

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between

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**COUNTY OF HUDSON/OFFICE OF THE SHERIFF**

"Public Employer"

-and-

**FOP LODGE NO. 127 (SUPERIORS)**

"Union."

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2011-052

**Before  
James W. Mastriani  
Arbitrator**

**Appearances:**

**For the Employer:**

Sean D. Dias, Esq.  
Scarinci & Hollenbeck, LLC

**For the Union:**

Eric B. Levine, Esq.  
Lindabury, McCormick, Estabrook  
& Cooper, PC

A petition to initiate interest arbitration was filed by FOP Lodge 127 [the "Union" or "FOP"] on May 26, 2011 after a declaration of impasse in negotiations between the FOP and the County of Hudson [the "County"]. The employees are superior officers in the Sheriff's Department. Thereafter, on June 7, 2011, I was appointed to serve as interest arbitrator by random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This law requires that an award be issued by 45 days after appointment with no provision for a mutually agreed upon extension of any length. The law also subjects an interest arbitrator to a \$1,000 per day fine for each day an award does not issue after the 45<sup>th</sup> day from the date of appointment.

On June 7, 2011, by letter, I scheduled an interest arbitration hearing on June 27, 2011. In accordance with N.J.S.A. 34:13A-16(f)(1), each party was directed to submit a final offer no later than June 17, 2011. Each final offer was received by close of business June 17, 2011.

At the June 27, 2011 hearing, the County and the FOP argued orally, submitted substantial documentary evidence and examined and cross-examined witnesses. Testimony was received from Dr. Raphael H. Caprio, FOP Financial Expert, Captain William Joy, President of FOP Lodge 127, Sergeant John Karas, Vice President FOP Lodge 127, Patrick Sheil, County Director of Labor Relations John Inagnaki, County Fiscal Analyst and Andrew Conti, Director, Hudson

County Sheriff's Office. Post-hearing briefs were received from both parties on July 7, 2011.

The final offers received from the parties and considered in this proceeding reflect the following issues:

### **FINAL OFFERS OF THE PARTIES**

#### **FOP LODGE 127**

1. **Contract Term**: 4 years (1/1/2011 – 12/31/14)
2. **Salary** – Year 1 - 7% increase; Year 2 – 7% increase; Year 3 – 3% increase; Year 4 – 3% increase.
3. **Longevity**: Increase longevity by \$100 each year of the contract term.
4. **Clothing Allowance**: Increase allowance by \$100 each year of the contract term.
5. **Personal Days**: increase from three to five per year.
6. **Holiday Compensation**: Any superior officer working on a holiday will receive one (1) compensation day for every eight (8) hours worked.
7. **College Credit Reimbursement**: provide a reimbursement for each credit for Associate's degree at Hudson County College rate and for Bachelor's and Master's degrees at New Jersey City University College rate.
8. **Supervising Detective Pay**: Provide an annual \$2,000.00 stipend for any superior who is assigned as a "supervising detective".

## Hudson County

1. Contract Duration – Three years effective January 1, 2011 to December 31, 2013
  
2. Article V – Salary
  - a. January 1, 2011 through December 31, 2011 – 0  
January 1, 2012 through December 31, 2012 – 1.0%  
January 1, 2013 through December 31, 2013 – 1.0%
  
  - b. No retroactivity.
  
  - c. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation.
  
3. Article VI – Overtime
  - a. In section one, delete reference to overtime for work performed “in excess of any eight (8) hours per day.” Amend section to provide that overtime shall be calculated on a weekly basis of more than forty (40) hours in a work week. Additionally, after the fifth (5<sup>th</sup>) sick day in a calendar year, sick leave days will not count as hours worked for overtime purposes.
  
  - b. For those officers in the Patrol Bureau and any officer working a Pittman Schedule, overtime shall not be paid unless a unit member has worked at least 86 hours in a 14 day period, pursuant to the “7(k) Exemption” under the Fair Labor Standards Act.
  
4. Article VII – Holidays
  - a. Amend section 1 to provide as follows: Notwithstanding the foregoing, the County reserves the right, at its discretion, to adjust the holiday schedule herein to conform to that promulgated by the Governor of the State of New Jersey. Additionally, if the County, in its sole discretion, deems it appropriate, the County may adjust the holiday

schedule by exchanging Lincoln's Birthday for the Day after Thanksgiving.

- b. Add new section 4 to provide as follows:

ABSENCE BEFORE AND AFTER HOLIDAY

An employee who is absent from work due to illness the day before and/or the day following a legal holiday, shall not be paid for the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as "absent no pay" or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday is observed while he/she is employed in either status.

5. Article XIV – Insurance

- a. The insurance and health benefit levels as provided in State Law shall remain in effect.
- b. Prescription Drugs: the prescription drug program is currently with the New Jersey Health Benefits Program. The County program shall be provided for the eligible Employee, family and spouse, as set forth and defined by law.
- c. The County shall provide health coverage currently through the New Jersey Health Benefits Program. The County program shall be provided for the eligible Employee, family and spouse, as set forth and defined by law.
- d. The County shall continue the basic County dental program, which shall be at a benefit level of the current plan. The County basic dental program shall be provided for the employee, family and spouse, as set forth and defined by law. The County and Union shall cooperate to secure State approval for the implementation of an Employee-paid upgrade in the current dental insurance plan. Such upgrade will be at no expense to the County. If implemented, the County will exert its best efforts to assure that

Employee payments for the dental upgrade are treated as pre-tax income.

- e. The County shall continue its present life insurance program benefit level of \$5,000.00.
- f.
  - A. The parties agree that the County shall have the unilateral right to select the insurance carrier, the program and/or to self-insure in its sole and absolute discretion. Any dispute dealing with the selection of insurance carrier, program, or decision to self-insure shall not be subject to the Grievance Procedure. No reduction in benefit level shall result.
  - B. Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over such changes. However, as a participating SHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and/or benefit level in this agreement will be changed accordingly including the cost of co-payments of prescriptions to employees. The County will not be liable for any change or the impact of any such change. In addition, no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, an individual employee or the County from filing an appropriate challenge against SHBP for any such change. The County will provide notification of any such changes to the Union and employees. This provision covers all plans under the New Jersey State Health Benefits Programs including but not limited to healthcare, prescription drugs, etc.
- g. Unit members shall, pursuant to State Law, contribute 1.5% of base salary to the County for the cost of healthcare insurance benefits. This amount may change from time to time based upon in legislation.

The County has no input into or control over any such legislative changes. Accordingly, when such a change is made under law this agreement will be adjusted to reflect any change in contribution rate. The County will not be liable for any such change, or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union or an individual employee of the County from filing an appropriate challenge against the State for any such legislative change. The County will provide notification of any such changes to the Union and employees.

- h. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation.

6. Pension

Employees shall continue to receive pensions and retirement benefits pursuant and limited to the provisions of State law. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation.

7. New Article Training

Sheriff's Superiors who receive training shall be obligated to remain in the employ of the County for a period of three (3) years after the training is complete or shall be responsible to refund to the County the cost and expenses of any training provided. Any training cost not repaid at the time of termination may be deducted from any accrued but unpaid balances, including but not limited to vacation time and holiday time.

8. Mandatory Direct Deposit

Incorporate into the collective bargaining agreement the side bar language, wherein the Union and the County agreed to the following:

In partial consideration for establishment of aforesaid 14-day work period, the FOP agrees, effective with implementation of the aforesaid schedule, to the establishment of a program in which all bargaining unit officers' compensation will be directly deposited into a financial institution and immediately available to officers on payday, at no cost to officers.

9. A. The assignment of County vehicles shall continue to be within the sole discretion of the Sheriff.
- B. Vehicle Use Allowance

With respect to investigators currently employed with the Sheriff's Office, if in the discretion of the Sheriff, a vehicle is no longer assigned to a Sheriff's Superior Officer, that Sheriff's Superior Officer will receive a monthly stipend of three hundred fifty (\$350) dollars. Those employees who continue to be assigned to a vehicle will not receive the monthly stipend.

