

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

- - - - - *
In the Matter of the Interest *
Arbitration between *
*
* DECISION
* AND AWARD
MERCER COUNTY PROSECUTOR *
*
-and- *
*
PROSECUTOR'S DETECTIVES AND * Docket Nos.
INVESTIGATORS PBA LOCAL 339; * IA-2010-069 and
PROSECUTOR'S SUPERIOR OFFICERS * IA-2010-070
ASSOCIATION *
*
*
- - - - - *

Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the Employer

Genova, Burns & Giantomasi

By: Brian W. Kronick, Esquire

For the Unions

Loccke, Correia, Limskey & Bukosky

By: Richard D/ Loccke, Esquire

D E C I S I O N

The Mercer County Prosecutor (the "Employer") and the Mercer County Prosecutor's Detectives and Investigators PBA Local 339 (the "PBA") are parties to a collective bargaining agreement which had a duration through December 31, 2009. The Mercer County Prosecutor (the "Employer") and the Mercer County Prosecutor's Superior Officers Association (the "SOA"); are parties to a separate collective bargaining agreement which had a duration through December 31, 2009. Negotiations for successor agreements reached an impasse and Petitions to Initiate Compulsory Interest Arbitration were filed in each impasse. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in both matters. The parties expressly agreed to consolidate the two impasse proceedings in order to resolve the dispute more efficiently (the PBA/SOA, collectively, are referred to as the "Unions").

The Arbitrator met with the parties on June 1, 2010 and July 14, 2010 in an effort to assist them in achieving a

voluntary resolution to their disputes. The impasses persisted. Evidentiary hearings were scheduled and held on October 13, 2010.

The parties were provided with the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was created at hearing. The documentary evidence is literally voluminous. There was direct testimonial evidence from several witnesses and the testimony from the transcripts of a parallel proceeding was incorporated in the record by stipulation. Both parties have filed comprehensive post-hearing briefs. The entire record has been carefully considered. The evidence has been evaluated in light of the nine statutory criteria set forth in *N.J.S.A. 34:13A-16(g)*.

The parties failed to mutually agree to a terminal procedure. Therefore, under *N.J.S.A. 34:13A-(d)(2)* the dispute shall be resolved through a determination by conventional arbitration. This resolution shall be reached through application of all of the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute.

Statutory Criteria

N.J.S.A. 34:13A-16(g) provides as follows:

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why others are not relevant, and provide an analysis of the evidence on each relevant factor:

(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 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 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 other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determinations 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).

Final Offers

PBA/SOA Final Offer

The Unions' Final Offer proposes a single economic issue, that there be a 3.5% across-the-board wage increase, effective on January 1 of each year of a four year duration from January 1, 2010 through December 31, 2013. The PBA/SOA also propose five non-economic changes as follows:

1. Reasonable Notice Definition, Article IV (PBA Contract):

The PBA proposes a modification of this Article so as to define "reasonable notice" at paragraph 4.1 to be seventy-two (72) hours from the start of the previously scheduled shift or the new shift designated, whichever occurs first.

2. Bereavement Definition:

The Associations propose the addition of coverage for "stepmother, stepfather or any other relative who lives regularly in the Employee's household."

3. Access to Personal Time:

The Associations wish to modify the personal leave notification language (Paragraph 8.4 of PBA Contract, Paragraph 7.4 of SOA Contract) so as to delete the

twenty-four hour notice requirement. A member could therefore request use of personal time at any point, however the approval would be subject to managerial discretion.

4. Access to Vacation Leave:

The Associations propose a deletion of the prohibition of taking a personal day in conjunction with vacation leave. The Associations propose that a personal day may be taken at any point subject to prior Departmental approval.

5. Seniority:

The Associations propose a modification of the second paragraph of this Article so as to change the word "may" to "shall."

Employer's Final Offer - PBA Unit

The Employer's Final Offer for the PBA Unit includes proposals relating to four economic items, as follows:

1. Term of the Agreement:

Three Years commencing January 1, 2010 through December 31, 2012.

2. Wages:

A) Article 6.1 shall be amended to read as follows:

a. Effective January 1, 2010: Zero percent (0%) increase on base pay and a step freeze to eligible employees who are on payroll as of January 1, 2010 and are still employed by the County when the contract is ratified by the Board of Chosen Freeholders.

b. Effective January 1, 2011: Zero Percent (0%) increase on base pay with movement on the steps.

c. Effective January 1, 2012: Two Percent (2.0%) total cost increase, inclusive of step increments, longevity and law enforcement longevity.

B) Article 6.3 shall be amended to reflect the past practice that step movement shall be on July 1 of each year of the current contract.

3. Medical Benefits:

A) Article 7.1 shall be amended to delete the following sentence:

a. The premium costs for said programs shall be fully paid by the County except that in the election of Health Maintenance Organization Medical Program, an eligible Employee shall continue to be required to pay, through payroll deductions, the difference in cost, if

any, between the standard Hospital/Medical coverage and HMO coverage.

B) Article 7.5 shall be amended to provide for the payment of accumulated unused sick time up to a maximum of \$15,000.

C) Article 7.6 shall be deleted in its entirety and amended as follows:

a. The County agrees to provide a Dental Insurance Program to eligible Employees and their dependents. There shall be three (3) types of coverage as follows: (1) Basic Dental Coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance. The County will pay all of the costs of the basic dental program. Employees shall be responsible for any additional costs associated with the Premium Dental Program or the Eastern Dental Program in excess of the cost for basic coverage.

D) Articles 7.7, 7.8 and 7.9 shall be amended to require that each active employee shall contribute 1.5% of salary towards health insurance pursuant to P.L. 2010, c. 2, or any amount deemed appropriate by legislative action following the ratification of this Agreement.

4. Holidays:

- A) Combine Lincoln's Birthday and Washington's Birthday into President's Day.
- B) Remove Day after Thanksgiving as a paid holiday.

Employer's Final Offer - SOA Unit

The Employer's Final Offer for the PBA Unit includes proposals relating to four economic items, as follows:

1. Term of the Agreement:

Three Years commencing January 1, 2010 through December 31, 2012.

2. Wages:

A) Article 5.1 shall be amended to read as follows:

a. Effective January 1, 2010: Zero percent (0%) increase on base pay.

b. Effective January 1, 2011: Zero Percent (0%) increase on base pay.

c. Effective January 1, 2012: Two Percent (2.0%) total cost increase, inclusive of specialty pay stipends, longevity and law enforcement longevity.

3. Medical Benefits:

A) Article 6.1 shall be amended to delete the following sentence:

a. The premium costs for said programs shall be fully paid by the County except that in the election of Health Maintenance Organization Medical Program, an eligible Employee shall continue to be required to pay, through payroll deductions, the difference in cost, if any, between the standard Hospital/Medical coverage and HMO coverage.

B) Article 6.5 shall be amended to provide for the payment of accumulated unused sick time up to a maximum of \$15,000.

C) Article 6.6 shall be deleted in its entirety and amended as follows:

a. The County agrees to provide a Dental Insurance Program to eligible Employees and their dependents. There shall be three (3) types of coverage as follows:

(1) Basic Dental Coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance. The County will pay all of the costs of the basic dental program. Employees shall be responsible for any additional costs associated with the Premium Dental Program or the Eastern Dental Program in excess of the cost for basic coverage.

D) Article 6.8 shall be amended to require that each active employee shall contribute 1.5% of salary towards health insurance pursuant to P.L. 2010, c. 2, or any amount deemed appropriate by legislative action following the ratification of this Agreement.

4. Holidays:

- A) Combine Lincoln's Birthday and Washington's Birthday into President's Day.
- B) Remove Day after Thanksgiving as a paid holiday.

Positions of the Parties

Position of the PBA/SOA

The PBA/SOA contend that their last best offer is more reasonable and should be awarded herein as the basis for the resolution of the issues in dispute at impasse. They maintain that these positions, relating to both economic and non-economic issues, are warranted under the statutory criteria.

With respect to the *Interest and Welfare of the Public*, the PBA/SOA stresses that the work of the Prosecutor's office is not a net expense to the taxpayers of the County but actually saves costs to the public. This concept is centered upon the number of specialized functions that the sworn personnel in the Prosecutor's Office perform in order to relieve local law enforcement departments from the expense of equipment and training necessary to provide such services. It notes that municipal departments might only occasionally need these specialized services and that the Prosecutor's Office can provide services county-wide on a skilled and efficient basis. Just a few examples of such

special work includes: arson investigations, gang and juvenile issues, homicide investigations and working on computer crimes.

