

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of the Interest Arbitration Between:

**UNION COUNTY PROSECUTOR'S
OFFICE**

Employer

-and-

**PBA LOCAL 250
(DETECTIVES AND INVESTIGATORS)**

Employee Organization

**Interest Arbitration
Decision
-and-
Award**

Docket No. IA-2011-007

**Before
Timothy A. Hundley
Interest Arbitrator**

For the Employer:

**Bauch Zucker Hatfield LLC
(Kathryn V. Hatfield, Esq., of counsel
and on the brief;
Elizabeth Farley Murphy, Esq.,
on the brief)**

For the Employee Organization:

**Mets, Schiro & McGovern, LLP
(James Mets, Esq., of counsel and
on the brief)**

The Union County Prosecutor (“Prosecutor” or “County”) and PBA Local 250 (“PBA”) were parties to a negotiated agreement covering the January 1, 2005 through December 31, 2009 time period. The PBA is the exclusive representative of all detectives and investigators employed by the Prosecutor, excluding those holding a superior officer rank.

Beginning in December 2009, the PBA and the County engaged in negotiations for a successor agreement. After failing to reach a voluntary settlement, the PBA filed an August 16, 2010 Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission (“PERC”). On October 5, 2010, PERC appointed me interest arbitrator pursuant to *N.J.A.C. 19:16-5.6(d)* and the parties’ mutual selection. Accordingly, this case is governed by the interest arbitration procedures in place on October 5, 2010. *L. 2010, c. 105*, which took effect on January 1, 2011, establishes new interest arbitration procedures and timelines for petitions filed on or after that date. *See L. 2010, c. 105, §4 and PERC’s Frequently-Asked Questions, Interest Arbitration Procedures (March 14, 2011).*

Subsequent to my appointment, I conducted mediations sessions in an effort to resolve the outstanding issues. However, the impasse persisted. Therefore, a formal interest arbitration hearing was held on November 22, 2011, at which time

the Prosecutor and the PBA examined and cross-examined witnesses and introduced numerous exhibits into evidence. The parties were also given the opportunity to supplement the record with certifications in lieu of testimony. Certifications were submitted by both parties; post-hearing briefs were received by August 2, 2012; and the record was initially closed on that date.

However, on October 15, 2012, I reopened the record to request that the County submit a scattergram showing base salary costs as of December 31, 2009, as well as increment and senior officer costs for 2009 through 2014. This information was solicited in order to comply with PERC's directives concerning procedures for costing out an award. The County supplied the information on October 26, 2012, and the record was closed on that date.

The pre-2011 version of *N.J.S.A.* 34:13A-16f(5) called for an interest arbitrator to issue an award within 120 days of selection or assignment. However, the statute also permitted the parties to agree to an extension. Pursuant to this latter provision, the Prosecutor and the PBA have agreed to extend the time for issuing this award to December 28, 2012.

The pre-2011 version of *N.J.S.A.* 34:13A-16d(2) also provided that the terminal procedure was conventional arbitration, absent the parties' mutual agreement to an alternate procedure. The parties here have not agreed to an

alternative method of submission and this dispute therefore will be resolved by conventional arbitration.

N.J.S.A. 34:13A-16f(1) requires that each party submit a final offer. The Prosecutor and PBA final offers are as follows.

PROSECUTOR'S FINAL OFFER

1. Article XXIII: Salaries

Section 1

1/1/2010	0%
1/1/2011	2.25%
1/1/2012	0%

Section 4

In order to maintain a bi-weekly basis for paycheck distribution, effective January 1, 2010, a rotating bi-weekly pay day schedule shall be implemented whereby the pay day will be changed in each successive year as follows:

2010:	Friday
2011:	Monday
2012:	Tuesday
2013:	Wednesday
2014:	Thursday

This cycle will continue every five (5) years

When the pay day occurs on a holiday, paychecks or direct deposits will be issued on the day prior to the holiday.

2. Article X: Health Insurance - Modify as follows

Effective one month following the award, prescription co-payments shall be as follows:

Retail

\$20.00 co-pay per prescription for name brand where generic is available.

\$15.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

\$6.00 co-pay per prescription for generic.

Mail

\$15.00 co-pay per prescription for name brand where generic is available.

\$10.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

\$5.00 co-pay per prescription for generic.

The above co-pays shall apply to both retail pharmacy purchases (up to thirty (30) day supply) and a ninety (90) day supply through mail order.

Drug Plan Utilization Modification

- (a) Enhanced Concurrent Drug Utilization Review (Refill too soon/stockpiling).
- (b) Preferred Drug Step Therapy (Generic or Preferred Name Brand first) limited to PPI, SSRI and Intranasal steroid drugs.
- (c) Clinical Intervention (Statement of medical necessity from MD) limited to Anti-Narcoleptic Agents, Weight Loss and Anti-Neoplastic Agents.

The restriction on flow through of prescription co-payments to the Major Medical portion of the health insurance coverage shall be continued.

Officers who receive fully paid retirement benefits under the 2005 through 2009 CNA shall be provided with the Medco Rx or an equivalent plan. The plan shall provide for free mail order prescriptions and 30% co-pay for retail. It is understood that in order to provide the Medco Rx plan, the base Health Plan will be converted from CIGNA ROAP7 to CIGNA ROAP3.

Effective January 1, 2011, the Third Party Administrator (TPA) will be eliminated and the County will no longer reimburse employees for any out-of-network charges.

Effective January 1, 2011, emergency room co-pays shall be \$25.00 per visit (to be waived if admitted).

Premium Contribution Amounts:

Any contribution to health care that is mandated by statute shall replace the contributions set forth in Section 3, paragraph (B). Employees hired after January 1, 2012 shall contribute the following percentages:

Family	3.0%
H& W & P/C	2.5%
Single	2.0%

or the rates set forth in Chapter 78, whichever is higher.

3. Article XIX, Overtime

Section 3: Delete and replace with the following:

Effective January 1, 2012, employees will be permitted to accumulate no more than 40 hours of compensatory time on an annual basis. The forty hours shall not be replenishable and must be used by December 31st of the year in which it is accrued. If not used by December 31st, it will be paid out in the employee's next regularly scheduled pay. An employee seeking to use compensatory time must first obtain the employer's approval prior to use.

4. Article XXVI: Duration

January 1, 2010 through December 31, 2012.

5. New Article: Probationary Period

All full-time employees shall serve a probationary period of one calendar year. The probationary period may be extended by two additional periods of forty five (45) additional calendar days [by agreement] of the parties which shall be in writing. During this probationary period the Employer reserves its absolute right to terminate a probationary employee subject to applicable

provisions of law. Such termination shall not have recourse through any other provisions of this Agreement. Upon successful completion of the probationary period the employee shall be credited with seniority as of the original date of hire.

PBA'S FINAL OFFER

1. Article XI, Personal, Business and Religious Leave

Section 1

Delete the clause "and if for business reasons the applicant must demonstrate that the business purpose could not be scheduled after working hours."

Section 3

Add at the end of the sentence: "unless personal days could not be used because of the business needs of the Prosecutor. In such cases, personal days may be carried over or cashed-in on a dollar-for-dollar basis."

2. Article XIII, Vacations

Section 1

Amend as follows:

- B. The following schedule shall apply to all employees who have at least one year of PFRS service:

Years of PFRS Service	Vacation Days
1 through 5	14
6 through 8	15
9 through 10	16
11 through 13	17
14 through 16	20
17 through 20	22
21 through 24	25
25 plus	2 days for each year over 24

Section 9 – Delete and replace with:

Vacations must be taken during the current calendar year, except that employees may carry-over ten (10) vacation days from year-to-year.

3. Article XIV, Sick Leave

Effective January 1, 2012, implement unlimited sick leave. Officers who are eligible for the contractual cash-in as of December 31, 2011 shall be paid the applicable cash-in amounts in equal installments by separate check from January 1 through December 31, 2012.

4. Article XVIII, Work Schedules¹

Section 1

Replace with the following:

Effective January 1, 2012, the work schedule for all employees covered by this Agreement, shall be four (4) consecutive ten (10) hour work days followed by three (3) consecutive days off. The four (4) day work blocks shall be Monday through Thursday or Tuesday through Friday. Days off shall be selected by seniority. A shift differential of 5% above base pay shall be paid to all officers whose shift ends after 1700 hours. The shift differential shall apply only to those hours worked after 1700 hours.

Section 2

Add a new sentence to the end of this Section as follows: "The Prosecutor shall provide an employee with a minimum of two (2) weeks' notice of a schedule change, absent emergent circumstances."

**5. Article XX, Standby, On Call and Vehicle Compensation
(new title)**

Section 1

Add: "In addition, any officer who is on standby or on call shall receive 8 hours of compensatory time for each 24 hours on standby or on call."

Section 3 (new)

If the Prosecutor removes the take home use of a County vehicle for any employee, that employee shall have the value of the car as established by the American Automobile Association annual report added to his base pay to

¹The PBA advises: "The January 1, 2012 date was used throughout this matter prior to proceeding to formal hearing. Due to the lack of a settlement, this date is no longer applicable and the Arbitrator should make the necessary adjustment should this proposal be awarded."

compensate him for the lost benefit for the make and model of the car removed.

6. Article XXIII, Salaries²

Section 1

For employees [hired] prior to January 1, 2012:

- | | | |
|----|-----------------------------------------------|------------------|
| 1. | Effective and retroactive to January 1, 2010: | 2.5% |
| 2. | Effective January 1, 2011 | \$2500 plus 2.5% |
| 3. | Effective January 1, 2012 | \$2500 plus 2.5% |
| 4. | Effective January 1, 2013 | 2.5% |
| 5. | Effective January 1, 2014 | 2.5% |

Employees hired on or after January 1, 2012 shall be placed on the salary scale set forth in Schedule A

Section 5

Replace with the following:

First paragraph: no change

Second paragraph:

Officers starting their 10th year of law enforcement service shall be entitled to Senior Officer differential pay in the amount of \$1,865 added to base and compounded by any contractual increases. Officers starting their 15th year of law enforcement service shall be entitled to Senior Officer differential pay in the amount of \$2,865 added to base and compounded by any contractual increases. Officers starting their 20th year of law enforcement service shall be entitled to Senior Officer differential pay in the amount of \$3,265 added to base and compounded by any contractual increases.

7. Article XXIV, On the Job Injury

² The PBA advises: "The January 1, 2012 date was selected a future reference during negotiations and mediation. Since this matter has proceeded to formal hearing and this date has come and gone, should the Arbitrator award this proposal, a more appropriate date would be the date of the Award forward. This will prevent any detectives who were already hired on or after January 1, 2012 on from potentially having their terms and conditions of employment unfairly reduced."

Paragraph B

Change 180 calendar days to 1 year and delete the 90 day language and the third party distinction.

Paragraph C

Change “one hundred eighty (180) or ninety (90)” to 1 year.

Also, add at the end of this Section: “The employee’s sick leave shall only be charged in an amount equal to the difference between his regular salary less the amount paid by Temporary Disability or Workers Compensation. If the employee does not use sick leave, only the portion attributed to wages shall be taxed by the employer.”

8. Article XXXIII, Education Incentive (new)

Section 1

Since the Prosecutor recognizes the value of trained Detectives and Investigators, he hereby agrees to pay any officer covered by this Agreement additional compensation in the amount of \$50.00 each year for each college credit that is obtained by any officer on or after January 1, 2010. This per credit amount shall be added to an officer’s base rate of pay for all purposes. The maximum that an officer may receive per year is \$2,500. The credit must be from an approved college and in a course that will be of value to the person in the performance of work for the Prosecutor.

Section 2

In addition to the foregoing, an employee shall receive the following annual bonus for having or obtaining any of the listed degrees:

BA/BS	\$1,000
Master’s	\$1,500
PhD/Professional Degree	\$2,000

9. Article XXXIV, Discipline & Layoff and Recall

Section 1: Insert Section 3 from Article VIII

Section 2:

The Prosecutor may lay off employees for purposes of efficiency or economy or other valid reason requiring a reduction in the number of employees in a given class. No permanent employee may be laid off until all temporary and probationary employees have been let go. Where there are two or more non-probationary employees in the same classification from which a layoff is to be made, employees with two (2) consecutive unsatisfactory evaluations within the last twelve (12) months shall be the first to be laid off. The order of layoffs for other employees shall be by seniority in classification; that is those last appointed are the first terminated.

Laid off employees shall be placed on a special reemployment list and recalled in classification seniority order. Recall right shall last for five years from the date of layoff.

10. Article XXXV, Duration

January 1, 2010 through December 31, 2014

11. Schedule A

Adjust for raises in Article XXIII as follows:

Employees Hired on or After 1/1/12

	1/1/2012	1/1/2013	1/1/2014
STEP			
1	\$44,786	\$45,906	\$47,503
2	\$49,661	\$50,903	\$52,175
3	\$54,536	\$55,899	\$57,297
4	\$59,411	\$60,896	\$62,419
5	\$64,286	\$65,896	\$67,540
6	\$69,161	\$70,890	\$72,662
7	\$74,036	\$75,887	\$77,784
8	\$78,911	\$80,884	\$82,906
9	\$83,786	\$85,881	\$88,028
10	\$88,660	\$90,877	\$93,148

**Employees Hired Prior to 1/1/12
STEP**

	1/1/2009	1/1/10	1/1/11	1/1/12	1/1/13	1/1/14		
		2.5%	\$2500+2.5%	\$2500+2.5%	2.5%	2.5%		
Minimum	\$44,692	\$45,809	\$49,517	\$53,317	\$54,650	\$56,017		
1	\$54,129	\$55,482	\$59,432	\$63,480	\$65,067	\$66,694		
2	\$59,212	\$60,692	\$64,772	\$68,954	\$70,678	\$72,445		
3	\$65,020	\$66,646	\$70,874	\$75,208	\$77,089	\$79,016		
4	\$70,827	\$72,598	\$76,975	\$81,462	\$83,499	\$85,586		
5	\$78,089	\$80,041	\$84,605	\$89,282	\$91,514	\$93,802		
6	\$80,992	\$83,017	\$87,655	\$92,409	\$94,719	\$97,087		
7	\$83,896	\$85,993	\$90,706	\$95,536	\$97,924	\$100,372		
8	\$85,349	\$87,483	\$92,232	\$97,101	\$99,528	\$102,016		
9	\$90,257	\$92,513	\$97,389	\$102,386	\$104,946	\$107,569		
10	\$93,204	\$95,534	\$100,485	\$105,560	\$108,199	\$110,904		

In addition to the proposals set forth in their respective final offers, the County and the PBA have stipulated to several contractual changes that are set forth in the Discussion and Analysis section of this award, under “Stipulations.”

STATUTORY FACTORS

I am required to resolve this dispute based on a reasonable determination of the issues, giving due weight to those statutory factors set forth in *N.J.S.A. 34:13A-16g* deemed relevant. The nine statutory factors 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) Comparisons 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 that 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 P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62³ (C40A:4-45.45), 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 of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services; (b) expand existing local programs and

³ In July 2010, N.J.S.A.40A:4-45.45 was amended by L. 2010, c. 44.

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 a proposed local budget.

(7) The cost of living.

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

(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).

BACKGROUND

This interest arbitration proceeding involves the approximately 47 detectives and investigators employed in the Prosecutor's office. Detectives and investigators are hired by the Prosecutor, a constitutional officer appointed by the Governor with the advice and consent of the Senate. *NJ Const., Article VII, Section II; N.J.S.A. 2A:157-2 and -3*. While the Prosecutor is the employer of investigators and detectives, the expenses of the Prosecutor's office are borne by the County of Union ("County"). *N.J.S.A. 2A:157-8*.⁴ Accordingly, both parties have submitted extensive financial and demographic information about the County.

⁴ While the County and the PBA refer to unit members as "detectives", the employee list attached to the County's scattergram shows that the official title of all current unit members is "investigator." Prosecutor's detectives are in the classified civil service while prosecutor's investigators are in the unclassified service. *Compare N.J.S.A. 2A:157-2 and 2A:157-10*. Consistent with the parties' practice I will generally use the term "detective."