Any employee hired as of July 1, 2010 will not receive the monthly stipend and the assignment of a vehicle to that employee is within the discretion of the Sheriff. If it is determined by the Sheriff that the employee will not have an assigned vehicle, the employee will not receive a monthly stipend.

### **BACKGROUND**

The bargaining unit in this case consists of superior officers employed in the County's Sheriff's Office. The ranks include Sergeant, Lieutenant, Captain, Chief Court Officer, Chief Warrant Officer, Chief ID Officer and Chief Sheriff Officer. There are 26 superior officers in the unit. They, according to the testimony of Captain William Joy, supervise some 235 to 240 Sheriff's Officers for a ratio of 9 to 1.



There are various bureaus within the Hudson County Sheriff's Office. Director Conti testified to its organization. There are eight to nine superior officers in the Court Bureau, two in the Detective Bureau, eight to nine in the Patrol Bureau, and one Superior Officer in each of the following bureaus: Security, Swat, Process, Internal Affairs and Traffic Safety.

As is obvious from the final offers of the parties, there are many issues in dispute, most of which are economic in nature. The central issue in dispute is salary. Each party has submitted evidence concerning salary that each believes supports its respective rationale for each party's widely divergent position. Their views also differ sharply with respect to the financial evidence. I will focus mainly upon a general summary of their submissions on the points that touch upon their main contentions although all of the record has been reviewed in its entirety even if not specifically mentioned in the summary.

The FOP acknowledges that its salary proposal of seven (7%) percent annual increases for the first two years (2011 and 2012) followed by three (3%) percent annual increases for the final two years (2013 and 2014) may appear extreme and out of line with the current state of the local and national economy. However, the FOP, through the testimony of Sergeant Karras and Captain Joy and documentary evidence, points to an unusual circumstance caused by a voluntary agreement for years 2008-2012 between the County and PBA Local

334, the representative for the sheriff's officers who are supervised by this unit, that "erased any meaningful rank differential" between top Sheriff's Officers pay and Sergeants pay that contradict the history of how rank differential between these two classifications has been treated. The County does not dispute the impact of the Local 334 agreement on the Sheriff's Officer/Sergeant differential but disputes the FOP's claim that it should fund the FOP's proposal at the level the FOP seeks. This is a core issue in this proceeding as well as the evidence submitted by both parties that concerns the County's financial health. The FOP sees the County's finances as easily able to support its proposals while the County contends that the FOP wage proposals would cause adverse financial impact.

According to the FOP, the rank differential issue was caused by a five year voluntary agreement reached between the County and PBA Local 334. That agreement called for increases of 6% per year for a top step Sheriff's Officer commencing January 1, 2008 through December 31, 2012. Each 6% increase was effective on January 1. The top step in the Local 334 Agreement is at Step 9. The steps between Step 1 through Step 8 were increased by 3%. Under the terms of the PBA Local 334 agreement, the top step Sheriff's Officer moved to \$79,797 in 2011 and \$84,584 in 2012. These years are the first two years of the new FOP contract in this proceeding. The FOP points out that a Sergeant's pay is \$84,420 in 2010, the last year of its expired contract, and would remain at \$84,420 in 2011 under the County's proposal for a 0% increase. Sergeant's pay

would only move to \$85,264 in 2012 under the County's proposal for a 1% increase and then move to \$86,116 in 2013 under the County's proposal for an additional 1% increase. The FOP goes on to calculate the historical differential between top step pay for the rank and file Sheriff's Officer and Sergeant as having been 17.59% in 2006, 18.73% in 2007, 16.49% in 2008, 14.3% in 2009 and 12.14% in 2010. The FOP emphasizes that these rank differentials decreased significantly in 2008, 2009 and 2010 as a result of the annual 6% increases received by the top step Sheriff's Officers. The FOP calculates that under the first two years of the County's proposals, the differential would further decrease to 5.79% in 2011 and further decrease to 0.08% in 2012 by virtue of the Sergeant receiving only \$680 more in annual compensation than a top step Sheriff's Officer. Based upon these undisputed facts, the FOP contends that its proposal cannot be viewed as extreme but rather merely an attempt to only partially restore an historical salary differential at only one-half of what the differential had traditionally been.

According to the FOP, it sees its wage proposals as solving a wage disparity that will threaten the stability of the Sheriff's Department. It points to Sgt. Karas' testimony that the compression that would be caused by the County's wage proposal would have a chilling effect on his desire to have sought a promotions and foster ill will and morale problems because there would be no or little reward for assuming supervisory responsibilities. He further cites the last contract between the County and the FOP that addressed the need to improve

differentials between the rank of Sergeant and Lieutenant and Lieutenant and Captain as evidence of a demonstrated recognition to have reasonable differentials among ranks. This effort, defined by the labor agreement as "rank separators," saw Lieutenants receive an additional \$750 in 2006, \$1,000 in 2007 and \$1,000 in 2008 with Captains receiving an additional \$1,000 in 2006, \$1,250 in 2007 and \$1,250 in 2008 for the purpose of rank separation. The FOP concludes that there is an internal contradiction in the County's failure to now address the flat compression between Sergeants and Sheriff's Officers that would exist under the ct's proposal by virtue of having meaningless distinctions between the salary of a Sheriff's Officer and a Sergeant.

In further support of its proposal, the FOP seeks attention drawn to the fact that 13 of the 26 Superior Officers who were promoted in 2010 agreed to waive their salary increases upon promotion for six months, resulting in a \$169,342 cost savings to the County. The County does not dispute that there were savings but asserts that the amount was less than have of what the FOP claims. An analysis of the Sheriff's Supervisors' budget was submitted by the FOP reflecting the difference between what wages were received and the wages that were scheduled. [FOP Ex. #26]. This amount is \$169,342 but appears to be an annual number, whereas the length of the deferrals was not for the full year, thereby causing the differences in the parties' projections.

The FOP offers considerable documentation from its financial expert, Dr. Raphael Caprio showing dramatic negative economic impact of recent pension and health benefit legislation commonly referred to as Senate Bill 2937. When considered in conjunction with the County's proposal for a 2% increase over 3 years, according to Dr. Caprio, due to their specific salary ranges, they will contribute a disproportionately high percentage of their base salary under this Bill to cover the healthcare contributions and receive less compensation in 2013 than in 2010. He also calculated that the percentage of salary contributed ranges from 1.5% in 2011 to almost 8% in 2014. In terms of dollars, members of the FOP could be contributing as much as \$5,754.00 annually by 2014 depending upon the type of health coverage selected. Yet, according to Dr. Caprio, the savings to the average Hudson County homeowner under this new legislation in 2014 will be a total of eighty-six cents (\$0.86). Additionally, under the new legislation, Dr. Caprio testified that members of the FOP will now be contributing an additional one and one-half percent (1.5%) of their salary toward their pension, thereby further depressing their actual take home pay. The FOP notes that the balance of the wage scales between the rank and file and the superiors is further upset by Local 334 being immune from any health care contributions in 2011 and 2012 while the FOP must make substantial contributions because its contract expired on December 31, 2010. The net result, according to Dr. Caprio, is that the take home pay for Sergeants will be dramatically less than the officers they supervise.

While acknowledging that its wage proposal is tied towards rectifying an imbalance between Sergeants and the rank and file Sheriff's Officers, the FOP submits evidence on external comparability reflecting that it receives lower salaries than superior officers employed in various county sheriff's departments including Union, Morris, Sussex, Somerset, Monmouth and Bergen as well as being on the low end of comparisons with law enforcement salaries within the municipalities within Hudson County. It further notes that the wage scale for Sheriff's Superior Officers is lower than those received by Correction Superior Officers employed by the County.

