

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between:

**SHERIFF OF BURLINGTON COUNTY
AND THE BOARD OF CHOSEN FREEHOLDERS
FOR THE COUNTY OF BURLINGTON**

"Public Employer,"

- and -

FRATERNAL ORDER OF POLICE, LODGE 166

"Union."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2003-070

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Alan R. Schmoll, Esq.
Capehart & Scatchard

For the Union:

Charles E. Schlager, Jr., Esq.
Loccke & Correia

Pursuant to a petition to initiate compulsory interest arbitration filed by the FOP Lodge 166 [the "FOP"], I was designated to serve as interest arbitrator by the New Jersey Public Employment Relations Commission on May 20, 2003. The FOP is a party to a collective negotiations agreement [the "Agreement"] with the public employer, the Sheriff of Burlington County [the "Sheriff"] and the Board of Chosen Freeholders of the County of Burlington [the "County"]¹ which expired on December 31, 2002. The negotiations unit consists of Sheriff's Officers, Sergeants and Lieutenants.

A pre-interest arbitration mediation session was held in Mount Holly, New Jersey on September 22, 2003. Although the number of issues in dispute were narrowed during the mediation session, the impasse remained and an interest arbitration hearing was held on November 12, 2003. At the hearing, each party presented their last offers on the issues in dispute. I received testimony and documentary evidence from the FOP and the County. I received post-hearing submissions from both parties.

The collective negotiations agreement between the parties commenced on January 1, 2000 and was scheduled to expire on December 31, 2002 or until "a substitute or successor agreement shall be entered into by and between the parties" [Jt. Ex. #1, Article XLII].

¹ Hereinafter, any reference to either the County and the Sheriff will be a reference to the employer of sheriff's officers consistent with the Preamble of the parties' collective negotiations agreement.

During the course of mediation/interest arbitration, the parties reached stipulation on an issue, withdrew others and submitted evidence concerning the remaining items in dispute. I set forth the last offers of the parties as follows:

LAST OFFER OF THE FOP

Salary Proposal

ARTICLE VI. SALARIES

Delete Sections A, B and C - Replace with:

- A. All employees will be paid pursuant to the Wage Guide schedule set forth below:
- B. Should the Employer decide to hire a law enforcement officer who is currently certified by the New Jersey Police Training, they may, at their own discretion, start the officer at Step 3 on the Wage Guide in recognition of the officer's prior law enforcement experience and training.
- C. D. It is agreed that to be covered by the retroactive wage provisions of this Agreement, an officer shall have maintained full-time employment at the Burlington County Sheriffs Office up to and including the date of full execution of this Agreement by both parties. However, upon the death of an officer covered under this Agreement, retroactive wages shall be paid to said officer's estate.

Wage Guide

| | Expired Guide | | |
|-------------|------------------|-------------|-------------|
| | <u>2000-2002</u> | <u>2003</u> | <u>2004</u> |
| Entry Level | \$25,000 | \$28,000 | \$28,000 |
| Step 1 | \$26,000 | \$32,000 | \$33,000 |
| Step 2 | \$27,750 | \$36,000 | \$36,000 |
| Step 3 | \$29,250 | \$39,000 | \$40,000 |
| Step 4 | \$30,750 | \$41,000 | \$43,000 |
| Step 5 | \$32,250 | \$44,000 | \$47,000 |
| Step 6 | \$33,750 | \$48,000 | \$52,000 |

| | | | |
|---------------|----------|----------|----------|
| Step 7 | \$35,250 | \$52,000 | |
| Step 8 | \$36,750 | | |
| Step 9 | \$38,500 | | |
| Step 10 | \$41,250 | | |
| Sgt. – Step 1 | | \$57,000 | \$57,000 |
| Sgt. – Step 2 | | \$62,000 | \$62,000 |
| Lt. – Step 1 | | \$67,000 | \$67,000 |
| Lt. – Step 2 | | \$72,000 | \$72,000 |

ARTICLE XXI. UNIFORM ALLOWANCE

A. Modify as follows:

1. 2003 - Each officer shall be paid a lump sum payment of \$750 which sum shall be paid by the County (as soon as practicable) after the execution of this Agreement.
2. 2004 - Each officer shall be paid a lump sum payment of \$800 which sum shall be paid by the County (as soon as practicable) after the execution of this Agreement.

ARTICLE XIV. PERSONAL LEAVE

Modify Section A to reflect four (4) personal leave days

ARTICLE XXX. GRIEVANCE AND ARBITRATION PROCEDURE

Modify Section A to include minor discipline.

NEW ARTICLES – PROPOSED

Article (New) Officer's Bill of Rights

- A. Members of the Sheriff's Department hold a unique status as public officers in that the nature of their office and employment involves the exercise of a portion of the police powers of the County.

B. Internal Affairs Investigations

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

1. The interrogation of a member of the FOP shall be at reasonable hour, preferably when the member of the FOP is on duty, unless the exigencies of the investigation dictate otherwise.
2. The interrogations shall take place at a location designated by the Chief of Police. Usually it will be at the office of the Chief or the location where the incident allegedly occurred.
3. The member of the FOP shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the members of the allegations, shall be provided. If it is known that the officer is being interrogated/investigated as a witness only, he shall be informed at the initial contact.
4. The questioning of officers shall be reasonable in length. Should it be necessary for extended questioning, the officer shall receive fifteen (15) minutes for personal necessities, meals, telephone calls and rest periods at the end of every two hours.
5. Officers shall not be subject to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. Further, the Employer, including representatives, agents or those acting in their behalf shall make any promise of reward as an inducement to answer questions.
6. Throughout the proceeding, the Employer, including representatives, agents or those acting in their behalf shall afford the opportunity to any officer, if he so requests, to consult with their legal representative and/or his majority representative before and during their interrogation concerning a violation of the Department's rules and regulations and/or administrative code. The Employer shall permit the officer, subject to questioning, a reasonable period of time to attain representation, but this time shall not exceed one (1) hour, unless mutually agreed to by the parties.
7. In situations, other than departmental investigations, when an officer is under arrest, or is a suspect or

target of a criminal investigation, he shall be given his rights pursuant to the current decisions of the United States Supreme Court.

