

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

CUMBERLAND COUNTY PROSECUTOR

“Public Employer,”

- and -

PBA LOCAL 396 & PBA LOCAL 396A

“PBA.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket Nos. IA-2012-028 & IA-2012-029

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the County:

Brian Kronick, Esq.
Genova, Burns & Vernoia
Philip M. Rofsky, Esq., on the Brief

For the PBAs:

Stuart J. Alterman, Esq.
Christopher A. Gray, Esq.
Alterman & Associates

Petitions to initiate interest arbitration were filed by PBA Locals 396 and 396A [the "PBA" or the "Unions"] on March 15, 2012 after declaration of impasse in negotiations between the PBAs and the Cumberland County Prosecutor [the "County" or "the Prosecutor"]. Thereafter, on March 30, 2012, I was appointed to serve as interest arbitrator in both filings by random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This law requires that an award or awards be issued by 45 days after appointment with no provision for a mutually agreed upon extension based upon good cause shown. Although there are two filings, there was a single appointment. Informal guidance indicates that the two contract impasses be treated as a single case for timeliness purposes. The law also subjects an interest arbitrator to a \$1,000 per day fine for each day an award or awards does not issue after the 45th day from the date of appointment.

On April 2, 2012, by letter, I scheduled an interest arbitration hearing to be held on April 18, 2012. Although separate petitions were filed, the hearings were consolidated for the purposes of economy and efficiency. Each party reserved the right to submit evidence unique to one or the other bargaining unit. In accordance with N.J.S.A. 34:13A-16(f)(1), each party was directed to submit a final offer no later than April 11, 2012. Each final offer was received in timely fashion.

Hearings were held on April 18 and April 26, 2012 in Bridgeton, New Jersey. At the hearings, the County and the Unions argued orally, submitted

substantial documentary evidence and examined and cross-examined witnesses. Testimony was received from Ken Pagliughi, Esq., former Cumberland County Prosecutor and former Cumberland County Assistant Prosecutor, Captain James Parent, Chief, Investigative Division - Prosecutor's Office, Sergeant George Chopek, President - PBA 396A, Detective Ryan Bresland, President - PBA Local 396, Raphael Caprio, PhD., PBA Financial Expert, Harold Shapiro, First Assistant Prosecutor and Ken Mecouch, County Administrator. As directed, both parties submitted post-hearing briefs on May 1, 2012.

The final offers considered in this proceeding reflect the following:

PBA Local 396A (Superiors)

1. **Injured on Duty (Add Provision)**

Whenever an Employee is injured in the line of duty, he/she shall not be charged with sick leave but shall be carried a "excused from duty."

2. **Minor Discipline Clause**

Cumberland County Prosecutor's Office and this Association hereby agree that matters involving departmental charges that are of minor discipline in nature, consisting of a suspension of five (5) days or less, against an Association member, shall be granted the opportunity to present the matter for final hearing and determination to the Public Employment Relations Commission for Binding Arbitration.

3. **Off Duty Action Clause**

All personnel covered by this Agreement who take any lawful police action during his/her off duty hours which action should have been taken by said employee on active duty will be entitled to the rights and benefit protections concerning such action as if on active duty.

Any lawful action taken while off duty will be compensated at the rate of time and one-half (1 ½) the normal rate of compensation.

4. **Retention of Benefits Clause / Past Practice Clause**

Retention of Benefits

The County of Cumberland and the Prosecutor agree that all benefits, terms and conditions of employment relating to the status of members of the Cumberland County Prosecutor's Office not covered by this agreement, shall be maintained at not less than the highest standards in effect at the time of the commencement of collective negotiations leading to the execution of this agreement.

5. **Union Security Clause**

Employees represented by this collective bargaining unit may not request payroll deduction for payment of dues to any other labor organization other than the duly certified majority representative. Existing written authorizations for payment of dues to any other labor organization shall be terminated.

6. **Layoff Language**

The Prosecutor, if he/she shall deem it necessary for demonstrable reasons of economy and just cause, may decrease the number of members and officers of the department or their grades and ranks. When an officer is demoted, such demotion shall be in the inverse order of their promotion. Subsequently, any demotion to investigator will cause the member to be placed at the top of the investigator salary guide. The demoted officers must be re-promoted in the order of demotion.

7. Replace all references of FOP Lodge 132 with PBA Local 396A

8. Modify Article XXIV solely to change opt out payment amounts.

a. An Employee opting out of county sponsored health benefits plan shall receive a stipend equivalent to

25% of the premium for the type of coverage they are waiving, but in no case shall the employee's stipend exceed the **\$5,000**. (emphasis in original)

9. Modify Article XXVII under section 7.
 - a. Replace 1040 hours of sick time with 540 hours of sick time.
10. **Duration of Contract**
 - a. January 1, 2011 through December 31, 2014
11. **Salaries**
2011 0%
2012 1.5% effective 1/1/2012, 1.5% effective 7/1/2012
2013 1.5% effective 1/1/2013, 1.5% effective 7/1/2013
2014 1.5% effective 1/1/2014, 1.5% effective 7/1/2014
12. Maintain other contract provisions.

PBA Local 396

1. **Injured on Duty (Add Provision)**
Whenever an Employee is injured in the line of duty, he/she shall not be charged with sick leave but shall be carried a "excused from duty."
2. **Minor Discipline Clause**
Cumberland County Prosecutor's Office and this Association hereby agree that matters involving departmental charges that are of minor discipline in nature, consisting of a suspension of five (5) days or less, against an Association member, shall be granted the opportunity to present the matter for final hearing and determination to the Public Employment Relations Commission for Binding Arbitration.
3. **Off Duty Action Clause**
All personnel covered by this Agreement who take any lawful police action during his/her off duty hours which action should have been taken by said employee on active duty will

be entitled to the rights and benefit protections concerning such action as if on active duty.

Any lawful action taken while off duty will be compensated at the rate of time and one-half (1 ½) the normal rate of compensation.

4. **Retention of Benefits Clause / Past Practice Clause**

Retention of Benefits

The County of Cumberland agree that all benefits, terms and conditions of employment relating to the status of members of the Cumberland County Prosecutor's Office not covered by this agreement, shall be maintained at not less than the highest standards in effect at the time of the commencement of collective negotiations leading to the execution of this agreement.

5. **Union Security Clause**

Employees represented by this collective bargaining unit may not request payroll deduction for payment of dues to any other labor organization other than the duly certified majority representative. Existing written authorizations for payment of dues to any other labor organization shall be terminated.

6. **Layoff Language**

The Prosecutor, if he/she shall deem it necessary for demonstrable reasons of economy and just cause, may decrease the number of members and officers of the department. When the service of an officer is terminated, such termination shall be in the inverse order of their appointment. Subsequently, any rehiring of officers shall be in the order of their respective appointment seniority.

7. Incorporate new vacation schedule. (See attached)
8. Replace all references of FOP Lodge 132 with PBA Local 396
9. Modify Article XXIV under Section (H)(3)

- a. An Employee opting out of county sponsored health benefits plan shall receive a stipend equivalent to **25%** of the premium for the type of coverage they are waiving, but in no case shall the employee's **stipend exceed the \$5,000.** (emphasis in original)
10. Modify Article XII under section 1.
- a. The normal work week shall consist of forty (40) hours, Monday through Friday. The regular tour of duty shall consist of eight (8) hours from 8:30 a.m. – 4:30 p.m. inclusive of a one hour paid lunch. The Organized Crime Bureau personnel work hours will be determined by the Task Force Commander or his/her designee. Temporary changes in scheduling (i.e. 10 hour or 12 hour shifts, etc.) can be made only with the approval of the **Bureau Commander** or his/her designee. Permanent changes of shift (i.e. 10 hour or 12 hour shifts, etc.) can be made only with the approval of the Chief or his designee with approval of the authorized representatives of PBA Local 296. (emphasis in original)
11. Modify Article XXIII Section 2.
- a. Vehicles used primarily by investigative personnel will be equipped with emergency lights in the Front and Rear of the vehicle with an audio device.
12. **Duration of Contract**
- a. January 1, 2011 through December 31, 2014
13. **Salaries**
- 2011 0%
 - 2012 1.5% effective 1/1/2012, 1.5% effective 7/1/2012
 - 2013 1.5% effective 1/1/2013, 1.5% effective 7/1/2013
 - 2014 1.5% effective 1/1/2014, 1.5% effective 7/1/2014
14. Maintain other contract provisions.

The County / Prosecutor - Local 396A

1. **Term of Agreement:** Three years, commencing January 1, 2011 through December 31, 2013.

2. **Salary:**

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

B) Effective July 1, 2012: 1.75% increase on base pay.

C) Effective July 1, 2013: 2.00% increase on base pay.

3. **Longevity:**

Article XI shall be amended to state that longevity shall be grandfathered for existing employees but eliminated for new hires.

4. **Educational Stipends:**

Article XX, Paragraph 3, Section D shall be eliminated.

5. **Clothing Allowance:**

Article XX, Paragraph 4 shall be eliminated.

6. **Vehicles:**

Article XXIII shall be eliminated.

7. **Retirement:**

Article XXV shall be amended to state that health benefits will be grandfathered for existing employees but shall be eliminated for new hires.

8. **Grievance Procedure:**

Article IX, Step 2 shall be amended to state that the Prosecutor shall issue a written decision within twenty (20) days of the filing of the grievance at this level.

Article IX, Step 3 shall be amended to state that the employee shall give notice and file arbitration within ten (10) business days.

Article IX, Step 3(a)-(d) shall be eliminated and amended with the following:

- A) The parties herewith agree to utilize the panel of arbitrators maintained by the New Jersey Public Employment Relations Commission (“PERC”) and shall following the procedures set forth by PERC for grievance arbitration matters. The arbitrator shall be confined to the Agreement and shall not have the power to add to, subtract from, or modify the provisions of the Agreement.
- B) The decision of the arbitrator shall be final and binding consistent with applicable law and this Agreement. The fees and expense of the arbitrator shall be divided equally between the Employer and the moving party. Any other cost of the arbitration proceeding, including the cost of recording, shall be borne by the moving party.
- C) The time limits specified in the grievance procedure shall be construed as maximum limits. However, these may be extended upon mutual agreement between the parties in writing.

The County / Prosecutor - Local 396

- 1. **Term of Agreement:** Three years, commencing January 1, 2011 through December 31, 2013.
- 2. **Salary:**
 - A) Effective January 1, 2011: Zero Percent (0%) increase on base pay with movement on steps.
 - B) Effective July 1, 2012: 1.75% increase on base pay for those employees at maximum pay; all other employees shall receive no increase other than step movement.
 - C) Effective July 1, 2013: 2.00% increase on base pay for those employees at maximum pay; all other employees shall receive no increase other than step movement.

3. **Rates of Pay:**

Article X, Paragraph 2 shall be amended to state that step movement shall be frozen upon expiration of the Agreement until a successor agreement is negotiated or arbitrated.

4. **Longevity:**

Article XI shall be amended to state that longevity shall be grandfathered for existing employees but eliminated for new hires.

5. **Educational Stipends:**

Article XX, Paragraph 3, Section D shall be eliminated.

6. **Clothing Allowance:**

Article XX, Paragraph 4 shall be eliminated.

7. **Vehicles:**

Article XXIII shall be eliminated.

8. **Retirement:**

Article XXVI shall be amended to state that health benefits will be grandfathered for existing employees but shall be eliminated for new hires.

9. **Term of the Contract:**

Article XXXIII, Paragraph 4 shall be amended to state that step movement shall be frozen upon expiration of the Agreement until a successor agreement is negotiated or arbitrated.

10. **Grievance Procedure:**

Article IX, Step 2 shall be amended to state that the Prosecutor shall issue a written decision within twenty (20) days of the filing of the grievance at this level.

Article IX, Step 3 shall be amended to state that the employee shall give notice and file arbitration within ten (10) business days.

Article IX, Step 3(a)-(d) shall be eliminated and amended with the following:

- A) The parties herewith agree to utilize the panel of arbitrators maintained by the New Jersey Public Employment Relations Commission ("PERC") and shall following the procedures set forth by PERC for grievance arbitration matters. The arbitrator shall be confined to the Agreement and shall not have the power to add to, subtract from, or modify the provisions of the Agreement.
- B) The decision of the arbitrator shall be final and binding consistent with applicable law and this Agreement. The fees and expense of the arbitrator shall be divided equally between the Employer and the moving party. Any other cost of the arbitration proceeding, including the cost of recording, shall be borne by the moving party.
- C) The time limits specified in the grievance procedure shall be construed as maximum limits. However, these may be extended upon mutual agreement between the parties in writing.

In addition to the evidence that concerns the merits of the many disputed issues as set forth above in the final offers of the parties, the County and the PBAs have challenged the legality of some of the proposals advanced by the other party. Four scope of negotiations petitions were filed by the County and one by the PBAs. At the time of hearing, briefing schedules in support of the scope of negotiations petitions had not been completed.

The County challenged the legality of the Unions' proposals concerning health insurance opt-out (see SN-2012-61), minor discipline (SN-2012-61), vehicle specifications (SN-2012-61) and the layoff provision (SN-2012-61). The

Unions filed one scope of negotiations petition (SM-2012-55). The parties clarified the contents of the scope petitions on the second day of the interest arbitration hearings and presented an overview of their legal challenges.