The FOP further contends that its proposals can be easily funded by the County without adverse financial impact on the governing body, its residents or taxpayers and within its lawful authority. The FOP argues that it presented persuasive evidence in support of these contentions through the testimony and documentation of Dr. Caprio. Citing his testimony in conjunction with his exhibits, the FOP asserts that it has established a decrease in the County's share of the total tax distribution from 23.32% in 2007 to 21.47% in 2010. The FOP further notes that the percent of property value from the Non-Residential Category in Hudson County of 39.98% is the second highest in the State behind Atlantic County. Further evidence of its financial health is said to lie in the average county tax burden which Dr. Caprio testified is the lowest among the three other major urban northern counties. Specifically, he testified that the tax burden in 2010 was \$7,073 compared to \$10,057 in Bergen, \$9,490 in Essex and \$9,061 in

Union. Dr. Caprio refuted the County's contention that its tax rate based on equalized value has increased over the last few years by indicating that the current rate is equal to the rate that was set in 2006 and is now only approximately 60% of the 2001 rate. The FOP further points out that County exhibits and testimony reflect that, under the County's adopted budget, the County showed \$670,000 less than its Cap limit.

Turning to its other economic proposals that concern longevity, clothing allowance and supervising detective pay, the FOP notes that it only seeks the exact same award in those areas that the County voluntarily agreed to with PBA Local 334 in their 2008-2012 agreement. According to the FOP, "having provided the benefit to other County employees working within the same department, it would be inequitable to provide the FOP with a lesser benefit." With respect to its holiday proposal, the FOP argues that it:

... reflects the need for compensation commensurate with the increased workload that superior officers have to handle on holidays when they are held over, as described by Captain Joy. He testified that on holidays, it is not uncommon for a superior to be ordered to remain at work in excess of eight hours beyond that superior's scheduled shift. In those instances, it seems reasonable that the superior held over should receive compensatory time for each eight hours that he or she is forced to work as a reasonable accommodation for the increased workload that the members of the FOP shoulder in those circumstances.

The FOP also urges the rejection of the County's proposals regarding overtime, holidays and training based upon its view that the County did not submit justification or evidence in support of these proposals. The FOP further

notes that the County's overtime proposal is not consistent with an executed sidebar agreement made in April 2011 that established a Pittman Schedule and specifically spoke to the issue of what the overtime threshold should be:

[T]he County's overtime proposal regarding the accumulation of overtime after working eighty-six (86) hours in the fourteen day workweek is flatly contradicted by the terms of the negotiated Pittman Sidebar (Exhibit Jt-1 and FOP Book 1, Tab 3) which establishes an overtime threshold of eighty (80) hours worked during the fourteen day workweek. No reason has been provided why Superiors would need to work six more hours than their subordinates for overtime calculations.

Incongruously, in the County's proposal #8 of its fair and final offer, the County asks the Arbitrator to adopt only a select portion of the Pittman Schedule sidebar as it relates to the County's Direct Deposit proposal, yet it seeks to sidestep that same agreement as it relates to overtime accumulation. FOP Book 1, tab 3; Exhibit Jt. 1. No explanation of why any deviation from the Pittman Schedule sidebar was given by the County, whereas Captain Joy explained that the County initially proposed an eighty-six hour overtime threshold during the Pittman negotiations, which both the FOP and PBA Local 334 rejected. As such, the final approved Pittman Schedule sidebar should remain the binding authority on the overtime threshold as it represents a fully negotiated agreement between the County and the FOP.

The County urges rejection of the FOP proposals and seeks the adoption of its own. The County relies heavily upon the general economic climate which includes high unemployment rates and the layoff of many public employees generally, including in-uniform personnel performing public safety functions in certain jurisdictions such as Newark and Camden. It notes that the County unemployment rate is approximately 11%, that the net private sector wage change in Hudson County from 2008 to 2009 was a decrease of 1.8%, that 14.6% of County residents are below poverty level and that the median



household income for County residents ranks 15<sup>th</sup> at \$55,767, well below the pay for superior officers. According to the County, it has experienced escalated costs while simultaneously having decreases in revenues and in its tax ratable base. Notwithstanding all of these factors, the County notes that it has successfully managed to avoid layoffs and furloughs for County employees due to its ability to demonstrate fiscal prudence.

The County submits financial evidence in the form of official budgets, a certification from its Director of Financial Administration, County Treasurer and Chief Financial Officer Wade Frazee and the testimony of Financial Analyst John Inagnaki. A portion of its financial submission was summarized in its post hearing brief as follows:

The County's tax ratables and property taxes are a primary concern for the County due to the financial impact it has on County residents. (Cert. Frazee, paragraph 5) For the years 2005 through 2009, the County's Equalized Value of Property shows an increase of \$27.3 billion dollars. The Assessed Value of Property for the same period increased by only \$1.3 billion. For the year 2009, the County's Equalized Value of Property only increased by \$1.9 billion and the Assessed Value of Property increased by only \$1.3 billion dollars. This is indicative of the down turn in the economy. (Cert. Frazee, paragraph 5) To further illustrate this fact for the year 2010, the County's Equalized Value of Property decreased by \$1.9 billion dollars and the Assessed Value of Property increased by only \$18.3 million. (Cert. Frazee, paragraph 5) The more recent data for the year 2011 demonstrates a significant decline in the County's Equalized Value of Property in the amount of \$4.8 billion dollars (Exhibit C-114). That is double the decline from the previous year.

The County Tax Rate for 2010 increased to \$4.10 per \$1,000 from \$3.83 in 2009 or an increase of \$.27 cents per \$1,000. The increase is a result of declining Equalized Values and Tax Levy

Increase. (Cert. Frazee, paragraph 5) Despite the County's efforts to cut costs in the budget, County taxes have continued to escalate. This unfortunate trend of increasing taxes has continued to place a tremendous burden on our taxpayers. For 2005, the County tax levy increased by \$6.2 million, and 2006, the tax levy increased by \$10.6 million, 2007, the tax levy increased by \$10.1 million, 2008 the tax levy increased by \$11.8 million, 2009 the tax levy increased by \$11.8 and the 2010 tax levy increased by \$12 million. Since 2005, the County has been forced to increase County taxes by \$62.5 million. (Cert., Frazee, paragraph 10) For 2010, the County tax levy increased by \$12 million. (Exhibit C-118).

Another indication of the economic downturn and the impact on property values is reflected in the number of tax appeals with the County. For the year 2010, 7,754 tax appeals were filed. Not since 1996/97 has this number of tax appeals been filed. This number does not include the tax appeals filed directly with the N.J. Superior Tax Court. (Cert. Frazee, paragraph 6).

The County does not dispute the fact that it has been able to regenerate and maintain fund balance. However, Frazee expressed concern that the County's reliance on fund balance as a major resource to support the revenue stream for the following budget year may not continue. He cites the fact that despite having used virtually all of the fund balance on an annual basis, County taxes have increased by \$62.5 million since 2005, thus showing that the fund balance has not kept pace with spending. He contends that the County's recurring expenditures exceed its recurring revenues and have been addressed by such means as the deferral of pension payments, no salary increases for non-union employees in 2008, 2009 and 2010<sup>1</sup>, tax levy increases and revenues from employee contributions for medical benefits. The County points out that the Union's financial expert acknowledged that the County's fund balance will decline

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<sup>1</sup> The testimony of Director of Labor Relations Patrick Sheil corroborates the certification on the issue of no salary increases for non-union employees, although the years given by Sheil are 2010 and 2011.

by \$1.1 million in 2011 and that the County has typically used 98% of its fund balance to fund County operations and services. Among other things, the County emphasizes that several increases in cost that are effective in 2011. These include an increase in debt service of almost \$4 million, a 12%, or an estimated \$4.5 million in health, prescription and insurance costs, an increase in PERS payments of \$2,349,063 and an increase of \$2,764,947 in PFRS payments. The County urges rejection of the Union's proposal for a four year contract as an attempt to avoid the impact of the statutory limitation on arbitrated increases to base salary items and the FOP's attempt to have an unreasonably high wage award to serve as an offset to statutory contributions to health benefits coverage.

