STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

COUNTY OF ATLANTIC

Employer

-and-

PBA LOCAL No. 243

Employee Organization

Interest Arbitration Decision -and- Award

Docket No. IA-2010-071

Before
Timothy A. Hundley
Interest Arbitrator

For the Employer:

Richard Andrien, Esq.
Assistant County Counsel

For the PBA:

Myron Plotkin
Labor Relations Consultant
Plotkin Associates, L.L.C.

The County of Atlantic ("County" or "Atlantic") and PBA Local No. 243 ("PBA" or "Local 243") were parties to a negotiated agreement covering the January 1, 2006 through December 31, 2009 time period. The PBA is the exclusive representative for all County sheriff's officers below the rank of sergeant.

The parties engaged in negotiations for a successor agreement beginning in October 2009 and had a final meeting on December 21, 2009. On February 16, 2010, the PBA filed a petition with the Public Employment Relations Commission ("PERC"), requesting the initiation of compulsory interest arbitration pursuant to *N.J.S.A.* 34:13A-14 *et seq.* On March 4, 2010, PERC appointed me interest arbitrator pursuant to *N.J.A.C.* 19:16-5.6(d) and the parties' mutual selection. Accordingly, this case is governed by the interest arbitration procedures in place on March 4, 2010. *L.* 2010, *c.* 105, which went into effect on January 1, 2011, establishes new interest arbitration procedures, timelines, and standards for petitions filed on or after that date. *See L.* 2010, *c.* 105, §4 and *PERC's Frequently-Asked Questions, Interest Arbitration Procedures (March 14, 2011).*

I conducted four joint mediation sessions between July 2010 and September 2010. However, the impasse persisted. Therefore, a formal interest arbitration hearing was held on January 14, 2011; January 28, 2011; and February 16, 2011.

At the hearing, the PBA and the County examined and cross-examined witnesses and introduced numerous exhibits into evidence. Post-hearing briefs were received by May 16, 2011 and reply briefs were filed by June 4, 2011.

The pre-2011 version of *N.J.S.A.* 34:13A-16f(5) called for an interest arbitrator to issue an award within 120 days of selection or assignment, albeit the statute also permitted the parties to agree to an extension. Pursuant to this latter provision, the County and the PBA have agreed to extend the time for issuing an award to March 30, 2012.

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

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

COUNTY'S FINAL OFFER

Article XXV – Duration

January 1, 2010 through December 31, 2013

Article XIII - Insurance & Workers Compensation

A. Medical Insurance

1. Employees and their eligible dependents shall be entitled to comprehensive medical and hospital coverage in accordance with the provisions of the New Jersey State Health Benefits Program. Employees shall be afforded coverage through a NJ Direct Plan, or an HMO plan. If an employee chooses NJ Direct 10 or an HMO plan, they will pay the difference between NJ Direct 15 and said plan.

2. Prescription drug coverage shall be offered to all employees and their dependents in accordance with the free standing prescription plan offered by the New Jersey State Health Plan.

3. The employees and their dependents shall also be afforded optical and dental coverage through the County's own provider contracts.

All of the coverages outlined above will be furnished to the employees and their dependents with premium co-pays as follows:

Up to $79,999	-	1.5% of salary
$80,000 to $100,000	-	2% of salary
Over $100,000	-	2.5% of salary

4. Atlantic County offers an opt-out program. Per State law, opt out cannot be paid to employees who would otherwise have dual coverage in SHBP. Provisions of the opt-out plan are set forth in the document Atlantic County Government Health Benefits Opt-Out Program, available on Infoplease and from Human Resources.

5. EMPLOYEE, as used herein, means a bargaining unit member who works work than 25 hours per week. Your eligible dependents , for comprehensive medical, hospital and prescription drug coverage under the New Jersey State Health Benefits Program, are your spouse and/or your children under age 26; eligibility as defined under SHBP. Eligible dependents for optical and dental coverage are defined by the County's provider contracts.

B. Health Benefits at Retirement. An employee who retires shall be eligible for County paid health benefits coverage for himself/herself and eligible dependents for three (3) years after retirement, commencing with the employee's retirement date. Retirement is currently defined in accordance with N.J.S.A.

40A:10-23 as having 25 years or more of service credit in the State Pension Plan and 25 years of service with Atlantic County or upon reaching the age of 62 years or older and having at least 15 years of service with Atlantic County. Health Benefits coverage is defined as the coverage currently in force at the time of retirement and any changes to such coverage as may occur during the three (3) year period of employer-paid coverage.

C. **Leaves of Absence**. When an employee is granted a leave of absence unrelated to any Family and Medical Leave Act, the coverage of that employee and his dependents will be terminated unless the employee reimburses the County in full for the premiums due during the leave in advance of taking such leave. Employees can then re-enroll with the County group upon returning from the leave of absence. In no event can this period of reimbursed coverage exceed six (6) months. Any employee who goes to an unpaid status for 15 or more calendar days is liable for payment of premiums retroactively to the first day of unpaid status.

D. **Workers' Compensation**. When an employee is injured on duty during working hours, he/she will be entitled to workers' compensation benefits as set forth by New Jersey Statute (N.J.S.A. 34:15).

E. **Temporary/Disability Insurance**. The employer agrees to provide Temporary Disability Insurance for employees in accordance with the provisions of P.L. 1980, Chapter 18, or as amended, and it is understood that both the employer and employee participate in financing of the Temporary Disability Benefits program at the rates established by the State of New Jersey on an annual basis.

F. **Eligibility for County Benefits Based on Working Term With the County.** Only current County service will count towards time and eligibility to accrue any and all County benefits determined by length of service with the County.

Article IX(C) – Salary Guide

ON GUIDE –% increases of 0%; 0.15%; .015% and 0.25% WITH some exceptions +2 new steps in 2011

OFF GUIDE – all employees w/YE 2009 salary $68,086 receive 2%, 0.50%; 0.75%; and 0.75%, respectively.

YE 2009	GUIDE	2009	2010	2011	2012	2013
1 31,500	1	31,500	31,500	31,547	31,595	31,674
2 35,500	2	35,500	35,500	33,500	33,550	33,634
3 37,450	3	37,450	37,450	37,506	37,562	37,656
4 39,000	4	39,000	39,000	39,050	39,117	39,215
5 42,325	5	42,325	42,325	42,388	42,452	42,558
6 45,235	6	45,235	45,235	45,303	45,371	45,484
7 47,940	7	47,940	47,940	48,012	48,084	48,204
	8			53,750	53,831	53,966
8 59,400	9	59,400	59,400	59,489	55,500	55,639
	10			63,839	60,000	60,100
9 68,086	11	68,086	68,086	68,188	68,290	68,461
			0%	0.15%	0.15%	0.25%

OFF GUIDE – all employees w/YE 2009 salary $68,086 receive 2%; 0.50%; 0.75% ; and 0.75% increase, respectively.

	2009	2010	2011	2012	2013
		2.00%	0.50%	0.75%	075%
OFF GUIDE	68,086	69,448	69,795	70,318	70,846

The County also proposes to eliminate all clothing stipends and longevity payments.

There will be no movement on the guide at the end of 2013, until a new contract is reached because S(5) will apply to the next CBA.

Article IV – Work schedules

Add this new section

PBA Local 243 member shall be obligated to take five (5) furlough days (unpaid), without impact upon their pension, in year 2010. Such furlough days shall be mandatory in nature and all members of the bargaining unit shall be obligated to take five (5) unpaid days in 2010, no matter how long they are on the payroll in the year. No paid leave time, compensatory time or other paid/unpaid leave shall be used in lieu of these furlough days and/or to convert these furlough days from unpaid to paid status.

Amend Section C(7) on page 10 to include the following language:

The Sheriff reserves the right to modify schedules and the organizational structure of the department in accordance with operational needs, including but not limited to, scheduling for mandatory training and voluntary special operations. In non-volunteer situations the Sheriff shall provide the employee with at least two (2) weeks notice of the modified schedule. In the case of employees volunteering to modify their schedule, there is no notice requirement.

FINAL OFFER SPECIFIC TO SPECIALTY UNIT SCHEDULING
(This language amends Article IV, Section C.4, C.5, and C.6)

The County proposes to modify the applicable language of the current CBA so that all specialty units (the Legal and Investigative Unit, the Warrants Unit, the K-9 Unit and the Bicycle Unit) are subject to the following schedule requirements:

The hours and operation for the Legal and Investigative Unit, the Warrants Unit, the K-9 Unit, and the Bicycle Unit, will be flexible as determined by the Sheriff, but within the framework of the unbroken eight (8) hour shift, 40 hour schedule provided for all Sheriff's Officers in this CBA.

Article XVI – Fringe Benefits

The County proposes the following revision to Section H on page 59 through 60 of the current CBA to read as follows:

Any employee whose position and duties require the holding of a CDL license shall receive a $700 annual stipend. In the event that an employee has a position and duties that require the holding of a CDL license for part of a year, the employee shall be compensated on a prorated basis for the term in which the employee held a position requiring the holding of a CDL to effectuate their duties. Such stipend shall be paid by the second pay in November of each year.

Employees shall pay for all costs related to licenses, blood tests and special training mandated by the State or Federal Government.

The County proposes to add the following language for K-9 stipends:

Any employee whose positions and duties require the care for a Sheriff's K-9 shall receive a $1,000 annual stipend. The parties agree that this stipend is reasonable in consideration of the anticipated off-duty hours and all other provisions contained in this section. The Parties anticipate that officers assigned to care for a K-9 will spend approximately five (5) off-duty hours per pay period to care for the K-9. In the event an officer determines that he/she will need more than five (5) off-duty hours to care for the K-9, the officer shall notify the Sheriff and request a reasonable extension of time to care for the dog during on-duty hours. The Sheriff will make every attempt to extend the first or last 30 minutes of each tour to allow the officer to care for the K-9 during on-duty hours, as needed in each circumstance.

In the event that an employee has a position and duties that require care for a K-9 for part of a year, the employee shall be compensated on a prorated basis for the term in which the employee held a position requiring care for a K-9 to effectuate their duties. Such stipend shall be paid by the second pay in November of each year.

This section shall be read in conjunction with the County's K-9 Policy, as may be amended from time to time.

Article VIII - Fringe Benefits Section E

Delete "E" and replace with the following:

Upon entry into the academy, an appropriate academy uniform shall be issued. The individual academy recruit shall be responsible for paying for the initial issue (sweats, uniforms, etc.). Upon completion of the academy, the officer will be reimbursed by the County for payment of the initial issue. The Sheriff or a designee thereof shall indicate an acceptable vendor in advance of the recruit purchasing the initial issue. The officer shall supply administration with receipts as proof of purchase of the initial issue.

Note: Initial issue and clothing allowance is a different issue. This is in addition to the deletion of the clothing allowance referenced above.

Article XII – Vacations

Delete Section C(3) on page 45 of the current CBA and replace with the following language:

Members shall submit their vacation requests by January 25 of each year. Vacation confirmations will be given to the members in writing, no later than ten (10) working days following submission. If a member requests a vacation before January 25 of each year, every attempt will be made to accommodate the member.

Delete paragraph 4.

Delete paragraph E in its entirety and replace with the following:

If an employee becomes sufficiently ill so as to require in-patient hospitalization while he/she is on vacation, he/she may charge such period of illness and post hospitalization recuperation against sick leave at his/her option. Said employee shall submit proof of hospitalization and a physician's certificate certifying as to the need for post hospital recuperation.

Article VIII – Clothing Allowance - Add the following provision:

Wearing of County Issued Body Armor

Sworn officers of the Sheriff's Office shall be responsible for wearing their County issued body armor while acting in the official performance of their duties. Undergarment vests shall be worn under the County issued uniform shirt and will be equipped with the ballistic panels inserted in the carrier along with the trauma plate.

Members of the Sheriff's Office working in non-uniform assignments shall have their ballistic vests readily available for wear in the event of a duty related assignment requiring ballistic protection and/or a police related emergency situation. Any and all sworn officers shall wear body armor in compliance with the Article. Failure to do so will be in violation of the Rules and Regulations of the Sheriff's Office and this Article governing the wearing of body armor.

Final Offer For All Other Terms in the Current Contract

All terms consistent with the above economic and non-economic provisions shall remain in full force and effect. All provisions inconsistent with the economic and non-economic provisions shall be deleted.

PBA'S FINAL OFFER

Article XXV – Duration

January 1, 2010 through December 31, 2014

Article IV - Work Schedules (Section C & D) (linkage to Bidding Procedure changes – Non-economic Items)

C.5 Warrants Unit – Work Week

a. The normal work week shall be Monday to Friday.

Warrants Unit Work Shifts

a. 0800 – 1600 hrs.
1600 – 2400 hrs.

Add new sections as follows:

C.7 Canine Unit Work Week

The normal work week shall be Monday through Friday.

Canine Unit Work Shifts

a. 0800 – 1600 hrs.

b. 1600 – 2400 hrs

c. The above shift times may be changed upon seven (7) days written notice as long as said shifts consist of eight (8) consecutive hours.

C.8 Bicycle Unit – Work Schedules

a. The work shifts for this unit shall be eight (8) consecutive hours between the hours of 0800 hrs (8:00 a.m.) and 2100 hrs. (9:00 p.m.).

b. The normal work week shall be between Monday to Sunday.

c. Said work week can be "flexed" upon seven (7) days written notice prior to the issuance of the work schedule as long as said work week consists of five (5) consecutive days on followed by two (2) consecutive days off.

C.9 Information Technology – Work Schedule

a. The normal work week shall be Monday to Friday.

Information Technology – Work Shifts

a. 0830 – 1630 hrs.

C.7 (current) Delete this section in its entirety, re-number and insert the following:

C.10 Shift changes to the above units shall only be for unit specific assignments and shall not be used to avoid the payment of overtime.

C.11 SRO's

It is understood that on days when schools are not in session or the SRO is not assigned in a school, he/she will work from 8:30 a.m. to 4:30 p.m. and be assigned to Courts and Transportation. The work week for SRO's shall be Monday-Friday.

C.12 New Units

The work schedules for any newly established unit or title by the Sheriff shall be subject to negotiations with the PBA prior to their implementation.

D. In the fourth line, delete "departmental needs" and insert *"special skills."*

Article V – Overtime (Section J)

J. Modify to read as follows:

If County *and or State* officers are closed due to inclement weather *or other unforeseen circumstances* and Sheriff Officers are required to remain on duty or report during the time the County *and/or State* offices are closed, the Officers who work in any site(s) in which County employees are either released or told not to report shall be compensation with one hour of compensatory time for each hour during which they are required to work when other employees are not. (*Italics indicate additions to current language).*

Article VIII – Clothing Allowance

A. The PBA is proposing increasing the current clothing allowance of $1,350.00 to $1,600.00 and rolling such allowance into the 2009 base salaries before any additional salary adjustments/increases are made. (Average of $50.00 increase per year of the agreement).

Article IX – Salaries[1]

The PBA proposes the following increases to the salary guide.

2010 Steps 1-8 – 3.5%
Step 9 - 4.0%
(cost = 3.6%)

2011 Effective July 1 – 3.0% (each step)
(cost = 1.5%)

2012 Effective July 1 – 3.25% (each step)
(cost = 1.62% + roll-over of 1.5% = 3.1%)

2013 Effective July 1 – 3.75% (each step)
(cost = 1.87% + roll-over of 1.62% = 3.49%)

2014 Effective July 1 – 4.0% (each step)
(cost = 2% + rollover of 1.87% = 3.87%)

Total Cost to County Over 5 Years = Average of 3.1% Per Year

Employees not on the maximum step in 2006 (Step 8) or thereafter shall advance two (2) steps in 2010-2011, as set forth in Attachment A.

<u>Attachment A</u>

2010-2014 Step Movement

2009 Step	2010 Step	2011 Step	2012 Step	2013 Step	2014 Step
1	3	4	5	6	7
2	4	5	6	7	8
3	5	6	7	8	9
4	6	7	8	9	9
5	7	8	9	9	9
6	8	9	9	9	9
7	9	9	9	9	9
8	9	9	9	9	9
9	9	9	9	9	9

[1] The cost calculations are included in the PBA's final offer. The PBA final offer also sets a forth salary guide that incorporates its proposed salary increases (without clothing and longevity roll-ins), as well as salary guides that factor in those fold-ins. I have not reproduced those salary guides here.

Delete all wording in Section C. following the salary schedule except for the last sentence which shall remain and reads:

"All of the above salary increases and changes shall be fully retroactive to their effective date."

Add New Sections as Follows:

G. Shift Differential

Shift differentials shall be paid to Officers assigned to or working the following shifts or any part thereof and shall be included for the computation of overtime rate of pay:

1600 hrs. – 2400 hrs.	$.50/hr.
2400 hrs. – 0800 hrs.	$.55/hr.

H. Longevity (currently Article XIX)

Delete in its entirety and add $1,900 to salary Step 9 on the 2010 salary guide and then adjust the 2011, 2012, 2013 and 2014 salary steps pursuant to the percentages stated on the guides.