The Unions contend that some of the issues proposed by the County are non-negotiable and/or non-arbitrable because they are alleged to conflict with a Bigley Order issued by the Assignment Judge in Cumberland County during 2005. The Court issued an order covering, among other things, the hiring of personnel, the funding of salary adjustments, the funding of vehicles, and setting the amount of the Prosecutor's Operating Expense Budget for five years commencing 2005. The Unions contend that the Bigley Order precludes the County from proposing issues such as educational credit, clothing allowance, vehicles, longevity and the retiree health insurance proposal.

The PBAs submit argument in their post-hearing brief concerning the applicability of the Bigley Order:

Ordinarily a person may not bring an action on a contract unless the person is a party to the contract. Persons may enter into a contract for the benefit of others; however, a person not a party to a contract may not sue to enforce it merely because he/she happens to be benefited by it. Rather it must appear that the contract was made by the parties with the intention to benefit him/her and that the parties to the contract intended that he/she receive a benefit enforceable in court. *Brooklawn v. Brooklawn Housing Corp.*, 124 N.J.L. 73 (E. & A. 1940); *First National State Bank v. Carlyle House, Inc.*, 102 N.J. Super. 300 (Ch. Div. 1968), *aff'd*, 107 N.J. Super. 389 (App. Div. 1969), *certif denied*, 55 N.J. 316 (1970). Here the PBA were the third party beneficiaries of this Bigley action and entitled to all of the benefits so derived. Those benefits, ordered by the Superior Court are not negotiable and any attempt to remove those benefits must be denied by the Arbitrator as positions outside the scope of negotiations.

It appears as though the County is forgetting the past and setting up the Prosecutor's office to fall back into these terrible conditions. This will

cause Cumberland County to fall further behind in its staffing, technology and crime fighting ability in the face of significant increases in crime. This must be considered along with the fact that Cumberland County is the "prison capital" of New Jersey.

Currently as demonstrated by Prosecutor's office exhibits E315. The PBA specifically pulled out several pages of County exhibits and marked them P30, P29 and P31. It is important to note that the Cumberland County Prosecutor's Office, according to P30, ranks last in median salary, second to last in average length of service and 19th in the state in average length of sworn law enforcement officer service. Currently with the Prosecutor's office is at the bottom of the salary and length of service categories and the County is falling back into its roots in underfunding the Prosecutor's office and the Investigators despite their own expert telling them of the need to continue to fully fund and promote the needs of the Investigators in order to get a better more experienced Investigator staff. The comparative counties as dictated by Judge Stanger are all fairing much better than Cumberland County in terms of wages and benefits for their full time detectives and Investigators.

A great deal of comparison has been drawn between Assistant Prosecutors and their supervisors. The First Assistant Prosecutor has been provided appropriate salary and benefits in order to retain experienced attorneys. The line Prosecutors have not been so fortunate. The Cumberland County Prosecutor's Office has the highest turnover rate in the state for Prosecutors and second highest for Investigators. The County needs to provide proper funding for the Prosecutor to be able to do her job efficiently in this very high crime ridden County. The PBA agrees with the First Assistant Prosecutor, that the attorneys are underfunded. They should be paid more, have more time off, and additional benefits. The turnover rate has been dealt a significant blow because of the Bigley and successor agreements achieved for investigators. The line prosecutors will need another Bigley or at least a strong contract and support from the Prosecutor to improve the entire compensation package.

The County has responded to the Unions' scope petition that asserts the County's proposals are non-negotiable due to the Bigley Order. The County contends that the Unions' reliance on the Bigley Order is without merit and misplaced:

In In re Application of Bigley, 55 N.J. 53, 259 A.2d 213 (1969), the Supreme Court of New Jersey held that, though N.J.S.A. 2A:158-7, the legislature conferred upon the Assignment Judge for a given county the "final and conclusive authority" to require a county board of chosen

freeholders, on application by that county's prosecutor ("Bigley application"), to meet the needs of the prosecutor not provided for by the county in its regular or emergency appropriations for the prosecutor's office. In 2005, former Cumberland County Prosecutor Ronald J. Casella filed a Bigley application to: (1) appropriate additional funds for the Prosecutor's Operating Budget; (2) authorizing the Prosecutor to hire and employ additional assistant prosecutors, detectives and clerical support staff; (3) to provide funding for raises to assistant prosecutors, detectives and clerical support staff; (4) for funds to obtain office space necessary to house the Prosecutor's Office staff in one centralized location; and (5) for the expenditure of funds for capital acquisitions. (E52, E53). The matter was before the Court sitting as a legislative agent rather than a judicial officer. Id. An Order (the "Bigley Order") between the County and Cumberland County Prosecutor was entered into on March 18, 2005. (E52).

In general, the Bigley Order provided the following:

- (1) The hiring of additional personnel incrementally on a progressive basis during the course of each year to be funded in the budget each year in accordance with the salary guides and salaries established by the collective bargaining unit contracts (2004-2009);
- (2) The appropriation of certain funds to fund salary adjustments for assistant prosecutors, supervisors, executive staff and the First Assistant Prosecutor;
- (3) A salary step guide for Assistant Prosecutors;
- (4) An agreement that future contract negotiations involving any unit within the Prosecutor's Office be held jointly with the Prosecutor or his authorized representative, the County, and the bargaining unit participating in the process;
- (5) The County will appropriate sufficient funding through 2009 to provide for the purchase of 10 vehicles each year for the next 5 years beginning in 2005.
- (6) An agreement that the Prosecutor's operating expense budget shall be funded as follows: 2005-\$600,000; 2006-\$632,000; 2007-\$653,000; 2008-\$679,000; 2009-\$700,000.
- (7) Nothing contained in the Order shall be construed as prohibiting the Prosecutor or the County from making any application to enforce the terms of the Order. Nothing contained in the Order shall be construed as prohibiting the Prosecutor in any subsequent year to apply to the Assignment Judge for additional funds beyond those provided in the Order if necessary to meet his statutory duties and responsibilities, pursuant to N.J.S.A. 2A:158-7.

Simply put, the Unions lack standing to enforce the Bigley Order. A Bigley application is a prosecutor driven process. In re Application of Bigley, 55 N.J. 53, 259 A.2d 213 (1969). The Bigley Order was entered into by the County and the Cumberland County Prosecutor. The Unions were not a party to the Bigley Order. Indeed, the Bigley Order itself permits only the County and Prosecutor to enforce its terms or permit a subsequent Prosecutor from seeking relief from the Assignment Judge. As such, the Unions lack standing to enforce the Bigley Order. Furthermore, even if the Unions had standing to enforce the Bigley Order, interest arbitration is the improper forum for enforcement. In interpreting N.J.S.A. 2A:158-7, the Supreme court of New Jersey has determined that the statute authorizes the Assignment Judge to approve expenses of the prosecutor that exceed the funds appropriated by the county only when the expenses are reasonably necessary. In re Taylor, 196 N.J. 162, (2008). Thus, interest arbitration is an improper venue for enforcement of the Bigley Order.

If the Unions were found to have standing and interest arbitration was the appropriate forum for enforcement, the Unions' reliance on the Bigley Order is misplaced. The Unions' witness, former First Assistant Prosecutor Ken Pagliughi, testified at length regarding the reason for the Bigley application in 2005. In 2005, the Bigley application was filed to attract and maintain staff within the Prosecutor's Office. To do so, the parties agreed to authorize staffing levels and required the County to appropriate sufficient funds to ensure that existing Prosecutor's Office positions were funded in the budget as of January 1st each year from 2004 to 2009. The budgeted amount included all fringe benefits in accordance with collective bargaining agreements and County practice and policy. The Bigley Order required that the County appropriate sufficient funding through 2009 to provide for the purchase of 10 vehicles, conforming to detailed specifications, from 2005 to 2010. The Bigley Order provided for other requirements, many of which are not at issue in the current matter and will not be discussed.

The terms and conditions of the Bigley Order are not perpetual. The Bigley Order contains specific years that span from 2004 to 2010. Thus, the Bigley Order expired in 2010. In 2008, the County, Prosecutor's Office and Unions collectively negotiated two separate agreements that also expired in 2010. Under the successor agreements, the Cumberland County Prosecutor's Office retained investigator-detectives at an astounding rate. From 2009 to 2011, turnover for the investigator-detectives unit is down to 2%. (E275, E325A). Additionally, neither the Prosecutor nor the County has exercised their rights to enforce any of the terms of the Order.

The Bigley Order has been fully implemented pursuant to its specific terms and fulfilled its purpose. The Bigley Order cannot be used as a shield for the negotiability of wages and benefits. Because the Bigley Order was fully implemented and expired in 2010, the Unions' reliance on the Bigley Order is misplaced. The Bigley Order and the former prosecutor's stewardship of the funds received in the Bigley Order as it

was applied to the investigator-detectives unit has created greater disparity within the Prosecutor's Office resulting in a number of the County's proposals in its Final Offers.

The scope of negotiations filings by the County challenge the legality of the Unions' proposals that concern the health insurance opt out, minor discipline, vehicle specifications and the layoff and recall proposal. The County offers the following submissions concerning each of these proposals:

1. *Health Insurance Opt Out*

The County filed and briefed a scope petition with respect to the health insurance opt out. (E7). In the brief, the County maintained that N.J.S.A. 40A:10-17.1 provides a county with "the sole discretion" to decide the amount of consideration to be paid to an employee that waives health insurance coverage. The language of N.J.S.A. 40A:10-17.1 also expressly, specifically and comprehensively provides that, "[t]he decision of a county ... to allow its employees to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective bargaining process." The Unions failed to timely file a reply brief regarding the negotiability and/or arbitrability of the health insurance opt out, and, consequently, waived the opportunity to respond. Thus, the County maintains that the Unions Final Offer with respect to Health Insurance Opt Out is statutorily preempted by N.J.S.A. 40A:10-17.1 and must be restrained from interest arbitration.

2. *Minor Discipline*

The County maintains that the opportunity to present minor discipline for final hearing and determination to the Commission for binding arbitration is not negotiable and/or arbitrable. (E7A). N.J.S.A. 2A:157-10 provides that, "[a]ny county investigator who has been tried and convicted of any charge or charges ... may obtain a review thereof by the **Superior Court.**" (Emphasis added). As a general rule, an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation. Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 47-38 (1982). In Bethlehem, the Supreme Court of New Jersey held that negotiation is preempted if any specific statute or regulation fixes a term and condition of employment "expressly, specifically and comprehensively." See also, State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). Thus, the adoption of any specific statute setting or controlling a particular term or condition of employment will preempt negotiation on that subject. Id. N.J.S.A. 2A:157-10, "expressly, specifically and comprehensively" provides that the Superior Court is the exclusive forum for county investigator-detectives' discipline appeals. As

such, the forum for minor discipline is statutorily preempted and must be restrained from interest arbitration.

3. *Vehicle Specifications*

The County submits that vehicle specifications are a non-negotiable managerial prerogative. The County proposes the elimination of Article XXIII, "Vehicles" from the contracts. (E8, E9). Article XXIII requires the County and County Prosecutor to supply vehicles that conform to certain minimum standards not directly related to health and safety. The Unions propose language regarding "emergency lights in the Front and Rear of the vehicle with an audio device." In In the Matter of Township of Hillside, P.E.R.C. No. 83-132 (April 20, 1983), the Commission held there is no limitation for a public employer's right to select vehicles of its choice. Similarly, in In re Middlesex County, App. Div. Docket No. A-3564-78 (June 16, 1980), the Court found that matters such as the make, model, color and engine size of vehicles are non-negotiable. The Court also held that the equipping of vehicles are negotiable so long as they *directly* relate to employee health and safety. Id.

The County maintains that the Unions' Final Offers do not directly relate to employee health and safety, and, therefore, vehicle specifications are non-negotiable managerial prerogatives. County investigator-detectives are not primary responders, but rather *react* to and investigate a crime that has already occurred. In fact, the Office of the Cumberland County Prosecutor Police Pursuant Summary Report reports that zero (0) pursuits were initiated by the Cumberland County Prosecutor's Office from January 1, 2011 to December 31, 2011. (See Cumberland County Prosecutor's Office Annual Report 2011). Likewise, zero (0) police vehicles, third party vehicles and pedestrians were injured during that span. Clearly, employee health and safety has not been compromised. Therefore, the County's Final Offers regarding "emergency lights in the front and rear of the vehicle with an audio device" must be restrained from interest arbitration.

4. *Layoff Provisions*

Finally, the County submits that the Unions' Final Offers regarding the layoff provisions are a non-negotiable managerial prerogative. The Unions propose that, "when the service of an officer is terminated, such termination shall be in the inverse order of their appointment. Subsequently, any rehiring of officers shall be in the order of their respective appointment seniority." Recently, the Commission determined this very issue in In the Matter of Union County Prosecutor's Office and PBA Local 250, P.E.R.C. No. 2011-74 (April 28, 2011). In this case, the public employer petitioned for a scope of negotiations determination asserting that a layoff by seniority proposal that the union made during collective negotiations was not mandatorily negotiable and may not be submitted to compulsory interest arbitration. Id. The public employer asserted that the union's proposal was inconsistent with the variety of departments and functions of the Prosecutor's Office and would interfere

with the ability to manage and operate the office. Id. The Commission found that such a proposal is not mandatorily negotiable and may not be submitted to compulsory interest arbitration for inclusion in a successor collective negotiations agreement. Id. The Commission stated that the proposal would significantly interfere with the exercise of the Prosecutor's managerial prerogative is not mandatorily negotiable. Likewise, in accordance with Union County, the County submits that layoff provisions are a managerial prerogative that must be restrained from interest arbitration.

