms of coverage depending upon whether the coverage was single, parent/child or family. In the October 17, 2008 interest arbitration award for PBA Local 151, the terms of the health benefits provisions, including Schedule C, were modified and awarded as follows:

### Health Benefits Premium Contribution

Effective January 1, 2010, the dollar amount premium contributions for the Medallion, Wraparound, and HMO shall be increased by 10% resulting in the following bi-weekly payroll deductions.

	Medallion	Wraparound	HMO
Family	\$50.82	\$28.36	\$22.53
Parent/Child	\$36.08	\$20.03	\$14.97
Single	\$19.20	\$10.73	\$8.21

### Prescription Co-Pays

Effective January 1, 2009, the prescription co-pays shall be \$5.00 for generic; \$10.00 for name brand; and \$15.00 for formulary prescriptions. Effective January 1, 2009, two (2) co-pays for a three-month supply by mail order.

### Article XI, Hospital and Medical – Surgical Insurance, Section 1, page 19

Effective January 1, 2009, HMO Blue - \$10.00 co-pay for office visits and \$15.00 co-pay for specialist. Increase eye glass lens reimbursement to \$100.00

### Article XI, Hospital and Medical – Surgical Insurance, Section 1, page 9

Medallion – Effective January 1, 2009, increase co-pay to \$20.00, increase deductibles to \$300/\$600. Add \$100.00 eye glass lens reimbursement.

Based upon the fact that the two labor agreements have had virtually identical health insurance provisions in the past, I award these changes to be effective the day after the award.

Recognizing that the PBA has proposed many other economic terms, my determinations above shall represent the entire new costs and economic changes for this contract. I have considered the PBA's proposal with respect to

other economic issues. These include four correction officer days, two additional personal days, two additional paid holidays and proposals for the sell back of sick time under a sick leave incentive program, an increase in the payout of unused sick time at retirement from \$12,000 to \$20,000 and the clarification of the definition of what constitutes a "sick occurrence." I do not award any of these proposals based upon my determination that the financial impact of any one or more of these proposals would not be in balance with the terms of this overall award, notwithstanding any merit that may exist with respect to any of these individual proposals. The County has estimated that the cost of the payout for accumulated sick leave at retirement to be approximately \$70,000 over the life of this Agreement. The County has estimated the cost of the holiday pay increase as approximately \$310,000 between 2007 and 2010. The County has estimated the cost of a one-time payout of 75% for accrued hours of sick leave beyond 240 hours as \$763,965, with a 75% payout for excess hours earned annually over three years as approximately \$250,000. In addition, the PBA's proposals for correction officer days and additional personal days would amount to an additional 6 days off with pay annually has been calculated by the County to cause a cumulative payout of over \$500,000. Any or all of these costs that would require expenditures beyond the salary increases that have been awarded. Such costs would be inconsistent with my obligation to render a reasonable determination of all issues under all of the statutory criteria, including financial impact and the spending and tax cap limitations.

I next turn to the remaining issues in dispute. One such issue is the County's proposal to add language to the bulletin boards provision in Article 18. The County has proposed to supplement the existing provision with language that would not allow a designated bulletin board to be in a position where it could be viewed by the public. The County also proposes that the content of any postings be accompanied by the initials of the President or Vice President of PBA Local 298. The proposed language requiring that the bulletin board be located in a position where it cannot be viewed by the public is reasonable given the fact that the material is for private union use. Further, there is no evidence that by placing this limitation on bulletin board use that members of PBA Local 298 would be unable to access the material. I award this proposal. I do not award the other aspect of the County's proposal that such material be initialed prior to the placement on the designated bulletin boards. The existing language in the beginning of the Article provides sufficient protection to the County that the bulletin boards be used for the purposes that are specified. Accordingly, Article 18 shall be modified to state the following:

The Sheriff shall permit the Association reasonable use of designated bulletin boards located in work areas for the posting of notices concerning Association business and activities, provided any such notices shall not contain malicious, inflammatory or anonymous material. The designated bulletin board shall not be located where it can be viewed by the public.

The PBA has proposed to add a Convention Leave provision into the contract that incorporates statutory language that would include the number of officers permitted to attend. A Convention Leave provision is normal and

customary in law enforcement units generally. I award the inclusion of such a provision that incorporates the statutory language. That language shall not include a specification of the number of officers to permitted to attend. If there are disputes over the usage of this provision, such disputes over whether the statutory obligation has been met may be submitted through the parties' grievance procedure or the PBA may again advance a more specific proposal upon this contract's expiration.

The PBA has proposed that the Employer provide an office for the sole and exclusive use of the PBA within the facility. The County has indicated a willingness to do so providing that space is available and that it retain the ability to amend such provision depending upon space constraints. I award the following new provision:

The County shall provide office space for the exclusive and sole use of the PBA dependent upon the County's determination that space is available for such purpose. The determination as to whether such space is available shall be within the sole discretion of the County. In the event that office space is deemed available, the County shall have the discretion and authority to amend an existing practice.