In its post-hearing submission, the County addresses financial issues contained in Dr. Caprio's testimony and financial analysis which it believes supports the County's position in this proceeding. These include a surplus decline to \$24,543,014 in 2010 to \$16,222,038 in 2011, a decline in current taxes budgeted and actual for 2011 from which the County concludes that the Cap is affecting its ability to increase taxes and a reduction in the amount that the County is under Cap from \$6,996,073 in 2010 to \$673,701 in the adopted budget. The County disputes the FOP's contention and its testimony that employees will not want to be promoted due to the low amount of rank separation between Sheriff's Officers and Sergeants. It notes that five such officers were part of thirteen officers who were promoted in April of 2011. It urges rejection of the FOP's salary proposals that would partially restore some of the rank

separation. The County argues that “if Cpt. Joy, Sgt. Karas or any union representative saw an issue of rank separation, they would have negotiated it into the Agreement when the parties last negotiated a contract. Article II of the Agreement only addresses a “rank separator” for Lieutenant and Capitan. There is none for Sergeant.”

The County seeks the rejection of the Union’s proposal to increase longevity. It cites current economic conditions and recent interest arbitration awards which have either rejected similar demands or awarded concessions. It also seeks rejection of the Union’s proposal to increase the number of personal days to five. The County submits a chart reflecting that no County grants five personal days to Sheriff’s Officers. It further submits that the current clothing allowance is comparable based upon a chart comparison and that the Union’s proposal for an increase in the allowance is unreasonable. The County contends that the existing educational benefits received by members pursuant to Article XX are reasonable and that no rational basis has been presented to increase that benefit. With respect to the Union’s proposal for a \$2,000 stipend for a “supervising detective,” it terms such proposal as irrational. According to the County, “each member of the unit is already a “supervising” member of the Superior Officers Union. An essential job duty of a Superior Officer is to “supervise.” It makes no difference if they are supervising detectives, transportation, patrol, swat or any other employees in the bureaus within the Sheriff’s Office that they should receive additional pay for supervising. The

Union provided insufficient evidence to establish a need for the County to incur this additional unnecessary cost.”

The County also seeks the awarding of its proposals on health insurance because they are consistent with legislation or already part of existing language in this agreement and/or others within the County.

### **DISCUSSION**

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).

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. It is widely acknowledged that in most interest arbitration proceedings, no single factor can be determinative when fashioning the terms of an award. This observation is present here as judgments are required as to which criteria are more significant and as to how the relevant evidence is to be weighed. In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying it the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the Award.

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

The evidence that I rely mainly upon in fashioning this award include the following:

1. The Sheriff's Department operates as one organization discharging many responsibilities such as court security and proactive law enforcement activity within the County.
2. Its employees are organized into two negotiations units, one that is non-supervisory (PBA Local 334 – Sheriff's Officers) and one that is supervisory (FOP Lodge 127 – Sergeants, Lieutenants and Captains).
3. The FOP unit has a labor agreement that expired on December 31, 2010. The PBA unit has a labor agreement that extends through December 31, 2012.
4. Traditionally, there has been a significant difference in the amount of compensation between top step pay for non-supervisory Sheriff's Officers and Sergeants but that differential has steadily declined as



a result of the PBA Local 224 agreement that commenced in 2008 and expires at the end of 2012 after the last FOP agreement began in 2006 and expired at the end of 2010.

5. The five year, 6% agreement with PBA Local 334 caused a reduction in the differential between the top step Sheriff's Officer and Sergeant from 18.73% in 2007 to 12.14% in 2010. The County's proposal to the FOP for 2011 and 2012, if awarded herein, would further reduce the differential to 5.79% in 2011 and to 0.08% in 2012.
6. The County has adopted a zero increase labor policy for its non-unionized employees for 2010 and 2011.
7. The County's finances over the last several years have been stable but it has experienced declining indicators in 2010 and 2011. During such time its surplus or fund balance has remained substantial but has declined from \$24,532,014 in 2010 to \$23,439,454 in 2011.
8. The County's adopted budget for 2011 is \$673,000 above its statutory cap. The County is subject to a tax levy cap which limits the amount to be raised by taxation but does not limit expenditures.
9. The parties' have differing projections concerning the County's finances going forward. There is evidence that county assessments and evaluations could improve as a result of the Estimated Costs of Construction authorized by the increased number of building permits in 2011 over 2010 figures which could increase tax ratable and property valuations upon completed construction. But there is evidence that, after years of substantial

growth, there has been a decline in the County's Equalized Value of Property and that this figure decreased by \$1.9 billion in 2010 and by an additional \$2.9 billion in 2011.

From all of this and other evidence considered but not set forth, I first address the contract duration issue. The County has proposed a three year agreement and the FOP has proposed a four year agreement. Notwithstanding these proposals, and in conjunction with having to make a reasonable determination on the salary issue, I am compelled to conclude that a two year agreement, commencing on January 1, 2011 and expiring on December 31, 2012 is the appropriate length for contract duration under all of the facts and circumstances of this dispute. Each party's view on contract duration is based upon the awarding of its own salary proposal and how the respective and corresponding salary numbers, if awarded, would further each party's own labor relations goals. Because I find neither proposal to represent a reasonable determination of the salary issue, I do not find either proposal on contract duration to be consistent with the statutory criteria that I have deemed to be the most relevant.

Neither party has shown with any reasonable degree of confidence what the financial health in the County of Hudson will be going beyond 2012 as it may relate to their own proposals. I find that the salary result for this unit of employees, in order to be more consistent with a result that furthers the interests and welfare of the public, should not extend beyond 2012. I reach this

conclusion because the issue of whether there should be reasonable distance between the salaries of the Sergeants and those that they directly supervise is best resolved during the two years in which the PBA Local 334 contract remains in existence (through December 31, 2012) and the two years that the FOP agreement will be effective (through December 31, 2012). These years overlap and, when they are concluded, the parties will be free to address this issue in conjunction with the identical years that will be subject to negotiations at that time.

It is significant to observe that the context of this Award is narrow in scope. It is intended to address the issues that are present in this proceeding in contrast with issues that would extend to a far broader scope because no labor agreements exist in the Sheriff's Department or in other law enforcement units within the County that go beyond 2012. This Award does not answer the broader scope of issues such as what ultimately should be the disposition of salary compression between non-supervisors and supervisors in the future beyond 2012 or, more importantly, what should the County policy be in negotiations for its employees for years that extend beyond the years that it already has contracts in place. Simply put, the terms of this Award are intended to resolve the narrow labor relations issues arising out of the Sheriff's Department for years 2011 and 2012 and are not intended to have any significance for contract years that extend beyond these years for bargaining units that may be without agreements for 2011

and 2012 and in the absence of any labor agreement in law enforcement that extends to 2013.

The factor of internal comparability, based upon existing agency and court precedent, is a factor that is not only specifically addressed in the statutory criteria [N.J.S.A. 34:13A-16g(2)(c)], but also has been found to fall within the criteria of the “interests and welfare of the public” and the “continuity and stability of employment.” [See County of Union, PERC No. 2003-33 and PERC No. 2003-87. See also Somerset County Sheriff’s Office v. Somerset County Sheriff’s FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008) and County of Passaic, PERC No. 2010-42 and PERC No. 2011-36]. This precedent is applicable here, not for the purpose of determining whether there is a pattern of settlement, but rather to examine the FOP’s contention that there should be some wage separation between supervisors and non-supervisors which would be reduced to 0.08% in 2012 under the County’s proposal.

The pattern of settlement principle simply cannot apply here because the financial evidence clearly shows changed circumstances from the time that the County negotiated the 6% increases it voluntarily entered into with PBA Local 334 for the 2008-2012 years. These circumstances have already been detailed herein and need not be re-summarized here. In the absence of changed financial circumstances, factors such as a pattern within a law enforcement department, external comparisons and the desirability of having a rank

separation more consistent with traditional percentages could accommodate the awarding of higher amounts but I decline to do so in light of the criteria that concerns the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] and the County's statutory budgetary limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]. While technically, the County could legally fund the percentages proposed by the FOP, its ability to do so, at the expense of other considerations, cannot be deemed the controlling fact. But I find merit in providing some financial adjustments beyond that proposed by the County in response to the FOP's main contention regarding rank separation.