The County is part of the New York metropolitan area; is home to approximately 536,499 residents; and is comprised of 21 constituent municipalities, including Elizabeth, the fourth-largest municipality in New Jersey (PBA Exhibits D-2; D-9; County Exhibit Vol. II-A, p. 10). Of New Jersey's 21 counties, Union ranks sixth in population; twentieth in size; and is the third most densely populated (PBA Exhibit D-9). Union was one of four northern New Jersey counties that lost population between 1970 and 2009: the County's population declined 3.1% during this time period, compared to New Jersey's gain of 21.5% (County Exhibit, Volume II-A, p. 10). However, since 1990, the County's population has increased 6% (County Exhibit, Volume II-A, p. 10).

The County's median household income for 2009 was \$64,588 compared to \$68,444 for New Jersey (PBA Exhibit D-3). For 2008, per capita income was \$51,814 and the average annual wage (\$58,041), was the seventh highest in the State (County Exhibit, Volume II-A, pp. 1 & 10). During 2009, 9.5% of County residents were living below the poverty level, compared to 9.4% statewide (PBA Exhibit D-3).

The County serves as world headquarters for such major employers as Merck & Co.; Lucent Technologies; Schering-Plough; and Wakefern Food Corporation (Union Exhibit D-9). Top industries in the County include manufacturing, retail, pharmaceuticals, petroleum and communications.

On April 19, 2012, the Board of Chosen Freeholders introduced a \$483,644,564 budget that, in the words of the County's Budget Message, was achieved only after extraordinary efforts to close an approximately \$36 million budget gap (2012 budget, sheet 3a). The message described how this deficit resulted from declining revenues due to a prolonged slump in the real estate market; a reduction in state reimbursements; and increases in mandated costs including salaries, pensions and health insurance. The County explained that given the magnitude of these problems, it planned to forge ahead "with a comprehensive plan to cut costs, while maintaining essential services and maximizing various revenue sources."

The County's plan involved service and program reductions (including elimination of the Division of Consumer Affairs); deferred salary increases for 632 exclusionary employees; maintenance of the County's voluntary furlough program; a hiring freeze for non-essential positions; reforms to the prescription drug program; and a property tax increase that averaged \$93 per property owner. The budget message also indicated that the County had filed two layoff plans with the Civil Service Commission covering a total of 280 employees (2012 budget, sheet 3a).

In addition to these cost savings measures, the budget message described two new revenue-enhancing initiatives; specifically, the leasing of beds at the

County's juvenile detention facility and a new, extended lease between the County's utility authority and Covanta Energy (PBA Exhibit D-22).

The 2012 budget reflects the wide range of diverse services provided by the County through such departments as Public Works and Facilities; Runnells Specialized Hospital; Public Safety; Engineering; Public Works and Facilities, Parks and Community Renewal; and Correctional Services. The Union County Prosecutor's Office (UCPO) is of course another such department. It consists of 250 employees, including prosecutors, assistant prosecutors, and detectives and investigators. The UCPO has an annual budget of approximately \$19.5 million and oversees approximately 2000 municipal police officers, as well as the County's Sheriff and Police Departments (PBA Exhibit E-1).

The UCPO is divided into 21 sections, including Child Abuse; Gangs, Guns and Violence; Domestic Violence; and Adult Sex Crimes. Other divisions include the Homicide Task Force; the Computer/Hi Tech Squad; the Grand Jury unit; the Juvenile Justice Unit; the Seized Asset Forfeiture unit; the Release Defenders Unit and the Appellate, Computer Services, and Records and Evidence sections (PBA Exhibit E). The 47 employees in this negotiations work as detectives in these divisions and, in that capacity, deliver subpoenas; interview witnesses; locate suspects; pick up and transport evidence throughout the State; assist prosecutors in trial preparation; testify before the Grand Jury; and gather information on the

existence, identities and capabilities of criminal suspects and enterprises (PBA Exhibit E). Detectives in the Child Abuse section must obtain a certification for forensic child interviewing, and employees in the Arson unit also require a special certification (Certifications of William Mannix and Stephen E. McGuire).

The dominant issues in this interest arbitration are salary increases; health benefits; a probationary period for new employees; and layoff procedures. The parties have also presented a wide range of proposals on vacations, sick leave, work schedules, on-call compensation, education incentive, and overtime.

The County and the PBA each urge that the nine statutory criteria weigh in favor of their respective proposals on all of these items, and they have each submitted comprehensive briefs and voluminous exhibits. The record includes, among other items, the County's 2012 budget; the report of the PBA's financial expert, Joseph R. Petrucelli; numerous negotiated agreements pertaining to other County employees and prosecutor's detectives in other counties; documents describing the operations of the UCPO; and federal and state data on the cost of living and economic and demographic trends. Also among the submissions are recent interest arbitration awards; PERC-compiled settlement data; the New Jersey Department of Labor and Workforce Development (NJLWD) reports on private sector salaries and wage increases; charts detailing the County's health benefit premiums; and cost analyses of the parties' final offers.

I have carefully reviewed these documents, together with the certifications submitted by both labor and management representatives, including PBA President Stephen E. McGuire, a detective in the Domestic Violence unit; PBA State Delegate William Mannix, a detective assigned to the Gangs, Guns and Drugs Task Force; PBA Vice-President and Treasurer, Edward Henderson, a detective in the Child Abuse Unit; Prosecutor Theodore Romankow; First Assistant Prosecutor Albert Cernadas; Chief of Detectives Robert Buccino; and Director of Finance Bibi Taylor. I have also taken arbitral notice of certain information posted on governmental websites, including the most recent PERC Salary Analysis; federal Bureau of Labor Statistics (BLS) reports on consumer price increases; and County budgets prior to 2012.

My analysis has also been informed by recent legislation that has a bearing on this proceeding. *L. 2010, c. 44*, was approved July 13, 2010 and amended *N.J.S.A. 40A:4-45.44* to *45.47*, to reduce the property tax levy cap for school districts, counties and municipalities from 4% to 2%. The Act states that it “shall be applicable to the next local budget year following enactment.” Also pertinent is *L. 2010, c. 2* (“Chapter 2”), which directs that all employees of counties and other local units shall pay 1.5% of their base salary as a contribution toward health insurance premiums. It took effect on May 21, 2010, except for employees

covered by a collective negotiations agreement in effect on that date. For those employees, the statute applies once the contract expires.

Finally, *L. 2011, c. 78*, signed on June 28, 2011 (“Chapter 78”), requires that employees of counties and other local units pay a statutorily-fixed percentage of the premium costs for their health benefits coverage. The applicable percentage depends on the employee’s salary and the type of coverage chosen and is phased in over four years. The statute also increases the Police and Fire Retirement System (PFRS) employee contribution from 8.5% to 10% of the employee’s base salary.

The following is a summary of the arguments presented by the County and the PBA.

COUNTY’S POSITION

The County vigorously argues that an analysis of the nine statutory factors firmly demonstrates that its own economic package best reflects current economic realities. By contrast, the County insists that the PBA’s proposals completely ignore the County’s financial condition and are based on the union’s unsupported contention that the County can afford the demanded increases. I start by reviewing the County’s discussion of the statutory factors as they relate to salary increases and contract duration. I address the County’s arguments on the remaining disputed issues later in this opinion, in the course of ruling on them.

SALARIES

Interest and Welfare of the Public

In analyzing this statutory criterion, the County recognizes that an award must be fair and should not destabilize law enforcement. However, it also emphasizes that because County taxpayers have been stretched to the limit, they cannot afford to fund the PBA's salary proposal, which it estimates will cost \$941,943 more than the County's offer for 2010 through 2012. In support of its position, the County underscores the severity of the fiscal crisis that it experienced during 2012. It highlights both the information set forth in the 2012 budget message and the analysis in Taylor's certification. The following are some of the points set forth in Taylor's submission.

- 2012 revenues decreased by \$9.2 million while appropriations increased by over \$26 million.
- The County's ratable base plunged from a high of \$78 billion several years ago to \$69 billion in 2012.
- Revenues from real estate transactions and sheriff's sales have decreased \$1.1 million, spurring a 25% increase in tax appeals.
- The County's surplus has decreased at a rapid pace over the last few years, from \$22.6 million at the end of fiscal year 2010 to an expected \$16 million at the end of fiscal year 2012.
- The County's long-term general bond obligation rating was downgraded from Aaa to Aa1 status, an action that appreciably affects \$722 million in County and County guaranteed bonds.

The County also highlights Taylor's statement that balancing the 2012 budget was a grueling process that required a \$12.3 million tax increase; appropriation of \$16 million in surplus (leaving a reserve of only \$1.9 million); workforce reductions; and elimination of raises for exclusionary employees and deferral of contractual benefits for retirees.

Overall, the County cites Taylor's conclusion that Union County cannot afford the PBA's demands. It notes in particular that any money that might have been available in the 2010 salary adjustment line would have lapsed into the 2012 budget, where every dollar has been used. For 2011, the County asserts that it has budgeted only for the 2.25% increase that it has proposed. Further, it states that there is absolutely no money available to fund any increase for 2012 and, in terms of 2013, it asserts that it is anticipating a deficit for that year as well.

The County also vigorously disputes Petrucelli's conclusions that it has the ability to fund the PBA's offer, contending that much of the comparative data Petrucelli used for the years leading up to 2010 was invalidated by the 2012 economic crisis. It also challenges Petrucelli's assessment that a \$4.0 million surplus on a half a billion dollar budget is healthy. Further, it rejects as pure speculation Petrucelli's suggestion that the County can balance its budget based upon unanticipated revenues or governmental grants.

The County further stresses that because of the current unstable economic environment, the public interest weighs in favor of a three-year agreement. It writes that additional raises for 2013 and 2014 are unwarranted when the economic forecast is that budgetary problems are increasing, not decreasing. In this vein, the County suggests that short-term contracts and one-year extensions may well become the norm until the County successfully navigates its way through this economic storm.

Comparisons with Similar Employees and Employees Generally

The County underscores that unit members are well compensated when compared to both private and public sector employees. It insists that such comparisons weigh in favor of its salary proposal. In addition, the County urges that comparisons with other County employees support a three-year contract, since only two of the County's many negotiations units have contracts extending beyond December 31, 2012. The County makes the same point with respect to private employees, "who do not have the benefit of guaranteed raises over the next two years."

Private Sector Employees

The County observes that PBA members enjoy an average salary in excess of \$90,000, a far higher figure than the average private sector salary statewide of \$54,932 for 2008 and \$54,542 for 2009 (a .7% decrease). Indeed, the County adds

that between 2008 and 2009, private sector workers in Union County experienced a 2% decrease in their compensation, from \$59,243 for 2008 to \$58,041 for 2009. In this posture, the County asserts that, when evaluated against the private sector component of *N.J.S.A. 34:13A-16g(2)*, its own offer is more reasonable than the PBA's.

Employees in the Same Jurisdiction

The County stresses that its exhibits definitively show that the vast majority of its negotiations units received a wage freeze for 2010, with the only exception being the Assistant Prosecutor's Association, which negotiated its contract before "the economic sky fell." With respect to 2011, the County stresses that it is prepared to give the PBA a 2.25% increase consistent with the awards rendered with respect to other law enforcement units.

The County reasons that 2012 is the crux of this dispute, and it recognizes that the County Police (PBA Local 73), the County Police Superiors (PBA Local 73A), and the County's rank-and-file Corrections Officers (PBA Local 199) all negotiated 2.5% increases for 2012. These settlements were followed by awards involving the Sheriff's Superiors (FOP Lodge 103) and the Sheriff's rank and file (PBA 108). However, the County reasons that the internal settlements were reached in 2010, before the County's fiscal distress became evident, adding that the PBA Local 199 agreement included features that saved the County money.

With respect to the interest arbitration awards, the County writes that data concerning 2012 was not part of the record in the Sheriff's Superior Officer proceeding. Finally, in the County's view, the PBA Local 108 award relied too heavily on internal comparables without appreciating the current economic crisis.

Employees in Comparable Jurisdictions

The County reasons that the key to any comparability analysis lies in determining what jurisdictions are similar to Union County. The County rejects the PBA's reliance on agreements pertaining to prosecutor's detectives in 20 other counties, maintaining that it cannot be seriously argued that every County from Cape May to Sussex is comparable to Union. The County's own exhibits emphasize the five contiguous counties of Essex, Hudson, Middlesex, Morris, and Somerset, albeit it also argues that differences among Union and these jurisdictions makes comparisons difficult. In any case, however, it notes that detectives in these counties received the following salary increases in settlements or awards.

	2010	2011	2012	2013	2014
Somerset	0%(except top-step & Sgt.)	0% & no step movement	3.5%		
Hudson*	2.5%	2%	2%, effective July 1		
Morris*		0% & no step movement	2% top step only	1.5%	\$1,775 increase
Essex	2.5%	2%	2%		
Middlesex**	0% 2009; 1.0% effective January 1, 2010; 1.5% effective July 1, 2010	1% effective January 1 1.5% effective July 1	2% effective January 1		

*Result of Award that is under appeal.

**Result of Award that was not appealed.

Overall, the County concludes that comparisons with other counties are difficult at best. It therefore urges that the arbitrator should not give significant weight to these comparables due to the unique circumstances facing each jurisdiction.

Overall Compensation

The County states that a review of the record reveals that the PBA 250 unit has a very good overall compensation package. The County emphasizes the average unit salary of over \$90,000; health coverage that is mostly paid by the employer; and vacation, sick leave, personal day, and holiday benefits that are among the best in the State vis-à-vis comparable units. The County notes that according to the “2011 Staffing Resource analysis of the Offices of the County Prosecutor and the Division of Criminal Justice”, PBA Local 250 ranks fifth in the State for mean salary and eighth for median salary (County Exhibit Vol. 1-J).

Stipulations of the Parties

The County notes that Exhibit J-2 sets forth the stipulations agreed to by the parties on November 22, 2011.

Lawful Authority of the Employer

The County emphasizes that, in 2012, the County raised taxes to the maximum extent permitted by law in order to balance its budget. In 2012, the

maximum tax levy was in fact included in the budget (Taylor certification, 2012 budget, CAP sheet).

Financial Impact on the Governing Body and its Residents

The County begins its analysis of *N.J.S.A.* 34:13A-16g(6) by observing that the criterion mandates that an arbitrator consider the impact of an award on the ability of the governing body to maintain, expand, or initiate programs and services. Viewed through this lens, the County insists that awarding the PBA-proposed increases would be wholly irresponsible and would lead to cuts in services. The County notes that it has already reduced 10% of its work force and yet still anticipates a \$16 million deficit in 2013 even if taxes are raised by the maximum permissible amount. It reiterates that exclusionary employees have not received a wage increase in almost five years.

Cost of Living

The County states that the arbitrator is required to consider the cost of living, specifically the Consumer Price Index (“CPI”), in assessing the reasonableness of the parties’ respective economic proposals. In this context, the County comments that the CPI-U (for all urban consumers) increased 2.7% from December 2010 to December 2011, while the medical insurance component increased 4% (County Exhibit Vol. 1-N, p. 4). By contrast, the County notes that, during 2010, its own increased medical costs rose from \$36.8 to \$45.5 million. Because it absorbs most

of these medical increases, the County concludes that “the net gain to PBA members far exceed the differential between the cost of living and the proposed contractual wage increase.”

Continuity and Stability of Employment

The County asserts that its proposal will maintain the continuity and stability of employment in the UCPO. It points out that there is no evidence of any unit unrest or turnover and, indeed, it states that award of the PBA’s offer would undermine the continuity and stability of employment since it would result in the PBA receiving higher increases than those obtained by other County employees.

Statutory Restrictions Imposed on the Employer

In applying this criterion, the County asserts that its residents are already taxed enough. It notes that in 2012 it was statutorily authorized to raise \$303,039,176 in taxes – the exact amount of its tax levy. In addition, the County points out that the PBA’s own financial expert noted that, between 2005 and 2011, the amount of revenue that the County raised by taxation increased 34.59%.