In response to the County's objections to the legality of the above proposals, the Union contends that all of its proposals are mandatorily negotiable and presents argument as to why the County's scope of negotiations petitions are without merit. The Unions' submission as to negotiability has been incorporated into their responses concerning its view of the merits of the County's proposals. Because of the interrelationship between their scope arguments and the merits of the issues, I will set forth the Unions' objections to the County's scope filings during the discussion of each individual issue.

BACKGROUND

The Cumberland County Prosecutor is the chief law enforcement officer in Cumberland County. PBA Local 396 is the exclusive majority representative for Investigators/Detectives. There are twenty-eight (28) such employees in the unit. PBA Local 396A is the exclusive majority representative for Sergeants, Lieutenants and Captains. There are eleven (11) superior officers, including seven (7) Sergeants, three (3) Lieutenants and one (1) Captain. The collective negotiations agreements for both units have effective dates of January 1, 2008 through December 31, 2010. The Investigator/Detective agreement has a salary

schedule containing a pre-academy step followed by ten steps with salaries ranging from \$48,934 to \$81,611. The Superior Officers agreement has a single step on each rank with the Sergeant rank at \$94,488, the Lieutenant rank at \$105,348 and the Captain rank at \$114,863. This is the initial collective negotiations process for PBA Local 396 and 396A after having replaced the FOP Local 132 and 132 SOA as the majority representatives. The sitting prosecutor was sworn in as Cumberland County Prosecutor on January 15, 2010.

The relationship between the County of Cumberland and the Office of the Prosecutor has been contentious in recent past. The PBAs submit documentary evidence and testimony concerning a Bigley application submitted by a former Prosecutor who sought additional funding and resources from the County. The basis for the Bigley request was a claim that these funds were needed to fulfill the statutory duties and responsibilities of the Prosecutor's Office. The Prosecutor petitioned the Court pursuant to N.J.S.A. 2A:158-7 for an Order directing the Board of Freeholders to appropriate additional funds. A Law Enforcement Management Consultant was hired by the Freeholders and recommendations were made in response to the claims, many of which were adopted by the County and the Prosecutor and incorporated into a Settlement Order. On March 18, 2005, a Consent Order was issued by the Honorable George H. Stanger, Jr., A.J.S.C., reflecting the agreement between the Prosecutor and the Board of Chosen Freeholders.

Many of the Unions' proposals and its objections to the proposals of the Prosecutor in this proceeding are reflective of its view that it is simply seeking to maintain the principles and standards set forth in the 2005 Bigley Order and that the County's proposals undermine that Order. The County does not share this view.

Because of the severely compressed time period and the complexity of the issues, including the many scope of negotiations disputes, it is a challenge to lay out each issue in dispute and to set forth the respective positions and arguments of the Prosecutor and the Unions on each issue in dispute along with the supporting evidence each party has submitted into the record. For the sake of simplicity and clarity, I have laid out each party's position on each individual topic each has proposed and the other parties' own articulated position in response.

DISCUSSION

I first summarize the proposals of each party and the other party's response.

Injured on Duty

The PBAs have proposed to add a new provision to the agreement to provide that whenever an employee is injured in the line of duty, he/she shall not be charged with sick leave but shall be carried as "excused from duty." In support of its proposal, the PBAs offer the following argument:

The PBA would like to specifically add a provision to the contract that provides for injured on duty coverage. The PBA testified specifically there was a detective in the department who was injured in the line of duty and the County and Prosecutor required them to use his or her accrued sick time while being injured from duty. The PBA is merely seeking language that states "whenever an employee is injured in the line of duty he/she shall not be charged with sick leave which will be carried as excused from duty." This position is necessitated as there has been a problem in the past regarding members of the PBA Local 396 and 396A who have not received the proper benefits and have been given less than fair treatment from the County who have used their accumulated sick leave instead of the proper workers compensation and excused IOD coverage. The County could not articulate a reason as to why this benefit should not be added to the contract. Law enforcement is dangerous and officers are much more prone to injury and should be given specific safeguards in relation to their daily sacrifice.

Injured on Duty provisions provide extra protection to these law enforcement officers who do get injured in effectuating their positions. These officers are required to arrest, subdue and get into physical confrontations with individuals who have violated the law. As such they are asking for protection for when they do get injured so that their families can be protected should they be injured in the line of duty. This clause only hammers home benefits with which they are already entitled and complements their statutory protection under workers compensation law.

The County opposes this proposal:

As an initial matter, a party seeking a change in the terms and conditions of employment bears the burden of establishing the need for modification. Somerset County Sheriff's Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani). Here, the Unions propose a provision regarding "Injury on Duty". The Unions propose that an employee injured in the line of duty shall not be charged with a sick day and shall be carried as excused from duty. Currently, Article XIX, "Worker Compensation" provides, "[w]hen an employee is incapacitated because of an occupational injury or disease...the employee will be paid their full base salary for the initial thirty (30) days of job related disability." Additionally, investigator-detectives are allotted 15 sick days year per year, with the ability to carry over unused sick days. (E2, E3).

The County respectfully requests denial of this proposal. (2T34:16-24; 2T35:1-3). The County maintains worker's compensation is available to employees that are injured on duty. Id. Additionally, employees may use sick days in addition to the available worker's compensation. Id. As of April 7, 2012, the Unions earned 4,592.34 sick hours in 2012 and maintained a sick hour balance of 15,206.93. (E276). Investigator-detectives have ample sick days to use should this situation arise.

The Unions presented no specific testimony or evidence regarding circumstances in the past where there have been issues with time off for injuries under the expired contracts. In fact, Captain Parent testified that he could not recall when injury on duty was an issue. (1T56:11-15). Similarly, Sergeant Chopek could not provide an example of when worker's compensation did not cover an injured employee. (1T86:7-10). Likewise, Detective Breslin was unable to recall a single time that an employee was not protected in this situation. (1T56:8-13). The Unions' witnesses could not recall a single situation when this issue arose because the contract already provides a mechanism for injuries on duty – worker's compensation. (E2, E3).

Based on the foregoing, the Unions have failed to carry their burden of establishing the need to change the current method of providing paid time off for employees that are injured on duty. Somerset County Sheriff's Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani).

I do not award this proposal because there is insufficient record evidence as to any negative impact the existing language and policy has had on unit employees that would warrant the inclusion of the proposed language.

Minor Discipline

The PBAs have proposed a provision to address minor discipline. The specific language proposed by the PBAs states:

The Cumberland County Prosecutor's Office and this Association hereby agree that matters involving department charges that are of minor discipline in nature, consisting of a suspension of 5 days or less, against an association member, should be granted the opportunity to present the matter for final hearing and determination to the Public Employees Relations Commission for binding arbitration.

In support of its proposal, the PBAs offer the following argument:

The County had filed a Petition for Scope Negotiations regarding this specific provision but the Petition for Scope Negotiations is improper in

this matter. This provision is specifically requested consistent with N.J.S.A. 34:13A-5.3 which provides:

“Public employers shall negotiate written policies setting forth grievance and discipline review procedures by means of which their employee or representative of employee may appeal the interpretation, application or violation of policies, agreements and administrative decisions, including disciplinary determinations affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization . . . for purposes of this section, minor discipline shall mean a suspension or fine of less than 5 days. . . .”(N.J.S.A. 34:13A-5.3).

The PBA’s proposed language making minor discipline grievable gives employees the avenue to appeal disciplinary measures consistent with public policy as set forth in the act that employees have a contractual method to appeal disciplinary measures. The County argues that this matter is pre-empted by N.J.S.A. 2A:157-10. N.J.S.A. 2A:157-10 makes its permissibly negotiable for members to arbitrate where minor discipline is involved. Specifically under the statute:

“any County Investigator who has been tried and convicted of any charge or charges, and is employed by a prosecutor in a County where Title 11A of the revised statutes is not in operation, may obtain a review thereof by the Superior Court. Such review shall be obtained by serving a written notice and . . .”

This language directly mimics the language applicable to local police officers. N.J.S.A. 40A:14-147.

The Investigators are specifically seeking this provision to allow the matters to go to arbitration instead of appealing to the Superior Court. These law enforcement officers specifically deal with Superior Court Judges all of the time when seeking applications or search warrants and other warrants from court. As such to uphold the integrity of the organization the PBA is requesting these members go to arbitration in lieu of Superior Court as a less formal way to resolve the outstanding minor disciplinary issue. The Courts have traditionally preferred arbitration over litigation in Superior Court as a less formal way to resolve the outstanding issues. The ability to negotiate a minor discipline policy has been upheld several times in the Appellate Division. See County of Monmouth vs. Communications Workers of America, 300 N.J. Super. 272, (App. Div. 1997), New Jersey Turnpike Authority vs. New Jersey Turnpike Supervisors Association, 143 N.J. 185 (1996), Colon vs. Middlesex County Department of Corrections, 278 N.J. Super. 401 (Law Div. 1994); State vs. State Troopers Fraternal Association, 260 N.J. Super. 270 (App. Div. 1996).

It is also important to note that when handling minor discipline actions before, our office has been confronted by both the Assignment Judge and Judge Richard Geiger who specifically requested that we try to incorporate minor discipline arbitration clause into collective bargaining agreements for the unions that we represent, to avoid going to Superior Court. The Court having a heavy and backlogged docket in itself was requesting not to be put in the middle of these minor discipline matters. As a less formal way in order to resolve all of these matters, PERC specifically provides the ability to arbitrate the matter on a less costly, more efficient alternative to formal litigation.

The County opposes this proposal.

The Unions propose language regarding minor discipline, specifically the opportunity to present the matter for final hearing and determination to the Public Employment Relations Commission for Binding Arbitration. The County filed a scope of negotiations determination petition regarding this proposal. (E7A). The County maintains that pursuant to N.J.S.A. 2A:157-10, the forum for minor discipline is Superior Court. Therefore, the County submits that the issue is statutorily preempted and must be restrained from interest arbitration.

The County respectfully requests denial of this proposal. The Unions presented no specific testimony or evidence in support of their minor discipline proposal. Captain Parent testified that the ability to arbitrate minor discipline is "very cost effective". (1T38:12). The Unions' failed to submit any evidence to support Captain Parent's speculative assertion. In fact, Captain Parent later testified that similar preparation is necessary regardless of the venue, resulting in similar legal fees. (1T57:4). Meanwhile, Sergeant Chopek testified that arbitrations are "very expensive". (1T76:2). Detective Breslin also testified that arbitration would be "more cost effective". (1T95:15). However, when questioned about the costs of arbitration, Detective Breslin testified, "I don't know the cost." (1T108:9). Based on the foregoing, the Unions have failed to carry their burden of establishing the need to change the venue for minor discipline. Somerset County Sheriff's Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani).

I do not address the negotiability of this proposal. That statutory authority rests with PERC who has not delegated that authority to interest arbitrators to render such decisions. However, PERC has suspended its rule that had prohibited arbitrators from issuing an award on an issue that is subject to a scope

of negotiations petition. Following this suspension, no new rule has yet been adopted. Accordingly, I will decide this issue on its merits and not as a substitute for an agency scope of negotiations determination.

The ability to arbitrate minor discipline instead of pursuing an action in Superior Court is reasonable. It is consistent with seeking review in a less formal manner but given the nature of the work performed in the Prosecutor's office, I do not conclude that the ability to arbitrate should challenge instances of lesser levels of discipline including oral and written warnings or reprimands. Instead, I award the ability to arbitrate minor discipline for penalties which, at minimum, involve a one-day suspension without pay. I leave the issue as to what administrative agency would administer the provision to the parties. In the absence of an agreement, such agency shall be the American Arbitration Association.

Off Duty Action

The PBAs have proposed an off duty action provision. The specific language proposed by the PBAs states:

All personnel covered by this agreement who take any lawful police action during his or her off duty hour which action should have been taken by said employee on active duty will be entitled to the rights and benefits and protections of the employee as if on active duty.

Any lawful action taken while off duty will be compensated at the rate of time and one-half, the normal rate of compensation.

In support of its proposal, the PBAs offer the following argument:

Cumberland County Investigators are hourly employees that work for the Prosecutor's office. As such they are sworn law enforcement officers that are required to take action when appropriate or to prevent or arrest after a crime is committed. Investigators in the Prosecutor's office are law enforcement personnel anywhere in the County that they travel and they are essentially "always on duty". As such, if a detective or Investigator either takes off duty action in order to prevent a crime or react after a crime is committed, the officer is requesting to be compensated for their time. Often times if Investigators get involved in such actions, they will be required to complete reports and/or give statements to other on duty personnel and as such they are requesting compensation for that. In addition, the off duty action provision will provide workers compensation and other benefits should the employees get injured while in the line of duty while preventing or dealing with crime that occurs while they are off duty.

This protection in the contract helps guarantee officers who "do the right thing". They will be covered by their employer should they get hurt and be rewarded for their actions for going above and beyond the call of duty. This provision will be of course subject to prosecutor approval to make the payment and demonstration by the officer their actions were reasonable. These professions law enforcement personnel are entitled to such compensation, protection and treatment.

