

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

**UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY**

"Employer"

and

**FRATERNAL ORDER OF POLICE,
LODGE NO. 74 and LODGE NO. 155,
SUPERIOR OFFICERS**

"Union"

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2008-099

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the University:

Abdel Kanan, Esq.
University of Medicine & Dentistry
of New Jersey

For the FOP:

Matthew D. Areman, Esq.
Markowitz & Richman

A petition to initiate interest arbitration was filed by FOP Lodge Nos. 74 and 155 [the “FOP” or the “Unions”] after a declaration of impasse in negotiations between the FOP and the University of Medicine and Dentistry of New Jersey [the “University” or “UMDNJ”]. FOP Lodge No. 74 represents rank and file police officers employed at the University’s facilities in Newark, Piscataway/New Brunswick, Stratford, Camden and Scotch Plains while Lodge No. 155 represents Sergeants and Lieutenants at these same locations. Pre-interest arbitrations were held but the impasse remained. The parties requested time for direct negotiations prior to the scheduling of formal hearings. Because no agreement was reached, interest arbitration hearings were held. The record in this proceeding consists of substantial documentary evidence, stipulations of mutually agreed upon issues, certifications, post-hearing briefs and reply briefs, the last of which was received on April 8, 2010.

FINAL OFFERS OF THE PARTIES

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

The FOP

1. **Contract Term**: Four (4) year contract (July 1, 2007 through June 30, 2011).
2. **Wages**:
 - a. Annual Wage Increases:

- i. 5.5% retroactive increase for the contract year covering July 1, 2007 through June 30, 2008;
 - ii. 5.0% retroactive increase for the contract year covering July 1, 2008 through June 30, 2009;
 - iii. 5.5% retroactive increase for the contract year covering July 1, 2009 through June 30, 2010;
 - iv. 5.0% increase (retroactive, if necessary) for the contract year covering July 1, 2010 through June 30, 2011;
- b. Experience Differential:
 - i. Increase to \$0.75/hr for employees with ten (10) or more years of UMDNJ Police Office experience, and to \$1.00/hr for employees with fifteen (15) or more years of UMDNJ Police Officer experience beginning with contract year covering July 1, 2009 through June 30, 2010 and continuing thereafter.
- c. Step Increases:
 - i. Annual Step increases shall be effectuated on a Police Officer's or Superior Officer's anniversary date (For Lodge 74, date hired as UMDNJ Police Officer; For Lodge 155, date promoted into unit) provided she/he receives a satisfactory performance evaluation.
- d. Shift Differential:
 - i. Increase shift differential \$0.25 in each year of the respective contracts.
- e. Special Unit Officers:
 - i. Special Unit Officers in Lodge 74 bargaining unit shall receive an annual "Special Unit" stipend increase of \$500, from \$2,500 to \$3,000 beginning in the contract year covering July 1, 2008 through June 30, 2009; and an additional "Special Unit" stipend increase of \$500, from \$3,000 to \$3,500 beginning the contract year covering July 1, 2010 through June 30, 2011.

- ii. Special Unit Officers in Lodge 155 bargaining unit shall receive an annual "Special Unit" stipend increase of \$1,500 beginning in the contract year covering July 1, 2008 through June 30, 2009; and an annual "Special Unit" stipend increase of \$500, from \$1,500 to \$2,000 beginning the contract year covering July 1, 2010 through June 30, 2011.
- f. Field Training Officers:
 - i. Officers designated by UMDNJ as "Field Training Officers" shall receive an additional \$1.25/hr for all hours worked in such a capacity.
- 3. **Uniform Maintenance Allowance:**
 - a. \$325 for contract year covering July 1, 2007 through June 30, 2008;
 - b. \$350 for contract year covering July 1, 2008 through June 30, 2009;
 - c. \$375 for contract year covering July 1, 2009 through June 30, 2010;
 - d. \$400 for contract year covering July 1, 2010 through June 30, 2011
- 4. **Access to Personnel Files:**
 - a. Modify Lodge 74 Article XXIII and Lodge 155 Article XXII to reflect that employees shall have access to their "Departmental Files" as well as personnel files.