PBA’S POSITION

As a prelude to its discussion of the statutory criteria, the PBA comprehensively outlines the environment in which County detectives work. For example, the PBA extensively summarizes the functions of the UCPO’s many divisions, and it emphasizes that County detectives work in a dangerous

jurisdiction with a high crime rate. Thus, the PBA cites governmental and news websites that show a steady increase in violent and non-violent crime in the County beginning in 2007. The PBA observes that the County is home to Elizabeth, one of New Jersey's most dangerous cities. It adds that the prevalence of street gangs is a major factor relating to crime in Union County, with the State's Department of Law and Public Safety reporting that, as of 2010, 30 municipalities statewide reported gang activity where none had existed in 2007. The PBA predicts that gang activity will increase over the awarded contract term, thereby making the detectives' work more dangerous.

The PBA further emphasizes that unit members are subject to considerable occupational danger and stress. The PBA observes that in 2011 alone 173 law enforcement officers nationwide were killed in the line of duty, while 160 federal, state, and local law enforcement officers suffered that fate in 2010. During 2011, one of the fatalities was a police officer in Lakewood, N.J. The PBA also underscores that law enforcement officers are at high risk of being assaulted and are 30% more likely to commit suicide than males of similar ages (PBA Exhibits I-1 through I-11).

Against this backdrop, the PBA vigorously argues that when the evidence is analyzed in light of the statutory criteria, it is apparent that the arbitrator must award the PBA's final offer in its entirety. The following is a summary of the

PBA's review of the statutory factors as they relate to salary and contract duration. I address the PBA's arguments on the remaining disputed issues later in this opinion, in the course of ruling on them.

Interest and Welfare of the Public

The PBA states that arbitrators traditionally accord this criterion significant weight because it touches on several of the other statutory factors. Citing recent interest arbitration awards, the PBA writes that the public has a strong interest both in maintaining an effective and high-morale law enforcement department and in ensuring that those law enforcement services are obtained at a reasonable cost.

The PBA insists that award of the County's offer would be contrary to the public interest because it would destroy unit morale. By contrast, it asserts that the public interest favors the award of its own offer both because it would improve morale and is within the County's legal ability to fund.

The PBA underscores that Petrucelli's analysis of the County's finances unequivocally establishes that the County has the ability to finance the PBA's offer. Relying on Petrucelli's report, the PBA cites these positive fiscal indicators:

- The County currently maintains an exceptional Aaa bond rating from Moody's Investment Services, a designation that is attributable in part to the County's low outstanding net debt and a debt percentage ratio of .73%.
- Since 2005, the County has generated significant fund balances and excess results from operations, thereby enabling it use a portion of the fund balance as revenue in the ensuing year's budget. This practice

has allowed the County to hold down taxes. The County had a December 31, 2011 fund balance of \$18,700,000 and anticipates a \$16,000,000 surplus in 2012.

- The County's ratables have increased 92.40% since December 31, 2000. The County added new ratable assessments of \$926,045 in 2011 and \$880,294 in 2012.
- During 2010 and 2011, the County realized miscellaneous unanticipated revenues of \$11,811,372 and \$7,928,579, respectively. The 2011 unaudited financial statement indicates excess revenue from operations for 2011 in the amount of \$13,988,099. The 2010 unaudited financial statement reflects that the County has \$8,083,357 in reserves that are available to lapse into the 2012 budget. As of December 31, 2011, the County had a cash balance of \$17,945,976. These factors indicate that the County spends less than budgeted and/or collects more revenue than anticipated.
- The UCPO has been successful in generating grants for the County and is entitled by law to receive the full amount to be raised by taxation from its constituent municipalities.

In light of these statistics, the PBA contends that Taylor's claims of a fiscal crisis are marked by hyperbole and conjecture. For example, the PBA maintains that salaries comprise 55.22%, not 73% of the County's budget, while insurance costs increased \$6,372,280 between 2011 and 2012, not the \$11 million as posited by Taylor. The PBA also disputes the assertion that the County's surplus has "rapidly" decreased, reasoning that the alleged drop between 2010 and 2011 is attributable to the one-time receipt, in 2010, of \$3,999,999 in unanticipated revenue for "retiree benefits."

Within this framework, the PBA urges that it is disingenuous for the County to maintain that it cannot afford the PBA's offer, when it has voluntarily agreed to pay three law enforcement units salary increases far higher than those it has offered to this unit. The PBA also highlights that the County chose not to appeal an award ordering similar increases for a fourth unit, the Sheriff's Superiors.

In continuing this discussion, the PBA points out that, despite State aid reductions, the County's budgeted revenue from taxation increased 93.94% between January 1, 1999 and January 1, 2011 while, between 2005 through 2010, actual revenues grew at an average of 4.7% per year. By comparison, the PBA observes that the rate of growth in PBA salaries has been much less, averaging 3.4% per year from 2004 through 2011 and a negative .8% between 2010 and 2011 (Petrucelli report, pp.8-9). The PBA adds that the County has not been restricted by the tax levy CAPs and, indeed, could have levied an additional \$707,513 in 2011 if it had used the maximum COLA rate under N.J.S.A. 40A:4-45.1a et seq.

Finally, the PBA contends that the County's decision to lay off hundreds of employees to close a budget gap cannot be attributed to unit members. It calculates that the cumulative difference between the PBA and the County's final offers for 2010 through 2012 is \$616,702, while the County itself estimates that it stands to receive \$675,756 in health benefits contributions from PBA members for 2012 through 2013.

In espousing increases of 2.5% for 2010 through 2014, plus additional \$2500 payments for 2011 and 2012, the PBA argues that these adjustments will raise the morale of unit members who have twice had their salaries reduced by statutory enactments requiring health benefits premium contributions. The PBA underscores that it is also proposing a salary guide for new hires that will result in top step salaries that will be \$16,900 lower than the existing guide in 2012; \$17,322 less in 2013; and \$17,756 less in 2014. The union reasons that the substantial savings that the County would obtain from the new guide should be considered in adjusting salaries for incumbent employees.

The PBA continues that the County's proposed wage increases are less than those included in the "alleged pattern" pertaining to PBA 73, PBA 73A; PBA 199; FOP 103; and PBA 108, all of whom received across-the-board rate increases of 0% for 2010; 2.25% for 2011; and 2.5% for 2012, with the PBA 108 interest arbitration award granting increases for 2013 and 2014 as well. The PBA points out that these settlements and awards also included increases in senior officer pay and that three units (PBA 199, PBA 73A and PBA 108) received additional adjustments. In particular, PBA 250 emphasizes that, in exchange for a different salary guide for new hires, the County agreed to provide PBA 199 with salary adjustments that increased compensation well in excess of the alleged pattern. It urges that the public interest favors the same result here.

By contrast, the PBA argues that the increases proposed by the County would decimate unit morale; would be completely subsumed by the required health benefits contributions; and could jeopardize the continuity and stability of employing by eroding the unit's relative standing vis-à-vis comparable law enforcement units. Indeed, it contends that virtually no awards issued under the pre-2010 version of the interest arbitration statute granted "such pitiful wage increases" as those proposed by the County.

Finally, the PBA asserts that the public interest strongly supports a five-year contract instead of the three-year agreement proposed by the County. The PBA reasons that a three-year contract would run counter to the goal of achieving labor relations stability, since the parties would have to begin negotiating for a successor agreement within months of the award. In support of its position, it points to the interest arbitration award pertaining to PBA 108, where the arbitrator rejected the County's proposal for a three-year contract but arrived at salary increases for 2013 and 2014 that recognized the uncertainty surrounding the County's budgets for those years.

Comparisons with Other Employees

The PBA observes that N.J.S.A. 34:13A-16g(2) requires the arbitrator to compare unit members' compensation with that received by employees in comparable public and private sector employment.

Private Sector Employees

The PBA stresses that because no private sector position is truly comparable to that of a police officer, the “private sector” prong of the criterion should be given little if any weight. However, the PBA argues that if the arbitrator grants the draconian economic reductions proposed by the County, unit members will see their compensation decrease when compared to private employees. The PBA urges that this result is unwarranted in view of the July 30, 2010 study by The Economic Policy Institute, which concluded that state and local employees are undercompensated by 4.05% when compared to their private sector counterparts.

Public Employees in the Same or Similar Jurisdictions

The PBA emphasizes that the County is proposing wage increases that are far less than those that the County’s other law enforcement units received in negotiations and interest arbitration. Moreover, the PBA states that such a paltry wage increase would cause unit members to lose ground vis-à-vis their law enforcement colleagues in the County.

With respect to Prosecutor’s detective and investigators in other jurisdictions, the PBA states that the 2009 top step base salary for this unit (\$93,204) was the sixth highest out of the 21 counties, with Bergen, Monmouth, Passaic, Middlesex and Camden ranking higher (PBA Brief, p. 71). Moreover, it identifies Essex, Hudson, Middlesex, Monmouth, Morris, Passaic and Somerset

counties as the most comparable to Union, reasoning that they are all geographically proximate and financially similar. It posits that awarding the PBA's offer in this matter will maintain this unit's relative standing vis-à-vis these seven counties and will result in it having the eighth highest salary in the State in 2010 and the seventh highest in 2011.⁵

By contrast, the PBA protests that it would be a grave injustice to deflate the PBA's salaries as requested by the County. It has prepared a chart showing that, under the County's offer, this unit's salary would rank eighth in the State in 2010 and ninth in the State in 2011 (PBA Brief, p. 72). It adds that in 2009, unit members earned approximately 15% more than their counterparts in Essex but that under the County's proposal, they would earn 1.6% less in 2012. The PBA stresses that the case in favor of awarding of its own offer is reinforced when unit salaries are compared with those of the prosecutor's detectives in Morris, Hudson, Bergen, Passaic and Middlesex, all of whom also earn longevity in addition to base salary.

Finally, the PBA analyzes the parties' respective wage proposals in the context of recent interest arbitration awards Statewide. It underscores that PERC's Salary Analysis shows that the average increases in awards and settlements for 2010 through 2012 are comparable to those proposed by the PBA and considerably

⁵ The PBA compiled these rankings by applying its own proposed increases to Monmouth and Camden counties (for 2010) and Monmouth, Camden and Atlantic (for 2011). It took this approach because those jurisdictions do not have settled contracts for those years (PBA brief, p. 72).

higher than the average annual .67% across-the-board raise sought by the County. The PBA highlights that there have been a number of awards decided under the 2.0% salary CAP. It points to two awards in which the arbitrator awarded increases higher than those proposed by the County in this proceeding, which is *not* subject to the salary cap.

Overall Compensation

The PBA maintains that the overall compensation that unit members actually receive is decreasing due to the statutorily-mandated health benefits premium contributions. It argues that the County's proposals would exacerbate this trend, while its own salary offer would serve to maintain the current compensation at a reasonable level. The PBA urges that in arriving at a salary award, the arbitrator should consider the cost savings accruing to the employer as a result of the new health benefits contributions. It underscores that other arbitration awards have articulated this approach and that one, involving the County's sheriff's officers, was affirmed by PERC.

The PBA also observes that unit members do not receive much in the way of compensation other than base salaries. It comments that while the agreement currently entitles some detectives to senior officer pay, that benefit pales in comparison to other law enforcement units in the County and the Prosecutor's

office, who are provided with longevity, education reimbursement, and other additional payments.

Stipulations

The PBA states that it and the County entered into a series of stipulations set forth in Exhibit J-2.

Lawful Authority of the Employer

The PBA asserts that the evidence establishes that the County is financially capable of funding the PBA's proposals without implicating CAP limitations or requiring it to increase taxes. In support of this proposition, the PBA cites the fact that the County was able to regenerate surplus in both 2010 and 2011 and also received substantial unanticipated miscellaneous revenues in those years.

Conversely, the PBA maintains that the County's final offer is an attempt to bootstrap its finances to those of the State and County as a whole.

Financial Impact on the Governing Body, Taxpayers and Residents

In addressing this criterion, the PBA asserts that the difference in cost between its proposals and the County's final offer would not burden the County or require it to raise taxes. It identifies the disparity in year-to-year costs as follows.

2010	\$68,725
2011	\$202,549
2012	\$345,426
Total	\$616,702

Based on these figures, the PBA calculates that, compared to the County's proposal, the total cost to the average residential property tax payer of awarding the PBA's proposal would be \$9.19 for the entire contract period.

Cost of Living

The PBA approaches this criterion by noting that "the cost of living in Union has always been high." It cites information from citydata.com showing that the cost of living index in Union County is 125.4 compared to the U.S. average of 100. It states that these figures indicate that the cost of living is 25% higher in the County compared to the nation as a whole.

In light of this circumstance, the PBA objects that the County's final offer does not take into account either Union's historically high cost of living or recent increases in the CPI. It states that in the twelve months prior to December 2011, the all items index of the CPI rose 3.4%, with some components of the index increasing by larger percentages. For the twelve months prior to January 2012, the PBA asserts that the CPI increased 2.9% before seasonal adjustment. Overall, the PBA concludes that the County's final offer would not allow wages to keep pace with the CPI, a situation that is exacerbated by the newly-enacted health benefit contributions that erode unit members' purchasing power.

Continuity and Stability of Employment

The PBA writes that award of its own final offer will prevent its membership from leaving County employment to seek posts in more lucrative jurisdictions. In addition, award of the PBA's offer will allow the Prosecutor to attract the best and the brightest. By contrast, the PBA concludes that the County's offer of 2.25% over three years is detrimental to the continuity and stability of employment.

Statutory Restrictions on the Employer

The PBA reiterates the arguments it made in connection with the lawful authority and financial impact criteria. It states that the PBA's offer does not infringe on the 2% tax levy CAP and it points again to the County's large cash balances and its "ability to continue amassing a large surplus." Further, given its history of receiving unanticipated revenues, the PBA writes that it is not likely that the County will need to raise taxes to fund the PBA's offer.

DISCUSSION AND ANALYSIS

My consideration of the parties' proposals is governed by *N.J.S.A.* 34:13A-16g and pertinent Court and PERC decisions. I must indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. *N.J.S.A.* 34:13A-16g; *Cherry Hill Tp.*, P.E.R.C. No. 97-119, 23 *NJPER* 287 (¶28131 1997).

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. Accordingly, I have been guided by the decision-making principles that are typically used in deciding interest arbitration disputes. One such principle is that the party proposing a change in an employment condition bears the burden of justifying it. I have applied that principle to the proposals in this proceeding, although I note that PERC has held that the “burden” construct has less import in evaluating salary proposals, where both sides typically propose changes; neither party seeks a continuation of the pre-award salary guide; and the award must contain a salary ruling. *Essex County*, P.E.R.C. No. 2005-52, 31 *NJPER* 86 (¶41 2005).

Similarly, while I have evaluated the individual merits of each proposal, my award reflects the precept that an arbitrator must consider the totality of changes to be made to the existing agreement, as well as the cost and impact of the overall economic package. *N.J.S.A. 34:13A-16d(2)* reflects this latter concept by requiring that the arbitrator separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine criteria in *N.J.S.A. 34:13A-16g*.

The primary unresolved issues in this proceeding are across-the-board salary increases; contract duration; a probationary period for new employees; and

seniority layoff procedures. Additional issues include health benefits; work schedules; paycheck distribution; vacations; sick leave; and overtime. All of these proposals must be evaluated in the context of recent State legislation that reduced the County's tax levy CAP and increased employee premium contributions for health benefits coverage. That legislation was in turn enacted in the aftermath of a severe, almost unprecedented recession, from which the State and national economies are still struggling to recover.

In arriving at an award, I am mindful of both the essential law enforcement services that these unit members perform, and the budgetary restrictions under which the County must operate. I conclude that all of the statutory factors are relevant but that not all are entitled to equal weight. My weighing and balancing of the nine factors, particularly those pertaining to the public interest, financial impact, lawful authority of the employer, statutory restrictions on the employer, and comparisons with other employees, leads me to award a total economic package that, for 2010 through 2012, closely mirrors the internal settlements and interest arbitration awards involving the County and other of its law enforcement units. My decision-making has also been informed by these factual conclusions and judgments:

- The County is well-managed and has some markers of financial strength. However, during 2010 through 2012, the County experienced severe budgetary pressures as a result of decreased revenues; increased pension and health insurance costs; and a

declining surplus. In order to close a \$36 million hole in the 2012 budget, the County was forced to raise taxes and prepare lay off plans for 280 employees. These and other factors weigh in favor of moderate salary increases and a three-year contract term.

