STATE OF NEW JERSEY

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**MONMOUTH COUNTY PROSECUTOR**

-and- Docket No. IA-2014-085

**PBA LOCAL 256**

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**AND**

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In the Matter of the Interest Arbitration Between:

**MONMOUTH COUNTY PROSECUTOR**

-and- Docket No. IA-2014-084

**PBA LOCAL 256 (SUPERIOR OFFICERS UNIT)**

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Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Employer:

Office of the County Counsel

(Steven Kleinman, Asst. County Counsel)

For the PBA:

Detsky, Hunter & DeFillippo

(David DeFillippo, of Counsel)

Witnesses:

Craig R. Marshall, County Chief Financial Officer

William McGuane, County Benefits/Workers Comp Manager

Ken Rostkowski, Express Scripts Representative

Paul J. Grew, Express Scripts Representative

Kevin Duffy, Horizon BC/BS of NJ Representative

Marc Lemieux, First Assistant Prosecutor

Michael Pasterchick, Prosecutor’s Chief of Detectives

Joseph Petrucelli, PBA Financial Expert

Dominick Fanuele, PBA Insurance Consultant

Detective Sergeant Teresa Wilbert, Prosecutor’s Office

­­­­­­­­­ **\_\_INTEREST ARBITRATION AWARD**

**BACKGROUND**

On March 31, 2014, the Monmouth County Prosecutor’s Office filed a Petition for Interest Arbitration (Docket No. IA-2014-085) with the Public Employment Relations Commission to initiate interest arbitration over successor collective negotiations agreements with Police Benevolent Association Local 256. The same date, it filed a second Petition (Docket No. IA-2014-84) for Interest Arbitration with Police Benevolent Association Local 256, Superior Officers. Both prior agreements expired on December 31, 2013. At the parties’ request, these matters were consolidated together.

On June 18, 2014, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 45 days of my appointment. Both parties submitted Final Offers by July 2. The County submitted a list of employees employed during 2013 together with their dates of hire, dates of retirement or separation where applicable, and their aggregate base pay paid during 2013.

On July 15 and 16, I conducted an interest arbitration hearing at the County Administration Building.[[1]](#footnote-1) The County and the PBA each submitted documentary evidence and testimony.[[2]](#footnote-2) The PBA submitted the report of its financial analyst and the County offered the testimony of its chief financial officer. The County submitted the levy cap calculation workbook for 2014. Both parties submitted their respective calculations of the financial impact of their economic proposals. Post-hearing briefs were filed by July 25, 2014.

**FINAL OFFERS OF THE COUNTY**

The County makes the following final offers applicable to both the PBA the SOA units:

**DURATION (ARTICLE XXV):**

The County proposes a three-year agreement for the period January 1, 2014 through December 31, 2016.

**BASE SALARIES (ARTICLE XIII)[[3]](#footnote-3)**:

Add New Section 3 as follows:

Due to the timing of the County’s pay cycle, the parties recognize and agree that salary shall be paid in 27 equal installments in 2015, rather than the normal 26 equal installments. The Prosecutor shall be permitted to implement the foregoing in any reasonable manner.

**TEMPORARY LEAVE (ARTICLE VIII):**

Amend Section 1, paragraph 3 -- Sick leave payouts upon retirement or death -- as follows:

Upon an employee’s death, the Employer will grant supplemental compensation to the employee’s estate ~~in the amount of one-half of the earned and unused accumulated sick leave based upon the average annual compensation received during the last year of employment prior to the effective date of death~~, ~~but not to exceed $15,000.00 or~~~~such higher amount as the County may hereafter adopt by resolution~~ for accumulated sick leave to the extentprovided for by general County policy, and only under the terms and conditions provided for by general County policy, or any future amendments thereto.

At the time of retirement the retiring employee shall be entitled to ~~the cash value of one-half of all accumulated sick time calculated at the retiree’s then current total rate of daily compensation at the time of separation from active service not to exceed $15,000~~ payment for accumulated sick leave to the extentprovided for by general County policy, and only under the terms and conditions provided for by general County policy, or any future amendments thereto.

**FAMILY LEAVE (ARTICLE IX):**

Rename Article “Family and Medical Leave,” and replace article in its entirety, as follows:

Employees shall be eligible for family/medical leave pursuant to the federal “Family and Medical Leave Act” (“FMLA”) and/or the “New Jersey Family Leave Act” (“FLA”), and shall also be eligible for benefits available pursuant to the “New Jersey Paid Family Leave Law,” P.L. 2008, c. 17. Employees agree to be bound by the existing County family/medical leave policy or any future amendments thereto, including any requirement to utilize paid leave as part of the employee’s family/medical leave allotment.

**WORK INCURRED INJURY (ARTICLE X):**

Amend as follows (deletions by strikethrough, additions by underline):

The statutory compensation provided in N.J.S.A. 34:15-12(a) and applicable law, is recognized as controlling the issue of access to payment for employees on temporary disability leave. ~~It is agreed that~~ Reimbursement for temporary disability leave of ~~less than~~ ~~one year~~ six (6) months or less shall be calculated to ~~insure~~ ensure that employees on such worker’s compensation temporary disability leave will be paid the same amount of take home pay [net pay] as they were receiving prior to their disability leave~~, payments continuing for not longer than the first year~~. Thereafter, the provisions of N.J.S.A. 34:15-12(a) shall apply. ~~The employee shall in no way suffer reduction of net pay as a result of the injury or disability~~. Notwithstanding the foregoing, if the County offers a greater worker’s compensation benefit to its employees not represented for the purposes of collective negotiations, employees represented by the Association shall be entitled to an identical benefit.

On July 14, the County amended this proposal to add the following additional new language to this clause:

Additionally, in the event of a work-incurred injury directly attributable to the specialized sworn law-enforcement duties of an investigator, or in cases of extreme hardship, the Prosecutor, in his sole discretion, may extend the period an employee receives full net pay for no longer than one year. The Prosecutor’s decision to do so, or not to do so, in any particular instance will not be subject to the grievance procedure.

This amendment was accepted at hearing.

**HEALTH BENEFITS (ARTICLE XI):**

The County proposes several modifications to theexisting medical and prescription coverage plans. It proposes for administrative convenience and clarity that these modifications be implemented by a separate document or appendix, rather than placing them directly in the body of the successor collective negotiations agreement. The changes sought are:

The County shall have the right to implement any or all the following changes to its health care and pharmaceutical plans at any time on or after January 1, 2015, so long as no such changes are implemented for Association employees until such time as they are simultaneously implemented for the County’s non-represented employees;

The County shall provide at least sixty (60) days prior written notice before implementing any or all of the changes listed herein, but the Association shall have no right to demand negotiations as to whether or not they shall be implemented, nor shall the Association have any right to file any grievance, unfair labor practice, lawsuit, or other legal challenge in any forum relating to the County’s decision to implement any or all of these changes provided said changes are made in accordance with this Agreement;

The foregoing changes shall not affect the benefits of any current retiree as of the date the Agreement is executed.

HEALTH CARE PLAN MODIFICATIONS

1. The County may increase OOP (Out of Pocket) maximums for out-of-network treatment as follows: Family OOP maximums may be increased from $5,000 per year to no more than $10,000 per year. Single OOP maximums may be increased from $2,500 per year to no more than $5,000 per year.

2. The County may increase the co-payment for utilizing emergency room services from $25 per visit to no greater than $100 per visit. The existing policy of waiving the co-payment when an ER visit results in admission to a hospital shall remain in force.

3. The County may revise its pricing schedule for out-of-network treatment to modify the “reasonable and customary” rate used to calculate reimbursement for such out-of-network treatment to no less than 150% of the rate established by the Centers for Medicare & Medicaid Services.

PHARMACY PLAN MODIFICATIONS

1. The County may implement a “network narrowing” plan to reasonably limit the pharmacies from which members may purchase pharmaceuticals, which shall consist of removing one (1) of the following three (3) national pharmacy chains (or their successors in interest) from the County’s network: (1) Walgreens, (2) Rite-Aid, or (3) CVS.

2. The County may implement “step therapy” procedures when, within a specific therapy class, multiple drugs are available to treat the same condition.   In such instance, a patient will be required to first try clinically effective generic or lower-cost brand medications, before “stepping-up” to a higher cost medication.  If, after the patient tries the generic or lower-cost medication, the patient’s physician determines that a higher-cost medication is medically required, the physician may contact the County’s pharmacy benefits manager for a coverage review and to request authorization for that higher-cost medication.  Provided the physician fully cooperates with the pharmacy benefits manager in this process, such authorization shall normally be granted within three (3) days.A current list of drugs for which step therapy will apply will be provided by the County to the Association.

3. The County may implement a “dispense as written” policy in which members are subject to the use of generic prescription drugs according to State guidelines, and if a member insists on a brand drug when a generic drug is available, the member will be required to pay both the “brand” co-pay as well as the entire difference in actual cost between the brand drug and the generic drug. This provision shall not be applicable if the brand name drug is specifically prescribed because of medical necessity, as determined by the prescribing physician.

4. The County may implement a “prior authorization and quantity duration” policy in which it may ensure via a series of clinical safety edits that FDA and other clinical guidelines are being followed in treatment in order to ensure best safety outcomes. For drugs that are not normally needed every day such as sleep aids, or migraine treatments, supply per prescription will be reduced in accordance with the policy. This provision shall not be applicable if a particular quantity of a drug is specifically prescribed because of medical necessity, as determined by the prescribing physician.

**GRIEVANCE PROCEDURE (ARTICLE XVI):**

Amend Section 2 (at Step 4) and Section 9 to provide that only the Association, and not an individual grievant, may request arbitration at Step 4 of the grievance procedure.

**PERSONNEL FILES (Article XX):**

Amend as follows (deletions by strikethrough, additions by underline):

Reckoning of disciplinary action ~~shall be handled pursuant to Section 5:2-5 of the Rules and Regulations of the MCPO, dated April 16, 2012 and attached hereto as Appendix D,~~ shall not be considered a contractual right and the rules and regulations governing same may be modified in the Prosecutor’s sole and absolute discretion provided prior notice is provided to the Association of any such modification.

NOTE: If the foregoing proposal is awarded, Appendix D shall be eliminated from the successor agreement.

**\* \* \* \* \***

The following County offers apply only to the PBA agreement:

**BASE WAGES (ARTICLE XIII):**

**Section 1:**

The County proposes to grant step increments in 2014 and 2015 but to freeze the salary guide dollar values (no across-the-board increases) for that period. Effective January 1, 2015, 3 additional steps would be added to the PBA salary guide –- between existing steps 7 and 8 -- for a total of 18 steps. For 2016, step movement shall take place on July 1 except for steps 7a, 7b, 7c, and 8, which shall take place on January 1, 2016. Effective January 1, 2015, the top step would be increased by $1,000, and effective January 1, 2016, the top step would be increased by an additional $1,000. The modified salary guide would be as follows:

**New Step# Old Step# Existing 2014 2015 2016**

Step 1 Step A 50,000 50,000 50,000 50,000

Step 2 Step B 55,000 55,000 55,000 55,000

Step 3 Step C 60,000 60,000 60,000 60,000

Step 4 Step D 65,000 65,000 65,000 65,000

Step 5 Step E 70,000 70,000 70,000 70,000

Step 6 Step F 75,000 75,000 75,000 75,000

Step 7 Step G 80,000 80,000 80,000 80,000

Step 8 Step 1 85,000 85,000 85,000 85,000

Step 9 Step 2 90,000 90,000 90,000 90,000

Step 10 Step 3 95,000 95,000 95,000 95,000

Step 11 Step 4 100,000 100,000 100,000 100,000

Step 12 Step 5 105,000 105,000 105,000 105,000

Step 13 Step 6 110,000 110,000 110,000 110,000

Step 14 Step 7 113,000 113,000 113,000 113,000

Step 15 *New (7a)* n/a n/a 116,000 116,000

Step 16 *New (7b)* n/a n/a 121,000 121,000

Step 17 *New (7c)* n/a n/a 125,000  125,000

Step 18 Step 8 127,000 127,000 128,000 129,000

In addition, the County proposes the following provision be added to Article XIII, Section 1:

The step program shall not survive the expiration of the Agreement and there shall be no automatic annual step movement progression if a successor agreement is not in place on January 1, 2017.

The County proposes to modify Section 1 as follows:

Add New Section:

Effective January 1, 2014, there shall be a permanent “hard cap” representing the maximum salary for all members of the association, which shall survive the expiration of this agreement so long as the Prosecutor’s statutory salary remains at $165,000 per year. The hard cap is as follows:

County Investigator: $129,000

At such time as the Prosecutor’s statutory salary is increased by the Legislature, the amount of the hard cap, if any, may thereafter once again be the subject of negotiations in a successor agreement.

\* \* \* \* \*

**COUNTY FINAL OFFERS FOR SOA AGREEMENT**

**BASE WAGES (ARTICLE XIII):**

The County’s final offer proposes the following increase for the Superior Officers unit:

**2014 2015 2016\_\_**

Sergeants $2,518 0 0

Lieutenants $2,253 0 0

Captains $2,750 0 0

The resulting increases would be as follows:

**Existing 2014 2015 2016\_\_**

Sergeants 134,482 137,000 137,000 137,000

Lieutenants 143,747 146,000 146,000 146,000

Captains 149,250 152,000 152,000 152,000

In addition, the County proposed to add the following language to the Wages Article:

Effective January 1, 2015, when an employee is promoted to Sergeant, and the promotional salary increase he or she would otherwise be entitled to receive is greater than $15,000, the employee will instead receive a $15,000 annual base salary increase for the period from the date of promotion until the January 1st after the employee has served as a Sergeant for at least six (6) months, when he or she will receive another increase of either $15,000 or the full Sergeant’s pay, whichever is less. On the following January 1st, if the employee is not yet at the full Sergeant’s pay, he or she shall receive an increase to the full Sergeant’s pay.

For example, if an employee earning $100,000 is promoted to Sergeant in April 2015, his or her base salary shall immediately increase to $115,000 and shall remain at that amount until January 1, 2016, at which time his or her annual base salary shall increase to $130,000. On January 1, 2017, the employee shall receive the full Sergeant’s pay ($137,000 or such other amount as may be determined in the collective negotiations process). However, if that same employee is promoted to Sergeant in October 2015, his or her salary shall be increased to and remain at $115,000 until January 1, 2017, at which time his or her salary shall increase to $130,000, and he or she shall receive the full Sergeant’s pay starting on January 1, 2018.

Further, the County proposed to add this new section:

Effective January 1, 2014, there shall be a permanent “hard cap” representing the maximum salary for all members of the association, which shall survive the expiration of this agreement so long as the Prosecutor’s statutory salary remains at $165,000 per year. The hard cap is as follows:

County Investigator Sergeant: $137,000

County Investigator Lieutenant: $146,000

County Investigator Captain: $152,000

At such time as the prosecutor’s statutory salary is increased by the legislature, the amount of the hard cap may thereafter once again be the subject of negotiations. If such a change is enacted into law during the term of this agreement, it may be reopened for purposes of determining whether employees covered by this agreement shall be entitled to additional compensation within the statutory salary constraints established by law.

**OVERTIME (ARTICLE IV):**

Amend Section 2 of the SOA 256 Agreement only as follows (deletions by strikethrough, additions by underline):

Sergeants shall have the individual discretion as to whether to be compensated for each overtime period worked in either paid overtime or compensatory time off (“CTO”) (calculated at the time and one-half rate). If a Sergeant elects to receive CTO, it shall be used within his/her sole discretion subject only to prior employer approval. All CTO exceeding ~~240~~ one hundred twenty (120) hours at any one time shall be compensated as paid overtime.

Amend Section 5 of the SOA 256 Agreement only as follows (deletions by strikethrough, additions by underline):

This section applies only to Lieutenants and Captains. As senior management personnel, Lieutenants and Captains are not entitled to paid overtime and are required to work additional time whenever necessary. They can, however, earn contractual compensatory time at the rate of time and one-half (1 ½) for all hours worked in excess of forty (40) hours per week. This compensatory time bank may contain up to ~~eighty (80)~~ forty (40) hours at any one time, and is replenishable throughout the year. The use of such contractual compensatory time requires pre-approval, which shall not be unreasonably denied. This contractual compensatory time cannot be converted to money. Sick leave shall not count as hours worked for compensatory time purposes.

**FINAL OFFERS OF LOCAL 256**

The following offers apply to both the PBA agreement and the SOA agreement:

**DURATION (ARTICLE XXV):**

January 1, 2014 – December 31, 2017.

### WORK SCHEDULE (ARTICLE III):

### Section 1: Revise as follows:

### The standard weekly work schedule for all employees covered by this Agreement shall be Monday to Friday, 8:30 a.m. to 4:30 pm., inclusive of a 30-minute paid break.

### Section 2: Revise as follows:

### Upon a minimum of ten calendar days advanced notice to the affected employee(s), the Prosecutor shall have the right to schedule the hours of work in the workweek and to vary the daily or weekly work schedule consistent with the needs of the Monmouth County Prosecutor’s Office. If the minimum advanced notice is not provided, said officer(s) shall be compensated at the rate of time and one half (1½) for all hours worked outside of the employee(s)’ normal work hours. The advanced notice requirement set forth above shall not be required if the change in the work schedule is necessitated by a State of Emergency declared by the Governor of New Jersey.

### Section 3: Add the following provision:

### Any employee required to be on-call while otherwise off-duty shall be compensated with two hours compensatory time for each day on-call.

### OVERTIME (ARTICLE IV):

### Section 1: Delete the following:

### Sick leave shall not count as hours worked for overtime purposes.

### Section 4: Add the following provision:

### The entitlement to compensation pursuant to this clause shall also apply in the event employee is contacted before or after normal working hours for consultation, advice or instruction or otherwise performs any work related function.

### VACATIONS (ARTICLE V):

### 

### Section 1: Revise this clause effective September 1, 2014, as follows:

### An employee’s years of service shall be calculated based on his/her years of PFRS Pension Service Credit at the time of commencement of employment with the Monmouth County Prosecutor’s Office. [[4]](#footnote-4)

### LOCAL 256 FINAL OFFERS FOR PBA UNIT ONLY

### BASE WAGES (ARTICLE XIII):

### The PBA proposes increment payments for eligible employees in 2014 and an increase to the dollar value of top step of 3.167% effective and retroactive to January 1, 2014. For 2015, it proposes to pay increments only with no across-the-board increase for any employees. For 2016, it proposes both a freeze of the salary guide and a freeze of step movements. For 2017, it proposes the payment of increments but a zero across-the-board increase.

### SENIORITY (New Clause):

### The PBA seeks to add the following language to its contract:

### Section 1: Seniority, for purposes of this Article, shall be defined as the years of service with Monmouth County Prosecutor’s Office (MCPO).

### Section 2: Seniority shall be the determining factor for layoffs and recalls. Thus, in the event of a reduction in force, same shall be conducted by inverse seniority. Forty-five (45) days advance written notice shall be given to any employee selected to be laid off. In the event of a layoff, the laid off employee shall be placed on a recall list for five (5) years. Placement on the recall list shall provide preference to the laid off employee over any other applicant.

### LOCAL 256 FINAL OFFERS FOR SOA UNIT ONLY

### BASE WAGES (ARTICLE XIII):

### The SOA proposes a 2% across-the-board increase for all employees effective January 1, 2014; a 2% across-the-board increase for all employees effective January 1, 2015; and another 2% across-the-board increase effective January 1, 2016. Effective January 1, 2017, all employees would receive a 1.7438% increase.

### SENIORITY (New Clause):

### The SOA seeks to add the following language to its contract:

### Section 1: Seniority, for purposes of this Article, shall be defined as the years of service with Monmouth County Prosecutor’s Office (MCPO).

### Section 2: Seniority shall be the determining factor for layoffs, demotions and recalls. Thus, in the event of a reduction in force and/or demotion, same shall be conducted by inverse seniority. Forty-five (45) days advance written notice shall be given to any employee selected to be laid off or demoted. In the event of a layoff, the laid off employee shall be placed on a recall list for five (5) years. Placement on the recall list shall provide preference to the laid off employee over any other applicant. Moreover, any employee demoted shall be given preference over any other individual in the event of future promotion to his/her former rank.

**BACKGROUND FACTS**

**Demographics:**

Monmouth County is situated between New York City and Philadelphia metropolitan areas, and on a larger scale, is centrally located within the Boston to Washington, D.C. regional corridor. The County possesses a wide diversity of landscapes: the cliffs and highlands of the Bayshore Region, the shoreline and rivers of the Coastal Region and the farmland of the western Monmouth. The natural environment is further enhanced by over 49,000 acres of protected public open spaces. The County has twenty-seven miles of ocean beaches, 26 miles of Raritan Bay shoreline and numerous lake and river fronts. The County Parks System managed 15,729 acres of land and 132 miles of park system trails. (C-31)

A five-member elected Board of Chosen Freeholders is responsible for the Monmouth County government. The Freeholders exercise both legislative and executive functions including the oversight and regulation of County property and finances. (C-3) The County Administrator supervises the actual day-to-day operation of County departments. Within County government, there are also several constitutional officers, who are separately elected or appointed pursuant to the New Jersey Constitution and state law to oversee certain specific governmental functions. In addition to the Prosecutor, these officers include the County Clerk, County Surrogate, and County Sheriff. The County employs nearly 4,000 people among its various departments and agencies, including those run by the constitutional officers. Of those employees, just over 2200 are unionized, and are represented for purposes of collective negotiations by 27 separate units. (C-95) The County has fifty-three municipalities. Between 2000 and 2010, twenty of the County’s fifty-three municipalities grew in population, while thirty-three reported a loss. The larger suburban municipalities of Freehold Township, Marlboro, Manalapan, Howell, Holmdel, Middletown, Wall, and Tinton Falls have population densities ranging from approximately 800 to 1,600 persons per square mile. Monmouth County’s larger rural municipalities, located primarily in the western portion of the County, have the lowest population density per square mile ranging from 145 persons to 320 persons per square mile. (C-31) The County of Monmouth is an area of 302,042 acres and 471.94 square miles (C-27). According to the Monmouth County QuickFacts from the US Census Bureau, the County’s estimated 2013 and 2012 population was 629,672 and 629,393 respectively (C-28 and 29). Its housing units totaled 259,789, with a homeownership rate for 2008 through 2012 of 75.6%. The median value of owner-occupied housing units for the same period above is $399,000. The number of households is 233,661 with 2.66 persons per household. Per capita income in 2012 is $40,824; median household income is $81,308 (C-31); and the number of persons below the poverty level for 2008 through 2012 is 6.6%. (C-28) Average household income in 2012 is $108,046 (C-31). Per Capita Personal Income (PCPI) for 2012 is $61,426, ranking fifth highest out of the twenty-one counties in New Jersey. The PCPI was 11.7% above the State average of $54,987 and 41% above the national average of $43,735. The County’s PCPI ranked 82nd among the 3,113 counties in the United States. (C-30)

The total average estimated private sector employment population for the County in 2012 is 207,926. Monmouth County’s largest industry, trade transportation and utilities, employed an average of 51,571 employees or 24.8% of total County employment. The 2012 “information” industry has the highest average annual wage of $97,150; however, the industry provided the smallest number of jobs during the same period. Employment in the information sector was down during 2012 partially due to the closing of Fort Monmouth where a significant number of private sector contractors were employed. From 2007 through 2012, educational and health services, leisure and hospitality and other services added the most jobs over the period. Its 2013 annual average number of unemployment insurance claimants is 5,414 with a corresponding 7.5% unemployment rate (not seasonally adjusted) (C-30; 31). As of May 2014, Monmouth County’s unemployment rate is the 8th lowest out of the State’s twenty-one counties. The following chart reflects New Jersey Counties’ Unemployment Rates for May 2014:[[5]](#footnote-5) (C-43)

|  |  |
| --- | --- |
| **NJ Counties Unemployment Rates - May 2014** | |
| **County** | **Rate** |
| Atlantic | 10.3% |
| Cumberland | 10.0% |
| Cape May | 9.1% |
| Passaic | 8.1% |
| Essex | 7.8% |
| Hudson | 7.5% |
| Camden | 7.4% |
| Union | 6.9% |
| Gloucester | 6.9% |
| Ocean | 6.7% |
| Salem | 6.6% |
| Burlington | 6.4% |
| Middlesex | 6.2% |
| Monmouth | 6.0% |
| Sussex | 5.9% |
| Bergen | 5.7% |
| Mercer | 5.4% |
| Warren | 5.4% |
| Somerset | 5.3% |
| Morris | 5.1% |
| Hunterdon | 5.0% |

Monmouth County’s unemployment rates for May of 2012 through May of 2014 were: (C-44)

2012: 8.5% (E)[[6]](#footnote-6)

2013: 7.5% (E)

2014: 6.0% (P)[[7]](#footnote-7)

In 2013, there were 1,663 building permits of which 1,121 were for single-family residential homes.[[8]](#footnote-8) Total building permits in 2012 was 1,034 ranking the County as seventh highest county in the State. Building permits for single-family residential homes in 2012 is 690, ranking third highest among counties in the State. (C-30; C-46)

Monmouth County’s 2012 tourism spending totaled $2.093 billion, a 5.4% increase from 2011 receipts. Comparatively, Monmouth had the seventh highest year-over-year growth in tourism industry sales in New Jersey. The County also welcomed over 5.82 million visitors to its park facilities. (C-31)

The County has several long term, community-wide initiatives to promote the economic health of Monmouth County. In addition, its shared services program presents opportunities for local government entities to work together to share existing resources and a collective purchasing power. Created by the County’s Board of Chosen Freeholders in 1986, the Monmouth County Improvement Authority serves to provide cost-saving alternatives to the traditional methods of public capital financing to municipalities, boards of education, local and regional utility authorities and other local and county government entities in the financing of large projects. The Community Development section coordinates, implements, and monitors compliance for several federal grant programs and oversees a variety of activities benefitting low and moderate-income families. (C-31)

**Organization of the Prosecutor’s Office:**

The Office of the County Prosecutor exists under the authority of the New Jersey State Constitution, N.J. Const.

(1947), Article VII, Section II, paragraph 1. The County Prosecutor is appointed by the Governor with the advice and consent of the Senate for a term of five years, or until the appointment and qualification of a successor, N.J.S.A. 2A:158-1. (C-61) Current acting Prosecutor Christopher Gramiccioni was appointed in mid-2012.

The mission of the County’s Prosecutor’s Office is to create

and preserve an environment of safety and security for the citizens of Monmouth County. The office’s primary goals to fulfill its mission are successfully investigating and prosecuting criminal offenses; to promote and foster education of the public in the criminal justice system; to identify law enforcement and prosecutorial needs and to promulgate initiatives to meet those changing needs; to promote and foster cooperation with other law enforcement, public officials, community leaders, and business leaders in an effort to improve the quality of life for its citizens.

Other principal activities include the detention, apprehension, and prosecution of criminals which are exclusively governmental functions that cannot be accomplished by a private entity or person. Pursuant to both the New Jersey Constitution and the New Jersey Statutes, the County Prosecutor is vested with that authority and obligation. (C-60)

For budget and administrative purposes, the Monmouth County Prosecutor’s Office is a division of County government within the Public Safety Department. The Table of Organization for the Prosecutor’s Office Investigation Division is headed by Chief of Detectives Michael Pasterchick, who reports directly to the Prosecutor. The Deputy Chief of Detectives, Albert Deangelis, reports to Pasterchick. Under their management, are three sections: Criminal Investigation Section; Narcotics and Criminal Enterprise Investigation Section; and Special Investigations Section. Each section is headed by a detective captain. Within each section are several bureaus which are each headed by a lieutenant. Within each bureau, separate units are headed by detective sergeants. (C-61)

County CFO Marshall testified that one-third of the County’s workforce is employed in its Public Safety Division. The County CFO stated that the Public Safety Department also includes Corrections, Sheriff’s Office, and the Medical Examiner (C-48). Marshall testified that the County determines the amount of the Prosecutor’s budget; whereas, the Prosecutor decides how to spend its budget.

Monmouth County’s Prosecutor’s salary is statutorily capped at $165,000; the Director of Public Works’ salary is $154,000; the

CFO’s salary is $138,000; the Sheriff’s salary is approximately $130,000 or less; and the Director of Human Services’ salary is $128,000. All of the aforementioned salaries, excluding the Prosecutor’s Office, are based on a thirty-five hour workweek. All employees in the Prosecutor’s Office work a forty-hour workweek.

**STATUTORY CRITERIA**

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

The statute also provides a definition as to what subjects are included in “base salary” at 16.7(a):

“Base salary” means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

It should be noted, pursuant to the above language, that the 2.0% cap, or the amount that an award cannot exceed, is not tied directly to contract terms but rather to:

[T]he aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

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

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

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

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

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

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

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

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

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

The Arbitrator’s award must address all nine statutory criteria, identify the criteria found to be relevant, analyze all of the evidence pertaining to the relevant criteria, and explain why any remaining criteria were deemed irrelevant. "A reasoned explanation along those lines should satisfy the requirement for a decision based on those factors that are judge relevant." Borough of Hillsdale and PBA, 137 N.J . 88 (1994). Any economic offers that are clearly unreasonable in light of the statutory criteria must be rejected.

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. It is widely acknowledged that in most interest arbitration proceedings, no single factor can be determinative when fashioning the terms of an award. This observation is present here as judgments are required as to which criteria are more significant and as to how the relevant evidence is to be weighed.

In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that theparty proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the Award.

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among those factors that interrelate and require the greatest scrutiny in this proceeding are the evidence on internal comparability and comparability to other jurisdictions [N.J.S.A. 34:13A-16g(2)(c)]; the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] the County’s statutory budget limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]; the impact upon continuity and stability of the bargaining unit, including employee morale and turnover; and the cost of living.

**DISCUSSION**

**CONTRACT DURATION:**

The Prosecutor has proposed a three-year contract term, running from 2014 through 2016, while the PBA and SOA seek a four-year contract, continuing through 2017. The Prosecutor argues that a three-year term is best suited for the present economic uncertainties and the continuing legislative changes on the state and federal levels that are having a dramatic impact on public sector negotiations. It would make little sense to have an interest arbitration award that has been rendered obsolete by unforeseen economic changes (for example, extreme inflation or another recession) or legal developments, which is more likely to be the case if this award runs through the end of 2017.

In addition, the County argues that there is a previous history of three-year agreements with the PBA and SOA. Although the most recent PBA and SOA agreements extended for four years, (2010 through 2013), those agreements were not settled until mid-2012, thus making a three-year deal impractical. Here, a contract extending through 2016 would provide two full years of labor stability. First Assistant Prosecutor, Marc Lemieux, also pointed out that the County will be subject to the federal “Cadillac Tax” starting in 2018, so if the arbitrator does not award the Prosecutor's health care proposal, it will be too late to do anything about it if the contract does not expire until the end of 2017. Currently, the County does not have a single collective negotiations agreement that extends past 2015. Also, if the Prosecutor's final offer is awarded with the hard caps, or even if the arbitrator freezes salaries at the level proposed by the Prosecutor in its final offer, a three-year contract term will allow the issue of compensation to be reviewed sooner rather than later, and any appropriate adjustments negotiated if the Legislature acts to increase to increase the Prosecutor's salary above $165,000.

