

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**SUSSEX COUNTY SHERIFFS**

**AND**

**PBA LOCAL 138**

Docket No. IA-97-29

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**BEFORE: ERNEST WEISS, ARBITRATOR**

**APPEARANCES :**

**FOR THE FOP:**

**CHARLES E. SCHLAGER, ESQ.  
LOCCKE & CORREIA**

**FOR THE COUNTY:**

**BRIAN T. GIBLIN, ESQ.  
GIBLIN AND GIBLIN**

## **PRELIMINARY STATEMENT**

The above parties are signatories to a Collective Bargaining Agreement for the term of January 1, 1993 through December 31, 1995. The bargaining Unit represented by PBA Local 138 consists of all Sussex County Correction Officers, Sergeants and Lieutenants.

Since the parties were unsuccessful in negotiating a successor agreement, I was designated to serve as Interest Arbitrator in accordance with the rules of the Public Employment Relations Commission. Prior to my appointment the parties engaged in a series of collective bargaining sessions and were successful in resolving some outstanding issues. Initially I attempted to mediate the remaining disputes in order to help resolve the outstanding issues voluntarily. At one point a tentative settlement was actually reached and a memorandum of understanding was executed by the parties. However, since the understanding was not ratified, a formal arbitration hearing was held on October 20, and November 7, 1997. During the formal hearing the parties were afforded the opportunity to present documents, testimony and argument in support of their respective position. The proceedings were transcribed and the parties were also afforded the opportunity to submit post hearing briefs which I thoroughly considered.

Since the parties failed to agree upon an alternative form of submission, I am mandated by statute to decide the outstanding issue with conventional authority and in accordance with the revised statutory criteria which is as follows:

### **STATUTORY CRITERIA**

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

1. The interest 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, 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 service 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 jurisdiction, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however that each

party shall have the right too 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 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 the factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45. 1 et seq.)
6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in dispute in which the public employer is a count or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will effect 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 employee' 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 taxpayer of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or © initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
7. The cost of living.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16g)

## **FINAL PROPOSAL OF THE FOP**

**Wages:** Increases to be across the board at each step as follows:

1996	2% 1/1/96	2% 7/1/96
1997	2% 1/1/97	3% 7/1/97
19/98	3% 1/1/98	2% 7/1/98
1999	3% 1/1/99	2% 7/1/99

**Clothing allowance:** Increase to \$800.00 per year effective 1/1/97

**Delete step A of the Salary Schedule (post October 1, hirees)**

## **FINAL PROPOSAL OF THE COUNTY**

### **Salary Ranges:**

Eliminate the step system and replace it with minimums and a \$ amount of increase. (The minimum and maximum represent a 3% increase each year.)

### **Lieutenants:**

1996	\$42,242	(Increase \$1,134)
1997	\$50,719	(Increase \$1,477)
1998	\$52,241	(Increase \$1,522)

### **Sergeants:**

	<b>Minimum</b>	<b>Maximum</b>	<b>Increase</b>
1996	\$40,333	\$47,286	\$2,500

1997	\$41,543	\$48,705	\$2,600
1998	\$42,789	\$50,166	\$2,700

**Officers:**

	Minimum	Maximum	Increase
1996	\$25,033	\$38,941	\$2,000
1997	\$25,784	\$40,109	\$2,100
1998	\$26,558	\$41,312	\$2,200

No employee shall be paid less than the minimum of the range nor more than the maximum of the range.

**Salary increases:**

On January 1 of each year, each employee shall receive the increase listed above except as listed below:

1. In 1996 and 1997, if the amount of the automatic step was greater than the above increases the employee's salary shall not be reduced.
2. Should the increase listed above exceed the maximum of the range, the employee shall receive the maximum of the range only.
3. On January 1, 1997, each officer hired n 1994 will receive the increase listed above plus \$800. Not to exceed the maximum of the range.

In addition to the evidence and testimony at the formal hearing, both parties submitted extensive post hearing arguments in support of their respective positions and in light of the above statutory criteria.