- Settlements with other County law enforcement units implicate three statutory criteria: the public interest and welfare; comparisons with other employees; and the continuity and stability of employment. In addition, each agreement sheds light on the parties' understanding of what constituted a reasonable salary determination in a challenging budgetary environment. Accordingly, I have given significant weight to these settlements and to two interest arbitration awards involving the County's superior sheriff's officers and rank-and-file sheriff's officers. I have also given significant weight to the settlements involving several of the County's civilian units.

Within this framework, the terms of my award are as follows:

1. **Salaries**

0% across-the-board salary increase effective January 1, 2010.

2.25% across-the-board salary increase effective January 1, 2011.

2.5% across-the-board salary increase effective July 1, 2012.

Each salary increase is retroactive to its effective date.

Effective January 1, 2012, Article XXIII, Section 5 shall be amended to increase senior officer pay for each level by \$210.00

2. **Paycheck Distribution**

Article IV, Section 2 is amended to state:

In order to maintain a bi-weekly basis for paycheck distribution, a rotating bi-weekly pay day schedule shall be implemented whereby the pay day will be changed in each successive year as follows. This section shall be implemented as soon as administratively feasible after issuance of this award.

2012: Tuesday
2013: Wednesday
2014: Thursday
2015: Friday
2016: Monday

This cycle will continue every five (5) years.

When the pay day occurs on a holiday, paychecks or direct deposits will be issued on the day prior to the holiday.

3. **Health Insurance**

Article X, Health Insurance, is modified to read as follows:

1. Effective one month following the award, prescription co-payments shall be as follows:

Retail

\$20.00 co-pay per prescription for name brand where generic is available.

\$15.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

\$6.00 co-pay per prescription for generic.

Mail

\$15.00 co-pay per prescription for name brand where generic is available.

\$10.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

\$5.00 co-pay per prescription for generic.

The above co-pays shall apply to both retail pharmacy purchases (up to thirty (30) day supply and a ninety (90) day supply through mail order.

2. **Drug Plan Utilization Modification**

- (a) Enhanced Concurrent Drug Utilization Review (Refill too soon/stockpiling).
- (b) Preferred Drug Step Therapy (Generic or Preferred Name Brand first) limited to PPI, SSRI and Intranasal steroid drugs.
- (c) Clinical Intervention (Statement of medical necessity from MD) limited to Anti-Narcoleptic Agents, Weight Loss and Anti-Neoplastic Agents.

The restriction on flow through of prescription co-payments to the Major Medical portion of the health insurance coverage shall be continued.

- 3. Officers who receive fully paid retirement benefits under the 2005 through 2009 CAN shall be provided with the Medco Rx or an equivalent plan. The plan shall provide for free mail order prescriptions and 30% co-pay for retail. It is understood that in order to provide the Medco Rx plan, the base Health Plan will be converted from CIGNA ROAP7 to CIGNA ROAP3.
- 4. The Third Party Administrator (TPA) will be eliminated and the County will no longer reimburse employees for any out-of-network charges.
- 5. Emergency room co-pays shall be \$25.00 per visit (to be waived if admitted).

4. Article XXXII: Duration

January 1, 2010 through December 31, 2012.

5. New Article – Probationary Period

All full-time employees shall serve a probationary period of one calendar year. During this probationary period the Employer reserves its absolute right to terminate a probationary employee subject to applicable provisions of law. Such termination shall not have recourse through any other provisions of this Agreement. Upon successful completion of the probationary period the employee shall be credited with seniority as of the original date of hire.

6. New Article - Layoff and Recall

1. The Prosecutor may lay off an employee for purposes of efficiency or economy or other valid reason requiring a reduction in the number of employees in a given job classification. No permanent employee may be laid off until all temporary and probationary employees have been let go. Where there are two or more non-probationary employees in the same classification from which a layoff is to be made, layoffs shall be conducted in reverse seniority order, provided however, that the Prosecutor has the authority, as a matter of his or her sole discretion, to determine exceptions to the use of seniority based on personnel needs relating to specific skill sets; experience and/or specialized training; or an employee's receipt of an unsatisfactory evaluation or significant discipline within the last 36 months. Such discretion shall not be unreasonably exercised. For purposes of this article "significant discipline" shall mean an unpaid suspension of three or more days.
2. Laid off employees shall be placed on a special re-employment list and recalled in classification seniority order provided, however, that the Prosecutor may determine exceptions to seniority on the grounds enumerated in paragraph 1. Recall rights shall last for five years from the date of layoff.

7. Article XIX, Overtime

Section 3: Delete and replace with the following:

Employees will be permitted to accumulate no more than 100 hours of compensatory time on an annual basis. The 100 hours shall not be replenishable and must be used by December 31st of the year in which it is accrued. If not used by December 31st, it will be paid out in the employee's next regularly scheduled pay. An employee seeking to use compensatory time must first obtain the employer's approval prior to use.

8. Article XXIV, On the Job Injury

Paragraphs B and C

Change 180 calendar days to one year.

Cost of Award

A necessary prelude to the analysis mandated by *N.J.S.A. 34:13A-16g* is a costing out of the award. The total 2009 base compensation for the 47-member unit was \$4,219,907. Assuming no resignations, retirements, or new hires, the cost of the annual across-the-board base salary increases under the employer's offer, the PBA's proposal, and the award are listed below.

	County	PBA	Award
2010	\$0	\$105,498	\$0
2011	\$94,948	\$228,573	\$94,948
2012	\$0	\$234,287	\$53,935.50 plus 53,935.50 flow through into 2013
Total	\$94,948	\$568,358	\$202,819, including 53,935.50 flow through into 2013

For 2010 through 2012, the figures for the County and the PBA assume that the total base salary for the preceding year was enhanced by the across-the-board percentage increase that it has (or has not) proposed; the same method was used to calculate the cost of the award. For the PBA, the calculated costs for 2011 and 2012 also reflect the additional \$2500 payment proposed by the PBA for each of the 47 unit members (\$117,500 for both 2011 and 2012). The \$117,500 was added to the new base before the across-the-board increase was applied, consistent with the phrasing of the PBA proposal (“\$2500 plus 2.5%”).

During the term of the contract the payout required under the award is \$53,935.50 more than under the County's offer and, in addition, there is a flow-through of \$53,935.50 into the next contract term. Overall, the across-the-board rate increases attributable to the award are \$107,871 more than under the County's offer proposal and \$365,539 less than sought by the PBA.

For 2010 through 2012, the County states that the current senior officer benefit would increase by \$5,345 in 2010; \$12,155 in 2011; and \$19,630 in 2012.⁶ These costs will also be incurred under the award. In addition, effective January 1, 2012, the award increases senior officer pay at both levels by \$210, resulting in an additional \$9,870 assuming, for the purposes of analysis that all unit members are eligible for this benefit. (The salary information submitted by the employer shows that most unit members received senior officer pay as of December 31, 2009).

The award continues the existing salary guide structure, whereby employees with an anniversary date between January 1 and June 30 receive their salary increment as of January 1, while unit members with anniversary dates between July 1 and December 31 move up on the guide on July 1 (Article XXIII, Section 2). The County's scattergram identifies increment costs as \$53,594 for 2010; \$38,046 for 2011; and \$30,825 for 2012. Increment costs are substantially the same under

⁶ These figures do not include the compounding that results when, pursuant to the contract, the 20-year benefit is increased by the amount of any across-the-board increase.

the award and the County's offer, since the County does not propose to change the current guide structure.⁷

Pursuant to *N.J.S.A.* 34:13A-16d(2), I conclude that the above-noted total net annual economic changes for each year of the agreement are reasonable under the criteria listed in *N.J.S.A.* 34:13A-16g.

In placing the cost of the awarded increases in context, it is also useful to note that unit members are subject to two distinct statutory mandates that, beginning in 2010, required them to pay health benefits costs that would otherwise have been absorbed by the County. Thus, on or about May 21, 2010, employees were required to assume, by operation of law, a minimum contribution toward their health benefit premiums in the amount of 1.5% of their base salary. Given the May 2010 effective date, this statute's implementation took place during the second half of 2010 and the first half of 2011 and required \$63,298 in new premium contributions. Thus, the County received new employee health benefits contributions from this unit of \$31,649 in 2010 and \$31,649 in 2011.

It is also instructive to consider the health benefits contributions that will be remitted pursuant to Chapter 78. As noted, that statute directs that as soon as administratively feasible after June 28, 2011, employees who were not covered by a negotiated agreement in effect on that date must contribute 1.5% of their base

⁷ The 2012 increment costs under the award, vis-à-vis those under the County's offer, are increased by the across-the-board adjustment awarded in 2012.

salary *or* a designated percentage of the cost of their health benefits premium, whichever is greater. The statute is phased in over four years and the annual Chapter 78 contribution depends on the type of coverage selected, the employee's salary, and the cost of the premium. The County states that it began to implement Chapter 78's "year one" schedule in January 2012 (County's brief, p. 27).

Given these variables, it is not possible to calculate the Chapter 78 contributions for this unit with precision. In addition, much of the statute's implementation will take place beyond the awarded contract term, with employees making the largest contributions in 2013-2014 and 2014-2015. Nevertheless, the first year of Chapter 78's implementation, which extends through June 30, 2012, takes place within the term of the award, and the second year, July 1, 2012 to June 30, 2013, is partially included within it. It appears that in year two, the County will receive some additional contributions, beyond those mandated by Chapter 2, from officers who choose dependent coverage.⁸ However, some of the year two contributions will flow through into the next contract term.

The rationale for the award is set forth in the following discussion, in which I analyze the evidence on each statutory factor and describe how it relates to my decision to award the above-noted salary increases; the adjustment to senior officer

⁸ During year two of Chapter 78's phase-in, the 46 officers who selected dependent coverage are required to pay between 9.5% and 14.5% of a \$25,677 family premium or between 11.5% and 15% of an annual \$24,474 premium for employee/spouse or employee/child coverage (County Exhibit Vol. I-H; Chapter 78; County scattergram). These formulas translate into an annual second-year Chapter 78 obligation of \$2,439 to \$3,723 for family coverage or \$2,814 to \$3,671 for employee/spouse and employee/child coverage. The Chapter 2 obligation (1.5% of an officer's base salary) would range from approximately \$975 to \$1,449 given the pre-award salaries for this unit.

pay; and the three-year contract term. With that discussion as a foundation, I then address the health benefits, seniority, probationary period, and other proposals.

SALARIES

Interest and Welfare of the Public

The public interest and welfare, *N.J.S.A.* 34:13A-16g(1), is a broad criterion that encompasses a review of an employer's financial circumstances and an analysis of the compensation package required to attract and retain a productive and high-morale law enforcement department. This statutory factor also encompasses the public interest in labor relations stability and explicitly requires consideration of the CAP law set forth at *N.J.S.A.* 40A:4-45.1a *et seq.*

The New Jersey Supreme Court has underscored the central importance of the public interest in deciding interest arbitration disputes, *PBA Local 207 v. Bor. of Hillsdale*, 137 N.J. 71 (1994). Accordingly, I have given this multi-faceted criterion substantial weight in determining salary increases and ruling on the parties' other proposals. Moreover, because the "public interest and welfare" synthesizes and integrates several of the considerations enumerated in other statutory factors, my discussion of this criterion touches on some points that are addressed in more detail later in this opinion.

As a threshold matter, the public interest is pertinent to the issue of contract duration, and it favors the award of a three-year agreement from January 1, 2010

through December 31, 2012. A three-year agreement is more reasonable than the five-year contract sought by the PBA because it is difficult to gauge whether the severe budgetary pressures that the County is experiencing will have eased by 2013 or 2014. Further, there is still considerable uncertainty about whether the State and national economies will have fully recovered by that point. In addition, the record contains very limited comparability data for 2013 or 2014.

I recognize that these factors are not an absolute bar to a five-year contract. Multi-year contracts are common in negotiations and interest arbitration, even though it is not possible to predict with assurance the exact budget circumstances a public employer will face in future years. However, the current economic and budgetary situation is more fluid than usual, and the public interest is best served by a three-year contract that will allow the parties greater flexibility to adjust to future conditions. I reach this conclusion even though a 2010-2012 contract term will result in the parties resuming negotiations in the near future. While a respite from negotiations is desirable in the abstract, that objective is outweighed in this case by the strong public interest in ensuring that negotiations take place in an environment where the parties have a better knowledge of the County's likely fiscal condition for the years under consideration.

Similarly, I recognize that Arbitrator Susan Osborn awarded a five-year contract for the Sheriff's Officer rank-and-file unit. While I have reviewed that

award, I have determined that there is insufficient information in this record for me to award salary increases for 2013 or 2014.

An analysis of the public interest is also critical to resolving the parties' salary dispute for 2010 through 2012. Specifically, the fiscal and compensation components of the criterion must be balanced in light of the particular economic and budgetary circumstances pertaining in Union, as well as the job responsibilities and current compensation structure for this unit.

The Prosecutor is the chief law enforcement officer in the County, and the record shows that unit members are instrumental in accomplishing the Prosecutor's mission of detecting and prosecuting a wide range of serious criminal offenses. The continuity and stability of employment in the unit is strong; there is no evidence of turnover; and from a review of the salary roster, it appears that a majority of unit members are receiving "senior officer pay," thereby indicating that they have been with the Prosecutor's Office for at least fifteen years.

The 2009 salary guide for this unit demonstrates that employees are well paid vis-à-vis the County's several other units of non-supervisory law enforcement and civilian employees. The top-step 2009 salary for this unit, \$93,204 is higher than that of the rank-and-file County police (\$81,301 in 2010), corrections officers (\$77,911 in 2009), and sheriff's officers (\$82,034 in 2010, including 20-year senior pay) (County Exhibits Vol. II-C, p. 50; II-E, p. 49; II-G, p. 74). Like those

employees, the unit's maximum salary is augmented by senior officer pay, so that detectives with 20 years of service receive an additional \$3,417, bringing their 2009 salary to \$96,621 (County Exhibit Volume I-D, pp. 34-35; County scattergram).

In addition, unit members' compensation compares favorably with that of Prosecutor's detectives and investigators in other counties. The 2009 top-step salary is the sixth highest among the 21 counties, where maximum 2009 salaries range from \$72,965 in Cumberland to \$117,328 in Monmouth (Union Brief, p. 71; PBA Exhibits B-1 through B-16). In the five counties contiguous to Union, top 2009 base salaries are as follows:

2009 Top Step Base Salary		2009 Top Step Base Salary with Maximum Longevity or Senior Pay
Essex	\$89,743	None for those hired after 7/25/1974
Hudson	78,925	\$80,025 (\$1,100 after 25 years)
Morris	\$87,064	None for those hired after 7/26/90 ⁹
Somerset	\$89,406	None
Middlesex	\$98,840	\$102,793 with senior pay; \$111,016 (8% longevity)
Union	\$93,204	\$96,621 (\$3,417 after 20 years)
[PBA Brief, p. 71; PBA Exhibits B-8, pp. 22 & 34; B-16, p. 47; B-10, Appendix; B-6, Appendix II]		

Further, the record demonstrates that unit members are well paid vis-à-vis the County's several units of civilian employees, as is appropriate given the training and critical responsibilities of these law enforcement officers. By way of illustration, maximum 2009 salaries for teachers and social workers in the County

⁹Employees hired prior to this date receive maximum longevity of 9% of base salary after 16 years, resulting in a maximum 2009 top step salary with longevity of \$94,900 (PBA Exhibit B-8).

jail range from \$63,334 to \$72,232, while the several salary guides pertaining to social workers and human services specialists in the CWA unit show maximum 2009 salaries of \$74,495 to \$78,079 (County Exhibit Vol. II-I and II-M). Maximum 2009 compensation for park maintenance workers varies from approximately \$40,000 to approximately \$62,000, depending on position title (County Exhibit Vo. II-R). Finally, unit members are also well paid compared to New Jersey's private sector workers, where the average 2009 salary was \$54,542. In Union County itself, the average private-sector wage in 2009 was \$58,041, a 2% decrease from 2008 (County Exhibit Vol. I-L).

Based on the foregoing, I conclude that the compensation package under the predecessor agreement was competitive and enabled the County to attract and retain highly qualified and experienced detectives. There is a strong public interest in maintaining such competitive salaries, to the extent consistent with the County's fiscal circumstances.