8. Nothing herein shall be construed to deprive the Department, including representatives, agents or those acting in their behalf to conduct the routine and daily operations of the Department.
9. Under no circumstance shall the Employer offer, direct, or require any officer to take a polygraph or voice print examination for the purpose of determining a violation of Department Rules and Regulations. This shall not be applicable, except as permitted by law, to investigations by agencies other than the Burlington County Sheriff's Department.

C. Personnel Files

One (1) personnel file shall be established and maintained for each employee covered by this Agreement. Such files are confidential records and shall be maintained in the office selected at the sole discretion of the Employer, and may be used for evaluation purposes.

Upon advance notice and at reasonable times, any member of the Department may at any time review his personnel file. However, this appointment for review must be made through the Employer or his designated representative.

Whenever a written complaint concerning an officer of his actions is to be placed in his personnel file, a copy shall be made available to him and he shall be given the opportunity to rebut it if he so desires, and he shall be permitted to place said rebuttal in his file. When the employee is given a copy of the complaint, the identification of the complainant shall be excised. However, if any disciplinary action is taken based on any complaint, then the Employee shall be furnished with all details of the complaint, including the identity of the complainant.

All personnel files will be carefully maintained and safeguarded permanently, and nothing placed in any file shall be removed therefrom. Removal of any material from a personnel file by any member of the force shall subject that member to appropriate disciplinary action.

The parties agree that the intent and purpose of counseling letters and verbal reprimands reduced to writing are to provide continuing instruction to officers. While repeated instruction on the same issue may result in discipline, the parties agree that should an officer not receive a counseling letter and/or verbal reprimand reduced to writing on the same issue for a period of six (6) months, any such letters or reprimands shall be expunged from the personnel file of the officer.

ARTICLE (new). BEREAVEMENT LEAVE

1. An officer shall receive three (3) days off with pay for a death in the immediate family. Immediate family is limited to mother, father, sister, brother, spouse, children, and parents of spouse. An additional two (2) days off with pay will be granted for out of state travel requirements if the funeral is more than five hundred (500) miles one-way.
2. An officer will be granted the day off with pay to attend the viewing and funeral of grandparents, brother-in-law, and sister-in-law if said funeral services fall on a scheduled work day. All other bereavement provisions do not provide in this case.
3. Reasonable verification of the event and familial relationship must be submitted upon request within five (5) calendar days of the Employee's return to work.

ARTICLE (new). LONGEVITY

1. Effective January 1, 2003, there shall be added to and made a part of the compensation of each employee covered by this Agreement, an amount equal to a certain percent of the salaries and wages fixed for each said person based on the completion of a certain number of years of cumulative service in and for the County as follows:

| Amount Equal To | Years Cumulative Service |
|-----------------|--------------------------|
| 1.0% | 7 |
| 1.5% | 10 |
| 2.0% | 15 |
| 2.5% | 20 |
| 3.0% | 24 |

2. Such additional compensation shall be paid notwithstanding the maximum salaries or wages, and shall be paid at the same time and same manner as regular salaries and wages.
3. Such longevity pay shall be based on the earnings of the normal workweek and longevity shall not be added to over-time remuneration.
4. For any employee whose anniversary date of cumulative period of five (5) years of service falls between July 1st and December 31st his longevity payment will effect on the next January 1st. For any employee whose anniversary date of cumulative period of five (5) years falls between January 1 and June 30, his/her longevity payment will take effect on the next July 1st.

ARTICLE (new). CEREMONIAL ACTIVITIES

In the event a Sheriff Officer in another Department in the State of New Jersey is killed in the line of duty, the City will permit at least one (1) uniformed Sheriff Officer of the County to participate in funeral services for the said deceased Officer.

Subject to the availability of same, the Employer will permit a County vehicle to be utilized by the members in the funeral service.

Sheriff officers participating in such funeral service shall be entitled to compensation during the time in which they are participating in said funeral service unless otherwise agreed to by the Employer.

ARTICLE (new). PRESERVATION OF RIGHTS

The parties agree that all benefits, rights, duties, obligations and conditions of employment relating to the status of the Department which benefits, rights, duties, obligations, terms and conditions of employment are not specifically set forth in this Agreement, shall be maintained in not less than the highest standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this Agreement.

Unless a contrary intent is expressed in this Agreement, all existing benefits, rights, duties, obligations and conditions of employment applicable to any Officer pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired, removed or abolished.

ARTICLE (new). SEPARABILITY AND SAVINGS

If any provision of this Agreement or any application of this Agreement to any Employee, member or group of Employees or members is held to be invalid by operation of law, by any Court, administrative body or other tribunal of competent jurisdiction, then the parties agree to reopen the negotiations with respect to the impact of such invalid provision consistent with the law relating to negotiations and interest arbitration as set forth in NJSA 34:13A-3 et seq.; however, all other provisions and applications contained herein shall continue in full force and effect, and shall not be affected thereby.

ARTICLE (new). NO WAIVER

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the Employees herein are entitled by law.