The Unions argue that their offer for a four-year contract was intended to provide an opportunity for a larger aggregate pull of fund under the 2% arbitration cap which can be divided unevenly among the years of the contract, thus allowing the possibility that in-step employees could obtain increments in three of the four years.

\* \* \* \*

Generally, a longer contract provides for a longer period of stability and labor peace and provides the parties with predictability. On the other hand, in times of a volatile economy, locking down employees’ pay and benefits rates for an extended period may not be advantageous, since the parties may need to readdress those issues in the event of inflation, market conditions, or legislative initiatives that impact on employee’s working conditions or on the employer’s appropriations or revenues.

Here, although not raised as a concern by either party, I suspect an issue of some concern is that the 2% arbitration cap is due to again sunset effective December 2017. Contracts expiring in December, 2017 may not be subject to the 2% cap unless that provision of the statute is amended. Thus, a contract extending through 2017 may enable the Union to escape the 2% cap in the next contract, while a three-year contract will virtually assure the County of at least one more round of 2% caps in the next contract, beginning in 2017.

In considering all aspects of the award, I consider this a trade-off; as discussed more fully below, I have not awarded the County’s demand for hard caps on salaries until the legislature increases the Prosecutor’s salary. Nor have I awarded all of the health and prescription benefit reforms the County has proposed. However, absent a statutory change, the issues of salary compression as unit members’ salaries come closer to that of the Prosecutor’s management staff and the Prosecutor himself will certainly need to be addressed in the next round of negotiations. Additionally, the risk that the County may be subject to the federal “Cadillac tax” on health benefits as costs continue to increase will certainly need to be addressed in 2017, as 2018 will simply be too late to undo the damage. Therefore, in consideration of these issues not being fully resolved in this award, I award the County’s proposal for a three-year contract extending through 2016.

**SALARIES AND INCREMENTS**:

**County’s Arguments**

The County argues that allowing salaries to spiral upwards as proposed by the PBA and SOA while New Jersey's economy is still struggling to recover from severe economic turmoil is not reasonable, is not rational, and is not logical, much less in the public interest. On the other hand, the Prosecutor’s offer represents a common sense approach, reflecting a willingness to provide reasonable salary increases in the face of a volatile economy and spiraling benefit and pension costs, without sacrificing the Prosecutor’s fiscal stability or overwhelming the already strapped taxpayers.

Additionally, the Prosecutor's proposal intelligently resolves the $14,000 "bubble step" on the existing salary guide by adding three balanced steps at the top of the guide, rather than the two unbalanced steps proposed by the PBA. The Prosecutor's "hard cap" proposal to limit the runaway growth of PBA and SOA salaries will further ensure that the salaries and benefits provided to these law enforcement officers, who are statutorily entitled to the interest arbitration process, do not continue to grow out of proportion to the civilian employees of the Prosecutor and County, who do not enjoy the right to interest arbitration. Regardless of whether the arbitrator chooses the Prosecutor’s offer, the PBA/SOA offer, or awards her own offer, there can be no question PBA and SOA members will continue to enjoy salaries and benefits far better than the overwhelming majority of employees within the County.

The County argues that the PBA's proposal would increase salaries of top step investigators more than 3% in 2014, from $127,000 to more than $131,000, and together with step movement, would represent well over a 4% increase in overall salary paid to employees of that negotiations unit in a single year. The County notes that the PBA’s proposal also retains a large "bubble step" on the salary guide of almost $9,000. The SOA's proposal would increase the salaries of sergeants, lieutenants and captains 2% each year, so by the fourth year of the proposal, captains would be earning over $160,000, lieutenants would be earning over $155,000 and sergeants would be earning over $145,000, far above and beyond all but a handful of the County's other most high-ranking employees.

The County states that the “interests and welfare of the public” is reflected in the public policy of the State of New Jersey. It notes that C. 105 imposing the 2% cap on arbitration awards reflects the strong desire of the public to curb runaway interest arbitration awards and reflects the shifting realization that the interests and welfare of the public are poorly served by providing public employees with salaries and benefits that are unsustainable and increasingly unaffordable to taxpayers. The PBA and SOA's final offer attempts to subvert the purpose of the law in two ways. First, the PBA tries to front load its proposal, which, while apparently technically legal, would result in a far higher total cost to the taxpayers. Second, both the PBA and SOA have sought to add a number of new provisions that would greatly add to their total compensation at the same time they will make it far more difficult for the Prosecutor to do its critical job of investigating and prosecuting criminal activity.

By contrast, the Prosecutor's offer, at least with respect to the PBA, provides for annual salary increases that are well-balanced throughout the term of its proposal, and comes within $300 of the total amount legally available under the amended Interest Arbitration Act. All of its proposed contractual changes are similarly reasonable and in almost every case have been accepted by a substantial number of the Prosecutor's and/or County's other negotiations units.

With regard to criteria(g)(2) in the statute -- a comparison of wages and working conditions between the disputed employees and those in the same and comparable jurisdictions -- the County avers that, by far Monmouth Prosecutor’s investigators are paid better than any other group in the County, and nearly every investigator group State-wide. The County notes that investigators have a higher starting salary, and a top base pay of nearly $30,000 higher than sheriff’s officers or corrections officers. The County acknowledges that both Sheriff’s officers and correction officers have salary guides with fewer steps, but predicts more steps will need to be added in light of the 2% arbitration cap, which will make the large step movements contained in their guides become unsustainable.

At the superior ranks, there is similarly a very substantial difference between the compensation earned by superior Sheriff’s officers and superior corrections officers, and those investigators holding the ranks of sergeant, lieutenant and captain. As of the expiration of the Agreement, all County investigator sergeants earned $134,482, all County investigator lieutenants earned $143,747 and all County investigator captains earned $149,250. There is no step guide at any rank.

The Prosecutor has proposed a three-year agreement that would increase the 2014 salaries of sergeants 1.87%, lieutenants 1.57% and captains 1.84% in 2014, followed by a salary freeze for 2015 and 2016. The Union has proposed a four-year agreement increasing the salaries of all SOA members by 2.0% in 2014, 2015, 2016 and 2017. A review of the two competing proposals demonstrates the following results:

|  |  |  |
| --- | --- | --- |
| **Sergeants** | **Prosecutor's Offer** | **SOA Offer** |
| Existing (2013) | 134,482 | 134,482 |
| 2014 | 137,000 | 137,172 |
| 2015 | 137,000 | 139,915 |
| 2016 | 137,000 | 142,713 |
| 2017 | n/a | 145,202 |
| **Lieutenants:** | **Prosecutor's Offer** | **SOA Offer** |
| Existing (2013) | 143,747 | 143,747 |
| 2014 | 146,000 | 146,622 |
| 2015 | 146,000 | 149,554 |
| 2016 | 146,000 | 152,545 |
| 2017 | n/a | 155,206 |
| **Captains:** | **Prosecutor's Offer** | **SOA Offer** |
| Existing (2013) | 149,250 | 149,250 |
| 2014 | 152,000 | 152,235 |
| 2015 | 152,000 | 155,280 |
| 2016 | 152,000 | 158,385 |
| 2017 | n/a | 161,147 |

In comparison, newly promoted Sheriff’s officer sergeants and corrections officer sergeants must go through several steps to reach top pay. Their identical salary guides require seven steps to reach top pay if promoted before July 1, 2011, and six steps if promoted afterwards. But, notably, top salary for those promoted to sergeant after July 1, 2011 is more than $6,000 less than the top salary for those promoted before that date. Moreover, newly promoted sergeants who are promoted on or after a particular date in a year (July 1 for corrections officer sergeants and September 1 for Sheriff's officer sergeants) do not move up a step until the second January 1st following their promotion.

The County continues that, there is also a substantial difference between Sheriff’s officer lieutenants and corrections lieutenants as compared with investigator lieutenants. As of 2013, Sheriff’s officer lieutenants and corrections officer lieutenants both earned $133,991 or nearly $10,000 less than investigator lieutenants.

The County maintains that, in comparing Monmouth’s investigators with their counterparts in New Jersey’s twenty other counties, PBA Local 256’s members are compensated far above almost all of their colleagues in other jurisdictions. In fact, of the 20 other counties, only high cost-of-living Bergen County compensates their investigators at a greater level. PBA members are receiving compensation about 30% greater than the statewide average - approximately $30,000 in actual dollars. While new investigators must proceed through up to fifteen steps to reach top pay, depending upon their starting salary, that provision has only been in place since July 20, 2012, and before that date there were only eight steps, which was among the fewest Statewide. That is relevant because of the 52 PBA members as of December 31, 2013, only ten were hired after the new step guide became effective. And of those ten, only four were hired at less than the $80,000 starting salary under the old step guide. Thus, any argument that PBA members have had to proceed through an unfavorable step guide compared to investigators in other counties would be misleading.

The Prosecutor acknowledges that PBA and SOA members do not have such fringe benefits like a uniform allowance or longevity/senior bonuses, which are offered by other prosecutors. However, even such benefits would do little to narrow the $30,000 between Monmouth’s investigators and those in other counties. SOA members, regardless of rank, are similarly compensated far above their Statewide counterparts. While the gap between SOA members and superior investigators throughout the State is not quite as wide as it is for PBA members, for sergeants and lieutenants, only Bergen County pays anywhere near as much as the Prosecutor. For captains, only Bergen County and Middlesex County pay as much or better.

According to U.S. Bureau of Labor Statistics data, PBA and SOA members are among the highest paid in their occupation anywhere in the United States. In fact, the mean annual wage for detectives and criminal investigators nationwide is only $79,030, more than $40,000 less than the mean annual wage for PBA and SOA members. And even this amount is skewed upwards by the high salaries paid to federal detectives and criminal investigators - for those employed by local government the mean annual wage is only $65,420. New Jersey is the third highest paying jurisdiction for detectives and criminal investigators, trailing only the District of Columbia (presumably, including federal employees) and Alaska. In order to be in the top 10% of employees in this profession, a detective or criminal investigator must earn $125,320. Given that top step investigators and all SOA members earn above this amount, it is clear that PBA and SOA members are among the fortunate elite in compensation levels nationwide.

The County notes that both SOA and PBA members are paid higher wages than all of the County's unionized civilian employees. And even the lowest paid SOA members earn more than any civilian County employee, regardless of union status, except for the County Administrator, County Counsel, and a tiny number of the County's highest ranking administrators and executives. For example, CFO Marshall earns $138,000 and is responsible for managing an annual budget in excess of $500 million. That is approximately the same amount as the Prosecutor has proposed for sergeants in 2014. Marshall also testified that a top step investigator earned more in 2013 than the County's Director of Human Services, who manages a complex department with hundreds of employees.

The County contends that, while the PBA has proposed a 3.167% raise for top step investigators in 2014, this is well above the 2% received by non-union County employees in 2014. Moreover, of the handful of civilian negotiations units under contract for 2014, annual raises in those units are generally 2% or less. Most notably, the low-paid employees of the Monmouth County Care Centers, represented by AFSCME 2284, have agreed to a complete salary freeze for 2014.

Finally, the County states that assistant prosecutors, who hold critical supervisory roles within the office and have highly complex job duties and responsibilities, are compensated at far lower rates than the investigators. Entry-level assistant prosecutors start at $50,000, the minimum starting salary for an investigator, and annual salary increases are far below the large step movements enjoyed by PBA members. Of the 51 assistant prosecutors not holding senior management positions, only seven earned more than a top step investigator's 2012 salary of $124,510. Moreover, unlike PBA members and sergeants, assistant prosecutors are not paid overtime.

OPEIU 32, representing the Prosecutor’s clerical employees, and the Supervisors Association, representing the Prosecutor's clerical supervisory employees, have recently agreed to terms for the 2013 to 2015 contract. Both agreed to 2% increases for each year together with a reduction in the promotional salary increase rates from 6% to 3%. They also agreed to a package of health care and pharmaceutical plan design changes that the Prosecutor is seeking to implement here as well. The County contends that it is hardly equitable that these hard-working clerical employees, who already do not enjoy the outstanding pay and benefits of PBA and SOA members, should see that income disparity widen.

The Prosecutor’s proposal here continues to allow investigators at all ranks to receive a substantial premium above most other County employees, without dramatically widening the already existing salary gap, especially given the sacrifices imposed on other employees in recent years due to a poor economy.

The County contends that the PBA and SOA final offers are contrary to established concept of “pattern bargaining,” which is regularly applied in collective negotiations. The County states that this concept involves the understanding that there should be some rational relationship in the salaries and wages among a public employer’s various negotiations units. The PBA and SOA final offer would worsen the already irrational relationship between the salaries of its members and the salaries of practically every other employee of the Prosecutor and County, and represents yet another reason why their final offer must be rejected.

The Prosecutor recognizes that it is difficult to make a perfect comparison between investigators and employees in the private sector, since for the most part law enforcement responsibilities are exclusively the province of government.

The Prosecutor submits that a report of private sector wage changes compiled by the New Jersey Department of Labor and Workforce Development shows that average private sector wages increased 1.9%, from 2011 to 2012. But a closer review of this data reveals two noteworthy facts. First, in Monmouth County, private sector employees earn wages substantially lower than the Statewide average - just $47,826 in 2012, more than $10,000 beneath the statewide average. Overall, in 2012 Monmouth County ranked 12th of 21 counties in average annual private sector wages, as compared with Somerset County, where the average private sector wage was $79,563, in Morris County it was $74,077, and even in highly urbanized Hudson County it was $69,608.

Second, in 2012, Monmouth County's private sector wage growth was only 0.4%, one of the worst performances in the State and far less than places like Cumberland County (increase of 2.7%), Mercer County (increase of 3.6%), and Morris County (increase of 4.5%).

Of course, what the foregoing data does not take into consideration are the outstanding benefits and relative job security enjoyed by PBA and SOA members, perks that are hard to find in most private sector positions. This data supports the awarding of the Prosecutor’s final offer.

A review of the existing PBA and SOA contract demonstrates that their members receive outstanding benefits in addition to their outstanding base salary. These benefits include comprehensive medical and prescription drug coverage (including post-retirement medical benefits for employees hired in July 1994 or before), enhanced worker’s compensation benefits, up to five weeks of paid vacation per year, three days of paid personal leave per year, fifteen sick leave days (up to $15,000 of which may be sold back at retirement, if unused), thirteen paid holidays, paid bereavement leave, veteran’s benefits and more.

In addition, investigators and sergeants have the opportunity to earn substantial cash overtime at a rate of time and a half. According to LeMieux, a top step investigator's overtime rate is in excess of $90 per hour. In 2013, PBA and SOA members earned nearly an additional $1 million in overtime. At least 20 PBA and SOA members earned at least $20,000 in overtime in 2013 and well more than half of all PBA and SOA members - 47 in total - earned at least $10,000 in overtime. Moreover, each County investigator is enrolled in the Police and Fireman’s Retirement System ("PFRS"), which permits retirement after twenty years of service at 50% of final compensation or twenty-five years of service at 65% of final compensation. N.J.S.A. 43:16A-11.1.

N.J.S.A. 34:13A-16(g)(5) requires the arbitrator to consider the “lawful authority of the employer,” including the “Local Government Cap Law.” N.J.S.A. 40A:4-45.1. This statute states that local governmental entities, including counties, are generally limited from increasing their final appropriations by more than 2.5% or the cost-of-living adjustment, whichever is less. N.J.S.A. 40A:4-45.2. However, in the case of counties, the increase applies to the property tax levy, not final appropriations. N.J.S.A. 40A:4-45.4. There are also certain enumerated exceptions that are not included when determining the permissible increase in a county’s property tax levy. Notably, the 2013 cost-of-living adjustment was just 0.5 percent, reflecting continued low inflation.

In addition to the 1977 Cap, a second tax levy cap has been established by the Legislature, this one applicable to all local governmental entities, not just counties. This new levy cap was first established by sections 9 through 13 of P.L. 2007, c. 62, and is now codified at N.J.S.A. 40A:4-45.44 through -45.47.Because the formulas and exceptions contained in the two levy caps are different, P.L. 2007, c. 62 expressly states that counties must calculate their allowable tax levy increase under both formulas, and apply whichever formula is more restrictive.

In 2010, C. 62 was amended to cut the allowable tax levy increase to 2%, starting in 2011, to just 2% per year. C. 44. The County's 2014 cap calculation workbook shows that the County was able to comply with the 2010 Cap with approximately $10 million remaining. While the County was able to also comply with the 1977 Cap, it used nearly $2 million from its 2012 cap bank in order to do so.

At this point, the Prosecutor is not claiming that the County is in imminent danger of exceeding either the 1977 Cap or 2010 Cap regardless of which final offer is awarded. But, as will be discussed in the following section, whether or not the cap laws may become an issue in the future still remains in substantial doubt given the County is facing an uncertain financial situation in the years ahead.

As the Appellate Division explained in Hillsdale, the “financial impact” criterion, N.J.S.A. 34:13A-16(g)(6), requires the arbitrator to “consider the financial impact of his award on the [local governmental entity], its residents and its taxpayers, whether wealthy or poor.” Hillsdale, 263 N.J. Super. at 194. This criterion encompasses a far more searching and critical analysis than simply whether a local government has the ability to pay an award. Put differently, a local government “should not have to demonstrate it would be financially crippled before its arguments could be found to be sufficient.” Id.

What becomes readily apparent in the PBA proposal is that it has front loaded the agreement so that most of the salary increase is in 2014. It does so by paying out 2014 step movement in full, at a cost of over $128,000, plus awards all of the top-step Investigators more than a $4,000 raise. The result of this strategy is to make the PBA's proposal far more expensive over its entire term, even if it appears to comply with the restrictions of P.L. 2010, c. 105, which permit the 2% annual salary increase to be distributed in unequal annual percentages.

By front loading the contract, the PBA's proposal would cost the taxpayers nearly $232,000 more than the Prosecutor's proposal between 2014 and 2016, almost all which would be incurred in 2014 and 2015. But while the Prosecutor is willing to provide the maximum raise available under the law for PBA members it certainly did not anticipate nor did it budget for a salary increase for the PBA well in excess of 4% in 2014, and having to fund that large increase - more than double what was anticipated - would have obvious and immediate detrimental consequences for the Prosecutor's finances.

The County contends that the SOA’s proposal would increase salaries by 2.0% for its membership overall at each rank for each year over a four-year period, while the Prosecutor’s proposal would increase salaries to a fixed maximum in 2014, and freeze them for two additional years. At the 2013 SOA base salary total of $3,336,730, 2% would be $66,735. The proposed increases by the Prosecutor would result in base salary increasing by a little over 2.3% in 2014, then staying level for 2015 and 2016. Of course, such a proposal is well within the constraints of New Milford.

The problem with the SOA's final offer is that it uses an incorrect base salary, which skews all of the calculations that follow. At the hearing, the SOA agreed that the Prosecutor's list, Exhibit 81(b), accurately represented the composition of the SOA on December 31, 2013, and that the salaries paid on that list were similarly accurate (except for the $100 per employee resulting from the dispute over the two week pay lag issue). Petrucelli admitted that he failed to include in his calculations the correct 2013 salary for two sergeants who were promoted to lieutenant in 2013 and thus had blended salaries. Also, Petrucelli included the salary of an employee who retired in early 2013 in each year of the cost-out, skewing the numbers even further.

Using an accurate 2013 base salary of $3,336,730 and an accurate list of employees on the payroll as of December 31, 2013, the SOA's proposal, at the end of the proposed four-year contract term, is nearly $20,000 over the 2% cap. It therefore cannot be legally awarded.

The County notes that the Unions argued that the County's financial state is strong and it can easily handle the approximately $225,000 extra the PBA's proposal will cost over the next two years, as well as the entire SOA proposal. Although PBA and SOA member salaries by themselves represent about 2% of the County’s total annual operating budget, an award that is front-loaded so severely will have ripple effects throughout the County as it attempts to bring its budget under control in all respects. That is why our Supreme Court has directed arbitrators to consider the effect that an award will have on other employees and the employer’s overall budget, stating, “[g]iven the existence of financial constraints and budget caps… an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget.” Hillsdale, 137 N.J. at 86.

The County avers that, if the arbitrator awards the PBA's front-loaded proposal, and all of the County's other law enforcement negotiations units, representing well over 400 sworn law enforcement officers, will use that award as a pattern for their negotiations or interest arbitration, the potential financial impact on the County is severe.   
 As Marshall testified the County did not plan for 2014 salary increases within any negotiations unit to exceed 4%. And even if the County could cobble together the money to pay such oversized awards, such as through breakage, because unspent salary at the end of the year is used to bolster the County's fund balance, it would detrimentally impact the County's bottom line.

Marshall described how the County has had reduced revenues in the last few years as a result of loss of fees and interest rate decreases. These revenue declines were not due to mismanagement, but due to circumstances entirely outside of the County's control. So in order to make the budget work, at least without raising taxes on struggling Monmouth County residents, Marshall testified that every County department has had to cut back on its spending, the number of County employees has significantly declined, and there has been an all-around belt tightening in every area of County government.

Marshall also described a worrying trend in 2014, where the County does not appear to be on pace to regenerate its fund balance in the amount anticipated at the start of the year, which was already in decline. Marshall testified that, based on what has happened over the first six months of the year, the County is on pace to regenerate only $21.1 million of its fund balance, which would result in a reduction in overall fund balance from $76.2 million to $54.3 million. While Marshall made clear that his analysis is only based upon projections, and it is possible these numbers may improve during the second half of the year, they were not contradicted by anything presented by the PBA and SOA.

The ability to properly regenerate and manage surplus is especially critical to the County because it maintains a coveted AAA bond rating from all three major bond rating agencies. By maintaining the highest possible rating, the County saves millions of dollars in interest on its annual bond offerings. Marshall further explained that the level of surplus is the most important factor ratings agencies use in determining a bond rating. This means the County is in a precarious position -- if it uses too much of its surplus to fund employee salaries and benefits, it will be hit with an additional penalty of millions more in borrowing costs, continuing the downward spiral in County finances. The County’s bond rating is also utilized by almost all of the municipalities in Monmouth County to borrow money for their capital improvements through the Monmouth County Improvement Authority. A loss of the County’s AAA rating would have deleterious effects for the finances of all of those entities, as well. Based upon Marshall's credible and unchallenged testimony about the County's current financial situation, there is a very real possibility that a reduction in the County's bond rating is looming. At a minimum, Marshall's testimony presents a compelling reason why salaries should not be front-loaded in 2014 at a considerable added expense to the County.

The County notes that the cost of fringe benefits continues to grow substantially year over year. Health care costs have gone from under $40 million in 2006 to over $62 million in 2013, and are projected to be over $69 million in 2014 - or nearly 15% of the County's entire operating budget. Meanwhile, the County's overall pension costs have increased from $5 million in 2006 to over $22 million in 2013. About half of that amount goes to PFRS to fund the pensions of its law enforcement officers. And since PBA and SOA members are the most highly compensated law enforcement officers anywhere in the County, and pension contributions are based as a percentage of salary, the actual pension costs to the County for PBA and SOA members is already far above the average. Front-loading PBA salaries in 2014 would result in the County having to make a substantial added pension contribution.

The PBA and SOA have failed in any way to explain, as required, why the salaries of their members “are entitled to such a priority in the overall budget vis-à-vis other functions, plans and concerns of residents and taxpayers.” Fox v. Morris County Policemen's Ass'n, 266 N.J. Super. 501, 517 (App. Div. 1993).

The arbitrator is required to consider the cost of living in rendering her award pursuant to N.J.S.A. 34:13A-16(g)(7). The Appellate Division, in Hillsdale, specifically faulted an arbitrator for failing to “consider or discuss the disparity between police salary increases and the consumer price index.” Hillsdale, 263 N.J. Super. at 195.

Nationally, between June 2013 and May 2014, the CPI increased 2.1%. For the New York/New Jersey metropolitan area, which includes Monmouth County, the CPI increased only 1.9% between June 2013 and May 2014. The relative lack of inflation in the United States is further reflected by the determination by the Social Security Administration that it would award cost of living increases of only 1.7% in 2013 and 1.5% in 2014.

Based on the CPI statistics it is reasonable to conclude that the United States economy, as well as the local economy, is experiencing historically modest levels of inflation. While it is impossible to predict future inflation levels, nothing in the record suggests that an inflation spike is likely anytime soon.

On the other hand, the maximum 2.0% annual increase currently allowed by law requires difficult decisions to be made regarding the allocation of resources. The PBA has proposed a complete salary freeze, including on the step guide, in 2016, which will affect employees earning $100,000 or less and thus more susceptible to changes in the CPI. The Prosecutor does not seek to freeze steps in any year of its proposal in recognition that those employees earning a lesser salary deserve some measure of salary progression each year. That is yet another reason why the Prosecutor's final offer must be accepted and the PBA and SOA's offer rejected.

The “stability and continuity of employment” criteria of N.J.S.A. 34:13A-16(g)(8) is intended to address recognized employment issues such as seniority, longevity, layoffs, give-backs, and salary freezes. See Hillsdale, 263 N.J. Super at 195. An arbitrator also should consider unemployment levels in general, the low level of turnover in law enforcement, and “the virtual absence of unemployment among police.”Fox, 266 N.J. Super at 519.

The County emphasizes that there is practically no turnover among the Prosecutor's investigators, and they generally only occur due to retirement. The Prosecutor regularly receives unsolicited resumes from highly qualified individuals and the hiring process is competitive. When the Prosecutor has on rare occasions advertised for an opening, LeMieux indicated that the office receives a flood of applications. Moreover, LeMieux testified that once hired, investigators generally remain with the Prosecutor until retirement and it is extremely unusual for an investigator to voluntarily leave for employment with another law enforcement agency. According to LeMieux, the only employee who resigned in the last five years did so because she was unwilling to meet the Prosecutor's residency requirement. In summary, LeMieux confirmed that at existing salary levels, the Prosecutor has no problem finding qualified candidates nor are there any retention issues with current employees.

**Union’s Arguments**

The Unions acknowledge that their membership is among the highest paid investigators in the State. However, the Unions noted that, according to first Assistant Prosecutor LeMieux, Monmouth’s investigators are “the best in the State.” In order to continue to serve and protect the residents of the County, as well as the highly valuable commercial, industrial and residential properties located therein, the investigative staff of the Prosecutor's Office must continue to receive competitive wage increases. In this way, the County and its residents will benefit from the ability to continue to attract and, more importantly, retain high caliber investigators and remain the finest investigatory staff in the State.

The Union argues that an award of the PBA and SOA salary proposals will not have any adverse impact on the County, its taxpayers nor its residents. The reasons for this are obvious: Monmouth County's finances are exceptionally strong and, at the same time, the operations of the Prosecutor's Office represent a miniscule portion of the overall tax budget. It notes that

Monmouth is the only county in New Jersey that has achieved an AAA rating from all three bond rating agencies, thus enabling it to borrow at reduced interest rates. Marshall conceded that the County's bond ratings will not likely be adversely impacted in the event that the Arbitrator awards the Unions' salary proposals. In addition, the Union notes that the County's excess results from operations grew from $36.4 million in 2011 to $55.5 million in 2013. Also, the County had $76.2 million in Cash Balances in 2013 and its free Cash Balances increased by nearly $10 million over 2012's level.

Further, the County has for the last several years budgeted well under the spending and tax levy caps. In the 2014, the County budgeted only a .5% increase in spending. Therefore, it must be concluded that neither the spending or tax levy caps represents an impediment to the fair and modest wage proposals advanced by the Unions in their proposals. Moreover, the Unions emphasize that CFO Marshall conceded the County has more than sufficient monetary resources to fully fund the proposals advanced by the PBA and SOA. In addition, the Unions aver that their respective proposals are fully compliant with the 2% cap law.

Local 256 argues that the County's budget represents only 16% of the total tax bill for Monmouth County residents. Moreover, the Prosecutor's Office and other related services account for just 0.9% of the total tax bill. Breaking this down even further, the Unions note that the services provided by the members of the PBA and SOA cost the average Monmouth County taxpayer just $.20 a day -- or less than the cost for any daily newspaper in the tri-state area.

Notwithstanding the small fraction which the operations of the MCPO constitute in the County’s budget, the Unions’ expert further revealed that the Prosecutor’s Office regularly and routinely spends less than budgeted each year. Consequently, the County annually reaps hundreds of thousands of dollars in reserves just from the Prosecutor's Office alone.

According to the PBA, in 2012, the County initially budgeted $2.16 million for Prosecutor's salary and wages. However, the County ultimately spent only $2.15 million - creating a reserve of $119,193. Thus, the Unions argue, an award of the PBA and SOA economic proposals will not have any adverse impact on the "governing unit, residents and taxpayers" of Monmouth County.

The Unions argue, as Petrucelli demonstrated, inflation has, unfortunately, averaged 2.76% per year for the period of January 1, 2000 through October 31, 2013. Not surprisingly, the metropolitan area has higher costs of goods than national averages. As Petrucelli demonstrated, what had cost $100,000 in 2000 had a price tag $136,342 in 2013.

Additionally, Petrucelli stated that while a Monmouth County resident required an annual income of $78,149 in order to purchase an average home in Monmouth County in 2000, that very same employee now needs to earn $107,070 in order to purchase that same home. Thus, in order to live in that same County, employees must continue to receive fair increases in their income. For these reasons, the modest raises advanced by the PBA and SOA in the instant matter must, respectfully, be awarded.

Further, Local 256 avers that the County's median household income between 2006 and 2010 was $82,265. During roughly this same time period, Monmouth County residents also enjoyed the fifth highest per capita income in New Jersey ($40,976) trailing only Hunterdon, Morris, Somerset and Bergen Counties. The average residential sales price in Monmouth County increased in value by $126,473 (or 39%) between the ten-year period of 2003-2013. In addition, the overall, total private sector wages in New Jersey rose by 2.1% between 2011 and 2012.

In applying the statutory criteria of comparable wages and working conditions in similar jurisdictions, the PBA/SOA argue that, while its members rank among the best paid in New Jersey, same is deserved since they are the best in the state. Also, the Unions emphasizes that, unlike investigators employed in other counties, the Monmouth investigators do not receive longevity, clothing allowances, and college tuition reimbursements. Also, since the vast majority of the investigative staff was hired after July 1, 1994, they will not be eligible for post-retirement medical benefits. This is significant as most other counties do extend this benefit to their retired detectives.

The PBA maintains that their members have an extremely busy and dangerous job. It notes that the office is currently manned by only 78 investigators (all ranks), down from 84 from just a few years ago. Thus, the members of the PBA and SOA have been required to "do more with less". For the varied and various risks and sacrifices they make every day, they must be properly and fairly compensated.