Turning to those circumstances, the County is well-managed; has a low debt burden; and is home to several major corporate employers. While it has historically enjoyed a strong Moody's Aaa bond rating, its current finances are strained.

As detailed more fully in the financial impact section, there has been a significant decline in several revenue sources in recent years, coupled with

increases in both health insurance premiums and mandated pension costs (Taylor certification). These fiscal stresses came to a head in 2012 when the County's bond rating was lowered; Moody's rating agency assigned Union a "negative outlook"; and the County closed a \$36 million hole in the 2012 budget by raising taxes and filing two layoff plans covering a total of 280 employees (Taylor certification; Petrucelli Report, Tab 11, December 7, 2011 Moody's Release, p. 5).

The economy as a whole is still emerging from a deep recession and continues to be marked by high unemployment, low inflation, a depressed housing market, and reduced tax revenues to state and local governments. These phenomena have affected the County in the form of reduced investment income and county clerk fees (Taylor Certification; County Budgets, 2009 through 2012 sheet 4). They also create a "perfect storm" in which the County has less budgetary flexibility than in the past while, at the same time, financially stressed citizens are more sensitive to tax increases and more concerned that the County deliver public services at reasonable cost.

The foregoing considerations do not mean that the County is without resources or some budgetary flexibility. However, they do call for moderation in awarding salary increases during this negotiations cycle.

Within this framework, I am satisfied that both the fiscal and compensation components of the public interest weigh strongly in favor of across-the-board

increases of 0% in 2010; 2.25% effective January 1, 2011; and 2.5% effective July 1, 2012, together with a \$210 increase in both levels of senior pay effective January 1, 2012. These awarded increases give significant weight to the County's budgetary constraints, as evidenced by the fact that the average annual across-the-board rate increase over the three-year term is 1.58%. As detailed in my comparability analysis, this figure is within the range of, but is lower than, the average annual increases included in interest arbitration awards issued in 2010 through 2012. *See PERC Salary Increase Analysis (April 30, 2012).*

I am also satisfied that these increases are in accord with the public interest because they parallel the rate increases received by five other law enforcement units, two of which were the subject of interest arbitration awards. Further, the awarded increases are consistent with several internal civilian settlements.

My consideration of these internal settlements is informed by PERC's directive that arbitrators must consider evidence of settlements between the employer and other of its negotiations units, as well as claims that those settlements constitute a pattern. *Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459 (¶33169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29 *NJPER* 250 (¶75 2003). Further, arbitrators must fully articulate the rationale for any decision to deviate from an internal settlement pattern. *Union Cty.*, P.E.R.C. No. 2003-33; *Union Cty.*, P.E.R.C. No. 2003-87. The principle underlying these decisions is that

maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. *Essex Cty.*

While the PBA and the County each refers to the settlements and awards pertaining to the County's other law enforcement employees, neither espouses an award that parallels those settlements and awards for 2010 through 2012. However, I believe that this is the most reasonable determination of this salary dispute.

For 2010, the public interest overwhelmingly supports a 0% increase. The record demonstrates that five law enforcement groups and 10 civilian units received a wage freeze for 2010 (County Exhibit Volume I-F; Osborn award). The sole exception to this pattern (among units that have reached agreements for 2010) is the Union County Assistant Prosecutor's Association. That group received a 5% increase in 2010, which was the final year of a five-year, 2006-2010 contract that was signed in October 2007. Thus, that contract was negotiated well before the downturn in the State and national economies (County Exhibit, Vol. II-T).

Against this backdrop, there is nothing in the nature of the PBA's existing compensation package that warrants this group receiving an increase that is 2.5% more than that negotiated with a broad spectrum of other County groups, including three law enforcement units. To the contrary, unit members are already well-paid

vis-à-vis their law enforcement and civilian colleagues in the County. Award of the PBA's proposed increase would have the definite potential to discourage future settlements and undermine morale within the County.

A similar analysis pertains to 2011, where the awarded 2.25% increase proposed by the County increase mirrors the increases included in the three settlements and two arbitration awards involving County law enforcement employees. Again, nothing in this unit's compensation package warrants an adjustment above this pattern.

While the PBA stresses that some law enforcement units received adjustments beyond the 2.25% in exchange for certain concessions or tradeoffs, such adjustments are not appropriate here. For example, the rank-and-file corrections officers (PBA Local 199) received an \$870 adjustment to base salary in exchange for implementation of a different salary guide for new hires and inclusion of the value of 14 holidays in base pay (County Exhibit Volume I-F).

The holiday pay facet of the corrections settlement is not relevant here, because employees do not work holidays and do not receive holiday pay. In addition, I have decided against awarding a new salary guide for employees hired after January 1, 2012. There is no evidence in the record that the County plans to hire detectives or investigators in the near future, and the tradeoff suggested by the PBA would impose significant costs on the County during this contract term, when

the County has experienced severe budgetary constraints. The PBA-proposed salary guide is also problematic because it results in a substantial pay gap between employees hired after January 1, 2012 and those hired before. Such a structure could undermine unit morale and cohesion.

For calendar year 2012, I have awarded a 2.5% increase effective July 1, 2012, despite the County's proposal for a 0% increase and the PBA's proffer of a 2.5% increase, plus \$2500. The County police, police superiors, corrections officers, Sheriff's superior officers and Sheriff's rank-and-file officers all received a 2.5% rate increase for 2012. The public interest weighs in favor of awarding the same rate increase for this unit, together with the \$210 adjustment to senior officer pay that these units also received.¹⁰

By contrast, the public interest does not favor the across-the-board increases sought by the PBA. As discussed earlier, the PBA has not shown that its compensation package calls for adjustments above those received by other law enforcement officers employed by the County. Similarly, I retain the existing senior pay structure and decline to award the PBA's proposal to institute a ten-year senior pay benefit. While the other law enforcement units receive senior pay after ten years of service, the absence of such a provision for this group is part of the compensation structure that has been negotiated by the parties over many years,

¹⁰ Most of the units received the \$210 adjustment in 2011 (County Exhibit Volume I-F).

and which also includes higher base salaries than those in other County law enforcement units. I also maintain the existing method of calculating senior pay, which is similar to that in other units.¹¹

The public interest also militates against the County's offer of a 0% increase for 2012. When coupled with the increases that it has proposed (and I have awarded) for 2010 and 2011, the County's offer would provide detectives with an average annual increase of only 0.75% per year – a figure that is well below PERC data and the increases received by the other County groups. Increases at this level would have the potential to erode unit members' standing vis-à-vis other County employees and their counterparts in other counties.

However, in delaying the effective date of the 2012 across-the-board rate increases, I have given weight to the fact that, except for the Osborn award, the other internal law enforcement agreements or awards were finalized before the parties became aware of the severity of the County's 2012 fiscal situation. In recognition of this circumstance, I have made the 2.5% increase effective July 1, 2012, consistent with the Osborn award. The delayed effective date will cost the County \$53,935.50 less in 2012 than would an increase that became operative on

¹¹ The PBA seeks to add senior pay to base salary and then apply any annual contractual rate increase. Currently, and consistent with other units, only the 20-year benefit is adjusted by the contractual rate increase. For PBA 250, the stipend itself is adjusted by the rate increase (County Exhibit Vol. II-D, p. 35). In other units, 20-year senior pay is added to base salary and then the rate increase is applied.

January 1. At the same time, the 2012 rate increase still facilitates a modest 1.58% increase in top-step salary over the contract term.

Overall, and as addressed in more detail later in this opinion, financial considerations do not necessitate a 0% increase for 2012 and deviation from a strong internal settlement pattern. I conclude that, within an annual budget of over \$483 million, the County has some budgetary flexibility to fund senior pay adjustments and across-the-board increases that, over the three-year contract and extending into 2013, exceed those proposed under the County's own offer by \$117,741.

A final element that must be considered in connection with the public interest is the CAP established by *N.J.S.A. 40A:4-45.1a et seq.* This CAP (the "1977 law") limits the amount by which a County may increase its tax levy over that in the preceding year to the lesser of 2.5% or a federally-prepared cost of living adjustment. In any given year, the County is subject to the 1977 law or the tax levy CAP enacted in 2007 and amended in 2010, whichever is lower. *See L. 2007 c. 62*, codified at *N.J.S.A. 40A:4-45.44 through 45.47*; *see also L. 2010, c. 44*.

For 2010 and 2011, the award aligns with the County's offer and thus presents no CAP problem. For 2012, the award is \$63,805.50 more than the employer's offer, with an additional \$53,935.50 flow-through into 2013. During

2012, a year in which the 1977 law resulted in the lower tax levy, the County's raised the maximum tax levy authorized by that statute: \$303,039,175.78 (2012 Budget, CAP calculations).

There is no evidence that this award, which is consistent with internal settlements, will cause the County to exceed its maximum tax levy for 2012. Put simply, it is reasonable to surmise that an award consistent with internal settlements can be funded within the appropriated budget, including reserves for salary increases.

Comparisons with Other Employees

N.J.S.A. 34:13A-16g(2) is a multi-pronged factor that calls for a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees "performing similar services" and "employees generally" in (1) private employment in general; (2) public employment in general; and (3) public employment in the same or similar comparable jurisdictions. The record includes data on all of the above-noted categories of employees, some of it focusing on the percentage increases received by different groups and some of it detailing actual employee salaries and benefits. Overall, I have carefully considered all of this information and given the comparability criterion significant weight.

In applying the comparability criterion to a determination of 2010-2012 salary increases, I start from the premise, as set forth in the public interest analysis, that existing salaries compare favorably with those of other County employees and with the salaries of Prosecutor's detectives and investigators in other counties. In this posture, my focus in this proceeding is on arriving at increases that will allow the unit to maintain reasonably competitive salaries within the framework of the County's budget.

The linchpin of my analysis is that the County has traditionally engaged in "pattern" bargaining, and has been successful in achieving virtual uniformity among its law enforcement units with respect to across-the-board salary increases. The County has implemented the same approach among its many civilian units and, indeed, there are points of intersection between the civilian and law enforcement settlements.

Thus, County Exhibit Vol. I-F shows that the County has 9 law enforcement units that are entitled to interest arbitration, all of which had a contract extending from January 1, 2005 through December 31, 2009.¹² Three units reached settlements for 2010 through 2012; I awarded a 2010 through 2012 contract in the arbitration involving the FOP 103 Sheriff's Superiors; and Arbitrator Osborn awarded a 2010 through 2014 agreement for the PBA Local 108 Sheriff's Officers.

¹² The Assistant Prosecutors Association is not included in this group.

As noted, all of these settlements and awards included a \$210 adjustment to senior officer pay and across-the-board rate increases of 0% for 2010; 2.25% for 2011; and 2.5% for 2012.

Against this backdrop, an analysis of the wages and compensation of employees “performing the same or similar services in the same jurisdiction” weighs strongly in favor of the awarded across-the-board rate increases, which parallel those in the noted settlements and awards. A consideration of the wage increases received by the County’s civilian employees also strongly supports the awarded increases.

The record indicates that the County and eight of its unions agreed to four-year contracts for the January 1, 2008 through December 31, 2011 or January 1, 2009 to December 31, 2012. Each of these four-year agreements included a 0% increases for 2010, a 0% increase for a second contract year and two 3% increases (County Exhibit Vol. I-F). Two additional civilian units agreed to the same increases for the July 1, 2009 through June 30, 2013 contract term.

While the percentage increases are differently configured than in the law enforcement settlements, the overall economic packages included a 1.5% average annual increase over the four year contract term, similar to the average 1.58% annual rate increase awarded here.

On balance, the above-noted comparisons with other County employees strongly militate against the County's proposed 0% increase for 2012. Award of the County's final offer would result in a deterioration in this unit's relative standing vis-à-vis other County employees. The County has not demonstrated that either comparability or fiscal considerations warrant deviation from these settlements and awards. *Union Cty., supra.*

At the same time, internal comparisons also weigh against the PBA's proposed increases, which are higher than those received by other units. The current compensation and benefit structure for this unit is already very competitive vis-à-vis the County's other law enforcement and civilian employees.

This analysis is not altered by the fact that the PBA has proposed a new salary guide for future hires in exchange for higher increases for current employees. As noted in the public interest section of this opinion, higher increases during this contract term would have a deleterious fiscal impact on the County. In addition, from a comparability perspective, it is not certain that the new salary guide, which has a lower top-step salary than that which currently pertains, would be sufficient to maintain the unit's competitiveness vis-à-vis Prosecutor's detectives in other counties.

With respect to the increases received by public safety employees statewide, my awarded increases are lower than, but within the range of, those increases,

particularly for voluntary reported settlements. *PERC's Salary Analysis* reflects a clear downward trend in the average increase included in interest arbitration awards and settlements. The following figures indicate the average raises set forth in awards issued, or settlements reached, during the year in question.

	Awards	Settlements
2010	2.88%	2.65%
2011	2.05%	1.87%
2012 (1/1/12-4/30/12)	1.82%	1.83%

PERC's Salary analysis also observes that, for post-2011 filings, some of these awards and settlements included deferred increases; zero increases; increases at the top step only; various adjustments to salary guides; and no retroactive increases.

Turning to non-uniformed public and private sector workers in New Jersey, NJLWD reports show the following increases in average annual wages.

	2010	2011
Private Sector – N.J.	2.2%	2.1%
Private Sector –Union County	1.6%	3.4%
Federal, State & Local Government Employees in N.J.	2.2%	2.4%

[NJLWD Private Sector Wage Reports, August 2011 and August 2012]

Standing alone, these figures might support somewhat higher increases than I have awarded. However, the dominant comparability consideration in this proceeding is the internal settlements and awards. Moreover, a closer analysis of the most recent NJLWD report shows that, for 2011, local government wages in New Jersey increased 1.4%, a statistic that is closer to the average annual rate

increase in this award. This figure is most likely indicative of the fiscal pressures faced by local units statewide. In addition, the private sector wage figures for 2010 and 2011 should be considered together with the reported data for 2009. In that year, private sector wages declined .7% in New Jersey as a whole, and fell 2.0% in Union County. Unit members received a 5% increase for that year (County Exhibit Vol. I-D, p. 33).

Finally, I have considered the salaries of Prosecutor's detectives in other counties in awarding across-the-board increases. As a threshold point, the County urges that the appropriate comparison group is the contiguous counties of Hudson, Morris, Somerset, Middlesex and Essex. While the PBA urges that Passaic and Monmouth should also be included in this list, it does not address why they are more comparable than other non-contiguous counties such as Mercer or Sussex. Nevertheless, for purposes of analysis, the following chart reflects the salaries of the broader group and includes this unit's compensation under the award.

	2009	2010	2011	2012	2013	2014		Longevity/Senior Pay
Essex	\$89,743	\$91,987	\$93,826	\$95,703	\$97,617			None
Hudson	\$78,925	\$80,898	\$82,516	\$84,166				Maximum \$1,100 after 25 years
Middlesex	\$98,840	\$101,326	\$103,874	\$105,952				4% to 8% of base salary plus senior pay
Somerset	\$89,406	\$98,704	\$102,159					None
Monmouth	\$117,328							None
Passaic	\$107,983	\$110,952	\$113,171	\$115,435	\$117,743	\$120,098		None for employees hired after 1994; 2% to 10% of base for

							pre-1994 hires
Morris	\$87,064	\$90,547	\$90,547	\$92,358	\$93,743	\$95,517	None for those hired after 1990
Union	\$93,204	\$93,204	\$95,301	\$97,683			Effective January 1, 2012 15 years – \$2,575 20 years - \$3,791

[PBA Exhibits B-6 to B-9; B-12; B-16;B-17; PBA Brief, p. 71; County Brief, p. 26 and interest arbitration awards cited therein]

A review of 2009 salaries reflects that unit members fared better than their colleagues in Essex, Hudson, Morris, and Somerset, while Middlesex had a higher top-step salary and Passaic and Monmouth had substantially richer compensation packages. The County was able to retain highly qualified detectives under the existing salary guide structure and the awarded increases will ensure that unit members' salaries will remain reasonably competitive. Under the award, the top-step base salary will continue to be higher than that in Essex, Hudson, and Morris and will continue to lag behind that in Middlesex, Monmouth, and Passaic. While the top-step salary will fall somewhat behind that in Somerset, this circumstance is partially offset by the senior officer benefit that exists in Union but not in Somerset.