I. Computation of Salary

An Officer's total annual salary for overtime shall consist of an Officer's base salary, shift differential and college allowance and shall be paid in equal installments to the Officer. An Officer's total annual salary for pension purposes shall consist of an Officer's base salary and college allowance and shall be paid in equal installments to the Officer. Any other stipends, reimbursements or payments shall be paid to the Officer in two (2) equal installments, the first no later than January 20 of each year and the second no later than July 20 in each year.

Article X – Sick Leave

B. In the fourth line, delete word "critically."

Article XIII – Insurance and Worker's Compensation

B. Health Benefits on Retirement

In the first line after the words "who retire", insert "or retires on a disability retirement."

E. Worker's Compensation

Add a New Section as Follows:

4. Doctor's appointments shall be done during an employee's work time, if the physician has office hours available, without being charged leave time.

F. Add the Following to the Opt-Out provision:

The Section 125 Plan shall allow an employee, at his/her option, to enroll in a Flexible Spending Account (FSA) at no cost to the employee.

Article XV – Training/Travel Time

D. Delete in its entirety and insert the following:

N.J.S.A. 34:15 *et seq.* (Worker's Compensation) shall apply to an employee en route to or from a "call-in" (This is for clarification and is consistent with Article VI, Section C).

Article XVI – Fringe Benefits

A. Extended Medical Coverage

In the sixth line after the word "example," insert *MRSA, Swine Flu (H1N1) or any mutation"*.

In the sixth line, delete "for example" and insert *"including but not limited to"*

In the seventh line after the word "excluding," insert *"common"*

In the eighth line after the words "positive for," insert *"the following diseases including but not limited to MRSA . . . ."*

F. Death Benefits

In the fourth line after the words "compensatory time", insert "*and sick leave"*.

H. Stipends

(NEW) EMT

"Any employee having or receiving certification as an EMT shall receive a one thousand dollars ($1,000) stipend per year."

(NEW) Canine Allowance

1. "Each K-9 Officer shall receive an additional four percent (4%) per year of their base pay as part of their regular wage for the care, grooming and maintenance of the animal."

2. K-9 Officers shall be provided with all the necessary equipment to maintain a clean and healthy atmosphere for their assigned police dog.

3. The County shall provide all necessary foodstuffs, medical supplies, veterinary services and equipment for the maintenance and good health of the police dog.

4. The County agrees that if a police dog is deemed by the County's veterinarian to be medically unfit for duty, the dog will be kept in the custody of the K-9 Officer upon the signing of an appropriate release form provided by the County.

5. The County shall provide medical care and supplies for a police dog for a period of one (1) year after the dog's retirement from service.

(NEW) FTO Compensation

"Each Officer assigned as a Field Training Officer (FTO) shall receive one-half (1/2) hour compensatory time for each day assigned as an FTO *(current practice).*

Article IV – Work Schedules (Section D) (Linkage to Work Schedules Proposals):

Delete Sections D.2 and D.3 insert the following:

D.2. Bidding Procedure

a. Bidding for jobs and work locations shall be governed and assigned based upon seniority except if special qualifications and/or skills are necessary.

b. This bidding procedure shall exclude K-9, Bicycle Unit, SRO's and Legals. If an opening in one of these units should occur during a calendar year, such assignment/position shall be posted for at least ten (10) days and officers shall be allowed to apply for those positions.

c. Bidding shall take place from November 1 – November 30 of the year immediately preceding the assignment. Assignments shall be announced on December 15.

d. If a new unit/position is formed during the calendar year, such assignment shall be posted for at least ten (10) days and officers shall be allowed to apply for those positions in the new unit.

Article XII – Vacations

Add a new section as follows: (The PBA states that the County agreed to this proposal, which is consistent with past practice, on December 14, 2009)

H. In the event that bumping takes place, a full week (five (5) consecutive work days) takes priority over a single day selection.

Other Issues

All prior agreements shall be included in the Agreement.

Language from settlement agreements and/or arbitrations during the period of 2006 to 2009 agreement shall be included in the new agreement.

All other proposals by both parties are withdrawn.

STATUTORY FACTORS

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

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

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

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

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62[2] (C40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services; (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

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

---

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

BACKGROUND

This proceeding involves Atlantic County and the approximately 93 rank-and-file sheriff's officers employed by the County. The County is located in southern New Jersey; encompasses 561 square miles; and has a year round resident population of approximately 271,712. Its population has increased 7.6% between April 2000 and July 2009, as contrasted with a 3.5% growth rate statewide (PBA Exhibit 25). The County's median household income for 2008 was $52,409, compared to $70,347 for New Jersey as a whole (PBA Exhibit 25). For 2008, the County's per capita income ranked 17th among the State's 21 counties and that figure ($39,835), was 77% of the State average of $51,473 (PBA Exhibit 27). Casino gambling is of course a major industry within the County (Exhibit C-16 and C-17).

As of 2009, the County's net taxable valuation was $46,360,640,701, the fourth highest of ten southern New Jersey counties (PBA Exhibit 40). [3] The average 2010 property tax bill in the County was $5,132, the fourth lowest in the State according to the PBA's financial expert (Caprio report, Exhibit 13). [4] The percentage of the Atlantic's total 2009 property tax levy appropriated for county

[3] As discussed *infra*, the PBA adds Mercer and Monmouth to the eight counties that are traditionally viewed as comprising southern New Jersey.
[4] Raphael Caprio, the PBA's financial expert, prepared a separately bound report that is divided into numerous exhibits. It will be cited as "Caprio Report, Exhibit ___. " The County also submitted a report by its financial expert, Leon P. Costello, which comprises much of the County's submission. It is divided into multiple numerical tabs and will be referred to as Exhibit C-1, C-2, etc. Exhibit C-20 is a binder of County exhibits divided into alphabetical tabs, and will be referred to accordingly. Finally, the PBA's binder includes numerous numbered exhibits that will be individually cited.

government was 15.20%, a figure that ranked 17th among the 21 counties (Caprio report, Exhibit 9).

In January 2010, the Atlantic County Executive delivered a Preliminary Budget Message that detailed the economic challenges facing the County. He pointed to a local unemployment rate of almost 13%; a substantial decline in casino revenues for the third year in a row; a stagnant local real estate market; and reduced county revenues from real estate transfers (Exhibit C-17). The budget message explained that, in order to meet CAP requirements, the County would have to eliminate approximately $4.5 million in expenses while still accommodating substantial increases in health benefits; pension payments; unemployment obligations; and payments to the State for care of psychiatric patients. As a result of these pressures, the budget message explained that the County eliminated a total of 80 positions during 2009 and 2010, a figure that included 17 layoffs. The Executive continued that "[d]uring the year ahead we must require all employees to take mandatory unpaid furlough days" (Exhibit C-17).

At the same time, the County Executive assured residents that the 2010 budget was sound and responsible. He added that while it contained cuts in both services and personnel, the budget still ensured that County would be able to meet the fundamental needs of its most vulnerable citizens.

The County's 2011 Budget Message similarly described the County's continuing efforts to meet a range of economic challenges. However, the County Executive also stated that "we have been able to fare better than many other governments due to our management staff and conservative fiscal policies." He added that the 2011 budget was $1.5 million under the applicable CAP, while also highlighting that the County had ended the year (2010) with a healthy $15.5 million budget surplus (Exhibit C-16).

The County Executive also offered a caveat, noting that the County had to negotiate fourteen outstanding union contracts during 2011. He expressed the view that "[s]hould the costs of these contracts exceed two percent, furloughs and/or layoffs may become necessary during the course of the year" (Exhibit C-16).

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

Consistent with these mandates, the Atlantic County Sheriff's Officer includes a Transportation Unit that provides secure transport for prisoners traveling to area hospitals, psychiatric facilities, other correctional institutions, or County or Municipal Courts. Also part of the Sheriff's Office are: a Courts Division that maintains courthouse security and escorts incarcerated individuals to court for their scheduled appearances; a Fugitive/Warrants Unit that investigates and arrests persons wanted on outstanding County bench warrants; and an Identification Bureau that offers photograph, fingerprint, and DNA identification services to municipal police departments throughout the County. A legal unit effectuates legal service of complaints, summonses, and protective orders and also assists in the enforcement of judgments by seizing property, garnishing wages, and holding Sheriff's sales (PBA Exhibit 69).

In addition to executing these core statutory responsibilities, the Sheriff's Office has established a Domestic Violence Unit that handles all domestic violence cases and serves temporary and final restraining orders. Weapons seizure also falls within the purview of the Domestic Violence section. Similarly, a Community Policing section includes a bicycle unit that "adds a silent tactical approach" to law enforcement patrols, while also enhancing liaison with the community. A Traffic Unit enforces traffic laws; investigates vehicle-related accidents; and monitors DWI checkpoints, while a K-9 unit deploys separate canine teams for property and field searches; tracking; and criminal apprehension. The School Resource Officer works with students to prevent juvenile delinquency while also developing crime prevention programs and conducting security inspections. Finally, an Information Technology unit supports police operations and also actively assists the County Prosecutor's Office in investigating computer-related crimes. An Office of Professional Responsibility oversees Internal Affairs, Inspections, Pre-Employment functions, and Policy and Procedures Accreditation (PBA Exhibit 69).

Among the dominant issues in this proceeding are across-the-board wage increases; salary guide structure and advancement; longevity, clothing allowance, health benefits, work schedules; shift bidding, and compensation for members of the K-9 unit. The County and the PBA each urge that the nine statutory criteria weigh in favor of their respective proposals on all of these items, and they have each submitted comprehensive briefs and reply briefs as well as voluminous exhibits.

The record includes, among other items, State and County census data; copies of the County's 2010 and 2011 budgets; and detailed reports by Caprio and Costello. The parties have also submitted recent interest arbitration awards; PERC-compiled settlement data; and exhibits setting forth the salaries, benefits, and settlements reached with other County employees and with sheriff's officers in other counties. Federal and state data on the cost of living and information on private sector salaries and wage increases are also among the submissions.

I have carefully reviewed this documentary record and considered the testimony of Caprio, Costello and Sheriff Frank Balles. I have also taken arbitral notice of certain information included on governmental websites, including the most recent PERC Salary Analysis and Private Sector Wage Survey; the 2012 budget introduced by the County in January 2012; and the most recent version of the U.S. Bureau of Labor Statistics (BLS) reports submitted by both parties.

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

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

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

COUNTY'S POSITION

The County vigorously argues that the nine statutory factors support its own offer. Further, it insists that the PBA has not proven that the County is financially able to fund the union's economic proposals. I start by detailing the County's strong objections to the PBA's financial analysis, and then summarize its arguments in favor of its salary, longevity, clothing allowance, health benefits, work schedule, and K-9 proposals. I address the County's arguments on the remaining disputed issues later in this opinion, in the course of ruling on them.

Objections to Financial Analysis

As a prelude to a discussion of its own offer, the County maintains that Caprio cannot be considered a credible expert in this matter because he is not a CPA or a Registered Municipal Accountant. The County also maintains that Caprio's report and testimony are fatally flawed because, in asserting that the County had "foregone revenue" in the amount of $4,129,220, he incorrectly identified which of the two levy CAP laws applied to the 2011 budget.

The County also contends that, in concluding that the County had the resources to fund the PBA's proposal, Caprio improperly failed to consider the impact of awarding the PBA's offer on the 14 other County units that have open contracts. The County also faults Caprio for citing "breakage" as a possible source of funding, reasoning that Caprio's calculations did not factor in the vacation, terminal leave and other retirement-related payouts that are incurred when senior officers leave the Sheriff's Office.

In addition, the County emphasizes that, in characterizing the union's offer as "unremarkable," Caprio did not consider such factors as the casino industry's continuing struggle; the fact that the majority of County households earn less than $50,000 annually; and the impact of the average Atlantic County property tax bill on County residents. In particular, it refers to Exhibit C-5, titled "Atlantic City Casino Industry Casino Win Analysis", which shows that casino revenues declined from a high of $5,217,877,474 in 2006 to a low of $1,652,850,473 in 2010, with declines each year between 2006 and 2011.

Similarly, the County asserts that Caprio was wrong in concluding that there were "no red flags" apparent in the County's budget. Instead, the County insists that declines in surplus and revenue, coupled with increases in taxes, are all gigantic red flags that must be considered.

Thus, the County points to Exhibit C-3, which shows that the County's year-end fund balance declined from $21,064,806 in 2006 to $15,442,754 in 2009, with an estimated 2010 balance of $15,504,926. In this regard, the County highlights the testimony of its own expert, Costello, who opined that surplus should not be used for regularly occurring costs such as salaries. Costello further explained that, pursuant to prudent municipal budgeting practices, the County has consistently appropriated approximately 50% of its end-of-year fund balance as revenue in the ensuing budget (Exhibit C-3). Exhibit C-6 illustrates that the surplus remaining after such appropriations declined from $8,650,000 in 2005 to $7,722,000 in 2010.

Exhibit C-6 also reflects that, between 2005 and 2010, there were significant declines in interest on investment income, receipts from the County Clerk's office, and fees from the State Corrections Department. Those budget years also saw a corresponding increase in the tax levy from $110,840,470 in 2005 to $146,224,156 in 2010. Finally, the County points to Exhibit C-6 as illustrating the tremendous increase in employment-related costs (salaries, health benefits, pensions, social security, workers' compensation and unemployment), for its entire work force. These obligations escalated from $85,381,958 in 2005 to $113,632,321 in 2010.

Against this backdrop, the County reasons that the conditions that existed when the 2006-2009 agreement was executed are long gone. Instead, it maintains that "the County's fiscal condition is trending down with the local and national economy." The County concludes that the PBA has not shown that the County has the financial capacity to pay for the PBA's final offer. Indeed, the County comments that many of the exhibits in the Caprio report — such as those pertaining to new construction; current property taxes; estimated 2010 revenue sources; and locally generated miscellaneous revenues — actually support the County's own view of its financial capacity. The County maintains that various other exhibits in the report are not pertinent to assessing whether the PBA's economic proposal would have a negative financial impact on the County (Exhibit C-21).

Salaries and Health Benefits

In espousing its own economic offer, the County reiterates the points it highlighted in disputing Caprio's report and conclusions. In addition, in describing the environment in which this proceeding takes place, the County underscores that there is a clear correlation between the County's budgetary problems and the State and national economies. In this regard, the County has included in Exhibit C-20A copies of the legislation establishing a 2% tax levy CAP and mandating health benefit premium contributions from public employees. It reasons that these statutes reflect a bipartisan acknowledgement of harsh national and regional economic realities, as well as the recognition that the interest arbitration process "must allow government the ability to contract."

Exhibit C-20 also collects press releases and news articles reporting on, *e.g.*, a pay freeze for federal civilian employees and layoffs of law enforcement and civilian employees in several New Jersey counties, including Morris and Somerset, which rank among the wealthiest in the nation. Exhibit C-20C further indicates that the 2009 unemployment rate in Atlantic was 12.1%, the second highest in the State. The County attributes this circumstance in large part to the declines in the casino industry, a major employer in the area.

Against this backdrop, the County contends that the statutory factors support its salary and health benefits proposals.

Interest and Welfare of the Public

The County recognizes that the public interest is a multi-pronged factor that encompasses the fiscal and budgetary status of the employer. The County maintains that the proofs it has put forward illustrate the severe decline in the County's revenue and surplus, as well as the County's increasing pension and salary obligations. It points out that these developments occur at a time when the Atlantic City casino industry — on which the County and its residents depend — is struggling to attract tourists in the wake of a four and one-half year decline. The County also stresses that the average 2010 property tax bill of $5,132 imposes a significant burden on the average taxpayer in Atlantic, which has the third lowest median household income of any New Jersey County.

In this context, the County maintains that the public interest is served by its proposal for a four year contract that provides significant percentage increases to each person based upon their previous annual salary. It underscores that there is no evidence of turnover in the Sheriff's Office, and observes that most officers who leave the Office do so because of retirement or disability. The County adds that the top-step sheriff's officer salary in Atlantic is well above the median household and family income in the County. Indeed, the County emphasizes that this maximum salary is higher than that in Hunterdon County, which is one of the richest counties in the nation. The County cites PBA Exhibit 229, a news article that quotes the County Executive as cautioning that layoffs will be required if 2011 contract negotiations result in wage increases above 2%.

In continuing its public interest analysis, the County reiterates that the union's financial proofs fail to show that the public interest weighs in favor of the union's proposal. It has prepared a detailed "cost-out" of the PBA's wage proposal that shows the substantial costs that would be incurred by the County if the PBA's across-the–board increases and proposed step movements were awarded. These costs, including the cost of most unit members advancing two steps in 2010, range from $348,578 in 2010 to $525,271 for 2014 (Exhibit C-9, p. 3). In this posture, the County reasons that while the Chapter 105 base salary CAP does not pertain to this proceeding, a responsible fiscal analysis nevertheless entails an examination of "the percentage increase being paid for total compensation in a contract." The County continues that this requires more than the traditional approach of considering only the across-the-board percentages applied to various steps on a guide.

In terms of its own salary offer, County Exhibit 20D includes a detailed explanation of how its proposal to add two new steps to the salary guide would affect individuals on various steps of the schedule. The exhibits states that all of the affected employees would receive increases ranging from 15.25% to 42.81%, over the life of the five-year contract, as a result of advancing on the guide.