The objection to this provision by the First Assistant Prosecutor was that there would be no oversight and could lend itself to abuse. To a certain extent there is a trust factor between employers and employees and there is absolute oversight by way of the discipline process and through performance reviews. As such it is not difficult for the County to "police" the use of this benefit to make sure it is not abused or causing a significant hardship on the Prosecutor's office so that the employee and the taxpayers benefit from these protections.

The people that ultimately benefit from this type of provision are the taxpayers of the County of Cumberland who have officers and Investigators who are always on duty and willing to respond to an incident on a moment's notice and to do the right thing. This protection is being sought by the detectives as fair and reasonable and the financial impact on the County budget as the amount of time and effort used by the Investigator in overtime can be controlled by their superiors.

The County opposes this proposal:

The Unions propose language related to off duty action. The Unions seek to be entitled to the rights and benefit protections for off-duty action as if on active duty and compensated at time and one-half the normal rate of compensation for any lawful action taken while off duty.

The County respectfully requests denial of this proposal. (2T35:13-18). Article XX, Section 5 of the contract provides employees indemnification for any lawful action. (E2, E3). Captain Parent testified that under the contract, the County indemnifies investigator-detectives when acting in the scope of their responsibilities as law enforcement officers. (2T58:1). Additionally, worker's compensation is available for injuries that occur during an off-duty action. (E2, E3, T85:7).

Sergeant Chopek testified that the Unions should be compensated for carrying out their law enforcement responsibilities while off-duty. (1T74:10). The County has a number of concerns regarding the administrative aspects of this provision, such as how to approve responses and how to account for hours worked while off-duty. (2T35:13-18). Simply put, the Unions' proposal is impracticable.

The Unions have set forth no evidence or circumstance that warrants the need for this proposal. Accordingly, the Unions have failed to carry their burden of establishing the need for an off duty action provision. Somerset County Sheriff's Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani).

The Agreement, at Article XX, Section 5 contains reference to an indemnification of employees for lawful actions they take including law enforcement responsibilities while off duty. The first paragraph, while seemingly unobjectionable, is not clear in what "rights, benefits and protections" consist of when lawful police action is taken while off duty. In the absence of that specificity, I do not award this aspect of the proposal, although by doing so, I do not intend to restrict the protections offered by Article XX, Section 5 or any other rights and protections that currently exist under the existing Agreement, existing policy or law.

I also do not award the second paragraph of the proposal that deals with compensation. The Unions seek time and one-half pay for lawful actions taken off duty. While there is no dispute that a law enforcement officer is "always on

duty" as a result of having 24/7 authority, the proposal for compensation cannot be awarded in the absence of evidence as to the extent to which such actions have been taken in the past, including the number of occasions and hours, and the comparative evidence showing the extent to which similar contract provisions have been negotiated elsewhere.

Retention of Benefits

The PBAs have proposed to add a new provision to the agreement to provide retention of benefits provision otherwise known as a preservation of rights. The specific language proposed by the PBAs states:

The County of Cumberland and the Prosecutor agree that all benefits, terms and conditions of employment relating to the status of members of the Cumberland County Prosecutor's Office not covered by this agreement, shall be maintained at not less than the highest standards in effect at the time of commencement of collective negotiations leading to the execution of this agreement.

In support of its proposal, the PBAs offer the following argument:

This provision is requested by the PBA due to the nature of the environment in which they work. Investigators at the Prosecutor's office hope to work a full 25 year career where as the Prosecutor's are appointed for five (5) year terms and they change. A single employee can see 5 or 6 different Prosecutors in the term of their employment and the employee should not be forced to lose any benefits or privileges that they have and have continued to use through their employment at least without negotiation.

The past practice and retention of benefits clause is derived from N.J.S.A. 34:13A-5.3 which require "proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established". The Public Employees Relation Commission and New Jersey Courts have long held that the statutory requirement applies not only to contractual terms but to working conditions as they exist by past practice as well. As with the current

status of PERC and case law, the burden of showing past practices exist is borne by the person who is seeking to enforce the past practice. As such these benefits would fall under the Grievance Procedure clause and be subject to checks and balances approach where the Prosecutor could dispute the past practice. Such clauses also remove some of the “politics” from such employment, all to the taxpayer’s benefit.

There are certain benefits and working conditions that Investigators come to enjoy, and depend upon, through their time working in the Prosecutor’s office and although they may not all be spelled out in the contract, such benefits should be enforceable if they meet the “standard”. As such, when there are changes in administration almost every 5 years, it is unfair to the employees to lose any benefits that they have accrued or used without negotiation.

Such clauses benefit long term employment and provide an opportunity to continue with the benefits levels that they have enjoyed throughout their career. Ultimately this burden still would remain with the person seeking to use the past practice as it goes both ways to protect management and to protect members. This provision seeks to incorporate language from the PERC statute into the collective bargaining agreement for the benefit of PBA Local 396 and 396A.

The County opposes this proposal.

The County respectfully requests denial of this proposal. (2T35:20-22). The County submits that this proposal is overly broad. The County maintains that management of the office is a managerial prerogative. (1T185:11-23). Due to the lack of specificity presented in the Unions’ proposal and testimony, every past practice that occurred in the history of the Prosecutor’s Office would be protected under the proposed provision. The Unions’ failed to provide specific examples of a past practice that has changed and whether it is part of their proposal. When questioned to provide specific examples of past practices that the proposal is designed to protect, Captain Parent answered, “Just protection from any changes, I can’t give you any specifics.” (1T60:15-19). When pressed, Sergeant Chopek testified regarding two past practices that this provision would protect. First, Sergeant Chopek testified that detectives were once permitted personal use of their County issued cell phones. (1T72:12-23). The Prosecutor has since prohibited personal use on County issued cell phones. (1T186:2-9). Additionally, Sergeant Chopek testified that detectives were once permitted personal use of County issue vehicles. (1T84:3-8). The Prosecutor has since prohibited personal use of County issued vehicles. (1T186:13-187:7). The County maintains the Prosecutor should maintain the ability to exercise the managerial prerogative to eliminate past practices that expose the County to increased costs and unnecessary liability.

Clearly, the Unions have set forth no evidence or circumstance that warrants the need for this proposal. Accordingly, the Unions have failed to carry their burden of establishing the need to for a retention of benefits provision. Somerset County Sheriff's Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani).

I do not award this proposal. Any such claim that a modification of an existing rule governing working conditions has occurred to the detriment of a unit employee may be pursued under N.J.S.A. 34:13A-5.3.

Union Security Clause

The PBAs have proposed to add a union security clause to the agreement. The specific language proposed by the PBAs states:

Employees represented by the collective bargaining unit may not request payroll deduction for payment of dues to any other labor organization other than the duly certified majority representative. Existing written authorizations for payment of dues to any other labor organization shall be terminated. This provision was requested on behalf of the PBA in light of the decertification and of the FOP and the certification of the PBA as the majority representative unit.

In support of its proposal, the PBAs offer the following argument:

This matter was proposed to provide security to the union. The County did not object to this provision being added and they took no position whatsoever on its incorporation into the collective bargaining agreement. It is unknown as to why the County would not simply stipulate to this provision like the union did to changing the payday to Friday provision but that is a question better left to the Board of Chosen Freeholders.

The County has offered no position on this proposal. In the absence of objection or any evidence in opposition to the subject matter of this proposal, it is awarded.

Layoff & Rehire

The PBAs have proposed to add a new provision in the agreement to a layoff/recall provision to provide for layoff by seniority. The specific language proposed for PBA Local 396A states:

The Prosecutor, if he or she shall deem it necessary for demonstrable reasons of economy and just cause, may decrease the number of members and officers of the department or their grades and ranks. When an officer is demoted, such demotion shall be in the inverse order of the promotion, subsequently any demotion to an Investigator will cause the member to be placed at the top step of the Investigators salary guide. The demoted officers must be re-promoted in the order of the demotion.

The specific language proposed for PBA Local 396 states:

The Prosecutor, if he or she shall deem it necessary for demonstrable reasons of economy and just cause, may decrease the number of members and officers of the department. When service of an officer is terminated, such termination shall be in the inverse order of their appointment. Subsequently any rehiring of officers shall be in the order of their respective appointment in seniority.

In support of its proposal, the PBAs offer the following argument:

In light of recent PERC decisions and layoff rights from the Hudson County Prosecutors Office, the PBA amends their proposal to include a provision for the Prosecutor to designate essential personnel that are necessary for the functionality of the office. The

Prosecutor must designate these essential personnel and they will be exempted from the layoff provisions for seniority. Such descriptions should be limited to only a certain few positions demonstrating special skills. With the added caveat the Prosecutor can select exempted members to fill necessary positions or necessary specialties, Prosecutor can protect the function of the office and for all other members it will be done by seniority.

Therefore, in the situation as brought up by the First Assistant Prosecutor, if the Prosecutor needs to keep a technical genius who is the most recent hired, that person can be prevented from being laid off as being designated as an "essential" personnel and, therefore, although he is the least senior person the layoff would either begin with the person above him or around him.

The PBA seeks to have some discretion taken away from the Prosecutor regarding layoffs and making it a fair seniority type system as enumerated in the statutes for municipal police officers and other statutory or contractual employees. The caveat is the Prosecutor's ability to designate essential personnel. The request of the PBA is entirely consistent with the status of the law. The testimony from the First Assistant Prosecutor did not have any other reason for denying this type of proposal but for they want to be able to save the person with specific technical skills and ability that is essential to the Prosecutors function. The PBA believes that the provision is equitable and responds to both the needs of the prosecutor and the request of the PBA in order to make layoffs, if they occur, done in a fair and equitable way. Layoffs, in recent years have been consistently threatened.

The Public Employees Relation Commission has continually held that the ability of the employer to determine to layoff is "not negotiable". Currently, the courts have consistently held that either the mechanism or procedure for dealing with layoff order or procedure is negotiable. As such the PBA is merely seeking to add some framework and criteria to layoffs for the protection of its membership and to remove some of the politics from the situation. Thus, the employees and taxpayers benefit.

The Courts have previously held that negotiable terms and conditions of employment are those matters that intimately and directly affect the work and welfare of the public employees and on which negotiated agreement would not significant interfere with the exercise inherent management prerogatives pertaining to the determination of government policy. See Burlington City College Faculty Association vs. Board of Trustees, 64 N.J. 10 (1973), Lullo

vs. International Association of Fire Fighters, 55 N.J. 409 (1970). The proposal by the PBA is a compromise regarding mandatorily negotiable provisions and leaving room for management prerogative if needed.

The County opposes this proposal:

The Unions' Final Offers propose a layoff provision that provides that any rehiring of officers shall be in the order of their respective appointment seniority. The County filed a scope of negotiations determination petition regarding this proposal. (E7A). The County maintains submits that layoff provisions are a non-negotiable managerial prerogative in accordance with the Commission's decision in In the Matter of Union County Prosecutor's Office and PBA Local 250, P.E.R.C. No. 2011-74 (April 28, 2011).

The County respectfully requests denial of this proposal. The Unions presented no specific testimony or evidence in support of their layoff provision proposal. Captain Parent testified that the purpose of the seniority layoff provision is to protect seniority. (1T60:24). Likewise, Detective Breslin testified that he would rather layoff 12 new hires than layoff the 2 detectives with the most seniority. (1T110:2). The Unions' position would have a devastating effect on the Prosecutor's Office.

The Prosecutor's Office maintains that flexibility is absolutely necessary when issuing layoffs. (1T187:16-24). It is imperative that the Prosecutor, as the chief law enforcement officer in Cumberland County, retain the ability to make personnel decisions to ensure that the Office carries out its mission to create and preserve an environment of safety and security for the citizens of Cumberland County. Id.

Based on the foregoing, the Unions have failed to carry their burden of establishing the need for a seniority layoff provision. Somerset County Sheriff's Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani).

I do not address the negotiability of this proposal. That statutory authority rests with PERC who has not delegated that authority to interest arbitrators to render such decisions. However, PERC has suspended its rule that had prohibited arbitrators from issuing an award on an issue that is subject to a scope of negotiations petition. Following this suspension, no new rule has yet been

adopted. Accordingly, I will decide this issue on its merits and not as a substitute for an agency scope of negotiations determination.

The Unions' proposal requires seniority to be the determining factor in layoff and rehire. County testimony has established that skills, experience and qualifications may be an important, if not controlling, fact in layoff and rehire for certain types of positions. For this reason, I do not award the Unions' proposal because, as phrased, it is overly restrictive on the Prosecutor's ability to assess skills, experience and qualifications. In its post-hearing brief, the Unions have amended their proposals. But a revision in such position after the conclusion of the record is prohibited by PERC rule and thus, the amendment cannot be considered on its merits.

References to Employee Organization

The PBAs propose to replace all references of FOP Lodge 132 with PBA Local 396 or PBA Local 396A depending on the contract. The County has not stated a position on this issue. In the absence of objection, it is awarded.

Opt Out Payments

The PBAs have proposed to modify Article 24 regarding opt out payments for health insurance. The PBA's proposal seeks to modify Section A to provide:

An employee opting out of the County sponsored health benefits plan shall receive a stipend equivalent to 25% of the premium for

the type of coverage they are waiving but in no case should the employee stipend exceed \$5,000.