#### THE INTEREST AND WELFARE OF THE PUBLIC.

There was no dispute between the parties that the interest and welfare of the public are best served by providing its employees fair wages and conditions of employment while at the same time insuring the economic viability of the County and its residents.

The County pointed out that the common thread running through the testimony of its witnesses and the evidence was that the County is doing its best to maintain the current levels of services it provides while moderating the tax increases of its already overtaxed citizens. The budget director and the Personnel director both testified extensively about the various methods used to by the Board of Freeholders to reduce costs and stabilized the tax rate. The County argued that it has no trouble filling vacancies in the Sheriff's Department at the existing wage rates. It contended that the current PBA contract as modified by the County's proposals of changes will provide a fair and equitable wage package while allowing the County to maintain a full complement of qualified officers.

The PBA argued in part that the County is well served by the exemplary performance of the Officers in the Unit. To substantiate its position regarding the efficiency of the facility, the parties provided the undersigned an escorted tour of the impressive modern facility. The PBA argued that the many successes of the Sussex County Correctional Facility are due to the dedication, skill, efficiency and productivity of the members of this Unit, and that the interest and welfare of the residents of the County would be best served by granting the modest wage proposal of the PBA..

#### COMPARISON OF COMPENSATION

Under statutory factors 2 and 3 the PBA argued that the high level of productivity and professionalism of the department is not matched with comparable compensation. It argued that the base wage rate for Sussex County top-step Correction Officers is the lowest among all comparable departments in evidence. At the hearing before me the PBA introduced numerous complete agreements for other jurisdictions. With its top rate of \$37,807, according to PBA chart No. 4, the Sussex county Corrections Officers rank 15<sup>th</sup> of the 19 other jurisdictions in the state of New Jersey. Only Warren, Burlington, Gloucester and Cumberland counties are slightly below Sussex in pay rates. The members of this Unit are 14.24% lower than the average county correction officer in the State.



In chart No. 5 the PBA introduced a list of other law enforcement departments in Sussex County. It concluded that the members of this Unit earn on average \$9.846 less than the other departments in Sussex County. The PBA concluded that even if the Arbitrator should award the initial PBA position of 7% per year, this Bargaining Unit would still be significantly behind other law enforcement agencies in the County. Additionally, the PBA argued that there are no offsetting benefits to compensate for the low wage rate. In support of their position the PBA submitted Chart No. 6 illustrating that the members of the Unit remain in the same relative position even when longevity payments or other benefits are added to the base wage.

The PBA also stressed that the comparative analysis also demonstrates conclusively that the Sussex County Correction Officers receive significantly less in clothing allowance than the departments submitted into evidence.

Chart No. 8 of the PBA demonstrates that the percentage increases of submitted law enforcement departments average 4.6% in 1995, 4.6% in 1996 and 4.06% in 1997. The PBA insisted that its split increase proposal of 2%/2% in 1996, 2%/3% in 1997, 3%/2% in 1998 and 3%/2% in 1999 is substantially similar to the above average. The PBA stresses that an award of the PBA position will still actually result in a reduction in relative positioning of this bargaining unit with respect to other settlements in evidence. In this regard the PBA pointed out that the County's own evidence support this position.

With respect to the Comparison of Wages criteria, the County argued in relevant part that although there are very few private sector employees performing the same duties as the Sheriff's Officers, the County submitted evidence demonstrating that wages in general have been closer to the County's proposal than the PBA's.

Additionally the County argued that historically the PBA has enjoyed significant wage advantage over several of the other County bargaining units such as the CWA and the Welfare Unit. Also the County argued that the evidence of the recent awards submitted by the County demonstrate that the trend has been toward significantly lower awards most of the awards are closer to the County position. The County further argued that Sheriff's Officers who work in the jail are not comparable to Officers working in the field.

The County also argued that the absence of comparability with most of the bargaining units relied upon by the PBA strongly supports the County proposal both in dollars and methodology of removing the steps in order to eliminate the onerous impact of the across the board increase on top of the step movement.

