

NJ PERC SPECIAL INTEREST ARBITRATION

In the Matter of the Compulsory Interest
Arbitration

Between:

DECISION AND AWARD

County of Burlington and Burlington County
Prosecutor's Office

of

Joseph A. Harris, Ph.D., Arbitrator

And

Burlington County Prosecutor's Detectives PBA
Local #320

DOCKET: IA-2012-016

APPEARANCES:

For the Employer

Alan R. Schmoll, Esq.
Capehart Scatchard, OPA

Daniel Hornickel, HR Director

Raymond Milavsky, First Asst Prosecutor

For the Union:

David J. DeFillippo, Esq.
Klatsky Sciarabone & De Fillipp

Michael Krug, PBA President

Joseph R. Petrucelli, Financial Expert
PP & D Accounting Services, Inc.

Dates of Hearing:

April 2 and 5, 2012

Date of Award:

April 21, 2012

This case assignment by the New Jersey Public Employment Relations Commission (PERC) was given to and accepted by Arbitrator Harris on March 8, 2012. The Parties submitted final proposals on March 28; they met at hearing on April 2 and April 5, 2012. The Parties

presented written and oral evidence and argument, and they engaged in cross-examination. Witnesses testified under oath. The Parties did not submit post-hearing briefs; the record was closed on April 5, 2011.

ISSUE: What shall be the terms of a successor Agreement to that which expired on December 31, 2010, and what shall be the duration of that Agreement?

FINAL OFFERS OF THE PARTIES **(Summarized)**

FINAL OFFERS OF PBA LOCAL 225

Effective Dates: January 1, 2011 through December 31, 2014 – 4 year contract. “If the parties have not executed a successor agreement by December 31, 2014, then this Agreement shall continue in full force and effect until a successor agreement is executed.” (Article XXXI)

Economic Proposals:

Salary (Article XXX): 2.75% per year for four (4) years. “The raises shall be placed on the preexisting salary guide previously established in the 2007 – 2010 agreement...”

Hours and Overtime (Article VIII)

STIPULATION: The Parties stipulated to add to Paragraph D the “call back” language in the *Stipulation of Settlement in Burlington County Prosecutor’s Office and PBA Local 320* – PERC Docket No. CO-2010-007

Paragraph A: Change work day for “all employees in the Prosecutor’s Office” to “eight (8) consecutive hours per day, inclusive of a hour paid lunch, forty (40) hours per week.” The workweek is to be Monday through Friday. (The current language in Paragraph A is limited to “all permanent employees” and is 8.5 consecutive hours per day, inclusive of a half-hour unpaid lunch, forty (40) hours per week.” Additionally, the workweek is “five (5) consecutive days.”)

Paragraph C: Change to: “Regular working hours shall consist of an eight (8) hour period” from current wording: “...any consecutive eight and one half (8.5) hour period.”

Standby Duty (Article IX):

Add new paragraph: “If any crime scene unit employee is required to be on standby, such employee will be compensated ten (10) hours compensatory hours.” Currently, the applicable language is more general, referring to “any employee” rather to “crime scene unit employee.” It states: “The employee who is required to perform stand-by duty in

excess of eight (8) weeks in a calendar year shall be compensated at the rate of one hundred twenty five (\$125.00) per week beginning with the ninth (9th) week of standby duty.”

Non-Economic Proposals:

Grievances

1. Definition Change (Article IV): Add “and any appeals of minor disciplinary actions (ie, suspensions or fines of five (5) days or less.)”
2. Grievance Procedure (Article VII): Add step to grievance process: Thirty (30) days to appeal decisions of the County Prosecutor to PERC grievance arbitration (final and binding) for minor grievances.

General Provisions (Article XXIII)

1. Paid time off for meetings (Paragraph C): Add new sentence: “The employer shall also grant two (2) employees in addition to the President and State Delegate to attend the annual NJSPBA Collective Bargaining Seminar without loss of pay or time.”
2. Allow 30 minutes on-clock for PBA meetings (Paragraph D - New): The new paragraph would permit the PBA “to hold three (3) general membership meetings during the hours of 12 p.m. to 1 p.m. each calendar year.”

Seniority (Article XXV) Currently, this Article reads, in totality: “Seniority shall be given preference for purposes of internal scheduling in the Prosecutor’s Office for vacation and personal leave.” The Union proposes three paragraphs:

Paragraph A: “Seniority is defined as being as the actual date the employee became an investigator.”

Paragraph B: “Seniority is the determining factor for layoffs, recalls, and time-off disputes. For example, in the event of a reduction in force, same shall be conducted by inverse seniority. Forty-five (45) days written notice shall be given to an investigator selected to be laid off. The laid off investigator shall then be placed on a recall list for five (5) years. Placement on the recall list shall provide preference to the laid off investigator over any other applicant in the event a vacant investigator position in the Burlington County Prosecutor’s Office becomes available.”

Paragraph C: “Upon written requests from the Union, the employer shall furnish a complete seniority list ranked by the actual date that the employee became an investigator. The list will also include the original date of hire.”

FINAL OFFERS OF BURLINGTON COUNTY PROSECUTORS'S OFFICE

Effective Dates: January 1, 2011 through December 31, 2013 – 3 year contract. (Article XXXI)

Economic Proposals:

Salary (Article XXX): Freeze all salaries for 2012 and 2013 at the 2011 levels. “Upon expiration of the Agreement on December 31, 2013, there shall be no incremental step movement on the guide for 2014.”