LAST OFFER OF THE EMPLOYER

ARTICLE VI – SALARIES

A. 2003 - 2005 Salary Guide

| | |
|---------|--------|
| Step 8: | 44,500 |
| Step 7: | 40,500 |
| Step 6: | 38,000 |
| Step 5: | 35,500 |
| Step 4: | 33,000 |
| Step 3: | 30,500 |
| Step 2: | 28,000 |
| Step 1: | 26,000 |

Effective January 1, 2003, all officers hired on or before December 31, 1991 shall be placed at Step 8 of the salary guide. Any officer whose 2002 base salary exceeds Step 8 shall receive a \$1,500 increase to his/her 2002 base salary.

Effective January 1, 2003, all officers hired between 1992 and 1994 shall be placed at Step 7 of the salary guide.

Effective January 1, 2003, all officers hired between 1995 and 1997, or designated with such experience, shall be placed at Step 6 of the salary guide.

Effective January 1, 2003, all officers hired in 1998, or designated with such experience, shall be placed at Step 5 of the salary guide.

Effective January 1, 2003, all officers hired in 1999, or designated with such experience, shall be placed at Step 4 of the salary guide.

Effective January 1, 2003, all officers hired in 2000, or designated with such experience, shall be placed at Step 3 of the salary guide.

Effective January 1, 2003, all officers hired in 2001, or designated with such experience, shall be placed at Step 2 of the salary guide.

Effective January 1, 2003, all officers hired in 2002 or 2003, or designated with such experience, shall be placed at Step 1 of the salary guide.

Effective January 1, 2004, all officers shall move one step on salary guide. Any officer whose base salary was at Step 8 or higher in 2003 shall receive a \$1,500 increase to his/her base salary.

Effective January 1, 2005, all officers shall move one step on salary guide. Any officer whose base salary was at Step 8 or higher in 2004 shall receive a \$1,500 increase to his/her base salary.

B. Superior Officers

2003

Effective January 1, 2003, all sergeants with a base salary of less than \$46,000 in 2002 shall be paid a salary of \$47,500.

Effective January 1, 2003, all sergeants with a base salary of \$46,000 or greater but less than \$49,000 in 2002 shall be paid a salary of \$50,000.

Effective January 1, 2003, all sergeants with a salary of \$49,000 or greater in 2002 shall receive a salary of \$52,500.

2004:

Effective January 1, 2004, all sergeants with a salary of \$49,999 or less in 2003 shall be paid a salary of \$51,500.

Effective January 1, 2004, all sergeants with a salary of \$50,000 or greater in 2003 shall be paid a salary of \$54,000.

2005:

Effective January 1, 2005, all sergeants with a base salary of \$50,499 or less in 2004 shall be paid a salary of \$52,500.

Effective January 1, 2005, all sergeants with a base salary of \$51,500 or greater in 2004 shall be paid a salary of \$55,500.

During the life of this agreement, any Sheriff's Officer promoted to the rank of sergeant shall receive a \$1,500 increase to his/her base Sheriff's Officer's salary during the year s/he is promoted. On January 1st of each year thereafter, he/she shall be paid according to the provisions stated above.

For each year of this agreement, any employee holding the rank of lieutenant shall receive a salary equivalent to the highest sergeant's salary for the year plus \$1,000.

ARTICLE VII WORK SCHEDULES

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

- D. If for any reason, the Sheriff, in his/her sole discretion, determines that the efficiency of operations requires a change in the starting and stopping time of the regular schedule but cannot comply with the notice provisions as set forth in Paragraph C of this Article, the affected employee shall be granted overtime compensation for all hours worked outside of that employee's regular shift as set forth in Paragraph B of this article up to and including seven (7) calendar days.
- E. Nothing within the provisions of this Article shall be interpreted or construed to modify or alter the flexible work hours or schedules of Sheriffs Officers who work in the Civil Process Unit, Community Services Unit, the Warrants Unit and the Fugitive Unit.
- F. Community Policing - Officers assigned to the Community Policing Unit shall have to work a schedule designed to conform to the needs of the municipality. Typically, this schedule will consist of four consecutive ten- hour days or five consecutive eight-hour days within every given seven-day work week. However, if this schedule exceeds more than 80 hours in a two week work period the officer shall be entitled to overtime compensation as set forth in Article VIII, paragraph J. The Sheriff shall provide at least seven calendar days notice before making any changes in an officer's work schedule, where practicable.

Note: Other changes needed to reflect 40-hour workweek:

ARTICLE VIII OVERTIME (F)

When upon completion of a full shift an Officer is required to work a full second shift, he should also be entitled to a second one half-hour meal break on the second shift. Overlapping shifts shall be considered as full shifts.

Article VIII Overtime (H) - Whenever an Officer is required to work through such Officer's normal one half-hour lunch; the Officer may request a later lunch break. The granting of such a request shall be at the discretion of the Sheriff if the workload permits. If an Officer's request is not granted by the Sheriff, he shall be compensated at the overtime rate pursuant to paragraph L of this article.

ARTICLE VIII OVERTIME (J) - Divide by 8

ARTICLE VIII OVERTIME (M)

In recognition of flexible schedules of Sheriffs Officers assigned to the Civil Process Unit, Community Services Unit, Warrants Unit and Fugitive Unit, the entitlement to overtime compensation shall accrue after completion of eight hours of paid service, other than sick leave, in any day and/or forty (40) hours of paid service, other than sick leave, in any work week.

ARTICLE XXII HEALTH BENEFITS:

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

| | Doctor's Visits | Prescription Generic | Prescription No Generic avail | Prescription Brand |
|----------|--------------------|-------------------------|-------------------------------------|-----------------------|
| 01/01/04 | \$15.00 | \$8.00 | \$12.00 | \$25.00* |

* If generic is available and employee elects brand, employee shall pay applicable co-pay and the difference between generic and brand. If doctor prescribes brand name drug the employee shall pay co-pay only.