The PBA has proposed the inclusion of an Agency Shop (representation fee in lieu of dues) provision. Notwithstanding the existence of statutory language that would require the inclusion of such an article depending upon the PBA's meeting certain statutory requirements, the issue remains a negotiable issue. I find the inclusion of such provision to be reasonable and consistent with

the PBA's responsibility to provide representation to members and non-members alike so long as the PBA meets its statutory obligations on issues such as the inclusion of a demand and return system. Accordingly, I award the following language:

Commencing January 1, 2010, a new article shall be included in the agreement that would require the payment of all non-member employees in the unit to the majority representative a representation fee in lieu of dues for services rendered by the majority representative. The provision shall be consistent in all respects with the legal requirements set forth in N.J.S.A. 34:13A-5.5(a), (b) and (c) including the requirement that the PBA shall establish and maintain at all times a demand and return system as provided by N.J.S.A. 34:13A-5.5 and 34:13A-5.6 (L. 1979, C. 477.2 and 3). For the purpose of payment of such fees, the County shall institute a payroll deduction pursuant to N.J.S.A. 34:13A-5.6.

The PBA has proposed to amend the grievance procedure to provide for the arbitration of minor disciplinary grievances. I have summarized the parties' detailed positions on this issue earlier in this decision. After consideration of their respective positions, I award the PBA's proposal with certain modifications. The legislature has made this issue one of mandatory negotiations. It has also recently adopted legislation providing for the arbitration of major disciplinary actions in non-civil service jurisdictions. These facts establish that public policy favors administrative rather than judicial forums for the review and determination of disciplinary matters for police officers in the absence of pre-emption. Such provision is included in the Superior Officer unit. The record includes the fact that in certain years more than two dozen minor disciplinary actions have been taken against correction officers. The County's opposition is based primarily

upon its theory that order in the jail will be undermined by allowing for such a review procedure. This theory has not been supported by a sufficient level of credible evidence. However, I do agree that certain limitations should be placed on access to the arbitration procedure. I award the forum of arbitration for minor disciplinary penalties involving suspensions without pay of one day or more or fines at a level of one day's pay or more. Verbal warnings or verbal reprimands shall not be arbitrable. Written reprimands shall also not be arbitrable except if an employee receives a second written reprimand within a twelve-month period. In such a case, only the second written reprimand shall be arbitrable. Accordingly, I award the following:

Effective January 1, 2010, the grievance procedure shall include a new section that will allow for the arbitration of minor disciplinary grievances subject to the following. Such grievances to be arbitrated shall be for penalties involving suspensions without pay of one (1) day or more or fines at a level of one (1) day's pay or more. Verbal warnings or verbal reprimands shall not be arbitrable. Written reprimands shall not be arbitrable except when an employee receives a second written reprimand within a twelve month period. In such a case, only the second written reprimand shall be arbitrable.

The County has proposed to amend the vacation provision set forth in Article 8, Section 3. The language would provide:

Any vacation or portion thereof, which is not taken or granted because of the pressure of work may be taken during the next calendar year. No employee shall have an accumulation on December 31<sup>st</sup> of any given year, which exceeds the hours entitled to during the previous 18 months of employment. There will be no exceptions or extensions granted to this policy.



This language was included in the interest arbitration award involving PBA Local 151. For the reasons previously stated with respect to a settlement pattern, I award this provision effective January 1, 2010.

The County has proposed that Article 15, Section 2, Military Leave be amended to follow County policy. The existing section states that "Military Leave shall be provided pursuant to New Jersey Civil Service Personnel Manual (Local Jurisdiction) Part 17-3, "Military Leave" and said Part is hereby incorporated herein by reference." This language is the same as that which exists in the Local 151 contract and it has not been amended by the Local 151 award. Absent justification shown to amend this provision, I deny the proposal.

The County has also proposed a modification to Article 15, Section 5 – Other Leaves. It has proposed that an employee submit a written request to the supervisor at least fourteen (14) days in advance stating a reason for the request and the time required for leaves without pay. Currently, there is no provision for advanced notice but a written reason for the request is required except in emergency circumstances. The PBA Local 151 agreement provides for an identical provision except that such written request must be made at least thirty (30) days in advance. Given this provision, and for the reasons previously stated with respect to settlement pattern, the County's request for at least fourteen (14) days advance notice is reasonable and is awarded effective January 1, 2010.

The County has proposed the inclusion of a new provision concerning compensatory time. It has proposed the following:

Effective upon execution of this contract, employees may not accumulate more than eighty (80) hours of compensatory time at any time.

Employees having accumulated more than eighty (80) hours of compensatory time shall be permitted to retain their existing bank of such time but may not accrue any additional compensatory time. The Sheriff reserves the right to require employees to take compensatory time off.

I find that the record evidence is insufficient for the County to have met its burden on this issue. Accordingly, it is denied.

Based upon all of the foregoing, I respectfully enter the terms of the following award as a reasonable determination of the issues in dispute.