Hours and Overtime (Article VIII)

STIPULATION: The Parties stipulated to add to Paragraph D the “call back” language in the *Stipulation of Settlement in Burlington County Prosecutor's Office and PBA Local 320* – PERC Docket No. CO-2010-007

Paragraph A: Add provision to allow the Prosecutor to require employees “as a part of a special assignment and/or special investigation that is not part of the ordinary, normal routine and customary duties of a detective assigned to that unit” to work on Saturday and/or Sunday as part of their “five (5) consecutive days a work week.” An example of such assignment would be “court ordered electronic surveillance.” Maximum usage: “six (6) occasions per detective in a calendar year unless this limitation is waived by a detective.”

Paragraph B: Add provision not to pay overtime for hours worked on Saturdays and Sunday as provided in Paragraph A.

Insurance Benefits (Article XIX) The County proposes changes to the current plan and also to establish two alternative plans.

Plan 1 (Current Plan):

- a. Co-pay changes: Specialty visits - raise to \$35 from \$20
Emergency Room (non-emergency visits) – raise to \$100 from \$50
- b. Out-of-Network Benefit change: “Eliminate the current County portion of paying 80% and replace it with the County paying the Medicare reimbursement rate and the employee or dependent paying the remainder (this is approximately a 50/50 cost share).”

Plan 2 (Proposed Plan): “High Deductible Health Plan”

“The County shall provide a self-funded medical, optical and prescription plan with the same coverage (scope of benefits) as Plan I, but with a deductible of \$1,500 for single coverage and \$3,000 for family coverage. For employees under the age of 65, the County will make available a Health Savings Account (HSA) for tax-free deductions to be used for qualified medical expenses. The County will also contribute annually to each employee's HSA \$500 for single coverage and \$1,000 for family coverage. The County

is also willing to negotiate an additional HSA contribution for employees and dependents who participate in free wellness screening (e.g., annual physical ob/gyn examinations, etc.). Employees 65 and over shall not be eligible to use a HSA.

“After the appropriate deductible has been satisfied, employees and their dependents shall have the following co-pays: Doctor visits - \$20; Specialist visits - \$35; Emergency Room (for non-emergency visits) - \$100.”

Plan 3 (Proposed Plan) “Exclusive Provider Organization / Limited Provider Network”

The County shall provide a self-funded medical, optical and prescription plan with the same coverage (scope of benefits) as Plan 1, but employees and dependents shall have access to a smaller network of approved providers. There shall be no Out-of-Network benefit. Any service rendered by a non-approved provider shall be the employee’s own responsibility. Co-pays shall be as follows: Doctor visits - \$20; Specialist visits - \$35; Emergency Room (for non-emergency visits) - \$100.

Non-Economic Proposals:

Seniority (Article XXV) Add new paragraph: “Seniority is defined as being the actual date the employee became an investigator with the Burlington County Prosecutor’s Office.”

NJ PUBLIC LAW 2010, CHAPTER 105, EFFECTIVE JANUARY 1, 2011
N.J.S.A. 34:13A-16G(1)-16G(8)

34:13A-16. 7. Definitions: limitations upon certain arbitration awards for public fire and police contracts:

34:13A-16. 7. a. As used in this section:

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

“Non-salary economic issues” means any economic issue that is not included in the definition of base salary.

34:13A-16. 7. b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c. 85 (C.34.13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration...

34.13A-16.9 Effective date and application of legislative enactment upon certain public fire and police department collective negotiations:

This act shall take effect January 1, 2011; provided however, section shall apply only to collective negotiation between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effect date or any date thereafter until April 1, 2014, whereupon the provisions of section 2 shall become inoperative for all parties except those whose collective negotiations agreements expired prior to April 1, 2014 but for whom a final settlement has not been reached. When final settlement between the parties in all such negotiations is reached, the provisions of section 2 of this act shall expire. In the case of a party that entered into a contract that expires on the effective date of this act or any date thereafter until April 1, 2014, and where the terms of that contract otherwise meet the criteria set forth in section 2 of this act, that party shall not be subject to the provisions of section 2 when negotiating a future contract.

The Interest Arbitrator (in negotiations between public fire and police departments versus their respective labor unions) is required to give due weight to the following statutory criteria (in abbreviated format, as per Arbitrator Frank A. Mason in PERC Docket IA-2011-0048). (Quotation marks refer to the Public Law.)

1. "The interests and welfare of the public...[including] the limitations imposed upon the employer by P.L. 1976, c.68(C.40A:4-45.1 et seq.)."
2. "Comparison of the wages, hours and conditions of employment...with other employees performing the same or similar services and with other employees generally."
3. The overall compensation presently received including wages and benefits and all other economic benefits.
4. "Stipulations of the parties."
5. "The lawful authority of the Employer [including] the limitations imposed upon the employer by P.L. 1976, c.68(C.40A:4-45.1 et seq.)"
6. The financial impact on the governing unit, its residents, and taxpayers, including "the limitations imposed upon the employer by P.L. 1976, c.68(C.40A:4-45.1 et seq.)." It should include, to the extent that evidence is introduced, the impact on taxes, the change in percentage of the governing body's budget required to fund the employees' contract, the ability of the county or municipality to maintain existing programs and services, as well as the governing body's ability to expand these and to initiate new programs and services, etc. It also states: "Each party is now required by statute to submit evidence of this factor."
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 collective negotiations and collective bargaining.