With respect to the overall compensation, in addition to wages the County pointed out that the employees of this Bargaining Unit receive a substantial benefit package resulting in a significant financial outlay by the County.

## THE STIPULATION OF THE PARTIES

Both parties agreed that there were no important stipulations which would significantly impact on the instant arbitration.

## THE LAWFUL AUTHORITY OF THE EMPLOYER

Here the PBA argued that there is no prohibition of the lawful authority of the public employer to fund the last offer position of the PBA. It pointed out that the Department of Community Affairs publishes the "index rate" on an annual basis. The local governmental agency has the discretion to expand the formula to 5% cap. In this case the public employer did not need to utilize its lawful authority to increase the cap. Its flexibility to do so was carried over to the following year as permitted under the regulations. Also the County's unused surplus is within the acceptable limitations. It is available for budget stabilization or in cases of unexpected expenses or contingencies. According to the County's own testimony the surplus for 1996 was \$7,728,000. The PBA stressed that the Cap is in no way a prohibition in this case and there is no difficulty in paying the PBA's wage proposal.

The County argued in relevant part that it pays its employees a competitive wage. It pointed out that if the entire PBA position is awarded the top step base salary would increase from \$37,807.00 in 1995 to \$45,612.00 in July of 1999. The County calculates this to be a 20.64% increase over the four year term of the Agreement or more than 5% per year average. It insisted that in a time of

decreasing interest arbitration awards, and contract settlements and given the present economic conditions confronting the County, the PBA wage proposal goes well beyond the acceptable limits.

In defense of its own economic proposal the County pointed out that the offer may not be equated to a single percentage since the dollar amount varies. At the entry level for example in 1995 the amount of increase is as much as 8.2%.

the County argued that its proposed compensation system is more equitable since it treats all employees equally whereas the current step system results in huge increases for only certain employees. Additionally, the step system represents a continuing financial stranglehold which the County cannot control and it is unfair to the taxpayers of the county.

#### THE FINANCIAL IMPACT ON THE GOVERNING UNIT, ITS RESIDENTS AND TAXPAYERS.

The PBA argued in part that there would be no adverse impact on the governing unit or its residents if the PBA proposal were to be awarded. The impact would be almost de minimis and barely perceptible. In support of this position it presented the testimony of Vincent J Foti an expert in municipal finance, who testified in relevant part that the increases proposed by the PBA would cost the County only about \$200,00.00 per year which would not have a negative impact upon the county. Without the step movement, the per-year

amount would average to be \$143, 492. This amount is easily within the County's ability to pay.

Finally, the PBA argued that the County improperly compares the non-uniformed employees with the uniformed employees in this unit. The wages and benefits of the members of the PBA cannot be reasonably compared with non-uniformed employees of the County or employees in the private sector.

To illustrate the economic problems facing the County, the Employer introduced the testimony of Patrick Bailey, the Director of the Division of the Budget Management who is responsible for the annual preparation of the budget. Bailey testified in relevant part that in municipal finance the rule of thumb is to have between a low of 5% and a high of 15% in reserve for unexpected expenses or contingencies. He further stated that in 1997 the fund balance was about 3.13 million dollars or slightly above the minimum acceptable level. Additionally Bailey testified that the net ratable base of the County has decreased from 8.738 billion in 1991 to 8.456 billion dollars in 1997. This will increase the amount that each property owner will have to pay.

#### **COST OF LIVING**

Both parties relied on the Consumer Price Index (CPI) to support their respective positions regarding their economic proposals in this matter.

The PBA insisted that the CPI should be used only as a general measure and should be viewed in light of the cost of living in the specific region and not the general index. It further pointed out that since the CPI is based on the Buying habits of the "average" consumer it may not be a perfect reflection of an individual's inflation experience. The PBA argued that the actual inflation experience of its unit members are closer to 3.03% which is at the top of the range within the region.