FOP Final Proposals Specific to FOP Lodge 74

- 1. **Schedules, Article IX, §A (New Language):**
 - a. Upon execution of this agreement, all full-time police officers shall be scheduled to work a twelve (12) hour shift, except for those officers assigned to the Scotch Plains Campus or to the Detective Bureau, which shall continue to maintain eight (8) hour shifts. Accrual and use of vacations, sick time and float days shall be modified appropriately to reflect a police officer's twelve (12) schedule.

2. **Overtime Procedures – Article IX, §B (New Language):**

- a. Modify existing contract to add the following language: “In instances where posted overtime has not been filled 48 hours prior to the shift in question, the police officer with the least amount of mandates scheduled to work that day as listed in the mandatory overtime log shall be mandated to work. In instances where overtime has not been filled or is created within 48 hours of the shift in question and the voluntary list has been called, the police officer with the least amount of seniority scheduled to work that day shall be mandated to work. All mandated overtime shall be filled on a rotational basis, and police officers shall not be mandated more than once in a seven (7) day period, except in the case of an emergency. All mandated overtime shall be logged in the mandatory overtime log. No police officer shall be required to work more than sixteen (16) consecutive hours, except in the case of an emergency. Police officers may split mandated overtime.

3. **Seniority – Article XII (New Language):**

- a. Police officers may bid for all newly created or newly available shifts, and such shifts shall be assigned to the bidding officer with the highest seniority.

FOP Final Proposals Specific to FOP Lodge 155 Superiors

1. **Prior Benefits (New Language):**

- a. Include “prior benefits” provision which mirrors the FOP Lodge 74 contract, to wit: “Any and all existing benefits, policies, practices and general working conditions uniformly affecting all Officers in the unit in effect on the date of this Agreement shall remain in effect except to the extent they are modified by this Agreement. If the University changes or intends to make changes which have the effect of eliminating or altering terms and conditions of employment, the University will notify the FOP and, if requested by the FOP within ten (10) days of such notice or of such change or of the date on which the change would reasonably have become known to the officers affected, the University shall within twenty (20) days

of such request enter negotiations with the FOP on the matter involved, providing the matter is within the scope of issues which are mandatorily negotiable under the Employer-Employee Relations Act as amended and further, if a dispute arises as to the negotiability of such matters, then the procedures of the Public Employment Relations Commission shall be utilized to resolved such disputes.”

2. **Article V – Employee Rights:**

- a. Include “FOP Attorney” within definition of Lodge 155 representative.

3. **Article VI – Wages (New Languages):**

- a. Effective upon the date of the Arbitrator’s award, all Lieutenants shall be slotted into a five-step salary scale at a rate which reflects the next highest in value to the Lieutenant’s rate at such time. The salary scale for Lieutenants shall be as follows, effective July 1, 2007: Step 1: \$32.20/hr; Step 2: \$35.42/hr; Step 3: \$38.65/hr; Step 4: \$41.87/hr; and Step 5: \$45.09/hr.

The University

A. FOP Lodge 74

- 1. **Term of Contract** – Three (3) years: July 1, 2007 to June 30, 2010

- 2. **Article VIII – Wages**

FISCAL YEAR 2008

- a) Effective the pay period closest to July 1, 2007, Police Officers in the bargaining unit as of the date of Arbitrator Mastriani’s final decision, having also been employed in the eligible UMDNJ title as of June 30, 2007, shall receive an across-the-board increase in base rate of pay of 2.5%, plus the Experience Differential of \$.25/hr for incumbents with ten (10) years of UMDNJ Police Officer experience and

\$.50/hr for incumbents with fifteen (15) years of UMDNJ Police Officer experience.

- b) The AH salary table step rates shall be increased by 2.5%.
- c) There will be no step movement for members of the bargaining unit.
- d) The shift differential shall be two dollars (\$2.00) per hour.