Finally, in urging adoption of its offer, the County reasons that the public interest will be served by a system of tiered health benefits contributions in which higher-salaried employees pay more than their lower-salaried colleagues. In addition, the County believes that the public interest would be furthered by requiring employees to pay the difference between Direct 10 and Direct 15, a mechanism that would save the County hundreds of dollars per employee but would still give unit members the option of choosing the more costly plan.

Comparisons with Other Employees

The gravamen of the County's position is that, in making comparisons between this unit and public and private employees in New Jersey, the focus must be on contracts executed in 2010 or thereafter. The County contends that these contracts reflect a changed legislative environment in New Jersey, and correspond to a time period when employers began to feel the full impact of the economic decline in the State and nation. Exhibit C-20E summarizes several awards and settlements (which have also been submitted as exhibits). The County identifies these contracts as indicative of a trend toward lower increases for law enforcement and other employees:

- *Hunterdon County Interest Arbitration Award (Corrections Officers)* (IA-2009-067*), aff'd* P.E.R.C. No. 2011-80) Froze the newly awarded salary guide for 2009 through 2011 for all but the tenth 10th and 11th steps. Thus, most employees will experience only step movement.

- *Ocean County Sheriff's Office agreement with the Assistant Fire Marshall unit for April 1, 2010 through March 31, 2013.* Contract includes 1.9% increases for 2010-2011; 2.0% for 2011-2012; and 2.0% for 2012-2013. Unit does not appear to have an incremental salary guide.

- *Keyport Borough Interest Arbitration Award (IA-200-092).* Arbitrator awarded 2.85% increase on January 1, 2008; 0% in January 2009; 2.75% in September 1, 2009; and 2.5% on July 1, 2010. These figures do not include incremental movement (p. 74 of opinion).

- *Jersey City Police SOA Interest Arbitration Award (IA-2009-070).* Arbitrator awarded 2.75% annually for 2009 through 2012, for superior officers who appear to have a single salary for each rank.

- *Atlantic County Government Workers Union (GWU),* agreed in 2010 to a tiered system of health benefits contributions, together with increases to hourly wages of 2% in 2009; 2.75% in 2010; and 2.75% in 2011.

In analyzing these agreements and awards, the County places special emphasis on the *Hunterdon* award, and underscores that it resulted in a top-step salary for 2012 that is lower than the 2009 maximum salary for this unit. It reasons that this comparison is particularly significant because Hunterdon County is much wealthier than Atlantic. Overall, the County also maintains that compensation in this unit is competitive with their counterparts in other counties, especially such geographically proximate counties as Cape May, Salem, Cumberland, and Gloucester (PBA Exhibits 91 through 93).

The County also rejects the PBA's suggestion that there is an internal settlement pattern that encompasses higher across-the-board increases than those which the County has proposed here. First, the County notes that many of the settlements cited by the PBA were negotiated well before the economic downturn and cover such contract terms as 2007 through 2010 or 2009 through 2011. It observes that the only contract relied on by the union that was executed in 2010 is the GWU agreement, which contained increases in the 2% range; payment of the difference between the Direct 10 and Direct 15 premium cost; and post-retirement benefits tied to 25 years of service with the County (as opposed to the pension system as a whole).

Second, the County disputes the significance of the interest arbitration award involving the County's corrections officers, observing that the County successfully appealed the portion of the award pertaining to an equity adjustment. *See Atlantic Cty., P.E.R.C. No.* 2011-76 (May 13, 2011). The County continues that while the

PBA cites several other law enforcement and civilian settlements, a review of the underlying contracts reveals that they include features that the PBA has resisted. The County lists the following:

- Health insurance contributions based on the tiered system in the County's final offer
- Payments for the difference between the premium cost for Direct 10 and Direct 15
- Three contracted furlough days in both 2009 and 2010
- Three years of post-retirement health benefits based on 25 years of service with the State *and* County
- Elimination of longevity pay, clothing allowance, and education bonuses for civilian units and law enforcement officers in the Prosecutor's Office
- Freezes on all compensation terms other than salary in the GWU agreement, with the same anticipated for pending Teamsters and nurses' contracts

The County also contends that there has never been a pattern of settlement between this unit and the AFSCME and JNESO unions that represent nurses employed by the County. Thus, the County comments that the implementation of shift differential for nurses does not support award of this benefit to sheriff's officers. It adds that the differential was instituted for nurses because of salary competition from private hospitals, a situation that does not pertain with respect to this unit. In addition, the County rejects the PBA's assertion that the Teamsters'

Public Safety unit receives shift differential, maintaining that the $750 payment cited by the PBA represents extra pay for supervisors.

Overall Compensation

The County asserts that an analysis of this criterion shows that sheriff's officers receive more compensation than other County employees, yet are subject to fewer "givebacks" than their colleagues. Thus, it points out that unit members were not subject to the mandatory furloughs experienced by civilian employees in 2010 and, further, enjoy a rich benefit package that includes a top-step salary of $68,086; maximum longevity of $2,500 per year; a $700 stipend for holding a CDL license; and educational bonuses.

Stipulations

The County states its belief that there are no stipulations that will influence the arbitrator's decision. It observes that there has been a stipulation that recruits will pay up front for their officer training clothes and will be reimbursed once they graduate from the academy.

Lawful Authority of the Employer

The County submits that the extensive documentation it has provided concerning budget issues demonstrates that its final offer is within the applicable tax levy CAP. By contrast, the County insists that the PBA has not done any analysis showing that its proposal fits within the relevant CAP. Accordingly, the County reasons that this factor weighs in favor of its own economic position.

Financial Impact of the Award

The County reiterates that its own exhibits in this matter amply illustrate that it is operating under significant budgetary constraints resulting from declining revenue and surplus and escalating employee costs. The County adds that County residents themselves are already burdened by heavy taxes, with many of them suffering from the setbacks experienced by the casino industry.

In this context, the County maintains that an award of its proposal will allow it to maintain current services at a sustainable level. However, it cautions that the County Executive has already signaled that an award exceeding 2% will require it to implement furloughs and layoffs.

Cost of Living

The County contends that this factor also favors its offer, given that its proposal exceeds the current CPI of 1.5%. As support for this point, it cites County Exhibit 20D-2, which calculates the percentage increases that would be received by various unit members as a result of moving through the guide from 2010 through 2013.

Continuity and Stability of Employment

The County reiterates that unit members receive a good salary and benefit package, particularly when compared with the median incomes of Atlantic County families and the salaries enjoyed by sheriff's officers in other, more prosperous counties. It maintains that any turnover in this unit results from retirements and medical disability and that, absent evidence of a high rate of turnover for other reasons, this criterion favors its own offer.

Statutory Limitations Imposed on the Employer

In addressing this factor, the County emphasizes that it has shown, through Costello's testimony and exhibits, that it does not have the legal ability to pay the PBA's final offer due to the governing tax levy CAP. Therefore, it concludes that the statutory limitations criterion favors its own proposal.

Work Schedule and K-9 Proposals

The County urges that Sheriff Balles's testimony supports the County's position that a flex schedule is necessary and appropriate for such specialty divisions as the warrants, bicycle and K-9 units. In support of this proposition, the County asserts K-9 units are in demand during off hours because they assist multiple municipalities throughout the County, while bicycle units patrol parks and recreational areas on weekends and during non-work hours, especially during the summer. Similarly, the County maintains that that it is easier for the warrants unit to apprehend individuals in the early morning and late night hours.

In espousing a flex schedule for the noted units, the County argues that it should not be linked to a shift bidding procedure. It cites Balles's statement that he needs the discretion to place certain officers in certain units, as well as his opinion that a bidding system would completely undermine his ability to organize and direct his department. The County emphasizes that in holding that a flex schedule was mandatorily negotiable, PERC's scope-of-negotiations decision on this issue assumed that the proposal did not involve shift bidding. The County concludes by underscoring that the Sheriff has compromised his position and is now willing and ready to adopt a flex schedule based upon those terms offered by the PBA "without job bidding."

K-9 Stipend

The County maintains that its proposal for a $1,000 K-9 stipend should be awarded because it appropriately remunerates officers for what the County estimates is approximately 2.5 off-duty hours per week spent grooming, feeding, and walking the canine. It underscores that, pursuant to federal FLSA case law, it is only off-duty care that warrants "reasonable" compensation.

The County also points out that its proposal reasonably allows an officer to request some on-duty time to care for the dog in the event that he or she lacks sufficient time to do so after hours. The County further observes that officers are not responsible for the costs associated with feeding and caring for the dog, adding that the Sheriff's Office receives donations that are earmarked for veterinary services for the canines. Finally, the County opines that the K-9 unit would have to be disbanded if anything more than a $1,000 stipend were awarded. The County states that such an award would make the unit unaffordable.

PBA'S POSITION

The PBA urges that the nine statutory factors weigh in favor of the award of its final offer, adding that it has presented substantial testimonial and documentary evidence that establishes the reasonableness of its proposal, including the total net annual economic changes that would flow from the award of its proposals. By contrast, the PBA maintains that the County has failed to submit arguments with respect to the majority of the nine mandatory criteria, but has instead based its position solely on the County's allegedly poor financial condition.

The PBA's strong opposing view is that while the County may not be the wealthiest in the State, it is well managed; has weathered these difficult economic times better than most governmental units in New Jersey; and can provide a much more substantial salary and benefit package than it has currently proposed.

As a prelude to its analysis of the statutory factors, the PBA first addresses the work environment of sheriff's officers and then extensively discusses some of the costing and financial issues implicated in this proceeding. Thus, the PBA observes that, for 2008, Atlantic County had the fourth highest total crime rate per 1000 residents among ten comparable New Jersey counties (PBA Exhibit 58). In 2007, it ranked third on this measure (PBA Exhibit 58). The PBA maintains that these crime rates have a direct bearing on this unit's workload and responsibilities, which it asserts have dramatically increased in recent years. As adverted to in the background section of this opinion, PBA exhibits extensively detail the diverse functions of the department.

Despite these wide-ranging duties, the PBA argues that the County's final offer represents a draconian attempt to decrease this unit's already low compensation vis-à-vis that received by sheriff's officers in other counties. While the PBA underscores that the County never presented a true "cost out" of its own salary, clothing, and longevity proposals, the union maintains that its own analysis reveals that an officer at the top step of the 2009 salary guide, with maximum longevity, would actually have his total 2009 compensation of $71,936 reduced to $69,448 in 2010 under the County's proposal. This situation would occur because the County seeks to eliminate the $2,500 longevity payment and a $1,350 clothing allowance. The PBA observes that by 2013, an officer at step 9 of the guide would be earning $70,846 – still less than in 2009 (PBA Exhibit 135).

The PBA contends that officers on the lower guide steps would also suffer the loss of the longevity and clothing allowances, while receiving very small across-the-board salary increases. In addition, the PBA highlights that the County is proposing to add two new steps to the guide while devaluing three steps. The PBA thus concludes that although the County states that it is offering a salary increase to this unit, in reality it seeks a salary decrease over the term of the agreement. The PBA observes that when County Exhibit 20D describes the salary increases that would allegedly go into effect under the County's offer, it does not take into account the elimination of the longevity benefit and clothing allowance and, further, includes step movements that are not traditionally included in such calculations.

The linchpin of the PBA's analysis is that the drastic measures proposed by the County are in no way required by the County's financial circumstances or any of the statutory factors. In particular, the PBA maintains that Caprio's report, and a range of PBA exhibits, show that the County was in excellent financial shape in 2006 through 2009, and remained in excellent shape in 2010 and 2011. In support of this position, the PBA identifies these factors:

- Prior to 2010, the County decreased its tax rate for eight straight years. While there was a slight increase in 2010, the County's 2011 tax rate is at approximately the same level as it was five years before (Caprio Report, Exhibit 15, citing Exhibit C-16, 2011 Budget Message).

- The County's 2011 Budget Message reflects that the County did not need to budget to CAP; did not contemplate layoffs or furloughs for 2011; and still had a surplus of over $15 million at the end of 2010.

- Atlantic County experienced a 42% growth in ratables between 2006 and 2009, demonstrating reasonable activity and investment, especially light of the 2008 and 2009 financial crisis. (Caprio Report, Exhibit 19). This increase in ratable growth was the sixth highest among New Jersey counties. (Caprio Report, Exhibit 21).

- The County has available to it "breakage" that results from older, more highly-paid officers leaving the department and being replaced by lower-paid officers. These amounts, net of replacement costs, are estimated by Caprio to be $664,000 in 2009 and an estimated $200,000 to $300,000 in 2011. In 2010, the estimated breakage was $80,106, after the County added 10 new positions. (Caprio Report, Exhibit 37.

The PBA also underscores the accuracy of Caprio's conclusion that the County had additional CAP flexibility in 2011. In a supplemental report dated May 23, 2011, Caprio observes that while the 1977 CAP governed in 2011, that statutory scheme allows a County to pass a resolution raising the CAP to 3.5%. Thus, Caprio stands by his position that the County made a policy decision to limit its revenues, despite the fact that this and 14 other labor contracts were being negotiated (PBA reply brief, Attachment A).

In response to some of the County's other objections to his analysis and expertise, Caprio observes that he has been found to be a highly regarded expert in many County-level interest arbitrations. In addition, he notes that neither he nor Costello analyzed the cost of settling the 14 other outstanding County contracts.

He adds that the only issue in this proceeding is the PBA 243 contract, especially since the County's other law enforcement units will most likely be subject to the new interest arbitration statute.

Caprio also contends that the County erred in stating that more than half of County households earn $50,000 or less. Caprio notes that the 2010 census shows that the County's median 2009 household income was $54,934, while the median family income was $67,700. Finally, Caprio insists that County revenues have been remarkably stable, with financial documents showing that the County had an end-of-year surplus of between $15,537,099 and $15,504, 927 for 2009 through 2011; had approximately $7.8 million in excess operations for each of those years; and thereby fully regenerated its surplus. (The 2011 figures are estimates).

Caprio reiterates his conclusion that the County is financially sound and exceptionally capable of funding the PBA's final wage offer. He cites Appendix 3 to his May 2011 report, which reflects that the County has an "AA" bond rating with a stable outlook from Standard & Poors, a designation that indicates "very strong capacity to meet financial commitments." Caprio contends that the County has not disputed the core fact that County has consistently been able to replenish its surplus and may have as much as $16 million available to fund a settlement for this unit for 2010 and 2011.

Against this backdrop, the following is a summary of the PBA's analysis of the statutory factors as they relate to salaries, the K-9 stipend, and flexible shifts. I discuss the PBA's arguments with respect to the other disputed issues later in this opinion, in the course of ruling on them.

SALARIES

Public Interest and Welfare

The PBA begins its discussion of this criterion by reasoning that the public is benefitted by a cohesive and dedicated Sheriff's Office, adding that morale and high commitment are achieved when there is a reasonable correlation between unit members' salaries and benefits and those of sheriff's officers in other counties. The PBA maintains that such a correspondence is now lacking in this County. The PBA contends that there is low morale and higher than normal turnover in this unit, with officers leaving for other law enforcement positions with better compensation.

Accordingly, the PBA argues that the public interest would be best served by the award of its own salary proposal as opposed to that of the County. The PBA emphasizes that the public interest does not automatically equate with the employer's proposal, commenting that the criterion encompasses both fiscal responsibility and the compensation and benefit package needed to maintain a productive and high-morale law enforcement unit. Finally, the PBA reiterates Caprio's conclusion that award of its offer would have no adverse impact on the

County, its residents or taxpayers. It highlights that the County Executive himself stated, in January 2011, that the County has "been very successful in responding to these challenging times" (PBA Exhibit 228).

Comparisons with Other Employees

The PBA approaches this criterion by urging that the relevant comparisons are with other law enforcement employees in the County and State. It expresses the view that a secretary or other civilian employee cannot "honestly be compared" to a sheriff's officer who must carry a gun, wear a bullet proof vest, and put his or her life on the line.

Given this perspective, the PBA emphasizes an alleged pattern of settlement with other County law enforcement groups, as well as comparisons with sheriff's officers in other counties. With respect to the latter, the union highlights PBA Exhibits 88 through 93, which show how this unit's maximum salary plus longevity compares with that in other counties.

Max Salary with Max Longevity (If Any)

	2007	2008	2009
Atlantic	$65,449	$67,967	$70,586
Burlington	n/a	n/a	
Camden	$73,010	n/a	
Cape May	$69,531	$69,531	$76,021
Cumberland	$53,717	$53,717	$55,794
Gloucester	$75,300	$75,300	
Mercer	$81,625	$81,625	
Monmouth	$85,431	$85,431	
Ocean	$90,338	$90,338	
Salem	$71,000	$71,000	$73,556

[PBA Exhibits 91, 92, & 93]

For 2010 through 2013, the PBA sets forth these maximum salary figures without longevity, with the Atlantic County salaries representing salaries under the PBA's offer, excluding the proposed longevity and clothing roll-ins.