The County in part argued that the CPI is generally regarded as strong evidence of the cost of living. It pointed out that the index is used by economists to determine the state of the national economy. It further argued that if higher CPI justified higher wages in the past, than a lower CPI, as has been the case in recent years, justifies a lower wage increase. The County concluded that it submitted evidence to show that in the recent past 5 year period since 1991 through 1995, the wage scale for a top-step Correction Officer rose more than \$4,000.00 above what a CPI adjusted wage increase would have been. The County further pointed out that in addition to the wage increases, there were increases in the health insurance and other mandated obligations which the County had to absorb.

## THE CONTINUITY AND STABILITY OF EMPLOYMENT.

Here the PBA argued area standard or “prevailing wage” It pointed out that the Exssex County Correction Officers are poorly paid and do not have sufficient offsetting benefits. It referred to chats No. 4, 5, 6, 7, which it claims clearly establishes full support of the PBA position on the wage increases.

The PBA concluded that based upon the testimony and evidence introduced at the hearing, and based upon the arguments in its summation, the Arbitrator should rule in favor of the final wage position of the PBA..

The County contended that that there has been no showing that the continuity and stability of the of employment would be adversely affected by the County’s proposal or enhanced by the PBA’s proposal. The County insisted that this Bargaining Unit enjoys an extremely competitive wage and benefits package. Moreover, it pointed out that the Employer has experienced on problems in recruiting qualified candidates for any positions that become available.

The County urged that the proposal submitted by the Sussex County Sheriff is more reasonable than the one submitted by the PBA and therefore it should be awarded by the arbitrator.

## **DISCUSSION AND OPINION**

Since the parties did not elect an alternative method of resolution of their wage dispute, I am mandated by the amended statute to decide the issue under the conventional method of arbitration, giving appropriate weight, where relevant, to the eight statutory criteria.

A thorough consideration of the wage positions and arguments of both parties in accordance with the statutory criteria, leads me to the conclusion that, for the reasons stated below, the most equitable award in this case is an annual wage increase of 3.5% commencing on January 1, 1996 and 4% on each subsequent January 1<sup>st</sup> of the remaining three years of the Contract. The annual split increases proposal of the PBA which would have resulted in a total wage increase, after compounding, of more than 20%, was not convincing. Such an arrangement of split increases are useful where greater than normal increases are found to be in order and where the temporary financial condition of the employer dictates a deferral of the immediate impact of the increases. There was nothing in the record, in my opinion, to suggest a need for split increases in this instance. The additional \$200.00 for clothing allowance proposed by the PBA is hereby granted commencing on January 1, 1998.

In view of the foregoing the County's wage proposal is hereby rejected. The elimination of the existing step system is a radical departure of the historic compensation arrangement between the parties. I have nothing compelling in the record to indicate that the annual step progression of compensation, which has long been in existence here and in other bargaining units of this nature, should now be totally transformed to a salary range arrangement, of minimum and maximum, as proposed by the County.



**The interest and welfare of the public** is the first factor in the amended statute. However, as I have stated in the past, it is axiomatic and somewhat contradictory that a well paid police force and a low tax rate are both in the interest and welfare of the public. Therefore, it is desirable to maintain a balance between these seemingly contradictory interests of the public. The residence and taxpayers of the County benefit by having a competent and efficient Sheriff's department. This, as agreed to by the County, requires the maintenance of a fair and competitive wage rate in order to reduce employee turnover and preserve a reasonable continuity of experienced and well-trained officers.

**The Comparison of Compensation** factors were extensively discussed both at the formal hearing and in the parties' post hearing briefs. While all the sub-criteria were considered, the PBA Chart No. 4 was found particularly instructive. This list of 19 counties compares the top step correction officers pay. The average base wage in 1995 is shown to be \$44,085 as compared to \$37,807 for the Sussex County correction officers. Additionally, PBA chart NO. 8 reveals the average increase to have been 4.6% in 1995, 4.6% in 1996 and 4.09% in 1997. Such average salaries and increases obviously include the wealthiest as well as the poorest counties in the State. Therefore, a 3.5% in the first year and a 4% per year thereafter for the remaining three years of the contract is, in my opinion, the most equitable result. In reaching this decision I considered the other County bargaining units as well as the private sector settlements. The county's radical proposal of transforming the entire compensation arrangement by eliminating the step system on the salary guide was found not persuasive.