A similar pattern emerges when the perspective is opened up to include all 21 counties. Bergen County detectives enjoy compensation in the range of that in Passaic and Monmouth, and the 2008 top-step base salary for Camden almost equals that in Middlesex. In 2009, Union had the sixth highest base salary after these counties and, under the award, Union's top-step salary will continue to be

higher than, or within reasonably close range of, the salaries in fifteen of the other 21 Prosecutor's detectives' units.

Rankings among the various jurisdictions change when longevity and senior pay are factored in, but the maximum senior officer pay under the award (\$3,791) yields a higher figure than the longevity benefit in most jurisdictions, including those with percentage formulas in the 1% to 2% range. The exceptions are Middlesex and Ocean counties which have maximum percentage benefits in the 8% to 10% of base salary range for all employees and Passaic and Morris, which have similar percentage benefits for employees hired prior to 1997 and 1990, respectively. Mercer has a maximum longevity payment of \$3,900, but the 20-year benefit is \$1,850.

Finally, the awarded increases are somewhat lower than those reported by PERC for interest arbitration awards and settlements for 2010 through 2012. However, the awarded increases are consistent with the developments that will unfold once the new interest arbitration statute is fully implemented. For all contracts expiring between January 1, 2011 and April 1, 2014, *L. 2010, c. 105* prohibits an arbitrator from rendering an award that increases base salary on an annual basis by more than 2%. Base salary is defined as "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."

Some awards have already been issued under Chapter 105, and the statute has resulted in a downward pressure on both awarded increases and settlements, since negotiations must be conducted within the framework of the amended interest arbitration statute. In this environment, I believe the County's compensation package will remain competitive as negotiations proceed in the many jurisdictions that have open contracts for 2013 and 2014.

Overall Compensation

The overall compensation criterion, *N.J.S.A.34:13A-16g(3)*, requires the arbitrator to consider all the economic benefits received by the employees involved in the proceeding, including direct wages, vacations, holidays, excused leaves, insurance, pensions and medical benefits. It thus directs a focus on all employee benefits, not just the items that are at issue in the proceeding.

Viewed from this perspective, unit members enjoy a comprehensive compensation and benefit package that includes vacation, holidays, sick leave, personal days, PFRS membership, and full medical coverage. This compensation structure is very similar to that enjoyed by other County law enforcement units. For example, no other County unit has an educational stipend and the maximum senior officer pay for this unit is higher than that in other County law enforcement units (County Exhibit, Vol. II-B).

Similarly, as set forth in the comparability discussion, the PBA's senior officer pay compares favorably with the longevity benefit in most other Prosecutor's detective units and the PBA has not shown that most Prosecutor's detectives units receive an education stipend. As such, the absence of such a benefit does not mean that this unit's overall compensation package is deficient.

I have also considered that unit members' contractual benefits package has unquestionably been diminished by both Chapter 2 and the more recently enacted Chapter 78. The latter statute raises the employee's PFRS contribution from 8.5% to 10% of base salary and both enactments mandate employee health benefit contributions. The statutory health benefits contributions exceed those required under the predecessor agreement, which were \$40.00 per month for incumbent employees earning over \$75,000 per year (County Exhibit, Vol. I-D, p.9).

However, nothing in either the new legislation or the interest arbitration statute entitles employees to salary adjustments that balance out the new statutorily mandated contributions. Further, these health benefit changes will eventually apply to all New Jersey public employees, while the pension changes will be effectuated for all public safety workers. In this posture, the legislative changes do not materially affect unit members overall compensation vis-à-vis other public sector employees in New Jersey. Within this framework, the overall compensation criterion does not factor significantly into my assessment of what

base salary increases to award, since there are no marked excesses or deficiencies in overall compensation that would lead me to adjust the percentage increases suggested by the other statutory factors.

Stipulations

N.J.S.A. 34:13A-16g(4) requires the arbitrators to consider the stipulations of the parties. The parties have stipulated to these points, as set forth in Exhibit J-2.

1. Preamble

Correct all dates in contract.

2. Article V, Grievance Procedure

Section 4 – Eliminate

Section 10 - Eliminate the requirement that the arbitrator issue his decision within thirty (30) calendar days from the date of the closing of the hearing.

3. Article VIII, Legal Aid

Section 3

Move to Article XXXIV

4. Article X, Health Insurance

Section 2, subsections 4 & 6c

Eliminate all premium sharing upon the effective implementation of any statutorily mandated premium sharing.

Section 3, subsections b, d, & B6

Eliminate all premium sharing upon the effective implementation of any statutorily mandated premium sharing.

Lawful Authority of the Employer; Statutory Restrictions on the Employer

N.J.S.A. 34:13A-16g(1) and (5) mandate consideration of the lawful authority of the employer, including the limitations on a county's tax levy imposed by *N.J.S.A.* 40A:4-45.1a *et seq.*, commonly known as the appropriations CAP law ("1977 law"). *N.J.S.A.* 34:13A-16(g)(9), similarly directs an analysis of the statutory restrictions imposed on the employer, including specifically the new tax levy cap enacted in 2007 and amended in 2010. *See L. 2007 c. 62*, codified at *N.J.S.A.* 40A:4-45.44 through 45.47; *see also L. 2010, c. 44*. Both CAPs were designed to help control the costs of local government and limit increases in the local property tax. Counties must abide by whichever calculation results in the lower levy increase. *See Local Finance Notice No. 2008-3 (February 11, 2008) (Department of Community Affairs, Division of Local Government Services)*.

For 2010 and 2011, the award presents no CAP issue because the award aligns with the employer's offer. For 2012, the award is \$63,805.50 more than the employer's offer, with an additional \$53,935.50 flow-through into 2013. During 2012, a year in which the 1977 law resulted in the lower tax levy, the County raised the maximum tax levy authorized by that statute: \$303,039,175.78 (2012 Budget, CAP calculations).

There is no evidence that this award, which is consistent with internal settlements, will cause the County to exceed its maximum tax levy for 2012. Put simply, it is reasonable to surmise that an award consistent with internal settlements can be funded within the appropriated budget, including reserves for salary increases. I note that as well that, under the 1977 law, the County could have passed a resolution to increase the tax levy by 3.5%. It thus would appear that it had the legal flexibility to use either the figure resulting from that calculation or the amount authorized by Chapter 62 (\$307,462,184), whichever was lower.

Financial Impact of the Award

N.J.S.A. 34:13A-16g(6) requires an arbitrator to consider the financial impact of an award on the governing unit, its residents and taxpayers. As such, the factor has a strong overlap with the fiscal component of the public interest and with *N.J.S.A.* 34:13A-16g(5) and *N.J.S.A.* 34:13A-16g(9), which mandate a consideration of the legal limits of a County's taxation authority. However, the financial impact criterion directs a broader inquiry than 16g(5) and (9) since the legal ability to raise a certain amount by taxation does not automatically signify that such a levy would be reasonable in view of the entity's overall financial picture. The financial impact criterion requires such an assessment and also directs an arbitrator to consider "to the extent evidence is submitted," the impact of

an award on an employer's ability to initiate, expand, or maintain programs and services.

I have given *N.J.S.A. 34:13A-16g(6)* substantial weight in awarding moderate salary increases that mirror internal settlements and that are lower than those received by public safety employees statewide. I also conclude that my award will not have an adverse financial impact on the County or its residents and taxpayers.

Overall, the record shows that the County is well managed; has a low debt burden; and a history of financial stability. Nevertheless it has faced serious budgetary challenges during the 2010 to 2012 time period and these pressures warrant caution in awarding salary increases. In addition, it is far from clear that the County's budgetary problems will begin to ease by 2013 or 2014.

A key point that emerges from a review of the pertinent data is that there has been a significant decrease in several revenue sources since the last PBA contract was negotiated. For example, investment income plummeted from \$1,771,272 in 2009 to \$177,237 in 2011; realty transfer fees dropped from \$4,256,643 in 2008 to \$2,749,430 in 2011; and County Clerk fees declined from \$2,072,783 in 2009 to \$1,775,100 in 2011 (Taylor certification; 2009; 2010 and 2012 County Budgets, sheet 4). During the same time frame, the County's ratable base declined from a high of \$78 billion several years ago to under \$69 billion in 2012. Similarly, State

reimbursements to the County for correctional services decreased from \$4 million in 2008 to \$500,000 in 2012 (Taylor certification).

As an apparent consequence of these developments, the County's December 31 fund balance decreased from \$28,493,871 in 2009 to \$22,657,876 in 2010 and then to \$17,945,976 in 2011 (Petrucelli report, p. 3; 2012 Budget, sheet 35).

Moreover, a substantial percentage of these surpluses were appropriated for use in the ensuing year's budget. For example, \$16 million of the 2011 surplus was used in the 2012 budget, leaving the County with only a \$1.9 million reserve in the context of a \$483 million budget (Taylor certification).

In preparing its 2012 budget, the County message detailed what it described as the "extraordinary" efforts undertaken to close a \$36 million budget gap, including 5% across-the-board budget cuts in all departments; a \$12.3 million increase in taxes; and the submission of layoff plans for 280 employees. Against this backdrop, Moody's rating agency downgraded the County's general obligation bond rating from Aaa to Aa1, with a negative outlook (Taylor certification).

Petrucelli's extensive report does not paint a materially different picture. For example, while it emphasizes the County's consistent ability to achieve excess results from operations and maintain strong cash balances, the document itself shows an annual decline in these items for most years (Petrucelli report, pp. 18 & 21). That decline is more marked when considered as a percentage of the total

budget, which increased from \$390,043,647 in 2005 to \$499,753,489 in 2011 (County Budgets, 2005 & 2012, sheet 2).

Similarly, Petrucelli's analysis shows that while the County has historically collected 100% of its tax levy, the proportion of the total budget raised through taxation increased from 52.4% in 2005 to 60.4% in 2011 (Petrucelli report, p. 20). In addition, while Petrucelli highlights an increase in miscellaneous revenue not anticipated (from \$2,070,764 to \$11,811,372 in 2010), underestimating revenues is a common budgetary practice that allows excess receipts to flow into surplus. The salient point is that those end-of-year surpluses (into which unanticipated revenues flow) have declined in recent years, even as the total budget has escalated.

Within this framework, I have given substantial weight to the financial impact criterion and arrived at an award that tracks internal law enforcement settlements and awards for 2010 through 2012. In addition, it includes average annual increases that are close to those received by many of the County's civilian units and lower than those received by public safety employees statewide.

These awarded increases are supported by the broader economic picture, including a State unemployment rate for October 2012 of 9.7% (NJLWD November 15, 2012 press release) and a October 2012 unemployment rate in Union County of 9.6% (NJLWD Counties Map). Nevertheless, while the financial

impact criterion strongly favors moderate increases, it does not mandate that wage adjustments be limited to those proposed by the County.

For 2010, the award aligns with the County's offer and includes the wage freeze that was part of the settlements with the County's three law enforcement units; numerous civilian units; and which was included in two interest arbitration awards. In addition, during the second half of 2010, the County received approximately \$31,649 in new statutorily-mandated employee health benefit contributions that it would otherwise have had to absorb.

For 2011, the awarded across-the-board increases also align with the County's offer and track the internal settlements and awards. As in 2010, the County received \$31,649 in health benefit contributions under Chapter 2.

During 2012, the rate increases under the award will cost \$53,935.50 more than the wage freeze proposed by the employer, with a \$53,935.50 flow through into 2013. In addition, the County will incur an additional \$9,870 in senior officer costs as a result of the \$210 increase to both tiers of senior officer pay.

These figures must be evaluated in the context of an overall budget of approximately \$483 million. In this regard, while it is not my role to direct how the County should fund the award, *see County of Essex*, citing *New Jersey State PBA, Local 29 v. Irvington*, 80 N.J. 271, 293 (1970), it is reasonable to surmise that the difference between the award and the County's offer might well be

accommodated within the framework of the adopted 2012 budget by, for example, drawing on reserved appropriations. *Compare Essex* (because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund). This principle is especially pertinent given that the award parallels the settlements and awards involving other law enforcement units.

In addition, developments during 2012 may afford the County some budgetary flexibility beyond that which it enjoyed at the outset of the year. As part of the initial phase-in of Chapter 78 in 2012-2013, detectives with dependent coverage began to remit employee health benefits contributions that exceeded of 1.5% of base salary. In addition, during 2012, the County implemented two innovative measures to enhance revenues: the rental of beds at the Juvenile Detention facility, which was estimated to generate \$1.9 million in 2012, and the finalization of an extended lease between the Union County Utilities Authority and Covanta Energy, the manager of the County's Resource Recovery Facility (2012 Budget, sheet 3a; PBA Exhibit D-22). The Covanta lease was expected to bring in an additional \$2 million in 2012.

For the foregoing reasons, I conclude that the awarded increases represent a reasonable determination of the salary dispute and will not have a negative effect on the County its residents and taxpayers, or the county purposes tax.

Cost of Living

N.J.S.A. 34:13A-16g(7) mandates consideration of the cost of living, which is typically measured by the BLS Consumer Price Index for all Urban Consumers (CPI-U), together with the regional index appropriate for the jurisdiction. The County has submitted BLS data for 2010 and 2011; the PBA cites BLS publications for 2010 through 2012; and I have taken arbitral notice of the most recent BLS news releases.

The BLS website reports that the 12-month percentage change in the CPI-U for New York-Northern New Jersey-Long Island (not seasonally adjusted) was 1.7% for 2010 and 2.8%¹³ for 2011. The annual change for the first half of 2012 was 2.3%, or an annual average of 2.26% per year. The nationwide CPI-U figures were 1.6% for 2010 and 3.2% for 2011.

The award results in an average annual rate increase of 1.58%, a figure that is somewhat below the CPI figures. However, it should be recalled that the CPI-U includes increases in medical costs (County Exhibit Vol. I-N, p. 3) which, even under recent legislation, are still borne largely by the County, particularly for 2010 and 2011.

The cost of living, standing alone, might well point to higher increases than I have awarded. However, while I have given some weight to this criterion, I have

¹³ County Exhibit Vol. I-N, a January 19, 2012 press release, shows figures of 1.4% for 2010 and 2.7% for 2011.

given greater weight to other factors that, taken together, point to increases in line with the adjustments included in the law enforcement settlements and awards. These criteria include the public interest, comparisons with other employees, financial impact, and the continuity and stability of employment.

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g(8) directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in public and private sector negotiations. It incorporates two concepts that have been discussed at other points in this award. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining “continuity and stability in employment.” The second principle centers on the importance of considering internal settlements, since unwarranted deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability within a jurisdiction.

When these principles are considered in the context of this case, the continuity and stability of employment criterion weighs strongly in favor of increases that align with those received by the County’s other law enforcement units. As discussed earlier in this opinion, the PBA’s proposed increases are at odds with both the County’s budgetary situation and the settlements and awards

arrived at with a diverse range of other County employees. Award of such increases would have the definite potential to discourage future settlements, thereby undermining labor relations stability in the County. Award of the County's proposed wage freeze for 2012 would also be inconsistent with internal settlements and awards.

I have also considered the internal settlements and awards in arriving at a contract term. While one interest arbitration award included a five-year contract for 2010 through 2014, no other law enforcement or civilian unit has a contract extending into 2014. In this posture, the award cannot be said to have established a new pattern.

Based on the foregoing, I find that the continuity and stability of employment will be furthered by the awarded across-the-board increases and the adjustments to senior officer pay.

OTHER ECONOMIC AND NON-ECONOMIC PROPOSALS

The foregoing discussion of the statutory factors informs my analysis of the remaining unresolved issues. In view of the budgetary constraints discussed in connection with the financial impact and public interest criteria, I have allocated economic enhancements to this unit's compensation package to across-the-board salary increases and adjustments to senior officer pay. Accordingly, I have

declined to award those PBA proposals that would impose additional costs on the County.

County's Health Benefits Proposal

In proposing to modify the health benefits article, the County seeks to increase prescription co-payments; include certain drug utilization protocols in the agreement; institute a \$25.00 emergency room co-payment; and continue the restriction on the flow through of prescription co-payments to the Major Medical portion of the health insurance coverage. It also proposes to eliminate the Third Party Administrator and cease reimbursements to employees for any out-of-network charges.