Local 256 contends that their proposals in the instant matter are both cap-compliant. With respect to the SOA, 2% increases for the ranks of sergeant, lieutenant and captain are proposed. If awarded, the salary guide would appear as follows:

Rank 2014 2015 2016

Sergeant $137,171 $139,915 $142,713

Lieutenant $146,621 $149,554 $152,545

Captain $152,235 $155,279 $158,385

The SOA notes that the requested 2% increases are consistent with the raises provided to the County's civilian bargaining units, as well as its unrepresented employees in 2014. As the PBA observes, complying with the 2% cap law is much more challenging for the PBA due to the large number of officers "in step." The PBA’s offer for the investigators was:

Add two steps to the salary guide, commencing

January 1, 2015;

Step movements occur on January 1, 2014, 2015

Step movements frozen in 2016;

Top step salary increase of 3.167% in 2014;

And 0% in 2015, 2016 and 2017.

Wilbert explained the Unions’ rationale for its proposals. She testified that the salary proposed by the PBA - wherein step movements would occur three of the four years (2016 being the exception) and top step increasing by 3.67% in one year only (2014) - is the most palatable scenario for the PBA and its membership. As Wilbert explained, all investigators in step received their increments in 2014. Unfortunately, the payment of said increments for 2014 far exceeded the 2% cap. The PBA is proposing a four-year contract -- as opposed to the more restrictive three year agreement advanced by the County - in order to be able to secure at least some raises for those detectives at top step. The Unions defends the County’s criticism of the lack of step movement in 2016 by explaining that it felt the impediments presented by the cap law made same unavoidable. As Wilbert explained, the members instead will receive their increments in three of four years and that the "step freeze" was necessary in order to secure at least some nominal raise - 3.167% over the four year deal - for those investigators at top step.

The PBA/SOA argues that the County's proposals to "cap" the salary of its top detectives at $129,000 as well as "cap" the salaries of its supervisors (sergeant: $137,000; lieutenant: $146,000; and captain: $152,000) would be unprecedented within the County and State-wide as well. The County’s artificial "cap" is separate and distinct from the Interest Arbitration Reform Act cap. Further, the Unions contend that the caps suggested are “unreasonable and arbitrary.”

The PBA/SOA point out that no other Monmouth County law enforcement group has been subjected any such arbitrary "caps". Sheriff Shawn Golden's current salary is $130,000, while Sheriff’s lieutenants earned a salary of $133,991 in 2013. Almost with exception, there are no artificial "caps" on the salaries which are payable to the investigators and supervisors of the various prosecutor's offices around the State.

Moreover, the PBA/SOA assert that the County’s proposal to add three steps to the salary guide would make this guide – at 18 steps – the greatest number of steps in any guide among prosecutor’s investigators throughout the State.

In short, the members of the PBA and SOA are extremely hard working professionals who deserve to receive the modest salary increases contained in their respective final offers. This especially true in light of the County's strong financial position; the fact that other civilian units have received 2% wage increases for this year; and the need to continue to attract and maintain high caliber investigators in the future.   
 Finally, the Union argued that, with regard to the County’s proposal to compensate newly promoted offers at a reduced salary, the newly promoted sergeant would then earn significantly less than not only his/her fellow sergeants but also various investigators under his/her command - the very same "evil" the County seeks to avoid in advancing its ill-conceived, unwarranted, and unreasonable artificial "caps" for the top paid detectives, sergeants, lieutenants and captains.

In summary, the PBA/SOA maintain that law enforcement is one of the most dangerous and stressful occupations in America. The dedicated and hardworking members of the PBA and SOA must be properly compensated in order to insure that the County will continue to attract and retain high caliber, experienced and efficient investigators to safeguard the residents and property owners in the County.

**ANALYSIS**

In applying the statutory criteria, together with the statutory 2% cap on arbitration awards, I have considered the following relevant facts:

**AUTHORITY OF THE EMPLOYER**

**INCLUDING APPROPRIATIONS**

**AND LEVY CAPS/FINANCIAL IMPACT (G5,6)**

**Budget Overview**:

For the fourth consecutive year, the County has managed to strike a budget which contains no tax increase for 2014. In introducing the 2014 budget, County Freeholder Deputy Director Gary J. Rich, Sr., commented in a press release in March 2014, as follows:

“This year, an internal budget subcommittee met with each department to look for duplicative services and identify areas for consolidation and savings. This process has yielded savings in the areas of information technology, finance, human resources, building maintenance and legal services.”

The County’s Chief Finance Officer, Craig Marshall, testified that the County continues to hold an AAA bond rating from all three major bond-rating agencies, a feat only a few dozen counties nationwide have achieved. The financial strength of the County allows for its municipalities, school boards and other government agencies to borrow money through the Monmouth County Improvement Authority (MCIA) and at the lowest possible interest rate. The MCIA also “pools” loan agreements for greater efficiencies. Marshall stated that currently 48 of the County’s 53 municipalities have used MCIA.

Marshall testified that due to economic changes in 2008 and on, the County implemented a salary freeze and hiring freeze in effort to regenerate surplus; also a “soft” freeze was in effect for its departments, upon request. The County offered each of its collective bargaining units the alternative of either cutting positions or accepting salary freezes. Marshall stated that if a zero percent increase was not agreed to by the bargaining unit members then lay-offs would result. The County Prosecutor’s office accepted the zero percent increase.

In calendar years 2010 through 2014, the County told its departments to cut their budgets. Marshall testified that since 2008, 400 full-time positions have been cut. In addition, through attrition, the County has maintained its commitment to a smaller, efficient workforce. The next chart depicts the County’s workforce in 2008 versus 2014 and the net change overall: (C-57)

|  |  |  |  |
| --- | --- | --- | --- |
| **County's Workforce** | | | |
| **Positions** | **2013** | **2014** | **Difference** |
| Full-Time | 3,227 | 2,834 | -393 |
| Part-Time | 158 | 117 | -41 |
| Seasonal | 396 | 152 | -244 |
| **Total** | **3,781** | **3,103** | **-678** |

The County’s Chief Financial officer (CFO), Craig Marshall, testified that the County is on a Calendar Year (CY) budget. Marshall stated that the County’s financial management is strong in that it uses a proactive approach to upcoming issues, considers collective wealth, and has a strong ratable base.[[9]](#footnote-9)

The CFO considers the County’s Fund Balance (Surplus) as a major factor in its budget. Marshall testified that the State policy is to encourage Counties to maintain its surplus balance at least 7% above revenues. The County’s balance is currently at 14%, whereas it consistently strives to maintain regeneration of surplus. The CFO stated that regeneration comes by unanticipated revenues or unspent appropriations and/or revenues and that unspent funds can be transferred where needed. Marshall predicted that regenerations of surplus will be down in 2014. He contends that the County has experienced a significant loss in local revenues due to decreased fees, reduced interest, and reduction of County Clerk fees as a result of a continuing slowdown in Monmouth County’s real estate market over the last several years, which

impacts not only property tax revenue but the amount of fees generated by the County Clerk’s office. Moreover, the County expects a loss in new miscellaneous revenues such as the weights and measures trust, the motor vehicle trust fund (Hurricane Sandy) and the open space trust fund.

Below is a summary of Monmouth County’s 2014 and 2013 Adopted Budgets Anticipated General Revenues: (C-48, Sheet 9)

|  |  |  |  |
| --- | --- | --- | --- |
| **General Revenues** | | | |
|  | **2014** | **2013** | **Difference** |
| Surplus Anticipated | 43,000,000 | 46,000,000 | -3,000,000 |
| Miscellaneous Revenues | 135,425,000 | 177,793,410 | -42,368,410 |
| Amount to be Raised by Taxation | 302,475,000 | 302,475,000 | 0 |
| **Total General Revenues** | **480,900,000** | **526,268,410** | **-45,368,410** |

The following chart depicts the County’s General Appropriations for budget years 2014 and 2013: (C-48, Sheet 33)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **General Appropriations** | | | | |
|  | **2014** | **2013** | **Difference** | **Reserved 2013** |
| Total Operations Including Contingent | 389,536,636 | 434,686,216 | -45,149,580 | 11,739,333 |
| Total Capital Improvements | 750,000 | 1,250,000 | -500,000 | 157,319 |
| Total County Debt Service | 53,263,364 | 54,382,195 | -1,118,831 | 0 |
| Total Deferred Charges and Statutory Expenditures | 37,350,000 | 35,950,000 | 1,400,000 | 575,044 |
| **Total General Appropriations** | **480,900,000** | **526,268,411** | **-45,368,411** | **12,471,696** |

**Net Valuation Taxable:**

Monmouth County’s 2013 net valuation taxable was $102,127,763,540; a decrease of $1.58 billion from 2012**.** Its 2013 ratable base was valued at $111.9 billion; a $5.0 billion decline from the $116.9 billion reported in 2012. The County’s breakdown of assessed valuation based on established property uses is as follows: 83% residential; 14% non-residential; 2% vacant land; and 1% farm. (C-31, p.23; C-55)

The Department of Community Affairs (DCA) website property tax source for 2000 equalized value reflects that the County of Monmouth has grown 118.39% in value or $59.8 trillion from December 31, 2000 to December 31, 2013. As of January 1, 2000, the County’s equalized value was $50.6 trillion and it has grown to $110.5 trillion. The Union contends that the increase in value provides the County with additional revenues that can be raised through taxation. (U-AA, p.19-20)

**Revenue:**

The County, by statute, receives its full budgeted revenue to be raised by taxation each year. It receives 6% interest per annum from the municipalities for nonpayment of taxes on or before the due date. The County’s budgeted revenue to be raised by taxation has not increased or decreased for that matter, since 2009. The estimated revenue to be raised by taxation has been $302,475,000 for the years 2010, 2011, 2012, 2013, and 2014. The statutory tax levy cap was 4% in 2012; and 2% for 2013 and 2014. (U-AA, p.50)

Property Taxes:

Monmouth County’s total property tax allocation for 2013 is provided as follows: County’s portion of property taxes is $335 million or 16%; municipal’s is $526 million or 25%; and the school’s portion is $1.2 billion or 59%. The Total County property tax levy was $2.08 million. The average assessed value was $407,500 with an average tax bill of $8,307. (U-AA, p. 12)

In December 31, 2013 the County’s property taxes represented 56.9% of its budgeted revenues (531,704,645/302,475,000). As of December 31, 2012, the County’s property taxes represented 58.1% of its budget (520,943,791/302,475,000). For the six-year period dated 2008 through 2013, County operations have been, or will be, funded through taxation at an average of 54.72% per year.

The County’s home ownership costs have grown during the past thirteen years. The Union avers that the taxable value generates the tax revenues for the County. It states that the County’s average equalized home value was $230,229 in 2000 and $435,256 in 2013, which represents an 89.05% increase or $205,027. This illustrates how a person buying a home in the County in 2013 had an average equalized inflation factor for January 1, 2000 to January 1, 2013 of 6.850% (89.05%/13). The average taxable value of a home in 2000 was $194,739 versus the average taxable value of a home in the County in 2013 which was $407,500. The equalized value of a $407,500 average taxable home was $435,256. (U-AA, p.9)

Cash Balances:

The PBA contends that the County has consistently maintained a strong cash position. The cash and equivalent balances of $120,251,059 on December 31, 2013 represent cash available after completion of the budget cycle for 2013. This represents 22.62% (120,251,059/531,704,645) of the 2013 realized budgeted revenues. The “free” cash balances of $76,208,017 represents excess cash available after deducting current liabilities.[[10]](#footnote-10) The following chart depicts the current fund balances, current liabilities, and “free” cash balances [[11]](#footnote-11) for the years 2009 through 2013: (U-AA, p.21)

|  |  |  |  |
| --- | --- | --- | --- |
| **Cash Balances** | | | |
| **Year** | **Current Fund Balances** | **Current Liabilities** | **"Free" Cash Balances** |
| 2013 | 120,251,059 | 44,043,042 | 76,208,017 |
| 2012 | 121,623,578 | 54,987,272 | 66,636,306 |
| 2011 | 130,550,766 | 61,112,607 | 69,438,159 |
| 2010 | 139,161,453 | 62,340,570 | 76,820,883 |
| 2009 | 143,784,051 | 60,019,812 | 83,764,239 |
| Source: 2009 through 2012 Audited Financial Statements ; 2013 Unaudited Financial Statement | | | |

Surplus:

The Union contends that the County has continually regenerated surplus since 2009. The following chart depicts surplus regenerated from May of 2009 through May of 2014: (U-AA, p.3; Tab 8)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Use of Surplus [[12]](#footnote-12)** | | | | | | |
| **Surplus Analysis** | **Budgeted** | **Actual** | **Actual** | **Actual** | **Actual** | **Actual** |
|  | **2014** | **2013** | **2012** | **2011** | **2010** | **2009** |
| Fund Balance as of Jan 1 | 76,208,017 | 66,636,306 | 69,438,158 | 76,820,883 | 83,764,239 | 83,648,839 |
| Surplus Utilized in the Budget | 43,000,000 | 46,000,000 | 43,865,000 | 43,865,000 | 44,850,000 | 44,850,000 |
| Remaining Fund balance | 33,208,017 | 20,636,306 | 25,573,158 | 32,955,883 | 38,914,239 | 38,798,839 |
| Excess from Operations/Revenue |  | 55,571,711 | 41,063,148 | 36,482,276 | 37,906,643 | 44,965,400 |
| Fund Balance as of Dec 31 |  | 76,208,017 | 66,636,306 | 69,438,159 | 76,820,882 | 83,764,239 |
| Percentage of Surplus Used | 56% | 69% | 63% | 57% | 54% | 54% |

The PBA asserts that the regenerated fund balance allowed the County to stabilize its tax levy while complying with Chapter 62 laws of 2007’s tax levy cap. In addition, the PBA maintains that in 2013, the fund balance in the beginning of the year was $66.6 million of which the County utilized $46 million as surplus revenue in the 2013 budget, after which the County had a remaining fund balance of $20.6 million ($66.6 less $46). In 2013, the County regenerated $55.5 million of fund balance and ended the year with a regenerated fund balance of $76.2 million on December 31, 2013. Marshall testified that the County has used more and more of its fund balance in its budget.

The chart depicted below shows the County’s excess results from operations from 2009 through 2013: (U-AA, p.18)

|  |  |
| --- | --- |
| **Excess Results from Operations** | |
| **Year** | **Excess** |
| 2013 CY | 55,571,711 |
| 2012 CY | 41,063,148 |
| 2011 CY | 36,482,276 |
| 2010 CY | 37,906,643 |
| 2009 CY | 44,965,400 |

In 2014, the Union states that the County utilized the lowest amount of surplus since 2009. It contends that this indicates that other budgeted revenue sources are sufficient to reduce the amount of surplus needed for 2014 budgeted operations. (U-AA, p.4)

Appropriation/Encumbrance Reserves:

As per the 2013 Unaudited Financial Statement, the County has $38.5 million ($12.4 plus $26.1) in appropriation and encumbrance reserves. The Union states that appropriations reserves are available to lapse into surplus in the second year and encumbrance portion of the reserves, if cancelled, lapse to surplus in the budget year cancelled, and could be utilized elsewhere in the budget. (U-AA, p.4; 16)

The following chart reflects the County’s unexpended balance of appropriation reserves from 2009 through 2014: (U-AA, p. 16)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **UNEXPENDED BALANCE OF APPROPRIATION RESERVES** | | | | | |
| **YEAR** | **Appropriation Reserves Unexpended** | **Encumbrance Reserves to be Expended** | **Total Reserves** | **Surplus Generated from Lapsed Appropriations** | **Percentage Recognized as Surplus** |
| 2014 CY |  |  |  | 9,984,858 | 41.63% |
| 2013 CY | 12,471,696 | 26,119,673 | 38,591,396 | 24,025,930 | 43.11% |
| 2012 CY | 23,983,663 | 25,042,644 | 49,026,308 | 28,554,126 | 50.81% |
| 2011 CY | 26,857,502 | 28,868,763 | 55,726,265 | 23,789,107 | 46.25% |
| 2010 CY | 23,430,020 | 32,772,640 | 56,202,660 | 17,555,455 | 36.64% |
| 2009 CY | 18,435,266 | 32,995,465 | 51,430,732 | 15,443,964 | 31.35% |
| Documentation supports: 2008-2012 Audited Financial Statements; and 2013 Unaudited Financial Statements. | | | | | |
|

The Union contends that the chart above illustrates that the County has continually spent less than budgeted. An analysis of the lapsed balances for the period 2009 through 2013 indicates that, on average, 41.63% of the appropriation/encumbrance reserves balance has lapsed to surplus. The total $38.5 million unexpended balances of the 2013 appropriation reserve will lapse to budget operations in the 2015 budget year. (U-AA, p.16)

Miscellaneous Revenues Not Anticipated (MRNA):

The PBA maintains that the County had additional revenues it did not anticipate in the budget or raised by taxation. Per the Unaudited Financial Statement as of December 31, 2013, the Monmouth County had additional revenue of $13,400,056. Marshall testified that the 2013 budget increase in MRNA was mostly attributed to FEMA reimbursements from County claims submitted in 2012 as a result of Hurricane Sandy. The PBA contends that this revenue is available for budget appropriations in future years. (U-AA, p.17) Marshall testified that MRNA is not dollars which are budgeted to balance the budget.

Federal and State Grants:

The Union states that the County has demonstrated its ability to obtain grant revenues to reduce taxation as evidenced by the $36.9 million of grants realized in cash in the 2012 budget. Furthermore, the Union states that in addition to grants that are anticipated when the budget is adopted, the County has the ability to fully fund appropriations that can later be reimbursed as Chapter 159 Grants are received during the budget year. For example, in the 2012 adopted budget the County anticipated $10.5 million in Federal and State grants and aid. During 2012, an additional $26.4 million ($36.9 less $10.5) of grant revenue was realized through the Chapter 159 procedures. For the 2013 budget the County realized $52.9 million in grant revenue. For the 2014 budget the County anticipated $8.8 million offset with appropriations. (U-AA, p.26)

Marshall testified that in 2013 the County received $10 million more in grant funding than in 2012 because of a highway grant. In addition, the County also received $16 million in 2013 for a bridge project. Marshall stated that in 2012 the County was short in its grant fund and had to transfer the dollars accordingly.

**Net Debt:**

As shown below, as of December 31, 2013, the County had $452.9 million of net debt and a resulting net debt percentage of 0.40%. The Union states that the resulting percentage indicates that the Countyhas significant remaining borrowing ability in the amount of $1.8 trillion. The County’s low debt percentage is below the statutory debt limit and the Union avers that this illustrates that the County is not financially extended. In addition, the County has maintained an AAA bond rating from Moody’s, Standard and Poor’s and from Fitch Ratings on its latest bond offering dated June 30, 2012. One could assume from these financial ratings that the County was an exceptional steward of its financial resources. The following chart depicts the debt analysis for the County: (U-AA, p.19)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Equalized Property Values and Debt Analysis** | | | | |
| **CY** | **Equalized Value** | **Net Debt Outstanding** | **Net Debt %** | **Remaining Borrowing Power** |
| 12/31/2013 | 110,466,094,079 | 452,960,720 | 0.40% | 1,810,147,541 |
| 12/31/2012 | 112,296, 608,407 |  |  |  |
| 12/31/2011 | 116,703,536,625 |  |  |  |
|  |  |  |  |  |
|  | 3-year Avg. Equalized Value | |  | 113,155,413,037 |
|  | Multiplied by 2.0% - 2013 Avg. Equalized Value | |  | 2.0% |
|  | **Statutory Debt Limit** | | **100.00%** | **2,263,108,261** |
|  | Amount of Statutory Debt Limit Utilized | | 20.01% | 452,960,720 |
|  | **Amount of Statutory Debt Limit Available** | | **79.99%** | **1,810,147,541** |

Fixed Costs:

The following chart represents the County’s 2013 and 2014 fixed costs: (C-48, C-57)

|  |  |  |  |
| --- | --- | --- | --- |
| **Fixed Costs** | | | |
|  | **2014** | **2013** | **Difference** |
| Insurance [[13]](#footnote-13) | 67,950,000 | 61,800,000 | 6,150,000 |
| State Rebate Costs | 29,016,344 | 28,806,259 | 210,085 |
| Pension | 37,350,000 | 35,950,000 | 1,400,000 |
| Debt Service | 53,263,364 | 54,382,195 | -1,118,831 |
| **Total** | **187,579,708** | **180,938,454** | **6,641,254** |
| **Total Increase in Fixed Costs = $6,641,254** | | | |

The following chart is a break-down of the County’s costs for the Public Employees’ Retirement System (PERS) and the Police and Fireman’s Retirement System for the years 2008 through 2014: (C-77)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Monmouth County Pension Costs** | | | | | |
| **Year** | **PERS** | **% Change** | **PFRS** | **% Change** | **Total** |
| 2008 | 6,213,446 | 76.995% | 8,334,344 | 48.900% | 14,547,790 |
| 2009 | 8,495,910 | 36.734% | 10,006,266 | 20.061% | 18,502,176 |
| 2010 | 9,706,455 | 14.249% | 11,272,994 | 12.659% | 20,979,449 |
| 2011 | 11,871,919 | 22.310% | 13,719,998 | 21.707% | 25,591,917 |
| 2012 | 11,915,119 | 0.364% | 10,987,146 | -19.919% | 22,902,265 |
| 2013 | 11,251,066 | -5.573% | 11,028,138 | 0.373% | 22,279,204 |
| 2014 | 10,877,663 | -3.319% | 11,466,483 | 3.975% | 22,344,146 |

The Union states that future and current pension increases

will continue to be outside the levy cap restrictions and will not have an effect on the cap calculation. In addition, it states that the increased pension contribution from 8.5% to 10% will diminish the disposable income of each PBA and SOA Local No. 256 member. The average additional contribution increase per PBA and SOA member for 2014 is estimated to be $1,887.10 or a $157.26 ($1,887.10/12) per month disposable income. (U-AA,

p.33) Marshall testified that the pension rates have been relatively stable for the past three years.

The Union contends that the increased health care contribution rate is estimated to result in 2014 health care contributions of approximately $133,895 based on its proposed 2014 base salaries. The average annual contribution for PBA Local 256 members is $2,194, for a total bargaining unit contribution of $92,138 ($2,194 x 42); the average annual contribution for SOA Local 256 members is $2,456 for a total bargaining unit contribution of $41,757 ($2,456 x 17).[[14]](#footnote-14) (U-AA, p.25; Tab 16)

**Prosecutor’s Budget:**

The following chart depicts the County Prosecutor’s Office salaries and wages, and other expenses for 2014 and 2013: (U-AA,

p.3; C-48, Sheet 17, 26)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Prosecutor’s Appropriations versus County Appropriations** | | | | |
| General Appropriations | Budgeted in 2014 | Paid in 2013 | Increase/  Decrease | % Change |
| Prosecutor’s Salaries and Wages | 21,185,320 | 21,416,666 | (231,346) | -1.080% |
| All Other County Department ‘s Salaries and Wages | 150,713,493 | 149,607,588 | 1,105,905 | 0.739% |
| **Total County Salaries and Wages** | **171,898,813** | **171,024,254** | **874,559** |  |

The PBA contends that the 2014 budgeted Prosecutor’s salaries and wages have decreased by -1.080% compared to the 2013 actual amounts paid while all other 2014 budgeted County salaries and

wages have increased by 0.739% over 2013 actual amounts paid. In comparison, I find that by reviewing the 2014 budget’s general appropriations for salaries and wages for other County offices, such as the Correctional Institution, the Fire Marshall, the Sheriff’s Office, the Division of Social Services Administration, etc., these divisions have also decreased from the previous 2013 budget year. (U-AA, p.3; C-48, sheets 17-20b, 21)

The Prosecutor’s Office salaries and wages equate to 12.3% of the County’s total salaries and wages appropriations of $171,898,813. The chart below depicts the Prosecutor’s office salaries and wages and other expenses for the years 2009 through 2014: (U-AA, p.2-3)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Monmouth County Prosecutor’s Office** | | | | |
| **Salaries & Wages** | **Budgeted** | **Modified**  **by Transfers** | **Amount**  **Paid** | **Reserved** |
| 2014 | 21,185,320 |  |  |  |
| 2013 | 21,943,143 | 21,426,243 | 21,416,666 | 9,577 |
| 2012 | 21,661,757 | 21,661,757 | 21,542,563 | 119,193 |
| 2011 | 21,232,069 | 21,632,069 | 21,438,864 | 193,205 |
| 2010 | 22,033,499 | 22,033,499 | 21,492,013 | 541,486 |
| 2009 | 21,781,547 | 21,781,547 | 21,249,846 | 531,701 |
| Prosecutor - Other Expenses |  |  |  |  |
| 2014 | 1,243,580 |  |  |  |
| 2013 | 1,241,907 | 1,241,907 | 1,098,271 | 143,636 |
| 2012 | 1,219,300 | 1,219,300 | 1,079,228 | 140,072 |
| 2011 | 1,233,000 | 1,233,000 | 1,015,941 | 217,059 |
| 2010 | 1,294,500 | 1,294,500 | 1,140,862 | 153,638 |
| 2009 | 1,420,550 | 1,420,550 | 1,117,058 | 303,492 |

The estimated impact on the taxpayer for the 2013 annual general tax allocated to the cost of the Prosecutor’s Office was a decrease of (0.02). The total assessed value for the County in 2013 is $102,127,763,540. The value of one tax point is $10,212,776. (U-AA, p. 6)

The Union provided the following chart which delineates the 2013 average annual residential property tax County rate decrease allocated to the cost of the Monmouth County Prosecutor’s Office: (U-AA, p.6)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **County Tax Allocated to the Cost of Prosecutor's Office (2013)** | | | | |
|  |  | **2012** | **2013** | **Increase (Decrease)** |
| County General Tax Rate |  | 0.323 | 0.328 | 0.0055 |
|  |  |  |  |  |
| Avg. Residential Assessed Valuation |  | 414,517.34 | 407,499.95 | ($7,017.39) |
| County General Tax Rate | x | 0.323 | 0.328 |  |
|  |  | 133,734.70 | 133,707.18 | 27.52 |
| Per $100 of Assessed Value | / | 100 | 100 | 100 |
| Amount to be Raised by Taxation for County General Purposes |  |  |  |  |
|  |  | 1,337.35 | 1,337.07 | **(0.28)** |
| Percentage of Prosecutor's Office Raised by County Taxation |  |  |  | 5.54% |
| Average Annual Residential Property Tax County Rate Increase Allocated to Cost of Prosecutors |  |  |  | **(0.02)** |

**EXISTING WAGES, BENEFITS AND WORKING CONDITIONS(G2):**

**Crime Statistics:**

A total of 13,197 violent crime index offenses were reported to the police of Monmouth County during 2012; a 12% decrease when compared to 2011. Violent crimes decreased 3% while the nonviolent crime category decreased 12%. The crime rate for the County was recorded at 21 victims for every 1,000 permanent inhabitants, a decrease of 12% compared to the previous year. Murder increased from 9 in 2011 to 10 in 2012. Rape increased from 63 in 2011 to 86 in 2012. Robbery decreased from 407 in 2011 to 363 in 2012. Burglary decreased from 2,867 in 2011 to 2,558 in 2012. Aggravated assault decreased from 668 in 2011 to 648 in 2012. The total value of property stolen in Monmouth County accounted to $24.0 million, of which 15% was recovered. There were 26,495 persons arrested during 2012, a decrease of 9% when compared to 2011. (C-32)

**Contract Benefits**

Members of the PBA bargaining unit hold the title of investigator but are commonly referred to as Prosecutor’s detectives. According to Chief of Detectives Michael Pasterchick, there are currently 74 authorized detective positions. By the close of 2013, the unit consisted of 52 detectives and the superior officers’ unit consisted of thirteen sergeants, nine lieutenants and three captains.

Detectives and superior officers are primarily assigned to work 8:30am to 5:30pm including a thirty minute unpaid lunch and two fifteen minute paid breaks. However, detectives frequently work alternate hours to meet the demands of the job. In addition, overtime is also frequent; in 2013 detectives earned an aggregate of more than $1 million in overtime pay at an average rate of just over $90 per hour.

The detectives are paid from the existing salary guide as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | | | |
| **Step** | **# # Ees** | **Salary** | **Increment** |
| A | 1 | 50,000 | 5,000 |
| B | 2 | 55,000 | 5,000 |
| C | 0 | 60,000 | 5,000 |
| D | 1 | 65,000 | 5,000 |
| E | 0 | 70,000 | 5,000 |
| F | 0 | 75,000 | 5,000 |
| G | 1 | 80,000 | 5,000 |
| 1 | 2 | 85,000 | 5,000 |
| 2 | 3 | 90,000 | 5,000 |
| 3 | 4 | 95,000 | 5,000 |
| 4 | 0 | 100,000 | 5,000 |
| 5 | 2 | 105,000 | 5,000 |
| 6 | 5 | 110,000 | 3,000 |
| 7 | 3 | 113,000 | 14,000 |
| 8 | 28 | 127,000 |  |
|  | 52 |  |  |

Superiors are paid as follows:

|  |  |  |
| --- | --- | --- |
| **2013 Salaries - SOA** | | |
| Rank | #Ees | Salary |
| Sergeant | 13 | 134,482 |
| Lieutenant | 9 | 143,747 |
| Captain | 3 | 149,250 |
|  | 25 |  |

The charts above represent the number of employees at each step and at each rank as of December 31, 2013. It should be noted that the 24 investigators not yet at maximum pay received their increment payments on January 1, 2014.

Unlike many law enforcement units in New Jersey, Prosecutor’s detectives and their superiors do not enjoy a longevity plan. They also do not receive a clothing allowance.

Overtime is paid to rank and file detectives at the rate of time and one half and in the form of cash or compensatory time at the option of the employee. Detectives are permitted to accumulate 120 hours maximum in their comp time banks; thereafter overtime must be compensated in cash. Sergeants are permitted the same option for overtime payments except that their comp time banks may not exceed 80 hours. Lieutenants and captains are considered “senior management” and therefore may only be paid for overtime through comp time. Lieutenants and captains may not accumulate more than 40 hours in their comp time banks; any additional overtime is therefore uncompensated.

Detectives and superiors also have a terminal leave benefit which provides that an employee may cash out one-half of unused accumulated sick leave up to a maximum of $15,000. Unit members hired before 1994 have paid medical benefits upon retirement; employees hired after 1994 have no medical coverage upon retirement. It should be noted that there are no employees left in the investigators unit that qualify for this benefit and only five employees remain in the SOA unit who so qualify.

Current employees are covered by the County’s healthcare plan which includes medical, prescriptions and a dental plan for the employees and their dependents. Medical coverage is provided through Horizon Blue Cross/Blue Shield. Employees are required by the provisions of Chapter 78, P.L. 2011, to contribute a percentage of the cost of premiums. In 2014, employees were in the top tier of contribution rates.

Prosecutor’s investigators and investigator superiors are subject to a residency requirement although it is uncertain whether this applies to all unit members and whether members are required to maintain residency in Monmouth County or in New Jersey.[[15]](#footnote-15)

**COMPARABILITY (G3):**

Monmouth – Internal Comparables:

Monmouth County has approximately 3,200 full-time employees, about half of which are represented for collective negotiations in 27 bargaining units. In the Prosecutor’s office, in addition to the two units at issue here, there is a bargaining unit of assistant prosecutors. In addition, the Prosecutor’s clerical employees are represented by OPEIU Local 32 in a broad-based unit of County administrative employees, and the Prosecutor’s clerical supervisors are included in a broad-based unit of clerical supervisors, also represented by OPEIU Local 32 (C-114(b)).