Additionally, visits to the emergency room shall have the following co-pays:

\$25.00

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

BACKGROUND AND POSITIONS OF THE PARTIES

The negotiating unit consists of one (1) Lieutenant, six (6) Sergeants and forty-nine (49) Sheriff's Officers. Testimony and documentary evidence reflect the various activities of unit members.

The Sheriff of Burlington County maintains the statutory functions of maintaining security in the County court facilities and by the service of civil process. The scope of the Sheriff's functions are many and varied. The department maintains an investigation unit, a function which previously had been performed by the County Prosecutor's office. One function of this unit concerns the handling of fugitives. During the first six months of 2003, the fugitive unit received 710 warrants representing a 21% increase over 2001. The primary function of this unit is to locate and apprehend individuals to answer for criminal charges in the County courts as well as returning and expediting fugitives. The investigation unit is also involved in child support enforcement and during 2001, this unit anticipates making over 1280 arrests and collecting more than \$700,000 for custodial parents. The Sheriff also maintains a special investigations unit which investigates thefts occurring in County facilities and also handles internal affairs components. A civil process unit performs process serving, services attendant to foreclosures and sheriff sales, serves temporary restraining orders on defendants in conjunction with Burlington County Prosecutor's Office and local law enforcement agencies and maintains vehicle, uniform and equipment inventories for the department.

The Sheriff also maintains a court division which is responsible for the integrity of the County Courts Facility, Administration Building and adjoining facilities, as well as the appearance of custodial defendants before the courts. Sheriff's officers maintain security posts on a 24-hour basis. The duties of this unit have recently increased due to the adding of seven judges since 1998. Among the functions of this unit are building security, employee and citizen safety, prisoner escort/ transportation and courtroom safety. This unit is developing a response to be available as the first response team in the event of a courtroom hostage or active shooter situation.

The Sheriff, through the Community Services Unit, has developed a program in conjunction with the County's Office on Aging which coordinates crime prevention and other services for senior citizens like the arbitrator. These activities are placed in the Crime Prevention Unit. The unit provides services and education concerning home security, a Person's-At-Risk Registry and several informational programs. The Community Services Unit also maintains many programs of an informational and educational nature including DARE, a child safety seat program, a youth development camp and disaster preparedness. The Sheriff's community policing program also supplements police patrols of County municipalities upon the request of local police departments. The hours devoted to this program has almost doubled during 2003.

The Sheriff also maintains a canine unit. This unit assists local, state and federal agencies in drug-enforcement activities where the special skill of a drug-detection dog is required and in the tracking of missing persons/fleeing felons.

The major points of contention in this proceeding concern salary, hours of work and health insurance. On these issues the parties emphasize internal comparisons between sheriff's officers and county employees in other bargaining units. For example, the FOP points to unfavorable comparisons which exist between current salary levels and salary guide structure with that which exists for the correction officers unit, PBA Local 249. The FOP cites the County's proposal to provide a salary schedule with a \$44,470 maximum for contract years 2003 through 2005 which only meets the salary maximum for correction officers in their contract year of 2001. The FOP further points out that the salary maximum for correction officers moves to \$46,471 in contract year 2002, \$48,562 in contract year 2003 and \$50,747 in contract year 2004. The steps in the salary schedule for correction officers was also compressed from nine steps to eight steps in 2003 and to seven steps in 2004. The FOP asserts that the County's salary proposal as set forth in the County's last offer is grossly inadequate and would maintain if not worsen the existing disparity. In response, the County compares the work schedules of sheriff's officers with correction officers. Pointing to the relevant work schedule provisions in each agreement, the County states that the sheriff's officers have a workweek of 35 hours per week compared to the 40 hour workweek for correction officers. The difference in the work week is asserted to

justify the relative salary differences between the two units. The County asserts that its salary proposal is reasonable and accurately reflects the comparisons in work hours between these departments.

An additional point of contention concerns health benefits. The County cites its labor agreements with other bargaining units involving non-law enforcement employees which contains certain differences with the health insurance plan currently enjoyed by the sheriff's officers. Noting that its proposal provides comprehensive benefits and fully paid premiums by the County, the County proposes that the health insurance plan for the FOP be consistent with the remainder of the County and consistent with its desire that there ultimately be a countywide plan for all County employees. In response, the FOP points out that its health plan, while not consistent with the remainder of the County, is consistent with the health insurance plan enjoyed by PBA Local 249 and should remain unchanged. The FOP does acknowledge that the County's proposal does expand on health benefits and would include female contraceptives and annual well child care visits for children ages 6 to 16.

The issues of salary, salary schedule structure workweek and health insurance are clearly the most significant issues in dispute. The evidence submitted by both parties is mostly directed towards N.J.S.A. 34:13A-16(g)(2)(c) which concerns a comparison of wages, salaries, hours and conditions of employment of unit employees with other employees performing the same or

similar services and with other employees generally in public employment in Burlington County or similar comparable jurisdictions. This is not to the exclusion of other statutory criteria because many of the other criteria are implicated in the main arguments which concern comparability. For example, the FOP contends that the interests and welfare of the public N.J.S.A. 34:13A-16(g)(1) support comparability in the salaries between sheriff's officers and correction officers and the County asserts that the interests and welfare of the public support its position that there be uniformity in health insurance programs covering County employees. The County further contends that the interests and welfare of the public do not support granting comparable wages for sheriff's officers who work fewer hours than employees such as correction officers who receive higher compensation but work longer hours.