The Unions initially emphasize the point that their members are not County employees but employees of the Prosecutor, a constitutional officer with "pre-eminence in legal authority" in Mercer County. They assert that the Prosecutor is "completely separate and apart from County government." They further argue that the County "cannot control any aspect of the operational authority of the Prosecutor." The case of *In Re Application of Bigley*, 55 N.J. 53 (1969) is cited for the proposition that the County does not have final authority over expenditures by the Prosecutor's Office.

Despite the assertion of pre-eminence in the law enforcement community, the PBA/SOA notes that the sworn personnel of the Prosecutor's Office has a very strong cooperative relationship with the local law enforcement departments throughout the county. The Unions contend that they provide public safety services to county residents with professionalism and efficiency. They point out that they

accomplish these tasks with less staff than in the past, exhibiting considerable productivity increases, documented in statistical analyses in the record.

The Unions address the *Comparability* criterion with an initial comparison of 2009 pay rates among three county prosecutor's offices (Bergen, Camden and Ocean) and three municipal police departments in Mercer County (Princeton Township, Princeton Borough and Ewing Township). The 2009 maximum rank and file rates of the comparison group establish a range from \$91,240 (Ocean County Prosecutor's Office) to \$116,780 (Bergen County Prosecutor's Office) in contrast to the Mercer County Prosecutor's Detectives' top rate for 2009 of \$90,804. The PBA/SOA also claim that this comparison is worsened by the recognition that their contract is lacking with respect to certain other benefits.

The PBA/SOA presents data for the comparison of base rate increases in other law enforcement units for the period of 2010 through 2013. The universe compared includes municipal law enforcement units in Princeton, Trenton, Ewing Hopewell and Belmar and County law enforcement units in Essex and Bergen. The range of base rate increases is from

2.25% to 4.0%, with the average each year above 3.3%. The median increase is also above 3%. The Unions argue that these comparisons support the reasonableness of their 3.5% proposal for each of the four years.

The PBA/SOA presents a comprehensive argument to establish that the comparison of law enforcement personnel to private sector employment is not particularly valid. It stresses the statutory elements of the job including: different treatment under wage and hour laws (*N.J.S.A.* 34:11-56a, et. seq.) and the Fair Labor Standards Act (29 *U.S.C.A.* Section 201 et. seq.); specifications of powers and duties; specific job qualifications; residency requirements; age restrictions; and the obligation to respond whether on or off duty.

In addressing the *Lawful Authority* and *Impact on the Taxpayers* criteria, the Unions reiterate the legal position that Mercer County is not the employer but that it is the Prosecutor who is legally in that role. They further maintain that the Cap Laws do not apply to this case because the Prosecutor is, in essence, an extension of the State which is not subject to the Cap Laws. The PBA/SOA

acknowledge that the Employer will argue to the contrary as to the Cap Laws but they point out that the 3.5% proposed increase for 2010 is within the Cap limit for that year.

The Unions insist that an examination of the turnover rate of personnel in the immediate past has had an impact to render the application of the Cap Law irrelevant to the resolution of the case. This argument is based upon an assessment of the ultimate costs, given changes in personnel. They present calculations revealing reduced pay costs of \$950,165 for separated employees, with replacement costs of \$422,838, leaving a net reduction in payroll of \$527,327. This represents in excess of 10% of the total base salary for the two bargaining units.

The PBA/SOA suggest that the statutory changes dictating specific minimum employee contributions toward health benefits present the Employer with a "windfall" in cost reductions. They seek "credit" for the value of this reduction which is of a continuing basis, beginning in May of 2010.

The Unions assert that the compensation package for bargaining unit employees represents a very minor portion of the tax bill for residents of Mercer County. They point to the County portion of the tax bill as 10% and note that the bargaining units compensation represents "two percent (2.0%) of the County's 'Current Year Amount to be Raised by Taxation.'" That would be 2% of the 10% County element; applying a 3.5% increase on that 0.2% that the payroll for the bargaining units represents would mean that the impact of the Unions' proposal for one year would be 0.007% of the total tax bill. The PBA/SOA point out that this does not even account for the offsets in costs previously addressed. The Unions insist that their position would have very little, if any, impact on the taxpayers.

In relation to the 8th criterion, the Unions draw attention to the traditional factors of "area wage standards" and "prevailing wages" to claim that they have established a strong case for their proposals. They characterize the wage increase proposal, the sole economic factor in their proposals, as "most conservative" and "well supported by the testimony and evidence in the record."

The PBA/SOA concludes that it has also presented strong support for its non-economic proposals, emphasizing the testimonial evidence presented to explain the reasoning for each. They argue that both the wage component and the five non-economic items are all more reasonable and should be awarded under the statutory criteria.

Position of the Employer

The Employer contends that its final offer presents the more reasonable position with respect to all the economic and non-economic issues presented for resolution at impasse. It maintains that "Mercer County is facing rising costs, declining revenues and difficult decisions about how to balance its budget." The Employer characterizes its own offer as "extremely fair and reasonable."

The Employer addresses the *Public Interest* criterion, initially asserting that continuing to raise taxes is not the solution for the residents of Mercer County. It notes evidence of a steady rise in the tax levy over the past eight years. The Employer maintains that salaries have continued to be funded during uncertain economic times. It points out that the County experienced a revenue shortfall

in 2009, anticipating \$314 million in revenue and receiving merely \$309 million. The Employer notes that prudence led to the reduced anticipated revenue for 2010 of \$294 million. It insists that there must be a recognition of the public value of various County programs whether they relate to roads and infrastructure or to parks or to social services or to public safety.

The Employer represents that about 20% of its total budget appropriations relate to public safety expenditures. Of that 20%, a little over 1/5 is found in the funding of the Prosecutor's Office. It argues that the best interests of the public are served by the implementation of the Employer's economic position which it describes as "more financially sound." It further stresses the belief that the Prosecutor's Detectives and Superior Officers are already well paid.

The Employer maintains that, applying the *Comparability* criterion, the employees represented by the Unions "receive far better compensation than other employees in both comparable public sector jurisdictions and the private sector as a whole." The Employer attempts to

document this assertion through the presentation of charts establishing the start and maximum rates for detectives in the prosecutors' offices in all New Jersey Counties. It claims that the top step in the Mercer contract for detectives is well above the average among other counties, although there is some missing data for the key comparison year of 2009. The comparisons for 2006, 2007 and 2008 reflect pay rates in Mercer that are very close to average among a nearly full set of data.

The Employer emphasizes the fact that the base pay is not the only benefit establishing the units' members to be well compensated. It notes that the holiday benefits are average, as are the levels of personal leave and sick leave. Additionally, the Employer describes the longevity payments as "very favorable." It charts a comparison of longevity benefits among all the prosecutor's offices in the State, listing those with percentage benefits those with flat dollar payment schedules (as in Mercer) and those with no contractual longevity at all.

The Employer stresses the favorable comparability of the units' members to other law enforcement personnel

employed by Mercer County. This comparison includes the Mercer County Sheriff's Officers and Corrections Officers and Superior Officers in both those Departments. Specifically, the Employer claims that the Prosecutor's employees have higher starting rates and higher maximum rates than any of the officers in either the Sheriff's Office or in Corrections. It charts these figures citing the documentary evidence in the record.

The Employer argues that the Prosecutor's employee units are far better compensated than County employees in other, non-law enforcement units. It further notes that there have been negotiated contracts with several other groups with some zero percent years in terms of salary increases. The Employer suggests that the disparity between the Prosecutor's Detectives and these other units will widen if the resolution herein is greater than that reached with the other units. Finally, the Employer maintains that recent private sector settlements reflect the appropriate nature of the Employer's proposals.

The Employer asserts that the *Overall Compensation* for employees in the two bargaining units at issue herein is

substantial. It calculates the average salary for rank and file Detectives to be \$84,931 and the average for Superior Officers to be \$114,237. In addition to base salary, the Employer points out that the employees "receive a wide array of economic benefits including: fourteen (14) holidays; three (3) personal days; and fifteen (15) sick days." It also draws focus on the employees enrollment in a retirement system providing significant benefits after either 20 or 25 years of service. The Employer states that, "in terms of overall compensation received by Mercer County Prosecutor Detectives, the County's Final Offer is more than reasonable under the statutory criteria and should be awarded."

The Employer insists that the Lawful Authority criterion requires the Arbitrator to consider the County's budget cap situation. It points out that the constraints on the County's ability to increase taxes are particularly important, noting that at least four of the nine statutory criteria specifically relate to the Cap Law.