The PBA does not raise any particularized objections to these proposed changes but strongly objects to any diminution of contractual health benefits coverage, aside from the County's proposal to implement CIGNA ROAP3 for officers who retire. The PBA stresses that unit members have already been significantly affected by the statutorily mandated premium contributions under Chapter 2 and Chapter 78, and it cites projections that, during 2010 through 2013, the County will receive \$675,656 as a result of these enactments.

In deciding to award the County's proposal, the gravamen of my analysis is that the core prescription drug and emergency room changes proposed by the County have already been agreed to or awarded with respect to five other law

enforcement units and 10 civilian units (County Exhibit Vol. I-F; Taylor Certification). Thus, there is an established pattern of settlement with respect to the noted provisions, and a strong public interest in maintaining that pattern. This concept applies with particular force in the area of health benefits, where a uniform benefit structure across employee groups is eminently reasonable from an administrative perspective.

In addition, the financial impact of the County's proposed changes is relatively minor. The County states that the prescription co-pay changes will result in \$5.00 and \$1.00 increases to the current cost structure, which has been in effect since 2002. How these changes will affect any individual officer cannot be predicted.

Similarly, it is not possible to quantify the financial impact of eliminating reimbursement for out-of-network services or including certain drug protocols in the agreement. Indeed, these provisions may not have any effect on most employees. In this posture, I conclude that the PBA has not articulated a persuasive basis for deviating from an established settlement pattern on the noted prescription drug and other health benefits issues.

This analysis is not changed by the fact that the County will receive additional health contributions from employees as a result of Chapter 2 and Chapter 78. Preliminarily, the figure that the PBA cites extends beyond the

awarded contract term. In any case, the mandated premium contributions do not foreclose employers and unions from modifying prescription co-pays, which are not covered by the legislation and which may affect the employer's cost of obtaining prescription coverage.

Two of the County's original proposed health benefits changes were not encompassed by the settlement pattern that I have described. First, for current employees, the County proposed to delete the premium contribution amounts set forth in the predecessor agreement and replace them with language stating that health care premium contributions shall be those mandated by statute. The inclusion of such a provision is favorable to the PBA and the parties have stipulated to it.

Second, for employees hired after January 1, 2012, the County's final offer seeks to impose premium contributions equal to either the contributions mandated by Chapter 78 or "3% of salary for family coverage; 2.5% for employee/spouse or parent/child coverage; and 2% for single coverage," whichever formulation results in the greater contribution.

The County has not has not met its burden of justifying this change. It has not estimated the cost savings that would accrue from this proposal and, given the moderate increases awarded, any diminution in the salary and benefits package for new hires is not warranted.

County's Pay Day Proposal

The County proposes to amend Article XXIII, Section 4, to provide for a rotating bi-weekly schedule for paycheck distribution whereby the designated payday moves one day forward in each successive year (starting with Friday in 2010), after which the cycle is repeated. The 2005-2009 agreement states that paychecks will be distributed on a bi-weekly basis.

The County explains that this proposed change is prompted by the fact that given a 365-day year, any contractual provision that establishes a single fixed payday will result in a scenario whereby, every few years, there will be 27 paydays. That circumstance can in turn engender controversy about how the contractual salary should be distributed.

The County asserts that while all negotiation units except FOP 103 and PBA 108 voluntarily agreed to this change, the payday proposal was awarded by the FOP 103 and PBA 108 interest arbitrators. The PBA does not articulate any specific objections to the proposal and the County has met its burden of justifying it. I will award the proposal, allowing the County to implement a Wednesday payday in 2013 as soon as the County determines that the change is administratively feasible.

County's Compensatory Time Proposal

The County proposes to amend Article XIX, Overtime, Section 3 to state that employees will be permitted to accumulate no more than 40 hours of compensatory time on an annual basis. If the time is not used by December 31st, the time will be paid out in the employee's next regularly scheduled pay.

Article XIX presently states that an employee may elect to be compensated for each overtime period worked in either paid overtime or compensatory time. There is no limit on the amount of compensatory time that may be accrued and Article IX specifies that the leave shall be used within the employee's sole discretion, subject only to the employer's prior approval.

The County explains that its auditor has recommended that it limit the accrual of compensatory time so that it can better prepare a budget and quantify this unfunded liability. The County also contends that this unit has so much leave time that management has difficulty staffing assignments at the end of the year, when employees try to use leave time before it is lost.

The PBA responds that the County's proposal would cause the overtime budget to skyrocket, because officers would have to be paid 1.5 times their straight salary once the 40-hour cap is reached. Nevertheless, the PBA suggests that if the arbitrator is inclined to "offer some protections to the County to avoid significant

retirement payouts,” he should require a cash-out at the end of the year with an allowable carryover of at least 200 hours.

The County has met its burden of justifying some change to Article XIX, section 3. Preliminarily, Article XIX exists within the framework of the federal Fair Labor Standards Act (FLSA). Subject to the agreement of a designated employee representative, the FLSA permits public employers to give their employees paid time off in lieu of immediate cash compensation for hours worked in excess of the FLSA threshold. Law enforcement employees may accrue up to 480 hours of compensatory time (reflecting a maximum of 320 hours worked); and the employee must be permitted to use the time within a reasonable period of making the request, if such use does not “unduly disrupt” the agency’s operations. 29 *C.F.R.* §553.22; §553.23; §553.24; & §553.25. Payments for unused compensatory time “may be made at any time” and shall be paid at the regular rate earned by the employee at the time the employee receives such payment. 29 *C.F.R.* §553.27.

Article XIX injects considerable uncertainty into the County’s budgetary process because it creates the possibility that the County will be liable for large compensatory time payouts, calculated at the employee’s pay rate at the time of retirement. Yet the County cannot be certain that it must budget for such payments, given the possibility that the employee may decide to use the leave. In

addition, Article XIX can potentially affect scheduling decisions, since leave requests must be approved unless they would unduly disrupt operations.

Among other County units, this is the only group that is entitled to accrue compensatory time without restriction. Most other civilian and law enforcement units receive either cash overtime in all cases or are permitted to accrue compensatory time up to a limit of 32 hours (one unit); 40 hours (four units); or 100 hours (three law enforcement units) (County Exhibit Vol. II-B, pp. 3-4).¹⁴ In this posture, I award a variation of the County's proposal, which will allow a carryover of 100 hours per year.

County's Probationary Employee Proposal

The County proposes to amend Article VIII, section 3 to require that all full-time employees serve a one-year probationary period, which would be subject to two 45-day extensions. During the probationary period, the employer would have the absolute right to terminate the individual without recourse to any contractual provisions. The County explains that while civil service regulations establish a one-year probationary period for classified law enforcement employees, unit members are in the unclassified service and are not subject to such rules. It also contends that all other County law enforcement employees serve such a trial period.

¹⁴ Two civilian units are allowed to accrue compensatory time to the extent permitted by law.

The proposed amendment furthers the public interest in ensuring that the Prosecutor's office is staffed by highly qualified and professional employees. A one year probationary period enables the employer to fully assess whether a new appointee is a good fit for a challenging law enforcement position in the Prosecutor's office. Consistent with the standards that pertain to other County law enforcement employees, the County should be able to terminate a short-term employee whose job performance is, in the County's words "barely adequate" but not so deficient as to rise to the level of incapacity, disobedience or other just cause.

Indeed, such a probationary period is expressly permitted by the statute authorizing the appointment of Prosecutor's investigators. After specifying that investigators shall be in the unclassified service, *N.J.S.A. 2A:157-10* states that "[n]otwithstanding the provisions of this section, a single probationary or temporary appointment as county investigator may be made for a total period not exceeding one year." However, because the quoted language limits a probationary period to one year, I decline to award the language permitting two 45-day extensions.

PBA's Vacation, Sick Leave, Personal and Religious Leave, Education Incentive, On-Call, and On-the-Job-Injury Proposals

The PBA seeks a number of modifications to the existing sick leave, vacation, and other contract articles. For example, it proposes to increase the

number of vacation days for officers at many service levels, while also allowing unit members to carry over or “cash in” unused personal days.¹⁵ The PBA further proposes to delete the portion of Article XI, Section 1, which states that where personal leave is requested for business reasons, the employee must show that the business purpose cannot be accomplished outside of working hours. Finally, the PBA seeks to amend Article XIV, which now provides for 15 sick days per year, to provide for unlimited sick leave.

The PBA offers no particularized arguments in support of the foregoing changes, and it therefore has not met its burden of justifying them. I note as well that the vacation day, sick leave, and personal day proposals would add to the costs of the award, and thus run counter to my decision to allocate economic enhancements to across-the-board salary increases and adjustments to senior officer pay. Moreover, internal comparisons reflect that no other law enforcement unit has the sick leave, vacation or personal day features that the PBA seeks (County Exhibit Vol. II-B, pp. 11-14).

With respect to the business leave proposal, the PBA has not shown that requests for such leave have been unreasonably denied. Indeed, Buccino certifies that, to his knowledge, leave has never been denied on the grounds that the task could be accomplished outside of working hours. Further, only two of the

¹⁵ Under Article XI, personal days do not accumulate from year to year and are thus a “use or lose” form of leave.

County's 22 negotiations units have obtained removal of similar business leave justification language (County Exhibit Vol. II-B, pp. 11-12).

The PBA proposes several other benefit enhancements that it explains in more detail. The PBA's vacation carryover proposal derives from the fact that, pursuant to Article XIII, Section 9, vacations must be taken during the calendar year earned unless the Prosecutor determines the leave cannot be taken because of the pressures of work. In that circumstance, unused vacation may be carried forward into the next succeeding year only (County Exhibit Vol. I-D, p. 27). The Prosecutor's Office currently permits employees to carry over five vacation days, and the PBA seeks to increase this number to 10.

In his certification, McGuire asserts that the Prosecutor unilaterally and unnecessarily reduced the vacation carryover to five days a few years ago. He contends that reinstitution of a 10-day carryover would raise morale and afford employees extra days off that would enable them to deal with unforeseen circumstances.

By contrast, Romankow certifies that the 10-day carryover made it difficult to schedule end-of-year assignments because, with a larger block of unused vacation time, employees were under pressure to bring the number of unused vacation days down to 10. Romankow states that even the five-day carryover can create scheduling difficulties. McGuire denies these contentions.

On balance, the PBA has not shown that an increase in the vacation day carryover is warranted. As a threshold point, the use and enjoyment of vacation time has a bearing on employee morale and well-being, especially for detectives with stressful and demanding occupations. As such, there is a public and employee interest in maximizing the amount of vacation time used in the year in which it is earned.

Moreover, given the competing certifications of management and union representatives, I cannot on this record definitively assess the degree of staffing difficulties that would be triggered by a ten-day versus a five-day carryover. As such, and because the PBA has the burden of proof, it has not shown that the change could be implemented without negatively impacting scheduling and operations. Therefore, the proposal is denied.

The PBA also seeks to institute an education stipend of \$1,000 for a bachelor's degree; additional amounts for advanced degrees; and tuition reimbursement in the amount of \$50 per college credit. It reasons that additional education would further the public interest and enhance the expertise of unit members, who perform very technical and sophisticated investigatory work.

Compensation for educational attainment might well be a goal to pursue in subsequent negotiations. However, I decline to award the PBA's proposal in this proceeding because of its potential cost impact. No other County unit has such a

benefit and the PBA represents that it exists in only seven of the agreements covering Prosecutor's detectives units in other jurisdictions (PBA brief, p. 77; County Exhibit Vol. II-B, pp. 21-22).

Another economic improvement that the PBA seeks is eight hours of compensatory time for each 24 hours that a detective is on call. The PBA contends that some compensation is warranted given that detectives assigned to the Child Abuse unit are on call 12 to 15 times per month, thereby severely restricting their ability to spend time on personal matters (Henderson certification).

Article XX of the 2005-2009 contract states that, effective January 1, 2005, detectives who are assigned to stand-by or on-call status shall be allowed to use their County vehicle 24 hours per day, seven days per week, during the time they are on standby or on call. Buccini certifies that this clause replaced language in the 2001-2004 agreement that provided employees with compensatory time equal to 25% of the hours during which they were assigned to on call or standby status.

The PBA has not offered persuasive reasons as to why, in this round of negotiations, the standby benefit should be enhanced to include both the compensatory time that was deleted in the 2005-2009 negotiations and use of a County vehicle that was agreed to in those same negotiations.

Finally, the PBA also proposes to modify Article XXIV, governing on the job injuries. The article now states that where there is an undisputed causal

relationship between an individual's employment and his or her injury or illness, the employee shall receive full pay for 180 days if the injury was deliberately inflicted. If the job-related injury or illness was not inflicted by a third party, the employee is eligible for full pay for 90 days.

The PBA proposes to delete the 90-day and third party language and provide up to one year of full pay for all job-related injuries or illnesses. It contends that because this proposal has been either agreed to or awarded to all other County law enforcement units, it would be a "shocking morale deflator" if the unit were not to receive this benefit.

The County does not expressly oppose this modification in its brief or certifications. The record indicates that the contracts governing the county police; police superiors; county corrections officers; and correction superiors all afford unit members one year of full pay for injuries or illnesses deliberately inflicted in the course of the unit member's employment. However, all of these agreements retain the 90 day limitation for job-related injuries not inflicted by a third party.

Arbitrator Osborn awarded a proposal to allow up to one year of full pay for all job-related injuries; she also deleted the references to the 90-day period for injuries not inflicted by a third party. The Sheriff's Superiors have the same 180/90 day language that the PBA seeks to change here, but the clause was not at issue in the arbitration leading up to their 2010-2012 agreement. With respect to

the County's civilian units, some include the 180/90 day language while others have no provisions entitling them to full pay for job-related injuries.

Unit members are law enforcement officers who, in the course of performing their duties, may well come into contact with confrontational and dangerous individuals. Accordingly, detectives who have been injured or made ill in the course of their employment have a strong interest in receiving full compensation during the period of their recovery—and in knowing in advance that they will be so protected. The existing contractual structure protects the employer's interests by specifying that the entitlement to full pay is triggered only when the County's worker's compensation carrier does not dispute the causal relationship between the injury or illness and County employment.

Based on the foregoing, the PBA's proposal to replace "180 days" with one year is awarded. That change is also reflected in paragraph C. I do not delete the 90-day and third party language absent more detailed discussion of this facet of the proposal, particularly since the 90-day and third party language is still included in most of the law enforcement agreements. Finally, I decline to award a new paragraph concerning the charging of sick leave for employees on temporary disability. This technical point was not addressed by the PBA and the clause is not included in other County agreements.

PBA'S Work Schedule Proposal

Most unit detectives are regularly scheduled to work Monday through Friday, eight hours per day; one exception is the Gangs, Guns, and Drugs unit, where the schedule varies based on need (Mannix certification). The PBA proposes to implement a 4/3 schedule whereby detectives would work 10 hours per day Monday through Thursday or Tuesday through Friday, with a 5% shift differential for that portion of a shift that ends after 5:00 p.m.

The PBA urges that this schedule would improve morale and reduce the need for overtime because it would result in two additional hours of coverage per day. The PBA also posits that officers may not need to use as much sick time under the 4/3 schedule and may also accumulate less compensatory time. It further suggests that the County will likely save on fuel and vehicle maintenance.

The County strongly objects to the schedule change, contending that any such major modification would require significant study and analysis before it could be implemented (Buccino certification). The County points out that when a 4/3 schedule was put in place for the Homicide Task Force several years ago, detectives expressed their adamant dislike for it and the 5/2 format was quickly reinstated.

PERC has emphasized that before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and

managerial implications of such a proposal, as well as its impact on employee morale and working conditions. *Teaneck Tp. and Teaneck FMBA Local No. 42*, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003); *City of Clifton*, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶ 33071 2002). PERC has also underscored that the party proposing a major work schedule change has the burden of justifying it. *Ibid.* In elaborating on this burden concept, PERC commented that over the course of a negotiations relationship between a particular employer and majority representative, department work schedules are not routinely or frequently changed. *Clifton*. Therefore, it held that work schedules should not be changed by an arbitrator without strong reasons. *Ibid.*

Against this backdrop, the PBA's proposal would constitute a "major" schedule change because it would decrease the work week by 20% and increase each work day by 25%. The PBA has not proved by a preponderance of the evidence that these significant modifications are warranted.