In support of its proposal, the PBAs provide the following argument:

This provision is being offered consistent with N.J.S.A. 40A:10-17.1 which provides:

Notwithstanding the provisions of any other law to the contrary, a County, municipality or any contracting unit as defined in section 2 of P.L.1971, c. 198 (C.40A:11-2) which enters into a contract providing group health care benefits to its employees pursuant to N.J.S.40A:10-16 et seq., may allow any employee who is eligible for other health care coverage to waive coverage under the County's, municipality's or contracting unit's plan to which the employee is entitled by virtue of employment with the County, municipality or contracting unit. The waiver shall be in such form as the County, municipality or contracting unit shall prescribe and shall be filed with the County, municipality or contracting unit. In consideration of filing such a waiver, a County, municipality or contracting unit may pay to the employee annually an amount, to be established in the sole discretion of the County, municipality or contracting unit, which shall not exceed 50% of the amount saved by the County, municipality or contracting unit because of the employee's waiver of coverage, and, for a waiver filed on or after the effective date of P.L.2010, c. 2, which shall not exceed 25%, or \$5,000, whichever is less, of the amount saved by the County, municipality or contracting unit because of the employee's waiver of coverage. An employee who waives coverage shall be permitted to resume coverage under the same terms and conditions as apply to initial coverage if the employee ceases to be covered through the employee's spouse for any reason, including, but not limited to, the retirement or death of the spouse or divorce. An employee who resumes coverage shall repay, on a pro rata basis, any amount received which represents an advance payment for a period of time during which coverage is resumed. An employee who wishes to resume coverage shall file a declaration with the County, municipality or contracting unit, in such form as the County, municipality or contracting unit shall prescribe, that the waiver is revoked. The decision of a County, municipality or contracting unit to allow its employees to waive coverage and the amount of consideration to be paid therefore shall not be subject to the collective bargaining process.

The expired agreement sets forth a provision under Article XXIV that pertains to the amount of consideration to be paid for an employee that waives health benefit coverage. The contract provides:

1. An employee, upon proof of alternate health insurance, can opt out of the County sponsored health benefits plan. Alternate health

insurance must be provided from a source other than the County sponsored health benefits plan.

2. Any request to opt out of the existing plans must be submitted in writing no later than November 15th of the prior year of which the employee wishes to be removed from the County benefit plan. In addition, it will be the responsibility of each employee opting out of the County health benefit plan to disclose any changes in their entitled plan coverage (i.e. Birth, death, divorce, etc.) at the time they request to opt out. Failure to disclose a change of health insurance coverage status may result in a forfeiture of opt out payment.
3. An employee opting out of the County sponsored health benefits plan shall receive a stipend equivalent to fifty percent (50%) of the premium for the type of coverage they are waiving but in no case shall the employer stipend exceed the amounts listed below:

Plan Coverage	Horizon	Aetna
Family	\$10,000	\$7,600
Husband/Wife	\$7,200	\$5,900
Parent/Child	\$5,800	\$4,800
Single	\$3,100	\$2,700

4. Should the amount of the stipend be less than the amounts listed above, the Cumberland County personnel office will supply FOP No. 132 with written documentation verifying the current insurance premium plan amounts.
5. New employees must enroll in the County's sponsored health benefits on their date of employment, then may elect to opt out in the next year.
6. For opting out of health benefits will be made through a separate check issued during the last pay period of the year in which the employee initiates the option. Employee will receive no payment if they opt to reenter the County's sponsored healthcare plan during the year.

The PBA filed to initiate compulsory interest arbitration on or about March 12, 2012. In the petition, the PBA identified health care buyout as an economic issue and dispute within the meaning of N.J.S.A. 34:13(a)-16(f) (2) on or about March 20, 2012. The County filed its response to the PBA's petition for Interest Arbitration and cited the health insurance opt out is non-negotiable.

Any final offers that were submitted by the County and the PBA were required to set forth exactly what they were looking for. The final offer for the PBA seeks to modify the language of the healthcare buyout to make it consistent with the language of N.J.S.A. 48:10-17 which thereby revised

the amounts of the healthcare buyback to twenty-five percent (25%) of premium or five thousand dollars (\$5,000) whichever is less.

In the final offer of the County, they did not address the healthcare buyout provision, now they are seeking to remove it or change it.

On April 18, 2012 and April 26, 2012, an Interest Arbitration proceeding and testimony was taken before Arbitrator James Mastriani regarding all of the provisions of the collective bargaining agreement. At no time did the County set forth the position in which to remove and/or modify the health care opt out language. The testimony provided by the County only provided that they believe that the healthcare buyout was a management prerogative, not subject to negotiations.

Pursuant to N.J.S.A. 34:13(a)-16(f) (1) both parties were required to submit a final offer to the Interest Arbitrator. Those final offers are part of the record. In the final offer of the Cumberland County and the Prosecutor it makes absolutely no reference to the healthcare buyout provision whatsoever. In the final offer of the PBA, it only seeks to modify the language of the healthcare buyout to make it consistent with State Law. As such, the County never forwarded a proposal to remove or delete the provision from the Contract. The PBA only sought to make it conform to State Law.

The position of the PBA has advanced through the collective bargaining process is to make the contract conform to State Law to provide for a benefit for its membership in excess to the statutory allowance. The County of Cumberland took no position to remove, modify the health insurance opt out provision in the contract who have not been impeded in their management prerogative but have just been instead of making the language in the contract conform to the maximum amount pursuant to the State Law. Further, grievances have previously been filed regarding this provision in the contract for the health insurance opt out where the prosecutor ruled in favor of the PBA that they were entitled to the benefits as part of the collective negotiation process. The Prosecutor, attached as Exhibit C, the decision of the Prosecutor made it permissibly negotiable for this benefit to be discussed during the collective negotiation process as the PBA had sought to do in this matter.

The PBA only advanced its position consistent with State Law in order to make the contract conform to the terms allowed by the Law. The County of Cumberland never sought to end or terminate the benefit and filed the Scope of Negotiations before receiving the final offer of the PBA which would merely make the contract consistent with State Law. As such, it is within the power of the Arbitrator to fix the terms of the Contract to make it more consistent with State Law when the County has not advanced the position to want to remove or decrease the amount of health insurance opt out benefits to be paid to the PBA members.

The County opposes this proposal:

The Unions' Final Offers provide a health insurance opt out proposal. The County filed and briefed a scope petition with respect to the health insurance opt out. (E7). The Unions failed to submit a timely reply brief. The County maintains that the amount of consideration to be paid to an employee that waives the County's health insurance coverage is statutorily preempted by N.J.S.A. 40A:10-17.1 and must be restrained from interest arbitration.

I do not address the negotiability of this proposal. That statutory authority rests with PERC who has not delegated that authority to interest arbitrators to render such decisions. However, PERC has suspended its rule that had prohibited arbitrators from issuing an award on an issue that is subject to a scope of negotiations petition. Following this suspension, no new rule has yet been adopted. Accordingly, I will decide this issue on its merits and not as a substitute for an agency scope of negotiations determination.

The existing Agreement, at Article XXIV, provides for an "opt out" provision allowing an employee to waive health insurance coverage and to receive a schedule of stipends depending upon the type of coverage the employee has waived. The PBA's proposal modifies Article XXIV to require payments for the "opt out" to conform with the statutory ceiling for such payments which are below the payments now permitted by Article XXIV.

The County's opposition stems from its view that the subject matter is preempted by N.J.S.A. 40A:10-17.1. Because of this, it does not offer a position as to the merits of the PBA's proposal. Whether the amount of consideration is a

matter that can be lawfully decided through collective negotiations or interest arbitration is a matter of negotiability that I do not decide. However, there is nothing that precludes the County from setting the amount of consideration in the form of notice to the PBA within the context of the collective negotiations agreement. Accordingly, I award the language of the PBAs' proposal in the form of a recommendation to the Prosecutor to be considered for adoption and, if adopted, to include an opt out provision in the form of a notice to the unit employees as follows:

The Prosecutor has exercised the authority of that office to allow employees to opt out of the County's sponsored health benefits plan in the amounts allowable by N.J.S.A. 40A:10-17.1, namely, in an amount equivalent to 25% of the premium for the type of coverage waived not to exceed \$5,000. Any change to this program can be made with thirty (30) days written notice.

The Prosecutor shall notify the PBA, within thirty (30) days of the Award as to whether the recommendation is accepted.

Sick Time Buy Back

PBA Local 396A has proposed to Modify Section 7A of Article 27 to replace 1,040 hours of sick time with 540 hours of sick time. In support of its proposal, the PBA offers the following argument:

The PBA is requesting to modify Article 27 under Section 7A to replace 1,040 hours of sick time with 540 hours of sick time. The PBA has testified that they are seeking to change the sick time buy back provision in their contract to allow officers to sell more time back to the County.

PBA Local 396A is seeking to modify Article XVII Paragraph 7. The PBA was keeping the provision in the contract that caps out the amounts that can be cashed out per year and it would still maintain the 2 for 1 that the County current enjoys.

The PBA's position is to increase the amount of sick sell back by reducing the mandatory amount that they have to carry from 6 months down to 3 months. The County receives the benefit of having detectives cash out sick days on a 2 for 1 basis and still have a cap of 128 hours that can be sold.

This is a benefit that was added to the contract emanating out of the Bigley decision only for the superior officers. The County offered no rebuttal as a cost prohibition for this provision to take place other than stating in general it costs more money. The County has not demonstrated in any articulable fashion why they can't afford such a benefit for the superior officers. The County's final proposal did not address this provision in the contract whatsoever.

As the provision stands in the contract, only two employees have the requisite amount of time in order to use the benefit in the contract. The PBA is seeking to increase the benefits of the other members of the bargaining unit to receive the same benefits as those who have been with the County for long periods of time.

The County opposes this proposal:

The Unions' Final Offers propose to modify Article XXVII, Section 7 of the PBA 396A contract. The Unions seek to replace 1040 hours of sick time with 540 hours of sick time.

The County respectfully requests denial of this proposal. (1T191:8-12). The County submits that this provision should be denied because it is not available to members of any other bargaining unit within the County. *Id.* The Unions' sick time buy back totaled \$5,750 in 2011. (329A). In comparison, assistant prosecutors and support staff received \$0 in sick time buy back in 2011. As of April 7, 2012, the Unions earned 4,592.34 sick hours in 2012 and maintained a sick hour balance of 15,206.93. (E276). Investigator-detectives have ample sick days to use should this situation arise. The County is not in favor of paying out sick leave every year instead of cap sick leave upon retirement because it violates the spirit of sick time buy back.

The Unions have set forth no evidence or circumstance that warrants the need for this proposal. Accordingly, the Unions have failed to carry their burden of establishing the need lower the threshold for sick time buy back. Somerset County Sheriff's Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani).

I do not address the negotiability of this proposal. That statutory authority rests with PERC who has not delegated that authority to interest arbitrators to

render such decisions. However, PERC has suspended its rule that had prohibited arbitrators from issuing an award on an issue that is subject to a scope of negotiations petition. Following this suspension, no new rule has yet been adopted. Accordingly, I will decide this issue on its merits and not as a substitute for an agency scope of negotiations determination.

The existing agreements at Article XVII provide for paid sick leave and sick leave buy back. The County seeks no change to the existing provision. PBA Local 396A has not provided sufficient justification for a change to the status quo to this sick leave buy back provision and accordingly, the proposal is denied.

Temporary Changes to Schedule

PBA Local 396A has proposed to modify Article XII – Work Schedule
Approval by Bureau Commander, Section 1 as follows:

- a. The normal work week shall consist of forty (40) hours, Monday through Friday. The regular tour of duty shall consist of eight (8) hours from 8:30 a.m. – 4:30 p.m. inclusive of a one hour paid lunch. The Organized Crime Bureau personnel work hours will be determined by the Task Force Commander or his/her designee. Temporary changes in scheduling (i.e. 10 hour or 12 hour shifts, etc.) can be made only with the approval of the **Bureau Commander** or his/her designee. Permanent changes of shift (i.e. 10 hour or 12 hour shifts, etc.) can be made only with the approval of the Chief or his designee with approval of the authorized representatives of PBA Local 296. (emphasis in original)

Although the PBAs offered testimony and argument at hearing, this proposal was not addressed in its post-hearing brief. The County offered the following:

The Unions propose to modify Article XII, Section 1 to read, “[t]emporary changes in scheduling (i.e. 10 hour or 12 hour shifts, etc.) can be made only with the approval of the Bureau Commander or his/her designee.” The County respectfully requests denial of this proposal. (1T188:11-24).

The Unions presented no specific testimony or evidence in support of their layoff provision proposal. Detective Breslin testified that the proposal relates to timing issues but was unable to recall a single time when timing was an issue for temporary work schedule approval. (1T103:14-106:2). The Prosecutor, as the chief law enforcement officer of Cumberland County, has the responsibility to direct the workforce and must have absolute discretion regarding approval of temporary work schedule changes. (1T188:11-189-7). Temporary work schedule changes are typically planned in advance with the Prosecutor’s knowledge. *Id.* Additionally, the Prosecutor is available around the clock to approve temporary work schedules. *Id.* The Unions’ proposal is merely designed to usurp the Prosecutor’s authority.

The Unions have set forth no evidence or circumstance that warrants the need for this proposal. Accordingly, the Unions have failed to carry their burden of establishing the need to allow Bureau Commanders to approve temporary work schedule changes. Somerset County Sheriff’s Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani).

The basis for this proposal is to make temporary changes in scheduling more responsive to unforeseen circumstances that can arise that can surround a given shift. The County expresses concern that the proposed language can usurp the absolute discretion now afforded to the Prosecutor. I do not award a change that could weaken that discretion which could now be exercised by the Prosecutor under Article XII, Section 1 to delegate such authority to a designee.