The positions of the parties also implicate N.J.S.A. 34:13A-16(g)(3) because their positions require an assessment of the overall compensation presently received by all of the employees who are subject to the comparisons made by the County and the FOP. The positions of the parties further implicate N.J.S.A. 34:13A-16(g)(8) because presumably a less attractive or more attractive comparison of terms and conditions of employees among the several bargaining units could impact upon the continuity and stability of employment for sheriff's officers. Factors which are relevant but less significant concern the cost of living, N.J.S.A. 34:13A-16(g)(7), and the financial impact of the award on the governing unit, its residence and taxpayers. The cost of living is a less significant factor when the parties' positions are pegged to the merits of comparisons among

bargaining units and no contentions are offered that the results of this proceeding would compel the County to exceed its statutory spending limitations N.J.S.A. 34:13A-16(g)(7) or cause adverse financial impact on the governing body, its residents or taxpayers N.J.S.A. 34:13A-16(g)(7).

During the course of the hearing, the County and the FOP have come to an agreement and have engaged in a stipulation which is incorporated herein as required by statute, N.J.S.A. 34:13A-16(g)(4). This stipulation concerns a comprehensive provision concerning Officers' Bill of Rights.

With respect to the remaining issues, the County and the FOP urge rejection of each other's proposals which alter the status quo, asserting that insufficient justification has been presented warranting any changes from what exists in the current agreement. Evidence in support of these proposals rest mainly on the existence of an improved level of benefit enjoyed elsewhere, and in particular, either in a municipal law enforcement unit in Burlington County or in a sheriff's officers unit in one of the remaining twenty counties.

DISCUSSION

I have carefully reviewed and thoroughly considered the arguments and evidence submitted into the record by the County and the FOP in support of their respective positions. The County and the FOP have offered testimony and considerable documentary evidence in support of their last offers.

The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

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

and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

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

(7) The cost of living.

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

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

The evidence does not support changes in the existing collective negotiations agreement above and beyond the stipulation entered into by the parties and the disposition of the central issues which I have decided which go to the very heart of this impasse. As set forth below, I have awarded substantial changes in compensation, salary structure, health insurance, and hours of work. The record simply does not support or justify other modifications of the Agreement during this contract term. These issues may be pursued during negotiations for a future contract term and their dismissal is without prejudice to their ability of the parties to pursue them at that time.

The positions of the County and the FOP on the issues of compensation and hours of work have been set forth and need not be summarized here once again. The FOP seeks a substantial increase in salary which well exceeds the statewide averages in law enforcement at both the county and municipal levels. The FOP has established that existing salaries for sheriff's officers are comparatively low as evidenced by the 2002 salary maximum of \$41,250. Significant weight must be given to the FOP argument that the salary maximum for correction officers was \$46,471 in 2002, \$48,562 in 2003 and \$50,747 in 2004 and that these salary levels represent an unfavorable comparison for the FOP,

especially given the fact that both units are law enforcement groups employed by the County. When examining the merits of this argument, significant weight must also be given to the County's argument that the work schedule for sheriff's officers yields a thirty-five (35) hour workweek compared to the correction officer work schedule which yields a forty (40) hour workweek. When solely viewed in the context of comparative hours worked, the FOP argument for comparable salary treatment is without merit but its argument becomes persuasive if reviewed in the context of a similar work schedule yielding similar hours for both units.

These two issues (salary and work hours) must be evaluated in tandem. The work schedule of a forty (40) hour workweek as proposed by the County is awarded when coupled with an award of wage increases to the sheriff's officers which provides salary adjustments in harmony with those received by correction officers effective by contract year 2004. This can be achieved by a phase in of salary guide compression from ten (10) steps plus an entry level step in 2002 to an eight (8) step schedule in 2003 with a 7.87% increase in salary maximum from \$41,250 to \$44,500 in 2003. This will be followed by a one step reduction in the salary schedule in 2004 to seven (7) steps with an increase in the salary maximum from \$44,500 to \$50,747. This equates to the salary maximum for correction officers which was made effective on January 1, 2004. This will be accompanied by an elimination of the \$1,500 payment to employees whose base salaries exceed the salary maximum because all pre-1992 officers will now be

placed at the new maximum of \$50,747 and the \$1,500 payment received for equity purposes is no longer warranted. These increases are roughly 14% at maximum (minus the elimination of the \$1,500 payment) but are supported by an award of increased work hours from thirty-five (35) to forty (40) which represents an increase in work hours of 14.3%. Comparability between the FOP and PBA Local 249 will ultimately be reached at the time of the implementation of the forty (40) hour workweek. This work schedule (40 hours per week) shall be implemented at the beginning of the first pay period after the issuance of this Award, at 12:01 a.m. on March 28, 2004.

A three (3) year agreement in duration is commonplace as a minimum duration based upon the labor agreements in evidence and should be implemented here as well. The terms for the third year will follow the major adjustments made to the salary schedule and work week for 2003 and 2004. There is no agreement between the County and other law enforcement units beyond 2004. Given the financial posture of the County coupled with comparable increases for similarly situated employees in similar jurisdictions, I award a four percent (4.0%) increase effective January 1, 2005 at each step of the seven (7) step salary schedule in place during 2004.

Because of the salary compression and the increases awarded, it is necessary to place sheriff's officers on the three annual salary schedules identifying them in accordance with the year in which each officer was hired.

These adjustments will not be relevant in future years because employees move up the salary schedule on an annual basis and there will be no need to identify employees based upon date of hire grouping.