FISCAL YEAR 2009

- a) Effective the pay period closest to July 1, 2008, there shall be a 0% increase to the base rate of pay of the Police Officers. The Experience Differential of \$.25/hr for incumbents with ten (10) years of UMDNJ Police Officer experience and \$.50/hr for incumbents with fifteen (15) years of UMDNJ Police Officer experience shall continue
- b) There shall be no increase to the AH salary table step rates.
- c) There will be no step movement for members of the bargaining unit.
- d) The shift differential shall be two dollars (\$2.00) per hour.

FISCAL YEAR 2010

- a) Effective the pay period closest to July 1, 2009, there shall be a 0% increase to the base rates of the Police Officers. The Experience Differential of \$.25/hr for incumbents with ten (10) years of UMDNJ Police Officer experience and \$.50/hr for incumbents with fifteen (15) years of UMDNJ Police Officer experience shall continue
- b) There shall be no increase to the AH salary table step rates.
- c) There will be no step movement for members of the bargaining unit.

- d) The shift differential shall be two dollars (\$2.00) per hour.

3. **Health Benefits**

Effective July 1, 2007, and on an ongoing basis, for all members of this bargaining unit there will be a one and one-half percent (1.5% deduction from an employee's bi-weekly pay check based on the employee's regular rate of pay for the New Jersey State Health Care Benefit cost sharing contribution.

4. **Article VIII, Sec C – Special Unit Police Officers**

- a. Effective July 1, 2007, Special Unit Police officers assigned to a special unit, shall receive an additional \$2,500 which will be pro-rated if they have been in the special unit for less than 1 year.
- b. Effective July 1, 2008, Special Unit Police officers assigned to a special unit, shall receive an additional \$2,500 which will be pro-rated if they have been in the special unit for less than 1 year.
- c. Effective July 1, 2009, Special Unit Police officers assigned to a special unit, shall receive an additional \$2,500 which will be pro-rated if they have been in the special unit for less than 1 year.

5. **Article XV – Uniform Maintenance Allowance**

The University shall provide a Uniform Maintenance Allowance in each year of this agreement to those Police Officers required to wear uniforms. The Uniform Maintenance Allowance shall be:

- a. Fiscal year 2008 - \$275
- b. Fiscal year 2009 - \$275
- c. Fiscal year 2010 - \$275

6. **Article XVII – Police Officer Benefits**

The University is proposing to replace current language in Section A. Health and Retirement Benefits with the following:

Effective July 1, 2007, all officers represented by the FOP 74 who are eligible for State health insurance benefits coverage shall pay premium or periodic charges, and shall be subject to and shall enjoy other changes in health benefits eligibility, coverage, and costs on the same basis and to the same extent as the State establishes for State employees for whom there is no majority representative. Should these benefits or costs change during the life of this contract, the benefits and costs for eligible members of the unit shall change accordingly. If the State should notify the University that they will not cover part-time Police Officers, the University will not continue such coverage.

B. FOP Lodge 155

1. **Term of Contract** – Three (3) years: July 1, 2007 to June 30, 2010
2. **Article VIII – Wages**

Wages

The parties could not reach agreement on a stipulated side letter addressing the correction to the BH salary table. Therefore, the following is included as part of UMDNJ's proposal relating to wages.

UMDNJ proposes a correction to Step 7 of the BH salary table from \$38.92 to \$37.85. This correction aligns this step with the correct step progression (3%) for this table.

There are two (2) incumbent employees on step 7 who have benefitted from the error and have in actuality been overpaid. UMDNJ proposes the following remedy: The employees currently on Step 7 shall maintain their current rate (\$38.92) and shall receive all general increases. However, these two employees will forego the next contractually scheduled step move, whenever such might occur. They will then resume eligibility for step moves and be placed on step 8, when appropriate, of the then existing salary scale.

FISCAL YEAR 2008

- a) Effective the pay period closest to July 1, 2007, Sergeants in the bargaining unit as of the date of Arbitrator Mastriani's

final decision, having also been employed in the eligible UMDNJ title as of June 30, 2007, shall receive an across-the-board increase in base rate of pay of two and one-half percent (2.5%), plus the Experience Differential of twenty-five cents (\$.25) per hour for incumbents with ten (10) years of UMDNJ Police Officer experience and fifty cents (\$.50) per hour for incumbents with fifteen (15) years of UMDNJ Police Officer experience.