Vacation Schedule

PBA Local 396 has proposed to amend the vacation schedule.

The PBA proposed revising the vacation schedule to account for years of service and not the individual membership as contained in the current agreement. The proposal does not increase vacation time for members and only sets a scale for future employees.

The guide was testified to as having information derived from the current scheme in the contract. The position of the County was that they didn't review the proposal and thought that the investigators generally have too much vacation time. There is no cost implication to this proposal as it merely reiterated what is in the contract.

The County opposes this proposal:

The Unions' Final Offers sets forth a new vacation schedule for PBA 396. The County respectfully requests denial of this proposal. (1T190:2-11). The County maintains that the number of days afforded to PBA 396 is generous and amendments to the vacation schedule are not necessary.

The Unions have set forth no evidence or circumstance that warrants the need for this proposal. Accordingly, the Unions have failed to carry their burden of establishing the need to for a new vacation schedule. Somerset County Sheriff's Office and FOP Lodge 39, Docket No. IA-2005-083 (J. Mastriani).

It is clear that the record that was developed at hearing did not confirm or reject the PBA's representation that its proposal would not increase vacation time and merely set a scale for future employees. As is currently the case, the existing provision is a somewhat unique scheme in that the amount of vacation is detailed for each employee as opposed to having a general schedule. I do not award the proposal. Instead, I award the establishment of a joint committee to more fully discuss the proposal to ascertain whether the proposal impacts upon

the amount of vacation time now provided and, if not, whether the adoption of a schedule is a preferable alternative.

Contract Duration

The PBAs propose a contract duration of January 1, 2011 through December 31, 2014. The County has proposed a contract duration of January 1, 2011 through December 31, 2013. In support of its proposed contract duration, the PBAs provide the following argument:

The PBA Local 396 and 396A is seeking to have a contract that continues through December 31, 2014.

There was significant testimony on behalf of the PBA members about the cost and the significant amount of time that it takes to get through the interest arbitration process. The PBA specifically testified that during the collective negotiations for the successor agreement, the negotiation meetings with the County resulted in the County trying to take away 27 provisions in the contract and thereby making it fruitless negotiations. (See Interest Arbitration Response from Cumberland County). The negotiation sessions were forced to occur during the evening by the First Assistant Prosecutor as negotiations were not allowed to occur during regular business hours. In addition, the costs of going through interest arbitration are significant on both sides. The PBA has a limited amount of resources in order to go through the full interest arbitration process whereas the County has unlimited resources. The PBA is seeking to have a reasonable extended period of time to be 'in contract' through the rest of the tenure of the sitting Prosecutor whose term will not be up until 2015. To have this matter come back sooner will cause more expense on behalf of both parties.

The County's economic status also warrants this contract be extended through 2014 as over the past five years even through this difficult economy, the County has successfully flattened their tax levy and reduced the tax rate for all tax payers. As such there have been no counter effects of the economy on the County of Cumberland. The tax collection rate remains at 100% every year. The County is isolated and not as affected by the economy when they generate revenue.

In addition, the County also has a significant resource being sold this year for over \$14 million dollars that will result in an injection of cash into the County budget. That money is going to provide financial stability for the

next several years. The contract should extend through December of 2014. The County cannot articulate any reason why the budget and finances of the County could not and shall not allow this collective bargaining agreement to extend through December of 2014.

In support of its proposed contract duration, the County provides the following argument:

The County proposes a three-year contract term as opposed to the Unions' contract term of four years for a number of important reasons. First, the County's fiscal health is being challenged by the most significant economic crisis in modern history. As set forth throughout this brief, the County has not been immune to this recession and must take a number of steps to get its financial house in order. Incumbent upon this is to provide a reasonable, shorter term deal due to the uncertainty of the economy. A three year deal will provide both employer and employee with a period of labor peace, but not go too far out in an uncertain future. The upcoming years are critical to the County's fiscal health. Thus, to award a contract beyond the proposed three years could potentially be damaging to the County's financial well-being.

Further, it is no secret that the County's contract expired December 31, 2010 which put it on the doorstep of the 2% aggregate base salary cap increase in interest arbitration. While not applicable, the Arbitrator should take arbitrable notice of that cap in issuing this award. However, to award a four year contract would place the contract beyond the sunset provisions of the new interest arbitration law. The County would therefore never receive the benefit of the 2% cap which would clearly run contrary to the purpose of the legislation of providing public employers with the benefit of the law. There is simply no basis in the record to provide a four (4) year deal. The Unions' arguments in favor of a four (4) year deal are mere subterfuge to their real reason for it – to forever avoid the 2% cap on interest arbitration awards.

There is some merit to each position that the parties have taken on this issue. The facts that are among the most relevant on this issue are that year 2011 will see no increase in the wage schedule, that the history of the parties has been such that longer term stability is preferable to the potential for shorter term conflict and that the record as to the County's finances is sufficiently clear so as to allow for economic terms through 2014 so long as they are set in a manner

that does not cause adverse financial impact to the County or create interference with its statutory appropriations or tax levy authorities. In my judgment, an Agreement that satisfies these factors can extend through 2014 and would further the interests and welfare of the public. Accordingly, I award a contract term effective January 1, 2011 through December 31, 2014.

Longevity

The County has proposed to eliminate the longevity provision for new hires. In support of its proposal, the County makes the following argument:

In Article XI, the expired agreements provide that “[l]ongevity will be based on the employee’s total years of service as a sworn law enforcement officer with the Cumberland County Prosecutor’s Office.” (E2, E3). This provision should be amended to state that longevity shall be grandfathered for current employees but eliminated for new hires. (E8, E9).

Negotiations for the expired agreements occurred before the economic downturn that spurred the “Great Recession.” Since the negotiations of the expired agreements, the County has weathered an extremely challenging economic climate. The County’s proposal protects longevity for the detectives that negotiated it. Eliminating longevity will not affect the generous benefit that current employees receive. With the need to curtail costs, eliminating longevity for new hires is a sensible proposal that will result in some much needed savings for the County and has been awarded by a number of arbitrators in interest arbitration proceedings. (E280: Spotswood Boro and PBA Local 255, Docket No. IA-2011-048 (F. Mason)).

The PBA opposes this proposal:

The County is seeking to remove all economic benefits received by the PBA Local 396. Many of these benefits have origins in the Bigley action in trying to recruit and maintain adequate staffing for the Investigator’s department. The longevity provision in the contract only allows a very limited number of individuals to receive any type of longevity. The maximum longevity received in this contract is only 2%. That based upon

the highest Investigator salary would yield a proximate \$1,500 to \$1,600 payment after the completion of over 20 years of service. As such the longevity provision is a reward for long term long standing employees that provide an additional benefit based upon their experience in law enforcement and their ability to train and mentor new employees.

Removing such a benefit from all future employees takes away the carrot at the end of the stick to keep employees employed over a long period of time. This is an extra remuneration to give to employees who have successfully completed years of service for the County and will help reduce the impact of the already low salaries and base compensation as summarized by P30 and the Division of Criminal Justice.

I do not award the County's proposal to eliminate longevity for new hires. The existing program is modest in relation to other law enforcement contracts that have longevity provisions. The cost of the existing program has not been shown to be burdensome in relation to the County's finances. Moreover, overall compensation and benefit levels are important considerations in the Prosecutor's ability to maintain the continuity and stability of employment of unit employees. However, commencing on January 1, 2014, I award a conversion of longevity payments in the value of percentage longevity received at each step of that schedule into a new schedule of dollar amounts that correspond to the percentage value of longevity on that date. This dollar amount schedule shall apply to employees hired after July 1, 2012.

Education Stipend

The County proposes to eliminate the education stipend from Article XX, Paragraph 3, Section D. In support of its proposal, the County offers the following argument:

In Article XX, Paragraph 3, Section D, the expired agreements provide that, “[a]ll members of the FOP Lodge #132 will be compensated annually \$500.00 for an Associate’s Degree or its equivalent, and \$1,000.00 for a Bachelor’s Degree, \$1,500.00 for a Masters’ Degree, and \$2,000.00 for a Doctorate Degree.” The County proposes that this provision be eliminated. (E8, E9).

The County’s proposal strives to achieve parity among the other units in the Cumberland County Prosecutor’s Office. (1T175:1-5). Notably, the Cumberland County Assistant Prosecutors, CWA Local 1036 and CWA Local 1036 Superiors, do not receive educational stipends. (E334, E335). Likewise, the total cost of the educational stipend for the support staff unit, UPSEU, was zero (0). (E329A). In 2011, the Unions’ educational stipend amounted to \$27,500. (E329A). The County’s proposal is a sensible cost-savings approach that will not decrease services. The need for parity among the various units is best demonstrated by a situation that recently occurred. Under the most recent agreements, a detective obtained a Juris Doctorate and received an education stipend of \$2,000 a year. (1T174:15-21). Meanwhile, all of the other attorneys working as Cumberland County Assistant Prosecutors do not receive an educational stipend. (E334). In effect, detectives’ ability to receive an educational stipend results in inequity among the units and added costs with no additional services at the Cumberland County taxpayers’ expense.

The County will continue to provide reimbursement of tuition and encourage an educated workforce. The County proposes to eliminate the Unions’ educational stipends in an effort to be prudent, responsive to taxpayer concerns, and to manage the Prosecutor’s Office the best way possible. Elimination of this benefit will also alleviate costs.

The PBAs oppose this proposal:

The County had a big problem with educational stipends for Investigators but such provisions are rather common in law enforcement contracts. The County fails to recognize the advantages of having employees that have advanced degrees. In the Investigators department they previously had an individual who had a jurist doctorate which is not a requirement of the position, but, the benefits that they received by having a person with a law degree work for them is tremendous. In addition, employees who seek to further their education and get bachelors and masters degrees become more useful assets in being able to solve and prevent crimes in addition to lending additional credibility when they are to testify in court against the criminals. Ultimately it benefits the taxpayer.

The County opposes the educational stipend received by the detectives. Why, because the prosecutors do not receive said stipends. These Investigators are not prosecutors. They are not required to have a JD in order to do their job. It is a base requirement for somebody to be an

attorney or a prosecutor in this state that they do possess a JD; therefore, it is incumbent upon their salary that they would receive such remuneration for their position. It is not the Investigator's fault that they did not negotiate the contracts for the Prosecutors and the wages that the County pays the Prosecutors are substandard in the State of New Jersey. As demonstrated by Exhibit P29, the Prosecutors in Cumberland County have the highest turnover in the State. In addition, they rank among the lowest with having experience in the practice of law. Yes, these needs to be fixed, and no, not at the expense of the investigators.

The educational stipend rewards investigators who bring additional benefits to the table that will make them more effective and more efficient. The overall highly educated Investigators benefit the tax payers. The Investigators that possess the advance degrees in criminal justice, accounting and law all benefit the Prosecutor in her ability to investigate, detect and research crime, patterns and gangs.

The County offered no documentation on the actual costs of the educational stipends and pursuant to N.J.S.A. 34:13A-16F3, the County was required to provide the estimate of the financial impact on its final offer on the County taxpayers. The removal of the longevity and education stipends is an economic benefit to the taxpayers and the County has not addressed what the net effect would be on the taxpayer. Once again this is an ill conceived idea of the County to take away benefits and compensation to the Investigators bringing them back to the substandard level prior to Bigley. They are the lowest paid department by average salary in the State. Taking away more benefits is not going to improve things. The notion is just absurd.

I do not award the elimination of this existing contractual benefit. The County has not shown that the costs of this benefit have been burdensome or outside of present financial abilities. The fact that Assistant Prosecutors do not have this type of benefit does not represent sufficient justification for its elimination.

Clothing Allowance

The County proposes to eliminate the clothing allowance contained in Article XX, Section 4. In support of its proposal, the County makes the following argument:

Article XX, Section 4 of the rank and file detectives contract provides that, “[t]he employer will provide a clothing allowance to all employees” in the amount of \$1,000.00 in 2008, 2009 and 2010. (E2). Likewise, Article XX, Section 4 of the superior officers’ contract provides employees with a clothing allowance of \$1,200.00 in 2008, 2009 and 2010. (E3). As noted above, no detective-investigator in the State receives a better benefit than this.

The Cumberland County Prosecutor’s Office requires its employees to dress professionally. Sergeant George Chopek testified that his uniform consists of a polo shirt and khaki pants. (E127). Purchasing five (5) polo shirts and five (5) khakis certainly do not come close to costing \$1,200, or even \$1,000, annually. Eliminating the clothing allowance is a reasonable approach to put an end to an unnecessary and excessive benefit.

The County’s Final Offers strive to achieve equal treatment among the units within the Cumberland County Prosecutor’s Office. Cumberland County Assistant Prosecutors and support staff do not receive a clothing allowance but are still responsible for dressing professionally. (E29A, E334, E335, E336). Meanwhile, in 2011, the detective units’ clothing allowances cost the County \$51,000. (E329A). Elimination of the clothing allowance will achieve parity among the Cumberland County Prosecutor’s Office units and save the County a significant amount of money

The PBA opposes this proposal:

The County is also seeking to remove the clothing allowance but provided no justification whatsoever other than the Prosecutors must buy their own clothing. The Investigators are **required to buy their own uniforms**. As testified to by Sgt. Chopek, the Investigators are required to purchase their own uniforms and equipment that are needed to do their job. The County does not provide any uniforms or footwear for the investigators to wear. Each year the officers must replace any worn out equipment and uniforms out of their own pocket. The Investigators also have to work out in the field, go to crime scenes, and make arrests and often times have to struggle and fight with suspects in order to get them apprehended. Those actions cause damage to clothing and uniforms and right now it is upon the officer to replace them himself.