	2010	2011	2012	2013
Atlantic	**$70,809**	**$73,110**	**$75,486**	**$78,317 (Proposed salaries)**
Cape May	$72,082	$75,165	$78,372	
Cumberland	$56,154			
Gloucester	$70,132	$73,681	$77,409	$81,325
Ocean	$88,157			
Salem	$78,351	$81,172		

[PBA Exhibits 95, 96, 97 & 98]

PBA Exhibit 99 also describes the longevity benefit included in current or predecessor contracts for the ten counties that it highlights. In Atlantic, the benefit ranges from $800 to $2,500 per year. Cumberland and Mercer also have a dollar-amount longevity benefit, which maxes out at $600 for Cumberland and $2,200 for Mercer. Three jurisdictions have a percentage benefit that starts at 2% or 3% and culminates at 7% or 8% per year. Four counties – Burlington, Cape May, Monmouth and Salem have no longevity (PBA Exhibit 99).

The PBA argues that when all of these figures are reviewed, it is apparent that Atlantic County sheriff's officers have a significantly lower compensation package than their southern New Jersey counterparts, even though the crime rate in Atlantic is higher than in the surrounding jurisdictions. In this regard, PBA Exhibit 59 shows that, for 2009, Atlantic County had 39.9 crimes per 1,000 inhabitants, a statistic that was above the state average of 23.9 and the second highest in southern

New Jersey, below only Cape May, which had 46.6 crimes per 1,000 inhabitants. Camden County was the next highest, with 36.8 crimes per 1000 inhabitants.

In light of the foregoing, the PBA reasons that Atlantic County salaries will begin to more closely resemble those in comparable counties under its own offer, as opposed to the County's. It adds that its proposal to retain a nine-step guide is also consistent with these external comparisons, since the guides for sheriff's officers in the ten counties have an average of 8.8 steps. Finally, the PBA disputes the relevance of the County's comparability exhibits, writing that the County "cherry-picked" awards and news articles concerning several isolated jurisdictions, most of which are outside of southern New Jersey and are not comparable to Atlantic County.

In analyzing internal comparisons, the PBA stresses that the awarded salary increase for 2010 must be determined in light of the economic circumstances pertaining at that time, together with the County's "ability to pay" for that specific year. PBA Exhibits 124 and 125 set forth the 2010 salary increases included in settlements with a broad range of 17 law enforcement and civilian units. The exhibit also sets forth the 2011 and 2012 settlements for the limited number of units that have reached agreements for those years. The percentage increases listed are:

FOP 112 – SOA Corrections	2010	5%
FOP 112 - Sgts. Corrections	2010	4%

	2011	4%
	2012	4%
CWA 1034 – Asst. Prosecutors	2010	4%
PBA #77 – Prosecutor's SOA	2010	6.8% (Lieutenants) 6.47%(Captains)
Nutrition Site Workers	2010	2.75%
	2011	2.75%
	2012	2.75%
JNESCO	2010	3.7%
CWA 1034 Prosecutor's Agents	2010	4%

In addition to these percentage increases, PBA Exhibit 124 reflects that ten civilian units settled for dollar amounts, added to base salary, that ranged from $1,500 to $2,200 for 2010. A few of these units also reached similar agreements for 2011 and/or 2012.

Finally, the PBA highlights an interest arbitration decision that awarded a 2007 through 2010 contract for the County's rank-and-file corrections officers, including a 4% increase for 2010. *See Atlantic County, IA-2007-57, aff'd with modification per P.E.R.C. No. 2011-76 (May 13, 2011).*

Against this backdrop, the PBA emphasizes that not one settlement or award included increases as low as those proposed by the County. Further, the PBA maintains that the County has historically engaged in pattern bargaining, asserting that the established pattern of settlement with many County units for 2010, and with one law enforcement unit for 2010-2012, substantiate the legitimacy of the

PBA's last offer. In addition, the PBA notes that the rank-and-file corrections who were subject to an interest arbitration award for 2010 have traditionally received the same percentage increases as the sheriff's officers, thereby maintaining a differential whereby sheriff's officers are paid somewhat more than corrections officers. The PBA accordingly concludes that this award supports its own offer.

In concluding its comparability analysis, the PBA comments that while no private sector job compares with that of a sheriff's officer, private sector statistics nevertheless show that the PBA's wage offer is fair when reviewed against the increases received by private sector employees. PBA Exhibit 191, a news release from Buck Consultants, reports average private sector increases of 1.8% in 2009; 2.5% in 2010; and 2.8% in 2011. Similarly, the PBA cites a November 2010 UAW wage settlement with Ceasar's Casino in Atlantic City, where workers received an 18% increase over five years (PBA Exhibit 211).

Overall Compensation

The PBA focuses on comparisons with other sheriff's officers in discussing this criterion, maintaining that there is no question but that this unit's salary structure compares unfavorably with that of sheriff's officer salaries in the surrounding 10 counties. It reiterates that is own wage offer would not bring unit compensation up to the average, but would be the beginning of a small improvement. The PBA remarks that under the County's offer, the unit would see a decrease in their overall compensation and would continue to receive one of the lowest salaries in the 10 counties.

Stipulations

The PBA writes that no formal stipulations were made a part of the record, except that the parties agree that all prior agreements should be included in the successor agreement, unless specifically modified.

Lawful Authority of the Employer/Statutory Restrictions on the Employer

In analyzing the evidence with respect to these criteria, the PBA acknowledges that the County is bound by statutory restrictions on its total tax levy. However, it emphasizes that the legislation does not set limits on how much or how little each specific line item can be increased or decreased. The PBA points to Caprio's well-supported conclusion that the County was under no CAP pressure whatsoever in 2010 and 2011, given that the budgets for those years were well within applicable limits. The PBA similarly reasons that, given the County's successful record of regenerating healthy surpluses, there is no indication that the CAP will present a problem in 2012. It contends that its conclusion in this regard is supported by the fact that the County has already agreed to a 4% increase for 2012 for the Corrections Sergeants unit.

Financial Impact

The PBA notes that *N.J.S.A.* 34:13A-16g(6) requires a consideration of the impact of an award on the governing unit, its residents, and taxpayers. The PBA emphasizes that the County's key indicators of fiscal performance are uniformly positive, thereby demonstrating that the County has been able to easily live within its CAP limitations without difficulty while maintaining a politically attractive taxing and spending pattern. The PBA maintains that Caprio's financial analyses make these points abundantly clear. The PBA also underscores that the County submitted no evidence showing that that the PBA's last offer would jeopardize any planned or existing programs or services.

The PBA also asserts that, in assessing the financial impact of an award, the arbitrator should consider that between 2007 and 2010, the total base salary cost for this unit increased only 3.9%, or 1.3% per year, despite the fact that the County committed to higher annual increases (PBA Exhibit 113). The PBA explains that this circumstance is attributable to high turnover, whereby higher-paid officers are replaced by lower-paid employees.

Cost of Living

The PBA recognizes that the cost of living must be considered in interest arbitration. It also acknowledges that recent CPI data shows cost of living increases in the range of 1.7% (PBA Exhibit 198). However, it urges that this criterion should be analyzed in the context of this unit's below-average compensation package, as well as the fact that other County employees, and employees throughout the State, have received increases for 2010 through 2012 that exceed the cost of living. The PBA also cites a news article that quotes the County Executive, who stated that his own cost of living increase was not really a salary hike because "cost of living increases simply mean you are making the same thing you made the previous year" (PBA Brief, Attachment C).

Continuity and Stability of Employment

The PBA argues that the continuity and stability of employment encompasses the concepts of "area standards" and "prevailing rates." Accordingly, the union argues that this factor weighs heavily in favor of its own final offer, which would help officers approach the compensation levels of sheriff's officers in comparable counties. Similarly, the PBA urges that while award of its proposal would encourage officers to remain in the County's employ, the County's offer encourages unit members to leave for "greener pastures", thereby undermining the continuity and stability of employment. Finally, the PBA reasons that this criterion also implicates the importance of internal settlements, since deviation from such settlements can undermine morale, discourage future settlements and affect labor relations stability within a jurisdiction. As such, the PBA concludes that this component of the continuity and stability of employment supports its own proposal.

Work Shifts and Shift Bidding

The PBA emphasizes that its proposal continues the work schedules that are in the predecessor agreement, albeit with the addition of new schedules for the warrants, K-9, and bicycle units, as well as the SRO officer. However, the PBA opposes the County's proposal to include language for these specialty units which, instead of providing a defined schedule, simply states that "schedules shall be flexible, as determined by the Sheriff." The PBA asserts that the public interest calls for officers to have a stable work environment, with work shifts that they can rely upon. It also states that nothing in its proposed language prevents the Sheriff from deploying officers whenever needed, subject to the obligation to pay overtime. The PBA concludes that it has always been willing to make concessions concerning work shifts, **if** the County would agree to its shift bidding proposal. It reiterates that this remains its position.

EMT and K-9 Stipends

The PBA urges award of a $1,000 annual stipend for officers with an EMT certification, explaining that in a heavily traveled building such as a court house, the public benefits from having sheriff's officers with such training. The PBA suggests that the stipend is reasonable because sheriff's officers have to attend training on their own time and at their own expense.

Similarly, the PBA explains that the County recently established the K-9 unit and adopted a policy governing its operations. While the policy allows officers ½ hour at the beginning and end of a shift to care for the animal, it does not provide for compensation for the officer who is responsible for the care, feeding and grooming of the dogs. The PBA maintains that its proposal for a stipend equal to 4% of the K-9 officer's salary is a reasonable adjustment and is much less than what it could have proposed in light of FLSA rulings.[5] It urges rejection of the County's proposal for a $1,000 stipend, arguing that this figure calculates out to $5.49 per hour for one-half hour of care per day.

DISCUSSION AND ANALYSIS

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

In addition, I note that *N.J.S.A.* 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages,

---

[5] The PBA emphasizes that the stipend is in addition to the already established 30 minutes off at the beginning and end of each shift (PBA brief, pp. 62-63).

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

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

This is a complex interest arbitration in which the parties have submitted quite disparate final offers on the intertwined subjects of salaries; guide structure; longevity and clothing allowance. In addition, they have presented a broad range of proposals concerning health insurance, fringe benefits, work schedules, and shift bidding. These proposals must be evaluated in the context of recent State legislation that tightened the County's tax levy CAP and increased employee premium contributions for health benefits coverage. Those statutes were in turn enacted in the aftermath of a severe, almost unprecedented recession, from which the State and national economies are still struggling to recover.

In arriving at an award, I am mindful of both the budgetary restrictions under which the County must operate and the critical law enforcement services that these sheriff's officers perform. I conclude that all of the statutory factors are relevant but that not all are entitled to equal weight. My weighing and balancing of the nine factors, particularly those pertaining to the public interest, financial impact, lawful authority of the employer, statutory restrictions on the employer, and comparisons with other employees, leads me to award an overall economic package that is less than sought by the PBA but more than proposed by the County. While I believe that the award will maintain a reasonably competitive compensation package for these essential employees, the awarded salary increases are less than would likely have been arrived at in a more favorable budgetary and economic climate.

My decision-making has been informed by these factual conclusions and judgments:

- While the County is well-managed and has some markers of financial strength, the record also reflects several areas of vulnerability, including decreased revenues from multiple sources. Beyond the County's own budgetary framework, County taxpayers themselves are not affluent; the County has a high unemployment rate; and declining trends in the casino gambling industry affect many County residents.

- Economic and budgetary difficulties at the State and local level have resulted in a changed negotiations landscape, with recent data showing declines in the percentage increases received by a range of private and public employees, including public safety employees. The salary portion of this award is consistent with, and within the range of, such increases.

- One of the best measures for assessing the competitiveness of this unit's compensation structure is through comparisons with sheriff's officers in other southern New Jersey counties. The awarded increases take into account such comparisons. However, fiscal and other considerations preclude award of the PBA's offer, which aims to bring salaries in this unit closer to those in some of the more highly-paid sheriff's departments in southern and central New Jersey. At the same time, comparisons with other sheriff's officers also militate against award of the County's offer, including its proposed changes in guide structure, clothing allowance, and longevity.

Against this backdrop, the terms of my award are as follows.

1. Term of Agreement

January 1, 2010 through December 31, 2012.

2. Salaries

2.0% across-the-board increase effective January 1, 2010.
1.5% across-the-board increase effective January 1, 2011.
1.5% across-the-board increase effective April 1, 2012.

Each increase applies to all steps of the existing salary guide and is retroactive to its effective date.

3. **Fringe Benefits**

Article XVI, Paragraph H, Stipends, is amended to include the following revised provision on the CDL stipend:[6]

Any employee whose position and duties require the holding of a CDL license shall receive a $700 annual stipend. In the event that an employee has a position and duties that require the holding of a CDL license for part of a year, the employee shall be compensated on a prorated basis for the term in which the employee held a position requiring the holding of a CDL to effectuate their duties. Such stipend shall be paid by the second pay in November of each year. Employees shall pay for all costs related to licenses, blood tests and special training mandated by the State or Federal Government.

Article XVI, Paragraph H, Stipends, is amended to include these additional paragraphs:

Any employee whose positions and duties require the care for a Sheriff's K-9 shall be relieved during the first and last thirty (30) minutes of each tour of duty to care for the canine, kennel and assigned equipment. In addition, such officers shall receive a $1,500 annual stipend in consideration of the anticipated performance of canine-related tasks during off-duty hours and all other provisions contained in this section. The Parties anticipate that officers assigned to care for a K-9 will spend approximately five (5) off-duty hours per pay period to care for the K-9.

This section shall be read in conjunction with the County's K-9 Policy, as may be amended from time to time.

4. **Work Schedules**

Article IV, Section C.4 is amended to read as follows:

The hours of operation for the Legal and Investigative Unit, the Warrants Unit, the K-9 Unit, and the Bicycle Unit, will be flexible as determined by the Sheriff, but within the framework of the unbroken eight (8) hour shift, 40 hour schedule.

---

[6] The PBA states that it agrees to the County's CDL proposal (PBA brief, p. 62), just as the County agrees to the PBA's FTO proposal (County reply brief, p. 10).

Article IV, Section C.5 is deleted and Section C.7 is re-numbered as Section C.6 and amended to read as follows:

The Sheriff reserves the right to modify schedules and the organizational structure of the department in accordance with operational needs, including but not limited to, scheduling for mandatory training and voluntary special operations. In non-volunteer situations the Sheriff shall provide the employee with at least two (2) weeks' notice of the modified schedule. In the case of employees volunteering to modify their schedule there is no notice requirement.

5. FTO Compensation

Article XVI is amended to include this new paragraph.

Each Officer assigned as a Field Training Officer (FTO) shall receive one-half (1/2) hour compensatory time for each day assigned as an FTO.

Cost of Award

A necessary prelude to the analysis mandated by *N.J.S.A.* 34:13A-16g is a costing out of the award. The total 2009 base compensation for the 93-member unit was $4,523,306. Assuming no resignations, retirements, or new hires, the cost of the annual across-the-board base salary increases under the award is $90,466 in 2010; $69,206 in 2011; and $52,683 in 2012. The figure for 2012 reflects the delayed effective date of April 1, 2012. A portion of the 1.5% rate increase for 2012 ($17,561) will flow through into 2013. In addition to these increases, the award of a $1,500 annual K-9 stipend effective January 1, 2010 will cost an additional $3,000 in 2010, based on two officers being assigned to this unit.

The County and the PBA each propose continuation of a compensation structure whereby officers advance on a salary guide, thereby receiving step increases as they move to a higher salary guide step. However, each party proposes some modifications to the salary guide set forth in the predecessor contract.

The award retains the existing salary guide structure. Accordingly, the cost of step movements under the award is lower than under the PBA's offer, because I have declined to grant its proposal to have officers advance two steps on the guide in 2010, a measure that would have significantly increased the increment load in that year. At the same time, the cost of step movements under the award is more than under the County's offer, because I have not awarded the County's proposals to add two steps to the guide and reduce the salary for three salary guide steps (County Exhibit 20D). These proposals would have lowered the increments received by some employees and delayed their advancement to the maximum salary.[7]

Pursuant to *N.J.S.A.* 34:13A-16d(2), I conclude that the above-noted total net annual economic changes for each year of the agreement are reasonable under the criteria listed in *N.J.S.A.* 34:13A-16g.

In placing the cost of the awarded increases in context, it is also useful to note that unit members are subject to two distinct statutory mandates that required them to pay, beginning in 2010 and 2011, health benefits costs that would

[7] In addition, the awarded across-the-board increases applied to each step are lower than those proposed by the PBA. They are generally higher than those proposed by the County, except that, for 2010, the County's proposal and the award each include a 2% increase for officers at the top guide step in 2009.

otherwise have been absorbed by the County. Thus, on or about May 21, 2010, unit members were required to assume, by operation of law, a minimum contribution toward their health benefit premiums in the amount of 1.5% of their base salary. Given the May 2010 effective date for Chapter 2, the statute's implementation took place during the second half of 2010 and the first half of 2011 and required approximately $67,850 in new health benefits contributions from unit members. Thus, while the awarded across-the-board increases for 2010 and 2011 exceed those proposed by the County, the County also received new employee health benefits contributions from this unit in the amount of $33,925 in 2010 and $33,925 in 2011.

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

Given these variables, it is not possible to calculate the Chapter 78 contributions for this unit with precision. In addition, much of the statute's implementation will take place beyond the awarded contract term, with employees making the largest contributions in 2013-2014 and 2014-2015. Nevertheless, the first year of Chapter 78's implementation, which spans 2011 and 2012, takes place within the term of the award, and the second year, 2012 to 2013, is partially included within it. It appears that, during 2012, the County will receive some additional contributions, beyond those mandated by Chapter 2, from officers at maximum salary who choose dependent coverage.