Salaries of the assistant prosecutors range from $56,750 to $140,000. That contract expired at the end of 2012 (C-103).

The County has five other law enforcement units, all of which are in the County Sheriff’s department. Sheriff’s officers are represented by PBA 314; Sheriff’s superior officers, represented by FOP 121; corrections officers, represented by PBA 240; corrections superior officers, represented by FOP 30; and investigators, secured facilities (a unit of corrections internal affairs employees), also represented by FOP 30. All of these units have contracts or interest arbitration awards expiring at the end of 2013.

The County argues that these Sheriff’s law enforcement groups represents the most immediate, direct and relevant comparison to Prosecutor’s investigators. A comparison between the 2013 salary guide of correction officers and sheriff’s officers to the Prosecutor’s investigators reveals the following:

**Step# PBA 314 PBA 240\_ PBA 256\_**

1 (entry) 35,770 34,006 50,000

2 43,046 43,117 55,000

3 50,323 44,881 60,000

4 57,604 46,645 65,000

5 64,877 48,409 70,000

6 72,153 50,173 75,000

7 79,430 57,229 80,000

8 86,712 64,286 85,000

9 97,594 71,342 90,000

10 none 78,399 95,000

11 none 86,276 100,000

12 none 97,813 105,000

13 none none 110,000

14 none none 113,000

15 none none 127,000

Several facts about this comparison are noteworthy. First the entry level salary for Prosecutor’s investigators is at least $15,000 higher than that for sheriff’s officers and correction officers. Second, and more importantly, the top pay for Prosecutor’s investigators is also significantly higher than that of any County rank and file group. Third, sheriff’s officers reach top pay in nine years, and corrections officers reach top pay in 12 years, while currently a Prosecutor’s investigator starting at the entry level step will take 15 years to reach top pay. The County argues that the step guides of both PBA Local 314’s unit and Local 240’s unit are likely to be lengthened through the next round of negotiations and/or interest arbitration as both have sizable step values, especially as one nears top pay. The County notes that the awarding of either final offer here will continue the wide disparity between Prosecutor’s investigators and the County's other sworn law enforcement officers.

In comparing Prosecutor’s superior officers’ pay to the pay guides for sheriff’s superior officers and corrections superiors, I find that top pay for those promoted before July 1, 2011 is $128,974 and top pay for those promoted after July 1, 2011 is $122,152. Thus, a Sheriff's sergeant or a corrections sergeant[[16]](#footnote-16) earns, depending upon the date of promotion, either $5,508 or $10,330 less than the current pay rate of a Prosecutor’s investigator sergeant. It should also be noted that both sheriff’s sergeants and corrections sergeants have a seven-step guide.

For 2014, the County’s non-union employees were given a 2% increase in pay rates. The County has five settled contracts which include 2014 in the covered years. The AFSCME contract covered 2011-2014, and included a wage freeze for 2014. The remaining contracts each provided a 2% increase for employees in 2014. Two of these contracts covered clerical employees and clerical supervisors in the Prosecutor’s Office.

**EXTERNAL COMPARABLES**

Investigators

The statute requires me to consider the compensation of these two bargaining units with that of other “comparable” jurisdictions. The County asserts, and I agree, that the compensation of investigators in other county prosecutors’ offices is a relevant and important criterion for consideration.

Of the other counties for which data was supplied, the following chart shows that comparison:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **County** | **2011** | **2012** | **2013** | **2014** | **Number of Steps**  **(most recent year available)** |
| **Atlantic** | n/a | n/a | n/a | n/a | n/a |
| **Bergen** | 124,192 | 128,228 | 132,076 | 134,057 | A + B + 7 |
| **Burlington** | 89,943 | 90,055 | 91,856 | N/A | Training + 8 or + 10  (based on hire date) |
| **Camden** | n/a | 102,563 | 103,896 | 105,247 | Recruit + 19 |
| **Cape May** | 87,835 | 91,348 | n/a | n/a | 9 |
| **Cumberland** | 81,611 | 82,427 | 84,292 | 86,626 | Pre-Academy + 10 |
| **Essex** | 93,827 | 95,704 | 97,618 | n/a | 7 |
| **Gloucester** | 95,749 | 97,664 | 99,618 | 101,610 | 9 or 12  (based on hire date) |
| **Hudson** | 86,642 | 88,375 | n/a | n/a | Starting +10 |
| **Hunterdon** | n/a | 82,206 | 83,850 | 85,527 | n/a (listed by employee only) |
| **Mercer** | 92,620 | 94,936 | 97,309 | n/a | Academy + 8 |
| **Middlesex** | n/a | n/a | 112,393 | 114,641 | 11 + Senior |
| **Monmouth** | **122,069** | **124,510** | **127,000** | **TBD** | **Entry + 8 or + 15**  **(based on hire date)** |
| **Morris** | 90,547 | 92,358 | 93,743 | 95,518 | Entry + 8 or +9  (based on hire date) |
| **Ocean** | 93,065 | 94,926 | 96,825 | n/a | Probation + 9 or +12  (based on hire date) |
| **Passaic** | 106,179 | 108,303 | 110,469 | 112,678 | 16 |
| **Salem** | n/a | n/a | 85,862 | 87,568 | 7 |
| **Somerset** | n/a | 83,461 | 86,382 | 89,406 | Academy + 8 |
| **Sussex** | 82,363 | 83,804 | 85,271 | 86,763 | Academy + 10 |
| **Union** | 93,204 | 95,301 | 97,683 | n/a | Minimum + 9 + 1st Class |
| **Warren** | n/a | 93,217 | 95,081 | 96,982 | Academy +7 |
| **Average**  **(Non-Monmouth)** | **93,598** | **95,088** | **97,990** | **100,656** |  |
| **Monmouth** | **122,069** | **124,510** | **127,000** | **TBD** |  |
| **Monmouth% Above Average** | **30.42%** | **30.94%** | **29.61%** | **TBD** |  |
| **Agreements**  **Available (of 20)** | **13** | **16** | **17** | **11** |  |

Thus, I conclude that Monmouth’s Prosecutor’s investigators have the highest base salary among all New Jersey counties except Bergen County. In addition, their base pay is more than $27,000 higher than the State-wide average. Mitigating against any conclusion that they are the best paid, however, if the fact that, unlike many prosecutor’s detectives, as well as other law enforcement personnel in New Jersey, Monmouth’s Prosecutor’s investigators do not receive longevity pay or a clothing allowance.

It is noteworthy that, in comparing the 2013 base pay rates with those of 2014 in the chart above, the average pay increase was $1,974 and no bargaining unit increase exceeded $3,024.[[17]](#footnote-17) In addition, the data shows that Monmouth County’s salary step guide already includes the greatest number of steps except Passaic County, meaning that Prosecutor’s investigators in nearly all other counties reach maximum salary in fewer years than in Monmouth.

Superior Officers

Members of Monmouth Prosecutor’s SOA are also similarly compensated above their statewide counterparts, (P-91). For sergeants, the data shows the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **2011** | **2012** | **2013** | **2014** |
| **Average Non-Monmouth Top Pay** | **107,281** | **107,829** | **110,555** | **112,917** |
| **Monmouth Top Pay**  **(as proposed for 2014)** | **129,260** | **131,845** | **134,482** | **TBD** |
| **Monmouth%**  **Above Average** | **20.49%** | **22.27%** | **21.64%** |  |
| **Number of Agreements**  **Available (of 20)** | **9** | **11** | **13** | **13** |

For lieutenants, the data shows the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **2011** | **2012** | **2013** | **2014** |
| **Average Non-Monmouth Top Pay** | **116,384** | **116,169** | **126,950** | **128,142** |
| **Monmouth Top Pay**  **(as proposed for 2014)** | **138,165** | **140,928** | **143,747** | **TBD** |
| **Monmouth%**  **Above Average** | **18.71%** | **21.31%** | **13.23%** |  |
| **Number of Agreements**  **Available (of 20)** | **6** | **8** | **12** | **12** |

For captains, the data shows the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **2011** | **2012** | **2013** | **2014** |
| **Average Non-Monmouth Top Pay** | **124,260** | **126,076** | **139,713** | **140,788** |
| **Monmouth Top Pay**  **(as proposed for 2014)** | **143,455** | **146,324** | **149,250** | **TBD** |
| **Monmouth%**  **Above Average** | **15.45%** | **16.06%** | **6.83%** |  |
| **Number of Agreements**  **Available (of 20)** | **6** | **7** | **10** | **10** |

For sergeants and lieutenants, only Bergen County pays anywhere near as much as the Monmouth Prosecutor. For captains, only Bergen County and Middlesex County pay as much or better. Also noteworthy, is the average Statewide increase from 2013 to 2014 for all Prosecutor’s superiors was $2,262 for sergeants; $1,192 for lieutenants; and $1,075 for captains.

**Consumer Price Index (CPI):**

The CPI currently utilizes the period between 1982 and 1984 as the base year. Therefore, the cost of goods and services during those years is given a value of 100. The cost of those same goods and services is then calculated for each following year, establishing an “index” for easy comparisons of purchasing power. The index shows that as of June 2014, a person would need to spend $237.90 for the same goods and services that would have cost $100.00 in 1982-1984. Nationally, between June 2013 and May 2014, the CPI increased 2.1%. For the New York/New Jersey metropolitan area, which includes Monmouth County, the CPI increased even less -- only 1.9% between June 2013 and May 2014. The County contends that the relative lack of inflation in the United States is further reflected by the determination by the Social Security Administration that it would award cost of living increases of only 1.7% in 2013 and 1.5% in 2014. (C-34, 35, and 37)

**Private Sector Comparisons**:

According to the New Jersey Department of Labor and Workforce Development Private Sector Wage Survey, total

private sector wages increased between 2011 and 2012 by 2.1%. Local government wages increased during the same period by 1.5%, while all wages (public and private sector) increased an average of 1.9%. The same report reveals that all wages increased an average of 0.4% in Monmouth County.

I give almost no weight to the component of comparability with the private sector, other than to observe the private sector wage increases. Moreover, there is no particular occupation, public or private, that is an equitable comparison to Prosecutor’s investigators. The officers are unique in a variety of ways, including the potential to be called upon to respond to their assigned mission areas of conducting interrogations, searches, and related duties as assigned, and the mitigation of special hazards that threaten public safety, along with the stress and dangers of the job. Moreover, they are regularly required to work evenings, nights and holidays. Unlike the private sector, they do not compete in a global economy, which tends to depress wages.

**PERC Settlement Rates**:

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards issued in 2013 on post-2011 filings was 1.16% where no 2% cap applied, and 1.89% were the cap did apply. Over the same time period, reported voluntary settlements averaged 1.96%.

The PERC analysis indicates that the average 2012 award for post-2011 with a 2% cap was 1.98%, and an average of 1.59% for awards with no 2% cap. Settlement for the same time period (based upon 29 contracts settled) averaged 1.82% Overall, PERC’s data over the past few years shows that there is a downward trend in salary increases received through voluntary settlement or an award.

**CONTINUITY AND STABILITY OF EMPLOYMENT (G7):**

The record shows that among members of the PBA and SOA is virtually non-existent with the exception of retirements. In addition, according to LeMieux, the Prosecutor’s Office has far more applicants for each opening than it can possibly consider.

Nevertheless, in an apparent effort to attract the most skilled and experienced detectives possible, it has asked its investigators to be on the look-out for members of municipal police detective bureaus that they might consider prime candidates for employment with the Prosecutor’s Office.

**DISCUSSION**

**Disputes Regarding Base Pay Calculation:**

The County submitted a list of unit employees for each bargaining unit of total base pay for 2013. The lists included the employees’ names, dates of hire, dates of separation, if any, the employees’ total contractual salary amounts, their step placement, and the total amount the Employer allegedly paid each unit employee during 2013. It pro-rated salary amounts for new hires and employees who separated from service during 2013. It arrived at a total of $5,788,962.06 for the investigator’s bargaining unit. It calculated the total amounts paid by aggregating the total pay check amount for each employee in 2013. The County explained that, because employees’ paychecks for the first pay day in 2013 were actually based upon the last pay period in 2012, the employees’ total base earnings for the year are actually less than the contractual amount.

The PBA/SOA agreed to the accuracy of the information on the Employer’s list except that it disagrees with the County’s reported numbers of total base pay. The PBA/SOA calculated that the total base pay for the Detective Unit was $5,796,098.03. The PBA based its calculation on the contractual amount the employee actually earned during calendar year 2013, and pro-rated new hires and separations from service for the partial year. The difference between the parties’ total base pay paid is only $7,136 resulting in a $142.72 difference in the 2% cap amount.

Section 16.7(a) of the statute defines base salary as:

“Base salary” means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

It should be noted, pursuant to the above language, that the 2.0% cap, or the amount that an award cannot exceed, is not tied directly to contract terms but rather to:

[T]he aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

With regard to the superior officers, the Employer calculated the aggregate 2013 base pay at $3,336,729.93 using the same methodology as it did for the rank and file. The SOA calculated the total base pay at $3,343,241.70 using the total amount employees earned during 2013. Both sides pro-rated pay for individuals recently promoted into the bargaining unit and for retirements. The difference between the parties total base pay paid is only $6,511.80 resulting in a $130.24 difference in the 2% cap amount.

I am inclined to find that a better measure of the “aggregate amount expended by the Employer” would be a calculation based upon the aggregate amount the employee earned during the relevant period rather than the total amount of pay checks issued to the employee. Once the employee earns their salary, the amount is encumbered and is due and payable immediately. In any event, the total difference between the Employer’s calculation and the Union’s calculation is only $7,136 for investigators the resulting calculation of the 2% cap is a $142.72 difference between the parties’ figures. For superiors, the difference in the 2% cap amount is only $130.24. Using either methodology, this award will not exceed the 2% cap.

**Salary Increases/Increments for Each Year:**

Investigators

With regards to the Detective Unit, the Employer proposes that increases for 2014 be limited to the amount of increments already paid. The cost of these increment payments for 2014 was $137,000. For 2015, the Employer proposes to pay another round of increments to those employees moving through the step guide and to add $1,000 to top pay. It also seeks to add three additional steps of equal value between the existing step 7 and step 8. For 2016, the Employer proposes to delay step increases to July 1 for all employees except those moving to the newly created steps of 7a and 7b, which would be implemented on January 1. The cost of the Employer’s proposal is as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **PBA** | **2014** | **2015** | **2016** | **Total** |
| Increments | 137,000 | 99,750 | 64,750 | 301,500 |
| Top Step Incr. = 1,000 |  | 31,000 | 31,000 | 62,000 |
| **Total** | **137,000** | **130,750** | **95,750** | **363,500** |

The Union proposes for the PBA unit that the dollar value of top step pay be increased from $127,000 to $131,022, an increase of 3.167%, retroactive to January 1, 2014 and that increments already paid be adjusted accordingly. In addition, the Union proposes that PBA members be awarded step increases for 2014, 2015, and 2017 (employees would be frozen on step for 2016). Further, the Union proposes to add two additional steps of equal value between step 7 and step 8 on the current guide. The cost of the Union’s proposal is as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2014** | **2015** | **2016** | **2017** | **Total** |
| Increments | 137,000 | 99,333 | 0 | 102,667 | 351,066 |
| Top Step Incr. | 3.167% | 0 | 0 | 0 |  |
| Increase Cost | 112,619 | 0 | 0 | 0 | 112,619 |
| **Total** | **249,616** | **99,333** | **0** | **102,667** | **451,616** |

Superiors

For the superior officers’ unit, the Employer proposes a flat increase effective January 1, 2014 for sergeants of $2,518; $2,253 for lieutenants; and $2,750 for captains. The County proposes no further increases for the superior officers’ group for the remaining life of the contract. The cost of this proposal for the superiors is as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Rank** | **# of Ees** | **Salary** | **Increase** | **Cost of Incr.** |
| Sergeant | 13 | 134,482 | 2,518 | 32,734 |
| Lieutenant | 9 | 143,747 | 2,253 | 20,277 |
| Captain | 3 | 149,250 | 2,750 | 8,250 |
| **Total** | **25** |  |  | **61,261** |

For the superiors officers’ unit, the SOA proposes a 2% increase for officers at all ranks, effective January 1, 2014, an additional 2% effective January 1, 2015, and an additional 2% effective January 1, 2016 and a 1.7438% increase effective January 1, 2017.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2014** | **2015** | **2016** | **2017** | **Total** |
| ATB | 2% | 2% | 2% | 1.7438% |  |
| ATB Cost | 67,105 | 68,447 | 69,816 | 62,090 | 267,458 |
| **Total** | **67,105** | **68,447** | **69,816** | **62,090** | **267,458** |

**Modification of Salary Guide Steps:**

Under the provisions of the PBA’s existing contract, the increment cost to move from step 7 to step 8 is $14,000 (step 7 = $113,000; step 8 = $127,000). Both parties recognize that this “bubble” step is untenable and must be broken up in order to provide any meaningful increases to the remaining employees. The County proposes to add three additional steps of equal value to the guide between steps 7 and 8. The Union proposes to add two steps between steps 7 and 8: the first of which would have a value of $117,666 (with an increment of $4,666) and the second step would have a value of $122,333 (with an increment of $4,667); and employees would then move to top step, which pursuant to the Union’s proposed salary increase, would have a value of $131,022.

The problem with the Union’s proposal is that it results in a guide which still has a bubble step between the top two steps of $8,689. It appears to me that such an increment is unworkable and excessive, particularly with the strictures which must be applied under the 2% arbitration cap. On the other hand, the County’s proposal to add three additional steps would ratchet down the amounts of the increments but now it would take even longer for the employee to reach maximum. The County’s proposal would extend the step guide to eighteen steps –- significantly more than any other Prosecutor’s guide in the State.

I award the following: Two steps will be added to the salary guide effective January 1, 2015. Step 7a will have a value of $120,000 and step 7b will have a value of $125,000. In addition the step value of step 7 will be changed to $115,000 in order to even out the increment amounts in the top four steps of the salary guide. The resulting, adjusted salary guide (before any across-the-board increases as discussed later) would be as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Step** | **# of Ees 12/31/14** | **2014 Salary** | **2015 Increment** |
| A | 0 | 50,000 | 5,000 |
| B | 1 | 55,000 | 5,000 |
| C | 2 | 60,000 | 5,000 |
| D | 0 | 65,000 | 5,000 |
| E | 1 | 70,000 | 5,000 |
| F | 0 | 75,000 | 5,000 |
| G | 0 | 80,000 | 5,000 |
| 1 | 1 | 85,000 | 5,000 |
| 2 | 2 | 90,000 | 5,000 |
| 3 | 3 | 95,000 | 5,000 |
| 4 | 4 | 100,000 | 5,000 |
| 5 | 0 | 105,000 | 5,000 |
| 6 | 2 | 110,000 | 5,000 |
| 7 | 5 | 115,000 | 5,000 |
| 7a | 0 | 120,000 | 5,000 |
| 7b | 0 | 125,000 | 2,000 |
| 8 | 31 | 127,000 |  |

**Calculation of the 2% Cap:**

As this award is subject to the 2% cap pursuant to N.J.S.A. 34:13A-16.7, it is necessary to determine the total base pay paid for the base year, 2013. As noted above, I intend to use the Union’s calculation of total base pay paid in 2013, which is $5,796,098. This results in a 2% cap of $115,921.96 for each year of the contract. This is the maximum amount that may be spent in each year and it does not compound from year to year. Thus, for a three-year contract, the total cap is $347,765.88. For the superiors, the 2% cap is $66,864.83 per year. Thus the maximum amount that can be spent for superiors over a three-year contract is $200,594.50.

The cost of increments for the PBA unit is substantial. For 2014, increments have already been paid and the cost of those increments totaled $137,000. Even after the guide adjustments as discussed above are implemented, the cost of paying the full value of increments in each year of the contract would be $336,500 ($137,000 in 2014; $99,750 in 2015, and $99,750 in 2016) if no other adjustments to the salary guide are made. Thus, it is obvious that full step guide movement cannot be granted in all years of the contract without exceeding the 2% cap.

I am not inclined to endorse the Union’s proposal to provide an increase in the first year of the contract of more than $4,000 for employees at top step. While I recognize that the Union, in making this proposal, has coupled it with freezes for the remainder of the contract, I find that the proposal unfairly ratchets up overall cost to the County in that once the increases are granted in 2014, they become “the gift that keep on giving” throughout the remainder of the contract. Moreover, an examination of the comparable salaries of other County law enforcement groups or among prosecutor’s investigators Statewide shows that there is no justification for a dramatic increase for this bargaining unit. Further, I must be mindful that this is the first of seven law enforcement units in the County to reach a successor agreement going forward. Increases in this bargaining unit may tend to influence the pattern of settlement for the other units. Hillsdale. I find that the Union has not justified front-loading the contract in the manner in which it has proposed increases.

On the other hand, the County proposal offers investigators at top pay, a one-year freeze followed by a flat $2,000 dollar increase over the next two years of the contract. This amounts to a mere 1.57% increase over a three-year period. I find that this level of increase is also not justified given that the rate of inflation is closer to 2% annually.

In consideration of all of the factors discussed herein, I award the following:

2014: Effective January 1, 2014, increments for all employees in steps A through 7; effective July 1, 2014, all employees at step 8 will receive a $1,000 increase.

2015: Effective January 1, 2015, increments for all employees in steps A through 7a; effective January 1, 2015, all employees at step 8 will receive a $1,000 increase.

2016: Effective October 1, 2016, increments for all employees at steps A through 7b; effective January 1, 2016, all employees at step 8 will receive a $1,000 increase.

Superiors

The SOA proposes to increase the salaries of superior officers at each rank by 2% in each of the first three years of the new contract. The Employer proposes flat dollar increases ranging from $2,253 to $2,750 effective January 1, 2014. The problem with the Union’s proposal, because it was predicated upon a four-year agreement which has not been awarded herein, the percentage increases cannot now be accommodated within the 2% arbitration cap. The problem with the Employer’s proposal is that it did exactly what it complained about the Union doing with to the investigator’s unit: it front-end loaded the contract.

Although the SOA unit does not have to be concerned with the cost of increment payments, this unit does have a big problem with salary compression. If anywhere close to the Union’s proposals were awarded, the salaries of the captains would soar to $158,385, which would actually exceed that of the Chief of Detectives. While I have not imposed the salary caps the Prosecutor has sought, I am mindful that it is unwise for any manager to make more than the employees he is responsible to supervise. I agree with the Prosecutor that salaries at each rank should bear some relationship to the level of responsibility entrusted to the individuals at that rank and the differentials between ranks should be maintained. The statutory cap on the Prosecutor’s salary is an unfortunate reality. Therefore, I am compelled to maintain the salary structure within the ranks of investigators so as to not destroy rank differential or to impinge upon the salaries of the Deputy Chief and the Chief.

Accordingly, I award the following:

2014: Effective January 1, 2014, superior officers of each rank will receive a salary increase of $1,000.

2015: Effective January 1, 2015, superior officers of each rank will receive a salary increase of $1,000.

2016: Effective January 1, 2016, superior officers of each rank will receive a salary increase of $1,000.

The resulting scales for superiors will be as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Rank** | **2013 Salary** | **2014 Salary** | **2015 Salary** | **2016 Salary** |
| Sergeant | 134,482 | 135,482 | 136,482 | 137,482 |
| Lieutenant | 143,747 | 144,747 | 145,747 | 146,747 |
| Captain | 149,250 | 150,250 | 151,250 | 152,250 |

These salary increases, while slightly ahead of the salary caps the Prosecutor sought to impose, still maintain a differential of $2,750 between the captains and deputy chief, and a differential of $5,503 between lieutenants and captains. While these increases are a comparatively small percentage in terms of the cost of living, they parallel the increases being awarded to top pay investigators. Given the unfortunate circumstances with the salary compression problem at the top ranks, I can do no better.

**Retroactive Pay:**

Consistent with Article XIII, Section 2 of the parties’ last contract, employees who retired or were promoted out the bargaining unit in 2014, but prior to the effective dates awarded herein, will be entitled to a pro-rated portion of the retroactive increases.

**New Step Guide for Sergeants:**

In the SOA contract, the County proposes to create a step guide for sergeants as follows:

Effective January 1, 2015, when an employee is promoted to Sergeant, and the promotional salary increase he or she would otherwise be entitled to receive is greater than $15,000, the employee will instead receive a $15,000 annual base salary increase for the period from the date of promotion until the January 1st after the employee has served as a Sergeant for at least six (6) months, when he or she will receive another increase of either $15,000 or the full Sergeant’s pay, whichever is less. On the following January 1st, if the employee is not yet at the full Sergeant’s pay, he or she shall receive an increase to the full Sergeant’s pay.

For example, if an employee earning $100,000 is promoted to Sergeant in April 2015, his or her base salary shall immediately increase to $115,000 and shall remain at that amount until January 1, 2016, at which time his or her annual base salary shall increase to $130,000. On January 1, 2017, the employee shall receive the full Sergeant’s pay ($137,000 or such other amount as may be determined in the collective negotiations process). However, if that same employee is promoted to Sergeant in October 2015, his or her salary shall be increased to and remain at $115,000 until January 1, 2017, at which time his or her salary shall increase to $130,000, and he or she shall receive the full Sergeant’s pay starting on January 1, 2018.

LeMieux testified the instances where investigators not yet at top pay are promoted to sergeant occur quite rarely, as most investigators promoted to Sergeant are already at the top step of the salary guide. The Prosecutor makes this proposal in recognition that $15,000 is a significant pay increase; more than enough to encourage employees to seek promotion, especially because salaries will continue to increase by $15,000 per year until reaching the maximum Sergeant's pay. In the rare circumstance where an investigator who is earning, hypothetically $100,000, and is promoted to Sergeant, the Prosecutor believes that a $30,000 immediate increase is excessive and not in the best interest of the taxpaying public. The County argues that this “relatively modest proposal” would still quickly bring all sergeants to full pay and simply makes sense given current economic realities. The Employer also notes that other law enforcement bargaining units have step guides for sergeants.

The Union responds that the problem with this proposal is that the newly promoted sergeant would have all of the responsibilities and job expectations of other sergeants, but would earn significantly less than other sergeants. In addition, the Union points out that the newly promoted sergeant would be earning less than rank-and-file investigators under his command -- very same "evil" the County seeks to avoid by its “hard cap” proposal.

I find that this proposal cannot appropriately be awarded. Each element of the award must be considered in relationship to the other elements presented. For superior officers, I have awarded a relatively modest increase of $1,000 per year on their salaries at each rank, which amounts to a raise of between 2.2% and 2.0%, depending upon rank, over the life of a three-year agreement. Therefore, I am not inclined to extract any concessions from among the superior officers group. Moreover, according to LeMieux, promotions from investigator to sergeant from among investigators who are already not at top pay rarely occur. While I appreciate the Prosecutor’s concerns that steep increases upon promotion maybe unnecessary, it would be unfair to have sergeants, even newly promoted ones, earn less than the investigators they supervise. This proposal has not been awarded.

**27th Pay Day:**

The County proposes to add a new Section 3 as follows:

Due to the timing of the County’s pay cycle, the parties recognize and agree that salary shall be paid in 27 equal installments in 2015, rather than the normal 26 equal installments. The Prosecutor shall be permitted to implement the foregoing in any reasonable manner.

The County contends that the purpose of this language is to deal with the anomaly in the County's pay cycle which occurs once every 11 years. A 365 or 366 day year is not equally divisible by 26, so once every eleven years there is an additional pay period to catch up on those additional one or two days not captured in the pay cycles of the prior ten years. The record indicates that this phenomenon last occurred in 2004. The County decided in that instance to simply pay employees the extra 27th check rather than have a dispute with its employees.

In 2015, there will again be 27 pay days. According to the County’s Chief Financial Officer (CFO), Craig R. Marshall, the County is still in the process of trying to determine the most equitable way to deal with this problem, which will affect all of its employees. However, he explained that the County is unwilling to simply pay employees an extra paycheck to avoid dealing with this problem.

The Union did not address this issue in its brief.

I find merit in the County’s proposal. The Employer contracts with the employees to pay them a negotiated (or in this case, awarded) amount of annual base salary. For members of these two bargaining units, they are on a yearly salary, not paid on an hourly rate. The Employer may not pay the employees less than that contractual amount. But neither is it obligated to pay employees more than the contractually established annual pay, no matter how many pay days occur during the calendar year. It is true that the net result of spreading that annual salary over 27 pay day rather than 26 will mean that the paycheck of each employee will be less in 2015 than it would be if there were 26 pay days. But that is merely a consequence of using a larger divisor.

I award the County’s proposal, as modified, to add a new Section 3 to Article XIII as follows:

Employees are paid on a bi-weekly basis. In any calendar year in which there are 27 pay days rather than 26, employees’ annual salary will be paid in 27 equal installments rather than the normal 26 equal installments.

**Imposition of “Hard Caps”:**

The County proposes to add a new section to each contract which would impose a permanent “hard cap” maximum for all employees’ salaries, as follows:

PBA:

Effective January 1, 2016, there shall be a permanent “hard cap” representing the maximum salary for all members of the Association, which shall survive the expiration of this Agreement so long as the Prosecutor’s statutory salary remains at $165,000 per year. The “hard cap” is as follows:

County Investigator: $129,000

At such time as the Prosecutor’s statutory salary is increased by the Legislature, the amount of the hard cap, if any, may thereafter once again be the subject of negotiations in a successor agreement.

SOA:

Effective January 1, 2014, there shall be a permanent “hard cap” representing the maximum salary for all members of the Association, which shall survive the expiration of this Agreement so long as the Prosecutor’s statutory salary remains $165,000 per year. The “hard cap” is as follows:

County Investigator Sergeant: $137,000

County Investigator Lieutenant: $146,000

County Investigator Captain: $152,000

At such time as the Prosecutor’s statutory salary is increased by the Legislature, the amount of the hard cap may thereafter once again be the subject of negotiations. If such a change is enacted into law during the term of this Agreement, it may be reopened for purposes of determining whether employees covered by this Agreement shall be entitled to additional compensation within the statutory salary constraints established by law.

In addition to the hard caps the County seeks to impose for these bargaining units, the employer seeks to create hard caps for all of the Prosecutors staff except clericals (P-156), as follows:

First Assistant Prosecutor, $161,000

Deputy First Assistant Prosecutor, $158,000

Chief of Detectives, $158,000

Deputy Chief of Detectives, $155,000

Investigator Captain: $152,000

Assistant Prosecutor/Director: $147,000

Investigator Lieutenant: $146,000

Assistant Prosecutor/Team Leader: $138,000

Investigator Sergeant: $137,000

Assistant Prosecutor/Rank and File: $129,000

Investigator/Rank and File: $129,000

The Prosecutor’s salary is established by statute at $165,000 and was last increased in 2008. LeMieux testified that the Prosecutor believes it is critical for the effective operations of the office to have an employee's salaries match his or her responsibilities. Under this concept, no salary should exceed the Prosecutor's salary of $165,000, and there should be some reasonable salary differential between various ranks to enhance the authority inherent in a high-ranking position and to encourage employees to strive for promotion. The County argues that, because PBA and SOA members are already so well compensated, there is little room for growth in salaries before this concept becomes unviable.