The Employer argues that the County cannot simply raise taxes to support salaries. It claims that continuing such an approach would conflict with the County's goal of

financial stability. It suggests that the efforts to control costs and contain rising taxes "should be lauded as good governmental policy." The Employer stresses that the 2010 appropriations for the Prosecutor's Department of \$14,248,000 was based on a zero percent increase in the wages of employees of the two bargaining units. It expresses the concern that given the ever more restrictive Cap Laws that the Unions' proposal for 3.5% increases would "'blow' the County's cap." The Employer insists that the Unions' wage increase proposal would exacerbate existing fiscal problems and ignore the limitations on its lawful authority.

The Employer contends that the *Financial Impact* criterion does not require proof that a "substantial detrimental result" would occur or be worsened through the awarding of the Unions' positions. It cites *Borough of Hillsdale*, 137 N.J. 71 (1994) for the proposition that a public employer need not demonstrate that it would be financially crippled for this criterion to be significant. It further urges an understanding that the full impact of the award must be considered including that upon other employees and the overall budget.

The Employer addresses the County's financial situation, placing substantial emphasis on the reduction of anticipated revenues for 2010. It further focuses on increasing costs in health insurance and pensions. The Employer notes that the County Freeholders have approved the maximum cap allowed for 2008, 2009 and 2010. However, the Employer cautions that matters have been made worse by a trend of increasing numbers of tax appeals. The Employer notes that it has taken several steps to address its fiscal issues. It states that it implemented a layoff of approximately 150 employees in 2010. It also sold off its Geriatric Center to save money.

The Employer next considers the matter of its fund balance history. The fund balance, it reveals, had increased steadily from 2000 through its high water mark in 2006. Since then this measure of reserves has dropped significantly as the fund balance was drawn down to moderate the impact on taxpayers. The Employer represents that the fund balance was 8% of the County budget in 2009 and will be reduced to 7% of the 2010 County budget. The Employer further emphasizes that the County faces increasing debt

service; noting that that figure was at nearly \$14.4 million in 2009 and \$14.04 million in 2010. The Employer concludes that the County is facing "serious financial problems" and "fiscal restraints" making it clear that it is unable to fund the Unions' demands in wages.

The Employer maintains that the consideration of the *Cost of Living*, as measured by the Consumer Price Index, supports the selection of its Final Offer. It contends that the cost of living has "remained consistent over the past several years", indicating no need to increase salaries as high as that proposed by the PBA/SOA.

With respect to the *Stability and Continuity of Employment* criterion, the Employer asserts that unit employees have "enjoyed a long employment with the Prosecutor's Office." It suggests that these employees generally remain with the Prosecutor's Office until retirement. It notes that the average seniority of a rank and file Detective is currently 9.6 years while the average seniority of a Superior Officer is 20 years.

The Employer argues that the *Statutory Restrictions* criterion emphasizes the requirement that the Arbitrator consider the budgetary limitations imposed by legislation. It places particular significance upon the recent, more restrictive levy cap of 2% on property tax increases. The Employer contends that this criterion supports the selection of its proposals as the only way to sustain financial stability.

The Employer maintains that the three year duration in its Final Offer is more reasonable than the four proposed by the Unions. It asserts that the swift-changing environment of government finances requires the shorter duration for the benefit of the County's financial well-being.

The Employer insists that its proposal to incorporate the 1.5% contribution to health insurance premiums is a statutory minimum and should be referenced in the contract. The Employer further seeks to "clarify" the dental coverage provisions of the contract to make clear the current practice of employees paying the difference in cost for coverage by one of the optional plans rather than the basic

dental plan which is fully paid by the County. It characterizes its health care proposals as reasonable.

The Employer states that the proposal to reduce the number of paid holidays from 14 to 12 is needed for "fiscal relief by saving on holiday pay and overtime pay associated with staffing for such holidays." It also claims that the agreement of AFSCME and the Teamsters in the negotiation of their contracts to combine the Lincoln and Washington Birthdays into one Presidents Day is supportive of this proposal.

The Employer contends that the Unions have failed to meet their burden of proving the need to make the non-economic changes that they have proposed. It urges that these proposals be rejected in the award herein.

Discussion and Analysis

The voluntary settlement of contract negotiations is always the preferred method of reaching resolution. Consistent with the purpose and intent of the interest arbitration statute, the Arbitrator worked with the parties to assist them in reaching a voluntary resolution.

The Arbitrator explained to the parties that they are well-served by extending their efforts toward a voluntary resolution because that process resolves disputes more swiftly, less expensively and without creating any perception of winners and losers. Further, it is through a voluntary resolution that the parties to an interest arbitration can maintain control over the terms and conditions of employment without the need to have them fixed by a neutral, third party.

The parties were unable to make any progress at all toward bridging their differences through direct or mediated negotiations. The impasse left no option under the statute

other than to have a final and binding determination made herein.

The issues in dispute are significant and meaningful items, terms and conditions of employment that are clearly important to both the Employer and the Unions. They include: the duration of the contract; wages; medical benefits; personal and bereavement leave time; seniority; work schedules; and holidays.

The parties have presented extensive documentation, in addition to testimonial evidence. Their arguments specifically address the criteria set forth for consideration in the interest arbitration statute. The Arbitrator has considered each and every criterion and the following is a discussion of the application of the criteria to the package forming the resolution of the dispute awarded herein.

The **Interest and Welfare of the Public** is always a relevant criterion in resolving an interest arbitration dispute. There are numerous elements to the public interest factor but the Arbitrator believes that this initial

criterion is always worthy of substantial weight in determining the most reasonable resolution of the parties' dispute. Consider that the services rendered by the employees at issue are a particularly important aspect of providing for the public safety. The Prosecutor's ability to attract, retain and promote qualified Detectives and Superior Officers has an impact on the quality of life of the residents of Mercer County, measured in terms of safety and in the effectiveness of the Prosecutor's Office. It is significant to acknowledge that the Mercer County Prosecutor provides substantial specialized services to the municipal law enforcement departments in the County at a professional and efficient level. It works in cooperation with local law enforcement, having a very direct impact on the public safety of the citizens in Mercer County. It's increased responsibilities in Trenton, as that city deals with challenging financial issues, must be acknowledged.

Fiscal responsibility is another component of the public interest that is directly relevant to the considerations in this interest arbitration. The public interest elements of the CAP Law must also be examined. Additionally, the morale of employees and the impact of this

contract in the context of the overall labor relations process in Mercer County are important considerations in relation to the public interest.

The Arbitrator acknowledges the Unions' contention that it is the Prosecutor and not the County that is the Employer of the two units of employees at issue herein. This fact is not only established through recognition of the constitutional nature of the Prosecutor's Office, but also through an examination of the prior contracts [Exhibits J-1 and J-2, also Exhibit E-3 and E-4] which reflect the indication of the Prosecutor as the singular Employer.

However, Mercer County is the governmental agency through which the funding of the Prosecutor's budget is achieved through property taxes and other revenue sources. The Prosecutor's budget is financed from within the County budget and although a *Bigley* application may be available to the Prosecutor to secure further funds, the normal reality is much more a matter of mutual coexistence rather than of contested budgets. Further, the County, as a partner and the funding source, is universally present at collective bargaining as is true for County Prosecutors' Offices

throughout the State. It's involvement and the consideration of the County's interests in this proceeding are most certainly ordinary and traditional factors in negotiations for Prosecutors' Detectives. Additionally, the inter-relationship among County law enforcement units and other contract negotiations is a common factor. The inclusion of these elements in the weighing of the record herein is certainly in the public interest. These inter-twined components of county services are undeniably relevant to the public interest.

The Arbitrator finds that the public interest criterion is worthy of a great measure of weight in deciding the issues in dispute in this impasse. Of immediate importance is the recognition that the Prosecutor's Office has served the public well. The Detectives and Superior Officers are particularly well-trained, experienced and professional. The Employer acknowledges that they perform at a very high level, "willing to go above and beyond what's in their job description" [TR. p110, line 16] and the record includes evidence of increasing efficiency and productivity. It is important that the Employer be able to attract and retain highly qualified personnel for this Office in order to

maintain its high performance level. This must be achieved with fiscal responsibility in full balance with the delivery of other County services to the public.