The need for some rank separation, or the avoidance of vertical compression, has been established in the testimony of Sgt. Karas and Cpt. Joy. It is, as well, a common and traditional principle in collective bargaining and in general human resource policy. The County has presented little evidence other than what the adverse impact would be by awarding the FOP's proposals for 7% increases in 2011 and 2012 followed by 3% increases in 2013 and 2014. It has not presented any effective rebuttal for a reasonable increase that would create some separation between ranks. I address this issue by awarding increases in dollar amounts that sets the difference between the top step Sheriff's Officer and Sergeant at the equivalent of a 5% level in 2012 by awarding a \$1,995 annual increase in 2011 followed by a \$2,398 annual increase in 2012. This is not intended to create a permanent percentage differential between these ranks but

rather to address this issue during the 2011 and 2012 contract years at which time both contracts expire. These dollar increases shall also be applied to the rank of Lieutenant and Captain in order to maintain the dollar amount differentials between all ranks.

The percentage increase yielded by the dollar amounts that would partially restore a reasonable amount of rank separation at the Sergeant rank is 2.3% in 2011 and 2.7 in 2012. By applying the same dollar amount to the Lieutenant rank, the percentage increase is 2.1% and 2.5% and 2.0% and 2.4% for the rank of Captain. It should be noted that these adjustments are well below the 6% increases received for top step Sheriff's Officers over these two years and are designed to avoid the more permanent flat compression that would be caused by the adoption of the County's wage offer.

As previously indicated, the changed financial circumstances of the County weigh heavily against the more full "restoration" sought by the FOP. I also find the County's contention in opposition to an increase beyond 1% over two years to be without merit. The flat compression caused by the County's proposal lends less relevant its assertion that no wage increases have been provided to non-union employees, especially in light of the 2011 and 2012 6% increases received by the Sheriff's Officers. The County's argument, that the FOP has, in effect, waived its right to any rank separation at the Sergeant level because, unlike how Lieutenant and Captain pay was treated, it did not address

the issue of Sergeant separation in in the 2006 negotiations is not persuasive based upon the facts in this record. At the time of the first year (2006) of the FOP agreement, the differential between top step Sheriff's Officer pay was 17.59% and was 18.73% in the second year (2007) of that agreement. Because the County later agreed to 6% annual increases in the PBA Local 334 contract between 2008 and 2012, the FOP could not have foreseen in 2006 that the future actions of the County and PBA Local 334 with respect to top pay for Sheriff's Officers would cause, in conjunction with the County's offer here, flat vertical compression for the Sergeants. Thus, I am unable to draw the adverse inference made by the County that the FOP was, in any way, responsible for the potential here for flat vertical compression between top step Sheriff's Officers and the Sergeants.

The amounts awarded for 2011 and 2012 will not cause adverse financial impact on the County, its residents or taxpayers and can be accommodated within available funds without causing conflict with the County's Cap. The Award will cost \$51,870 in 2011 and an additional amount of \$62,348 in 2012. Based upon the respective financial analyses offered by both parties, these sums have virtually no impact on the taxpayers of Hudson County and are substantially below the County's estimated impacts of the FOP wage proposals.

Further, I find that none of the remaining criteria can serve to alter the salary terms of this Award. The Award is for two years. The cost of living data

shows that the Award is above the cost of living level in 2011 but, in comparison, the wage settlements within the department substantially exceed the cost of living data and some increase is warranted under the circumstances of this case. I cannot credit FOP evidence that sharply rising co-pays for health insurance, reaching more than \$5,500 annually for unit employees, requires the amount of wage increases to offset the sharp reduction in take home pay that unit members will experience as a result of Senate Bill 2937. While this may be a harsh fact, as well as the fact that the amounts the County derives as revenue from such contributions exceed the amounts that I have awarded, there is nothing in that legislation which would alter a traditional analysis of the statutory criteria in favor of higher wage increases merely because of the impact of that legislation.

I next address the remaining issues.

#### Article IV – Longevity

The FOP has proposed to increase the longevity program by \$100 annually for each year of the contract term. The County opposes this proposal. Article IV of the Agreement currently calls for a dollar amount longevity program of \$400 per annum for more than five years of service, \$600 per annum for 10 years of service, \$800 per annum for more than fifteen years of service, \$1,000 for more than 20 years of service and \$1,200 for more than 25 years of service. I observe that the longevity program in the PBA Local 334 non-supervisory unit was increased by \$100 at each step of the longevity schedule in its agreement



that expires on December 31, 2012. This increase was added upon a longevity schedule in the Local 334 agreement that had expired on December 31, 2007 that was identical to the FOP longevity program that had last been adjusted on January 1, 2005. This resulted in a program for Local 334 that is \$100 above that for the FOP at each step of the schedule. I do not find that the FOP has offered sufficient justification for increases in the longevity program that would call for payments that would go beyond that which presently exists within the Department and enjoyed by the non-supervisory sheriff's officers. But, the internal departmental comparison analysis would allow for an increase in the FOP longevity program that would parallel the schedule in the PBA Local 334 agreement in order to achieve comparable levels between non-supervisors and superiors within the department. This would be accomplished by adding \$100 to each step at the 5, 10, 15, 20 and 25 year levels. I award these increases effective January 1, 2011. The new longevity schedule will parallel that of PBA Local 334 and will read as follows:

- A. For employees with more than: five (5) years of service, but not more than ten (10) years of service – \$500.00 per annum effective 1/1/11.
- B. For employees with more than: ten (10) years of service, but not more than fifteen (15) years of service – \$700 per annum effective 1/1/11
- C. For employees with more than: fifteen (15) years of service, but not more than twenty (20) years of service – \$900 per annum effective 1/1/11
- D. For employees with more than: twenty (20) years of service, but not more than twenty-five (25) years of service – \$1,100 per annum effective 1/1/11

- E. For employees with more than: twenty-five (25) years of service – \$1,300 per annum effective 1/1/11

### Article III – Clothing Allowance

The FOP has proposed to increase its clothing allowance by \$100 annually for each year of the contract term. The County opposes this proposal. Article III of the Agreement calls for a clothing allowance of \$1,000 per annum. I observe that the clothing allowance in the PBA Local 334 non-supervisory unit was increased by \$100 annually effective 2008, 2009, 2010 and 2011. This constituted a \$400 increase in the clothing allowance over the term of that contract which expires on December 31, 2012. These increases, however, were added upon a clothing allowance in the Local 334 agreement that expired on December 31, 2007 that only called for an allowance of \$600. Thus, the existing clothing allowance for the FOP, without any modification, is equal to the clothing allowance in the non-supervisory sheriff's officer unit through December 31, 2012. The County notes this fact and contends that there is no basis for an award at a level above what presently exists. Accordingly, I do not find that the FOP has offered sufficient justification for an increase in the clothing allowance that would call for an allowance that goes beyond that which exists between non-supervisors and superiors within the Department. The proposal is denied.

#### Article XXIV – Personal Days

The FOP proposes that the number of personal days be increased from three to five per year. The County opposes this proposal. Article XXIV of the Agreement provides for three paid personal days subject to certain requirements that appear in other sections of the Article. The FOP offers justifications for its proposal based upon its desire to offset supervisory stress and the increase in duties that it claims supervisors have assumed under the new Pittman Schedule. It acknowledges that its current allotment falls within the average level on a countywide basis. I am not persuaded by any of these arguments, especially in light of the fact that the existing number of personal days is equivalent to those contained in the rank and file unit. The proposal is denied.

#### Article XXVI – Holiday Compensation

Both parties have proposals that deal with this subject. The existing language that covers this topic appears at Article XXVI of the Agreement. That Article sets thirteen (13) specific paid holidays in each calendar year.