According to the testimony of Connie Sutton, Personnel Director, the County wage proposal for the duration of the Contract would be "approximately 20%" (T 1@ 131) However, there was no compelling evidence to persuade me that such a radical departure from the historic wage arrangement was desirable at this time. Therefore, for the reasons stated above, both the PBA proposal of split increases and the County proposal to eliminate the step system were found not persuasive.

With respect to the **Lawful Authority of the Employer** I first considered the PBA argument that the County did not find it necessary to use its full Cap discretion of 5% and that the County has a comfortable economic surplus which it continues to accumulate. However, here I must reiterate that, the fact that the County may have the ability to pay the PBA entire proposal does not by itself mean that the PBA is automatically entitled to receive its proposal in full.

In considering the **Financial Impact on the Governing Unit its Residents and Taxpayers**, I considered in part the County's argument that the net ratable base of the County has recently decreased which is likely to impact the residents and taxpayers of the County. However I was not convinced that the amount of erosion of the tax base between 1991 and 1997 dictates or justifies the total disassembling of the long existing step system of compensation.

Consequently, in reaching my decision on the wage increases for the PBA, I of course considered all the statutory criteria discussed herein including the

voluntary wage settlements granted the other County bargaining units. In this regard I note that the testimony of Ms. Sutton, Director of Personnel, revealed that at least in the second and third year, that is 1997 and 1998, the other County units received split twos 2%. one in January and another 2% in July of each year. With the roll-up effect this arrangement results is obviously more than a net 3.08% as suggested by the County. Nevertheless, I was not comfortable with the split increases proposal of the PBA. Instead, a cleaner and more equitable approach, in my opinion, is to grant the PBA an across the board four year increase of 3.5% wage increase on January 1, 1996 4% on January 1, 1997, 4% on January 1, 1998 and another 4% on January 1, 1999. Given the relative standing of the PBA with respect to other similar county units, and in light of the other statutory factors, these wage increases are, in my opinion, the most equitable resolution of this dispute.

With respect to the Cost of Living factor I agree that it is a general measure and may not necessarily reflect the buying habits of all the officers in the Unit. However, it is the most widely accepted measure of the standard of living in a particular region. While both sides invoked the CPI in support of their respective positions, the County argument was slightly favored with respect to this factor. However, this did not tip the scales completely in favor of the County economic proposal.

I considered the **Continuity and Stability of Employment**, factor in terms of the overall positions of the parties. Here, it appears that the County was seeking to eliminate the existing salary guide in order to reduce the annual additional costs of the step system. However, it can be argued that a competitive wage scale contributes to the reduction of employee turnover, which results in fewer employees moving through the step system to reach the maximum. While I note the Employer's argument that it has no problem recruiting candidates to fill the openings in the Department, I must also note that fewer departures would eventually result in more employees at maximum, which would reduce or even eliminate the movement on the salary guide and abolish the need to eliminate the existing wage structure.

Both parties raised numerous arguments relevant to the statutory criteria all of which may not have been addressed in detail herein. However, all such arguments were analyzed and given careful consideration even if not specifically mentioned herein in writing.

Having thoroughly considered all the evidence and testimony in light of the statutory criteria I make the following:

## AWARD

The duration of the Agreement shall be January 1, 1996 through December 31, 1999

There shall be an across the board wage increase as follows:

As of January 1, 1996 a 3.5% increase.

As of January 1, 1997 a 4% increase.

As of January 1, 1998 a 4% increase.

As of January 1, 1999 a 4% increase

The clothing allowance shall be increased to \$800.00 effective January 1, 1998.

All other provisions previously agreed to by the parties shall be incorporated in the new agreement.



ERNEST WEISS, ARBITRATOR

STATE OF : NEW JERSEY)  
COUNTY OF: MONMOUTH)

On this 27<sup>th</sup> day of July 1998, before me personally came and appeared ERNEST WEISS, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same



JILL E. FARKAS

NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 5, 2000