9. Statutory restrictions imposed on the employer, including "limitations imposed upon the employer by section 10 of P.L. 2007, c. 62(C.40A:4-45.45)." (This refers to the 2% Property Tax Levy Cap Law that prevents counties and municipalities from raising property taxes more than 2% per year. The law provides five exceptions to the 2% Cap: (1) money raised for capital expenditures, (2) increases in pension contributions above 2%, (3) increases in health care costs above 2% (but no more than increases in the State Health Benefits Program), (4) extraordinary costs resulting from a declared emergency and (5) amounts approved by voters in special elections.)

NJ PERC DECISIONS

Borough of Bloomingdale and PBA Local 354, PERC No. 2011-70 (March 31, 2011):

Middlesex Cty., N.J.S.A. 34:13A-16.9 sets forth that the 2% base salary cap applies to contracts expiring on or after January 1, 2011 only. The arbitrator's ruling that the contract, which expired December 31, 2010, was not subject to the 2% base salary cap is in conformance with the clear directive of the new law.

Borough of New Milford and PBA Local 83, PERC No. IA-2012-008 (April 9, 2012):

Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 C. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit at the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect (sic) the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

The arbitrator calculated base salary as wages including step increases plus longevity. However, the arbitrator has not provided the calculations he made to reach his total base salary or explain why other economic figures presented by the Borough were not included in base salary. Further, the arbitrator does not provide a cost analysis of each year of the award that includes as a minimum step increments and longevity. These calculations are a mandatory requirement under the new law. (pp. 14-16)

Inasmuch at the agreement between the parties expired on December 31, 2010, the above 2% base salary cap is not applicable to the instant arbitration. The State Legislature's 2% Property Tax Levy Cap, however, is very much in effect, and this Arbitrator considers it to be an important factor in analyzing the Parties' proposals and determining the award.

Estimated Costs of Salary Proposals

I have utilized the approach prescribed by PERC in *Borough of New Milford and PBA Local 83, PERC No. IA-2012-008 (April 9, 2012)*, although PERC's decision came down after the Hearing was closed in the instant case. (See above). Thus, it was necessary for me to make estimates of the proposed costs based on substantial revisions to the scattergrams provided by the Union (U2-Tab 18). The Union's scattergrams carried forward breakages, and PERC has disallowed this approach.

I found that there were 26 full-time detectives in the Prosecutor's Office at the end of 2010, when the contract expired. (The Union scattergram calculated the 2010 total base salary utilizing the 32 full-time employees who worked at some point in 2010.) They were on two different step guides, one for those hired before January 1, 2007 and the other for those hired on or after January 1, 2007. Total payroll for base salary in 2010 would have been \$1,883,606, assuming all 26 were employed the entire year and worked full-time. For 2011, I raised each step by 2.75% and moved each employee up one step (except those who were already on their top step). This raised the assumed total base salary to \$ 2,023,674, which was an increase in the County's direct cost (excluding increases for FICA, etc.) for base salaries of 7.4%, or \$153,068. I followed the same procedure for 2012, 2013, and 2014. The results are below. They show that, due to the peculiarities of step increase sizes, and the fact that almost all of the 26 employees reached their top steps by 2013, average salary increases would amount to 7.4% in 2011, 10.3% in 2012, 5.7% in 2013, and 5.8% in 2014. For the county, the annual increases would come to \$153,068 (2011), \$194,667 (2012), \$127,088 (2013), and \$137,363 (2014) – plus, of course, associate increases (FICA, associated overtime penalties, etc.)

**BASE SALARY CHANGES WITH 2.75% ANNUAL STEP INCREASES:
2011 – 2014**

	2010 Aver Hrly Rate \$ and Total Salary	2011 Aver Hrly Rate \$	% Incr, Total \$ Increase, Change	2012 Aver Hrly Rate \$	% Incr, Total \$ Increase, Change	2013 Aver Hrly Rate \$	% Incr, Total \$ Increase, Change	2014 Aver Hrly Rate \$	% Incr, Total \$ Increase, Change
Average Wage Rate 26 Full-time Employees	\$34.83	37.42	7.4%	41.26	10.3%	43.61	5.7%	46.15	5.8%
Total \$ for Salaries	\$1,883,606		2,023,674		2,231,341		2,358,429		2,495,792
Increase \$ in Salaries From Previous Year			153,068		194,667		127,088		137,363
Increase Over Salaries in 2010			153,068		347,735		474,823		612,186
UNION SCATTER- GRAM INCREASE IN BASE SALARIES			112,210		119,175		142,698		151,677
Increase Over Salaries in 2010 – Union Scattergram			\$112,210		231,385		374,083		525,760

The last two rows in the above table show the Union's estimates of total increased salaries, based upon actual breakage of 13 employees: six (2010), three (2011), and four 1/2012-3/2012) and actual six new hires: four (2011) and two (1/2012-2/2012). (U2, pp. 28-29)

County Government's Ability to Pay

The Union contends that the County is able to pay the salary increases it is proposing. Union Exhibit 2 (Expert Report of Joseph R. Petrucelli) makes a number of contentions. First, it states that the County has adequate reserves for salaries in the Prosecutor's Office from 2010, which came to \$254,000. Second, it states that the County as a whole had a fund balance of \$5.4 million in 2011. Third, it notes that the County's revenues from taxation have risen from \$139 million in (CY) 2005 to \$154 million in 2011 (increase of \$15.6 million), and the average

increase per year over that period was \$2.23 million. From January 2001 to January 2011, revenues from taxes grew an average of 5.45% per year, or \$5.3 million per year. The County responded by stating that County reserve is at a historic low of about \$8 million, and it would be harmful to bond rates for it to drop further. The County also contended that tax revenues stayed reached \$162.8 million in 2007 and have since fallen to \$154.2 billion in 2010. ("5 Year Budget Comparison" – Source: 2007-2011 County Budgets)