The FOP proposes that any superior officer working on a holiday will receive one (1) compensation day for every eight (8) hours worked. The County opposes this proposal. The thrust of this proposal is to provide additional compensatory time to a superior officer who is ordered to remain at work in excess of eight hours beyond that superior's scheduled shift. The FOP asserts

that the County would not be significantly impacted financially as a result of this proposal being awarded.

The County proposes two modifications to Article XXVI as follows:

- a. Amend section 1 to provide as follows: Notwithstanding the foregoing, the County reserves the right, at its discretion, to adjust the holiday schedule herein to conform to that promulgated by the Governor of the State of New Jersey. Additionally, if the County, in its sole discretion, deems it appropriate, the County may adjust the holiday schedule by exchanging Lincoln's Birthday for the Day after Thanksgiving.
- b. Add new section 4 to provide as follows:

ABSENCE BEFORE AND AFTER HOLIDAY

An employee who is absent from work due to illness the day before and/or the day following a legal holiday, shall not be paid for the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as "absent no pay" or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday is observed while he/she is employed in either status.

The FOP opposes these proposals.

In my evaluation of the parties' respective proposals concerning holidays, I deny the FOP proposal and paragraph A of the County's proposal. There is no support for the FOP's proposal within the practice or contract provisions that exist within the Department and there is no basis to award what, in essence, would be additional paid holidays simply because a superior officer is forced to work

overtime on a paid holiday. Paragraph A of the County's proposal falls outside of existing practice or any contract provision within the Department and the County has submitted no justification to be awarded the sole discretion to adjust or change the existing contractual holiday schedule.

In contrast, there is support for addressing the issue of absences on the days before and after a paid holiday. As set forth above, this appears as paragraph B in the County's proposal. As the County points out, that issue was similarly addressed and achieved in the PBA Local 334 agreement that expires on December 31, 2012, although the language in that agreement differs somewhat from the language the County has proposed in this proceeding. Nevertheless, the purpose of the County's proposal is essentially the same and it has merit in order to have consistency on this issue within the department. Thus, paragraph B is awarded as an addition to Article XXVI.

#### Article XX – College Credit Reimbursement

Both parties have proposals that deal with this subject. The FOP proposes that it be provided a reimbursement for each credit for Associate's degree at Hudson County College rate and for Bachelor's and Master's degrees at New Jersey City University College rate. The County opposes this proposal. The existing Agreement, at Article XX, already provides for reimbursement at Hudson County Community College for a maximum of six credits per semester. The provision also provides for a compensation schedule at the Associate,

Bachelor's and post-graduate degree levels of \$750, \$1,500 and \$2,000 respectively. Under the terms of the contract, reimbursement is for courses that are job related and upon which an officer must receive prior written approval. As its proposal is phrased, reimbursement for credits towards an Associate's degree would be at the Hudson County College rate but credits towards a Bachelor's and Master's degree would be, as appropriate, reimbursed at the New Jersey City University College rate.

A review of the education provision in the PBA Local 334 agreement provides for reimbursement at the Hudson County Community College rate. I do not find sufficient justification to extend the reimbursement rate for the FOP beyond that which presently exists in their expired agreement and at the level that exists in the non-supervisory sheriff's officer unit. Accordingly, this proposal is denied.

The County has also proposed to add new language that concerns training. It proposes the following:

Sheriff's Superiors who receive training shall be obligated to remain in the employ of the County for a period of three (3) years after the training is complete or shall be responsible to refund to the County the cost and expenses of any training provided. Any training cost not repaid at the time of termination may be deducted from any accrued but unpaid balances, including but not limited to vacation time and holiday time.

The FOP opposes this proposal.

The County contends that the investments that it makes for training under Article XX of the Agreement, including payment for food, lodging, tuition and transportation, should be returned to the County if a superior officer leaves because they derive a job related benefit from the training. The County further points out that a similar provision exists with respect to tuition reimbursement for the non-supervisory sheriff's officers represented by PBA Local 334. In that agreement, which expires on December 31, 2012, it was agreed that "the employee will be committed to a minimum of three years of continued service as a Sheriff's Officer with the County or must reimburse the County for the full cost of tuition."

Based upon their respective submissions on this issue, I award the County's proposal in part and deny it in part. The County's proposal extends to all training that an employee receives as distinguished from the reimbursements it has achieved with respect to tuition in the PBA Local 334 unit. The costs for food and lodging extend to law enforcement training that directly assists and improves the employee's ability to perform tasks that are more directly related to job responsibilities on a continuing basis. As such, the employee and the County both benefit from such training while the officer is employed and to require reimbursement for these costs could have a negative impact on an officer's desire to be trained. This aspect of the proposal is also not present in the Sheriff's Officers agreement and would create an inconsistency. In contrast, the

County should have a reasonable expectation that employee-initiated efforts towards higher education that involve County financial support be a long-term investment and one that is returned to the County if the minimum of three years of continued service thereafter is not met on a similar basis as to what is required in the non-supervisory unit. Accordingly, I award the following language as a new section to Article XX as Section D:

Article XX – Special Training

Section D. Sheriff's Superiors who receive tuition reimbursements under this Article shall be obligated to remain in the employ of the County for a period of three (3) years after such education is complete or shall be responsible to refund to the County the cost of such reimbursement.

Article V – Supervising Detective Pay

The FOP proposes that the County provide an annual \$2,000.00 stipend for any superior who is assigned as a "supervising detective." The County opposes this proposal. The existing language that covers such payment appears at Article V of the Agreement as follows:

Article V – Detective-Process Servers-Overtime-Mileage

In lieu of mileage expenses, process servers and any officer who is re-assigned to do the work of a process server shall receive an additional \$1,200.00 per annum. This shall be paid to process servers and officers doing the work of process servers in their regular salary payment. In order to be eligible for the \$1,200.00, an officer re-assigned to do process server work must be re-assigned on a full-time basis. Casual performance of process server work will not entitle such officers to payment under this Paragraph. Any officer re-assigned during the course of the fiscal year shall receive a pro-rated payment for the balance of the year.



According to the FOP, it merely seeks the same benefit that the County has provided to the Sheriff's Officers who are supervised by these superior officers and that an inequity would result by providing the FOP with a lesser benefit.

The contentions raised by the FOP require an examination of the levels of such detective payments for the non-supervisory Sheriff's Officers represented by PBA Local 334. In the 2003-2007 agreement between the County and PBA Local 334, this payment was covered by Article V which stated the following:

**Article V – Detective-Process Servers-Overtime-Mileage**

- A. In addition to regular salary, detectives shall be paid \$1,000.00 per annum. This shall be paid the detectives in their regular salary payments.
- B. In lieu of mileage expenses, process servers and officers doing the work of process servers shall receive an additional \$1,200.00 per annum. This shall be paid the process servers and officers doing the work of process servers in their regular salary payments.

In the 2008-2012 PBA Local 334 agreement, Article V was modified to provide increased payments to detectives pursuant to Section 14 of a Memorandum of Agreement between the County and PBA Local 334. Section 14 states:

The County agrees to create a detective 2. The detective 2 assignment will be at the discretion of the Sheriff. As with the detective assignment the Sheriff, at his/her sole discretion, may assign Officers to this assignment or remove them.

- The stipend for detective will be increased to \$1,300.00
- The stipend for detective 2 will be \$2,000.00.

The number of Officers in these titles will be decided upon by the Sheriff and at his sole discretion may be increased or reduced.

The language in the existing FOP provision that covers detectives and process servers is actually silent on the amount of the detective stipend in contrast to the PBA Local 334 agreement that expired on December 31, 2007 which then specifically provided for a \$1,000 stipend for detectives that was increased by \$300 in the 2008-2012 agreement. At hearing, Sgt. Karas testified that three superior officers serve as detectives and already receive a \$1,300 stipend under the FOP agreement that expired on December 31, 2010. The basis for the FOP proposal is to establish a \$2,000 stipend for any superior officer detective who could be assigned to a supervising detective position under similar terms as were created in the PBA Local 334 agreement for non-supervisory sheriff's officers. That agreement, as stated above, created a \$2,000 stipend for a detective 2. One of the County's objections, in addition to cost, is that the wording of the FOP proposal calls for such payment to a "supervising detective." The County asserts that the FOP proposal is "irrational" because all unit employees here are supervisors and that a detective should not receive any additional payments simply because that detective is called a supervising detective.