## **AWARD**

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

2. **PBA Office**

The County shall provide office space for the exclusive and sole use of the PBA dependent upon the County's determination that space is available for such purpose. The determination as to whether such space is available shall be within the sole discretion of the County. In the event that office space is deemed available, the County shall have the discretion and authority to amend an existing practice.

3. **Agency Shop**

Commencing January 1, 2010, a new article shall be included in the agreement that would require the payment of all non-member employees in the unit to the majority representative a representation fee in lieu of dues for services rendered by the majority representative. The provision shall be consistent in all respects with the legal requirements set forth in N.J.S.A. 34:13A-5.5(a), (b) and (c) including the requirement that the PBA shall establish and maintain at all times a demand and return system as provided by N.J.S.A. 34:13A-5.5 and 34:13A-5.6 (L. 1979, C. 477.2 and 3). For the purpose of payment of such fees, the County shall institute a payroll deduction pursuant to N.J.S.A. 34:13A-5.6.

4. **Grievance Procedure – Arbitration of Minor Discipline**

Effective January 1, 2010, the grievance procedure shall include a new section that will allow for the arbitration of minor disciplinary grievances subject to the following. Such grievances to be arbitrated shall be for penalties involving suspensions without pay of one (1) day or more or fines at a level of one (1) day's pay or more. Verbal warnings or verbal reprimands shall not be arbitrable. Written reprimands shall not be arbitrable except when an employee receives a second written reprimand within a twelve month period. In such a case, only the second written reprimand shall be arbitrable.

5. **Health Care Contributions**

Effective January 1, 2010 employee contributions towards healthcare premiums shall be as follows:

	2010
<b>Medallion</b>	
Single	19.20
Parent/Child	36.08
Family	50.82
<b>HMO Blue</b>	
Single	8.21
Parent/Child	14.97
Family	22.53
<b>Wraparound</b>	
Single	10.73
Parent/Child	20.03
Family	28.36

6. **Prescription Co-Pays**

Effective the day after this Award, the co-pay shall be as follows: co-pays for prescriptions shall be \$5.00 for generic, \$10.00 name brand and \$15.00 for formulary prescriptions. There shall be two (2) co-pays for a three-month supply by mail order.

7. **Article 12 – Health Benefits – Surgical Insurance, Section 1**

HMO Blue - Effective the day after this Award, \$10.00 co-pay for office visits, \$15.00 co-pay for specialist and increase eye glass lens reimbursement to \$100.00

Medallion – Effective the day after this Award, increase co-pay to \$20.00, increase deductibles to \$300/\$600. Add \$100.00 eye glass lens reimbursement.

7. **Article 18 – Bulletin Boards**

The Sheriff shall permit the Association reasonable use of designated bulletin boards located in work areas for the posting of notices concerning Association business and activities, provided any such notices shall not contain malicious, inflammatory or anonymous material. The designated bulletin board shall not be located where it can be viewed by the public.

8. **Article 8, Section 3 - Vacation**

This provision shall be amended effective January 1, 2010 as follows:

Any vacation or portion thereof, which is not taken or granted because of the pressure of work may be taken during the next calendar year. No employee shall have an accumulation on December 31<sup>st</sup> of any given year, which exceeds the hours entitled to during the previous 18 months of employment. There will be no exceptions or extensions granted to this policy.

9. **Salary**

The existing salary schedule shall be modified by 4% increases annually as reflected in the salary schedules set forth below. Each increase shall be effective and retroactive to January 1 of each calendar year.

**Corrections officers – hired prior to 1/1/01**

Step (Yrs)	2007	2008	2009	2010
8	\$76,210	\$79,259	\$82,429	\$85,726
7	\$70,074	\$72,877	\$75,792	\$78,824
6	\$64,250	\$66,820	\$69,493	\$72,273
5	\$58,437	\$60,774	\$63,205	\$65,733
4	\$53,785	\$55,936	\$58,173	\$60,500
3	\$50,232	\$52,241	\$54,331	\$56,504
2	\$47,008	\$48,888	\$50,844	\$52,878
1	\$43,784	\$45,535	\$47,357	\$49,251
Entry	\$39,260	\$40,830	\$42,464	\$44,162

**Corrections officers – hired after 1/1/01**

Step (Yrs)	2007	2008	2009	2010
9	\$76,210	\$79,259	\$82,429	\$85,726
8	\$70,074	\$72,877	\$75,792	\$78,824
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2	\$43,784	\$45,535	\$47,357	\$49,251
1	\$40,872	\$42,507	\$44,207	\$45,975
Entry	\$39,260	\$40,830	\$42,464	\$44,162

All increases shall be applicable to those presently employed and those who were employed or on payroll on each effective date or

who have retired on ordinary or disability pension prior to the date of the Award.

10. **Article 15, Section 5 – Other Leaves**

Effective January 1, 2010, the second sentence of this provision shall be modified to provide:


The employee shall submit a written request to the supervisor at least fourteen (14) days in advance stating the reason for the request, and the time required.

Dated: October 5, 2009  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey       }  
County of Monmouth       }ss:

On this 5<sup>th</sup> day of October, 2009, 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 4/30/2013