The County neither offered to purchase uniforms for their employees nor provide any other necessary items for the Investigators to do their job. This is so far drastically different from the Assistant Prosecutors who are required to wear a suit and tie to go to Court. Those suits and ties are not subject to damage while arresting individuals, going on raids and other aspects of the Prosecutors Investigator’s jobs.

Elimination of the clothing benefit in the contract is without merit and also a violation of N.J.S.A. 34:13A-16 F 3 as the County does not know how much of an impact the clothing allowance has on the County taxpayers. In the end the County has not put any resources in demonstrating the net effect of these proposals on the actual Investigators. When combined with the effect of Chapter 78, an officer could lose anywhere from \$12,000 to \$13,000 in pay throughout the life of this contract if the County is awarded all of their provisions that they are trying to take away from the Investigators.

Those proposals are nothing more than a wholesale degradation of the benefits and compensation that are received by the Investigators of Cumberland County and an effort to strip them of everything that was gained in the Bigley action to reduce their meager compensation package is unproductive and simply destructive. The County cannot articulate any budgetary need or reason to remove all of these provisions from the contract and to give nothing back to the investigators whatsoever.

The County has offered insufficient justification to sustain the requested elimination of this existing benefit. The Unions have not sought an increase to the existing allowances and, as such, they will remain at the same level through 2014 as they were in 2010. Testimony reflects that the purchase and maintenance of clothing and uniforms in connection with the performance of official duties results in expenses that the parties have historically agreed to offset by this allowance. Accordingly, I do not award the County's proposals.

Vehicle Specifications

The County proposes to eliminate Article XXIII Vehicle Specifications. In support of its position, the County offers the following argument:

Article XXIII of the expired contracts provides that that the County agrees to supply vehicles that conform to specific standards. (E2, E3). The County's Final Offers seek to eliminate this provision. (E8, E9). The County maintains that vehicle specifications are a non-negotiable managerial prerogative.

In In re Middlesex County, App. Div. Docket No. A-3564-78 (June 16, 1980), the Court found that matters such as the make, model, color and engine size of vehicles are non-negotiable. The Court also held that the equipping of vehicles are negotiable so long as they directly relate to employee health and safety. Id. The County maintains that the County's exercise of a managerial prerogative does not directly relate to employee health and safety, and, therefore, vehicle specifications are non-negotiable managerial prerogatives.

The PBA opposes this proposal:

Article XXIII of the contract provides for vehicles that are derived directly from the report of Debra Stone's report. It provides for what kind and type of vehicle is needed for the Cumberland County Investigators to be efficient and well equipped to carry out the functions that they are required to by law. Debra Stone specifically stated that when the County was left to decide about the conditions of the vehicles, they were absolutely deplorable and prevented Investigators from being able to do what they were required to do by statute. With regard to vehicles there was a specific section on Page 11 and Page 12 of the Debra Stone opinion that talks about the need for vehicles and the policies dealing with outdated or vehicles that needed to be replaced.

This report prepared by Stone, the expert for the Board of Chosen Freeholders, stated what number of vehicles the investigators need and the types of cars should that must be purchased for the Investigators. These are basic minimum requirements for safe operation of vehicles for the Investigators.

The County specifically had a problem with the provision providing that vehicles must be replaced at 100,000 miles. The Investigators were willing to work and remove that single phrase from the contract and allow the provision that states that the vehicle shall be kept in a sound mechanical working order and provided maintenance. Vehicles deemed unsafe shall be replaced.

Judge Stanger, as a legislative agent, proposed the language. It is a safety issue and provides for the Prosecutor to provide the basic tools for trade. The County was required to create a fleet management plan pursuant to the Bigley order in order to maintain and keep these vehicles in good working order in order to keep the Investigators safe and to give the taxpayers reliable vehicles for when use by the Investigators. The County has filed a scope and negotiation petition regarding the vehicle provision and at the same time the PBA filed a scope petition regarding all of those items that were ordered in Bigley. Vehicles fall squarely within what was determined to be necessary by Bigley and by the County's own expert's recommendation. When reading the contract it merely provides that the County will provide vehicles and that they have AM/FM radio and a mid to full size four door passenger car and/or SUV

that has air conditioning. They are minimum requirements and not requesting top of the line vehicles be purchased by the County. Further, the contract states that the vehicles used primarily by investigative personnel will be equipped with adequate emergency lighting and audible devices to conform with the minimum standards established by the New Jersey Attorney General Guidelines relating to motor vehicle pursuits.

These provisions in the contract do not infringe on management prerogative, it deals with safety issues and protection for the individual Investigators. The PBA only asks to modify this provision to make sure that the vehicles have front and rear lights. The First Assistant Prosecutor testified that he believed that all of the vehicles did. This is rather a simple solution that if the vehicle is being used for investigative purposes then the vehicle should have lights in the front and back. There was a safety issue as testified to by Detective Breslin when he was responding to a homicide call and he did not have rear strobe lights. It affected his ability to get to the scene and to negotiate through traffic when people behind him could not tell that he was an emergency vehicle going to an emergency. The rest of the provisions in the contract provide that the car should be maintained by both the County and the individual who drives the vehicle. The wholesale removal of Article 23 from the contract is inappropriate. This provision was put in as part of the Bigley order in order to insure that the Prosecutors and Investigators maintain the proper amount of equipment and vehicles that are necessary in order for them effectuate responding to crimes in a safe and efficient manner. This is merely a safety concern and not infringing upon management prerogative. It is entirely negotiable and the PBA is willing to work with the County regarding the replacement of the vehicles which was the biggest issue and the provision that appears under Article 23 in the contract.

I do not address the negotiability of this proposal. That statutory authority rests with PERC who has not delegated that authority to interest arbitrators to render such decisions. However, PERC has suspended its rule that had prohibited arbitrators from issuing an award on an issue that is subject to a scope of negotiations petition. Following this suspension, no new rule has yet been adopted. Accordingly, I will decide this issue on its merits and not as a substitute for an agency scope of negotiations determination.

The County's objection to Article XXIII is that it requires certain specifications for Prosecutor-provided vehicles. As such, its objection is limited. To the extent that Article XXIII requires vehicles to conform to specific standards, I award a modification that would remove vehicle specifications from the existing provision. I do not redraft or rephrase Article XXIII because the PBAs have indicated a willingness to cooperate with the Prosecutor concerning vehicle replacement and other such issues. It is appropriate to require such discussion to ensue through a joint committee whose function shall be to modify Article XXIII solely with respect to issues such as vehicle specification and replacement.

Retiree Health Benefits

The County proposes to amend Article XXV to state that health benefits will be grandfathered for existing employees but shall be eliminated for new hires. In support of its proposal, the County offers the following argument:

Article XXVI of the expired contracts provides health benefits upon retirement. (E2, E3). The County's Final Offers seek to grandfather retirement benefits for existing employees and eliminate the benefit for new hires. (E8, E9). In 2012, the cost of group health insurance totaled \$14,376,695. (E34). Health insurance costs will certainly continue to rise in future years. The County's proposal seeks to keep these costs as fixed as possible.

With the generous benefits that investigator-detectives receive, it is no coincidence that turnover is at 2% since 2009. (E329A). Likewise, seniority for rank and file detectives is 6 years, while seniority for superior officers is 16 years. (E274). As investigator-detectives continue to remain with the County for longer periods of time, it is more likely that they retire as County employees. Consequently, the costs for retirement benefits will rise in the coming years.

The County's Final Offers seek to alleviate the County's future finances by eliminating retirement benefits for new hires. The County's proposal will not affect the negotiated benefits that current employees receive.

Elimination of retirement benefits for new hires is a reasonable cost-saving measure that will help ease the County's financial burden in future years.

The PBA opposes this proposal:

The County once again is seeking to remove additional benefits from the PBA contract which is going to affect the ability to retain and bring in new and qualified members to PBA 396 and 396A. The County provided no current costs analysis or projection of what the benefit would save the County in the future regarding health benefits for retired members. Currently the contract provides in Article 26 "Employees shall retain all pension rights in accordance with New Jersey State law. Health benefits upon retirement will conform to the established protocols of the County of Cumberland." Currently the Collective Bargaining Agreement provides that the retirement benefits for Investigators are the same as for all other County employees. County policy requires at least 20 years of service with the County in order to receive those benefits. As Investigators, they are often drafted from local police departments. Very few are able to earn the ability to receive retired health benefits. Keeping the language that is currently in the contract will provide the benefit for Investigators that are coming into the department seeking a long term career working for Cumberland County. It is these types of benefits that allows employers to keep employees for long periods of time and rewards them for their continued service to the County. Turnover is a very costly transition for all employers and this is another one of those provisions where it helps the County recruit and maintains the best.

The existing benefit is part of the overall compensation and benefits scheme for unit employees. While it is a benefit that a cost is attached to, I do not find this justification to be sufficient to eliminate this benefit during this contract term.

Grievance Procedure

The County proposes to amend Article IX – Grievance Procedure as follows:

Article IX, Step 2 shall be amended to state that the Prosecutor shall issue a written decision within twenty (20) days of the filing of the grievance at this level.

Article IX, Step 3 shall be amended to state that the employee shall give notice and file arbitration within ten (10) business days.

Article IX, Step 3(a)-(d) shall be eliminated and amended with the following:

- A) The parties herewith agree to utilize the panel of arbitrators maintained by the New Jersey Public Employment Relations Commission ("PERC") and shall following the procedures set forth by PERC for grievance arbitration matters. The arbitrator shall be confined to the Agreement and shall not have the power to add to, subtract from, or modify the provisions of the Agreement.
- B) The decision of the arbitrator shall be final and binding consistent with applicable law and this Agreement. The fees and expense of the arbitrator shall be divided equally between the Employer and the moving party. Any other cost of the arbitration proceeding, including the cost of recording, shall be borne by the moving party.
- C) The time limits specified in the grievance procedure shall be construed as maximum limits. However, these may be extended upon mutual agreement between the parties in writing.

In support of its proposals, the County offers the following argument in its post-hearing brief:

Article IX of the expired contracts provide grievance procedure language. (E2, E3). The County proposes new language that will achieve parity with other County units. Accordingly, the County's proposal for new language in the grievance procedure must be granted.

The PBA opposes this proposal:

On their final offer, the County is seeking to modify the grievance procedure set forth in the contract. The County is offering changes to the grievance procedure in order to have no restrictions on the PBA Local

396 and 396A. Specifically under Article 9, Step 2, they add a 20 day limit for the Prosecutor to issue a written decision. Currently in the contract there is no provision to limit the amount of time for the Prosecutor to issue a written decision therefore the PBA can accept Article 9, Step 2 revision. Under Article 9, Step 3, 15 day window for the PBA or the County to request binding arbitration. The 15 day window is entirely reasonable and the County offered no testimony whatsoever as to why the window had to be shrunk from 15 days to 10 days. There have not been any problems with a 15 day window; therefore, the Arbitrator should deny this request. The County also seeks to change Article 9, Step 3(a) through (d). The County is seeking to limit the arbitration to the agreement alone and not allow the Arbitrator to add to, subtract from, or modify the provisions of this agreement. Currently, the Collective Bargaining Agreement allows Arbitrator the ability to render a decision that is based upon the findings of fact, reasons and conclusions on the issue or issues submitted. The Arbitrator's role is not limited in the contract. The grievance procedure is a less formal way to resolve contractual differences between the parties. The Arbitrator's discretion must be left open and not artificially constrained by grievance arbitration language that the County is seeking to insert.

In addition, the County is seeking to change the way the fees are handled for any other cost of the arbitration proceeding including the cost of recording and making it the burden of the moving party. In the current contract there is provision that the fees and costs for the Arbitrator are split between the parties. That is the standard practice when dealing with grievance arbitrations and that the parties will share the burden of the recording, the transcript and of the Arbitrator. This is not a provision where there is a loser pays provision. This is a moving party pays provision which is inappropriate in this contract and unsupported by any of the testimony from the First Assistant Prosecutor or the County Administrator. Therefore, we ask the Arbitrator to deny any of the changes to the grievance procedure sought by the County.

The PBAs agree with the County's proposal concerning Article IX, Step 2. Accordingly, it is accepted as a stipulation and is awarded. The County's proposal to reduce arbitration filings from fifteen (15) days to ten (10) days is not awarded. It has not been shown that the five (5) day reduction is required by any current conflict with the language. I find insufficient justification exists to alter any of the addition language that currently exists.

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).

My consideration of the parties' proposals is governed by N.J.S.A. 34:13A-16g. In arriving at this award, I conclude that all of the statutory factors are

relevant, but not all are entitled to equal weight. 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 the party proposing a change in an employment condition bears the burden of justifying it the proposed change. This burden must be met at a level that goes beyond merely seeking a change without sufficient evidentiary support. 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.