The record establishes that the Employer has shown that the County's 2010 budget is particularly tight. This reflects the downturn in revenues causing the budget to anticipate less revenue and to rely on fund balance as a revenue source to moderate the financial impact on taxpayers. Specifically, the drop in anticipated revenues in the County's 2010 Budget [Exhibit E-22] equals 3.5%. The steady growth of the County tax levy [Exhibit E-46] cannot be ignored but there was a diminished rate of increase in 2009, compared to 2008. Consider the chart below of the Mercer County Tax Levy 2001-2009:

Year	Tax Levy
2001	\$125,672,187
2002	\$146,343,066
2003	\$159,398,103
2004	\$169,622,003
2005	\$185,297,503
2006	\$189,190,481
2007	\$193,980,796
2008	\$208,483,580
2009	\$219,013,335

Of additional concern, relevant to an understanding of the current fiscal standing of the County, is an examination of the budget fund balance over the last ten years. There has been a steady decline since 2006, which represented the high water mark. Consider the data set forth in Exhibit E-44, Mercer County Fund Balance 1999-2009:

Year	Fund Balance
1999	\$7,247,880
2000	\$4,960,992
2001	\$4,989,704
2002	\$13,086,027
2003	\$11,604,914
2004	\$22,930,305
2005	\$31,752,771
2006	\$37,610,489
2007	\$30,901,613
2008	\$26,350,214
2009	\$14,000,000

The reduction of the fund balance over the last four years of the table above reflects a major effort on the part of County government to limit the impact on the taxpayers of increased costs to provide County services. There is some concern over the slope of the downward trend and the future limitations to continuing such a route but it is important

to note, as pointed out by the County, that the fund balance in 2010 will still equal 7% of the County's budget which is a healthy measure of fund balance.

The Employer emphasizes the growing costs of providing public safety services at the County level, noting a \$5.5 million increase over the last three years. However, a closer examination of Exhibit E-54 yields some very enlightening information. Consider the following chart of Mercer County's public safety costs, broken down by Department:

COST OF PUBLIC SAFETY

Year	Prosecutor	Sheriff	Corrections
2007	\$14,496,688	\$12,467,990	\$28,030,618
2008	\$13,466,257	\$13,146,635	\$30,047,841
2009	\$13,780,135	\$13,337,516	\$33,403,631
2010	\$14,248,179	\$13,096,610	\$35,323,787

Of relevant interest is the fact that the Prosecutor's Office is operating as a lower cost factor within the Mercer County Budget in 2010 than it did in 2007. This is probably due to some element of personnel changes but the record is not specific with regard to the makeup of the above figures which were presented by the Employer as having been taken from each year's budget. What is most meaningful about the

data above is that it validates the Unions' contention that personnel changes involving employees leaving, with reduced replacement costs, has presented the Employer with significant cost savings for the bargaining units.

The Unions' presentation, addressing Exhibit E-248, establishes that 13 unit employees have left the employment of the Prosecutor's Office since 2006, nine by way of retirement. It calculates that the payroll reduction (in terms of base salary only) from those separations from service equals \$950,165. Exhibit E-248 further documents nine new hires since 2006 and the Unions calculate that offset of the above reduction to equal \$422,838. The record provides credible evidence of a net reduction in payroll for positions in the two bargaining units equal to \$527,327 or about 11.2% of current payroll. This calculation is a snapshot and there will be changes over time; however, it does provide an offset to moderate increases in compensation, whether those of step advancement or the across-the-board increases. The existence of this cost reduction does not dictate that it all be used for increasing employee compensation. This Arbitrator will not order such a package. However, it is significant in finding

that the moderate and reasonable pay increases set forth herein will fall within budgetary limitations and without directly causing any increase to taxpayers.

The Employer presented the certified transcribed testimony of the County's Chief Financial Officer, David Miller, that there was no provision in the 2010 budget for wage increases. It was established that 75% of the budget revenues were generated by property taxes and that those revenues were subject to the limitations of the Cap Law. Further, the record does credibly establish that, particularly with respect to the 2010 budget, there is a reduction in other revenue sources causing the anticipation of lower revenues in 2010 than in 2009.

This evidence leads the Arbitrator to find that, in constructing a multi-year package, it is in the public interest to begin with one year of a zero percent across-the-board wage increase. This approach will be combined with a balanced structure of moderate wage increases in the other years. The Employer will have the ability to move forward, consistent with the anticipated 2010 appropriations, without any back pay liability for that

year. Placing a zero percent increase in 2010 provides the Employer with the maximum benefit from the freezing of across-the-board rates, from a cash flow perspective.

The Arbitrator finds that it is in the public interest to order a four-year contract, as proposed by the Unions. This duration will provide an opportunity for the Employer to face the 2012 and 2013 budgets with knowledge as to personnel costs, enabling those budgets to provide accordingly. The duration of four years allows for better planning with respect to constructing future budgets with a greater degree of certainty as to costs. The timing of this Award further dictates that there is a public interest in the four year contract term. The three year proposal of the Employer would put the parties back in negotiations approximately a year from now. It would serve the parties and the public interest to have a period of stability without the issue of negotiations and another possible impasse. The extra year in the situation at hand is clearly warranted.

Following the zero percent increase in the initial year of the four year contract period it is necessary to

construct a compensation plan that will keep the position of Detective, and the Superior Officer positions as well, competitive in the labor marketplace for law enforcement. The four year package should serve to maintain the high level of morale that exists in the Prosecutor's Office and protect against the erosion of personnel to other law enforcement opportunities, within a stabile budget.

The Arbitrator finds that the full package of across-the-board salary rate increases shall be as follows:

Effective January 1, 2010 - 0.0%

Effective January 1, 2011 - 2.0%

Effective January 1, 2012 - 2.5%

Effective January 1, 2013 - 2.5%

This approach recognizes the evidence of the immediate pressures from the 2010 budget and balances those demands with the other public interest concerns to maintain the very high standards of this pre-eminent law enforcement agency.

The First Assistant Prosecutor, who testified at the hearing, described the Prosecutor's Office as the "flagship for law enforcement in Mercer County." The Unions' presentation identified that there are municipal departments

in Mercer County that have higher pay scales than that for the Prosecutor's Detectives [see Exhibits P-6, P-7, P-9 and P-10]. While this is not an overwhelming fact, it is indicative that, in order to maintain its competitive position in the labor market, there must be at least a moderate increase in salaries, as set forth above.

Finally, with respect to the public interest criterion, there is absolutely nothing to indicate that the package awarded herein will present a Cap problem. The evidence of the history of retirements and other personnel changes, with lower cost replacements, provides reason in combination with other factors, to confidently find that these increases present no Cap problems.

The **Comparability** criterion requires an examination of numerous factors for comparing the employees of the two units at hand to other employees. It expressly dictates an examination of wages, salaries and terms and conditions of employees in the: private sector, generally; the public sector, generally; and the public sector in the same or similar jurisdictions. It also indicates that the employees should be compared to those performing the same or similar

services and to other employees, generally. It is up to the Arbitrator to determine the due weight to be attributed to each of the comparisons.

The most commonly used data with respect to comparisons with employees in the private sector, generally, is the Private Sector Average Annual Wages table compiled by the New Jersey Department of Labor and Workforce Development and republished by the New Jersey Public Employment Relations Commission. The latest such data was issued in August of 2010 [Exhibit P-17] and indicates that, statewide, the 2009 average annual wage for private sector employees (it relates only to those covered by unemployment insurance) was \$390 less than that for 2008. This computes to a 0.7% reduction in average annual wages. When broken down by County, the data reveals that Mercer County private sector average annual wages were reduced by 2.7% from 2008 to 2009.

The private sector data has some value as a context for the economic circumstances present in the State and the County. However, it is general in nature and must be viewed along with other, more specific and more recent data under this criterion. This evidence of private sector wages has

been given some weight in the formation of the economic package.

Comparisons involving the public sector, generally, are of similar import to those of the private sector. The same report noted above, the annual wage survey from the New Jersey Department of Labor and the Public Employment Relations Commission presents credible data as to government sector employees, generally. With respect to the changes from 2008 to 2009 (the most recent published data) the report reflects a 2.2% overall general increase in government employment. That 2.2% increase is also reported as being the average wage increase factor for both State and local government employment.

The Arbitrator finds that comparisons with employees performing the same or similar duties as providing the most meaningful comparisons. This is especially true when comparing similar jurisdictions or within the same jurisdiction, as the units at issue. Further, comparisons with other employee units of the same employer are particularly informative and significant under the Comparability criterion.