The First Assistant Prosecutor is directly subordinate and answerable only to the Prosecutor and is empowered to act and speak in the absence of the Prosecutor. The Deputy First Assistant Prosecutor has office-wide authority, reports directly to the Prosecutor and First Assistant Prosecutor, and is empowered to act and speak in their absence.

The County argues that a Captain has far less responsibility or authority than employees in any of those positions. The SOA's proposal, at a 2% salary increase per year, would have a Captain earning more than the Deputy Chief by 2015, more than the Chief and the Deputy First Assistant Prosecutor by 2016, and more than the First Assistant Prosecutor by 2017. Additionally, Captains enjoy additional benefits pursuant to the SOA Agreement, including the ability to generate compensatory time. So, as LeMieux and Pasterchick pointed out, under the SOA proposal, there would be no pay incentive for a captain to accept a promotion to Deputy Chief or Chief.   
The County maintains that there is something fundamentally inequitable when a captain earns more than the First Assistant Prosecutor, who indisputably has far greater responsibilities.

The Prosecutor notes that there is fairly recent precedent supporting its position. In the 2006-2008 SOA Agreement, the 2008 salaries of Captains and Lieutenants were frozen, but were subject to re-negotiations upon an increase in the Prosecutor's statutory salary. Arbitrator Robert Glasson retained jurisdiction, and when the Prosecutor's salary was increased by the Legislature, in May 2008 the SOA and Prosecutor entered into a memorandum of agreement to increase the salaries of captains and lieutenants by several thousand dollars. Here too, the Prosecutor has placed in its final offer a re-opener in the recognition that the "hard caps" may require adjustment in a similar circumstance. The Prosecutor has no interest in freezing salaries except to protect the greater interests of the office, and would certainly be amenable to a future salary increase at all ranks if it could grant one without damaging the rank structure it considers so vital.

The County also notes that some other prosecutor's offices in New Jersey have addressed this problem. For example, Passaic has a provision that states that no employee may earn a base salary higher than 90% of the statutory prosecutor's salary under any circumstances. Middlesex also has a "hard cap" on salaries whereupon a Captain must make at least $6,000 less than the statutory prosecutor's salary and there are mandatory salary differentials at lower ranks.

The County has proposed to extend hard caps to also include lieutenants, sergeants and rank-and-file investigators because the Prosecutor believes there should be some level of salary parity between investigators and assistant prosecutors, because assistant prosecutors work in cooperation with investigators on a daily basis, supervise investigations and are responsible for making the strategic investigative decisions that investigators must then execute. The hard cap structure set forth above would, in the Prosecutor’s view, provide a roughly equal balance between the various levels of responsibility on the attorney staff and the law enforcement staff, yet provide substantial incentives for employees to seek promotion. For example, the $9,000 difference proposed between sergeant and lieutenant is in recognition that a lieutenant cannot earn cash overtime, and so a substantial difference in pay between the two ranks is required to ensure a financial benefit upon accepting a promotion.

The Union counters that the County proposal concerning the imposition of hard caps are unsupported by the record and unprecedented within the County and state-wide as well. More particularly, it notes that no artificial cap restrictions have been imposed on the County’s Sheriff's officers; Sheriff's officer supervisors; correction officers; or correction investigators. In fact, the Unions note that Sheriff Shawn Golden's current salary is $130,000, the Sheriff’s lieutenants earned a salary of $133,991 in 2013 (U-T).

I am sensitive to the Prosecutor’s arguments concerning salary compression between the statutorily set Prosecutor’s salary and the various levels of supervisory employees’ salaries. I also well understand the arguments concerning salary compression between ranks of the superior investigators and the salaries of the detectives. However, I believe that, rather than imposing “permanent hard caps”, the better method to deal with this issue is for me to take these concerns into consideration in crafting the salary award herein.

Freezing unit members’ salary “permanently”, as the County’s proposal implies would effectively remove all discussion of salary from the negotiations table in the future. As noted elsewhere in this decision, the public policy as expressed by the legislature in the New Jersey Public Employer-Employee Relations Act is to permit public employee to negotiate through their majority representatives over compensation and other terms and conditions of employment. Therefore, I cannot find that removing compensation from the bargaining table would be in the public interest. Accordingly, the Prosecutor’s proposal to impose “permanent hard caps” on unit employees’ salaries is not awarded. However, I will take the Prosecutor’s concerns and arguments made in support of the hard cap proposal into account in considering the salary portion of this decision.

**Eliminate Automatic Increments:**

The County’s final offer contains a proposal to eliminate automatic increments in the detective’s contract. It proposes to amend the contract language in Section 1 to read as follows:

The step program shall not survive the expiration of the Agreement and there shall be no automatic annual step movement progression if a successor agreement is not in place on January 1, 2017.

The County maintains that the provisions in Article XII and Appendix B) requiring automatic step movement after the expiration of the PBA agreement should be deleted from the contract. The County points to the events in early 2014 as an example of the detrimental impact of automatic increment payments. Because of the strong contract language requiring increments to be paid after contract expiration, the Prosecutor advised the PBA that automatic step movement in 2014 would substantially exceed the 2% cap in base salary increases that an arbitrator could legally award. The Prosecutor gave the PBA the option to decide whether or not step movement should be frozen. The PBA requested that the steps be paid, and the Prosecutor did so.

The payment of increments in 2014 resulted in a cost of $137,000, which more than ate up the available 2% under the arbitration cap for that year, leaving no money available in 2014 for employees at top pay. In addition, the Prosecutor asserts that he would have also sought to address the "bubble step" in 2014, rather than wait until 2015, since as it currently stands, just three employees are received more than $40,000 in total salary increases in 2014. That represents more than one-third of the total salary increase available for all PBA members in 2014.

The County also cites a recent decision by PERC in Atlantic County, P.E.R.C. No. 2014-40, 40 NJPER 285 (¶ 109 2014), (appeal pending), in which the Commission held that employers are no longer required to pay increments after a contract expiration as a matter of law.[[18]](#footnote-18) PERC explained,

In the evolution of public sector labor negotiations in New Jersey, a post expiration requirement that employers continue to pay and fund a prior increment system creates myriad instabilities in the negotiations process. . . It is in both sides’ interest to have the ability to negotiate over adjustments in the incremental steps to be contained in a successor agreement and the dollars to be attributed to those newly negotiated steps, in light of the total dollars available.

Accordingly, the Prosecutor argues that automatic step movement after the expiration of a collective negotiations agreement has outlived its usefulness and should be eliminated from the PBA contract.[[19]](#footnote-19)

The Union makes no particular arguments in its brief concerning the automatic increments.

I intend to freeze employees on their current step going forward into the next contract after 2016 unless certain circumstances dictate otherwise as discussed below. At the expiration of the 2013-2016 contract, this bargaining unit will be again subject to the 2.0% cap on arbitration awards pursuant to recent amendments to the PERC statute. Under the provisions of this statute, an interest arbitrator is limited to awarding a maximum of 2.0% increases in base salary which is inclusive of base pay, increments, and longevity increases. In January, 2017, approximately 21 employees would be eligible to receive step increases. Step increases have in recent years cost the County more than $100,000 per year for this unit. It is therefore very likely that the increment load will exceed the available cap should the parties require interest arbitration to settle the contract. The outcome in these circumstances is often to forego or delay increments or, where increments have been paid, to freeze the salary guide in place for at least part of the contract period. In short, payment of increments in January might well mean that there is no money left available under the 2.0% cap for any increases for unit employees beyond increments. Alternatively, officers might be required to repay increment amounts that have already been paid out. Therefore, I award the following contract language:

If an interest arbitration salary cap is still in effect as of January 1, 2017, investigators who are not at top step in 2016 will not move to the next step in the guide in 2017 until the parties finalize a successor agreement though negotiations or through interest arbitration. Those officers will then move, if applicable, pursuant to the terms of the successor agreement. If the 2017 step movement cost does not exceed any interest arbitration salary cap in effect as of January 1, 2017, upon mutual agreement by the parties, those investigators in the guide shall receive their step increment in 2017 prior to resolving the successor agreement.

Interest arbitrators have previously discontinued the automatic increment payments and such awards were previously approved by PERC in Warren County and FOP Lodge 171, P.E.R.C. No. 2014-23, \_\_ NJPER \_\_\_ (¶\_\_\_\_\_\_\_ 2013) and are consistent with the Commission’s decision in Atlantic Cty. Awarding this language is in the interests of the public, in the interest of the County and in the interest of the Prosecutor’s investigators’ bargaining unit as a whole in that it will broaden the possibilities for bargaining a successor agreement without the handicap of increment costs already incurred.

**Cost of the Award):**

The cost of the award for investigators is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Cost of PBA Award** | | | |
| **Year** | **Increments** | **Increase to Top Step** | **Total Cost** |
| 2014 | 137,000 | 14,000 | 151,000 |
| 2015 | 105,000 | 31,000 | 136,000 |
| 2016 | 26,250 | 31,000 | 57,250 |
|  | **268,250** | **76,000** | **344,250** |

The cost of the award for superior officers at $1,000 increase for each year of the contract x 24 employees is $72,000.

**NON-SALARY ITEMS**

**WORK SCHEDULES (ARTICLE III):**

**Work Day**

The PBA and SOA propose a change in Section 1 of this article to, in essence, eliminate the two 15-minute breaks and shorten the employees’ workday by 30 minutes. The current contract language states,

Section 1: The standard weekly work schedule for all employees covered by this Agreement shall consist of forty (40) hours per week, eight (8) hours per day, exclusive of a one-half (1/2) hour meal period, and inclusive of two (2) fifteen (15) minutes breaks.

Local 256 propose to replace this language with the following:

### The standard weekly work schedule for all employees covered by this Agreement shall be Monday to Friday, 8:30 a.m. to 4:30 pm., inclusive of a 30-minute paid break.

Wilbert testified that the two existing 15-minute breaks are impractical given the nature of the work performed by the Prosecutor’s investigators. Further, Wilbert stated that the investigatory staff are extremely dedicated to their work and routinely work through their lunch. Chief Pasterchick acknowledged that investigators do sometimes work through their lunch, but they also sometimes take extended lunch breaks. No one closely monitors their time. In fact, the Prosecutor refused the County’s suggestion that a time clock be installed in the office.

The Union argues that the shortened work day would represent a fair trade off for the elimination of the two paid 15-minute breaks and the conversion of the lunch period for 30 minutes unpaid to 30 minutes paid. The Union asserts that there would be no impact on the operation of the MCPO.

The County opposes the change in the workday for investigators. Chief Pasterchick testified nearly all of the other Prosecutor’s staff work until 5:00, and that permitting the investigative staff to leave at 4:30 would have a negative impact on the morale of the civilians. Moreover, Pasterchick expressed concern that the unavailability of detectives between 4:30 and 5:00 p.m. could impair operations, especially when an assistant prosecutor is preparing a case for trial. Additionally, the County argues that providing breaks to its employees allows them time during the day to rest, have a snack, visit the bathroom, make personal phone calls, and so forth. If these breaks are eliminated, investigators will still have the same personal needs, but they will simply take care of them during work time. This will result in a reduction of office productivity. The County therefore argues that this proposal is therefore destructive to the efficient operations of the Prosecutor and must be denied.

I find that the Union’s proposal to shorten the work day must be denied. First, I agree with the County that investigators leaving the office at 4:30 while the rest of the Prosecutor’s staff continues to work until 5:00, could negatively impact on employee morale. Second, the absence of the investigators after 4:30 may impinge upon the assistant prosecutor’s ability to complete trial preparations or to gather last-minute, needed information from the investigators at the end of the business day, thus increasing the likelihood that investigators would have to be called at home. Finally, I believe the County is correct in its theory that employees need breaks to attend to personal matters during the work day. Employees will take these breaks to attend to personal needs, with or without the contractually allotted time. Thus, shorting the work day by thirty minutes would reduce productivity. Therefore, this proposal is denied.

**Notice of Work Hours Change:**

Local 256 also seeks to impose a requirement that the Employer give employees ten days’ notice before changing the employee’s work schedule unless it is an emergency. The current language provides,

Section 2: The Prosecutor shall have the right to schedule the hours of work in the workweek and to vary the daily or weekly work schedule consistent with the needs of the Monmouth County Prosecutor’s Office (MCPO).

Local 256 propose to replace this language with the following:

### Section 2: Upon a minimum of ten calendar days advanced notice to the affected employee(s), the Prosecutor shall have the right to schedule the hours of work in the workweek and to vary the daily or weekly work schedule consistent with the needs of the Monmouth County Prosecutor’s Office. If the minimum advanced notice is not provided, said officer(s) shall be compensated at the rate of time and one-half (1½) for all hours worked outside of the employee(s)’ normal work hours. The advanced notice requirement set forth above shall not be required if the change in the work schedule is necessitated by a State of Emergency declared by the Governor of New Jersey.

Wilbert testified that most of the investigators and supervisors have family and other obligations outside of the workplace and that last-minute changes in the work schedule cause unnecessary disruption to the employees’ personal lives. She cited a recent incident involving a guns-for-cash program which the administration had planned for months but waited until the day before the event to assign investigators to staff the event, which occurred during non-regular work hours. Wilbert opined that requiring the administration to provide advance notice of a work schedule change is reasonable and, if awarded, would not impede the operations of the MCPO. Wilbert suggested, for example, that a search warrant that needed to be executed could either be handled during regular working hours or delayed for ten days so that a schedule change could be effectuated. Local 256 argues that, even in those rare instances where the minimum advance notice could not be provided, the affected investigator would still be required to work the adjusted schedule but would receive premium pay.

The Union argues that the concept of advance notice regarding a schedule change is not unprecedented within the County. The corrections investigators are contractually entitled to 72 hours advance notice of any work schedule change (PBA-109). Additionally, a number of county prosecutors provide advance notice to their investigatory staff in the event of a scheduled change. The advance notice varies from 96 hours (Atlantic County sergeants); 72 hours (Sussex County investigators); 48 hours (Bergen County); and 24 hours (Morris County investigators). Lastly, the Unions note that its proposal includes an exemption for a state of emergency as declared by the Governor.

As LeMieux and Pasterchick testified, the crimes that detectives investigate do not all occur during the normal scheduled workday. The County asserts that the extraordinary compensation paid to investigators is expressly designed to compensate them in part for the possibility that their work schedules may vary on occasion in order to carry out the critical mission of the office. Further, the County notes that the PBA and SOA provided no financial estimate of the cost of this proposal. The County argues that Wilbert’s suggestion that executing a search warrant was a matter that could be delayed evidences a “fundamental misunderstanding” of how law enforcement works. Evidence can disappear in a moment's notice, and if the Prosecutor believes a warrant needs to be executed immediately, he will do what has to be done to ensure evidence is secured. The County argues that investigators will be paid more money for simply doing their jobs. Moreover, the County asserts that no evidence was presented that last-minute shift changes occur abusively or excessively, or for anything other than emergent law enforcement needs. Finally, the County avers that this proposal would make the Prosecutor’s Office a far less effective law enforcement agency, and must be denied.

I have carefully considered both sides of this issue. I well understand the employees’ position that schedule changes on short notice are disruptive to the employee’s family life and the scheduling of any personal pursuits. I have also considered that a provision requiring advance notice of schedule changes is included in the contracts of other County law enforcement groups. But I also see the Employer’s point that the nature of the Prosecutor’s operation often necessitates changes to the employee’s workday so that the Prosecutor’s mission can be fulfilled. The example of assigning a detective to execute a search warrant is telling. While Wilbert testified that, technically the Prosecutor has ten days to executive the warrant, a ten-day delay (so that the detective can be given notice of a schedule change) might compromise the evidence being sought. Nevertheless, the record shows that there are occasions that schedules have been changed in instances where notice could have been provided but was not.

### An added consideration is the statutory prohibition on awarding any new economic benefit not previously enjoyed by the prior contract. N.J.S.A. 34:13A-16.7 provides,

### An award of an arbitrator shall not include base pay items and non-salary economic issues which were not included in the prior collective negotiations agreement.

### In Byram Township, P.E.R.C. No. 2013-72, 39 NJPER 477 (¶151 2013), the Commission held that an award granting officers the right to cash out sick leave annually violated this provision of the statute even though officers were previously entitled to cash out sick leave, albeit upon retirement. The Commission held that the benefit was an “economic issue” not in the prior agreement, and therefore, could not be awarded.

Here, the proposed “penalty” of an overtime payment when notice is not provided may not legally be included in this provision.

In balancing the needs of the Employer to fulfill its mission and the interests of the employees in minimally disrupting their personal lives, I award the following contract provision:

Section 2: The Prosecutor shall have the right to schedule the hours of work in the workweek and to vary the daily or weekly work schedule consistent with the needs of the Monmouth County Prosecutor’s Office (MCPO). The Prosecutor’s Office will make every effort to provide at least 48 hours advance notice to the employee of any intended change in work schedule, except in the event of emergent circumstances which shall be in the sole discretion of the Prosecutor.

### On Call Pay:

### Local 256 also seeks to add a new provision to this article which would compensate employees with compensatory time for being on call. The new article would read:

### Section 3:

### Any employee required to be on-call while otherwise off-duty shall be compensated with two hours compensatory time for each day on-call.

The PBA and SOA propose to compensate investigators and supervisors required to be on call in any given period with two hours compensatory time for each day on call. Wilbert testified that the obligation to remain on call varies from unit to unit within the MCPO. Some units are on call more often than others. Wilbert testified that Detective D'Amico was required to be on call 24 hours a day, all year. Other officers are required to remain on call for at least one day during the week and one full weekend per month (PBA-L).

While on call, investigators must remain within "striking distance" of Monmouth County in the event they are pressed into duty and must also be available, to not only answer any phone calls, but provide competent expert advice as well. Pasterchick testified that officers on call are expected to provide expert advice and instruction. If the on-call detective

(or supervisor) does not respond to a call or fails to provide competent advice, he/she may be subject to discipline.

Local 256 argues that officers should be compensated in some way for the inconvenience and incursion of time into their personal lives. Local 256 asserts that such a proposal would not be unique to Monmouth County Prosecutor’s Office. The County Sheriff’s Office supervisors, represented by FOP Lodge 121, are compensated for being on-call. Corrections supervisors are also compensated two hours of on-call pay for every week on call (C-108).

Additionally, Local 256 argues that some form of on-call pay is provided to a large number of prosecutor's offices throughout the State provide varying forms of on-call compensation to its investigatory staff (PBA-Z). For example, Sussex County investigators are paid $40 per day and $60 if on call on a holiday. In Warren County, detectives are paid $62 for each day on call. Atlantic County sergeants are compensated 64 hours comp time yearly for being on call while Burlington County provides its investigators with $125 per week for being on call. Other counties such as Cumberland; Essex; Hudson; Morris; Ocean County (which pays $225 for each 7 day standby period); and Passaic County also provide varying forms of on call compensation.

The County argues that, if an employee was on call for a week, he or she would receive an additional fourteen hours of compensatory time. The County maintains that if additional compensatory time is added to the investigator’s compensatory banks, then the employee would be able to voluntarily cash out up to eighty hours of this time annually, and would automatically receive the time in cash if the compensatory time bank was maxed out. Thus, all of this new compensatory time off would represent an additional, unbudgeted financial liability to the Prosecutor.

### I find that this proposal cannot legally be awarded. Again, N.J.S.A. 34:13A-16.7 prohibits awarding any new economic benefits that were not included in the prior agreement. There can be no doubt that compensation for being on call would be a new benefit to investigators that they did not previously have in their collective agreement. Additionally, I find that the benefit is within the definition of a “non-salary economic issue” under the provision of the statute. Although the PBA is seeking payment in the form of comp time (not cash compensation) for the assignment, it is still an economic benefit. Moreover, the contract for investigators and for sergeants both provide that compensatory time above a certain maximum of hours must be cashed out; thus, eventually compensatory time could be converted to cash payment. Therefore, I find that section 16.7 of the statute prohibits me from awarding this new benefit.

**OVERTIME (ARTICLE IV):**

**Sick Leave Exclusion**

The Union seeks to eliminate the sick leave exclusion from the overtime calculations; in other words, overtime would be based upon hours worked including sick leave taken. The current contract provides,

Section 1:

The Employer shall compensate overtime at the rate of time and on-half(1 ½) of straight time pay to all employees covered by this Agreement for time worked in excess of forty (40) hours per week. Sick leave shall not count as hours worked for overtime purposes.

The Union argues that there is no rational basis to treat sick leave differently from other types of paid leave and therefore requests that the language be so modified.

LeMieux testified that this provision was added into the 2006-2008 collective negotiations agreement in return for substantial additional compensation for PBA and SOA members (P-11). The County maintains that that contract provided an increase in top pay from $98,000 to $117,328 during the period, partly in exchange for the Union’s concession to exclude sick leave from the overtime calculation. The County notes that now, the PBA and SOA ask to remove this critical provision, yet do not propose to make such large concessions in return. The County notes that every single one of the County's other law enforcement contracts contains an identical provision, as do the overwhelming majority of civilian units.

The County maintains that PBA and SOA members do receive credit for vacation, personal and compensatory time towards the forty-hour overtime threshold. It contends that counting sick leave for overtime purposes has the potential for abuse and inequity. For example, if an employee knows he or she will have to work a double shift on Tuesday, he or she can call out sick on Monday, knowing that eight hours of pay on Tuesday will be at time and a half. Further, while the employer has some control over an employee’s use of vacation and personal leave time by virtue of its approval process, it has virtually no control over the employee’s use of sick leave, as an employee can call out on sick leave without prior notice. The County argues that if Local 256’s proposal is granted, the County's other law enforcement units will likely demand this change in their own collective negotiations agreements, which in turn would cost the County thousands of dollars given the large overtime needs of the Sheriff's Office and the Corrections Division. Accordingly, the County argues that this proposal should be rejected.

I find that record does not justify awarding this proposal. First, the exclusion of sick leave from the overtime calculation was just recently amended into the contract. The unrefuted evidence shows that the Unions made that concession in the 2006-2008 contract. Generally, voluntary concessions in a contract settlement occur in tandem with additional compensation or a benefit in another area. Therefore, I assume that the Unions “got something” in exchange for conceding the sick leave exclusion from overtime pay. There is no basis in this award that such a trade-off is necessary. Further, the record does not provide sufficient information for me to determine the extent of sick leave used, either alone or in conjunction with overtime earned. Therefore, it is not possible to properly evaluate the potential impact of awarding this proposal. The proposal therefore must be denied.

**Consultation Time:**

The existing contract currently provides,

Section 4: Whenever an employee is called out by the Employer either before or after normal working hours, he/she shall receive a minimum of two (2) hours call out compensation for each said call out. Call out shall be paid at the appropriate rate provided for by this Article.

The Union seeks to add to Section 4 the following language:

### The entitlement to compensation pursuant to this clause shall also apply in the event employee is contacted before or after normal working hours for consultation, advice or instruction or otherwise performs any work related function.

Local 256 seeks to compensate detectives and supervisors who are called before or after normal working hours for consultation, advice or instruction; or to otherwise perform any work related function. Wilbert testified that there are numerous occasions when officers perform tasks off duty which are often time consuming, taking them away from their families and other personal activities. Wilbert testified that on many occasions these phone calls and other work–related functions can take up to 35-40 minutes. Currently, PBA and SOA members are only entitled to be paid if they are actually required to report to the office or a crime scene. Accordingly, the Unions maintain that the investigators should be compensated for any such worked performed outside their normal working hours.

In opposition to this proposal, Pasterchick and LeMieux limited their opposition to instances where an officer received a phone call of one or two minutes in duration. In such "de minimus" situations, the officer should not receive any compensation whatsoever. However, Wilbert stated that the Union’s proposals was not designed to compensate its members with the minimum two-hour "call out" pay for taking phone calls of one or two minutes in duration. Rather, Wilbert indicated that the purpose and scope of the proposal is designed to address those instances where the officers are taken away from their personal affairs for a significant period of time (for which they are not compensated in any manner). Wilbert insisted that the membership of the PBA and SOA have a high level of integrity and would not even consider putting in for two hours overtime time for de minimus phone calls. Wilbert believed that there would be no harm to the Prosecutor’s operations if this proposal were awarded.

Pasterchick acknowledged that it is not uncommon for investigators to be contacted by phone, text or e-mail before or after work with questions, requests for advice and so forth, most of which are very brief and informal in nature. For example, the Chief described how an investigator might be called by another investigator to see if he or she was familiar with a possible suspect to a crime. Pasterchick described these contacts as nothing more than communications between highly-paid professionals co-operating with each other to help the office operate more effectively and efficiently. Pasterchick testified that no one has ever been disciplined for failing to answer the phone in response to one of these inquiries.

The County argues that, under the PBA and SOA proposal, any time an investigator is contacted for any reason -- be it by phone, text message, or e-mail, the investigator would be entitled to the contractual minimum of two hours of cash compensation at the overtime rate. It will not matter if the phone call is just one minute long, or the text message is just one sentence long -- the Prosecutor will automatically owe two hours of compensation under this proposal.

The County points out that, at the overtime rate of a top-step investigator, a two-hour minimum payment would result in an overtime payment of more than $180. The County avers that this may lead to a ban on communications with any investigator before or after working hours, except in an emergency and with the prior authorization of senior management. Therefore, the County argues that this proposal must be denied.

### I find that, like on-call pay, this proposal amounts to a “new economic issue.” While the expired contract entitled officers to a two-hour minimum pay for being called out, the record indicates that it clearly applied only when investigators were called to report to the office or to a crime scene. It is acknowledged that this provision never applied to ‘consultation time’ spent on the phone or otherwise working at home while off duty. Therefore, as a new economic issue, I am constrained by the statute from awarding this proposal.

### Comp Time Limitations:

The County seeks to **r**educe the maximum allowed compensatory time bank for sergeants from 240 to 120 hours; and to reduce the compensatory time banks for lieutenants and captains from 80 hours to 40 hours. The County’s proposed amendments to these clauses in the SOA contract would provide:

Section 3. Sergeants shall have the individual discretion as to whether to be compensated for each overtime period worked in either paid overtime or compensatory time off (“CTO”) (calculated at the time and one-half rate). If a Sergeant elects to receive CTO, it shall be used within his/her sole discretion subject only to prior employer approval. All CTO exceeding ~~240~~ one hundred twenty (120) hours at any one time shall be compensated as paid overtime.

Section 5. This section applies only to Lieutenants and Captains. As senior management personnel, Lieutenants and Captains are not entitled to paid overtime and are required to work additional time whenever necessary. They can, however, earn contractual compensatory time at the rate of time and one-half (1 ½) for all hours worked in excess of forty (40) hours per week. This compensatory time bank may contain up to ~~eighty (80)~~ forty (40) hours at any one time, and is replenishable throughout the year. The use of such contractual compensatory time requires pre-approval, which shall not be unreasonably denied. This contractual compensatory time cannot be converted to money. Sick leave shall not count as hours worked for compensatory time purposes.

The Prosecutor has proposed a modification to the existing Article IV of the SOA Agreement, “Overtime,” which would reduce the amount of compensatory time off ("CTO") a superior investigator could accumulate in his or her leave bank. For sergeants, this would reduce the bank from 240 to 120 hours, and for lieutenants and captains, this would reduce the bank from 80 to 40 hours. For sergeants, once the CTO bank reached 120 hours, he or she would simply be paid in cash for any overtime worked, at a rate of time and one half. Lieutenants and captains are senior management personnel who are exempt from overtime under the Fair Labor Standards Act, so once they reached the limit, they could not accumulate any more CTO until they used up some of the time already in their CTO bank. There is no cash payout option for any CTO accumulated by lieutenants or captains.

The County contends that this proposal is not likely to have any negative financial impact on any SOA members, since sergeants would simply start getting paid for their overtime, and lieutenants and captains do not have any right to cash overtime. Pasterchick opined that the proposal would encourage employees to use their CTO more frequently rather than accumulating it for a lengthy vacation on some future date. Lengthier absences represent a greater disruption to the office, especially at the ranks of lieutenant and captain, where there are fewer people to pick up the slack. The County acknowledged that one potential financial implication would be if a sergeant chose to hold onto his or her CTO until he or she could cash it in after receiving a raise, or upon retirement, thus receiving a payout at a higher salary rate than when it was earned. In response to the SOA’s argument that granting the proposal might result in lieutenants and captains having to work uncompensated overtime, the County asserts that the simple solution to this problem is that they can promptly schedule and use the CTO once it is earned.

The SOA opposes this proposal. As Wilbert explained, once a sergeant has accrued 240 hours, any future overtime must be compensated in cash. The SOA argues that the proposed compensatory reductions are inconsistent with the standard among all other County law enforcement officers. For example, Sheriff’s supervisors are permitted to bank up to 480 hours of compensatory time (PBA-Z). The 480-hour maximum, which is the same as permitted under the Fair Labor Standards Act, also applies to the sheriff's officers', correction officers; corrections investigators; and corrections superiors. The SOA argues that the compensatory time maximums for its bargaining unit members are already well below those permitted for all other County law enforcement groups. Accordingly, there is no justification whatsoever for any further reduction in said amounts.

I find that the County has not justified the proposed reductions in compensatory time maximums. For one, there is no evidence that employees are holding large banks of compensatory time accrued or attempting to take comp time off in large blocks. Second, the County has not demonstrated that granting comp time off to employees has resulted in significant overtime costs because their positions must be backfilled when they are absent. Third, while the County generally opines that lowering the comp time maximums would allow employees to be out of work less, it has not proffered evidence of how much compensatory time is being taken or how this time is impairing the Employer from fulfilling its mission. Fourth, it is axiomatic that lowering allowable compensatory time banks will cost the County more in overtime expenses as sergeants would then be required to seek cash payment for overtime instead of compensatory time. There is no record evidence of the financial impact on the County if its proposals concerning compensatory time limitations are awarded. Finally, the County has not adequately explained how a transition to lower comp banks could be effectuated or the concomitant costs thereof: would sergeants be required to immediately sell back their excess compensatory time days, and if so, what would be the immediate costs of such a buy-back? The record does not contain the necessary data for me to evaluate the answers to these questions.

I therefore find that the County has not adequately justified its proposal to reduce comp time banks.

\* \* \* \* \*

The County’s next two proposals –- limiting sick leave cash out upon retirement/death and family leave –- both propose to eliminate a specific contractual benefit and replace it with County policy which has not yet been developed or is subject to future amendments at the discretion of the County. These proposals must be viewed with some skepticism. The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3 declares it to be public policy of New Jersey that public employees have the right to negotiate collectively through their chosen majority representatives over wages and working conditions. Terms and conditions of employment unilaterally set by the Employer at its sole discretion is the antithesis of collective negotiations. In effect, the Employer proposes with these two proposals to substitute its sole discretion to set certain benefits for collective negotiations with the PBA and SOA over those benefits. Therefore, I review these proposals individually with caution.