Given the language in the PBA Local 334 agreement at Section 14 of the MOA, I am unable to draw a conclusion, on this record, that there is any parallel between the newly created detective 2 position and the FOP proposal to create a “supervising detective” position at the same dollar amount.

The language in Section 14 makes a detective 2 position within the sole discretion of the Sheriff along with the authority to assign, remove, increase or reduce the number assigned. It cannot be discerned whether any Sheriff’s Officer has been assigned to this position and what, if any, duties accompany that assignment. Such evidence would assist in evaluating the merits of the FOP proposal which can be raised anew in future negotiations. Accordingly, I do not award the proposal but do award language for the County and the FOP to develop that would reduce to writing the existing level of pay for the detective payment under the existing provision, Article V – Detective – Process Server – Overtime – Mileage.

Article V – Detective – Process Server – Overtime – Mileage.

The County and the FOP are directed to reduce to writing the existing level of pay provided to superior officer who are assigned as detectives.

#### Article VIII – Overtime

The County proposes to change some of the language and standards set forth in Article VIII – Overtime as follows:

- a. In section one, delete reference to overtime for work performed “in excess of any eight (8) hours per day.” Amend section to provide that overtime shall be calculated on a weekly basis of more than forty (40) hours in a work week. Additionally, after the fifth (5<sup>th</sup>) sick day in a calendar year, sick leave days will not count as hours worked for overtime purposes.
- b. For those officers in the Patrol Bureau and any officer working a Pittman Schedule, overtime shall not be paid unless a unit member has worked at least 86 hours in a 14 day period, pursuant to the “7(k) Exemption” under the Fair Labor Standards Act.

The County characterizes its proposals as a cost containment tool to address its efforts to control costs. The County also supports its proposal by pointing to the PBA Local 109 contract covering correction officers that provides “all overtime shall be paid on a forty (40) hour basis” and by reference to the sick leave provision included in the PBA Local 109 Memorandum of Agreement and the PBA Local 334 Memorandum of Agreement. The FOP opposes these proposals asserting that the provision cited by the County concerning hours, while perhaps present in the PBA Local 109 agreement, conflicts with the language in the PBA Local 334 agreement. It further notes that its Sidebar agreement with the County that created the Pittman Schedule in April 2011 specifically calls for overtime after eighty (80) hours in a fourteen (14) day period and should be read to override the County’s proposal.

In assessing the merits of the County’s proposals, I initially note that I give greater weight to the overtime language in the PBA Local 334 agreement because the overtime system within the Office of the Sheriff has more relevance

to this unit than does the overtime system in Corrections. While not in this record, I take notice of the fact that overtime in corrections is far more substantial than in a Sheriff's Office. The PBA Local 334 agreement, at Article VIII, Section A, states that "overtime shall be paid at the rate of time and one-half, for any work performed in excess of any eight (8) hour shift, forty (40) hour work week." Similar language appears now in the FOP agreement. A modification of this language would directly conflict with the language in the PBA Local 334 agreement and create different administrative standards for overtime within the Office of the Sheriff. There is also no evidence as to the amount of overtime received by the superior officers and therefore, no basis to agree with the County's assertion that the proposal, in fact, would represent any cost savings to the County. Accordingly, I deny this aspect of the County's proposals.

The second part of the County's proposal in the first paragraph is to have sick leave days not count as hours worked for overtime purposes after the fifth sick day in a calendar year. In contrast to the above language regarding the calculation of overtime hours, similar language concerning sick days appears in the 2008-2012 agreement with PBA Local 334. As stated above, similar administrative standards with respect to the calculation of overtime within the Office of the Sheriff is desirable. Because of the existence of this administrative standard with the non-supervisory Sheriff's Officers, I award the County's proposal on this issue to create uniformity within the Department. Article VIII shall contain language which shall state the following, effective January 1, 2012:

After the fifth (5<sup>th</sup>) sick day in a calendar year, sick leave days will not count as hours worked for overtime purposes.

I next turn to the County's proposal in the second paragraph of its proposal that concerns eligibility for overtime for those officers in the Patrol Bureau and any officer working a Pittman Schedule. The County submits that superior officers working the Pittman Schedule already benefit from the schedule by virtue of having additional days off and should not benefit from receiving overtime for hours that are worked beyond 2080.

I find merit in the FOP's objections to this proposal. They center on the fact that the Sidebar agreement in April 2011 specifically covered the issue of overtime in contemplation of the new work schedule. The Sidebar agreement at II.D made clear and unambiguous reference to overtime as a result of the creation of a fourteen (14) day work period. It states as follows:

II. Overtime

- D. With creation of said 14-day work period, the parties nevertheless acknowledge that overtime may be paid as a matter of contract for hours worked in excess of 80 hours in said 14-day period, but that overtime shall be limited to that which is strictly necessary for coverage of the County park facilities. No overtime may be paid unless 80 hours shall have first been worked within the 14-day period, regardless of how many hours an officer may have worked on a given day, tour or within any other work period. On any given day or tour, a maximum of four (4) hours, either before or after an officer's regularly scheduled tour, may be worked, and credited toward the accrual of overtime entitlement, whether hours worked be on a

voluntary or mandatory basis. However, in no event shall overtime be due and payable until 80 hours shall have been worked within the established 14-day work period. For purposes of overtime/wage computations, vacation time, comp time, sick time and personal hours and/or days shall be considered "time worked."

Given the fact that the parties reached the above Sidebar agreement within a little over two months prior to the conduct of this hearing, I will not disturb or supersede the parties' voluntary agreement on this issue which specifically was intended to cover the initial trial period of twelve months which the parties are clearly within. Accordingly the proposal is denied.

#### Article XIV – Health Insurance

The County has proposed comprehensive language concerning Article XIV – Health Insurance. It reads as follows:

- a. The insurance and health benefit levels as provided in State Law shall remain in effect.
- b. Prescription Drugs: the prescription drug program is currently with the New Jersey Health Benefits Program. The County program shall be provided for the eligible Employee, family and spouse, as set forth and defined by law.
- c. The County shall provide health coverage currently through the New Jersey Health Benefits Program. The County program shall be provided for the eligible Employee, family and spouse, as set forth and defined by law.
- d. The County shall continue the basic County dental program, which shall be at a benefit level of the current plan. The County basic dental program shall be provided for the employee, family and spouse, as set forth and defined by law. The County and Union shall cooperate to secure State

approval for the implementation of an Employee-paid upgrade in the current dental insurance plan. Such upgrade will be at no expense to the County. If implemented, the County will exert its best efforts to assure that Employee payments for the dental upgrade are treated as pre-tax income.

- e. The County shall continue its present life insurance program benefit level of \$5,000.00.
- f.
  - A. The parties agree that the County shall have the unilateral right to select the insurance carrier, the program and/or to self-insure in its sole and absolute discretion. Any dispute dealing with the selection of insurance carrier, program, or decision to self-insure shall not be subject to the Grievance Procedure. No reduction in benefit level shall result.
  - B. Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over such changes. However, as a participating SHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and/or benefit level in this agreement will be changed accordingly including the cost of co-payments of prescriptions to employees. The County will not be liable for any change or the impact of any such change. In addition, no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, an individual employee or the County from filing an appropriate challenge against SHBP for any such change. The County will provide notification of any such changes to the Union and employees. This provision covers all plans under the New Jersey State Health Benefits Programs including but not limited to healthcare, prescription drugs, etc.
- g. Unit members shall, pursuant to State Law, contribute 1.5% of base salary to the County for the cost of healthcare insurance benefits. This amount may change from time to time based upon in legislation. The County has no input into or control over any such legislative changes. Accordingly,



when such a change is made under law this agreement will be adjusted to reflect any change in contribution rate. The County will not be liable for any such change, or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union or an individual employee of the County from filing an appropriate challenge against the State for any such legislative change. The County will provide notification of any such changes to the Union and employees.