Consider the following comparison chart of maximum salary rates for Prosecutor' Detectives [Exhibit E-199]:

COUNTY	2006	2007	2008	2009	2010	2011
Atlantic	\$76,002	n/a	n/a	n/a	n/a	n/a
Bergen	\$103,911	\$107,944	\$110,738	\$113,604	n/a	n/a
Burlington	n/a	\$80,267	\$83,500	\$86,000	\$88,500	n/a
Camden	\$86,185	\$89,381	\$94,100	\$98,099	n/a	n/a
Cape May	\$70,827	\$74,368	\$78,086	\$81,209	\$84,457	\$87,835
Cumberland	n/a	\$72,938	\$75,673	\$78,661	\$81,611	n/a
Essex	\$81,655	\$84,921	n/a	n/a	n/a	n/a
Gloucester	\$76,012	\$79,052	\$82,214	\$85,502	n/a	n/a
Hudson	\$75,097	\$78,101	\$80,850	n/a	n/a	n/a
Hunterdon	\$72,418	\$75,381	\$78,396	n/a	n/a	n/a
Mercer	\$80,145	\$83,551	\$87,102	\$90,804	n/a	n/a
Middlesex	\$95,038	\$98,840	\$102,793	n/a	n/a	n/a
Monmouth	\$109,000	\$113,087	\$117,328	n/a	n/a	n/a
Morris	\$77,400	\$80,496	\$83,716	\$87,064	\$90,547	n/a
Ocean	\$81,112	\$84,357	\$87,731	\$91,240	n/a	n/a
Passaic	\$97,020	n/a	n/a	n/a	n/a	n/a
Salem	\$61,808	\$67,920	\$74,277	\$76,951	\$79,721	\$82,591
Somerset	\$83,461	\$83,461	\$86,382	\$89,406	\$98,704	\$98,704
Sussex	\$60,000	\$62,200	\$73,751	\$76,517	\$79,386	\$82,363
Union	\$83,515	\$83,515	\$88,766	\$90,257	n/a	n/a
Warren	\$73,777	\$76,544	\$81,206	\$82,830	\$86,143	\$91,389

The evidence is most complete for the 2008 calendar year and a comparison can start there, as a base year. The Mercer Prosecutor's Detectives' 2008 maximum rate is surpassed by

only 6 of the 18 jurisdictions with data for that year. Of the other three remaining counties, it is likely that one (Passaic) will remain higher than Mercer; one (Atlantic) will remain lower than Mercer; and that Essex will remain about the same. This comparison reveals that in the base comparison year of 2008, the Mercer salaries were quite competitive and reasonable. The data for 2009 establishes that only three of the 14 jurisdictions with data available (Bergen, Camden and Ocean Counties) provide the Prosecutor's Detectives with higher salaries than Mercer. However, an additional 3 jurisdictions (Passaic, Middlesex and Monmouth) have higher top salary rates in prior years. The Mercer Prosecutor's Detective standing in 2009 is comparably similar to its competitive standing in 2008.

The evidence in the record for 2010 establishes an average increase in maximum salary for the eight jurisdictions with contracts on the record equal to 3.75%. The range of these salary increases is from 2.9% to 4.0%. The comparisons support an increase in 2010. They also reflect that the Unions' proposal, under this standard of comparison, is not as "exorbitant" as the Employer contends. However, this is not the only criterion and the economic

package constructed herein considers all the factors and balances them according to appropriate weight. The Arbitrator further recognizes that the timing of the establishment of the record and the number of unresolved contracts for 2010 and 2011 clearly affects the nature of the evidence.

The comparison data [Exhibit E-200] for the SOA unit presents a similarly strong reflection of the relatively competitive compensation standing of the Mercer County Superior Officer Unit among the various counties in the State. Further, consistent with the evidence relating to the rank and file, the Superior Officer pay rate increases in other jurisdictions were much more in keeping with the proposals of the Unions than with those put forth by the Employer.

When examining comparative compensation it is necessary to look carefully at certain benefits that provide pay in other forms. Key among these is longevity, which typically enhances compensation as a function of experience on the job or length of service with the employer. Consider the following comparison of County Prosecutors' Detectives

longevity benefits [Exhibit E-201] among the various counties:

Atlantic	
Bergen	(Rank & File) 6 years - \$200 9 years - \$400 14 years - \$800 19 years - \$1,000 (SOA) Omitted
Burlington	
Camden	None provided in Agreement
Cape May	None provided in Agreement
Cumberland	10-14 years = .5% 15-19 years = 1% 20-24 years = 1.5% 25+ years = 2%
Essex	
Gloucester	5-9 years = 2% 10-14 years = 4% 15-19 years = 6% 20-25 years = 8%
Hudson	5-10 years = \$300 10-15 years = \$500 15-20 years = \$700 20-25 years = \$900 25+ years = \$1,100
Hunterdon	
Mercer	5 years = \$300 10 years = \$900 15 years = \$1,350 20 years = \$1,850 24 years = \$2,300 30 years = \$3,900

Middlesex	9-15 years = 4% 16-20 years = 6% 21+ years = 8%
Monmouth	None provided in Agreement
Morris	3-8 years = 1% 8-12 years = 3% 12-15 years = 5% 15-16 years = 7% 16+ years = 9%
Ocean	7 years = 3% 12 years = 4.6% 17 years = 5.7% 22 years = 6.5% 27 years = 7.3% 32 years = 8%
Passaic	7 years = 2% 10 years = 4% 15 years = 6% 20 years = 8% 25 years = 10%
Salem	None provided in Agreement
Somerset	None provided in Agreement
Sussex	
Union	Omitted
Warren	5-10 years = \$400 10+ years = \$1,000

The flat dollar values provided in contracts at hand are at higher levels than the other jurisdictions providing flat dollar longevity. However, those detectives units which receive percentage longevity, specifically Passaic, Ocean, Morris, Middlesex and Gloucester, enjoy a substantially

higher longevity value than even the relatively high flat dollar values in Mercer.

As noted earlier, a comparison with certain municipal departments in Mercer County [see Exhibits P-6, P-7, P-9 and P-10] indicates that there are local law enforcement personnel earning higher salary rates than the members of the Prosecutor's Detectives and Superior Officers units. However, the compensation levels of the units at hand are currently sufficiently competitive to attract and retain highly qualified personnel. The economic package herein is balanced, over the four year duration, to prevent that competitive position in the labor market from eroding to a problematic level.

The Arbitrator finds the intra-county comparison among law enforcement employees to be another area warranting consideration and meaningful weight. There are three departments of law enforcement personnel in Mercer County, the Prosecutor's Office; the Sheriff's Office and Corrections.

Consider the following chart of 2009 maximum salary rates [Exhibit E-242] for rank and file law enforcement personnel among those departments:

Department	Maximum Salary Rate
Prosecutor's Detectives	\$90,804
Sheriff's Officers	\$79,425
Corrections Officers	\$79,161

The above comparison reflects the highly advantageous compensation position of the Prosecutor's Detectives among Mercer County law enforcement rank and file personnel. This is not necessarily an imbalance among these units. It is not unusual to find, in certain counties, that the Prosecutor's Office considers its law enforcement personnel to be more highly trained and experienced than the other law enforcement departments in the county. These relative relationships of enhanced compensation for Prosecutors' Detectives within county law enforcement have often developed over a significant period of time and appear to reflect a matter of policy. Parallel comparison evidence also exists [Exhibit E-242] for Superior Officers among the three law enforcement departments in Mercer County.

The record includes comparison evidence with non-law enforcement bargaining units of the County of Mercer and these, too, are relevant considerations, even though they do not deal with employees performing the same or similar duties. The key element making them relevant and worthy of some weight is that these bargaining units share the same funding source, Mercer County, as the employees involved in this proceeding.

The comparisons with these other units reveal that the County, as an employer, has been able to negotiate several contracts with zero percentage increases within the package of the settlement. For example, the Professionals/Supervisors unit represented by AFSCME Local 3566 reached a contract [Exhibit E-217] which provided for zero percent increases in 2009 and 2010 (no step movement in 2009) and a 2.5% increase in 2011. Another example is the County's settlement with Teamsters Local 35, representing a unit of nurses, in which there was a 3.5% wage increase in 2008 and a zero percent increase (no step movement) in 2009 [Exhibit E-219]. This evidence is of some guidance but it is not broadly encompassing nor universal in nature. This evidence must be given some weight but it is almost anecdotal in

probative value given its relationship to the larger picture of Mercer County employment.

The Comparability criterion presents a very mixed picture when the various components are viewed separately; however, the most compelling elements of the comparison evidence support a greater value of salary increase than that included in the package awarded herein. Some of the lesser weighted components of comparability have had impact on the ultimate package awarded herein, but the process has essentially balanced the comparative evidence supporting higher raises with the public interest and financial evidence warranting lesser increases. In the end, one clear finding under this criterion is that, although the increases awarded are not as high as those warranted by the comparison evidence, they will still maintain a competitive compensation package and allow the Prosecutor to attract and retain highly qualified law enforcement personnel.