- b) The BH salary table step rates shall be increased by two and one-half percent (2.5%).
- c) There will be no step movement for members of the bargaining unit.
- d) Effective the pay period closest to July 1, 2007, Lieutenants in the bargaining unit as of the date of Arbitrator Mastriani's final decision, having also been employed in the eligible UMDNJ title as of June 30, 2007, shall receive an across-the-board increase in base salary of two and one-half percent (2.5%).
- e) The salary range for Lieutenants shall be increased by two and one-half percent (2.5%).

FISCAL YEAR 2009

- a) Effective the pay period closest to July 1, 2008, there shall be a zero percent (0%) increase to the base rate of pay of the Sergeants. The Experience Differential of twenty-five cents (\$.25) per hour for incumbents with ten (10) years of UMDNJ Police Officer experience and fifty cents (\$.50) per hour for incumbents with fifteen (15) years of UMDNJ Police Officer experience shall continue.
- b) There shall be no increase to the BH salary table step rates.
- c) There will be no step movement for members of the bargaining unit.
- d) Effective the pay period closest to July 1, 2008, there shall be a zero percent (0%) increase to the base rate of pay of Lieutenants.
- e) There shall be no increase to the salary range for Lieutenants.

FISCAL YEAR 2010

- a) Effective the pay period closest to July 1, 2009, there shall be a zero percent (0%) increase to the base rate of pay of the Sergeants. The Experience Differential of twenty-five cents (\$.25) per hour for incumbents with ten (10) years of UMDNJ Police Officer experience and fifty cents (\$.50) per hour for incumbents with fifteen (15) years of UMDNJ Police Officer experience shall continue.
- b) There shall be no increase to the BH salary table step rates.
- c) There will be no step movement for members of the bargaining unit.
- d) Effective the pay period closest to July 1, 2009, there shall be a zero percent (0%) increase to the base rate of pay of Lieutenants.
- e) There shall be no increase to the salary range for Lieutenants.

3. Health Benefits

Effective July 1, 2007, and on an ongoing basis, for all members of this bargaining unit there will be a one and one-half percent (1.5% deduction from an employee's bi-weekly pay check based on the employee's regular rate of pay for the New Jersey State Health Care Benefit cost sharing contribution.

4. Article XV – Employee Benefits

The University proposes new language as follows:

Effective July 1, 2007, all officers represented by the FOP 155 who are eligible for State health insurance benefits coverage shall pay premium or periodic charges, and shall be subject to and shall enjoy other changes in health benefits eligibility, coverage, and costs on the same basis and to the same extent as the State establishes for State employees for whom there is no majority representative. Should these benefits or costs change during the life of this contract, the benefits and costs for eligible members of the unit shall change accordingly. If the State should notify the

University that they will not cover part-time Police Officers, the University will not continue such coverage.

BACKGROUND

UMDNJ is considered to be the largest public health sciences university in the USA housing sixty-four (64) buildings over 185 acres of land. Its student enrollment is approximately 6,000 with approximately one-half of that number enrolled at the Newark campus. Although the central programs offered by UMDNJ are at its five academic health center campuses, it maintains a network of 200 affiliated educational and health care partners throughout the State of New Jersey. It operates the State's only three medical schools, a dental school, a teaching hospital, behavioral health care centers, a cancer institute and schools of biomedical sciences, health related professions, nursing and public health. These include the New Jersey Medical School, Piscataway/New Brunswick and Camden, the School of Osteopathic Medicine, Newark, the New Jersey Dental School, Stratford, the School of Health Related Professions, Newark, the School of Nursing, Newark, the Graduate School of Biomedical Sciences, Newark and Piscataway, and the School of Public Health, Newark, Piscataway and Stratford. The University Hospital and Robert Wood Johnson Hospital were recently accorded the honor of being listed as a "Top Hospital", an achievement limited to only 174 of 4,861 hospitals.

The collective negotiations agreement between UMDNJ and FOP Lodge No. 74 covers sixty-three (63) full-time and regular part-time Police Officers and

Detectives. The collective negotiations agreement between UMDNJ and FOP Lodge No. covers twenty-four (24) full-time and regular part-time Sergeants and Lieutenants.