The PBA has not pointed to any particular difficulties with the 5/2 schedule and, while it posits that the 4/3 schedule might reduce overtime and sick leave, the union has offered no evidence that this has been the case in other jurisdictions. Indeed, nothing in this record suggests that excessive overtime or sick leave use is a problem in this unit. Nor is it clear that the overtime worked is primarily attributable to additional hours in a day as opposed to replacing an officer on leave

for an entire shift. Put simply, the perceived impact on employee morale is not in and of itself sufficient to justify award of this major work schedule change. Accordingly, the proposal for a 4/3 work schedule is denied.

I also deny the PBA's proposal that officers be given two weeks advance notice of a schedule change, absent emergent circumstances. The County objects to this requirement, with Buccino expressing view that the proposal is impracticable in the law enforcement context, where individuals must be deployed when crimes are committed.

Article XVIII provides that the standard work week shall be 37.5 hours, Monday through Friday. However, section 2 grants the Prosecutor the right to "schedule the hours of work in the work week and to vary the daily or week work schedule consistent with the needs of the Department." Section 3 adds that although the standard work week shall continue to exclude shift work and weekend duty, "the parties agree to continue to fulfill the needs of the Department which may, from time to time, require continuous 24-hour operations, including Saturdays, Sundays and holidays."

The PBA does not assert that the Prosecutor has unreasonably exercised his discretionary authority under Article XVIII. Nor does it contend that officers frequently have their work hours altered. In this posture, the PBA has not met its

burden of justifying its schedule change proposal, which has the potential to impede the Prosecutor's ability to deploy detectives in investigatory operations.

Take Home Vehicles

The PBA seeks an amendment to Article XX stating that if the Prosecutor removes the take home use of a County vehicle for any employee, that employee shall have the value of the car as established by the American Automobile Association added to his base pay "to compensate home for the lost benefit for the make and model of the car removed." The PBA urges that in view of the increased health care and pension contributions that this unit has had to shoulder, it would bolster morale if the award included protection against the reduction in compensation that would occur if the Prosecutor discontinued the use of take home vehicles. In that vein, Mannix and McGuire both state in their certifications that they were told when they were hired (in 1998 and 2003, respectively), that the use of a take home vehicle was part of the overall compensation package for all detectives.

The County argues that the proposal should be denied, reasoning that certain detectives have been assigned County-owned vehicles only for the purpose of enabling them to perform their job duties. In that vein, Buccino certifies that since he began employment with the Prosecutor's office in July 2002, he has personally

or through other superior officers advised every new detective that a County-issued vehicle is not part of their compensation and may be removed at any time.

Both parties agree that the PBA's proposal implicates the principles articulated in *Morris Cty. and Morris Cty. Park Comm'n*, P.E.R.C. No. 83-3, 8 *NJPER* 561 (¶13259 1982), *aff'd* 10 *NJPER* 103 (¶15052 App. Div. 1984), *certif. denied*, 97 *N.J.* 672 (1984). *Morris* held while an employer has a managerial prerogative to reduce or eliminate the use of employer-owned vehicles for commutation purposes, it must negotiate over offsetting compensation if the union can demonstrate that the practice of permitting take home vehicles rose to the level of negotiated compensation. PERC clarified that a negotiations obligation would not arise if the employer had a reserved contractual right to remove the vehicle or if it was provided purely as a gratuity or for official business purposes. *Ibid.*

I cannot determine on this record whether detectives are assigned vehicles as part of their overall compensation. There is no contractual cause so stating; there are competing certifications on what detectives were advised; and some detectives may have been told different things. The existing Article XX clause regarding the use of County vehicles pertains only to the period of time when detectives are on call or in standby status, and it is somewhat ambiguous. While the clause certainly suggests that a County vehicle may be used for personal reasons during the on-call period, that authorization arguably serves the business purpose of the employer

because the detective is able to respond more quickly. At the same time, the fact that the Article XX language was inserted after compensatory time for on call detectives was eliminated also suggests the parties' understanding that the use of the vehicle, at least by on call detectives, was intended to be compensatory in nature.

Given the lack of clarity surrounding this issue, I decline to award the PBA's proposal. I note as well that the PBA's proposal is not directed at a current reality, and there is no indication that the County has any present intention take away County vehicles. If that occurs, the PBA can file a grievance, subject to the County's right to argue that the grievance should be dismissed on contractual or other grounds.

Layoffs and Seniority – PBA Proposal

The PBA argues vigorously in favor of its proposal concerning layoffs and seniority. The crux of the new article would state that in the event that there are two or more non-probationary employees in the same classification from which a layoff is to be made, those employees with two consecutive unsatisfactory evaluations within the last 12 months shall be the first to be laid off. Otherwise, the order of layoffs shall be by reverse seniority in classification. The clause would also codify the Prosecutor's right to lay off employees for reasons of economy or other valid reason, while further specifying that no permanent

employee shall be laid off until all temporary and probationary employees have been let go.

The PBA urges that this clause would provide unit members with crucial protection against indiscriminate layoffs and would allow them to challenge arbitrary removals because of “politics or other sordid reasons.” It emphasizes that, in the context of a reduction in force, the absence of a seniority rights clause gives the Prosecutor unfettered discretion to layoff a more senior officer in favor of a new employee.

The PBA recognizes that seniority layoff clauses are mandatorily negotiable only if the employer retains the managerial prerogative to deviate from seniority when it determines that special skills are involved. However, the PBA underscores that its proposal satisfies these standards because it requires that officers with two consecutive unsatisfactory evaluations within twelve months will be laid off first. Further, the PBA notes that the clause specifies that seniority shall be determined by classification. The PBA points out that numerous negotiated agreements involving Prosecutor units throughout the State recognize seniority rights for layoff and recall purposes. In addition, it notes that several arbitrators have awarded such clauses.

The County strongly objects to the seniority proposal, contending that it is an unlawful attempt to require the Prosecutor to rely solely on seniority when

making layoff decisions. It maintains that the proposal would eviscerate the Prosecutor's discretion in a layoff situation because unit members are evaluated annually and few if any unit members receive two consecutive unsatisfactory evaluations in a 12-month period (Romankow certification). In this posture, the County concludes that the PBA's proposal does not protect the Prosecutor's broad right to consider skill sets and job performance when making layoff decisions.

In particular, the Prosecutor maintains that, as written, the PBA's proposal would preclude the Prosecutor from considering confirmed disciplinary charges in making a layoff decision, if the incident happened to occur after a satisfactory annual evaluation. Similarly, the County notes that the current proposed language would not enable the Prosecutor to give weight to a particular detective's unusual ability to work with child abuse victims.

Within this framework, I conclude that the public interest favors award of a provision that requires the Prosecutor to consider seniority in making layoff decisions. As an initial matter, I do not decide whether the PBA proposal as submitted is mandatorily negotiable: that assessment is the province of PERC.

N.J.A.C. 19:16-5.5.¹⁶

¹⁶ The County filed a scope of negotiation petition regarding an earlier version of the PBA proposal, and PERC held that it was not mandatorily negotiable and could not be submitted to interest arbitration. *Union Cty., P.E.R.C.* No. 2011-74, 37 *NJPER* (¶53 2011), *reconsideration denied*, P.E.R.C. No. 2011-91, 38 *NJPER* (¶16 2011). PERC held that the clause, which would have provided for unit-wide seniority, did not allow the Prosecutor to take into account factors other than seniority. It also reasoned that investigator and detective are distinct legal job titles that cannot be negotiated away, regardless of whether an employer has used them interchangeably.

However, after reviewing pertinent PERC decisions and the parties' arguments, I have awarded a clause that takes into account both parties' interests but which affords the Prosecutor broader discretion to consider special skills, performance, and prior discipline than does the PBA's proposal.

As discussed throughout this opinion, the County has faced serious fiscal challenges during the last few years, and layoff plans were submitted for 280 County employees, including some law enforcement employees. Corrections officers were among the potentially affected employees and two vacant County police officer titles were slated to be eliminated (Taylor certification, Attachment C). In this environment, it is understandable that unit members are apprehensive about the possibility of layoffs and concerned that there is no mechanism that ensures that a history of long and satisfactory service will be taken into account should the Prosecutor be forced to reduce the size of this unit.

In this context, the public interest in fostering unit morale favors award of a provision that requires consideration of seniority in layoffs and recalls. Award of such a proposal is also supported by the comparability criterion and *N.J.S.A.13A-16g(8)*, which calls for a consideration of the continuity and stability of employment, "including seniority and such other factors which are ordinarily and traditionally considered" in determining wages and employment conditions in public and private sector negotiations. Many public employees statewide,

including many law enforcement employees, are governed by civil service regulations that require seniority to be taken into account in making layoff decisions.

At the same time, the public interest in having an effective, efficient and high-performing Prosecutor's office requires that the Prosecutor be able to deviate from seniority in order to take into account special skills or qualifications; disciplinary history; or performance.

I believe the following new article incorporates and balances these considerations:

1. The Prosecutor may lay off an employee for purposes of efficiency or economy or other valid reason requiring a reduction in the number of employees in a given job classification. No permanent employee may be laid off until all temporary and probationary employees have been let go. Where there are two or more non-probationary employees in the same classification from which a layoff is to be made, layoffs shall be conducted in reverse seniority order provided however, that the Prosecutor has the authority, as a matter of his or her sole discretion, to determine exceptions to the use of seniority based on personnel needs relating to specific skill sets; experience and/or specialized training; or an employee's receipt of an unsatisfactory evaluation or significant discipline within the last 36 months. Such discretion shall not be unreasonably exercised. For purposes of this article "significant discipline" shall mean an unpaid suspension of three or more days.
2. Laid off employees shall be placed on a special re-employment list and recalled in classification seniority order, provided that the Prosecutor may determine exceptions to seniority on the grounds enumerated in paragraph 1. Recall rights shall last for five years from the date of layoff.

The term “job classification” is intended to refer to the statutory categories of “detective” and “investigator.” The 47 employees in this unit serve in a range of positions in multiple sections of the UCPO and may have had different assignments at different points in their careers. Defining job classification in the manner described ensures that total length of service as an investigator or detective will be taken into account. At the same time, the clause allows the Prosecutor to deviate from seniority where an employee has had significant discipline or an unsatisfactory evaluation within the last 36 months. In addition, the Prosecutor may determine exceptions to seniority in order to take into account specialized skills, experience, or training, including in particular the special certifications that are required for the Child Abuse and Arson units.

AWARD

1. Salaries

0% across-the-board salary increase effective January 1, 2010.
2.25% across-the-board salary increase effective January 1, 2011.
2.5% across-the-board salary increase effective July 1, 2012.

Each salary increase is retroactive to its effective date.

Effective January 1, 2012, Article XXIII, Section 5 shall be amended to increase senior officer pay for each level by \$210.00

2. Paycheck Distribution

Article IV, Section 2 is amended to state:

In order to maintain a bi-weekly basis for paycheck distribution, a rotating bi-weekly pay day schedule shall be implemented whereby the pay day will be changed in each successive year as follows. This section shall be implemented as soon as administratively feasible after issuance of this award.

2012:	Tuesday
2013:	Wednesday
2014:	Thursday
2015:	Friday
2016:	Monday

This cycle will continue every five (5) years.

When the pay day occurs on a holiday, paychecks or direct deposits will be issued on the day prior to the holiday.

3. Health Insurance

Article X, Health Insurance, is modified to read as follows:

1. Effective one month following the award, prescription co-payments shall be as follows:

Retail

\$20.00 co-pay per prescription for name brand where generic is available.

\$15.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

\$6.00 co-pay per prescription for generic.

Mail

\$15.00 co-pay per prescription for name brand where generic is available.

\$10.00 co-pay per prescription for name brand where no generic is available or name brand is required by the physician.

\$5.00 co-pay per prescription for generic.

The above co-pays shall apply to both retail pharmacy purchases (up to thirty (30) day supply and a ninety (90) day supply through mail order.

2. Drug Plan Utilization Modification

- (a) Enhanced Concurrent Drug Utilization Review (Refill too soon/stockpiling).
- (b) Preferred Drug Step Therapy (Generic or Preferred Name Brand first) limited to PPI, SSRI and Intranasal steroid drugs.
- (c) Clinical Intervention (Statement of medical necessity from MD) limited to Anti-Narcoleptic Agents, Weight Loss and Anti-Neoplastic Agents.

The restriction on flow through of prescription co-payments to the Major Medical portion of the health insurance coverage shall be continued.

- 3. Officers who receive fully paid retirement benefits under the 2005 through 2009 CAN shall be provided with the Medco Rx or an equivalent plan. The plan shall provide for free mail order prescriptions and 30% co-pay for retail. It is understood that in order to provide the Medco Rx plan, the base Health Plan will be converted from CIGNA ROAP7 to CIGNA ROAP3.
- 4. The Third Party Administrator (TPA) will be eliminated and the County will no longer reimburse employees for any out-of-network charges.
- 5. The emergency room co-pays shall be \$25.00 per visit (to be waived if admitted).

4. **Article XXXII: Duration**

January 1, 2010 through December 31, 2012.

5. **New Article – Probationary Period**

All full-time employees shall serve a probationary period of one calendar year. During this probationary period the Employer reserves its absolute right to terminate a probationary employee subject to applicable provisions

of law. Such termination shall not have recourse through any other provisions of this Agreement. Upon successful completion of the probationary period the employee shall be credited with seniority as of the original date of hire.

6. New Article - Layoff and Recall

1. The Prosecutor may lay off an employee for purposes of efficiency or economy or other valid reason requiring a reduction in the number of employees in a given job classification. No permanent employee may be laid off until all temporary and probationary employees have been let go. Where there are two or more non-probationary employees in the same classification from which a layoff is to be made, layoffs shall be conducted in reverse seniority order, provided however, that the Prosecutor has the authority, as a matter of his or her sole discretion, to determine exceptions to the use of seniority based on personnel needs relating to specific skill sets; experience and/or specialized training; or an employee's receipt of an unsatisfactory evaluation or significant discipline within the last 36 months. Such discretion shall not be unreasonably exercised. For purposes of this article "significant discipline" shall mean an unpaid suspension of three or more days.
2. Laid off employees shall be placed on a special re-employment list and recalled in classification seniority order, provided that the Prosecutor may determine exceptions to seniority on the grounds enumerated in paragraph 1. Recall rights shall last for five years from the date of layoff.

7. Article XIX, Overtime

Section 3: Delete and replace with the following:

Employees will be permitted to accumulate no more than 100 hours of compensatory time on an annual basis. The 100 hours shall not be replenishable and must be used by December 31st of the year in which it is accrued. If not used by December 31st, it will be paid out in the employee's next regularly scheduled pay. An employee seeking to use compensatory time must first obtain the employer's approval prior to use.

8. **Article XXIV, On the Job Injury**

Paragraphs B and C

Change 180 calendar days to one year.

9. **Stipulations**

The parties have agreed to the following items:

- **Preamble**

Correct all dates in contract.

- **Article V, Grievance Procedure**

- **Section 4 – Eliminate**

- **Section 10** - Eliminate the requirement that the arbitrator issue his decision within thirty (30) calendar days from the date of the closing of the hearing.

- **Article VIII, Legal Aid**

Section 3

Move to Article XXXIV

- **Article X, Health Insurance**

Section 2, subsections 4 & 6c

Eliminate all premium sharing upon the effective implementation of any statutorily mandated premium sharing.

Section 3, subsections b, d, & B6

Eliminate all premium sharing upon the effective implementation of any statutorily mandated premium sharing.

10. All proposals of the County and the PBA not awarded herein are denied and dismissed. All provisions of the existing collective negotiations agreement shall be carried forward except for those provisions modified by the terms of this Award.

Dated: December 28, 2012
Princeton, N.J.

Timothy A. Hundley
Timothy A. Hundley
Arbitrator

State of New Jersey }
County of Mercer } ss:

On this 28th day of December 2012, before me personally came and appeared Timothy A. Hundley 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.

Virginia G. Hundley
Virginia G. Hundley
Notary Public of New Jersey
My Commission Expires 6/22/2015