The County participates in the State Health Benefits Program (SHBP) for both medical and prescription drug coverage. While the record does not include the per employee premium cost for the various tiers of SHBP coverage, the SHBP website does feature a "contribution calculator" which shows that during the second half of the year one phase-in (January 2012 through June 2012) an employee who earns $70,000 annually and selects NJ Direct 10 family and SHBP prescription coverage will have to remit $108.84 per month, more than the 1.5% minimum contribution of $87.50. For year two, which begins in July 2012, the website indicates that premium contributions increase to $217.68 per month, albeit some of the year two contributions will flow through into the next contract term.[8]

The rationale for the award is set forth in the following discussion, in which I evaluate the evidence on each statutory factor and describe how it relates to my

[8]Thus, for 2012, top-step officers choosing family coverage will pay $1,959.12 annually ($653.04 for the first six months and $1,306.08 for the second six months). This compares with a Chapter 2 obligation of $1,050 for an officer earning $70,000.

decisions on salary guide structure and across-the-board-increases. This analysis also touches on the County's longevity proposal. With that discussion as a foundation, I then address the parties' longevity, clothing allowance, K-9, health benefits, stipend, work schedule, shift bidding and other proposals.

SALARIES

Interest and Welfare of the Public

The public interest and welfare, *N.J.S.A.* 34:13A-16g(1), is a broad criterion that encompasses a review of an employer's financial circumstances and an analysis of the compensation package required to attract and retain a productive and high-morale law enforcement department. This statutory factor also encompasses the public interest in labor relations stability. Further, it explicitly requires consideration of the CAP law set forth at *N.J.S.A.* 40A:4-45.1a *et seq*.

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

As a threshold matter, the public interest is pertinent to the issue of contract duration, and it favors the award of a three-year agreement from January 1, 2010 through December 31, 2012. A three-year agreement is reasonable because this record contains virtually no internal or external comparability data for 2013 or 2014; it is difficult to gauge whether the County's budgetary pressures will have eased by 2013 or 2014; and there is also still considerable uncertainty about whether the State and national economies will have fully recovered by that point. I reach this conclusion even though the parties have proposed longer contract terms. *Compare Hudson County Prosecutor,* P.E.R.C. No. 98-88, 24 *NJPER* 78 (¶29043 1997) (arbitrator with conventional authority has considerable discretion to fashion an award).

I recognize that multi-year agreements are common in negotiations and interest arbitration, even though no one can predict with assurance the exact budget circumstances a public employer will face in future years. However, the current economic and budgetary situation is more fluid than usual. In this posture, the public interest is best served by a three-year contract that will allow the parties greater flexibility to adjust to future conditions.

The public interest must also be considered in resolving the parties' salary dispute. Specifically, the fiscal and compensation components of the criterion must be balanced in light of the particular economic and budgetary circumstances pertaining in Atlantic; the nature of the services that Local 243 members perform; and the current compensation structure for this unit.

The record shows that unit members are engaged in providing a broad range of critical law enforcement services, which they perform efficiently and professionally. However, this is not a unit in which the majority of officers have a long tenure with the department. In each of the four years between 2007 and 2010, the department has had a large proportion of relatively less experienced officers who are moving through the salary guide and who are below maximum salary. In December 2010, only 31 of the 93 officers were at maximum salary and 44 officers were on the first four steps of the guide (PBA Exhibit 113). A similar pattern was present in 2007, 2008 and 2009, where the number of officers at maximum salary ranged from 36 to 39 officers and the number of officers on the first four guide steps was 42 in 2007; 39 in 2008; and 42 in 2009 (PBA Exhibit 113).

The PBA cites this data as evidence of low morale and high turnover, while the County insists that the continuity and stability of employment in the department is strong, because officers leave only when they retire or become disabled. Absent evidence of why officers left the department; how many officers retired in recent years; or how long the members of each entering "class" stayed with the Sheriff's Office, I cannot and do not make any finding that turnover is a definite problem in this unit.

However, I have considered unit composition in evaluating the parties' competing proposals on guide structure; across-the-board-increases; and longevity. The public has a strong interest in being served by a stable work force of skilled sheriff's officers. Excessive turnover entails training costs and can potentially undermine the County's mission by resulting in a less experienced cadre of officers. Accordingly, I have endeavored to arrive at an award that will encourage less senior officers to continue their law enforcement careers within the department, to the extent consistent with the County's economic circumstances.

Turning to those circumstances, the County is well-managed and has some positive fiscal indicators, including a low debt burden; an AA bond rating from Standard & Poors with a stable outlook; and a comparatively low effective tax rate vis-à-vis other New Jersey counties. Nevertheless, its current finances are strained.

As detailed more fully in the financial impact section, the County has experienced a marked decline in such revenue sources as investment income; realty transfer fees; and, for 2006 through 2010, reimbursements from the State of New Jersey for housing State prisoners (Exhibit C-6; Exhibit J-2, sheet 4). And while the County's fund balance appears to have stabilized in the last few years, it falls considerably short of the balances of $20,665,982 in 2005; $21,064,806 in 2006; and $20,894,872 in 2007.

Moreover, at the same time that revenues have declined, pension and health benefits costs have increased; the County's tax levy has escalated from $110,840,470 in 2005 to $146,224,156 in 2010; and, beginning in 2011, the 2010 budget levy CAP was reduced from 4% to 2%. Finally, the economy as a whole is still emerging from a deep recession and continues to be marked by high unemployment and a depressed housing market.

These phenomena create a "perfect storm" in which the County has less budgetary flexibility than in the past while, at the same time, financially stressed citizens are more sensitive to tax increases and more concerned that the County deliver public services at reasonable cost. The latter observations have particular force in Atlantic County, where the unemployment rate as of December 2011 was 12.4% (NJLWD website) and the median household income is below the New Jersey average. In addition, many residents are feeling the impact of declines in the casino industry, which is struggling as a result of both the recession and increased competition from other areas.

The foregoing circumstances do not mean that the County is without resources or some budgetary flexibility. However, they do point to caution in awarding salary increases during this negotiations cycle, even though higher increases would likely be appropriate in a better economic climate.

In that regard, unit members' existing salaries appear to be adequate but are at the low end of the range of reasonable compensation for these valuable employees. As set forth more fully in the comparability analysis, Atlantic County's top step 2008 and 2009 salaries (including longevity) were lower than those of sheriff's officers in all but one of the southern New Jersey counties for which information was available (PBA Exhibits 92 & 93). They were also lower than those in Mercer and Monmouth, but above salaries in Hunterdon – all counties outside the traditional definition of southern New Jersey, but jurisdictions on which the parties have submitted information.

The average 2010 salary for this unit is $48,638 (PBA Exhibit 112), a figure that is well below the average Statewide private sector wage (for 2009), of $54,542, and average local government wages of $55,442 (PBA Exhibit 187). On the other hand, the $48,638 average salary compares more favorably with the average Atlantic County private sector wage of $36,354 (PBA Exhibit 187).

While the County has numerous other negotiations units, the record includes little information about the salaries received by these civilian and law enforcement employees. It does appear that the sheriff's officers enjoy somewhat higher maximum salaries than Atlantic County corrections officers, a differential that has existed since 2003. The differential increased in 2006, when PBA unit members accepted a $2,000 adjustment to the base salary for all steps, in exchange for the corrections unit assuming hospital/custodial duty (PBA Exhibits 152 to 154; County Exhibit 20H, p. 22). Overall, in view of sheriff's officers training and critical responsibilities, this is not a highly-paid unit.

In harmonizing the fiscal and compensation components of the public interest, a threshold inquiry is whether the award should modify the current salary guide structure and/or the protocols for advancing on the guide. The current nine-step salary guide is well within the range of that in other counties, with the PBA citing an average guide length of 8.8 steps for the ten counties on which it has submitted information. The County's proposals to add new salary guide steps and freeze the value of certain other steps would tend to decrease the competitiveness of this unit's compensation package for the many officers who are below maximum salary. These County proposals are not warranted. This unit's compensation is already at the low end of the salary spectrum for sheriff's officers in southern New Jersey counties and, as noted, one aim of this award is to maintain a compensation package that will help encourage less experienced officers to continue their careers with the County.

At the same time, I decline to award the PBA's proposals to have officers advance two steps on the salary guide in 2010. That measure would substantially increase the cost of increments in 2010 and cannot be justified in light of the County's budgetary constraints. Accordingly, for the 2010-2012 contract term, the award continues the existing salary guide structure and protocols for salary guide advancement.

In arriving at across-the-board increases, I have given considerable weight to the County's budgetary circumstances. In a more typical negotiations cycle, I would be inclined to award increases closer to those received by other County employees during 2010. PERC decisions direct arbitrators to carefully consider internal settlements and fully articulate the rationale for any decision to deviate from them. *Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459 (¶33169 2002) and *Union Cty.*, P.E.R.C. No.2003-87, 29 *NJPER* 250 (¶75 2003). However, a key element of my public interest analysis is that these are not ordinary times, and it is no longer feasible to award increases that mirror those negotiated in a more favorable economic and budgetary climate.

Thus, for 2010, internal settlements in the County ranged from 2.75% to 4% for civilian units and 4% to 6.8% for law enforcement units (PBA Exhibits 124 & 125). In addition, 13 civilian units received dollar amount increases to base salaries that ranged from $1,608 to $2,075 (PBA Exhibit 124).[9] Moreover, in December 2008, the County and the FOP Corrections Sergeants unit agreed to 4% increases for 2010 through 2012 (PBA Exhibit 126) and in April 2010, an interest arbitrator issued an award for the County's rank-and-file corrections unit for the

[9] While the record does not disclose what those base salaries were, if those dollar amounts were added to this unit's average salary of $48,638, they would equate to increases ranging from approximately 3.3% to 4.26%.

2007 to 2010 contract term. For 2010, he awarded a 3.5% increase for officers below the top step of the salary guide and 4.0% for those at maximum salary (*Atlantic County,*IA-2007-57, p. 95).

However, the noted settlements were negotiated before local governments had begun to feel the full effect of the economic downturn. More recent salary data reflects a marked decline in the raises received by public safety employees statewide. Thus, the average increase in interest arbitration awards issued from January 2011 through December 31, 2011 was 2.05%, while that included in awards rendered in calendar year 2010 was 2.88% (PERC January 2012 Salary Analysis). For 2011, the average increase in voluntary reported settlements was 1.87%, while for 2010 the figure was 2.65% (PERC January 2012 Salary Analysis).

The awarded across-the-board rate increases of 2% for 2010; 1.5% for 2011; and 1.5% for 2012 reflect this changed negotiations landscape, and result in an average annual rate increase of 1.66%. At the same time, the awarded increases will provide some moderate enhancement of the officers' compensation package over the contract term. The award will also maintain the unit's relative standing (in terms of maximum salary plus longevity) vis-à-vis other sheriff's officers in southern New Jersey.

In addition, and as addressed in more detail later in this opinion, financial considerations do not necessitate award of the County's final salary offer. I conclude that, within an annual budget of approximately $190 million, the County has sufficient budgetary flexibility to fund the awarded across-the-board increases and K-9 stipend, while maintaining the existing salary guide, longevity and clothing allowance provisions. At this juncture, I note that while the County has extensively detailed the deleterious financial impact that would flow from award of the PBA's offer, I have not granted either the PBA's proposals concerning step movement or its proposed across-the-board increases.

A final element that must be considered in connection with the public interest is the CAP established by *N.J.S.A.* 40A:4-45.1a *et seq*. This CAP limits the amount by which a County may increase its tax levy over that in the preceding year to the lesser of 2.5% or a federally-prepared cost of living adjustment. As explained in the lawful authority section of this opinion, the County must also calculate the levy CAP imposed by *N.J.S.A.* 40A:4-45.44 through 45.47 and abide by whichever statute yields the lower tax levy.

As set forth in more detail in the lawful authority discussion, my award will not cause the County to exceed the limits imposed by the applicable CAP. Even if the award cannot be funded within the framework of the adopted budgets, the

County has additional CAP authority, for 2010 through 2012, which would allow it to fund the award.

Comparisons with Other Employees

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

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

On balance, and as adverted to in the public interest discussion, the record indicates that the salaries for this unit are at the lower end of the spectrum for comparable employees. While some enhancement over the contract term is essential to ensure that salaries for this unit stay within the reasonable range, fiscal considerations point toward lower across-the-board salary adjustments than might be awarded in a more favorable economic climate. Further, economic and budgetary conditions over the past few years have resulted in lower salary increases for public safety employees statewide, thereby providing further support for the increases awarded herein.

The maximum 2009 salary for this unit was $68,086 or $70,586 with the maximum longevity benefit of $2,500. It is difficult to assess how this compensation compares with the salaries of the County's many administrative, professional, and blue collar workers, since most of the internal comparability exhibits pertain, not to actual salaries, but to contract settlements with other units. Nevertheless, this unit's 2009 salary is somewhat higher than that for a top-step County corrections officer which, under the 2007 through 2010 interest arbitration award, was $63,907 in 2009 or $66,407 with the maximum longevity benefit of $2,500 (*Atlantic County, IA-2007-57, p. 87).*

With respect to private sector employees, the average 2009 salary for this unit, $48,638, is well below New Jersey's average private sector wage of $54,542, a figure that represents an averaging of several more highly-paid sectors (utilities, construction, manufacturing, wholesale trade, finance, real estate, information, and management), with several lower paid categories such as retail trade, education, accommodation/ food services, and arts/recreation. The unit's average 2009 salary is also below the 2009 average wages for federal, state and local government employees, which ranged from $55,442 for local government employees in New Jersey to $69,636 for federal employees. By contrast, the $48,638 average salary is higher than the Atlantic County average private sector wage of $36,354.

In evaluating dollar amount salaries, it is essential to compare Local 243's salaries and working conditions with those of employees who perform the "same or similar services" in the "same or comparable jurisdictions." *N.J.S.A.* 34:13A-16g(2). The first prong of this statutory directive calls for comparisons with other sheriff's officers. As to comparable jurisdictions, Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties have historically been considered as constituting southern New Jersey, and these geographically proximate counties are the most appropriate comparison group. The PBA adds Monmouth and Mercer counties to its analysis and, for its part, the County focuses heavily on Hunterdon County.

I have given the greatest weight to the data pertaining to sheriff's officers in Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties. However, whether comparisons are limited to southern New Jersey as it is traditionally viewed, or whether comparisons are extended to Mercer, Monmouth, and Hunterdon counties, the conclusion is the same. Atlantic County's sheriff's officers are at the lower end of the compensation spectrum vis-à-vis their counterparts in other jurisdictions.

The record includes the following salary information for (2007 through 2009) for sheriff's officers in the noted jurisdictions.

	Salary	Year	Maximum Salary + Maximum Longevity
Atlantic	$68,086	2009	$70,586
Burlington	n/a		
Camden	$68,324	2007	$73,010
Cape May	$69,118	2009	$76,021[10]
Cumberland	$53,994	2009	$55,794
Gloucester	$66,764	2009	$72,105
Mercer	$79,425	2008	$81,625
Monmouth	$85,431	2008	$85,431 (no longevity)
Ocean	$84,824	2008	$90,338
Salem	$73,556	2009	$73,556 (no longevity)
Hunterdon	$57,500	2009	$57,500 (no longevity)

[PBA Exhibits 91, 92, & 93; *Hunterdon Cty.*, IA-2009-103, p. 81]

Although this salary information covers different years, it shows a definite relationship among the above-noted counties in terms of maximum salaries (plus longevity, if applicable). Top-step officers in Atlantic are paid far less than those in Ocean, Mercer and Monmouth, with those three jurisdictions comprising the uppermost tier of compensation. Cumberland and Hunterdon lag well behind all other counties, while Camden, Cape May, Gloucester and Salem form another cluster, with salaries ranging from $72,105 to $76,021. Atlantic's 2009 maximum salary plus longevity is closest to this group of southern New Jersey counties, albeit it is the lowest among them at $70,586.

[10] PBA Exhibit 93 lists Cape May's 2009 maximum base salary as $69,118, with a 10% maximum longevity benefit. However, PBA Exhibit 99 states that Cape May does not have a longevity benefit. This discrepancy is perhaps attributable to a post-2009 contract that eliminated longevity or included it within base salary.

The PBA's proposed across-the-board increases, coupled with its proposals concerning step movement, appear designed to bring Atlantic's maximum salary closer to those in Ocean, Mercer, and Monmouth, although the $85,046 salary it projects for 2014 (with longevity and clothing allowance rolled-in) would still fall short of Ocean's 2008 salary and would not quite equal Monmouth's 2008 top-step compensation. Nevertheless, as outlined in the public interest and financial impact analysis, the PBA's proposed adjustments would entail substantial costs and are untenable in light of the County's budgetary circumstances and the broader economic picture. Moreover, absent firm, clear-cut evidence that a high number of officers have been leaving the department prior to retirement, the PBA's proposed adjustments would be unusual at any time, given that negotiators and interest arbitrators ordinarily aim to maintain a unit's relative standing vis-à-vis comparable units.