The University police department performs similar law enforcement functions as municipal police departments. They generally work an eight (8) hour day and forty (40) hour workweek and function on a twenty-four (24) hours per day, seven (7) days per week basis. They receive the same academy training, carry fire arms 24 hours a day and have the power of arrest, not only at the University's campuses but at any location within the State of New Jersey. Among the University's geographical locations, the Newark campus experiences the highest rate of crime as reflected in the New Jersey State Police Uniform Crime Reporting Unit. The total crime index for all locations shows 541 overall crimes in 2005, 407 in 2006, 324 in 2007 and 361 in 2008. Of these crimes, 476, 350, 324 and 272 were committed on the Newark campus. Larceny/theft is by far the most frequently reported crime. The scope of law enforcement work was described in part by the FOP in its written argument:

UMDNJ campuses, particularly in Newark, are located at the convergence of major state and county roadways, and police officers are responsible for enforcement of the traffic code, handling motor vehicle accidents, and responding to crimes and emergencies which occur on the streets near the campuses. Patrol areas incorporate expansive areas of the local communities and police officers interact with members of the general public on a regular basis. The public is aware of the availability of University police officers, both on campus and between facilities, and often call on them for assistance.

One of the factors influencing the increased demand for police services is the size of the population being served. The population of UMDNJ consists of 15,000 faculty and staff and 5,900 students for a total of over 20,000. According to the University's own figures, however, well over two million patients make use of University facilities every year. This figure excludes contractors, vendors and visitors. The transient population of UMDNJ has also increased in recent years, as well, increasing the workload of police personnel. This is particularly true on the Newark Campus because several nearby hospitals have closed forcing indigent patients to come to University Hospital for medical services. Numerous disturbances and reports of suspicious activity, and a high percentage of crimes occurring on the Newark Campus, particularly at University Hospital, involve patients or visitors, either as victims or perpetrators of crime.

In addition, recent years have seen the growth of a thriving business district around the UMDNJ Campuses. These businesses include supermarkets, banks, doctor's offices, pharmacies, and numerous other shops and eateries. In addition to these businesses, there are schools located adjacent or near UMDNJ campuses (e.g., St. Vincent's Academy, adjacent to the Newark Campus and Kindercare Learning Center, which is located on the Newark campus.) University police are the primary responding agency for the business area surrounding the campuses. Increased traffic between the campuses and the local businesses has increased the workload on University police. Patrols have to be maintained to ensure the safety of University students, personnel and patients patronizing the businesses.

The fiscal underpinnings of UMDNJ are understandingly complex given the enormity and sophistication of its missions, the number of faculty, staff and students, its capital assets and its revenues which are derived from many sources. The financial profile is reflected in many official documents including but not limited to Consolidated Financial Statements, State Appropriation Summaries, New Jersey Department of Treasury exhibits and Certifications from Frances X. Colford, CPA and Vice President for Finance and Treasurer for UMDNJ. Among its revenue sources are student tuition and fees, state

appropriations, research grants and contracts, patient services, professional services and contracts and investment income. An additional revenue source was the receipt of \$23.5 million in federal funding through the American Recovery and Reinvestment Act of 2009. The parties disagree on the health of the University's finances. This subject will be reviewed herein mainly in the context of the parties' compensation proposals.

The issues in this proceeding are complex and the evidentiary submissions are comprehensive. For these reasons, a summary of the parties' arguments and exhibits in support of their respective positions on each issue in dispute will be reviewed in the context of the disposition of each issue that has been proposed in the Discussion section of this decision and award. I commence this process by setting forth the stipulations of the parties which, pursuant to N.J.S.A. 34:13A-16(e)(4) have been incorporated into the Award.