**TEMPORARY LEAVE (ARTICLE VIII)**:

Terminal Leave Benefits:

The County proposes to revise Section I (Sick Leave), paragraphs 3 and 4, as follows:

Upon an employee’s death, the Employer will grant supplemental compensation to the employee’s estate ~~in the amount of one-half of the earned and unused accumulated sick leave based upon the average annual compensation received during the last year of employment prior to the effective date of death~~, ~~but not to exceed $15,000.00 or~~~~such higher amount as the County may hereafter adopt by resolution~~ for accumulated sick leave to the extentprovided for by general County policy, and only under the terms and conditions provided for by general County policy, or any future amendments thereto.

At the time of retirement the retiring employee shall be entitled to ~~the cash value of one-half of all accumulated sick time calculated at the retiree’s then current total rate of daily compensation at the time of separation from active service not to exceed $15,000~~ payment for accumulated sick leave to the extentprovided for by general County policy, and only under the terms and conditions provided for by general County policy, or any future amendments thereto.

In effect, the Prosecutor proposes these two paragraphs to eliminate the guaranteed $15,000 maximum lump sum payment for accumulated, unused sick leave in an employee's leave bank at the time of an employee's retirement or upon death. Therefore, the terms and conditions of any such benefit would default back to general County policy. County policy currently matches the current contractual language, and thus, the County points out this proposal would not result in any immediate change. LeMieux testified that employer sick leave sell-back benefits have become increasingly controversial; there continues to be legislative efforts to roll back or eliminate altogether this practice. The County states that it is concerned about maintaining such guaranteed language in contracts in the event that such legislation is enacted. The County notes that the language proposed here is already contained in all four of contracts covering other Prosecutor’s employees. Therefore, the County asserts that awarding its proposal would result in PBA and SOA members being treated equally to other employees of the Prosecutor.

The Union argues thatthere is no other law enforcement group –- either within or outside of Monmouth County -- which has a contract containing this clause. Second, the Union argues that the County essentially desires the ability to unilaterally change the policy for such payments at any time in the future -- limited only by its unfettered discretion. In short, the County wishes to remove this particular term and condition of employment from any future negotiations.

The Union asserts that the current $15,000 maximum is in line with the payment maximums applicable to all other County employees, as well as with the benefits provided to County detectives and supervisors statewide, the proposal must be rejected out of hand.

I am not inclined to award the County’s proposal. Importantly, the County seeks to replace an existing defined benefit with a benefit level that is unknown and not yet determined. In effect, this is a “pig in a poke”. The statute requires interest arbitrators to set terms and conditions of employment in the successor agreement wherever the parties are unable to so agree. The purpose of the statute is to provide finality to the parties’ negotiations. Awarding the County’s proposal in this regard would be tantamount to awarding the replacement of an existing specified benefit with a benefit of unknown value or perhaps no value at all, should the County policy be amended to simply eliminate cash payment for sick leave entirely.

The County’s stated concern is that the legislature may statutorily establish maximum payment amounts for sick leave upon retirement and/or death. Taking that concern at face value, I award the following language to be added to Article VI, Section 1:

Should the legislature pass any law which limits the maximum amounts payable to employees for accumulated, unused sick leave, then this provision shall be amended in accordance with the statutory provisions.

**FAMILY LEAVE (ARTICLE IX):**

This article presently provides,

Family leave is available to an eligible employee seeking time off from work duties to fulfill family obligations relating directly to the birth of the employee’s child, the placement for adoption of a child with an employee, or the serious health condition of an employee’s family member. Eligible employees are defined as individuals employed for twelve (12) months or more who have worked one thousand (1,000) or more base hours during the preceding twelve-month period.

To request family leave time off, the employee must submit a written application to the Administration Office. The request must contain a doctor’s certificate along with the start date and approximate ending date for the family leave. An eligible employee may request up to twelve (12) weeks of unpaid leave over any 24-month period with a supervisor’s approval. The employee may choose not to utilize sick, vacation or personal time while on family leave. While an employee is on family leave, no vacation, sick or personal time will accrue. Subject to the terms, conditions and limitation of the employee’s health plan, the Employer will continue to provide health care coverage for the duration of the family leave, with the employee billed for his/her share. The extent possible, an employee returning from family leave will be reinstated to his/her former position or offered an equivalent position.

The employer seeks to replace this clause in its entirety with the following language:

Employees shall be eligible for family/medical leave pursuant to the federal “Family and Medical Leave Act” (“FMLA”) and/or the “New Jersey Family Leave Act” (“FLA”), and shall also be eligible for benefits available pursuant to the “New Jersey Paid Family Leave Law,” P.L. 2008, c. 17. Employees agree to be bound by the existing County family/medical leave policy or any future amendments thereto, including any requirement to utilize paid leave as part of the employee’s family/medical leave allotment.

This proposed change would confirm an employee’s right to benefits under the FMLA and/or the New Jersey FLA, none of which are specifically cited in Article IX as it presently reads. It also requires PBA and SOA employees to be bound by existing County policies with respect to the use of such leave. LeMieux confirmed at the hearing that the Prosecutor follows the County's human resources policies wherever applicable, including with respect to family leave.

The County asserts that the only substantive impact of this proposal, if awarded, would be that PBA and SOA members would now have to use their accumulated paid sick and personal time simultaneously with any family leave provided under the FMLA or FLA, consistent with County policy. County policy further permits employees to also use their accumulated vacation time while on FMLA or FLA leave, but they are not required to do so. The County's policy is permissible under both federal and New Jersey law, and is intended to ensure that employees with substantial time in their paid leave banks do not use that time to extend such a leave beyond the amount intended by law.

The County explains that under its existing policy, if an employee with twelve weeks of accumulated sick leave takes FMLA or FLA leave for the maximum twelve weeks, he or she will be paid in full for that entire time, but will have no sick leave remaining at the end of the twelve weeks. At that point, the employee will be required to either return to active duty or seek approval for additional unpaid leave. Such additional unpaid leave may be available as a reasonable accommodation under the Americans for Disabilities Act, where applicable, or as an unpaid leave of absence under County policy. However, whether or not to grant an unpaid leave of absence is within the County's discretion. Under the PBA and SOA agreements, an employee can choose not to use sick leave while on family leave, and at the end of the twelve week period, immediately take twelve more weeks of paid sick leave, thus effectively extending the permissible family leave period to twenty-four weeks.

The County points out that most of its other collective negotiations agreements contain language similar to what the Prosecutor has proposed here. Notably, such language is contained in two of the Prosecutor's four other collective negotiations agreements. The collective negotiations agreements with the other two units at the Prosecutor, OPEIU 32 and the Prosecutor Supervisors Association, are silent on the issue and thus would default to County policy. Similar language is also contained in the Sheriff's collective negotiations agreements with numerous sworn law enforcement units, including FOP 30 (Corrections Superiors), FOP 30 (Investigators) and PBA 121 (Sheriff's Officer Superiors).

The County argues that there is simply no reason to give PBA and SOA members a greater benefit in this area than other County employees, especially given that no matter what, their rights to family and medical leave are enshrined in law and thus cannot be modified or reduced beneath the statutory requirements. Leaving Article IX as it currently stands would simply represent another instance where they are treated better than other County employees, which is neither fair nor equitable. Instead, the Prosecutor believes it is hardly a burden for PBA and SOA members to abide by a policy that has proven fair and consistent for the overwhelming majority of employees of the Prosecutor and County.

Local 256 opposes this proposal. First, as Wilbert testified, there have not been any problems, concerns or other disputes relative to the current text of the PBA and SOA contracts. Second, the SOA and PBA memberships currently "may choose not to utilize sick, vacation or personal time while on family leave". The County’s proposal would require family leave or illness leave to be taken concurrently. Third, the County desires to remove this item from future negotiations and grant itself unfettered discretion to amend its policy in the future. The Union argues that any such change in terms and conditions of employment should be subject to good faith negotiations.

Lastly, the PBA argues that this proposed language does not exist in any of the other County’s law enforcement groups.

I am not inclined to award the County’s proposal. First, it appears that if this proposal were awarded, implementing the County policy as it presently exists would have the net effect of reducing an employee’s available leave to a maximum of the number of days in the employee’s sick leave bank or twelve weeks, whichever is greater. The record does not indicate whether the existing contractual benefit has been abused or even significantly used by employees in the PBA and SOA units. Therefore, it is unclear what the potential impact on employees might be if the existing County policy were implemented for this unit. As previously stated, the party proposing to change an existing benefit has the responsibility to prove that its proposal is justified. This is not the case here.

Secondly, by proposing to replace an existing contractual benefit with County policy which is subject to amendment at the County sole discretion, the County is again proposing to replace collective negotiations with unilateral employer action. Therefore, I find that the County has not justified awarding this proposal.

**WORK INCURRED INJURY (ARTICLE X):**

The County seeks to amend this provision as follows:

The statutory compensation provided in N.J.S.A. 34:15-12(a) and applicable law, is recognized as controlling the issue of access to payment for employees on temporary disability leave. ~~It is agreed that~~ Reimbursement for temporary disability leave of ~~less than~~ ~~one year~~ six (6) months or less shall be calculated to ~~insure~~ ensure that employees on such worker’s compensation temporary disability leave will be paid the same amount of take home pay [net pay] as they were receiving prior to their disability leave~~, payments continuing for not longer than the first year~~. Thereafter, the provisions of N.J.S.A. 34:15-12(a) shall apply. ~~The employee shall in no way suffer reduction of net pay as a result of the injury or disability~~. Notwithstanding the foregoing, if the County offers a greater worker’s compensation benefit to its employees not represented for the purposes of collective negotiations, employees represented by the Association shall be entitled to an identical benefit.

The County’s Benefits/Workers Comp Manager, William McGuane, testified that this contractual provision provides a guaranteed benefit substantially greater than the amount required by New Jersey statute, which is a percentage of an employee’s salary up to a maximum amount. The Prosecutor proposes to reduce this guarantee from one year to six months, with two important caveats. First, the Prosecutor would have the discretion to extend worker’s compensation leave at full net pay for up to another six months in the event an injury is directly attributable to the specialized sworn law enforcement duties of an investigator, or in the case of an extreme hardship. Additionally, if general County policy were to provide a greater benefit than the contractual provision, the greater County benefit would apply.

County policy presently provides full net pay for one year, which is identical to the contractual benefit enjoyed by the PBA and SOA. However, McGuane testified that due to the high cost of providing worker’s compensation benefits, whether such a generous benefit can remain sustainable is under careful consideration by the County. As might be imagined, paying an employee’s full net salary (reflecting that worker’s compensation benefits are not subject to Federal income tax) for an entire year while that employee is on worker’s compensation leave is exceedingly costly to the County, which spends approximately $5 million annually on worker's compensation benefits, approximately $2 million of which goes to indemnity payments. (P-79)

Moreover, the County asserts that the current contractual language provides no incentive to return to work for an entire year due to a workplace injury. With no “skin in the game,” employees can malinger by exaggerating their condition with no financial consequence. McGuane testified that there had been multiple incidences where County employees were on worker's compensation leave at full pay, but were later found to have falsified the extent of their condition.

The Prosecutor acknowledges the Union’s claim that its membership has not used worker’s compensation benefits excessively or abusively, and that investigators assume added risks because of their status as sworn law enforcement officers. However, the County contends that compared with other bargaining units the Prosecutor’s investigators receive a substantially greater benefit than the overwhelming majority of other County employees, both union and non-union. Within the Prosecutor’s office, all four of the civilian negotiations units have all agreed to accept general County policy with respect to worker’s compensation benefits. In fact, every single civilian negotiations unit within the County has agreed to accept County policy regarding this benefit. Of the County’s five other sworn law enforcement negotiations units, three have accepted some limitations on their worker’s compensation benefit. FOP 30, representing investigators at the Monmouth County Correctional Institution, has agreed that County policy will apply. FOP 30, representing Superior Corrections Officers, and FOP 121, representing Superior Sheriff’s Officers, has agreed that in the 11th month on worker’s compensation, their members will receive 95% of net pay, and in the 12th month on worker’s compensation, their employees will receive 90% of net pay, unless County policy is more generous. The remaining two units, PBA 314, representing Sheriff’s Officers, and PBA 240, representing Corrections Officers, still have the same language as is in the current PBA and SOA Agreements, but those units are currently in negotiations for a successor agreement and worker’s compensation is a substantial issue in those negotiations.

The Prosecutor further notes that its proposal is consistent or better than a number of other prosecutor's offices around the State. While a substantial number do automatically provide for a full year of net pay, at least four -- Camden, Cape May, Hunterdon and Union, do not under any circumstances. Camden's language is identical to, and is the inspiration for, the Prosecutor's proposal. It provides for an automatic six months of full net pay, with the possibility of an extension of an additional six months at the prosecutor's discretion in the case of "extreme hardship." Cape May provides 100% of net pay during the first twenty work days while on worker’s compensation leave, 90% for the next thirty work days, 80% for the next thirty work days. After the first eighty work days, employees receive only the statutory benefit. Hunterdon provides a flat twenty-six weeks of full net pay, with no possibility of an extension. Union County provides full net pay for ninety calendar days, except when the injury is inflicted by a third party, in which case it is one hundred eighty calendar days. Notably, both Burlington and Mercer have provisions providing for a full year of net pay, but only in the instance where the injury or illness is "directly attributable to the unique duties and responsibilities" of a law enforcement officer. Both Burlington and Mercer leave this determination to management. This language is also found in the Prosecutor's proposal, but only after six months at full net pay, not at the onset of a work-incurred injury.

Based on the foregoing, the County maintains that its proposal is fair and reasonable and should be awarded.

The County also asserts that the award must be dictated by its internal pattern of settlements with its other bargaining unit and cites Morris County Prosecutor's Office, Docket No. IA-2012-32, Osborn (5/24/12). In that matter I said,

The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale and fosters consistency in negotiations...This indirectly fosters the public interest.

If the arbitrator were to reject the Prosecutor's proposal, it would be a clear deviation from that well-articulated principle.

Therefore, the County argues that I am compelled to follow the internal pattern of settlement among other County employees.

The Union argues that there is no basis to disturb the existing contractual benefit. Further, it asserts that the County has not demonstrated that the existing benefit is being abused by any member of this PBA or SOA. Wilbert testified that only one detective in recent memory needed a full year to recover from his work-related injuries. Rather, the norm for the investigative staff is to return to work much sooner. Further, Wilbert cited one recent instance where a detective was brutally beaten with the butt of a firearm while undercover. That officer nevertheless returned to work within approximately four weeks. Thus, as Wilbert testified, none of the members of the PBA or SOA have ever abused -- or have even been suspected of abusing this contractual benefit. However, as Wilbert testified, it is the members of the PBA and SOA who are responsible to investigate such acts of alleged fraud.

Further, the Union alleges the one year benefit is consistent with the leave or the benefit provided to other detectives and supervisors employed by the majority of the prosecutor's offices around New Jersey.

Moreover, all other Monmouth County law enforcement groups currently receive up to one full year. Indeed, there is only one collective negotiations agreement -- the FOP Lodge 121 -- wherein the membership may receive less than one full year at full pay. In that agreement, the Officers receive full pay for the first 10 months; 95% in month 11 and 90% in the last month.

In addition, the Union notes that the work performed by the members of the PBA and SOA is extremely dangerous. Its members run the risk daily of being injured or worse. The security of knowing that their families may be taken care of for up to a year is an important benefit to the members. The County's amended proposal -– which would permit a six-month extension in the Prosecutor's discretion -- does not alleviate any of the concerns of the PBA and SOA. As Wilbert testified, the proposal does not set forth any guidelines, factors or other objective standards for the Prosecutor to consider in deciding to extend the duration of said leave. Accordingly, the likelihood for favoritism or other arbitrary factors creeping into the decision-making process regarding a possible six-month extension loom large.

For all of the above reasoned principles, the PBA and SOA respectfully submit that the County's proposal on this matter must be denied.

I have carefully considered the parties’ respective arguments with regard to this issue. On the one hand, the parties acknowledge that the members of these two bargaining units have not abused the injury on-duty leave provisions as set forth in the contract. The record does not show that in recent memory any more than one employee has even taken the full one year leave. In fact, the record does not indicate how many members of this bargaining unit have taken injury leave of any length over the past contract period. Ordinarily this would lead to the conclusion that there is no problem that needs a remedy by this award.

On the other hand, I am somewhat constrained by the internal pattern of settlements among other County employees. PERC, other arbitrators’ awards, and my own prior awards have consistently held that where the Employer can demonstrate a pervasive pattern of settlement, deviating from the settlement pattern requires significant justification. Here, I note that of the 27 bargaining units representing Monmouth County employees, including those units which cover civilians in the Prosecutor’s Office, only four bargaining units including the two at issue here, continue to have a full year of leave with full pay for injuries on duty.

It is significant however, that none of the law enforcement groups have contract language as limiting as the County proposes for these two groups. One explanation for this is of course, that law enforcement personnel have the most dangerous jobs in County government. This in itself is justification for distinguishing an injury on-duty benefit for civilian employees from law enforcement benefits. The later groups, in recognition of the nature of the work they perform, are entitled to a greater protection from a loss of income if hurt on the job because of their greater job risks.

In balancing the interests of the Prosecutor and the needs of the employees, I award the following modifications to Article X:

The statutory compensation provided in N.J.S.A. 34:15-12(a) and applicable law, is recognized as controlling the issue of access to payment for employees on temporary disability leave. Reimbursement for temporary disability leave of six (6) months or less shall be calculated to ensure that employees on such worker’s compensation temporary disability leave will be paid the same amount of take home pay [net pay] as they were receiving prior to their disability leave. The Prosecutor may in his sole discretion extend such leaves for up to one year.

In the event that an injury is directly attributable to the specialized sworn law enforcement duties of an investigator, such reimbursement of an amount equal to the employee’s net pay shall continue for up to one year. However, in the 11th month on worker’s compensation, their members will receive 95% of net pay, and in the 12th month on worker’s compensation, employees will receive 90% of net pay, unless County policy is more generous. Notwithstanding the foregoing, if the County offers a greater worker’s compensation benefit to its employees not represented for the purposes of collective negotiations, employees represented by the Association shall be entitled to an identical benefit.

**VACATION (Article V):**

The current contract provides:

Section 1: Each employee shall be entitled to annual vacation leave, depending upon years of service with the Employer, as follows:

Years of Service Vacation Time

Up to 1 year 1 day for each month worked

2nd through 5th year 12 working days

6th through 12th year 15 working days

13th through 20th year 20 working days

21 or more years 25 working days

Local 256 proposes to change this provision, effective September 1, 2014, as follows:

An employee’s years of service shall be calculated based on his/her years of PFRS Pension Service Credit at the time of commencement of employment with the Monmouth County Prosecutor’s Office.

In other words, as the Union explained at hearing, an employee hired with prior experience in municipal or county law enforcement (service eligible for pension credits with the New Jersey Police and Fire Pension Fund) would be given credit for that time for purposes of vacation allotments.

The Union points out that it had formerly been the practice of the Prosecutor to hire only detectives who had at least three years prior law enforcement experience. This practice was rescinded by the current acting Prosecutor in July 2012. The vast majority of the PBA and SOA membership were employed in law enforcement prior to commencing employment with the MCPO. A large percentage of said members were previously employed with municipal police departments or other PFRS-covered job titles. The Prosecutor’s Office continued to recruit whenever possible from municipal police detective bureaus. The Prosecutor’s Office recently issued a memo to its investigators instructing them to advise the administration of any municipal detectives that might be interested in joining the County Prosecutor’s Office.

Wilbert testified that, in the past, experienced law enforcement officers were willing to accept lower vacation entitlements upon entering employment with the MCPO because the starting pay ($80,000) was relatively high and subsequent advancement to top step offered even greater pay. However, in light of the fact that the entry level salaries have been reduced to $50,000, the office is now having difficulty in attracting experienced and competent candidates for employment. The Union argues that its proposal will not only provide current members with more vacation time but will likely make a position with the MCPO more attractive to experienced law enforcement officers.

The County opposes the Union’s proposal. It points out that the allotment of vacation available to these employees is identical to that provided for all other County employees.

The County argues that the PBA’s proposal is unfair and illogical. It emphasizes that while some employees are hired from municipal police departments, others are hired with prior service in federal agencies, military backgrounds, or the State police, all with pension systems other than PFRS. Therefore, while county or municipal recruits would receive vacation credit for prior experience, investigators recruited from other agencies would not.

The Prosecutor's concerns over this proposal are borne out by the example of Chief Pasterchick, who recently joined the Prosecutor’s Office after spending more than twenty years with the federal government in a law enforcement capacity. The PBA and SOA proposal would allow an employee with six years of municipal law enforcement experience to enjoy more vacation time than the Chief.

LeMieux and Pasterchick expressed their concerns over the impact on productivity if additional vacation time were granted which could result in fewer crimes being successfully investigated and prosecuted. In addition, the County points out that besides vacation time, investigators also have significant accumulated compensatory time banks giving them added flexibility to take time off when needed.

The County argues that the PBA and SOA have not presented any particularized need for this change, nor have they shown they receive less vacation time than other law enforcement professionals around the state. While Wilbert suggested that this provision might be a recruitment tool, she could not provide any concrete examples where a lack of vacation leave dissuaded any potential hire from accepting a position with the Prosecutor, especially given the Prosecutor's broad discretion with respect to starting salaries. Finally, a review of the other collective negotiations agreements applicable to investigators employed in other counties evidences that the overwhelming majority do not provide any vacation credit for pension time accumulated while employed in another jurisdiction.

This proposal must be rejected. First, as the County points out, no other County employees have vacation credit for prior service. Therefore, awarding this benefit to the Prosecutor’s investigators would likely set a precedent for negotiations with other bargaining units, both civilian and law enforcement. Second, I find that the PBA’s proposal is inherently unfair to employees coming from other jurisdictions outside of the PFRS pension system. This could lead to a negative impact on employee morale and discord among employees. While I recognize the PBA’s argument that the ability to credit new recruits with prior service for vacation credit purposes would enhance the Prosecutor’s ability to attract well-qualified experienced candidates, this is really an issue of concern more for the Employer than to the Union.

However, most troubling is the lack of information in the record to establish how much prior service current investigators have that would credit them with additional vacation time under the Union’s proposal. Obviously, when investigators are on vacation, productivity is diminished. Absent more information concerning the impact this proposal would have on the collective vacation time of the bargaining units, it is impossible to adequately evaluate the proposal. Therefore, the proposal must be denied.

**SENIORITY (LAYOFF AND RECALL):**

The Union proposes a new clause be added to the PBA contract, “Seniority,” which would provide as follows:

### Section 1: Seniority, for purposes of this Article, shall be defined as the years of service with Monmouth County Prosecutor’s Office (MCPO).

### Section 2: Seniority shall be the determining factor for layoffs and recalls. Thus, in the event of a reduction in force, same shall be conducted by inverse seniority. Forth-five (45) days advance written notice shall be given to any employee selected to be laid off. In the event of a layoff, the laid off employee shall be placed on a recall list for five (5) years. Placement on the recall list shall provide preference to the laid off employee over any other applicant.

### For the SOA contract the Union proposes a similar clause which would add language to protect demoted employees. That clause would read as follows:

### Section 1: Seniority, for purposes of this Article, shall be defined as the years of service with Monmouth County Prosecutor’s Office (MCPO).

### Section 2: Seniority shall be the determining factor for layoffs, demotions and recalls. Thus, in the event of a reduction in force and/or demotion, same shall be conducted by inverse seniority. Forth-five (45) days advance written notice shall be given to any employee selected to be laid off or demoted. In the event of a layoff, the laid off employee shall be placed on a recall list for five (5) years. Placement on the recall list shall provide preference to the laid off employee over any other applicant. Moreover, any employee demoted shall be given preference over any other individual in the event of future promotion to his/her former rank.

### The Union argues that, although layoffs have not recently occurred in the Prosecutor’s Office, employees have been threatened with a layoff during the term of the last contract; therefore, the specter of layoffs is ever present. The current contract provides employees with no protection in the event of a layoff and no guarantee that laid-off investigators would be recalled.

Wilbert testified that in 2009 former Prosecutor Valentin was directed by the County to trim the budget of the Prosecutor’s Office. Valentin advised the PBA and SOA that if the two bargaining units did not acquiesce to the County’s demand for a wage freeze, layoffs would be necessary. Valentin made it very clear that layoffs would not necessarily be in inverse seniority order. The Unions point out that, unlike the Monmouth County law enforcement officers employed in the Corrections and Sheriff's Departments, MCPO detectives and supervisors are not afforded seniority protections under the Civil Service Act. For that reason, the Unions’ are proposing that any future layoffs be conducted "by inverse seniority". This will not only afford the more senior officers with some well-earned job security, but also provide an incentive to officers to spend their entire careers with the MCPO.

The Union argues that, seniority-based layoff clauses are common among prosecutor's investigators and supervisors in New Jersey. The Union’s exhibits demonstrate that County Prosecutors with layoff clauses include Bergen; Camden; Cape May; Cumberland; Gloucester; Essex; Mercer; Middlesex; Passaic; Somerset; and Warren (PBA-Z).

Local 256 argues that an award of the Unions’ proposal would also go a long way in enhancing the morale of the Department -- as well as significantly reduce the County's ability to unfairly "strong arm" its membership into accepting a wage freeze in the future.

In summary, the PBA and SOA maintain that their reasonable and objective seniority proposal would eliminate any favoritism or other arbitrary decisions relative to future layoffs.

In opposition to this proposal, Pasterchick and LeMieux expressed their concerns about those instances where the office could not, under the Unions’ proposal, consider an individual's "expertise" regardless of his/her seniority. However, Wilbert testified that no adverse impact to the MCPO's operation would result as the experienced officer would simply need to be trained in whatever "special" skill the laid-off investigator possessed.

The County opposes the Union’s proposals in both the PBA unit and the SOA unit. It points out that investigators are not Civil Service-classified employees. Accordingly, the Prosecutor has broad authority to act in this area to protect the best interests of the office in the event a layoff action becomes necessary.

The County argues that these proposals would completely remove all of the Prosecutor’s discretion in regard to layoffs and demotions and would be destructive to the operations of the Prosecutor. More importantly, the County argues the proposals are illegal because they do not allow the Prosecutor to deviate from seniority for any reason whatsoever, such as to consider an employee’s particular critical skill, training or expertise. The County cites a prior Commission decision in Union County Prosecutor's Office, P.E.R.C. No. 2011-74, 37 NJPER 166 (¶ 53 2011). In Union County, at issue was a Union proposal almost exactly like the one proposed by the PBA and SOA here.[[20]](#footnote-20) The County also maintains that the arbitrator lacks the authority to conform the PBA/SOA proposal to comply with the law. It points out that such a concept was recently addressed, and disposed of, by Arbitrator Mastriani in Cumberland County Prosecutor's Office and PBA 396 and 396a, Docket No. IA-2012-028 and IA-2012-029 (8/9/12). In Cumberland County, the employee representatives proposed language stating that inverse seniority would be used for any layoff action or demotion. The Employer argued that under Union County, the proposals could not be awarded. After the hearing closed, the employee representatives sought to amend it to include an exception for special skills. Arbitrator Mastriani found the proposed amendment impermissible under PERC’s rules and therefore denied the proposal.

Here, the County argues that special skills, experience and qualifications are critical factors which must be considered in the selection and retention of employees to permit the Prosecutor to effectively complete the mission of the office. LeMieux and Pasterchick explained how there are highly specialized units, such as computer crimes, where investigators are either hired with particular experience in a field, or receive extensive training to allow them to perform their required job duties. In a circumstance where the Prosecutor's computer crimes expert has less seniority than an investigator with no such specialized skills or experience, the PBA and SOA proposal would not give the Prosecutor any flexibility to retain the computer crimes expert.

LeMieux and Pasterchick also noted that if layoffs and demotions are governed by strict seniority, the Prosecutor would not be able to use productivity in deciding who would be subject to the layoff. Thus, an investigator at top salary who consistently underperforms someone earning a lesser amount would have their employment protected -- while more productive employees would lose their jobs.

### The County argues that the Prosecutor’s investigators are employees of an elite unit, earning an elite salary, should be judged on their merits with respect to employment decisions, rather than some artificial factor like date of hire. Even if it could legally be awarded, the PBA and SOA have not met their burden of justifying this proposal and it should be rejected.

### Both parties have made compelling arguments with regard to this issue. As the Union points out, Prosecutor’s investigators and investigator superiors currently have no protection in the event that economic conditions or organizational concerns make a layoff necessary. In addition, employees have no guarantee that once laid off, they would have any ability to be recalled into their former positions. This is also true of employees holding superior officer ranks; they have no guarantee that seniority would even be a consideration in the event that the numbers of superiors were reduced. In effect, the Employer could decide that staff reductions could save the most money by laying off highly paid, long-term career employees just before their eligible for retirement.

### On the other hand, the County is correct in its argument that the PBA and SOA’s proposals are not mandatorily negotiable as written. In Union County Prosecutor’s Office, PERC No. 2011-74, the Commission held,

### A public Employer, even where it decides to reduce staff for budgetary reasons, has the managerial prerogative to determine that a less senior employee with particular skills should be retained. . .

### In State v. State Supervisory Employees Ass’n, 78 N.J. 54, 89-90 (1978), the Court held that a public employer cannot negotiate an agreement bidding it to make layoffs strictly by seniority when other factor such as special skills may be relevant. . .

### In Union County, the Commission found that the PBA’s proposal limited the Prosecutor to make layoffs strictly by seniority and did not account for other factors that may be relevant such as special skills or unsatisfactory performance. This case is applicable here. Moreover, the County has made a convincing argument that there are certain instances where investigators bring special skills to the job or receive specialized training on the job for certain unique assignments. While the Union argues that any investigator could be trained to do any of the duties involved with job assignments in the Prosecutor’s Office, during an economic downturn which precipitates a layoff, the Employer is not likely to have money available to extensively train another investigator to perform specialized duties so that he/she can replace the laid off investigator.

### However, I do not credit the County’s argument that an interest arbitrator lacks authority to craft appropriate language over an issue even when neither party has presented that precise language. N.J.S.A. 34:13A-16 gives an interest arbitrator broad conventional authority to craft an award. Accordingly, I award the following clause to be added to the PBA contract:

### Section 1: Seniority, for purposes of this Article, shall be defined as the length of service with Monmouth County Prosecutor’s Office (MCPO).

### Section 2: In the event that a reduction in force is necessary, the Prosecutor shall consider seniority as a factor in determining which employees will be laid off. The Prosecutor may also consider employees’ specialized training, special expertise and/or unique skills, as well as employees’ performance records. Forth-five (45) days advance written notice shall be given to any employee selected to be laid off. In the event of a layoff, the laid off employee shall be placed on a recall list for three (3) years. Placement on the recall list shall provide preference to the laid off employee over any other applicant except where special skills or expertise is a controlling factor.