The **Overall Compensation** criterion establishes that the employees in the two bargaining units involved in this impasse enjoy a reasonable and highly competitive package of compensation and benefits. The salary factor was discussed

at length, above, but it is worth reiterating that the current levels of pay are competitive by almost any standard of examination. They clearly are not at the very highest levels among employees performing the same or similar functions among the Prosecutors' Offices across the State but they are sufficiently competitive to attract and retain highly qualified law enforcement personnel.

In addition to salary, the compensation package includes a strong, flat dollar longevity benefit. While this component fails to match those units with percentage longevity, it does outpace the other flat dollar versions of the benefit. The longevity component of overall compensation is reasonable. The members of both bargaining units enjoy relatively standard and reasonable benefit levels in terms of holidays, sick leave and personal leave. These levels are reflected throughout the other Mercer County law enforcement unit contracts and are reasonably consistent with those of other Prosecutor's law enforcement employees. The structure of the resolution of the impasse herein also takes account of the strong pension benefits, provided by law, as a recognition of the nature of the job performed by law enforcement personnel. Further, this

Decision and Award is cognizant of the health benefits provided by contract, and impacted by statute, in the overall compensation package earned by the members of these two bargaining units.

The only **Stipulations of the Parties** in this proceeding were procedural in nature. They played no part in the substantive formulation of the impasse resolution ordered in the Award herein.

The **Lawful Authority** criterion expressly requires the Arbitrator to assess the limitations imposed on the Employer by the Cap Law. The Unions argue that the Prosecutor, as a constitutional officer, is not subject to the Cap Law and that the Arbitrator should not give any weight to those criteria which relate to the Cap Law. The Arbitrator rejects that contention, finding that the Cap Laws are clearly relevant and worthy of consideration in this proceeding. The budget for the Prosecutor's Office is funded from within the Mercer County budget and, as such, is subject to the limitations imposed by the laws capping tax levies for county governments. It is entirely unreasonable to expect, although the Prosecutor has access to a judicial

application for additional funds, that there be no consideration of the budgetary restraints upon the funding source, including the substantial amount of that budget raised through property taxes. The Lawful Authority criterion is relevant and shall be given due weight.

The Arbitrator finds that the package awarded herein will present absolutely no problem with respect to the Cap Law limitations on the County's budget. In the initial contract year, there is no salary increase provided and the step increment movement is quite minimal [less than 0.5%] for the two units. Further, the County gained the benefit of an unexpected, in terms of the 2010 budget year, cost containment in the form of the 1.5% of base salary contribution to premium payments for health insurance benefits. Additionally, there have been personnel changes over the recent years that have substantially reduced the payroll costs for the two units. With respect to 2011 through 2013, there is continued health care cost containment which will actually be enhanced over time, under more recent legislation, to further reduce the budgetary costs of health care. Most significantly, the salary rate increases are moderate and in keeping with current trends

and the limitations of the Cap Laws. The average annual salary rate increases ordered herein is equal to 1.75%. While these are backloaded to provide a practical cash flow response to the County's problematic 2010 budget situation, even the higher (2.5%) later years will not present a Cap Law issue because there will clearly be an offset from changes in personnel.

The total County general appropriations for 2010 equals \$298,287,990 [Exhibit E-22] according to the County Budget in evidence. The PBA/SOA details a payroll base wage cost for the two units, representing 48 employees (2 Captains; 4 Lieutenants; 6 Sergeants; and 36 Investigators) of \$4,635,048. One percent of the total base salary figure for both units combined is equal to 0.0155% of the County budget. It is quite clear that a compensation package ordering across-the-board salary rate increases averaging less than 2% per year, ranging from 0.0% to 2.5%, will not present problems with respect to the County's Cap Law restrictions. This is even more evident when one considers the impact of the personnel changes over time; the low step increment costs (there are no incremental steps for the 12 Superior Officers and only 7 of the 36 rank and file

employees are eligible for steps in 2010); and the recent legislated cost control components relating to terms and conditions of employment.

The **Financial Impact** criterion is worthy of substantial weight in this interest arbitration proceeding. The significance of this criterion relates to the impact of the contract on the taxpayers, the governing body's budget and the ability of the Employer, and in this case also the funding source (Mercer County) to provide public services.

The economic costs of the package awarded herein are designed to respond to the transcribed evidence of cash flow issues relating to the 2010 budget (see Transcribed testimony of the Mercer County Chief Financial Officer, David Miller). The zero percent across-the-board salary increase for the 2010 year eliminates the pressure that back-pay liability would have had on that already stressed budget year. This is a recognition of evidence of a decline in revenues from various sources to the County budget. Note that the 2010 budget [Exhibit E-22] anticipated general revenues of \$298,287,990; a reduction of \$16,311,674 from than the anticipated general revenues in the 2009 budget,

\$314,599,664. This calculates to a 5.18% decline in anticipated revenues from one budget, 2009, to the next, 2010. It is quite obvious that a significant basis for this reduction in anticipated revenues relates directly to the fact that the County realized (in 2009) only \$309,164,703 of the \$314,599,664 anticipated revenue in the 2009 budget.

As discussed above under the Lawful Authority criterion, it is important to recognize the true financial impact of moderate changes in the salary rates of unit members in relation to the overall County budget. One percent of the total base salary component of the two units combined, \$4,635,048 [Exhibits P-3, J-1 and J-2] equals \$46,350, only 0.0155% of the \$298,287,990 total appropriations set forth in the 2010 Mercer County Budget [Exhibit E-22]. There should be some practical understanding that the increases ordered in this proceeding may have some ripple effect upon other units but the main focus herein is on the impact of the changes relating to these bargaining units. The calculations are based upon the two bargaining units that are the parties to this impasse but the judgments made herein are made with the understanding that these two units do not function alone in

a vacuum but that they are a part of a more complex labor relations structure within an overall County budget.

It must be emphasized that the Prosecutor's Office has functioned with increasing efficiency and productivity while presenting a cost factor below that generated by the same office in 2007. Exhibit E-54 reveals that the Prosecutor's Office's overall cost to the taxpayers in 2010 (\$14,248,179) was \$248,509 less than it was in 2007 (\$14,496,688). That increased efficiency and productivity must be recognized. Further, it places some focus on the Prosecutor's ability to serve the public and provide its essential services within reasonable cost parameters. The personnel of the two bargaining units should not be punished for their effectiveness; the balancing of a response to fiscal constraints with some moderate increases in compensation present a reasonable approach to the disputed issues, noting that the impact of the economic costs herein will not have any direct impact on tax rates. The one-year wage rate freeze, the personnel changes over time and the statutory cost offsets will render the economic package for these two bargaining units to have a relatively insignificant impact on the County's overall appropriations.

In evaluating the record under the Financial Impact criterion, the Arbitrator has given consideration to the trend with respect to the use and regeneration of fund balance over the years, noting the role its use as a revenue source has had in tempering the impact on property taxes. Consider the charting of the fund balance experience over ten years [Exhibit E-44]:

Year	Fund Balance
1999	\$7,247,880
2000	\$4,960,992
2001	\$4,989,704
2002	\$13,086,027
2003	\$11,604,914
2004	\$22,930,305
2005	\$31,752,771
2006	\$37,610,489
2007	\$30,901,613
2008	\$26,350,214
2009	\$14,000,000

The Arbitrator has also considered evidence presented as to the demographics of the population of Mercer County, including data relating to the unemployment rate, and per

capita income. Additionally, the Employer's notations as to the County's 2010 budgeted debt service of \$14.04 million was weighed. That factor did reveal a somewhat less problematic trend, at least, given that the 2009 debt service was 2.6% higher at \$14.04 million [Exhibit E-22].

The Arbitrator finds that the record evidence would indicate that the economic package awarded herein will have absolutely no negative impact on the County's ability to provide services to its residents. Indeed, this package was designed to specifically address the County's fiscal constraints in accordance with the evidence. The evidence presented under the Financial Impact criterion caused the Arbitrator to award lower salary rate increases than those that would have been dictated by the Comparability criterion had comparisons been the sole factor for consideration.

The **Cost of Living** criterion has been considered and given some measure of weight in evaluating the issues herein. The most commonly applied measure of the cost of living is the Consumer Price Index ("CPI"), compiled by the U.S. Department of Labor, Bureau of Labor Statistics. The January 2010 report [Exhibit E-495] established that the CPI

for all urban consumers increased by 2.7%, nationally, over the previous 12 months. The New York-Northern New Jersey data was a little lower at 2.3% and the Philadelphia-Southern New Jersey region was a little higher than the national average at 3.0%.