I also award salary adjustments for the ranks of Sergeant and Lieutenants, for each of its three years by applying a continuation of dollar the concepts of differential provided for in the prior agreement. Applying all of the above, the new salary schedules shall read as follows:

January 1, 2003

Superior Officers

| | |
|----------------------|--------|
| Lieutenants | 53,700 |
| Top two Sergeants | 52,500 |
| Next Sergeant | 50,000 |
| Junior Sergeants (3) | 47,500 |

Sheriff's Officers

| Date of Hire | | |
|--------------|--------|---------|
| 2003 | Step 1 | 26,000 |
| 2001-2002 | Step 2 | 28,000 |
| 2000 | Step 3 | 30,500 |
| 1999 | Step 4 | 33,000 |
| 1998 | Step 5 | 35,500 |
| 1995-1997 | Step 6 | 38,000 |
| 1993 | Step 7 | 40,500 |
| Pre-1992 | Step 8 | 44,500* |

*Employees whose base salaries exceed the maximum shall receive \$1,500 added to their 2002 base pay.

January 1, 2004

Superior Officers

| | |
|---|--------|
| Lieutenants | 56,247 |
| Sergeants (with 2 or more years of experience)* | 54,747 |
| Sergeants (with less than 2 years of experience)* | 52,747 |

*as of January 1, 2004.

Sheriff's Officers

| Date of Hire | | |
|--------------|--------|--------|
| 2004 | Step 1 | 32,500 |
| 2000-2003 | Step 2 | 34,500 |
| 1998-1999 | Step 3 | 36,286 |
| 1996-1997 | Step 4 | 38,045 |
| 1995 | Step 5 | 42,000 |
| 1993 | Step 6 | 46,000 |
| Pre-1992 | Step 7 | 50,747 |

January 1, 2005

Superior Officers

| | |
|---|--------|
| Lieutenants (with 2 or more years of experience)* | 59,777 |
| Lieutenants (with less than 2 years of experience)* | 58,277 |
| Sergeants (with 2 or more years of experience)* | 56,777 |
| Sergeants (with less than 2 years of experience)* | 54,777 |

*as of January 1, 2005.

Sheriff's Officers

| Date of Hire | | |
|--------------|--------|--------|
| 2005 | Step 1 | 33,800 |
| 2004 | Step 2 | 35,880 |
| 2000-2003 | Step 3 | 37,737 |
| 1998-1999 | Step 4 | 39,567 |
| 1996-1997 | Step 5 | 43,680 |
| 1995 | Step 6 | 47,840 |
| Pre-1994 | Step 7 | 52,777 |

Article VII, Work Schedules, Sections A through F shall be modified to reflect the change in the work hours and work week and shall read:

A. Sheriff's Officers shall work according to a basic schedule established by the Sheriff.

B. The regular schedule for Sheriff's Officers shall be Monday through Friday, 8:30 a.m. to 5:00 p.m. The workday shall be eight and one-half consecutive hours per day, including one half-hour unpaid lunch break. The workweek shall be forty (40) hours per week. Said work days shall be followed by two (2) consecutive days off except as otherwise provided in Paragraph E and F.

C. The Sheriff in his/her sole discretion shall have the right, for efficiency of operations, to make changes in the starting and stopping time of the regular schedule as set forth in Paragraph E and F of this Article between the hours of 7:00 a.m. and 8:00 p.m., Monday through Friday, upon seven (7) calendar days notice to the affected employee.

D. If for any reason, the Sheriff, in his/her sole discretion, determines that the efficiency of operations requires a change in the starting and stopping time of the regular schedule but cannot comply with the notice provisions as set forth in Paragraph C of this Article, the affected employee shall be granted overtime compensation for all hours worked outside of that employee's regular shift as set forth in Paragraph B of this article up to and including seven (7) calendar days.

E. Nothing within the provisions of this Article shall be interpreted or construed to modify or alter the flexible work hours or schedules of Sheriff's Officers who work in the Civil Process Unit, Community Services Unit, the Warrants Unit and the Fugitive Unit.

F. Community Policing – Officers assigned to the Community Policing Unit shall have to work a schedule designed to conform to the needs of the municipality. Typically, this schedule will consist of four consecutive ten-hour days or five consecutive eight-hour days within every given seven-day work week. However, if this schedule exceed more than 80 hours in a two work week period the officer shall be entitled to overtime compensation as set forth in Article VIII, paragraph J. The Sheriff shall provide at least seven calendar days notice before making any changes in an officer's work schedule, where practicable.

[Changes to Article VII underlined]

The FOP has raised issues concerning overtime calculations and procedures when a sheriff's officer is required to work through lunch. Existing provisions in the Agreement cover these issues. [See Article VIII, Overtime, Sections F, H & M]. Except for language conforming these provisions to the new forty (40) hour workweek with a one-half hour lunch period, I award no substantive changes to the overtime provision. The changes shall read:

- F. When upon completion of a full shift an Officer is required to work a full second shift, he should also be entitled to a second one half-hour meal break on the second shift. Overlapping shift shall be considered as full shifts.
- H. Whenever an Officer is required to work through such Officer's normal one half-hour lunch; the Officer may request a later lunch break. The granting of such a request shall be at the discretion of the Sheriff if the workload permits. If an Officer's request is not granted by the Sheriff, he shall be compensated at the overtime rate pursuant to paragraph L of this article.
- M. In recognition of flexible schedules of Sheriff's Officers assigned to the Civil Process Unit, Community Services Unit, Warrants Unit and Fugitive Unit, the entitlement to overtime compensation shall accrue after completion of eight hours of paid service, other than sick leave, in any day and/or forty (40) hours of paid service, other than sick leave, in any work week.