### I award the following clause to be added to the SOA contract:

### Section 1: Seniority, for purposes of this Article, shall be defined as the length of service with Monmouth County Prosecutor’s Office (MCPO).

### Section 2: In the event that a reduction in force or a reduction in the number of supervisory investigators positions is necessary, the Prosecutor shall consider seniority as a factor in determining which employees will be laid off or demoted. The Prosecutor may also consider employees’ specialized training, particularized expertise and/or unique skills, as well as employees’ performance records. Forth-five (45) days advance written notice shall be given to any employee selected to be laid off or demoted. In the event of a layoff, the laid off employee shall be placed on a recall list for three (3) years. Placement on the recall list shall provide preference to the laid off employee over any other applicant except where special skills or expertise is a controlling factor. Moreover, any employee demoted shall be given preference over any other individual in the event of future promotion to his/her former rank except where specialized training or particularized expertise is a controlling factor.

**GRIEVANCE PROCEDURE:**

The County proposes to limit arbitration to only the Union, not individual employees. Both current contracts provide a four-step grievance process with terminates in binding arbitration. Step 4 provides,

If a satisfactory settlement is not reached at Step Three, the grievant or the Association may request arbitration in writing within twenty (20) business days after the answer is given by the Prosecutor or the grievance shall be deemed to be waived. A request for arbitration must be submitted in writing to the Public Employment Relations Commission (“PERC”) with a copy sent to the Prosecutor, asking PERC to submit panels of arbitrators to each of the respective parties to this Agreement so each party may independently exercise its right of selection, which may be filed directly with PERC pursuant to its rules.

Section 3 provides that the arbitrator’s fees and expenses shall be borne equally by the Association and Prosecutor. Section 7 provides that the arbitrator’s decision shall be final and binding upon the parties. Section 9 provides,

An employee may represent himself or herself at all stages of the grievance procedure, or may choose to be represented by a representative selected or approved by the Association. When an employee is not represented by the Association, the Association shall have the right to be present and state its views at all stages of the grievance procedure and the Association shall be provided with correspondence and results of each step.

The County seeks to amend Section 2 and Section 9 to provide that only the majority representative, and not an individual grievant, may request arbitration at Step 4 of the grievance procedure.

The County argues that this provision seems to make little sense. An arbitrator’s decision interpreting a collective negotiations agreement, to which an individual grievant is not a party, could lead to unanticipated and destructive consequences to labor stability. In addition, the County points out that none of the Prosecutor's other collective negotiations agreements have such language. The Prosecutor sees no reason for this language, and requests that it be removed from the PBA and SOA Agreements.

While the Unions have not agreed to this proposal, neither have they argued vigorously against it. Therefore, the proposal to reform the language is awarded. Section 2, step 4, of the grievance procedure in each contract will now read as follows:

If a satisfactory settlement is not reached at Step three, the Association may request arbitration in writing within twenty (20) business days after the answer is given by the Prosecutor or the grievance shall be deemed to be waived. A request for arbitration must be submitted in writing to the Public Employment Relations Commission (“PERC”) with a copy sent to the Prosecutor, asking PERC to submit panels of arbitrators to each of the respective parties to this Agreement so each party may independently exercise its right of selection, which may be filed directly with PERC pursuant to its rules.

Sections 9 of the contracts are eliminated.

**PERSONNEL FILES (ARTICLE XX):**

The County proposes to eliminate the section of the article concerning “Reckoning of discipline” and replace it with the following:

A 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 of the Prosecutor. Upon advance notice and at reasonable times, any employee may at any time review his/her personnel file. However, this appointment for review must be made through the Chief or a designee.

Whenever a written complaint concerning an employee is to be placed in his/her personnel file, a copy shall be made available to the employee, who shall be given the opportunity to provide a written response or rebuttal, which shall also be placed in the employee’s personnel file.

Reckoning of disciplinary action ~~shall be handled pursuant to Section 5:2-5 of the Rules and Regulations of the MCPO, dated April 16, 2012 and attached hereto as Appendix D,~~ shall not be considered a contractual right and the rules and regulations governing same may be modified in the Prosecutor’s sole and absolute discretion provided prior notice is provided to the Association of any such modification.

Appendix D contains Section 5:2-5 of the MCPO Rules and Regulations:

The reckoning of discipline procedures and period for disciplinary action for detectives shall be as follows:

a. Reckoning of Disciplinary Action. The administrative reckoning of a disciplinary action is similar to an expungement. The forgiveness of a prior disciplinary action is incorporated to encourage Investigation Division personnel to strive for improvement when poor judgment is used or a careless mistake made.

b. Reckoning Procedure. This procedure states that a record of disciplinary action taken is to be placed in the employee’s personnel file. When the reckoning period is up, the employee submits a memo to the Chief of Detectives requesting the disciplinary action be removed. Upon reviewing the request, the Chief of Detectives will decide whether the discipline shall be reckoned.

The requesting employee will be notified of that decision. If a decision to reckon discipline is approved, the Chief of Detectives or his/her designee in consultation with the Prosecutor shall notify the Director of Administration to remove the record of disciplinary action from the personnel file of the employee. This record shall be sent back to the Chief of Detectives or his/her designee, whereupon it will be prominently marked with a notation “reckoned” and placed in the Internal Investigation file which documented the events which gave rise to the discipline. A notation will likewise be made on the file that the discipline has been reckoned. All information, reports, and documents which gave rise to that discipline will henceforth be considered as “sealed” and be made available only as a result of a court order. Reckoned discipline will not be considered in any future administrative decisions.

Reckoning Periods:

1. Letter of Reprimand Only: Where discipline resulted in a letter of reprimand only, the reckoning period will be two years from the date of the letter, provided no additional disciplinary action has occurred or is pending at the time of the request for reckoning.

2. Loss of Time: Where discipline resulted in a loss of time, the reckoning period will be three (3) years from the date of the notification letter, provided no additional disciplinary action has occurred or is pending at the time of the request for reckoning.

3. Suspension and Loss of Pay: Where discipline resulted in a suspension and loss of pay, the reckoning period will be five (5) years from the date of the notification letter, provided no additional disciplinary action has occurred or is pending at the time of the request for reckoning. . .

The County argues that the process of "reckoning," which is effectively the ability to have certain disciplinary charges expunged from an employee's personnel file, should not be considered a contractual right. Rather, it proposes that the Prosecutor should retain the right to determine the rules and regulations for how reckoning will be handled in the future. Reckoning is a concept unique to the PBA and SOA, and accordingly, no other collective negotiations agreement contains any language providing for such a procedure. There is no provision in the Civil Service Act or its associated regulations that would allow for the reckoning of discipline for Civil Service employees.

As LeMieux testified, reckoning prevents the Prosecutor from judging an employee on the entirety of the record when making critical decisions such as assignments and promotions. Employees with perfect disciplinary records therefore have no advantage over employees who have had potentially severe discipline that is now sealed forever. Reckoning is especially problematic when a new Prosecutor is appointed and may not have the institutional knowledge as to an employee's performance-related issues. Given that an employee's prior disciplinary record is a critical component when determining progressive discipline, the Prosecutor seeks the ability to modify the reckoning program to better fit the needs of management, in accordance with the broad discretion granted to the Prosecutor by law.

LeMieux testified to a recent incident where an employee filed a complaint with the U.S. Equal Opportunity Employment Commission, and the employee's disciplinary history was a critical issue in the proceedings. However, after the events occurred that were in dispute, but before the employee filed the complaint, the employee's disciplinary record was reckoned. Therefore, the Prosecutor was unable to have the employee’s disciplinary records to assist in its defense. The County argues that certainly, the Prosecutor should have the right to revise the reckoning procedure to ensure that such a situation never happens again. This proposal gives the Prosecutor that needed flexibility.

The Union argues that the ability to reckon discipline provides an incentive to investigators and supervisors to avoid discipline in the future. Additionally, Wilbert testified that the reckoning period advances morale so that an officer is assured that one mistake –- perhaps early in his/her career --will not be used to permanently bar advancement up through the Office's chain of command.

In short, the County proposes that reckoning of discipline "may be modified in the Prosecutor's sole and absolute discretion provided prior notice is provided to the Association of any such modification". The Union argues that the County’s proposal represents an obvious overreaction to a single incident and is an attempt to circumvent negotiations and replace a negotiated benefit with employer discretion.

I am not inclined to grant this proposal. The first section of the reckoning provision states,

If a decision to reckon discipline is approved, the Chief of Detectives or his/her designee in consultation with the Prosecutor shall notify the Director of Administration to remove the record of disciplinary action from the personnel file of the employee. (emphasis added)

A careful reading of this language reveals that the decision to reckon is not absolute. Rather, the language appears to give the Chief of Detectives, in consultation with the Prosecutor, some discretion over whether the employee’s request for reckoning should be approved. Thus, it appears to me that the Prosecutor already has discretion to decide in each instance whether a particular discipline should be expunged from an employee’s permanent personnel file.

Second, the reckoning procedures are detailed and obviously well thought out. As the County points out, they are unique to the PBA units, and not merely copied from some other contract. Employee terms and conditions of employment, which have been the subject of previous negotiations, should not ordinarily be excised from a collective agreement, absent strong justification for their removal. I have previously found this to be the case with regard to the Union’s proposal to remove the sick leave exclusion from the overtime clause. The same is true here. The single instance the County presented as a problem with one employee filing a complaint an EEOC complaint against the Prosecutor is not sufficient to scrap the entire existing reckoning clause in favor of prosecutorial discretion. Moreover, no specifically worded proposal is being advanced here; rather, the Employer proposes to replace the existing language with rules and regulations which it has not yet developed. For the foregoing reasons the Employer’s proposal to modify this clause is denied.

**Health And Prescription Plan Modifications:**

The County submitted detailed proposals to modify its health care and prescription drug programs, including three proposals to modify its health care plans and four proposals to modify the prescription benefit plan. The County asserts that implementing these proposals would result in substantial cost savings to the County, concomitant reductions in employee contributions, and little or no impact to most of its employees. In support of its proposed modifications, the County offered the testimony of Horizon Blue Cross/Blue Shield Consultant Kevin Duffy and the testimony of Express Scripts Consultants Paul Grew and Ken Rostkowski. In addition, McGuane testified with regard to the County’s health and prescription care costs, both present and forecasted.

In concert with consultants from Horizon and Express Scripts, the County developed a detailed strategic plan for it to save on health and prescription costs. That plan formed the basis of the County’s proposals as set forth here and also proposed to all of its other County bargaining units in negotiations.

\* \* \* \*

The County is completely self-insured. It offers all full-time County employees comprehensive health care benefits through multiple plans, including a "Direct Access Point of Service" plan administered by Horizon Blue Cross/Blue Shield of New Jersey ("Horizon BCBS"); a "Health Maintenance Organization" plan administered by Qualcare; and, for those employees hired prior to mid-1994, a traditional indemnity plan administered by Insurance Administrators of America.[[21]](#footnote-21) (P-70).

The County also provides its employees with a prescription drug plan through Express Scripts (formerly Medco Health Solutions). Finally, the County offers a voluntary employee-funded dental program. (P-71).

The Horizon Direct Access plan has no deductibles for in-network coverage (P-70). In fact, if an employee received all of his/her medical care in network, all medical care would be covered at no cost to the employee except for $10 co-pays to the practitioner for certain services. Out-of-network coverage is available but is subject to a $400 (single) or $800 (employee and one dependent or family) deductible. After reaching the out-of-network deductible, the County pays 70% of the cost while the employee pays 30%, up to the out-of-pocket maximum of $2,500 (single) or $5,000 (employee plus one dependent or family). At that point, the County will assume 100% of the "reasonable and customary" cost for the out-of-network care.

Under the provisions of the current PBA and SOA agreements, the maximum permissible prescription drug co-pays are $20 for brand name drugs ($15 if by mail) and $10 for generic drugs ($5 if by mail). Notwithstanding the contract provisions, the County has chosen to maintain generic drug co-pays at $5 and no co-pay for generics by mail, to encourage the use of generics.

The overwhelming majority of members in these two bargaining units have chosen health care coverage through the Horizon BCBS plan (P-75). In addition, a substantial number of PBA and SOA members do not participate in any of the County's health benefit plans because their health care coverage is provided by other source. For the current plan year -- October 1, 2013 through September 30, 2014 – the Horizon BCBS Direct Access plan costs $5,870.88 per year for single coverage; $12,182.28 for an employee and one dependent; and $17,194.92 for a family. In addition, prescription drug benefits cost $2,217.72 per year for a single employee, $5,065.32 for an employee and one dependent, and $5,329.56 for a family. Thus, for an employee on the Horizon BCBS single plan with prescription drug benefits the annual cost is $8,088.60, while for an employee on the family plan with prescription drug benefits, the current annual cost is $22,524.48.

Pursuant to Chapter 78, P.L. 2011, employees are required to contribute a percentage of the premium costs. Chapter 78’s full contribution rates were phased in over a four-year period, with the percentage of contribution becoming steeper each year. As of July, 2014, employees in these two bargaining units are contributing the full amount as required by the statute. The Chapter 78 formula is based upon the employee’s salary, the level of coverage selected (i.e., single coverage, one dependent, or family coverage) and the cost of the premium. Thus, an increase (or a decrease), in plan costs directly impacts the amount an employee must contribute. So too, does a salary increase potentially effect an employee’s percentage of contribution. The following chart shows the rate of employee’s contributions for single coverage and family coverage, depending upon the employee’s salary:

|  |  |  |
| --- | --- | --- |
| **Salary Range** | **Single Contribution Rate** | **Family Contribution Rate** |
| 50,000-54,999.99 | 20% | 12% |
| 55,000-59,999.99 | 23% | 14% |
| 60,000-64,999.99 | 27% | 17% |
| 65,000-69,999.99 | 29% | 19% |
| 70,000-74,999.99 | 32% | 22% |
| 75,000-79,999.99 | 33% | 23% |
| 80,000-84,999.99 | 34% | 24% |
| 85,000 - 89,999.99 | 34% | 26% |
| 90,000 - 94,999.99 | 34% | 28% |
| 95,000 - 99,999.99 | 35% | 29% |
| 100,000 - 109,999.99 | 35% | 32% |
| 110,000 and over | 35% | 35% |

It should be noted that most employees in the PBA unit, and all employees in the SOA unit, are at the maximum contribution rate of 35% of premium. Therefore, the investigator will contribute $2,831.01 ($8,088.60 X 35%); for family coverage in Horizon, the employee will contribute $7,884 ($22,524.48 x 35%) or about $657 a month.

It would appear from the foregoing facts that it is in the interest of both parties to control health and prescription costs to the extent possible without sacrificing quality of care.

One would assume that, as employees contribute a greater share of premium costs, the net cost to the employer would be decreasing. The County contends that the contributions have merely offset cost increases, and that it has not actually experienced net cost reductions. The County points out that the passage of the federal Affordable Care Act (“ACA”) has resulted in enhanced mandatory benefits to employees with a resulting increase in plan costs. For instance, under the ACA, employees may now keep their children on their health care plan through age 26; certain preventative services are now entirely free; all pre-existing conditions are covered, and there is no maximum cap on the amount of medical expenses covered over an employee's lifetime.

The ACA also contains a number of new fees that directly impact or will impact the County. First, as McGuane testified, the County is now required to pay an annual $63 fee per covered employee to the federal government, which McGuane explained will cost the County hundreds of thousands annually. Second, and of serious concern to the County, is that effective in 2018, the ACA requires payment of a 40% “excise tax” for all health insurance plans that exceed $10,200 for an individual and $27,500 for a family (P-72(a). This tax is commonly referred to as the "Cadillac Tax."

Given that the Direct Access family plan already costs approximately $22,500 in 2013-2014, McGuane projected that, based upon recent plan price increases that, absent plan changes, the County will exceed the thresholds by more than $2 million in when the Cadillac Tax takes effect in 2018. In fact, if the County's health care costs go up the predicted 8% per year, by January 2018, the Direct Access family plan will cost well in excess of $30,000 per employee.[[22]](#footnote-22) Thus, a 40% excess tax on the amount over the federal cap would, McGuane predicted, result in dramatically negative implications for all County employees, and it would threaten the County's ability to continue to provide the current level of benefits while still managing its budget.

The County asserts that it is taking a proactive approach to avoid or limit the excise tax in the future by planning changes today. It recognizes that action is required now because controlling health care costs will be a multi-year effort. McGuane described, for example, how the County is looking into establishing its own health clinic for the everyday medical needs of its employees. It also has looked into possible plan design changes that, as McGuane described, could provide substantial cost savings with the least possible impact to employees. McGuane explained that finding such savings presents a challenge, because some things that might seem cost-effective on their face may actually be counterproductive. For example, the County considered, but rejected, dramatically increasing the co-payment for in-network doctor visits because, while it would be simple and easy to understand, it would not likely result in long-term savings because it would discourage employees from seeking care until a condition worsened, making it even more difficult and expensive to resolve. The County avers that that such an approach would not be a positive outcome for the County's bottom line or the health of its employees.

The County has met with representatives of Horizon and Express Scripts to explore implementation of plan design changes. Its objective is to ensure that the plan design changes are implemented fairly and equitably. In its proposal for the successor contract here, the Employer has proposed seven modifications to the plan. McGuane stated that the County’s intention is not to implement any of these changes before January 1, 2015, and it seeks to provide at least sixty days’ notice before implementation. Second, the County proposes that none of these changes would be implemented until they are simultaneously implemented for all of the County's non-union employees, including the County's senior administration. Third, the County is prepared to guarantee that none of these proposals will affect anyone who retires prior to their implementation.

Finally, the County is not seeking to have these proposals awarded; rather, it is seeking the flexibility to only implement some of these proposals, or to not implement them to their full extent, in the event the projected savings do not materialize or they ultimately turn out to be too burdensome on employees.

The County points out that, to date, four negotiations units have already accepted these proposals in full, including two of the four civilian units at the Prosecutor. Those negotiations units are the Management Association (Division of Social Services); NAGE Local R2-30 (County Clerk); OPEIU Local 32 (Prosecutor's Clericals); and Supervisors Association (Prosecutor's Clerical Supervisors). A fifth unit, AFSCME Local 2514 representing Library employees, has agreed to accept general County policy with respect to health care coverage, thus implicitly agreeing to permit these changes at such time as they are implemented. The County contends that collectively, these units represent approximately 15% of all unionized employees working for the County. For those negotiations units that are still in negotiations for a successor agreement, the County has made it clear it will not finalize any agreement that does not include these proposals. It points out that all of the collective negotiations agreements extending past 2014 includes these proposals.

The Union opposes all of the County’s proposals to modify its health and prescription plans. The Union argues that all of the proposed changes are concessionary, they will limit or reduce benefits, or they will cost PBA/SOA unit members more in our-of-pocket expenses at a time when these employees are already paying up to 35% of the health care premiums.

First, the Union notes that because the County is self-insured, it has the ability to negotiate separate adjustments to its health care and prescription benefits with individual employee bargaining units. Second, the Union contends that, while the County has obtained the desired concessions from a few civilian bargaining units, it is undisputed that none of the County’s seven law enforcement bargaining units have agreed to any of these sought-after concessions. Nor have the Assistant Prosecutors agreed to same. The Union points out that civilian employees do not have interest arbitration available to them and therefore, they are burdened with a "take or leave it" bargaining position. So, Local 256 argues, the acceptance of these concessions by the civilian groups should have little relevance to the instant proceedings.

In support of its position that present levels of plan benefits and costs should remain untouched, the Union proffered the testimony health benefits expert Dominick Fanuele. Fanuele’s testimony, together with the Union’s arguments against each of the proposals appears below.

\* \* \* \*

The County’s seven proposals are as follows:

1) Increase the health care plan's out-of-network maximums from $2,500 to no greater than $5,000 for single coverage; increasing from $5,000 to no greater than $10,000 for family coverage.

The first health care plan design change would permit the County to raise out-of-network co-payments to double the existing amount. The County points out that, if an employee or his/her dependent does not utilize the out-of-network benefit, there will be no impact whatsoever. Only 10% of claims in the past year were out-of-network, and a number of those claims were still paid at the in-network rate, including treatment by out-of-network anesthesiologists and emergency room physicians. Approximately 10% of employees met the out-of-network deductible of $400 (single)/$800 (family), and of that 10%, only 1% met the existing out-of-network maximum and thus would be affected in any way by this proposed change.

Both Duffy of Horizon BCBS and Fanuele, the Unions’ insurance consultant, concur that Horizon BCBS has a robust, national network of in-network providers, and most of the nation's leading specialized care hospitals, including Memorial Sloan-Kettering Cancer Center and the Children's Hospital of Philadelphia, are within the network. Duffy further testified that an in-network provider is available for nearly every health care condition. But even if some unique medical condition existed that only an out-of-network provider could treat, the employee would be permitted to seek reimbursement at the in-network rate through Horizon’s appeal process. Duffy and Fanuele testified that employees tend to use the out-of-network benefit for personal convenience or because of a relationship with a particular out-of-network provider.

Fanuele testified that the County's proposal to increase out-of-network co-payments is designed to get people who use the out-of-network benefit back into the network, and the County freely concedes that is its goal given it is undisputed there is a far higher expense to the County when an employee chooses to go out-of network. It further acknowledges that there may be circumstances, as Fanuele described, where an employee has a particular comfort level with an out-of-network provider, or a provider who chooses to leave the Horizon BCBS network, and will either have to change to an in-network provider or shoulder an additional expense. McGuane testified that it is only fair for the 1% of employees who will be affected by this proposal to pay a more appropriate share of the expense, rather than pass those costs along to the 99% of other employees who otherwise would have to subsidize such care. That is why, as Duffy testified, and Fanuele agreed, more and more employers are seeking to increase out-of-network co-payments to the amount the County has proposed here. The County argues therefore that its proposal is well within accepted limits in the health insurance industry and is eminently fair and reasonable. This proposal, if awarded, would save the County approximately $225,000 per year.

Local 256 argues that the County is seeking to justify this increase in out-of-pocket maximums due to the looming "Cadillac tax" in 2018, but it has not justified doubling the existing maximums especially in light of the fact that its other law enforcement units continue to have the existing $2,500/$5,000 levels.

**2) Increase emergency room co-payments:**

The County’s second health care plan design change would permit the County to raise emergency room co-payments from $25 to an amount up to $100 per visit. The County proposes to maintain its existing policy that if an emergency room visit results in admission to a hospital, the co-payment would be waived. As Duffy testified, County employees evidence a higher than usual usage of the emergency room, and an analysis of those visits indicate many do not appear to be truly emergent in nature. Duffy attributed this in part to hospitals now advertising emergency room wait times and engaging in other efforts to have people utilize the emergency room as a convenient form of primary care. But emergency room visits represent a tremendous expense to the County, and with other readily available options (such as in-network urgent care centers) able to treat most conditions, the County avers that unnecessary usage of the emergency room is now simply unaffordable.

The County recognizes that increasing emergency room co-pays from $25 to $100, rather than $50 or $75, is a substantial increase. However, Duffy testified that Horizon has determined that is the threshold amount where people make a more considered decision whether or not to utilize the emergency room services. Duffy explained that a lesser increase would not be nearly as effective.

Duffy further testified that 80% of employees last year did not use the Emergency room at all, and another 15% used it only once. Thus, the County argues that if the County's proposal is awarded, 95% of PBA and SOA members will see a financial impact of either $0 or $75 -- hardly a substantial burden. Rather, the County says its proposal is intended to target the 5% who utilize the Hospital emergency rooms the most[[23]](#footnote-23) that would pay more of their fair share of this tremendous cost.

Duffy testified, and Fanuele did not dispute, that more and more employers are seeking to increase emergency room co-pays to the amount the County has proposed here. Therefore, the County maintains that its proposal is well within accepted limits in the health insurance industry. In fact, the SHBP's plan design consultants, AON Hewett, have recommended increasing emergency room co-pays to a minimum of $125for all plans: even more than the County is proposing. As AON Hewett explains:

The current ER copays for the Legacy Plans of $25 to $50 are ineffective as disincentives for inappropriate use of hospital emergency rooms, thereby unnecessarily increasing Plan costs. Both Horizon and Aetna experience confirms very high emergency room utilization and trends. Most employer health benefit plans have Emergency Room co-pays of $125 or more (P69, p. 60)

The County avers that this proposal, if awarded, would save it approximately $300,000 per year.

Local 256 argues that, while the County demonstrated that only a small segment of its employees appear to "overuse" this benefit, there has been no proof that members of PBA Local 256 or SOA 256 have "abused" this coverage. The Union maintains that, in light of these employees’ steep contributions to health care, any additional increases in their monetary obligations –- in the form of an increase in OOP maximums; doctor visit co-payments, etc. -- will have a significant impact on the employees in these two units. Accordingly, the PBA and SOA argue that the County has failed to present any justification for an increase in the emergency room co-payments.

**3) Modify the health care plan's out-of-network pricing schedule to no less than 150% of CMS.**

The third County proposal for health care plan design changes would modify the pricing schedule for out-of-network treatment. The County seeks to abandon the existing “reasonable and customary” rate used to calculate reimbursement for such out-of-network treatment and instead use “150% of the rate established by the Centers for Medicare & Medicaid Services ("CMS").” The County repeats that, if an employee stays in the Horizon BCBS network, this proposal will have no financial impact. When an employee goes outside of the network, after reaching a deductible, the County pays 70% of the "reasonable and customary" cost up to the out-of-pocket maximum, at which time the County assumes 100% of the "reasonable and customary" cost. This proposal, as Duffy testified, would change the existing formula used to determine exactly what that "reasonable and customary" cost would be. When a physician or other health care provider agrees to be in the Horizon BCBS network, as part of that agreement, that provider agrees to accept payment at an amount determined by Horizon BCBS. A provider outside of the network, on the other hand, has no such restrictions, and can charge any amount the practitioner decides. The insurance industry has established a comprehensive database for what most providers charge for a particular treatment in a particular geographic area, which becomes the "reasonable and customary" amount. Duffy testified that the County currently uses 90% of that amount when determining reimbursement for out-of-network care. He further testified that this has led to inflated costs because there is no way to place any controls on what providers charge.

For example, if the "reasonable and customary" amount for a particular out-of-network operation is $10,000 (and assuming that the employee already has reached the out-of-pocket maximum), the County would pay no more than $9,000 for that operation. If the employee received a bill for $20,000, the County would still only pay the $9,000 and the employee would either have to pay the remaining $11,000 or negotiate a different amount with the provider.

The County states that its proposal would switch the database used for "reasonable and customary" (commonly referred to as “UCR” rates) from one developed by a private entity to one established by the federal government through CMS. This database is used to determine reimbursements to physicians for Medicare and Medicaid patients. Duffy testified that physicians who accept Medicare and Medicaid patients can only charge within a certain range near the CMS-determined amount. The County's proposal would cover out-of-network care higher than that amount - 150% of the CMS rate. Duffy testified that this change would result in an overall 7% reduction in "reasonable and customary" reimbursements, but would vary by procedure.

The County reiterates that this proposal is designed to have those employees who choose to go out of network to pay more of their fair share. Notably, of the various procedures Fanuele selected for his presentation, he testified that he chose ones that he believed were relatively common, like a gallbladder removal or a colonoscopy. However, the County contends that it is undisputed that many of in-network providers are fully qualified to handle such routine medical procedures, and therefore, there is no medical reason why an employee would need to go out-of-network to have them performed. Put simply, using out-of-network providers for routine medical care is a luxury that is no longer affordable. Moreover, the County asserts, the cost of an employee's decision to go out-of-network when not truly necessary should not be borne by other employees who are more conscientious with their health care decisions, and is thus eminently reasonable. This proposal, if awarded, would save the County approximately $600,000 per year.

The Union argues that the most significant and costly concession proposed by the County concerns its desire to revise the pricing schedule for out-of-network treatment from the existing "reasonable and customary rate” (UCR) to 150% of the rate established by the Centers for Medicare & Medicaid services (CMS).

Fanuele explained that, currently, the County pays for all out-of-network services based on the 90th percentile of the UCR. Stated another way, the County reimburses at a rate accepted by 90% of the health care providers in a given geographic area. Fanuele further explained that any charges in excess of the allowable fee for a particular service are paid for by the employee and, significantly, do not count toward his/her deductible, nor out-of-pocket maximums.

Fanuele illustrated that a switch to 150% of the CMS would drastically increase the actual out of pocket costs for our members. Fanuele produced a comparison of the most common health care costs, illustrating how much will be paid by the member under the current UCR and the proposed 150% of CMS. In each instance, the cost to the employee would dramatically increase. Fanuele accessed this comparison information from the Fair Health database and limited his analysis to the Freehold zip code.

Fanuele’s comparison shows that if, for example, a member were to undergo removal of a gallbladder using an endoscope, he/she would have to pay $3,453 more in out-of-pocket expenses if the County's proposal is awarded. Moreover, if the employee has to undergo a removal of a bladder and lymph nodes on both sides of the pelvis, his/her out of pocket maximums will increase by a $13,374 under the CMS pricing schedule. Indeed, of the numerous and varied common Code entries contained in Fanuele's comparison, no item was less under the 150% CMS standard that the current UCR standard.

Thus, the Unions argue, given the fact that the membership of the PBA and SOA are already at their maximum employee contributions for health care premiums, coupled with the fact that no other County law enforcement unit is currently subjected to the proposed 150% CMS standard, the County's proposal to significantly increase the out of pocket costs must be soundly rejected.

**Prescription Coverage Modifications:**

**4) Institute "network narrowing" for the pharmaceutical benefit plan.**

The County proposes toimplement a “network narrowing” plan to limit the pharmacies from which members may fill prescriptions. This consists of removing one of the three current national pharmacy chains from the County's network: Walgreens, Rite-Aid or CVS.

As the Express Scripts representative Rostkowski testified, this proposal, if granted, would almost certainly remove Walgreens from the pharmaceutical plan network because Walgreens has consistently proven to have the lowest discount rates of the three major pharmacy chains, meaning that when an employee fills prescriptions there, it results in the highest possible expense to the County. Moreover, once Walgreens is removed from the network, Express Scripts can then negotiate better pricing with CVS and Rite-Aid because they will benefit from an increased volume of business from former Walgreens customers. However, the County has sought the flexibility to return Walgreens to the network in the future if it improves its cost competitiveness, and with appropriate prior notice, remove one of the other two chains instead.

As Rostkowski further testified, this change would not impact any of the thousands of other pharmacies within the Express Scripts network, including those operated by supermarkets and large retail stores like Wal-Mart or Target, as well as independent pharmacies. Employees will be allowed to utilize all of these pharmacies just as before.

Express Scripts has researched how many of the County's employees have utilized Walgreens to fill a prescription within a recent one-year period, and would be affected if they had to switch pharmacies. Of the 1,158 employees who used Walgreens, every single one could find another pharmacy within the Express Scripts network within four miles of the Walgreens where the prescription was filled, and 99.9% (all but one person) could find another pharmacy within two miles.