By contrast, the County's final offer would have the effect of diminishing Atlantic's maximum salary in absolute and comparative terms. When coupled with the County's proposal to eliminate longevity, the County's final offer would result in a maximum salary, in 2012, of $70,318 — less than the unit's maximum salary plus longevity in 2009. Atlantic would still likely rank higher than Cumberland County (and Hunterdon), but it would fall farther behind Camden, Cape May, Gloucester, Salem and Ocean.

Given the wide-ranging responsibilities undertaken by the Atlantic County Sheriff's department, coupled with the County's higher than average crime rate, the County's proposed diminution in maximum compensation is not warranted from a comparability standpoint. Nor is it compelled by fiscal exigencies, as discussed *infra.*

The Hunterdon County award does not alter this comparability analysis. The County correctly notes that the Hunterdon County Sheriff's Office has a lower maximum salary than Atlantic, despite Hunterdon being a very affluent locale. However, Hunterdon is not a geographic proximate jurisdiction and the County has not shown how it is demographically or otherwise similar to Atlantic. In any case, the interest arbitration award submitted by the County makes clear that Hunterdon had a very severe turnover problem and, prior to the award, was the only county in the State not to have an incremental salary schedule for its sheriff's officers. The award of the schedule was intended to help improve the County's ability to recruit and retain sheriff's officers but the arbitrator noted that the 2011 maximum salary for the unit would still be significantly below that in all other counties (*Hunterdon Cty. Sheriff,* IA-2009-103, p. 79, *aff'd P.E.R.C.* No. 2011-75, May 5, 2011).[11] In sum, *Hunterdon* is an outlier, with the comparability data as a whole pointing to

[11] The parties in Hunterdon did not submit information concerning Cumberland.

the conclusion that sheriff's officers in Atlantic have lower than average compensation.

Within this framework, I must determine the appropriate across-the-board increases, and salary guide structure, for 2010 through 2012. In a more typical negotiations cycle, I would be strongly inclined to award increases close to those received by other County units for 2010, where PBA Exhibit 124 shows that most settlements were at the 4.0% level, with a range of 2.75% to 6.8%. *Compare Union Cty.* However, most of those percentage increases were part of settlements for 2007 through 2010, and were thus negotiated in a substantially different economic and budgetary environment. I note that even the September 2008 settlement with the Corrections Sergeants (which included 4% increases for 2010 through 2012), was arrived at in September 2008, before local governments began to feel the full impact of the recession (PBA Exhibit 126). Similarly, the interest arbitration award involving the rank-and-file corrections unit pertained to an earlier negotiations cycle, 2007 through 2010.

As discussed throughout this opinion, increases at the 4.0% level are inconsistent with the County's current budgetary circumstances and the broader economic picture. Further, the record reflects a trend away from increases at this level. For example, the NJLWD reported that, during 2009, the average wages of federal, state, and local government workers in New Jersey increased 2.2%, while average wages for private sector workers in Atlantic County *decreased* 2.6%. Statewide average private-sector wages declined -0.7%. For 2010, the picture is somewhat improved: statewide private sector wages increased 2.2% while those in Atlantic County rose 1.6% (NJLWD 2011 Private Sector Wage Report).

Similarly, the average annual increase in interest arbitration awards issued in 2010 was 2.88%, while the figure declined to 2.05% for 2011. This downward trend is also reflected in the average salary increase in reported interest arbitration settlements, where the average increase was 2.65% in 2010 and 1.87% in 2011 (PERC January 2012 Salary Analysis). Within the County itself, it must be emphasized that the percentage increases received by civilian units in 2010 were balanced by the fact they were also required to take unpaid furlough days in 2010.

Finally, I have considered the NJEA research information submitted by the PBA, which shows average teacher settlements in Atlantic County school districts of 4.56% for 2009-2010; 4.0% for 2010-2011; and 4.05% for 2011-2012. This information is of limited relevance to this proceeding given the profound differences between counties and school districts. Further, consistent with the traditional practice in the education community, it is likely that the reported percentage increases include increment costs. *Contrast Hunterdon Cty. Sheriff,* P.E.R.C. No. 2011-75, p. 16 (statistics on average statewide salary increases do not include increment costs). It is also unclear when the NJEA-reported settlements were negotiated.

At the same time, comparability data is not supportive of the County's offer which seeks an average annual across-the-board increase (for 2010 to 2012) of 1.083% for those at maximum salary and less than one-quarter of a percent for those advancing through the salary guide. In this vein, the exhibits submitted by the County reflect higher across-the-board increases than those which the County espouses. For example, *Borough of Keyport (IA-2008-*092, p. 74 *),* included an average annual across-the-board rate increase of 2.025% (excluding increments) for 2008 through 2010. In *City of Jersey City (IA-2009-070),* the arbitrator awarded 2.75% across-the-board increases for 2009 through 2012 for a superior officer unit without an incremental salary schedule.

Within this context, I have decided to award across-the-board rate increases of 2.0% for 2010, 1.5% for 2011, and 1.5% for 2012 in order to provide some very moderate enhancement of unit salaries at all steps. These adjustments will not change the unit's relative standing and salaries will remain above those in Cumberland (and Hunterdon) and well below those in Ocean, Mercer, and Monmouth. And while a salutary objective would be to maintain compensation well within the range of that in Camden, Cape May, Gloucester, and Salem, that goal must be considered in the context of the County's budgetary constraints.

Under the award, unit salaries will continue to lag behind salaries in this core group of counties, and in a more favorable environment I would likely have awarded increases that brought them closer to their colleagues in these jurisdictions.

The following chart illustrates how a maximum sheriff's officer salary in 2012 will compare with those in Camden, Cape May, Gloucester, and Salem.

	Salary	Year	Maximum Salary + Maximum Longevity
Atlantic	$71,547	2012	$74,047 ($2,500 longevity at 20 yrs.)
Camden	$68,324	2007	$73,010 (2007 salary & maximum longevity)
Cape May	$78,372	2012	$78,372 (no longevity)
Gloucester	$77,409	2012	$83,602 (8% longevity at 20 yrs.)
Salem	$81,172	2011	$81,172 (no longevity)

[PBA Exhibits 91,96, 97 & 99]

As noted in connection with the public interest, I have declined to award the County's proposal to extend the salary guide and freeze certain guide steps. The current nine-step guide is close to the average: Cumberland has 10 steps; Hunterdon and Cape May have 11; and all remaining counties have nine or fewer steps. Camden's salary guide had five steps in 2007, the last year for which information is available. The County's salary guide proposals would diminish the unit's overall compensation package, a result that is not warranted given that salaries for this unit will continue to be at the low end of the spectrum for sheriff's officers in comparable jurisdictions.

Finally, while the awarded increases are lower than in recent interest arbitration awards and settlements, they are consistent with the developments that will unfold once the new interest arbitration statute is fully implemented. For all contracts expiring between January 1, 2011 and April 1, 2014, *L.* 2010, *c.* 105 prohibits an arbitrator from rendering an award that increases base salary on an annual basis by more than 2%. Base salary is defined as "the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service."

These provisions should result in a downward pressure on awarded increases. Settlements should also trend lower, since negotiations will be conducted within the framework of the amended interest arbitration statute. In this environment, I believe the County's compensation package will remain within the reasonable range.

Overall Compensation

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

Viewed from this perspective, unit members enjoy a comprehensive compensation and benefit package that includes vacation, sick leave, personal days, a clothing allowance, PFRS membership, and full health benefits coverage under the SHBP. The existing contract also includes a dollar-amount longevity benefit that is less than the percentage benefit offered in some other southern New Jersey jurisdictions (Camden, Ocean, and Gloucester) but is more generous than that in Cumberland. Salem, Cape May, Monmouth and Hunterdon have no longevity benefit, albeit the first three counties enjoy higher salaries than Atlantic.

I have also considered that unit members' contractual benefits package has unquestionably been diminished by both Chapter 2 and the more recently enacted Chapter 78. The latter statute raises the employee's PFRS contribution from 8.5% to 10% of base salary and both enactments mandate employee health benefit contributions. These health benefit changes will eventually apply to all New Jersey public employees, while the pension changes will be effectuated for all public safety workers. In this posture, the legislative changes will not materially affect unit members overall compensation vis-à-vis other public sector employees in New Jersey.

Within this framework, the overall compensation criterion does not factor significantly into my assessment of the parties' salary and salary guide proposals. However, as discussed *infra,* the fact that the maximum base salary in the unit is at the low end of the spectrum of comparable sheriff's departments is one factor that has prompted me to retain the existing longevity benefit and clothing allowance.

Stipulations

N.J.S.A. 34:13A-16g(4) requires the arbitrators to consider the stipulations of the parties. There are no formal stipulations that pertain to the issues involved in this interest arbitration. However, in its reply brief, the County states that it agrees with the PBA's FTO proposal. Similarly, the PBA has indicated its agreement with the County's CDL proposal. These proposals have therefore been awarded.

The County states that the PBA has agreed to its proposals concerning uniforms for new recruits and the PBA makes the same claim concerning its proposed changes with respect to sick leave and vacation scheduling. However, I have not awarded these provisions absent the other party's specific acknowledgement of the agreement.

Lawful Authority of the Employer; Statutory Restrictions on the Employer

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

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

For calendar year 2011, *L.* 2010, *c.* 44 lowered the above-described tax levy CAP to 2%. While Chapter 44 eliminated certain CAP exceptions it maintained add-ons for new ratables and exclusions for pension increases over 2% and health benefits increases over 2% up to the SHBP increase.

N.J.S.A. 40A:4-45.4, enacted in 1977, contains a different formula. It limits the amount by which a County can increase its total tax levy over that from the previous year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA). Certain items are excluded from the CAP limits including, among other items: revenue generated by applying the preceding year's tax rate to the apportionment valuation of new construction or improvements; capital expenditures; debt service; and expenditures mandated by statute or court order. Both statutes allow local units to "bank" the difference between the maximum allowable amount allowed to be raised in the current year and the actual amount raised. The CAP bank is not available cash but constitutes additional taxation authority.

For 2010, the County was subject to the 1977 appropriation CAP law, since it resulted in a lower maximum levy than did the 4% CAP (Exhibit J-1, sheet 3a). It was able to comply with this CAP because it used its 2008 CAP bank of $862,330 and a portion of its 2009 CAP bank of $1,004,470 (Exhibit J-1, sheet 3a).

In 2010, the award results in $93,466 in across-the-board increases and K-9 stipends. As discussed in the financial impact analysis, these monies can likely be accommodated with the framework of the 2010 adopted budget of $188,750,379. However, even if the additional monies are not available in, for example, appropriated reserves for salary increases, the awarded salary increases would not require the County to breach the applicable CAP limitation, given that the County had an additional $779,223 in its 2009 CAP bank (Exhibit J-1, sheet 3a).

For 2011, the 1977 CAP legislation also governed (Exhibit J-2, sheet 3a), and the awarded across-the-board increases cost $69,206 in that year. Again, even if these additional monies are not available in, for example, appropriated reserves for salary increases, the awarded salary increases would not require the County to breach the applicable CAP limitation, given that the County had an additional $967,247 available in its CAP bank (Exhibit J-2, sheet 3a).

The same analysis pertains in 2012, where it appears that the 1977 CAP again applied and yielded a maximum allowable levy of $155,312,568 (2012 County Budget, sheet 3a). The 2012 budget as introduced included an actual tax levy of $152,745,743 (2012 Budget, sheet 3a). Therefore, the County did not have to draw on either the $1,226,079 CAP bank from 2010, which was allowed to lapse, or the $1,666,321 CAP bank from 2011, which was carried forward for possible use in 2013 (2012 County Budget, sheet 3a). Thus, the County has additional CAP flexibility, should it be needed, to fund the across-the-board increases included in the award for 2012: $52,683 (with a flow-through into 2013 of $17,561).

Financial Impact of the Award

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

I have given *N.J.S.A.* 34:13A-16g(6) substantial weight in awarding moderate salary increases that are lower than those proposed by the PBA and, further, reflect a changed negotiations landscape for public safety employees statewide. I also conclude that my award will not have an adverse financial impact on the County or its residents and taxpayers.

Atlantic County is well-managed and has some markers of fiscal strength, including a low debt burden; an AA bond rating with a "stable" outlook; and a substantial tax base of over $46 billion. Nevertheless, there is no question but that the County has faced serious financial challenges during the last few years, a situation that warrants caution in awarding salary increases.

A review of the pertinent financial data shows that the County's end of year fund balance declined from $20,665,982 in 2005 to $15,504,926 in 2010 — the same time period when employee costs increased from $85,381,958 to

$113,632,321 and the tax levy escalated from $110,840,470 to $146,224,156 (Exhibit C-6). As County Executive Levinson stated in January 2009: "Our costs are up. Our revenues are down" (Exhibit C-18). He reiterated those concerns in January 2011 (Exhibit C-16).

Some of the revenue declines are attributable to a stagnant housing market and an environment of low interest rates. For example, realty transfer fees received by the County Clerk's office have continued to decline from a high of $5,857,351in 2007 to $2,891,680 in 2010 to $2,463,438 in 2011 (Exhibit C-6; 2012 County Budget, sheet 4). Interest on investments plummeted from $3,646,669 in 2007 to $620,704 in 2010, to $97,993 in 2011 (Exhibit C-6; 2012 County Budget, sheet 4). On the positive side, these developments have been partially offset by the substantial amounts attributable to insurance and telephone refunds (Exhibits J-1 & J-2, sheet 4; 2012 County Budget, sheet 4).

Within this environment, the County has pursued a commitment to reducing spending while maintaining essential services for its clients —predominantly the poor and the elderly (Exhibit C-16 through C-18). Achievement of those objectives has entailed some costs: in 2009 and 2010, 80 positions were eliminated and civilian employees took mandatory furlough days, thereby saving the County $1.8 million (Exhibit C-16 & C-17). As a result of these actions, the County was able to maintain a 2011 equalized tax rate that was at about the same level that it was five years prior, before the financial downturn (Exhibit C-16). In addition, while the County's end-of- year fund balance has not rebounded to pre-recession levels, it has stabilized at $15-plus million for 2008 through 2011. Also during 2008 through 2011, the County has also been able to regenerate that portion of the fund balance that was appropriated in the annual budget (Exhibits J-1 and J-2; 2012 County Budget).

Caprio's report does dispute that the County has faced some financial challenges in recent years. However, he highlights different facets of the County's budgetary profile. For example, he underscores that, compared to other New Jersey counties, Atlantic has a low average property tax bill; and a low proportion of taxes devoted to County government (Caprio Report, Exhibits 9, 10, & 24). However, given the strains faced by all governmental entities in New Jersey, this data does not weigh in favor of the economic package sought by the PBA.

Moreover, Atlantic's tax rate and average tax bill, as well as the fact that it had additional expenditure authority under the 1977 CAP legislation, must be evaluated in the context of the comparatively low income of Atlantic County residents; the County's high unemployment rate (12.4% as of December 2011); and the continuing difficulties in the casino industry. Similarly, while Caprio views construction activity in the County as a positive indicator, the data shows that construction starts have not come close to rebounding to 2005 or 2006 levels, although there was projected to be some increase between 2009 and 2010 (Caprio Report, Exhibit 1). Finally, while Caprio predicted that the County would have a surplus of $16 million at the end of 2011, it must be emphasized that, like many jurisdictions, the County depends on appropriating a significant portion of its end-of-year fund balance in the following year's budget. It is only through this practice that it is able to avoid increases in the tax rate.

Against this backdrop, I have given substantial weight to the financial impact criterion and awarded moderate increases that are less than what could be supported under the comparability criterion. However, while the financial impact criterion strongly supports moderate increases, it does not mandate award of the County's final offer. I conclude that the award represents a reasonable determination of the salary issue and will not negatively affect the County or its taxpayers.

For 2010, the cost of the award includes the $90,466 attributable to the 2% across-the-board-increases and $3,000 in K-9 stipends for two individuals. Some of these amounts would have been incurred under the County's offer, including $2,000 for the K-9 stipends and a 2% across-the-board increase for the 31 officers who were at the top step of the salary guide in 2009 (PBA Exhibit 112; Exhibit C-1). Because the County did not propose to change the salary guide structure for

2010, virtually all increment costs incurred under the award would also have been required under the County's offer.

The foregoing costs must be evaluated in the context of a 2010 budget of $188,750,379, and the fact that, beginning in the second half of 2010, the County received approximately $33,925 in new employee health benefits contributions that it would otherwise have had to absorb. In this regard, while it is not my role to direct how the County should fund the award, *see County of Essex,* citing *New Jersey State PBA, Local 29 v. Irvington,* 80 *N.J.* 271, 293 (1970), it is reasonable to surmise that the difference between the award and the County's offer might well be accommodated within the framework of the adopted 2010 budget by, for example, drawing on reserved appropriations. *Compare Essex* (because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund).

A similar analysis pertains for 2011 and 2012. The cost of the awarded 1.5% across-the-board increases for these years is $69,206 in 2011 and $52,683 in 2012 (with a flow-through into 2013 of $17,561). These amounts of course exceed the cost of the County's proposal, which sought increases of .50% in 2011 and .75% in 2012 for top-step officers, and lesser increases for the other salary guide steps.