These 2009 figures are somewhat noteworthy in that the 2009 CPI was virtually unchanged from January 2008 to January 2009, reflecting an indication of no rise in the cost of living that year [Exhibit E-484]. The most recent data on the record is found in Exhibit E-503 and it reflects a 12 month change from August 2009 to August 2010, nationally, in the CPI for all urban consumers of an increase of 1.1%. That same 1.1% increase is the measurement for the local Philadelphia-Southern New Jersey area.

The package herein has been constructed with some impact from the cost of living data. However, it must be noted that the CPI appears to be much more volatile and moves more frequently and more dramatically than do wage rate changes. The weight given to this criterion must

always be tempered in recognition of the normal trends of the processes at hand.

The **Continuity and Stability of Employment** criterion contains several components which may be relevant in determining the resolution to a negotiations impasse. In addition to the initially stated element, this criterion also engages the consideration of other factors ordinarily or traditionally considered in the determination of wages and other terms and conditions of employment.

In the case at hand, there is no evidence to suggest that there is a problem, under the current compensation structure with respect to continuity or stability of employment in the two bargaining units at issue. Although there has been some turnover, the bulk of that has been related to retirements, in the normal course of events in law enforcement employment. The package constructed herein may lead to some erosion of the Prosecutor's Detectives relative standing with respect to wages in the law enforcement labor market including local police departments in Mercer County. However, it is carefully designed to keep that erosion to a level that will not negatively impact on

the Prosecutor's Office; the cycle of bargaining will, most likely adjust, limiting any long-term impact.

The PBA/SOA are quite correct that this eighth criterion encompasses the traditional concept of "prevailing wages" as a measure of appropriate compensation. In the case at hand, the Detectives and the Superior Officers have an above average compensation plan, including wages and benefits. It is not anywhere near the highest paid group of Prosecutor's Detectives in the State but it is well above many and there is no indication that the package is not competitive. When compared with the other law enforcement personnel in Mercer County government, the Sheriff's Officers and the Corrections Officers, there is a clear and historic economic advantage to the Prosecutor's package, which has developed in what obviously reflects a policy decision as to internal comparability. This award will leave the Prosecutor's Detectives and the Prosecutor's Superior Officers in a reasonable position with respect to prevailing wage rates.

The ninth statutory criterion, the **Statutory Restrictions** criterion, reiterates the statutory emphasis on

the Cap Laws and the limitations they place on an employer. The criterion expressly references P.L. 2007, c. 62, Section 10, the tax levy Cap Law [also see Exhibits E-16 and E17]. The 2010 budget in evidence [Exhibit E-22] clearly falls within the restrictions of this statute and the economic package awarded herein was constructed with full consideration of the County's obligations and restrictions under P.L. 2007, c. 62, Section 10.

The Arbitrator also notes that there was a further revision of the tax levy limitations, imposed by the legislature in P.L. 2010, c. 44 [Exhibit E-19]. This additional revision of the Cap Law established a 2.0% levy cap and provided for a very limited basis for exclusions to this budgetary restriction. Beginning with the 2011 budget year the tax levy cap is built from a 2.0% limitation. The Arbitrator has constructed the economic package awarded herein in careful consideration of both P.L. 2007, c. 62 and P.L. 2010, c. 44. The average annual salary increase over the four years of the contract is 1.75%. The incremental cost pattern is remarkably low and will reduce over time unless further personnel changes occur, which may be likely. If personnel changes do occur, due to the savings from the

difference between the higher paid employees replaced by newer lesser paid employees, the result will be an even greater reduction in costs than that already reflected in the record herein. This record has established a substantial cost savings to the Employer from personnel changes, mostly as a result of retirements. There will also be cost savings as a result of legislative changes to the health insurance benefits, especially those imposing premium contributions by these bargaining unit members. Note that although the legislated cost reductions are noted with respect to the County's ability to meet its statutory restrictions, they were not a basis for expanding the salary rate increases in any year of the contract. The package awarded herein is reasonable under consideration of Statutory Restrictions criterion.

In order to consider the net annual economic change involved in the construction of the economic package herein, it is first necessary to establish the base payroll figures for the bargaining units. It is upon these base payrolls that the change can be calculated by applying the across-the-board percentage increases where they occur.

The parties each presented a different roster of the units' personnel and base payroll. Exhibit E-1 is that developed by the Employer and Exhibit P-3 reflects that presentation by the Unions. There are some minor differences between the personnel rosters in Exhibits E-1 and P-3 but they can be easily reconciled.

The Employer's exhibit includes a list of 41 investigators in the PBA unit and 10 supervisors in the SOA unit. The Unions' exhibit presents an accounting of 36 investigators and 13 supervisors. Three of the investigators in the Employer's exhibit are listed as supervisors in the PBA/SOA exhibit. The Unions' account appears to be more recent. This leaves a difference of 2 investigators between the 36 listed by the Unions and the 38 by the Employer. This difference is a reflection of the Employer listing 2 employees still in the Academy, which the Union left off its calculations. Therefore, the personnel roster for the units for calculation purposes includes 38 investigators (including the two in the Academy) and 13 supervisors.

The Arbitrator calculates that the base payroll under the 2009 salary rates for the SOA unit equals \$1,467,469 for 13 employees. Similarly, the base payroll for the 38 members of the PBA unit (including 2 in the Academy) computes to \$3,209,760. The total base salary for the employees affected by the Award herein equals \$4,677,229.

The across-the-board salary rate increases ordered herein are as follows:

Effective January 1, 2010 - 0.0%

Effective January 1, 2011 - 2.0%

Effective January 1, 2012 - 2.5%

Effective January 1, 2013 - 2.5%

There is no net economic change in 2010 as a result of the salary rate increases, since there is a salary rate freeze in 2010, that is zero across-the-board increase. The 2.0% salary rate increase, effective January 1, 2011, creates a \$93,545 addition to the total base salary component for both units, combined. The 2.5% salary rate increase, effective January 1, 2012, presents a new cost increase, over the 2011 total base salary, of \$119,269. Finally, the 2.5% salary rate increase, effective January 1, 2013, generates an

increase of \$122,251 over the projected 2012 total base salary for the two bargaining units.

The Arbitrator notes that there will be personnel changes over the course of the contract that will affect the actual costs for the two units. These will include step increment movements in each of the four years, retirements and other separations from service with a possible replacement factor. The step movement costs are quite manageable in these two units. There are no step costs for the 13 employees in the SOA unit because there are no salary steps for supervisors. There are only 7 employees in numbered steps in the PBA unit and their step movement on July 1, 2010 generates a minimal cost for 2010 (approximately \$13,500, based on movement on the steps valued at \$26,873, paid out effective July 1, 2010, over only six months). There are 2 employees at the Academy and they will enter the step movement pattern during the contract, however, one employee will advance out of the step increment pattern before the last two years of the contract. The Arbitrator has considered the impact of step movement costs and other personnel changes in structuring the salary component of the Award herein.

The issue of the duration of the contract was discussed under the analysis of the Public Interest criterion, which was the central basis for determining that the four-year proposal of the PBA/SOA was more reasonable. It must be noted that it was also necessary to have a four-year duration in order to properly construct a balanced package that could provide the Employer with the salary rate freeze for 2010. The duration from January 1, 2010 through December 31, 2013 is clearly the more reasonable result under the record at hand.

The Employer has proposed that the language of Article 6.3 of the PBA contract be amended to reflect the existing past practice that step movement be applied annually on July 1st of each year. That proposal is reasonable, in that it represents nothing more than a clarification of the system in place and clarity serves the parties' and the public interest.

The County has proposed certain changes to the health care provisions of the contract. It correctly asserts that the Arbitrator is "statutorily preempted" from constructing

an economic package with health benefit premium contributions below the legislated provisions. That includes the application of P.L. 2010, c 2, which enacted the 1.5% of base salary contribution toward health care premiums, effective May 22, 2010. That legislated imposition has been implemented and the Arbitrator certainly shall not interfere with its application. Further, the Arbitrator takes notice that the State Legislature has established further cost containment terms to be imposed on employees covered by collective bargaining agreements, including the units at issue herein, and that these provisions are set forth in P.L. 2011, c. 78.

The Arbitrator finds that these two enactments provide the Employer with substantial cost containment with respect to health benefits. P.L. 2011, c 78 has truly served to take the great measure of health benefits issues away from the negotiations process, at least for the time being. They also serve to provide this Employer with the bulk of the changes it sought through the proposals presented. The Arbitrator finds that the contract should clearly recognize the application of these enacted legislative measures with the understanding that the health benefits program under the

contracts shall be consistent with P.L. 2010, c. 2, and with P.L. 2011, c. 78. This will provide the Employer with substantial relief in the area of rising health benefit costs and will help maintain stability in its budget.