The Union also showed that in 2001, the County increased its average revenue from residential properties by \$8.22. The share of the Prosecutor's Department of this increase was \$0.45 per residential property. Inasmuch as the total assessed value in 2011 was \$41.47 billion, the value of one tax point was \$4.15 million. Thus, if the county were to increase the average annual residential property tax by one tax point, it "would increase by \$22.37 in order to raise an additional \$4,147,297 (one tax point) by taxation." (U2, p. 7) The County responded by stating the actual Tax Rate in 2010 was \$0.31, so an increase of one tax point would raise significantly less revenue. ("5 Year Budget Comparison" – Source: 2007-2011 County Budgets)

The Spending Cap limits local governments to annual increases of 2% (1011 and later), or the cost of living, whichever is less – with various exceptions. The Tax Levy Cap "imposes a two percent (2%) cap on the tax levy that municipalities, counties, fire districts and solid waste collection districts may impose, with very limited exceptions... Exclusions from the two percent (2%) tax levy cap include... taxation for capital expenditures...pension contributions...health care costs... extraordinary costs.... The County must compare the spending and Tax Levy Cap calculations and use the lesser of the two cap limitations." (U2, p. 22)

The Union presented data showing that the County has not fully utilized its legal right to raise revenues through taxation. Thus, although the 2011 budget was legally able to rise 2.0% to \$166.8 million, the "County utilized only \$154,250,000 of the available tax levy cap, thereby foregoing \$12,251,820 of available tax levy in the 2011 budget." (U2, p. 24) As well, the County did not fully utilize its legal right to spend its revenues. In 2011, it did not spend "\$6,058,347.29 of available spending." (U2, p. 24)

Finally, the Union points out that Chapter 2, P.L. 2010 requires employees to shoulder a minimum of 1.5% contribution to health care in 2011, and this percent increases. This amounts to \$40,343 in 2011, according to Union calculations, that the County will save from its 2010 costs and that Union members will have to pay.

Background Information: Burlington County

Geographically, Burlington County is the largest county in New Jersey. In 2010, its population was 448,734, up 6% from 2000. The estimated median household income in 2009 was \$74,924, up from \$58,608 in 2000, an increase of 28%. The percentage of residents living in poverty was 5.8% in 2009. One hundred and sixty six (166) of the 3,112 counties in the United States (2008) had higher per capita personal incomes than Burlington (\$46,564). (All data are extracted from Union Exhibit 1-E (Folder U-1 was prepared by David DeFillippo) (U1-E).)

Single-family new house construction building permits fell each year from 2000 through 2009 (2,282 down to 461), while the average cost of the buildings rose each year, from \$99,400 in 2000 to \$182,100 in 2009. In 2009, median real estate property taxes for housing units with mortgages were \$5,930. (U1-E)

The average residential sales price in Burlington County has risen steadily, according to incomplete data the Union provided from the NJ Department of the Treasury, Division of Taxation. (See table below, extracted from U1-F.) The data do not include prices for 2006-2009, when nationally, housing prices skyrocketed and then fell. If that occurred in Burlington County, prices recovered and substantially surpassed the 2005 level.

Average Residential		Average Residential	
Year	Sales Price	Year	Sales Price
2011	\$273,597	2004	\$208,451
2010	\$261,732	2002	\$163,123
2005	\$236,473	1999	\$138,291

Background Information: Police Officers

“Police officers are nearly three times as likely to die on the job as the average American worker.” (Police Labor Monthly, August 1999 – U1-G) The article summarizes Bureau of Labor Statistics data for 1992-1997, noting that “assaults and violent acts were the fatal factor in 51% of the deaths, but transportation incidents such as highway crashed or being struck by a vehicle accounted for 43% of all police officer fatalities.”

Shift work causes sleep deprivation, which is “a serious component of another potential killer: job stress.” “In the US, non-police males have a life-expectancy of 73 years. Policemen in the US have a life expectancy of 53-66 years, depending on which research one decides to embrace.” (“Shift Work and Officer Survival,” The Police Policy Studies Council, Summer 1999, Issue #31) (U1-G)

Background Information: Crime in New Jersey

“In 2010, no police officers were feloniously killed in the performance of their duties” in New Jersey. The comparative figures for earlier years are: 2009 (1), 2008 (0), 2007 (2), 2006 (1), 2005 (1), 2004 (0), 2003 (1), 2002 (0), and 2001 (1). Statewide, assaults on municipal police officers (not county agencies, state police, other state agencies, and university/college police) were 10.4 per 100 municipal police officers. In Burlington County, the rate was 9.5 assaults per 100 municipal police officers. Burlington was in the middle among New Jersey’s 21 counties. Among county law enforcement agencies statewide, 68 officers were assaulted, with 26 sustaining injuries. (“Crime in New Jersey, 2010,” NJ State Police Uniform Crime Reporting Unit – U1-H)

Background Information: Cost of Living

Increases in the Consumer Price Index for All Urban Consumers (CPI-U) occur almost every year. Changes in the CPI-U reflect fluctuations in with the business cycle, the exchange rate of the dollar, government deficits and debt, currency speculation, and many other factors. In recent years, the CPI-U has risen about 1%-3% per year, but the future is uncertain.