[changes to Article VIII underlined]

The County has proposed to enroll unit employees in its "countywide" health insurance plan. That plan applies to all County employees except for sheriff officers and correction officers. The current plan for unit employees is set

forth in Article XXII of the Agreement. The current plan is the same as included in the PBA Local 249 Agreement which expires on December 31, 2004.

The County has established that the application of the "countywide" plan to sheriff's officers would be administratively beneficial, cost effective and would be provided at employer cost. A comparison of plans also reflects that certain benefits would be expanded including female contraceptives and annual well child care visits for children ages 6 to 16. Uniformity of health insurance plans under these circumstances is a desirable goal. For these reasons, I award this plan but I award no change in this provision through December 31, 2004 to maintain a consistency in plans between this unit and PBA Local #249 through the expiration of Local #249's agreement. The County's proposal shall be effective January 1, 2005, the third and final year of the new agreement.

The final issue concerns uniform/maintenance allowance. Given my conclusions that there be balance in salary and hours of work between sheriff's officers and correction officers, I find no justification for differences in uniform/maintenance allowance beyond contract year 2003. Currently the sheriff's officers receive a sum of \$650 in 2002. PBA Local 249 (correction officers) received \$700 in 2002, \$725 in 2003 and \$750 in 2004. I award a uniform/maintenance allowance of \$700 in 2003, \$750 in 2004 and an additional \$25 to \$775 in 2005.

I conclude that all of the above terms represent a reasonable determination of the issues in dispute after consideration of the record and after applying the statutory criteria. As previously indicated, the evidence submitted by both parties is mostly directed towards N.J.S.A. 34:13A-16(g)(2)(c) which concerns a comparison of wages, salaries, hours and conditions of employment of unit employees with other employees performing the same or similar services and with other employees generally in public employment in Burlington County or similar comparable jurisdictions. I give most substantial weight to this evidence and have concluded that there be balance in salary and work hours between sheriff's officers and correction officers as phased in during the course of this Agreement. I also conclude that the interests and welfare of the public N.J.S.A. 34:13A-16(g)(1) support comparability in the salaries between sheriff's officers and correction officers and a uniformity in health insurance programs between the FOP and other non-law enforcement County employees effective January 1, 2005. The Local 249 agreement expires on December 31, 2004 and I give little weight to that agreement as it concerns health insurance thereafter. I have also given weight to N.J.S.A. 34:13A-16(g)(3) by assessing the overall compensation presently received by unit employees after considering their present compensation levels in my conclusion that that there be balance in salary and work hours between sheriff's officers and correction officers as phased in during the course of this Agreement. The Award implicates N.J.S.A. 34:13A-16(g)(8) because the existing less attractive terms and conditions of employment for sheriff's officers could impact upon their continuity and stability of employment if

such conditions were to continue. Also relevant, but less significant, is cost of living. The cost of living is a less significant factor when the parties' positions are pegged to the merits of comparisons among bargaining units. There is no evidence that the results of this proceeding would compel the County to exceed its statutory spending limitations N.J.S.A. 34:13A-16(g)(7) nor that adverse financial impact adverse financial impact will be caused on the governing body, its residents or taxpayers, N.J.S.A. 34:13A-16(g)(7), by implementing the terms of the Award.

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

AWARD

1. All proposals by the County and the FOP not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.
2. The increases in salary shall be retroactive to their effective date.
3. Duration - There shall be a three-year agreement effective January 1, 2003 through December 31, 2005.
4. Bill of Rights (add new article)

Departmental Investigations

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

1. The interrogation of a member of the department shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate otherwise.
2. The interrogations shall take place at a location designated by the Employer or designee. Usually it will be at the Employer's office or in the location where the incident occurred.
3. The member of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the members of the allegations should be provided. If it is known that the member of the department is being interrogated as a witness only, he should be so informed at the initial contact.

4. The questioning shall be reasonable in length. Fifteen (15) minutes time shall be provided for personal necessities, meals, telephone calls and rest periods at the end of every two (2) hours.

5. No member of the department interviewed in the capacity of a witness or the subject of an investigation shall be subject to profanity or vulgar language during the course of an interview or interrogation.

6. At every stage of the proceedings, the Department shall afford an opportunity for a member of the department, if he so requests, to consult with counsel and/or his Association representative before being questioned concerning a violation of the rules and regulations during the interrogation of a member of the department, which shall not delay the interrogation beyond one (1) hour for consultation with his Association representative.

7. In cases other than departmental investigations, if an officer is under arrest or if he is a target of a criminal investigation, he shall be given his rights pursuant to current decisions of the United States Supreme Court.

8. Nothing herein shall be construed to deprive the Department or its officers of the ability to conduct the routine and daily operations of the Department.

9. Under no circumstances shall the employer offer or direct the taking of a polygraph or voice print examination for any employee covered by this Agreement, unless repealed by statute in case of polygraphs or approved for administrative investigations by the New Jersey Attorney General for voice print examinations.

5. Article VI - Salaries

The new salary schedules shall be retroactive to the effective dates:

Because of the compression in salary schedule steps, there is a date of hire inclusion referencing the appropriate step for placement of each Sheriff's Officer. Commencing January 1, 2005, each Sheriff's Officer shall move to the next step on the salary schedule on an annual basis.