Moreover, the County states that it intends to provide substantial prior notice before removing Walgreens from the network and Express Scripts will provide any affected employee with a list of the three nearest pharmacies. At the hearing, Fanuele noted that Walgreens operates a number of 24-hour pharmacies, but conceded those hours are not exclusive to Walgreens, as CVS, for example, also operates a substantial number of 24-hour pharmacies. And if in some unique instance an employee had absolutely no choice but to go to a Walgreens to fill a prescription, the County presented testimony that the employee could fill the prescription, and then appeal to the County for a refund. This proposal, if awarded, would save the County approximately $300,000 per year.

The Union argues the County’s Express Scripts consultant suggested only Walgreens should be eliminated from the network; he did not cite any basis whatsoever for the elimination of either Rite-Aid or CVS. Moreover, the Union argues that the County’s other law enforcement units have not agreed to this concession.

5**) Institute "Dispense as Written" For the Pharmaceutical Benefit Plan.**

The County’s second pharmaceutical plan design change is to implement a “dispense as written" policy. The County states that this policy provides that if a doctor writes a prescription for a medication that is produced by a brand name manufacturer, and there is also a generic equivalent on the market, unless the doctor specifically requests the brand name medication for some medical reason, only the cost of the generic medication would be covered. If the employee nevertheless demanded the brand name medication, he or she would be responsible for paying the applicable co-payment plus the cost difference between the two. Express Scripts notes that about 3.5% of all prescriptions would be affected by this proposal.

The County opines that "dispense as written" represents nothing but basic common sense and there is no downside whatsoever to its implementation. As Rostkowski testified, by law a generic version of a brand name medication must have exactly the same active ingredients as the brand name medication. The average cost for a generic medication is $56.58; while for a brand name medication it is $390.76 -- about seven times as much (P-78). Although brand name medications only make up about 29.1% of the County's pharmaceutical benefit claims, they represent 73.9% of the cost -- nearly $12 million in a fifteen month period. Express Scripts has estimated that if the County reduced employee use of brand name medications by just 5%, it would save the County more than $1.2 million per year.

Here, with "dispense as written," the employee has a failsafe protection if for some reason the generic is unsuitable, such as because the employee is allergic to a non-active ingredient -- all the doctor needs to do is to write a prescription for the brand name medication and check the "do not substitute" box that exists on every standard State of New Jersey prescription blank. In that case, the employee will receive the brand name medication. The County argues that it is unfair to the County's taxpayers or an employee's colleagues for that employee to demand a brand name medication if his or her own doctor does not believe it is medically necessary and the identical generic will treat the same condition just as well. This proposal, if awarded, would save the County approximately $150,000 per year.

**6) "Step Therapy" For the Pharmaceutical Benefit Plan**

The County’s third pharmaceutical plan design change is to implement a “step therapy" policy. Step therapy applies only to certain prescription medications used to treat chronic medical conditions like acne, arthritis or sleep disorders. Under the County’s proposal, if an employee requires a prescription for one of these conditions, he or she will first be required to try a generic or lower cost brand name medication that in most cases will provide the same health benefit as a more expensive medication.[[24]](#footnote-24) If, however, that front line medication proves unsuitable for any reason, then the employee would "step up" to a more expensive back-up medication. The County avers that this proposal would save the County considerable money because most people will have a positive response to the front-line medication and will not need a back-up medication at a potential cost of thousands of dollars.

Express Scripts Consultant Grew explained that step therapy is now a widely accepted practice throughout the nation, that millions of Americans have step therapy as part of their pharmaceutical plans, and that every physician in America is familiar, or should be familiar, with it. Grew further testified that without step therapy, due to heavy pharmaceutical industry advertising and other reasons not directly related to effective patient care, physicians will often write prescriptions for the most expensive medication even if a less expensive one would be effective. For example, Grew described how the brand-name arthritis medication Embrel, whose manufacturer has engaged in heavy television advertising, is often over-prescribed at a cost of thousands of dollars per prescription, yet is needed only for a very small class of patients.

In his testimony, Grew further explained how the step therapy program was developed by a team of medical experts working with Express Scripts, including physicians and pharmacists. He noted that the County has no say in which medications are included in the step therapy program. However, he noted that medications needed to respond immediately to emergent conditions are never included in step therapy; neither the County nor Express Scripts would risk exposing themselves to liability by making any coverage decisions that would jeopardized an employee’s health.

The County notes that, under its step therapy proposal, an employee can receive a higher cost medication under three circumstances: first, if he or she has already tried the front-line formula; second, if he or she cannot take the formula for some medical reason (such as an allergy); third, if his or her doctor decides for medical reasons that the back-up medication is necessary. The County's proposal expressly guarantees that at any time, an employee's physician may contact Express Scripts for a coverage review and to request authorization for a back-up medication, and so long as the physician fully cooperates with the pharmacy benefits manager, the authorization will be granted in no more than three days absent unusual circumstances. At the hearing, Grew testified that Express Scripts has representatives available 24-7 if a coverage review needs to be initiated.

The County recognizes that step therapy will result in some possible inconvenience to employees; in some cases employees will not have their prescriptions filled for the medication originally prescribed by the physician. In such an instance, the employee will need to work with his or her physician to have a new prescription written and filled. However, there are no adverse medical impacts from step therapy despite its wide usage across the nation. Moreover, the County emphasizes that it has agreed to provide the PBA and SOA a current list of medications for which step therapy will apply. As Grew testified, it is not practical to have a fixed list that will remain in place during the entire term of a collective negotiations agreement because new medications are approved for use regularly, while others may become available in generic form and could become front line, rather than back-up medications. If any employee is concerned that a particular condition may trigger step therapy, he or she can obtain the list and provide it to his or her physician before any prescription is written. This proposal, if awarded, would save the County approximately $800,000 per year.

The Union notes that the County did not provide a list of drugs which would be subjected to the step therapy. Further, it argues that Grew acknowledged that any such list would be subject to future modification as new drugs come into existence.

7**) Institute "Prior Authorization/Quantity Duration" For the Pharmaceutical Benefit Plan.**

The County’s final pharmaceutical plan design change is to implement a “prior authorization and quantity duration" policy. These two concepts are closely related, but are distinct. Prior authorization ensures that a medication that is prescribed is clinically appropriate, while quantity duration ensures that the dosage amount of a medication authorized in a prescription is clinically appropriate.

Grew testified that prior authorization is similar to health care plans that require approval of a medical procedure before it is done to ensure the necessity of the test. As he described, certain prescriptions are being used for purposes for which they were not approved, or for non-medical purposes altogether. As with step therapy, the medications which are subject to this policy are not promulgated by the County, but by medical professionals working with Express Scripts. Grew testified that a prior authorization policy does not deny any employee the medication he or she needs; rather, it ensures that an employee receives an appropriate prescription for the condition indicated. As Grew explained, when an employee seeks to fill a prescription subject to prior authorization, it will be flagged by the pharmacist's computer system as "prior authorization required." At that point, a communication takes place between Express Scripts and the physician. Assuming that the drug is appropriate for the condition, it will be approved, and if not, it will not be covered by the County.

The County has provided a list of medications for which prior authorization is intended to apply (P-74), and has agreed to provide an updated list whenever any changes are made to it. A notable example of where prior authorization will apply involves testosterone replacements. Prior authorization is not a guarantee that medications will not be mis-prescribed, but it is a valuable check and balance to minimize that possibility as much as possible.

Similarly, quantity duration, also known as drug quantity management, is based upon expert medical guidance and guidelines developed by the U.S. Food and Drug Administration ("FDA"). (P-74, p. 14). This procedure helps save money in two different ways. First, if a prescription is available in different strengths, it may require that one dose of a higher strength be taken than two or more of a lower strength. Second, the program ensures that only the appropriate amount of medication is prescribed to avoid waste. The FDA has developed maximum quantities considered safe for prescribing certain medications. So, for example, if an employee sought a refill when records indicate he or she should still have medication left from an earlier prescription, the refill would be denied. Similarly, if the prescription is written for a quantity higher than the amount approved, the County will not cover the excess. Many medications, such as sleep aids and migraine drugs, do not need to be taken daily. In such circumstances, it would not be necessary to fill a prescription for thirty pills if only twelve were medically indicated.

Importantly, as with all of the County's pharmaceutical plan proposals, if in a particular circumstance there is a medical reason why a greater amount needs to be prescribed, a coverage review is available by calling Express Scripts. The County's final offer expressly makes clear that if the physician sets forth a legitimate medical necessity for why a greater quantity is required, it will be approved.

The County asserts that prior authorization and quantity duration are common sense measures to minimize waste or abuse. As Grew testified, they are becoming common place practices in the pharmaceutical benefits industry and like step therapy, have successfully been implemented for millions of Americans with little controversy or difficulty. This proposal, if awarded, would save the County approximately $860,000 per year ($573,000 for prior authorization and $287,000 for quantity duration.

With regard to this proposal, the Union again asserts that the County has not provided a list of which medications would be subjected to these restrictions.

In summary, the County conceded that all of the proposed changes to the health benefit and pharmaceutical benefit plans would have some measure of impact on its employees. The County contends that it certainly has no desire to diminish benefits unreasonably. It argues that it has presented undisputed evidence that, in light of the impending Cadillac Tax, it is necessary to make these proposals to cut unnecessary costs attributed to health and prescription coverage. The County contends that its proposal seeks changes which will impact very few employees, and in a relatively minimal way. The County contends that these proposed changes would reduce the County's 2018 "Cadillac Tax" liability from $2,039,949 to $628,463. Finally, the County notes that if none of these proposals at all are awarded, or are only awarded in part, it would be fundamentally unfair to the negotiations units that already have or will soon agree to them, as well as the County's unrepresented employees. The County continues that, even if there is no particular evidence that PBA and SOA members have utilized their health care benefits inappropriately or excessively compared to other County employees (and the Prosecutor has never claimed as such) they should not be excused from the shared effort necessary to keep the County's health care programs healthy themselves. To do otherwise, or to provide some added consideration to the PBA and SOA in return for awarding these common-sense proposals, would be neither fair nor equitable. This is especially true here because, as McGuane testified, these proposals focus strictly on excessive out-of-network care and the overuse of brand name drugs. Responsible PBA and SOA employees who stay in-network and use generic medication wherever possible will have their employee contributions reduced.

\* \* \*

The Union argues that the County’s proposed health and prescription plan changes should be rejected as unsubstantiated and unwarranted. It contends that each proposal would result in out of pocket expenses for the members of the PBA and SOA if any of the proposed modifications are awarded. For instance, the Union contends that these proposals will likely increase the number of prescriptions submitted to the pharmacy. Further, the Unions point out that these proposals would inevitably result in more visits to the treating physician and a delay in proper medical care. The Unions avers that each of the concessions sought with respect to the health care and prescription plans must be rejected.

\* \* \* \*

With regard to the proposed changes in the health benefits plan, I am inclined to permit an increase in the out-of-pocket maximums; the emergency room co-pays; and a change in the basis of the reimbursement rate for out-of-network expenses.

An increase in the out-of-pocket maximums to $5,000 for the member and $10,000 for dependents appears at first blush to be stratospheric. However, if an employee stays “in-network”, there are virtually no out-of-pocket expenses except small co-pays for certain medical services. In this instance, it was universally agreed that Horizon Blue Cross/Blue Shield has an extensive network of medical providers; not just in New Jersey, but nationally. There really is no valid reason an employee and his/her dependents would be unable to find a treating physician, specialist or other practitioner within the Horizon network. If one is able to obtain medical treatment in network, then the employee’s decision to go out-of-network is one of personal choice, either for convenience or because of an ongoing relationship with a favorite practitioner. While the employer has a contractual obligation to provide the employee and his dependents with medical care, it does not have to provide the employee with an unlimited choice of where to obtain that care. If the employee chooses to go outside Horizon’s broad network of providers, he/she does so knowing it will be a greater personal expense. There is no rational basis to assign the cost of this personal decision to the County’s taxpayers.

With regard to emergency room co-pays, the objective is to set the co-pay high enough to dissuade employees and their dependents from using the emergency room for medical issues which are not true medical emergencies, but reasonable enough so that employees will not be discouraged from going to the emergency room when there is a medical emergency. I accept the testimony of insurance consultant Duffy that Horizon has determined that a $100 co-pay will significantly diminish the use of emergency rooms for medical needs that could be handled through an urgent care center or by promptly seeking medical treatment through a primary care facility. The question is would a more reasonable co-pay also accomplish the same result? Duffy testified that Horizon has determined that a $50 co-pay would not achieve the same results. Moreover, the evidence shows that while this amount is higher than the public sector has been accustomed to, it is within the industry norm.

In addition, the evidence shows that most employees only visit the emergency room once a year or less. So, while $100 is a big co-pay for a single medical event, it should not happen too often through the course of a year. Further, the co-pay is waived where the patient is admitted. In addition, the members of these two bargaining units are sufficiently compensated so that a $100 co-pay is not unreasonable. Therefore, I award the $100 co-payment for emergency room visits.

As found above, there is no justification to continue to burden the Monmouth County taxpayers with the cost of employees’ personal decisions to cover out-of-network expenses. The same is true for the UCR rates for out-of-network expenses. The Union’s health benefit consultant made a convincing argument that a change in rate calculation from the UCR rate to 150% of the CMS rate would potentially result in a sizable increase in the amount the employee would have to pick up in “balance billing” from the practitioner. But, again, this potential for the employee to incur significant costs would be the result of the employee’s personal choice to go out of network, particularly where the pool of in-network practitioners is so extensive. It is in the public interest to allow employees to obtain quality medical care; it is reasonable for the taxpayers to shoulder some of the costs of that care; but it is not in the interest of taxpayers to pay for an employee’s own choice of having a surgical procedure or other treatment done by the employee’s favorite physician rather than an in-network practitioner.

Accordingly, I award the following:

The County shall be entitled to implement its health care design plan changes as identified below, beginning on or after January 1, 2015 and after it has provided the PBA, the SOA, and the affected employees with at least 60 days’ notice, and provided it also implements said changes for the County’s unrepresented employees.

- Increase Out-of-Pocket Maximums to $5,000 per employee and $10,000 for dependents;

- Increase Emergency Room Co-Payments to $100 per visit;

- The County’s reimbursement rate for out-of-network medical costs will be based upon 150% of the Medicare rate.

The County continues to retain the right to change health benefit providers. However, in the event that the County decides to change providers, these design plan changes awarded herein will immediately be subject to re-opened negotiations concerning same. The arbitrator retains jurisdiction.

With regard to the changes sought by the County concerning its prescription plan, I will award the proposed changes concerning network narrowing, “dispense are written”, and “step therapy”. I decline to award the proposals for quantities limited.

The County asked for permission to eliminate “one” of the three major pharmacy chains from its list of approved pharmacy venders: CVS, RiteAid, or Walgreens. However, the Express Scripts consultant testified that it is almost certainly Walgreens that is being targeted for elimination from the approved list. I accept the testimony of the Express Scripts consultant that, of the three, Walgreens consistently prices its drugs higher than its competitors. In any event, I agree that the County should have the ability to eliminate one of the sources of prescription drugs if its prices are not competitive. It is not in the public interest to spend more taxpayer dollars for the same medication, particularly when the employee has so many alternative sources to obtain medications. Employees and their families will continue to be able to have prescriptions filled at the remaining two major pharmacy chains, as well as Walmart, grocery stores, and independently owned pharmacies. Further, the County proved that the availability of alternative pharmacies within a close geographic area to virtually every employee, and some operating 24-hours, will prove no significant inconvenience to employees.

The County’s proposal to eliminate one of the three major pharmacy chains (Walgreens, RiteAid, or CVS) from its network of approved pharmacies is awarded.

I also award the proposal to limit payment for scripts to “Dispense as Written.” I believe this is an obvious and harmless source of savings. Simply put, it allows the pharmacy to substitute a generic formula for the name brand formula unless the prescribing physician prescribes otherwise. In New Jersey, all practitioners use the standard prescription format established by the State Medical Examiner’s Office. On each script, there is a box or line on which the physician can check “do not substitute”. If the physician wishes to limit filling the medication with brand name only for whatever reason, he or she simply initials this box. This results in a requirement that the pharmacy fills the script with only the brand name formula and the County pays the brand name costs. Where this box is not checked, the pharmacy will ask the member if a generic equivalent can be substituted. Under the County’s proposal, the employee (or dependent) will pay the generic cost if he/she allows the generic substitution. If the employee insists on the brand name, then the employee will pay the regular brand co-pay plus the difference between generic versus brand price.

This seems more than fair to the Employer and to the employee; the employee obtains the needed medication because generics are required to have the same active ingredient as the related brand; the County does not incur the added costs of filling with brand name drugs needlessly; and the employee still has the right to “upgrade” to brand but at his/her own expense. This proposal is awarded.

The next County proposal is for prescription “step therapy” as explained above. First, it should be noted that this limitation is only applicable to medications for certain chronic conditions, not to drugs which treat an emergency ailment. In essence, the employee would be required to treat a chronic condition with first a generic or less expensive brand name before stepping up to a more costly brand choice.

The problem with this proposed design change is the added levels of interaction that might be required between the treating physician and the patient, and the treating physician and Express Scripts. Conceivably, the physician writes the script, and the pharmacy then advises the patient that the drug is on the “step therapy” list and Express will not approve it as a “front-line” drug. Unless the employee assumes the full price of the script at that point, he/she must then contact the doctor, who must then write a new script for the less expensive medication, or the physician can contact Express Scripts to explain why the physician believes the high-end medication is absolutely necessary. If a new script for the less expensive alternative is then written, and the patient believes it is ineffective, he/she must then follow up with the physician, who can then try again for the higher priced brand. All this sounds like a hassle for the employee and for the treating physician, not to mention the possibility that additional follow-up visits add to the cost of the employee’s medical treatment, both for the County and for the employee.

However, these negatives can be overcome with some education to the employees and some preparedness. If the County provides and periodically updates, to the employee, a list of drugs which are subject to step therapy, the employee can advise his/her physician at the first visit that the plan is subject to step therapy. The treating physician can then decide to write the script for the less expensive brand (or generic) in the first instance, or call Express Scripts to seek pre-approval.

Second, while it might seem like additional doctor’s visits would be necessitated by step therapy, the fact is, and most chronic conditions require periodic visits to the patient’s physician in any event. On balance, I find that the savings benefits to the County’s taxpayers outweigh the potential inconvenience to the employee. Therefore, this proposal is awarded.

Finally, the County proposes to limit quantities of certain medications as well as dosage strengths. This proposal is denied. While I understand the theory behind this plan change, I cannot accept it. If a treating physician writes a script for 30 pills, then that is what should be dispensed to the patient. This proposal would seek to supersede the physician’s judgment for that of Express Scripts managers, and would potentially keep the patient going back and forth from the doctor to the pharmacy for additional medication. This proposal is denied.

\* \* \* \*

I award the following:

The County shall be entitled to implement its prescription drug design plan changes as identified below, beginning on or after January 1, 2015 and after it has provided the PBA, the SOA, and the affected employees with at least 60 days’ notice and a list of medications subject to step therapy, and provided it also implements said changes for the County’s unrepresented employees.

- Eliminate one of the three major chain pharmacies from the list of approved sources for prescriptions;

- Implement “Dispense as Written” policy;

- Implement Step Therapy Plan.

These changes in the prescription plan will be implemented on an 18-month experimental basis. At the conclusion of the trial period, the County will evaluate whether the measures implemented have been effective at controlling costs. The Unions will evaluate the level of inconvenience or harm to its members. Either party may seek to reopen negotiations concerning the viability of continuing with these measures on a permanent basis.

**AWARD SUMMARY**

**Duration:**

Three-year contract: January 1, 2014 through December 31, 2016.

**Salaries and Step Guides**:

PBA

2014: Effective January 1, 2014, increments for all employees in steps A through 7; effective July 1, 2014, all employees at step 8 will receive a $1,000 increase.

2015: Effective January 1, 2015, increments for all employees in steps A through 7a; effective January 1, 2015, all employees at step 8 will receive a $1,000 increase.

2016: Effective October 1, 2016, increments for all employees at steps A through 7b; effective January 1, 2016, all employees at step 8 will receive a $1,000 increase.

SOA

2014: Effective January 1, 2014, superior officers of each rank will receive a salary increase of $1,000.

2015: Effective January 1, 2015, superior officers of each rank will receive a salary increase of $1,000.

2016: Effective January 1, 2016, superior officers of each rank will receive a salary increase of $1,000.

**Retroactive Pay:**

Consistent with Article XIII, Section 2 of the parties’ last contract, employees who retired or were promoted out the bargaining unit in 2014, but prior to the effective dates awarded herein, will be entitled to a pro-rated portion of the retroactive increases.

**Modifications to Step Guide:**

Two steps will be added to the salary guide effective January 1, 2015. Step 7a will have a value of $120,000 and step 7b will have a value of $125,000. In addition, effective January 1, 2015, the step value of step 7 will be changed to $115,000.

**27th Pay Day**:

Add a new Section 3 to Article XIII as follows:

Employees are paid on a bi-weekly basis. In any calendar year in which there are 27 pay days rather than 26, employees’ annual salary will be paid in 27 equal installments rather than the normal 26 equal installments.

**Future Increments:**

Modify Article XIII, Section 1, as follows:

If an interest arbitration salary cap is still in effect as of January 1, 2017, investigators who are not at top step in 2016 will not move to the next step in the guide in 2017 until the parties finalize a successor agreement though negotiations or through interest arbitration. Those officers will then move, if applicable, pursuant to the terms of the successor agreement. If the 2017 step movement cost does not exceed any interest arbitration salary cap in effect as of January 1, 2017, upon mutual agreement by the parties, those investigators in the guide shall receive their step increment in 2017 prior to resolving the successor agreement.

**Work Schedules (Article III):**

Modify Article III, Section 2, as follows,

Section 2: The Prosecutor shall have the right to schedule the hours of work in the workweek and to vary the daily or weekly work schedule consistent with the needs of the Monmouth County Prosecutor’s Office (MCPO). The Prosecutor’s Office will make every effort to provide at least 48 hours advance notice to the employee of any intended change in work schedule, except in the event of emergent circumstances which shall be in the sole discretion of the Prosecutor.

**Temporary Leave (Article VII):**

Add to Article VII, Section 1, the following:

Should the legislature pass any law which limits the maximum amounts payable to employees for accumulated, unused sick leave, then this provision shall be amended in accordance with the statutory provisions.

W**ork Incurred Injury (Article X):**

Modify this article as follows:

The statutory compensation provided in N.J.S.A. 34:15-12(a) and applicable law, is recognized as controlling the issue of access to payment for employees on temporary disability leave. Reimbursement for temporary disability leave of six (6) months or less shall be calculated to ensure that employees on such worker’s compensation temporary disability leave will be paid the same amount of take home pay [net pay] as they were receiving prior to their disability leave. The Prosecutor may in his sole discretion extend such leaves for up to one year.

In the event that an injury is directly attributable to the specialized sworn law enforcement duties of an investigator, such reimbursement of an amount equal to the employee’s net pay shall continue for up to one year. However, in the 11th month on worker’s compensation, their members will receive 95% of net pay, and in the 12th month on worker’s compensation, employees will receive 90% of net pay, unless County policy is more generous. Notwithstanding the foregoing, if the County offers a greater worker’s compensation benefit to its employees not represented for the purposes of collective negotiations, employees represented by the Association shall be entitled to an identical benefit.

**Reductions In Force (New Article):**

Add the following new article to the PBA contract:

Section 1: Seniority, for purposes of this Article, shall be defined as the length of service with Monmouth County Prosecutor’s Office (MCPO).

Section 2: In the event that a reduction in force is necessary, the Prosecutor shall consider seniority as a factor in determining which employees will be laid off. The Prosecutor may also consider employees’ specialized training, special expertise and/or unique skills, as well as employees’ performance records. Forty-five (45) days advance written notice shall be given to any employee selected to be laid off. In the event of a layoff, the laid off employee shall be placed on a recall list for three (3) years. Placement on the recall list shall provide preference to the laid off employee over any other applicant except where special skills or expertise is a controlling factor.

**Reductions In Force (New Article)**:

New Article to be added to the SOA contract:

Section 1: Seniority, for purposes of this Article, shall be defined as the length of service with Monmouth County Prosecutor’s Office (MCPO).

Section 2: In the event that a reduction in force or a reduction in the number of supervisory investigators positions is necessary, the Prosecutor shall consider seniority as a factor in determining which employees will be laid off or demoted. The Prosecutor may also consider employees’ specialized training, particularized expertise and/or unique skills, as well as employees’ performance records. Forty-five (45) days advance written notice shall be given to any employee selected to be laid off or demoted. In the event of a layoff, the laid off employee shall be placed on a recall list for three (3) years. Placement on the recall list shall provide preference to the laid off employee over any other applicant except where special skills or expertise is a controlling factor. Moreover, any employee demoted shall be given preference over any other individual in the event of future promotion to his/her former rank except where specialized training or particularized expertise is a controlling factor.

**Grievance Procedure (Article XVI):**

Modify Section 2 as follows:

If a satisfactory settlement is not reached at Step three, the Association may request arbitration in writing within twenty (20) business days after the answer is given by the Prosecutor or the grievance shall be deemed to be waived. A request for arbitration must be submitted in writing to the Public Employment Relations Commission (“PERC”) with a copy sent to the Prosecutor, asking PERC to submit panels of arbitrators to each of the respective parties to this Agreement so each party may independently exercise its right of selection, which may be filed directly with PERC pursuant to its rules.

Sections 9 of the contracts are eliminated.

**Health Care Plan Changes:**

Add the following provisions to the contracts:

The County shall be entitled to implement its health care design plan changes as identified below, beginning on or after January 1, 2015 and after it has provided the PBA, the SOA, and the affected employees with at least 60 days’ notice, and provided it also implements said changes for the County’s unrepresented employees.

- Increase Out-of-Pocket Maximums to $5,000 per employee and $10,000 for dependents;

- Increase Emergency Room Co-Payments to $100 per visit;

- The County’s reimbursement rate for out-of-network medical costs will be based upon 150% of the Medicare rate.

The County continues to retain the right to change health benefit providers. However, in the event that the County decides to change providers, these design plan changes awarded herein will immediately be subject to re-opened negotiations concerning same. The arbitrator retains jurisdiction.

Prescription Plan Changes:

The County shall be entitled to implement its prescription drug design plan changes as identified below, beginning on or after January 1, 2015 and after it has provided the PBA, the SOA, and the affected employees with at least 60 days’ notice and a list of medications subject to step therapy, and provided it also implements said changes for the County’s unrepresented employees.

- Eliminate one of the three major chain pharmacies from the list of approved sources for prescriptions;

- Implement “Dispense as Written” policy;

- Implement Step Therapy Plan.

These changes in the prescription plan will be implemented on an 18-month experimental basis. At the conclusion of the trial period, the County will evaluate whether the measures implemented have been effective at controlling costs. The Unions will evaluate the level of inconvenience or harm to its members. Either party may seek to reopen negotiations concerning the viability of continuing with these measures on a permanent basis.

\* \* \* \*

All proposals by the County/; and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties.

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. My Award also explains

how the statutory criteria factored into my final determination.

Susan W. Osborn

Interest Arbitrator

Dated: August 4, 2014

Trenton, New Jersey

On this 4th day of August, 2014, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

1. County exhibits will be referred to as “C- “; Local 256’s exhibits will be referred to “U- “. [↑](#footnote-ref-1)
2. The parties presented 23 hours of testimony on the record and more than 178 exhibits. [↑](#footnote-ref-2)
3. Additional provisions concerning base salaries for each bargaining unit will appear below. [↑](#footnote-ref-3)
4. At hearing the PBA/SOA clarified that the intent of this proposal is to grant credit for prior PFRS eligible service to employee’s service time in calculating vacation leave allotment. [↑](#footnote-ref-4)
5. Preliminary 2014 data, not seasonally adjusted [↑](#footnote-ref-5)
6. (E): Reflects revised inputs, re-estimation, and adjustment to new state control totals.

   [↑](#footnote-ref-6)
7. (P): Preliminary. [↑](#footnote-ref-7)
8. 2013 State-ranking building permit information was not available. [↑](#footnote-ref-8)
9. The County also experienced a mass housing reappraisal after Hurricane Sandy. [↑](#footnote-ref-9)
10. The Union maintains that the 2013 and 2012 current liabilities include $12,471,696 and $23,983,663 (respectively) of appropriation reserves, which may lapse and create surplus, and encumbrances payable, which may be cancelled and also result in surplus.

    [↑](#footnote-ref-10)
11. Marshall testified that cash balance equals “free” fund balance. [↑](#footnote-ref-11)
12. Dollars are rounded. The chart is supported by the following: The 2014 Budget, 2009-2012 Audited Financial Statements, and the 2013 AFS Unaudited Financial Statements. [↑](#footnote-ref-12)
13. Worker’s Compensation (WC) accounts for $5.6 million of the 2014 budget. Marshall testified that for the first year of WC, the employee receives his/her salary; after the first year, the employee receives 70% of salary. [↑](#footnote-ref-13)
14. Some members of each bargaining unit have elected not to receive health care coverage through the County plan and therefore, make no contribution. [↑](#footnote-ref-14)
15. I infer this fact from Wilbert’s testimony that one investigator recently left the bargaining unit for another job because she was unwilling to meet the Prosecutor’s residency requirement. [↑](#footnote-ref-15)
16. Sheriff’s sergeants and corrections sergeants have the same pay scale. [↑](#footnote-ref-16)
17. This is based upon the twelve contracts settled in 2014. Increases range from a low of $1,492 to a high of $3,024. [↑](#footnote-ref-17)
18. An employer can still be contractually liable for the increment payment if the contract still so requires it.

    [↑](#footnote-ref-18)
19. It is assumed that the Prosecutor is only seeking to eliminate the automatic nature of increment payments and not to abolish the entire step guide system. To the extent there is an ambiguity in the Employer’s proposal, I specifically reject any suggestion that the step guide system be abolished. There is no support in the record for such a proposal. [↑](#footnote-ref-19)
20. The County alleges that it was unable to file a Scope of Negotiations Petition with PERC seeking to have this proposal declared non-negotiable because of the 45-day time limit on interest arbitrations. [↑](#footnote-ref-20)
21. There are no employees in the PBA unit and only three employees in the SOA unit who are eligible for the traditional plan. [↑](#footnote-ref-21)
22. Exhibit P-69 is the New Jersey State Health Benefits Program ("SHBP") Plan Year 2014 Rate Renewal Recommendation Report. The SHBP's consultants are recommending an increase of just under 8% for the year for the Local Government Employer Group. [↑](#footnote-ref-22)
23. Duffy testified that one County employee used the emergency room services 29 times last year. [↑](#footnote-ref-23)
24. At the hearing, there was some discussion of the difference between dispense as written and steptherapy. Dispense as written applies when there is a brand name medication and a generic equivalent with the same active ingredients and identical FDA standards as the brand name. See P-74 (page 4). Step therapy involves medications that are not identical, but are approved to treat the same condition. [↑](#footnote-ref-24)