Interest Arbitration Awards and Voluntary Settlements

PERC gathers statistics on the average salary changes in interest arbitration awards and “reported voluntary settlements,” which are voluntary settlements the Parties obtain after they have filed for arbitration. The new interest arbitration law came into effect on January 1, 2011. Thus, awards and voluntary settlements in 2011 reflect the impact of the new law, but the 2% wage cap did not directly affect most new contracts since they expired before January 1, 2011.

The data below show that the *average* annual percentage size of the awards and settlements fell sharply in 2011 (and lesser so, in 2010) from the levels of the entire previous decade – from 3.5% to 4.0% down to about 1.9% to 2.1%. The data do not include information as to the distribution around the average.

<u>PERC INTEREST ARBITRATION AWARDS and VOLUNTARY SETTLEMENTS</u>				
Cal. Year	Total # of Awards Issued	Average of Salary Increase All Awards	Number of Reported Voluntary Settlements	Average Salary Increase of Reported Voluntary Settlements
2012*				
2011	34**	2.05%	38	1.87%
2010	16***	2.88 (2.50****)	45	2.65 (1.86****)

2009	16	3.75	45	3.60
2008	15	3.73	60	3.92
2007	16	3.77	46	3.97
2006	13	3.95	55	4.09
2005	11	3.96	54	3.94
2004	27	4.05	55	3.91
2003	23	3.82	40	4.01
2002	16	3.83	45	4.05
2001	17	3.75	35	3.91
2000	24	3.64	60	3.87
* Avg. settlement for POST 2011 filings: 1.96% - various adjustments to guides; freezing steps; increase top step only; no retro; deferred increases (PERC Salary Analysis) ** Awards subject to new law: 7 *** Does not include awards on appeal **** Data for 2010 in PERC's Biennial Report Sources: "Salary Increase Analysis Interest Arbitration, 1/1/93 – 12/31/11" - undated (U1-I, p. 37); "Biennial Report of the NJ PERC on the Police and Fire Public Interest Arbitration Reform Act as Amended by P.L. 2010 c. 105 – January 2012" (U1-I)				

Salary Comparisons: Full-Time Detectives and Investigators

The Union provided data from the "2011 Staffing Resource Analysis of the Offices of the County Prosecutors and the Division of Criminal Justice," NJ Dept of Law & Public Safety, Div. of Criminal Justice (U1-Z). The table below shows that Burlington full-time detectives and investigators had an average (mean) annual salary of \$84,494, and a median annual salary of \$88,500, as of August 1, 2011. Two-thirds of the counties paid their respective employees higher salaries. The average annual salary among the 21 counties (and the Dept of Criminal Justice) was \$95,202; the median was \$95,759.

I note that the information provided to me does not give details as to what is included in "annual salary," and the category may vary by county. For example, I do not know if "annual salary" includes overtime payments. I do not know whether it is "base salary." I do not know if it is the budgeted amount. Nonetheless, it provides a tool to evaluate the relative position of Burlington full-time investigators.

Salary Comparison: Burlington County Prosecutor's Office Full-Time Detectives and Investigators vs. Average of New Jersey Counties, as of August 1, 2011						
County	Number Employed	Mean Salary	Median Salary	Average Service Length	2011 Salary Adjustment Approved	
					Yes	No
Bergen (Top County)	173	\$120,949	\$124,742	13.9	X	

by Mean Salary)						
Burlington	45	84,494	88,500	10.3 yrs		X
Hudson (Bottom County by Mean Salary)	18	70,715	77,000	9.9	X	
Burlington Ranking (From Top)	15	16	15	11	na	na
Total: 21 Counties & Div. of Crim. Justice	1,445	95,202	95,749	10.9	12	10
"2011 Staffing Resource Analysis of the Offices of the County Prosecutors and the Division of Criminal Justice," NJ Dept of Law & Public Safety, Div. of Criminal Justice (U1-Z). The data is for all 21 NJ Counties and the Division of Criminal Justice.						

The Union also provided a table entitled "Top Salary County Prosecutor Detectives" for 2011 (U1-S). The table shows, the average top salary and percentage raises in 2011 for 11 counties. Five were 2.0%, and the rest, in ascending order, were 3.0%, 3.5%, 3.6%, 3.75%, 4%, and 6.09%.

The County provided a one-page document entitled "PBA Local 320 – Prosecutor's Detectives and Investigators" showing, for each year 2000-2011, the number of employees, total salary, and average salary. For 2011, the figures were 28 employees, total salary of \$2,068,864, and average salary of \$73,888. The data, as in the table below, lacks specific definitions.

The County contends that salary increases from 2000, compared with the necessary income to buy a home in Burlington County, have significantly improved the employees' economic position. Thus, the County's document shows that in 2000, the average salary was \$47,274, compared with required annual income of \$48,700 to afford an average home in Burlington County costing \$145,000. In 2011, the respective figures were: average salary of \$73,888, far above the \$63,700 needed to purchase an average home costing \$227,400. (U2-p. 10) Thus, in 2000, the average investigator could not afford to buy a home in Burlington County, but in 2011 the average investigator's salary was quite adequate to do so.

Burlington County Contract Salary Increases

The County submitted a one-page document with the title "Salary Increases by Union Group 2009 to 2012," "prepared 4/3/12 by DH." It includes information about nine Burlington County labor contracts. On expired on December 31, 2008, but step increases were in effect in 2009 – 2011 (FOP 166 Sheriff's Officers/Sgt.Lt.) Six expired on 12/31/10 (including the instant contract). Of those, salaries were frozen in the four CWA contracts in 2011, but in the two PBA

320 contracts, step increases occurred in 2011 (Prosecutor's Sgt. & Lt., and the instant contract). The other two contracts expired on December 31, 2011: each had a raise of 1.5% to the steps in 2011 (PBA 249 Superior Correction Officers and PBA 249 Corrections).