The record does not include sufficiently persuasive evidence to support the other changes sought by the County with respect to health benefits. It is worth taking particular note that the proposal with respect to dental insurance does not require a contract change. The grievance arbitration award cited by the Employer and the claimed past practice, to the extent applicable to the units at hand, will stand on their own without contract revision at this time.

The Arbitrator finds that the evidentiary record does not provide a convincing basis to support the Employer's proposal to reduce the holiday benefit by two days. The holiday benefit is within the normal standards among the county prosecutor contracts throughout the State. There are 11 rank and file contracts providing the same or greater holiday benefits as the Mercer County Prosecutor and there are no county prosecutor's detectives' contracts providing

two fewer days, as proposed by the Employer [Exhibit E-203]. The evidence does not support the change sought and it shall not be awarded.

The Arbitrator finds that the evidentiary record does not meet the burden of establishing the reasonableness of the change, in this contract term, of Article 4.1 in the rank and file collective bargaining agreement. That PBA/SOA proposal sought to define the existing requirement of "reasonable notice" for schedule changes as 72 hours. The record simply does not provide sufficient evidence that there has been any problem under the "reasonable notice" standard. The Arbitrator declines to award the change sought by the Unions with respect to the *Work Schedules* provision.

There are several components to the Unions' proposals under the Paid Leave provisions. The PBA/SOA seek to add "stepmother, stepfather or any other relative who lives regularly in the Employee's household" to the existing list of family members for which paid bereavement leave is provided [Exhibit J-1 (E-3) Article 8.1 and Exhibit J-2 (E-4) Article 7.1]. The Arbitrator finds it reasonable to

allow for bereavement leave benefits for stepparents, as they are often very significant in the family structure. They clearly fall within the same category as other family members listed in the current provisions. The additional proposal by the Unions to add "any other relatives living in the household" is a bit too broad and the record is insufficient to warrant ordering a change to provide such an expansion of paid bereavement leave in this contract. The Award herein shall add the stepmother and stepfather designation to the paid bereavement leave provisions.

The next aspect of Paid Leave to which the PBA/SOA seeks to make a change is that of personal leave, Article 8.4 (PBA) and 7.4 (SOA). The Unions have proposed the deletion of the 24 hour notice requirement for use of a personal day. The Arbitrator notes that the current contract language provides:

In the event that 24 hours notice cannot be given, said leave may be taken only upon authorization of said supervisor.

The testimony at hearing provided clear evidence that the current language has not been problematic to the reasonable use of personal days under the above exception to the 24 hour notice requirement. This testimonial evidence, from

witnesses called by both parties, made it quite clear to the Arbitrator that the current language is reasonable as it has been applied by management. There is no basis for ordering a change in this contract.

The third component of the PBA/SOA proposals that addresses Paid Leave benefits also relates to Article 8.4 of the rank and file contract and Article 7.4 of the supervisors contract. It is the proposal that the final sentence of the clause be deleted. That sentence reads as follows:

Personal days shall not be taken in conjunction with vacation leave.

The Arbitrator finds that granting this proposal is reasonable; there is clear evidence from the testimony provided by a witness from each side, that this deletion would not interfere with the operations of the office, provided that there is notice, approval and discretionary protection. The Arbitrator notes that there has already been a ruling denying the Unions' request to delete the blanket notice requirement for use of personal days and the Arbitrator further points to the following sentence in the

same clause as an indication of existing discretionary protection:

The Prosecutor reserves the right to deny requests for personal days as conditions warrant, but authorization shall not be unreasonably withheld.

The Award herein shall order the deletion of the prohibition of taking personal days in conjunction with vacation leave, replacing that sentence with:

Personal days may be taken in conjunction with vacation leave subject to prior Departmental approval.

The final non-economic issue relates to Seniority, found at Article 11.2 in the PBA contract and at Article 10.2 in the SOA agreement. The current language provides that seniority "may" be used to establish preference in layoffs, recall, vacation and scheduling. The Unions propose that the term "may" be replaced with "shall". The First Assistant Prosecutor testified that the Employer was opposed to this change because it could interfere with the Prosecutor's discretion. It was specifically stressed that, during layoffs, there may be issues involving specialized training and specialized skill assignments for which seniority is an inappropriate determinative factor.

The concept of providing significant weight to seniority in layoffs, recall, vacations and scheduling is a common one in employment and it is generally supported under the ordinary and traditional component of the eighth statutory criterion. However, there are valid concerns to the Prosecutor's position; the Public Interest criterion requires that the Employer's valid concerns be addressed and protected.

The Arbitrator finds that the Employer's position is substantively persuasive; however, these concerns are not incompatible with the use of seniority if protections of the Prosecutor's discretion are expressly set forth in the provision. Consider the following language which shall be awarded herein:

Seniority will be given preference in layoffs, recall, vacation and scheduling, provided that it is expressly understood that the Prosecutor has the authority, *as a matter of sole discretion*, to determine exceptions to the use of seniority based on personnel needs relating to specific skill sets, experience and/or specialized training. Such discretion shall not be unreasonably exercised.

This essentially provides for the use of seniority while fully protecting the exercise of discretion by the Employer. The matter of unreasonable exercise of the Prosecutor's

discretion places the burden of proof on anyone challenging that exercise of discretion.

In conclusion, the Arbitrator finds that the terms and conditions of employment set forth in the Award herein, as the resolution to the parties' impasse, present a reasonable and balanced result under the statutory criteria. Each of the nine criteria have been given careful consideration and they have been applied to the evidence in order to reach to determination of contract terms. Although all the criteria have been given weight (except for the Stipulation of the Parties criterion, because the stipulations were only procedural in nature) the criteria worthy of the greatest weight in this dispute are: the Public Interest, Comparability, Financial Impact and Lawful Authority. The terms of resolution of the impasse are set forth in the Award herein and form a balanced and reasonable resolution of the disputed issues.

A W A R D

In accordance with the application of the nine statutory criteria [N.J.S.A. 34:13A-16(g)] to the evidence presented by the parties, as reflected in the foregoing Discussion and Analysis, IT IS HEREBY ORDERED that all issues in dispute at interest arbitration in Docket Nos.

IA-2010-069 and IA-2010-070 shall be resolved as follows:

1. The duration of the contracts shall be from January 1, 2010 through December 31, 2013.

2. (A) The wage rates shall be increased, across-the-board, as follows:

Effective January 1, 2010 - 0.0%

Effective January 1, 2011 - 2.0%

Effective January 1, 2012 - 2.5%

Effective January 1, 2013 - 2.5%

(B) The language of Article 6.3 of the PBA contract shall be amended to reflect the existing past practice that step movement be applied annually on July 1st of each year.

3. The Health Benefits provisions of the contracts shall be modified to expressly provide that the health benefits program shall be consistent with P.L. 2010, c. 2, and with P.L. 2011, c. 78.

4. The Bereavement Days provision of the contracts [Article 8.1 (PBA) and 7.1 (SOA)] shall be amended to add stepmother and stepfather to this list of immediate family members.

5. The existing sentence barring the use of personal days in conjunction with vacation leave shall be deleted from the contracts [Article 8.4 (PBA) and 7.4 (SOA)] and replaced with the following sentence:

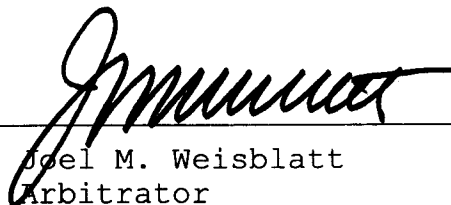
Personal days may be taken in conjunction with vacation leave subject to prior Departmental approval.

6. The existing language with respect to Seniority, set forth in Article 11.2 (PBA) and Article 10.2 (SOA) shall be replaced by the following clause:

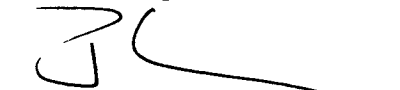
Seniority will be given preference in layoffs, recall, vacation and scheduling, provided that it is expressly understood that the Prosecutor has the authority, as a *matter of sole discretion*, to determine exceptions to the use of seniority based on personnel needs relating to specific skill sets, experience and/or specialized training. Such discretion shall not be unreasonably exercised.

7. All proposals not specifically addressed in the Award herein are denied due to the absence of sufficient evidence to support their implementation. The prior contracts shall remain in full force and effect except as modified herein or by the express agreement of the parties.

Dated: September 6, 2011
Skillman, N.J.


Joel M. Weisblatt
Arbitrator

On this 6th day of September, 2011, before me personally came and appeared Joel M. Weisblatt, 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 the same.


Attorney-at-law