STIPULATIONS

Stipulations between UMDNJ and FOP Lodge 74

1. The following language shall be added as Article V, §C (10):

“Police Officers covered by this agreement shall not be obligated to testify verbally against themselves at Step I of the grievance procedure. An officer must still comply with a request to submit a written statement which provides details about a specific incident. If an officer chooses not to testify at any step of the Grievance Process, the Hearing officer may make inferences with or without such testimony in order to render a decision.”
2. The first sentence of Article VI, §D shall be modified as follows, with the remainder of §D remaining unchanged:

- "No Police Officer covered by this agreement shall be suspended or terminated until a pre-disciplinary hearing with the Police Officer, Director/or his designee and the F.O.P. representative."
3. The following language shall be added as Article VIII, §A(5) and (6):

"5. Base Compensation Rate: An employee's base compensation rate is the employee's rate of pay without any differential(s), premium(s), bonuses, etc.

6. Regular Rate: An employee's regular rate of pay is the base rate of pay plus the experience differential, if applicable."
 4. Article VIII, §B shall be modified as follows:

"When an error in pay has been made by the Payroll Department resulting in an under payment to the employee, the University will issue a check with the correction within two (2) Payroll work days of notification of the error, with proper deductions. When an error in pay not made by the Payroll Department occurs, the correction will be reflected within the two (2) paychecks of receipt of the correction, unless the error amounts to eight (8) or more hours, in which case, the University shall issue a "manual check" as soon as possible. When error in pay has been made resulting in an overpayment to the employee, the University will provide the employee with an explanation and discuss a repayment plan, where appropriate."
 5. The following language shall be added as Article VIII, §C(8)(Shift Differential):

"Shift differential will be paid to non-exempt members of the bargaining unit for complete shifts only. To be eligible for a shift differential, an employee must work half or more of his/her regularly scheduled hours after 3:00 pm or before 6:00 am."
 6. The following language shall be added as Article VIII, §C(9) (Special Unit Officers):

"Special Unit Officers are defined as Detectives and the Officer responsible for Policy and Research, unless the parties mutually agree to add new job titles to this definition."
 7. With regard to Article VIII, §C(9) (Special Unit Officers), the parties do not stipulate to the dollar value of the stipend – which shall be addressed in

the parties' respective position statements – but do agree that Special Unit Police officers who are in the special unit for less than 1 (one) full year shall have their stipend pro-rated accordingly.

8. The following language shall be added as Article IX, §C:

“For purposes of this contract a “day” is defined to be an employee’s regularly scheduled weekly hours divided by five (5).”

9. The first sentence of Article X, §2 shall be modified as follows, with the remainder of §2 remaining unchanged:

“Full time members of the bargaining unit will have 48 hours of float holiday time. Float Holiday time will be pro-rated for part time employees.”

10. Article X, §3 shall be modified as follows:

“All full time bargaining unit members hired or returning from unpaid leaves of absences between January 2 and July 1 of any year will be credited with 24 hours of float holiday time within one full pay cycle after July 1. This float time will be pro-rated for part time employees. No float holiday time will be credited for individuals hired or returning from leave of absence from July 2 – December 31 (individuals returning from leave from January 2 and July 1 will receive the 24 hours of float holiday time if they did not already receive float holiday time for the particular year).”

11. The second paragraph of Article XII shall be modified as follows:

“For retirement and layoff purposes, including bumping rights, an officer’s seniority shall be his/her date of hire with the University on a university-wide, not campus-wide, basis. If hire dates are the same, then the officer’s seniority shall be determined by the officer’s birthday month and day. For all other purposes, an officer’s seniority shall be the date he/she became a Police Officer at UMDNJ.”

12. The final sentence of Article XV shall be modified as follows:

The Uniform Maintenance Allowance will be paid in the first pay period of December each fiscal year.”

13. The second paragraph of Article XVII, §C (Optional Group Dental) shall be deleted.

14. Article XVII shall be modified to add the following as §H:

“An employee who separates from the University by resignation will give twenty one (21) calendar days written notice. Employees who resign will be entitled to all accrued but unused vacation and compensatory time, less any sick time advanced but not accrued.

Employees who separate from the University by resignation or for any other reason must return all University property, including but not limited to ID cards, parking tags, keys, and computer software.

After submitting a notice of resignation, an employee shall be eligible to use a maximum of two (2) float holidays within the last three (3) weeks of employment, provided the request(s) for such float holiday(s) are approved.”