Longevity Increase Comparisons for County Prosecutor Detectives (U1-R)

The Union submitted 10-year longevity percentage increases for county prosecutor detectives in various NJ counties, based upon contract clauses. The data show that in 2008, 10 of twenty counties had this provision in these contracts. In the 10 counties with this provision, the average increase was 1.64%. In 2009, the increase was 1.46%, in the eight counties that had the provision (or that the Union could document). In 2010, the increase was 0.77% (6 counties), and this rose to 0.81% in 2011, where the Union included only 11 counties in its table.

<u>10-Year Longevity Increase Comparisons for County Prosecutor Detectives</u>						
Rank by % Incr. in 2008	County	% Incr. in 2008	% Incr. in 2009	% Incr. in 2010	% Incr. in 2011	% Incr. in 1012
1	Middlesex	4.00				
2	Gloucester	4.00	4.00			
3	Ocean	3.00	3.00			
4	Warren	1.23	1.21	1.16	1.09	
5	Mercer	1.03	0.99	0.99	0.97	0.95
6	Sussex	1.01	1.04	1.06	1.08	
7	Hunterdon	0.66				
8	Hudson	0.62	0.60	0.59	0.58	0.57
9	Cumberland	0.50	0.50	0.50		
10	Bergen	0.35	0.34	0.33	0.32	0.31
Average % Increase in Counties With Increases		1.64% average increase in 10 counties	1.46% average increase in 8 counties	0.77% average increase in 6 counties	0.81% average increase in 5 counties	0.61% average increase in 3 counties
Counties With No Increases		10	10	9	6	4
Number of Counties in Table		20	18	15	11	7

ARBITRATOR'S ANALYSIS

Effective Dates (Article XXXI)

The Union asks for a 4-year contract; the County asks for a 3-year contract. I am awarding a 3-year contract for one main reason. In 2010, the state government passed an extraordinary labor-relations law, part of which expires on April 1, 2014. That legislation establishes a public-policy direction for public sector labor relations. By the providence of one day, the Parties in the current negotiations are not governed by the 2% wage cap established by that legislation. However, it would be wrong for me to rule in such a way that they avoid the direct 2% cap for the entirety period of its operation.

The County asks that after the expiration of the contract, "there shall be no incremental movement on the guide for 2014." The County did not argue for that proposal at the Arbitration, and I reject it.

Salary

The County does not deny its actual ability to pay the Union's salary proposal of 2.75% annual step increases for the small (approximate 26-30 person unit) for four years (2011-2014). It contends that it is not an appropriate request, given the overall economic environment in Burlington County and in the nation. Its main criticism of the Union's position is that it does not adequately consider the state of the economic and political environment. The County states that the economy is bad, with a very sick construction industry and an unemployment rate hovering in the 9% range. And, since County revenues are falling and tax ratable are falling (drop of 5% from 2009 to 2011), there is a need to reduce spending. During the past five years, the total County budget fell \$9.6 million, and the Prosecutor's budget fell \$387,000, a decline of 4%. ("5 Year Budget Comparison – County of Burlington"). The County notes that it reduced its workforce from 1,851 in 2007 to 1,635 in 2011, a decline of 216 employees. And, it laid off two investigators from the Prosecutor's Office. That is why, states the County, it is proposing a freeze on movements up the steps and a freeze on step levels.

The Union contends that the County has the ability to pay its salary proposal. It points to a number of factors, including the County's ability to raise taxes, which it has not fully utilized. It also states that almost all of its members will soon be at the top of the salary guide, or near it – and that those at the top will not receive the benefit of movement upward along the guide. In

contrast to many other contracts, the instant contract does not have any longevity increases - for 10, 15, or 20 years.

The Union contends that the County's ability to retain detectives will be damaged if the Arbitrator accepts the County's proposal to freeze salaries. Members at the top of the guide, especially, will have no incentive to remain. I note that in 2011, 6 detectives were at the top of the guide. This number rises to 14 in 2012, to 17 in 2013, and to 20 in 2014 (assuming the workforce remains constant).

In determining my award, I am required to consider nine factors, as noted above. From the abundant data the Parties presented, it is apparent to me that while many Burlington County residents are suffering from the economic situation, there is less suffering there than in most counties. I note that only 166 of the 3,112 counties in the United States had higher per capita personal incomes than Burlington (\$46,564) in 2008. Additionally, the poverty rate is quite low: 5.8% in 2009. Nationwide, and in New Jersey, housing prices have fallen steadily since about 2007 or so. The result has been that large numbers of owners have gone "below water" – owing more in mortgages than the selling price of their homes. In Burlington County, by contrast, housing prices have recovered (assuming they dropped – no data was provided for 2006-2009). In 2010, the average sales price was \$261,732, up \$25,000 from 2005. In 2011, the rise continued, with home selling prices averaging \$273,597. This information does not imply that residents are comfortable with raising their local property taxes, or that the County has the obligation to raise taxes to their maximum so as to satisfy salary demands.

PERC interest arbitration awards in 2011 provided average salary increases of 2.05% per year, as noted above. Of the 34 arbitration awards, seven were subject to the new 2.0% wage cap, and 27 were not subject to the new law. Thus, 20% of the awards helped to lower the average award. In 2010, 16 arbitration awards resulted in average increases of 2.88% (or 2.5%, depending on the source of information—see table above). Where step guides were in place, these salary increases necessarily led to higher actual salary increases for those below the top step. Where longevity increases existed, these also provided bumps for some employees who had reached their top step.