Again, the cost of the awarded across-the-board increases must be considered in the context of annual budgets for 2011 and 2012 of approximately $190 million and the fact that, in both 2011 and 2012, the County derived some additional budgetary flexibility statutorily-mandated health benefit contributions. During 2011, the County received approximately $33,925 in new health benefits contributions pursuant to the full implementation of Chapter 2. Similarly, during 2012, the County will also obtain some enhanced budgetary flexibility from the health benefits contributions required by Chapter 78. It appears that officers at maximum salary with family medical and prescription coverage will pay approximately $909 more per year in health benefits contributions than they would under Chapter 2. *See footnote 8.*

Finally, for both 2011 and 2012, there are some costs attributable to retaining the existing guide structure, as opposed to awarding the County's proposal to add two new steps and modify three other steps. However, the increment costs that will be required during 2011 and 2012 are less than those which would have obtained under the PBA's salary guide proposals.

Moreover, it is worth noting that increment costs often result from turnover. To the extent that officers at the bottom of the salary guide have replaced senior officers, the unit's total base salary costs will be lower than they would have been absent the departure of the more highly compensated employees. For example, turnover in this unit resulted in increases in total base salary costs that, between 2006 and 2010, were less than the percentage increases included in the negotiated agreement (PBA Exhibits 113 & 118).[12]

In light of the foregoing, I believe the moderate increases awarded are consistent with the County's conservative fiscal practices; represent a reasonable determination of the salary dispute; and will not have a negative effect on the County, its residents or taxpayers, or the county purposes tax.

<u>Cost of Living</u>

N.J.S.A. 34:13A-16g(7) mandates consideration of the cost of living, which is typically measured by the Consumer Price Index for all Urban Consumers (CPI-U) published by the federal Bureau of Labor Statistics (BLS). The BLS also reports annual changes in the CPI-U for the Philadelphia-Wilmington-Atlantic City region (PBA Exhibit 202). Each party has submitted BLS charts and news releases for 2009 and 2010 and I have supplemented that information with the most recent BLS data.

Between October 2009 and October 2010, the CPI-U for the Philadelphia-Wilmington-Atlantic City area increased 1.7%; , while the annual percentage change for 2010 was 2.0%, compared to -0.4% for 2009 (PBA Exhibit 202; BLS

[12] When Chapter 105 is implemented, the salary CAP that it mandates will be a CAP on "total base salary costs", including longevity and increments, as opposed to a CAP on the percentage and step increases received by any individual employee. Thus, if turnover occurs in a unit, it will likely affect the calculation of the Chapter 105 salary CAP.

Table for Philadelphia-Wilmington-Atlantic City, www.bls.gov). For 2011, the annual percentage change in the CPI-U for the area was 2.7%, while the December 2010 to December 2011increase was 2.8%) (BLS Table for Philadelphia-Wilmington-Atlantic City, www.bls.gov).

For 2010, the awarded across-the-board-increase corresponds to the annual increase in the CPI-U for the Atlantic City region (2.0%). For 2011, the awarded across-the-board increase is lower than the annual 2.7% increase. However, it should be recalled that the CPI-U includes increases in medical costs which, even under recent legislation, are still borne largely by the County.

On balance, I have given the cost of living criterion some weight in arriving at an award that includes an average annual across-the-board rate increase of 1.66%. The cost of living, standing alone, might point to higher across-the-board increases than I have awarded. However, I have given greater weight to criteria pertaining to the public interest, comparisons with other employees, financial impact, and the continuity and stability of employment. These factors together weigh in favor of the salary increases that I have awarded.

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g(8) directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in public and private sector negotiations. This factor incorporates three concepts that have been discussed at other points in this award. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Absent strong justification, arbitrators are generally reluctant to significantly change a unit's relative standing, reasoning that interest arbitration, as an extension of the negotiations process, is not ordinarily intended to revamp a compensation structure established over many years of negotiations.

Finally, the continuity and stability of employment also implicates the importance of considering internal settlements, since unwarranted deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability within a jurisdiction.

Applying these concepts to the record in this case, the continuity and stability of employment criterion points to increases higher than those proposed by the County but less than those sought by the PBA.

The awarded increases, together with my decision to retain the existing salary guide structure, will maintain the unit's relative standing and keep salaries within the range of those in most southern New Jersey sheriff's departments, particularly since the implementation of Chapter 105 will likely exert a downward pressure on future salary increases in those jurisdictions. While I appreciate the PBA's desire to improve salaries for these skilled officers, this is not the environment to change the unit's relative standing or to make the adjustments that it seeks.

Similarly, although I recognize that many officers appear to have left the department in recent years, the PBA has not shown that this circumstance is attributable to officers choosing to accept better-paying law enforcement positions, as opposed to qualifying for retirement or disability. In the current difficult labor market, it is unlikely that the award will either cause officers to leave the department or impair the County's ability to recruit new officers.

Finally, I have considered that the awarded increases are less than those received by many civilian and law enforcement units for 2010 and by the FOP Sergeants for 2010 through 2012. However, these settlements were negotiated in a significantly different legislative and budgetary environment and, for the most part, they cover the 2007 through 2010 time period. Even the FOP Sergeants settlement was reached in December 2008, before local entities had felt the full impact of the downturn in the State and national economies. By contrast, this award covers the 2010 through 2012 time frame and is issued in a significantly changed negotiations and budgetary landscape. That environment militates against following either the earlier internal settlements or the interest arbitration award involving the corrections officers.

In sum, the continuity of stability and employment will not jeopardized by the awarded increases, which are lower than those proposed by the PBA. At the same time, I have also determined that the County's final offer could well jeopardize the morale of this dedicated group of sheriff's officers, thereby triggering an undesirable level of turnover. As discussed at other points in this opinion, the County's final offer, including its longevity proposal, would reduce the salary of top-step officers over the term of the agreement and would diminish the compensation of less senior officers vis-à-vis their colleagues in other jurisdictions.

OTHER ECONOMIC AND NON-ECONOMIC PROPOSALS

The foregoing discussion of the statutory factors informs my analysis of the other unresolved issues and yields two guiding principles with respect to the parties' economic proposals. First, when the moderate across-the-board salary increases are taken into account, the public interest in maintaining a competitive compensation package militates against reductions in existing benefits. Second, the budgetary constraints discussed in connection with the financial impact and public interest criteria weigh against award of those proposals, other than the K-9 stipend, that would impose additional costs on the County.

Longevity and Clothing Allowance

Both parties propose changes to the longevity benefit and the clothing allowance. I first consider the County's proposals.

In seeking to eliminate all longevity payments and clothing stipends, the County underscores that law enforcement officers in the Prosecutor's Office have agreed to such changes. Nevertheless, I conclude that the County has not met its burden of justifying these proposals.

The longevity benefit is an integral part of this unit's compensation package and, indeed, is one component of overall salary. As discussed in the public interest and comparability sections of this opinion, Atlantic County sheriff's officers are on the low end of the compensation spectrum compared to their colleagues in other counties. While I have awarded lower across-the-board increases than could be justified under comparability considerations, I have still endeavored to arrive at an overall award that will maintain unit salaries within a reasonable range of those in southern New Jersey.

Maintenance of the existing longevity benefit is essential to achieving this objective and to retaining a competitive salary package for all officers who qualify for the benefit, especially those at maximum salary. Elimination of the longevity stipend would reduce the salary of such top-step officers below 2009 levels, a result that would be potentially injurious to the public interest and the continuity and stability of employment. The same analysis pertains to the clothing allowance, which is a common benefit in law enforcement departments and helps augment the overall compensation package for this unit.

My analysis is not altered by the fact that law enforcement employees in the Prosecutor's Office may have agreed to eliminate the noted benefits. The record includes no information as to the salaries of these employees or how those salaries compare with their counterparts in other jurisdictions. Thus, it is not possible to gauge how the elimination of longevity and clothing allowance affected the competitiveness of their overall compensation structure. Moreover, since it appears that law enforcement officers in the Prosecutor's Office received increases of at least 4% for 2010, any reductions in other benefits must be considered in this context (PBA Exhibit 125).

Based on the foregoing, the County's longevity and clothing allowance proposals are denied. I also deny the PBA's final offer on these items.

The PBA's longevity proposal has multiple components. First, it seeks to eliminate the longevity benefit for all officers below step 9. It then proposes to take the average longevity benefit for the unit as a whole ($1,900) and fold it into the maximum salary for 2011, before applying the across-the-board salary increase for that year. The PBA urges that this proposal would actually decrease costs for the County, while enhancing the maximum salary for top-step officers.

The PBA's longevity proposal is problematic for two reasons. First, over the long term, it could well increase costs for the County because, once the longevity benefit is folded into base salary, future across-the-board increases are calculated on the enhanced salary, as is overtime and, quite possibly, pension contributions. Second, the PBA's proposal deprives less experienced officers of the longevity payments that they now receive, a less than optimal result given the public interest in maintaining a competitive compensation package for all unit members.

Similar concerns are raised by the PBA's proposal to increase the clothing allowance from $1,350 to $1,600 for all employees, and then to roll that amount into 2009 base salaries before applying across-the-board increases. The dollar amount increase in the clothing allowance is not warranted in light of the fiscal concerns highlighted throughout this opinion, and my decision to allocate economic enhancements primarily to across-the-board increases. Further, as discussed in connection with longevity, including this benefit in base salary entails its own costs. For these reasons, I conclude that the PBA has not met its burden of justifying its longevity and clothing allowance proposals.

Work Schedule and Shift Bidding Proposals

Work schedules and shift bidding are among the primary issues in this proceeding, with the County vigorously espousing the need for flexible schedules in the canine, bicycle, and warrants units and the PBA strongly urging adoption of a new bidding procedure. The PBA has also proposed language that would allow for some flexible scheduling in the K-9 and bicycle units, albeit it links its offer to the County's acceptance of its shift bidding proposal. In its post-hearing brief, the County continues its objection to the PBA's shift bidding proposal but states "[t]he Sheriff has compromised his position and is willing and ready to adopt a flex schedule based upon those terms offered by the PBA *without job bidding*."

I turn first to the issue of work schedules. I am fully persuaded that, because of the specialized missions of the canine, bicycle and warrants unit, there are strong operational reasons for officers in such assignments to have work schedules that do not conform to a Monday to Friday, 8:00 a.m. to 4:00 p.m. work week. Flexible schedules will better align work hours with departmental needs, and will ensure that officers in the warrant unit are regularly on duty when they are most likely to apprehend fugitives; K-9 officers can more readily respond to the many off-hours requests for assistance; and the bicycle unit can better patrol recreational areas on evenings and weekends.

The PBA's own admittedly contingent work schedule proposal acknowledges the desirability of having some scheduling flexibility for the K-9 and bicycle units and, further, it offers no particularized objection to the County's argument that such flexibility is also appropriate for the warrants division.[13] In any case, the Sheriff convincingly testified that fugitives and criminals are more easily apprehended during early morning or evening hours, outside the purview of the current Monday to Friday schedule.

In this posture, I award the County's proposal to amend Article IV, Sections C.4 and C. 5 to give the Sheriff authority to establish flexible schedules for the warrants, K-9, and bicycle units, provided the schedules fall within the contractual framework of the unbroken eight (8) hour shift, 40 hour work week. The award will thus extend the existing contract language pertaining to the legal and investigative unit to the three noted specialty units. While the PBA objects that this type of broad provision is subject to abuse, it has not cited problems with its application to the legal and investigative section.

I also award the County's proposal to amend (and renumber) Article IV, Section C.7, which currently gives the Sheriff the authority to alter work schedules. The proposal expands on the existing provision by setting forth some specific examples of when work schedules could be altered (*e.g.*, mandatory training). It also requires the Sheriff to give at least two weeks' notice of a modified schedule in all "non-volunteer" situations. This new language helps address the PBA's

---

[13] The PBA's proposal for the warrants unit includes the same hours as in the predecessor contract, but without the paragraph stating that officers shall work five consecutive days followed by two consecutive days off (County Exhibit 20H, p. 10).

concern that officers are entitled to rely on regularly established work schedules, shifts, and hours.

I decline to award those parts of the PBA proposal that deal with work hours for the information technology unit; the schedule for the SRO; and a proposed new Article IV.C.12, which would mandate that work schedules for any new units or titles be negotiated with the PBA prior to implementation. No evidence or testimony was adduced on these proposals and the PBA has therefore not met its burden of justifying them.

Finally, I am not persuaded that Article IV.D should be amended in the manner sought by the PBA. As it now reads, Article IV.D states that, within each operational unit to which an employee is assigned (other than Special Operations), employees will be able to bid semi-annually on choice of shift and available days off, in accordance with seniority "except if departmental needs require a particular transfer." The PBA would substitute "special skills" for "departmental needs." However, the PBA but does not contend that the Sheriff has inappropriately invoked the existing clause and the insertion of the requested language would substantially narrow the exception and could have a significant impact on departmental operations. I therefore decline to award the proposal.

Turning to the PBA's shift bidding proposal, it seeks implementation of a system whereby "bidding for jobs and work locations shall be governed and assigned based upon seniority except if special qualifications and/or skills are necessary." The proposed bidding position would expressly exclude the K-9, bicycle, and legal units, as well as SROs.

The gravamen of the PBA's position is that this type of bidding procedure is common in law enforcement contracts and is in fact included in the County's agreement with its corrections officers. Therefore, it rejects the County's contention that the bidding procedure would be disruptive and interfere with management's prerogative to direct the department and maintain efficiency. For its part, the County underscores the Sheriff's position that he needs the discretion to decide which officers to put in which positions.

While an earlier version of the PBA's work schedule proposal was the subject of a scope-of-negotiations decision by PERC, the County did not allege that the PBA's shift bidding proposal was not mandatorily negotiable.[14] Thus, I am charged with evaluating the merits of the PBA's proposal. The linchpin of my analysis is that the record does not contain sufficient information for me to conclude that the proposal should be awarded.

Preliminarily, it is apparent that the proposal is a wide-ranging one that would require jobs in the transportation, courts, identification, and warrants unit to be presumptively assigned on the basis of seniority. The proposal provides an

[14] It does not appear that the PBA tied its original work schedule to the County's acceptance of its shift bidding proposal.

exception "if special qualifications and/or skills are necessary" but the Sheriff's decision to invoke this provision would be subject to resolution in grievance and/or scope of negotiations proceedings. Thus, the proposed bidding procedure would constitute a sharp departure from the current system, whereby the Sheriff assigns each officer to his or her unit and his or her position within that unit. Currently, only shifts (work hours) are bid (County Exhibit 20H, pp. 11-12).

While the PBA correctly notes that shift bidding clauses are not unusual in law enforcement contracts, that circumstance is not in and of itself a basis on which to award its proposal. This is especially so given that the proposal here provides for bidding for shifts *and* assignments. *See Camden Cty. Sheriff,* P.E.R.C. No. 2000-25, 25 *NJPER* 431 (¶30190 1999) aff'd 27 *NJPER* 357 (¶32128 2001)(articulating the principles that are implicated in evaluating the mandatory negotiability of contract clauses that provide for bidding for both shifts and assignments).[15]

Against this backdrop, the PBA did not offer any testimonial or documentary evidence concerning how the proposed bidding procedure would

[15] The first principle is that public employers and majority representatives may agree that seniority can be a factor in shift assignments provided all qualifications are equal and managerial prerogatives are not otherwise compromised. The second principle is that public employers have a managerial prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. PERC explained that, in the event of a negotiability challenge to a bidding procedure, the Commission would assess the interplay between these two principles on a case-by-case basis. *Camden* ultimately held that the PBA's proposal would have required bidding with respect to many positions for which all unit members were not equally qualified, because the positions required special training, experience, or other qualifications. Accordingly, PERC held that the proposal was not mandatorily negotiable with respect to those positions.

likely benefit officers or the department. Nor has the PBA suggested that there are problems with, or a lack of confidence in, the way in which the Sheriff has made assignments under the current system. In this posture, I decline to award a bidding proposal that would significantly change departmental procedures by making seniority the standard by which officers are assigned to a broad spectrum of positions that are now filled on an individualized basis.

I recognize that, just as the PBA has not offered detailed arguments as to the benefits of the proposal, the County has not provided any specific analysis as to how or why its implementation would impair departmental efficiency. Indeed, because the County did not file a scope of negotiations petition, I must assume that all unit members are qualified for the positions that would be bid, and that the bidding procedure would not significantly interfere with the governmental policy goal of matching the best qualified employees with particular assignments. *Camden.*

However, the fact that a proposal is mandatorily negotiable does not mean that it should be awarded. The PBA bears the burden of affirmatively showing why the proposal should be granted. It has not done so in this proceeding but is not foreclosed from raising this issue in future negotiations.

County and PBA K-9 Stipend Proposals

The parties are in accord that the canine handlers in the recently formed K-9 unit should receive some compensation for at-home care of their dogs. Indeed, the County's comprehensive policy for the unit currently states that "a compensation stipend is awarded for at-home care for the canine, kennel and assigned equipment on days off as agreed upon in a labor agreement" (PBA Exhibit 169, p. 5). However, the unit was established after the last contract was negotiated; the parties have been unable to resolve the stipend question in the current round of negotiations; and they have each presented stipend proposals in this proceeding.