- h. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation.

As the County has noted, some of the above language is the same as what presently exists while also containing language that is merely intended to clarify certain issues. This is especially true with proposal (f)(A) and (B) which I award as proposed. Proposal (e) states a continuation of the County's present life insurance program which I also award. Proposals (a), (b), (c) and (d) have not been objected to and, in the main, state the plan coverages to be provided. These proposals are awarded. Proposal (g) has not been shown to be necessary given the unique circumstances surrounding the implementation and application of legislation enacted pursuant to Senate Bill 2937. The instant bargaining unit became subject to the 1.5% contribution upon the expiration of its Agreement on December 31, 2010 and then later became subject to the more substantial levels of contribution required by the enactment of Senate Bill 2937 which was enacted during June 2011. That bill governs, among other things, the

rates of employee contributions and the time period that governs the increasing rates of contributions in the future at specified times. In place of the County's proposal in (g), I award the following language:

- g. Base salary contributions towards the cost of health care insurance benefits shall be governed in all respects by the terms set forth in Senate Bill 2937.

The County's proposal with regard to (h) is awarded with additional language stating "unless such legislation does not preempt negotiations and creates a mandatory bargaining obligation on the parties." The language awarded shall state the following:

- h. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation unless such legislation does not preempt negotiations and creates a mandatory bargaining obligation on the parties.

#### Pension

The County has proposed language regarding pension and retirement benefits. I award this proposal along with the additional language that would allow for negotiations only if such future legislation does not preempt negotiations and creates a mandatory bargaining obligation on the parties.

Employees shall continue to receive pensions and retirement benefits pursuant and limited to the provisions of State law. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts

the terms and working conditions of employment, the Union and the County agree to abide by such legislation unless such legislation does not preempt negotiations and creates a mandatory bargaining obligation on the parties.

#### Mandatory Direct Deposit

The County has proposed to include into the Agreement language that the County and the FOP agreed to in a supplemental agreement that concerned the implementation of the Pittman Schedule. The parties refer to that supplemental agreement as a Sidebar. The FOP views this proposal as moot because it is already contained in the Sidebar. While the direct deposit proposal is set forth in the Sidebar agreement, no justification has been presented for its exclusion in the collective negotiations agreement. Accordingly, I award the County's proposal.

#### Vehicle Use

The County has proposed language concerning the assignment of County vehicles and monthly stipends in the event that a vehicle is no longer assigned. The record of this proceeding contains no evidence that any Sheriff's superior officer in this bargaining unit is currently assigned a County vehicle or has ever been assigned a County vehicle. Given this fact, I conclude that the only portion of the County's proposal regarding vehicle use shall be paragraph A which preserves the discretion and authority of the Sheriff with respect to the assignment of County vehicles. Accordingly I award paragraph A which states the following:

- A. The assignment of County vehicles shall continue to be within the sole discretion of the Sheriff.

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

### **AWARD**

1. All proposals by the County and the FOP not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

2. **Duration**

There shall be a two-year agreement effective January 1, 2011 through December 31, 2012.

3. **Article IV – Longevity**

The longevity schedule shall be modified to reflect the following:

- A. For employees with more than: five (5) years of service, but not more than ten (10) years of service – \$500.00 per annum effective 1/1/11.
- B. For employees with more than: ten (10) years of service, but not more than fifteen (15) years of service – \$700 per annum effective 1/1/11
- C. For employees with more than: fifteen (15) years of service, but not more than twenty (20) years of service – \$900 per annum effective 1/1/11
- D. For employees with more than: twenty (20) years of service, but not more than twenty-five (25) years of service – \$1,100 per annum effective 1/1/11
- E. For employees with more than: twenty-five (25) years of service – \$1,300 per annum effective 1/1/11

4. **Article XX – Special Training**

New Section:

Section D. Sheriff's Superiors who receive tuition reimbursements under this Article shall be obligated to remain in the employ of the County for a period of three (3) years after such education is complete or shall be responsible to refund to the County the cost of such reimbursement.

5. **Article XXVI – Holidays**

New Section:

Section 4. **ABSENCE BEFORE AND AFTER HOLIDAY**

An employee who is absent from work due to illness the day before and/or the day following a legal holiday, shall not be paid for the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as "absent no pay" or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday is observed while he/she is employed in either status.

6. **Mandatory Direct Deposit**

The County shall have the authority to establish a program in which all bargaining unit officers' compensation will be directly deposited into a financial institution and immediately available to officers on payday, at no cost to officers.

7. **Article V – Detective – Process Server – Overtime – Mileage**

The County and the FOP are directed to reduce to writing the existing level of pay provided to superior officer who are assigned as detectives.

8. **Article VIII – Overtime**

Effective January 1, 2012, after the fifth (5<sup>th</sup>) sick day in a calendar year, sick leave days will not count as hours worked for overtime purposes.

9. **Article XIV – Health Insurance**

- a. The insurance and health benefit levels as provided in State Law shall remain in effect.
- b. Prescription Drugs: the prescription drug program is currently with the New Jersey Health Benefits Program. The County program shall be provided for the eligible Employee, family and spouse, as set forth and defined by law.
- c. The County shall provide health coverage currently through the New Jersey Health Benefits Program. The County program shall be provided for the eligible Employee, family and spouse, as set forth and defined by law.
- d. The County shall continue the basic County dental program, which shall be at a benefit level of the current plan. The County basic dental program shall be provided for the employee, family and spouse, as set forth and defined by law. The County and Union shall cooperate to secure State approval for the implementation of an Employee-paid upgrade in the current dental insurance plan. Such upgrade will be at no expense to the County. If implemented, the County will exert its best efforts to assure that Employee payments for the dental upgrade are treated as pre-tax income.
- e. The County shall continue its present life insurance program benefit level of \$5,000.00.
- f.
  - A. The parties agree that the County shall have the unilateral right to select the insurance carrier, the program and/or to self-insure in its sole and absolute discretion. Any dispute dealing with the selection of insurance carrier, program, or decision to self-insure shall not be subject to the Grievance Procedure. No reduction in benefit level shall result.
  - B. Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over such changes. However, as a participating SHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and/or benefit level in this agreement will be changed accordingly including the cost of co-

payments of prescriptions to employees. The County will not be liable for any change or the impact of any such change. In addition, no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, an individual employee or the County from filing an appropriate challenge against SHBP for any such change. The County will provide notification of any such changes to the Union and employees. This provision covers all plans under the New Jersey State Health Benefits Programs including but not limited to healthcare, prescription drugs, etc.

- g. Base salary contributions towards the cost of health care insurance benefits shall be governed in all respects by the terms set forth in Senate Bill 2937.
- h. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation unless such legislation does not preempt negotiations and creates a mandatory bargaining obligation on the parties.

10. **Pensions**

Employees shall continue to receive pensions and retirement benefits pursuant and limited to the provisions of State law. During the term of the collective negotiations agreement, should the New Jersey Legislature pass any law that directly or indirectly impacts the terms and working conditions of employment, the Union and the County agree to abide by such legislation unless such legislation does not preempt negotiations and creates a mandatory bargaining obligation on the parties.


11. **Vehicle Use**

- A. The assignment of County vehicles shall continue to be within the sole discretion of the Sheriff.

12. **Article V – Salary**

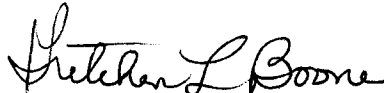
Effective and retroactive to January 1, 2011, all bargaining unit salaries shall be increased by \$1,995 and effective January 1, 2012, by an additional \$2,398. The salary schedule shall be modified accordingly.

Dated: July 22, 2011  
Sea Girt, New Jersey

  
\_\_\_\_\_  
James W. Mastriani

State of New Jersey        }  
County of Monmouth       } ss:

On this 22<sup>nd</sup> day of July, 2011, 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