It is now mid-2012, so almost all police and fire arbitration awards are now subject to the 2% wage cap. In spite of the fact that the cap does not directly limit salary increases in the instant

case, the cap does greatly affect comparison arbitration awards - which is one of the nine factors I am required to consider.

Arbitration awards for Burlington County provide a little guidance for comparison purposes. Two contracts expired on December 31, 2011: each had a raise of 1.5% to the steps in 2011 (PBA 249 Superior Correction Officers and PBA 249 Corrections). Apparently, new contracts do not exist for years 2011 and future years.

The Union provided incomplete data on longevity increases in other counties for county prosecutor detectives. The data show that in 2008, ten counties had such clauses, at least for 10-year seniority, providing a 1.64% average increase. For later years, however, the data indicate a reduction in the number and size of such clauses, but the data is too sketchy to draw conclusions.

Inflation has not been particularly large in recent years, so I do not give it great consideration. Short-term contracts generally provide better protection against inflation than longer-term contracts. Cost-of-living (COL) clauses also provide protection. Inasmuch as the Union asked for a 4-year term and did not request a COL clause, it is apparent that inflation is not a strong factor in the Union's calculations.

The Union stressed the inherent dangers of being an investigator, including violence, and it provided data as to short length of life, emotional difficulties, and marital failure rates. While these factors are persuasive, and the County did not dispute them, they are not cause for higher salary increases than other police and fire units are receiving.

The Union contends that a salary and step freeze would lead to increased turnover. That may be true, but this matter more properly belongs to Management. There is, however, little doubt that a freeze would harm employee morale, and this is cause for great concern for employees, management, and the general public. In short, a balance needs to be established among the legitimate needs and concerns of all parties.

My examination of the nine factors leads me to award increases to the expiring step rates as follows: 0.5% (January 1, 2011), 1.25% (January 1, 2012), and 2.0% (January 1, 2013).

Hours and Overtime (Article VIII)

STIPULATION: The Parties stipulated to add to Paragraph D the "call back" language in the *Stipulation of Settlement in Burlington County Prosecutor's Office and PBA Local 320* – PERC Docket No. CO-2010-007.

Union Demand: The Union asks that I change the workday from 8.5 consecutive hours, which includes 0.5 unpaid hours for lunch, to 8.0 consecutive hours per day, which would include a 1.0 hour paid lunch. In other words, the Union would like to change from 8 hours of work per day to 7 hours of work per day. I reject this proposal (to Paragraph A). The Union did not present adequate evidence either to justify this request or to explain its possible consequences to the parties affected by the proposal. Separately, the Union asked that “regular working hours... consist of an eight (8) hour period,” which is a 0.5 hour reduction from the current (consecutive) 8.5 hour period. I also reject this proposal (to Paragraph C), for the same reasons as above. Each demand is for a substantial increase in hourly pay while shortening working hours.

County Demand: The County asks that it be allowed to assign employees “as a part of special assignment and/or special investigation...” to work on Saturday and/or Sunday as part of their “five (5) consecutive days a week duty” for a maximum of six (6) occasions in a calendar year. When this occurs, the County would not pay overtime for hours worked on Saturday or Sunday. The Union opposes this proposal, stressing that a Monday through Friday schedule is important to its members and that this proposal undermines this longstanding practice.

The proposal is a small cost-saving measure for the County, but it would diminish or eliminate overtime pay for weekend work for some detectives and tend to undermine family life. The County did not show the urgency or necessity for this cost cutting. I reject the proposal.

Standby Duty (Article IX)

The Union asks that for special handling of crime scene unit employees who are required to on standby. Currently, all employees who are required to be on standby more than eight weeks in a calendar year are “compensated at the rate of one hundred twenty five (\$125.00) per week beginning with the ninth (9th) week of standby duty.” The Union also states that almost all standby time is for crime scene unit employees. The Union would like crime scene unit employees to receive ten (10) hours compensatory time whenever they are required to be on standby, rather than the current formula. The Union explains that being on standby is a substantial burden on crime scene unit employees, and they are not compensated properly.

According to testimony, currently, each of the three (3) crime scene unit employees works 17 weeks of standby each year, on a rotating basis with the other two employees. Each such employee receives \$1,125 per year for this service (\$125/week for weeks 9-17). The cost to

the County is \$3,375 per year. If the Union's proposal were accepted, the County would save \$3,375 per year, in exchange for the three employees each obtaining 170 hours of compensatory time off (10 hours/week for 17 weeks).

The County testified that the compensatory hours would cost the County (@\$31/hour) an additional \$18,000 per year. This assumes that the County grants the hours off work – and pays other employees to perform work during those time.

The Union's proposal is not fair to the County, its residents, and to other employees. If enacted, it would entitle the three crime scene unit employees to an additional 170 paid hours off per year, which is approximately one month. If the County granted time off (to prevent the compensatory banks from rising to great heights), the result would be actual reduction of investigatory work and/or overtime assignments to other detectives to fill the gap.

However, I also note that the current system (\$125 per week – for the last 9 of 17 weeks) amounts to about \$65 per week, or \$13 per day for being on standby (available) after/before work one-third of the year. That is a small amount of compensation for great inconvenience. Therefore, I will raise the rate to \$135 per week – for the last 9 of 17 weeks. The County can easily absorb this cost, and it would be an equitable change.