Before evaluating the parties' competing proposals, it is useful to start with a review of the unit's current policies, as well as pertinent FLSA regulations and case law. The Canine Unit Directive, which was effective September 1, 2009, establishes detailed protocols for handler and canine selection; training for canine teams; and deployment of canines in apprehensions and arrests, building searches, crowd control, tracking and narcotics detection.

The policy also comprehensively sets forth the handler's responsibility for the health, care and well being of the canine, including the canine's daily feeding, grooming and exercise; maintenance and cleaning of the yard or kennel where it is housed; and attention to the canine's health needs. The directive underscores that the handler is responsible and accountable for the assigned canine's actions both on and off duty and, toward this end, the handler is charged with keeping the dog under his or her complete control and constant supervision. In the absence of the handler, canine care must be limited to mature and responsible household members who have demonstrated the ability to control the canine. The canine unit policy currently provides that, within the context of their 40-hour work week, handlers shall be relieved during the first and last thirty (30) minutes of each tour of duty in order to care for the canine, kennel, and assigned equipment.

The County's policies must be read together with FLSA regulations and case law, which state that canine care performed during off-duty hours is compensable under the FLSA. *See, e.g., Leever v. Carson City,* 360 F.3d 1014, 1017 n. 1 (9th Cir. 2004); *Brock v. City of Cincinnati*, 236 F.3d 793, 801 (6th Cir. 2001); *Krause v. Manalpan Tp.,* No.09-2871 (D. N.J. September 30, 2011). Compensation is typically provided pursuant to 29 *C.F.R.* §785.23, which may be invoked where employees perform overtime work from their homes, in circumstances where it is difficult to compute the exact number of hours worked by the employee. Under this regulation, an employer and employee (or majority representative) are permitted to agree on an alternative means of compensating the employee, as long as the agreement falls within a broad zone of reasonableness and considers all the facts and circumstances of the parties' relationship, including information as to the approximate of hours worked at home. *Leever; Brock; Manalapan.* The federal

Department of Labor, the agency charged with administering the FLSA, has opined that officers can be compensated at different rates for their law enforcement and canine care activities. *Leever, supra,* citing DOL Wage and Hour Opinion Letter, March 10, 2006.

Within this framework, I believe a reasonable resolution of this dispute is to award a $1,500 annual stipend, while retaining the current provisions concerning on-duty care of the canine. The 30-minute relief time at the beginning and end of the officers' shifts affords them a significant opportunity to complete canine-related responsibilities, without imposing additional monetary obligations on the County. For these reasons, I am retaining this provision. However, some at-home care is also necessarily required, if only on off-duty days. A reasonable estimate of a handler's responsibilities in this regard is approximately one-half hour to one hour per off-duty day for grooming, exercise, and feeding, with additional time occasionally required for veterinary appointments and maintenance of equipment. I conclude that the $1,500 annual stipend, plus the relief time under the existing policy, will reasonably compensate officers for their canine care responsibilities. This combined benefit falls within the "zone of reasonableness" that has been marked out by several federal court decisions. *See, e.g., Brock* (17 minutes of compensatory straight time adequately compensated handlers, when considered together with the non-monetary support that they were provided in the form of a take-home cruiser and tax-payer provided food and veterinary care); *Manalapan* (one hour of compensatory straight time per day was reasonable compensation in the unique circumstances of the case, where handlers themselves were instrumental in setting up the K-9 unit and personally negotiated the compensatory time arrangement); *Rudolph v. Metropolitan Airports Commission,* 103 F.3d 677,678 A(8^{th} Cir. 1996) (one-half hour of overtime compensation per on-duty day and one hour on off-duty days held adequate where employees had agreed that they would not devote additional time to canine care). *Contrast Leever* (reversing summary judgment holding that $60 bi-weekly flat fee negotiated with the union was reasonable compensation as a matter of law); *Holzapfel v. Town of Newburgh*, 145 F.3d 516, 520 (2d Cir. 1998) (two hours per week overtime compensation unreasonable where it was unilaterally imposed by the municipality, and where administrators knew that officers worked at least seven off-duty hours per week).

While the PBA notes that the payment reviewed in *Leever* ($1,560 annually) was less than what the County has proposed, the salient feature that distinguishes this case is that the officers will, under the award, continue to receive significant on-duty time to care for their dogs. This element was absent in *Leever.* In addition, it is noteworthy that, in *Leever,* the Sixth Circuit denied the union's motion for summary judgment that the stipend was *unreasonable* as a matter of law. The case was remanded the case for further factual findings as to what would constitute reasonable compensation.

While I have carefully reviewed the parties' own stipend proposals, I decline to award the PBA's proposal for a stipend of 4% of the handler's base salary. This provision would translate into $2,778 for a top step officer in 2010, and would automatically escalate with every future salary increase. (The PBA also uses the maximum salary in estimating the cost of the stipend). An annual stipend at this level is not warranted given the County's budgetary constraints and the existing policy concerning relief time for K-9 officers.[16]

I also reject the County's proposal, which calls for a $1,000 annual stipend and elimination of the current provision whereby officers are entitled to 30 minutes off at the beginning and end of each shift to care for their assigned dogs. By allowing on-duty time to care for their canines only if approved by the Sheriff, the County contemplates that officers would receive $1,000 per year for what it estimates would be five hours of off-duty care per pay period or 2.5 hours per week. The figure of 2.5 hours appears low in light of the current practice (five hours on-duty time plus some at-home care) and the detailed responsibilities set

[16] In conjunction with seeking a K-9 stipend, the PBA also proposes to include contractual provisions pertaining to the County's obligation to provide necessary equipment, food, medical supplies, and veterinary services for the canine; procedures for an officer taking custody of the dog after it retires; and a proposal for the employer to pay for medical care and supplies for one year after the dog retires. The latter clause would impose additional, unspecified costs on the County and is not warranted in this environment. The other proposals touch on subjects that are currently addressed in the County's policy and the PBA has not shown why they need to be incorporated in the contract.

forth in the County's policy. In addition, by eliminating the relief time at the end of the shift, the proposal would require officers to assume canine care duties on their own time at a very low pay rate ($7.692 per hour, assuming 2.5 hours of work per week). This compensation alternative is not reasonable under all the facts and circumstances.

Health Benefits

The County's final offer includes a proposed new Article XIII that retains several existing provisions but sets forth changes with respect to premium contributions; retiree health benefits; temporary disability; participation in an opt-out program; leaves of absence; and eligibility for County benefits, including health benefits. The County limits its discussion to the proposals for premium co-pays and retiree health benefits and I confine my analysis to those issues. For its part, the PBA proposes to expand the group of retirees who are entitled to retiree health benefits.

Turning first to the County's premium co-pay proposal, it seeks a tiered contribution system whereby employees earning up to $79,999 would pay 1.5% of salary; those earning $80,000 to $100,000 would remit 2% of salary; and those with salaries of $100,000 or above would pay 2.5% of salary. As applied to this unit, the County's proposal has been effectively implemented by statute, since no unit member will earn $80,000 in salary during the contract term and all New

Jersey public employees are now required to contribute a minimum of 1.5% of their base salary toward their health benefits premiums. Moreover, with the implementation of Chapter 78, some unit members will pay more than 1.5% of their salary during 2012, depending on their salary and whether they have selected dependent coverage. Those contributions will increase in 2013 and 2014.

Overall, the current statutory framework will result in premium contributions that equal or exceed those which would result under the County's proposal under the 2010 to 2012 agreement. In this posture, I decline to award the County's proposal.

I also decline to award the County's proposal that employees pay the difference between the NJ Direct 15 plan and the more expensive option of NJ Direct 10 (or an HMO plan). The County has not met its burden of justifying this provision because it has not estimated the savings that would accrue to the County under the proposal or identified approximately how many employees it would affect. Moreover, as Chapter 78 is fully implemented, employees will incur some additional cost if they choose a more costly plan, since their contributions will be linked to a percentage of the selected plan's premium.

Finally, the County seeks to tighten the eligibility standards for retiree health benefits by requiring a full 25 years of service with the County for officers retiring before age 62. Under the predecessor contract, such officers are entitled to three years of post-retirement coverage if they have 25 years with the "State Pension Plan" and "a period of full service of up to 25 years with the County." For officers hired before January 1, 1997, all prior law enforcement service is counted as "service with the County."

While the County has not addressed this proposal in any detail, it could potentially result in cost savings for the County to the extent that there are unit members who began their law enforcement careers with other entities and later joined the Sheriff's Department. The County also states that the JNESCO, AFSCME and Teamsters units currently have such clauses in their contracts.

On balance, I decline to award this proposal without an estimate of the savings that would likely accrue to the County. While some civilian units may have agreed to this proposal, I underscore that this unit is receiving a lower across-the-board salary increase for 2010 than many other County units. It is also worth observing that there may be stronger reasons for retaining current retiree health benefit provisions for this unit than for civilian units. Given the physical and other stresses inherent in law enforcement positions, those employees have a stronger interest in early retirement benefits.

With respect to the PBA's retiree health benefits proposal, it seeks to specify that officers who retire on disability are entitled to three years of employer-paid health coverage. Currently, this benefit is available to retiring officers who meet certain service requirements with the PFRS pension system and/or Atlantic County. Since a disability retiree who met these service requirements would already be entitled to the employer-paid coverage, it appears that the intent of the PBA's proposal is to extend the benefit to all disability retirees, regardless of how many years of service they have with PFRS or the County. The proposal would thus impose additional costs on the County and is not warranted in this budgetary environment.

PBA Shift Differential and EMT Proposals

The PBA proposes a $.50 per hour differential for officers who staff the 1600 hours to 2400 hours shift and a $.55 per hour differential for those who are scheduled for the 2400 hours to 0800 hours time slot. The PBA estimates that the proposal would cost a total of $1,040 per officer per year for the evening shift and $1,144 per officer per year for the midnight shift. It reasons that the additional payments are warranted in view of the County's commitment to "expanding work schedules" and the fact that there is a pattern whereby other unionized County employees receiving such differentials.

In that regard, PBA Exhibit 150 lists four other County units that work 24/7, including registered nurses; LPNs; communication operators in the public safety division; and corrections officers. Citing the respective contracts for these units, the exhibit represents that RNs in the JNESCO unit receive differentials of 10% for the evening shift and 15% for the midnight shift, while the AFSME LPN group earns an additional $.50 per hour for the second shift and .$75 per hour for the third shift. PBA Exhibit 150 also indicates that communication operators receive $750 annually as a shift differential. Finally, an interest arbitrator awarded the FOP corrections officers unit the same differentials that the PBA seeks here.

The County strongly counters that the $750 annual stipend received by some County employees is not a shift differential but instead constitutes heightened pay for supervisors. It also insists that the award of shift differentials to the corrections officers was not justified, adding that it is appealing this ruling to the Superior Court, Appellate Division. Finally, the County contends that there has never been a pattern of settlement between the sheriff's officers and the JNESCO and AFSCME units and that, in any case, the shift differentials in those units were initiated in order to attract nurses from the private-sector market, which was paying more than the County. Finally, the County argues that the nurses' benefit packages must be considered together with the health benefits and other concessions that those unions made in previous contracts.

I conclude that the PBA has not met its burden of justifying the proposed shift differentials. First, as noted earlier, I have chosen to allocate economic improvements to across-the-board salary increases and the K-9 stipends. This is not the fiscal environment in which to award a proposal with an undefined but potentially significant cost impact – over $1,000 annually for each officer assigned to the evening or night shift.

Second, comparability considerations do not favor award of the proposal: the PBA has not shown that this is a common benefit in other sheriff's departments and, with the appeal of the corrections officers' award, the shift differential in that unit is subject to review. Finally, because the JNESCO and AFSCME differentials were triggered by competition in the medical marketplace, the nurses' contracts do not support award of a differential here.[17]

I turn next to the PBA's proposal for a $1,000 annual stipend for each officer who has or receives an EMT stipend. I appreciate the PBA's position that this certification could be valuable in a unit where officers in the Courts division respond to medical emergencies (PBA Exhibit 69). However, the record does not reflect what additional level of care could be provided by certified EMTs, and the County has raised legitimate concerns about whether it would be liable if officers failed to competently perform EMT duties. In addition, the record does not indicate how many officers would currently be eligible for this stipend and, again, fiscal considerations preclude award of a benefit with an uncertain financial impact.

For these reasons, I deny the PBA's EMT proposal.

[17] I cannot resolve the factual dispute over whether the communications operators receive a differential. Neither party has submitted the underlying contract.

Miscellaneous PBA Proposals

The PBA's final offer seeks several contract modifications, including changes that would: clarify when an officer may use sick leave to attend to a family member; entitle officers to enroll in a Flexible Spending Health Account; and allow employees injured on duty to schedule doctor's appointments during work time, without being charged leave. The PBA also seeks new sections on the computation of salary and priorities for vacation scheduling, while proposing to modify Article XVI.A, Extended Medical Coverage, to require screening for MRSA and swine flu. Another proposal would re-word an existing clause stating that worker's compensation pertains to employees traveling to and from a "call-in."

Although some of these proposals appear to suggest minor clarifications or wording changes (*e.g.*, the sick leave proposal), they all touch on the administration of existing benefits and the PBA has not explained what issues or problems they were designed to address. In this posture, I decline to award them. I also decline to amend Article XVI to require that accumulated sick leave be paid to the estate of a deceased officer. Nor does the award modify Article V to specify that officers are entitled to compensatory time whenever they work on days when State (and not just County) offices are closed. These clauses might not be frequently invoked, but they would impose additional costs on the County.

County's Miscellaneous Proposals

The County's final offer also sets forth various proposed contract revisions that touch on the administration of benefits. Thus, the County proposes to modify procedures for the submission and processing of vacation requests and use of sick time during vacation. It would also require that officers to wear County-issued body armor and specify that recruits pay the initial cost of the departmental uniform, subject to reimbursement upon completion of academy training. The County's revised health benefits article proposes changes or additions related to the County's "opt-out" program; the definition of "dependents;" the clause referencing COBRA benefits; the number of working hours required to trigger employer-paid health benefits; and the standard for determining County benefits based on length of service; Finally, the County's final offer originally sought to require that all unit members take five unpaid furlough days in 2010.

The County has provided little or no background information on these proposals and has not met its burden of justifying them. With respect to the furlough day proposal, it pertained to 2010 and no County employees were required to take furlough days in 2011. While unit members were not subject to the furlough requirement that applied to many County employees during 2010, this circumstance is balanced by the fact that the awarded across-the-board increases are lower than those received by other units during 2010. Accordingly, I decline to award a provision requiring unit members to take furlough days.

AWARD

1. Term of Agreement

January 1, 2010 through December 31, 2012.

2. Salaries

2.0% across-the-board increase effective January 1, 2010.
1.5% across-the-board increase effective January 1, 2011.
1.5% across-the-board increase effective April 1, 2012.

Each increase applies to all steps of the existing salary guide and is retroactive to its effective date.

3. Fringe Benefits

Article XVI, Paragraph H, Stipends, is amended to include the following revised provision on the CDL stipend:

Any employee whose position and duties require the holding of a CDL license shall receive a $700 annual stipend. In the event that an employee has a position and duties that require the holding of a CDL license for part of a year, the employee shall be compensated on a prorated basis for the term in which the employee held a position requiring the holding of a CDL to effectuate their duties. Such stipend shall be paid by the second pay in November of each year. Employees shall pay for all costs related to licenses, blood tests and special training mandated by the State or Federal Government.

Article XVI, Paragraph H, Stipends, is amended to include these additional paragraphs:

Any employee whose positions and duties require the care for a Sheriff's K-9 shall be relieved during the first and last thirty (30) minutes of each tour of duty to care for the canine, kennel and assigned equipment. In addition, such officers shall receive a $1,500 annual stipend in consideration of the anticipated performance of canine-related tasks during off-duty hours and all other provisions contained in this section. The Parties anticipate that officers assigned to care for a K-9 will spend approximately five (5) off-duty hours per pay period to care for the K-9.

This section shall be read in conjunction with the County's K-9 Policy, as may be amended from time to time.

4. **Work Schedules**

Article IV, Section C.4 is amended to read as follows:

The hours of operation for the Legal and Investigative Unit, the Warrants Unit, the K-9 Unit, and the Bicycle Unit, will be flexible as determined by the Sheriff, but within the framework of the unbroken eight (8) hour shift, 40 hour schedule.

Article IV, Section C.5 is deleted and Section C.7 is re-numbered as Section C.6 and amended to read as follows:

The Sheriff reserves the right to modify schedules and the organizational structure of the department in accordance with operational needs, including but not limited to, scheduling for mandatory training and voluntary special operations. In non-volunteer situations the Sheriff shall provide the employee with at least two (2) weeks' notice of the modified schedule. In the case of employees volunteering to modify their schedule there is no notice requirement.

5. **FTO Compensation**

Article XVI is amended to include this new paragraph.

Each Officer assigned as a Field Training Officer (FTO) shall receive one-half (1/2) hour compensatory time for each day assigned as an FTO.

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

Dated: March 14, 2012
Princeton, N.J.

Timothy A Hundley
Timothy A. Hundley
Arbitrator

State of New Jersey }
County of Mercer }ss:

On this 14th day of March 2012, before me personally came and appeared Timothy A. Hundley to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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