January 1, 2003

Superior Officers

| | |
|----------------------|--------|
| Lieutenants | 53,700 |
| Top two Sergeants | 52,500 |
| Next Sergeant | 50,000 |
| Junior Sergeants (3) | 47,500 |

Sheriff's Officers

| Date of Hire | | |
|--------------|--------|---------|
| 2003 | Step 1 | 26,000 |
| 2001-2002 | Step 2 | 28,000 |
| 2000 | Step 3 | 30,500 |
| 1999 | Step 4 | 33,000 |
| 1998 | Step 5 | 35,500 |
| 1995-1997 | Step 6 | 38,000 |
| 1993 | Step 7 | 40,500 |
| Pre-1992 | Step 8 | 44,500* |

*Employees whose base salaries exceed the maximum shall receive \$1,500 added to their 2002 base pay.

January 1, 2004

Superior Officers

| | |
|---|--------|
| Lieutenants | 56,247 |
| Sergeants (with 2 or more years of experience)* | 54,747 |
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*as of January 1, 2004.

Sheriff's Officers

| Date of Hire | | |
|--------------|--------|--------|
| 2004 | Step 1 | 32,500 |
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| 1996-1997 | Step 4 | 38,045 |
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January 1, 2005

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| 2005 | Step 1 | 33,800 |
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| 1998-1999 | Step 4 | 39,567 |
| 1996-1997 | Step 5 | 43,680 |
| 1995 | Step 6 | 47,840 |
| Pre-1994 | Step 7 | 52,777 |

6. Article XXII - Health Insurance

Article XXII shall remain in effect through December 31, 2004. Effective January 1, 2005 Article XXII, A(1) shall be replaced with a paragraph stating the following with the remaining language carried forward:

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

| | Doctor's Visits | Prescription Generic | Prescription No Generic avail | Prescription Brand |
|----------|--------------------|-------------------------|-------------------------------------|-----------------------|
| 01/01/05 | \$15.00 | \$8.00 | \$12.00 | \$25.00* |

* If generic is available and employee elects brand, employee shall pay applicable co-pay and the difference between generic and brand. If doctor prescribes brand name drug the employee shall pay co-pay only.

Additionally, visits to the emergency room shall have the following co-pays:

\$25.00

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

7. Article VII - Work Schedules

Effective March 28, 2004, 12:01 a.m. the new work schedule shall be:

A. Sheriff's Officers shall work according to a basic schedule established by the Sheriff.

B. The regular schedule for Sheriff's Officers shall be Monday through Friday, 8:30 a.m. to 5:00 p.m. The workday shall be eight and one-half consecutive hours per day, including one half-hour unpaid lunch break. The workweek shall be forty (40) hours per week. Said work days shall be followed by two (2) consecutive days off except as otherwise provided in Paragraph E and F.

C. The Sheriff in his/her sole discretion shall have the right, for efficiency of operations, to make changes in the starting and stopping time of the regular schedule as set forth in Paragraph E and F of this Article between the hours of 7:00 a.m. and 8:00 p.m., Monday through Friday, upon seven (7) calendar days notice to the affected employee.

D. If for any reason, the Sheriff, in his/her sole discretion, determines that the efficiency of operations requires a change in the starting and stopping time of the regular schedule but cannot comply with the notice provisions as set forth in Paragraph C of this Article, the affected employee shall be granted overtime compensation for all hours worked outside of that employee's

regular shift as set forth in Paragraph B of this article up to and including seven (7) calendar days.

E. Nothing within the provisions of this Article shall be interpreted or construed to modify or alter the flexible work hours or schedules of Sheriff's Officers who work in the Civil Process Unit, Community Services Unit, the Warrants Unit and the Fugitive Unit.

F. Community Policing – Officers assigned to the Community Policing Unit shall have to work a schedule designed to conform to the needs of the municipality. Typically, this schedule will consist of four consecutive ten-hour days or five consecutive eight-hour days within every given seven-day work week. However, if this schedule exceed more than 80 hours in a two work week period the officer shall be entitled to overtime compensation as set forth in Article VIII, paragraph J. The Sheriff shall provide at least seven calendar days notice before making any changes in an officer's work schedule, where practicable.

[changes to Article VII underlined]

8. Article VIII - Overtime

Effective March 28, 2004, 12:01 a.m. the new overtime provision shall be modified to reflect changes in the following sections:

F. When upon completion of a full shift an Officer is required to work a full second shift, he should also be entitled to a second one half-hour meal break on the second shift. Overlapping shift shall be considered as full shifts.

H. Whenever an Officer is required to work through such Officer's normal one half-hour lunch; the Officer may request a later lunch break. The granting of such a request shall be at the discretion of the Sheriff if the workload permits. If an Officer's request is not granted by the Sheriff, he shall be compensated at the overtime rate pursuant to paragraph L of this article.

M. In recognition of flexible schedules of Sheriff's Officers assigned to the Civil Process Unit, Community Services Unit, Warrants Unit and Fugitive Unit, the entitlement to overtime compensation shall

accrue after completion of eight hours of paid service, other than sick leave, in any day and/or forty (40) hours of paid service, other than sick leave, in any work week.

[Changes to Article VIII underlined]

9. Article XXI - Uniform Allowance

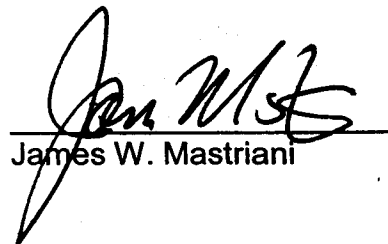
Section A shall be amended to reflect the uniform/maintenance allowance as listed below:

Effective 1/1/03 - \$700

Effective 1/1/04 - \$750

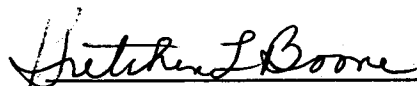
Effective 1/1/05 - \$775

Dated: March 21, 2004
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 21st day of March, 2004, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008