Grievances (Articles IV and VII)

The Union asks that appeals of minor disciplinary actions be added to the current definition of grievances. It also asks that an additional step be added to the grievance process: 30-days to appeal decisions of the County Prosecutor to PERC grievance arbitration (final and bargaining). In support of its proposal, the Union submitted a table (U1-X) showing that in every other county in New Jersey, other than Burlington, county detectives are able to take their disputes to arbitration. As well, in Burlington County, Sheriffs and Corrections have that right. The Union asks for "parity" with Burlington County Sheriffs and Corrections.

The County opposes the Union's proposal, noting that labor relations have been peaceful and contending that there is no real need to make the change.

I grant the Union's request, inasmuch as arbitration of disputes provides for a neutral to resolve issues. Arbitration is a useful and time-tested means of promoting mutual respect, resolving issues, increasing adherence to the contract, and building harmonious labor relations.

Insurance Benefits (Article XI)

The County proposes to change the current plan by raising the co-payment for specialist doctors from \$20 to \$35 and non-emergency visits to Emergency Rooms from \$50 to \$100. The County did not provide adequate justification for the additional charges, so I deny them.

The County proposes to establish two new (alternative) health plans, a "High Deductible" and a "Exclusive Provide Organization/Limited Provider Network." The proposals, as presented in the County's "Final Positions," lack sufficient detail for me to analyze them appropriately. As one of many examples, although each of the two proposed plans includes a prescription plan, neither provides the co-pay amount(s) for prescription drugs. The Parties, and their insurance experts, need to have serious discussions before making decisions on this matter. I note that these proposed plans are not in place for any other bargaining unit.

General Provisions (Article XXIII)

The Union requests additional time off for union business. I deny the proposal since conditions do not warrant it.

Seniority (Article XXV)

The Union requests three changes in Article XXV. First, it asks that seniority be defined as "the actual date the employee became an investigator." The County's request is the same, except that it adds the phrase "with the Burling County Prosecutor's Office." I approve the County's approach, as it provides a seniority date that reflects service to the Prosecutor's Office.

Second, the Union also asks that seniority be the "determining factor for layoffs, recalls, and time-off disputes." It notes that job security has become an issue, and it contends that higher paid, longer service personnel have been let go, to the detriment of justice and morale. The County objects, stating the provision would reduce its ability to provide the best service to the residents of the County. It contends that, since much of the investigative work is specialized and requires initiative and the use of modern technology, a contract clause that requires layoff by inverse seniority would harm its ability to hold onto young, energetic, newly trained and motivated personnel.

This is a classic dilemma in labor relations. Each Party has legitimate needs and concerns. The lack of a seniority clause does not reflect a proper balance. A better balance would

be: "Senior employees will be given preference with regard to layoffs, recalls, and time-off disputes when the job relevant qualifications of employees are equal."

AWARD

1. Effective dates (Article XXXI): "January 1, 2011 through December 31, 2013 – 3 year contract."

2. Salary/Guides (Article XXX): 0.5% salary increase as of January 1, 2011, 1.25 % as of January 1, 2012, and 2.0% as of January 1, 2013. "The raises shall be placed on the pre-existing salary guide previously established in the 2007 – 2010 agreement..."

(The increases rise over time for two reasons: first, to enable the County to budget more easily, and second, to enable the increasing numbers of investigators who reach the top of the guide (14 of 26 in 2012, and 17 of 26 detectives in 2013) to receive meaningful raises.)

3. Grievances (Articles IV and VII): Approve the Union's proposals as stated in the "PBA Local #320 Contract Proposal (Final Offer)," except that the time to file for binding arbitration will be 15 days rather than 30 days. The Union's actual proposals are appended to this award.

4. Hours and Overtime (Article VIII):

Stipulation: The Parties stipulated to add to Paragraph D the "call back" language in the *Stipulation of Settlement in Burlington County Prosecutor's Office and PBA Local 320 – PERC* Docket No. CO-2010-007

Union proposals: Denied, for reasons stated above.

County proposals: Denied, for reasons stated above, except that "New Year's Day" will replace "New Year's" in Paragraph B.

5. Standby Duty (Article IX): Change "\$125" to "\$135" in second paragraph.

6. Insurance Benefits (Article XXI): The County's proposals are denied.

7. Seniority (Article XXV)

Add three paragraphs:


Paragraph A: "Seniority is defined as being the actual date the employee began work as an investigator at the Burlington County Prosecutor's Office."

Paragraph B: "Senior employees will be given preference (inverse seniority) with regard to layoffs, recalls, and time-off disputes when the job relevant qualifications of employees are equal. Laid-off investigators shall be placed on a recall list for two (2) years. Placement on the recall list shall provide preference to the laid off investigator over any other applicant in the event a vacant investigative position in the Burlington County Prosecutor's Office becomes available."

Paragraph C: "Upon written request from the Union, the employer shall furnish a complete seniority list ranked by the actual date that the employee began work as an investigator at the Prosecutor's Office. The list will also include the original date of hire."

8. General Provisions (Article XXIII): The Union's proposal is denied. . . .

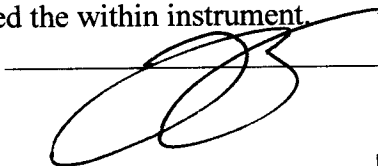
April 21, 2012



Joseph A. Harris, Ph.D., Arbitrator

STATE OF NEW JERSEY) ss.:
COUNTY OF BERGEN)

On this 21st day of April 2012, before me, the subscriber, personally appeared
JOSEPH A HARRIS, who, I am satisfied, is the person named in and who
executed the within instrument.



JOHN D. LOUGLAS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 31, 2012