Salary

The parties have developed extensive evidence as to County finances. All relevant official budget documents are in evidence. The PBA offered testimony by its financial consultant Ralph Caprio, Ph.D. who provided a comprehensive financial profile. The County offered the testimony of Ken Mecouch who has been the County Administrator since April 2006 and first began county employment in 1977. Mecouch participates in collective negotiations and oversees the County budget. Each testified in support of the parties' respective salary proposals. The PBAs each propose:

2011	0%
2012	1.5% effective 1/1/2012, 1.5% effective 7/1/2012
2013	1.5% effective 1/1/2013, 1.5% effective 7/1/2013
2014	1.5% effective 1/1/2014, 1.5% effective 7/1/2014

The County proposes:

PBA Local 396A

- A) Effective January 1, 2011: Zero Percent (0%) increase on base pay.
- B) Effective July 1, 2012: 1.75% increase on base pay.
- C) Effective July 1, 2013: 2.00% increase on base pay.

PBA Local 396

- A) Effective January 1, 2011: Zero Percent (0%) increase on base pay with movement on steps.
- B) Effective July 1, 2012: 1.75% increase on base pay for those employees at maximum pay; all other employees shall receive no increase other than step movement.
- C) Effective July 1, 2013: 2.00% increase on base pay for those employees at maximum pay; all other employees shall receive no increase other than step movement.

Dr. Caprio has summarized the substance of his report in a summary that sets forth the following points:

- Cumberland has the second smallest ratable base from among the 21 counties; comparative analyses must be explored within this context (Exhibits 2 and 3).
- While the average residential property value is lowest among the 21 counties, Cumberland also has the lowest average property tax. Given relative comparisons, there are no red flags with respect to undue tax burden (Exhibits 4 and 5).
- 19 of the State's 21 counties lost value between 2008 and 2011; Cumberland – ranked 5th best in performance, saw a significantly smaller decline of its tax base than 16 of the 21 counties (Exhibit 3).
- Property taxes for County operations actually FELL from 2008 (\$84.68 million) to 2011 (\$83.92 million). (Exhibit 6)

- County operations are 38.7 percent of total taxes, ranking first in the State; the flat County assessment, therefore, has moderated total tax increases throughout the County (Exhibit 7-10).
- Based on the statutes distributing State Aid, Cumberland municipalities are unlikely to see a further drop in State Aid (Exhibit 11).
- One measure of economic rebound, estimated value of new construction, is higher than 2008, recovering significantly in 2011 from the recession years, 2009 and 2010 (Exhibit 12-14).
- Cumberland was under its property levy Cap in 2011, with more than \$600,000 in FY 2011; the impact of going to Cap and providing less reliance on one-time revenue would have been \$10.60 per homeowner (Exhibits 15-18).
- Distribution of appropriations in Cumberland are unremarkable when compared to either regional counties or all counties in the State (Exhibits 19, 20).
- As the economy rebounds, the regional cost of living increases are higher than during the recession; PBA and other households have seen a 2% CPI increase for nearly 18 months, reducing purchasing power prior to the impact of any other element (as will be discussed) that will further, and quite significantly, reduce net salaries (Exhibit 21, Exhibit 25 and following).
- Recent sale of Cumberland Manor by the County to LTC Management for \$14 million will both reconstitute the fund balance as well as eliminate deficit operations of \$2.5 million, as reported by the Daily Journal. (Exhibit 22A).
- Cumberland chose to draw down its Fund Balance while concomitantly having tax increase capacity that it chose not to exercise (Exhibits 22-24, Supplemental Exhibit 24A) further indicates that the County does not seem to be considering going to the cap in 2012 either.
- Pension and Health Care Reform will decrease net effective salaries by as much as 8% by 2014 unless progressive incremental progress is made now. Not doing so will have two results: (1) there obviously will be a major diminution in compensation, but also 2014, the County will not have the tax raising capacity to address this or other issues because its tax

capacity under both the 1977 and 2% Caps will be insufficient to raise sufficient tax resources.

- The County CAN afford the PBA Demands; the Impact will be approximately \$3.00 per homeowner by 2014 (Exhibit 39).
- The alternatives on the one hand are: (a) taxpayers saving \$3.00 annually, or (b) employees losing between \$4,369 and \$6,137 annually (depending upon salary and type of health care coverage) (Exhibit 39).

The Unions' view is straightforward. It believes that its salary proposals are commensurate with the financial conditions of the County, that they can be borne without adverse financial impact, that they can be funded by the County within its statutory limitations, that they are required in order to maintain the continuity and stability of employment, that they are required in order to maintain comparability with Salem and Gloucester counties in particular and with prosecutor's offices generally throughout the State of New Jersey, and are consistent with the objectives set forth in the 2005 Bigley Order.

The County disagrees. The County submits that Cumberland County is a depressed County with a 14.3% unemployment rate and with a poverty rate among its residents that approximates 17%. It points out that civilian units have been subject to layoffs while Investigators have not. The County acknowledges that unit employees play an important public safety role but that the PBA salary proposals ignore economic realities. In short, it cautions that expenditures cannot exceed the natural growth of the community that is served and that the

costs of salary increases must take into consideration the ability of the taxpayers to fund them.

The County urges the arbitrator to consider the sharp decline in surplus ending balances, the declines in revenue streams while taxes have remained at fixed levels, the doubling of pension payments between 2008 and 2011, increases in health insurance premiums with the County paying a majority of increased costs despite the increases in employee contributions, reductions in taxable income due to assessed valuation appeals and losses in State aid. Because the County can only tax 61% of the land within the County, it asserts that the burden to raise revenue falls on the County's low income residents who have a per capita income of \$21,641.

In my evaluation of the respective salary proposals, I initially note that each last offer consists of no adjustments to the salary schedule for contract year 2011. Thus, the only increases to have been received for that year are the step increases for employees who are not yet at the salary maximum of \$81,611. Eighteen (18) of the twenty-eight (28) Local 396 employees fell into that category. The superior officer ranks represented by Local 396A all occupy a single step and would receive no increase. Accordingly, the salary schedule shall be frozen for contract year 2011.

The County has proposed that no employee receive a step increase in 2012 and 2013. I do not award the County's proposal. Continuity and stability of employment has been a major concern in the past. This has been ameliorated in recent years but the implementation of freezes in step movement for less experienced Investigators over the term of the Agreement could potentially interfere with the more recent stability that has been achieved. I also note that the parties have a salary schedule containing eleven (11) steps including the Pre-Academy step through Step 10. A freezing of these steps over the course of a new agreement could unduly delay the movement of Investigators towards increased compensation and provide disincentives to remain employed in the Prosecutor's office. I also do not award the County's proposal to amend Article X, paragraph 2 of the Local 396 Agreement to state that step movement shall be frozen upon expiration of the Agreement until a successor agreement is negotiated. The Agreement now states that advancement will occur "as of January 1 of each new year" but is silent on whether such advance survives contract expiration. The failure to award this proposal is not intended to serve as a waiver of any arguments the County may raise in the future with regard to the automatic payment of future increments upon contract expiration which, as the parties have referenced, has been the subject of recent case law. In the event that any such dispute arises in the future on this issue, they may be resolved through the grievance procedure and/or unfair labor practice proceedings.

I next address the across the board increases. As previously stated, the salary schedule for 2011 shall remain as had been established for 2010 under the old agreement. Thereafter, I conclude that a reasonable determination of the salary issue is to set increases of 0% effective January 1, 2011, 1.0% effective on January 1, 2012, 1.25% on July 1, 2012, 1.0% on January 1, 2013, 1.25% on July 1, 2013 followed by an increase of 1.5% effective January 1, 2014. All increases shall be at each step of the salary schedule and at each superior officer rank and shall apply to all unit employees and those who have retired on normal or disability pension and except for those who have voluntarily resigned or have been separated from employment without good standing.

Step	1/1/2011 0%	1/1/2012 1.0%	7/1/2012 1.25%	1/1/2013 1.0%	7/1/2013 1.25%	1/1/2014 1.5%
Pre-Academy	46,834	47,302	47,894	48,373	48,977	49,712
Step 1	48,956	49,446	50,064	50,564	51,196	51,964
Step 2	52,699	53,226	53,891	54,430	55,111	55,937
Step 3	55,060	55,611	56,306	56,869	57,580	58,443
Step 4	57,420	57,994	58,719	59,306	60,048	60,948
Step 5	60,176	60,778	61,537	62,153	62,930	63,874
Step 6	66,089	66,750	67,584	68,260	69,113	70,150
Step 7	70,410	71,114	72,003	72,723	73,632	74,737
Step 8	72,771	73,499	74,417	75,162	76,101	77,243
Step 9	75,154	75,906	76,854	77,623	78,593	79,772
Step 10	81,611	82,427	83,457	84,292	85,346	86,626

Step	1/1/2011 0%	1/1/2012 1.0%	7/1/2012 1.25%	1/1/2013 1.0%	7/1/2013 1.25%	1/1/2014 1.5%
Sergeant	94,488	95,433	96,626	97,592	98,812	100,294
Lieutenant	105,348	106,401	107,731	108,809	110,169	111,821
Captain	114,863	116,012	117,462	118,636	120,119	121,921

I conclude that the above terms represent a reasonable balance taking into consideration the entirety of the record evidence that concerns the County's

budgetary circumstances, its statutory limitations, the goal of maintaining continuity and stability of employment in the Prosecutor's office, the cost of living data and levels of comparability between the Prosecutor's office and surrounding counties.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

AWARD

1. All proposals by the County and the Unions 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.

2. **Duration**

There shall be a four-year agreement effective January 1, 2011 through December 31, 2014.

3. **Minor Discipline Clause**

I award the ability to arbitrate minor discipline for penalties which, at minimum, involve a one-day suspension without pay. I leave the issue as to what administrative agency would administer the provision to the parties. In the absence of an agreement, such agency shall be the American Arbitration Association.

4. **Union Security Clause**

Employees represented by this collective bargaining unit may not request payroll deduction for payment of dues to any other labor organization other than the duly certified majority representative. Existing written authorizations for payment of dues to any other labor organization shall be terminated.

5. **Employee Organization Reference**

Replace all references of FOP Lodge 132 with PBA Local 396 or 396A.

6. **Health Insurance Opt Out**

I award the language of the PBAs' proposal in the form of a recommendation to the Prosecutor to be considered for adoption and, if adopted, the Agreement shall include an opt out provision in the form of a notice to the unit employees as follows:

The Prosecutor has exercised the authority of that office to allow employees to opt out of the County's sponsored health benefits plan in the amounts allowable by N.J.S.A. 40A:10-17.1, namely, in an amount equivalent to 25% of the premium for the type of coverage waived not to exceed \$5,000.

The Prosecutor shall notify the PBA, within thirty (30) days of the Award as to whether the recommendation is accepted.

7. **Vacation Schedule – PBA Local 396**

I award the establishment of a joint committee to more fully discuss the vacation proposal to ascertain whether the proposal impacts upon the amount of vacation time now provided and, if not, as the PBA argues, whether the adoption of the proposed schedule is a preferable alternative to specifying the amounts of vacation time by individual employee.

8. **Longevity**

Commencing on January 1, 2014, I award a conversion of longevity payments in the value of percentage longevity received at each step of that schedule into a new schedule of dollar amounts that correspond to the percentage value of longevity on that date. This dollar amount schedule shall apply to employees hired after July 1, 2012.

9. **Vehicle Specifications**

I award a modification that would remove vehicle specifications from the existing provision through a joint committee whose function shall be to modify Article XXIII solely with respect to issues such as vehicle specification and replacement. I recommend that the scope of negotiations petition be suspended pending committee action.

10. **Grievance Procedure**

Article IX, Step 2 shall be amended to state that the Prosecutor shall issue a written decision within twenty (20) days of the filing of the grievance at this level.

11. **Salary**

The salaries at each step of the salary schedule shall increase by 0% effective January 1, 2011, 1.0% effective on January 1, 2012, 1.25% on July 1, 2012, 1.0% on January 1, 2013, 1.25% on July 1, 2013 followed by an increase of 1.5% effective January 1, 2014. All increases shall be at each step of the salary schedule and at each superior officer rank and shall apply to all unit employees and those who have retired on normal or disability pension and except for those who have voluntarily resigned or have been separated from employment without good standing. The salary schedule shall read as follows:

Step	1/1/2011 0%	1/1/2012 1.0%	7/1/2012 1.25%	1/1/2013 1.0%	7/1/2013 1.25%	1/1/2014 1.5%
Pre-Academy	46,834	47,302	47,894	48,373	48,977	49,712
Step 1	48,956	49,446	50,064	50,564	51,196	51,964
Step 2	52,699	53,226	53,891	54,430	55,111	55,937
Step 3	55,060	55,611	56,306	56,869	57,580	58,443
Step 4	57,420	57,994	58,719	59,306	60,048	60,948
Step 5	60,176	60,778	61,537	62,153	62,930	63,874
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Step 10	81,611	82,427	83,457	84,292	85,346	86,626

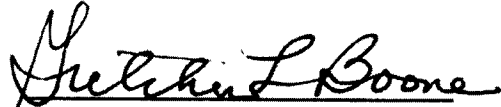
Step	1/1/2011 0%	1/1/2012 1.0%	7/1/2012 1.25%	1/1/2013 1.0%	7/1/2013 1.25%	1/1/2014 1.5%
Sergeant	94,488	95,433	96,626	97,592	98,812	100,294
Lieutenant	105,348	106,401	107,731	108,809	110,169	111,821
Captain	114,863	116,012	117,462	118,636	120,119	121,921

Dated: May 14, 2012
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 14th day of May, 2012, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014