15. Article XVIII, §A shall be modified as follows:

“Sick time and medical leaves of absence shall be governed in accordance with federal and state FMLA statutes, Family Leave statute, and current University policy.”

16. Article XVIII, §B, shall be modified as follows:

Regular full time bargaining unit members shall accrue sick days on the basis of one (1) eight hour day per month. Regular part time employees, working 20 hours or more per week, shall accrue pro-rated sick days based on the regularly scheduled hours per week.

17. Article XVIII, §C, shall be modified as follows:

At the time of a death of a family member, up to three (3) consecutive work days off with pay will be granted to Police Officers provided they are scheduled to work those days, and provided sick pay or other paid leave is accumulated to the credit of the Police Officer, and is so charged. Members of the immediate family are defined as spouse, children, parents, brothers or sisters, parents-in-law, grandparents, grandchildren, or other relatives living in the Police Officer's household. In the cases where the death of a brother-in-law, sister-in-law, aunt or uncle, niece or nephew occurs, up to one (1) calendar day off with pay will be granted to attend the funeral services, provided sick pay or other paid leave is accumulated to the credit of the Police Officer, and is so charged. A short period of emergency attendance upon a member of the Police Officer's immediate family who is critically ill and requiring

the presence of such Police Officer may be granted in accordance with University Policy.”

18. Article XVIII, §D shall be modified as follows:

“1. A Police Officer may apply for FMLA by completing the appropriate leave application form and presenting documentation to the Human Resources Department from his/her personal health care provider which must state when the Police Officer’s inability to work commenced, the nature of the illness or disability, and the expected date the Police Officer will be able to return to work.

2. For employees taking medical/FMLA leave for self, the maximum leave allowed will be six (6) months, unless the employee has paid time accruals exceeding six (6) months, then the maximum leave time shall be up to twelve (12) months. All paid sick time accruals must be utilized first, then float holidays and vacation accruals must be used. The statutory 12 week FMLA shall run concurrently with the first 12 weeks of such leave. Staff members hired prior to January 1, 1983, with accrued sick time exceeding twelve (12) months will be entitled to use all such time.

3. Documentation from the Police Officer’s personal health care provider indicating that he/she is able to return to work must be presented before or at the time of the Police Officer’s return to work.”

19. In Article XXI, the phrase “Human Resources Department” shall be replaced by the phrase “Director of Labor Relations or his/her designee.”

20. The second sentence of Article XXI, §D shall be modified as follows:

“In addition, the University agrees to provide a maximum of five (5) days unpaid leave per year for the FOP President to attend FOP activities.”

21. Article XVIII shall be modified as follows:

“Within sixty (60) days after the signing of this agreement by both parties, the Agreement will be posted on the University’s website. Printed copies will not be made available.”

22. Article XXVIII, §D shall be modified as follows:

“For the purpose of giving notice as provided in Article XXVIII, the University may be notified through the Director of Labor Relations,

65 Bergen Street, Suite 1237, Newark, New Jersey 07107-3007, and the FOP through its President at the current Lodge address.”

23. Side Letter #2 shall be modified to add the following language:

“The University shall notify the Union at least thirty (30) days in advance of any takeover, sale, assignment, transfer, merger, reorganization, consolidation or other change of ownership, in accordance with applicable law.”

24. Side Letter #4 shall be modified to add the following language:

“Should a Police Officer volunteer for overtime and the assignment is cancelled, then he/she will be placed back at the top of the voluntary overtime list.”

25. A new Side Letter shall be added to the parties’ agreement, and said Side Letter shall read as follows:

“1. In accordance with FMLA, it is agreed that the maximum leave allowed for Intermittent Leave is 12 weeks within a rolling twelve month period

2. In addition, for FOP 74 employees taking medical/FMLA leave to care for a family member for a serious illness, the maximum leave allowed is twelve (12) weeks. Paid leave time will be a maximum of ten (10) days of accrued sick days first, then vacation and float holidays.”

Stipulations between UMDNJ and FOP Lodge 155

26. The parties have agreed to modify the agreement to reflect the inclusion of the Job Title of “Lieutenant” in the bargaining unit, as follows:

- Preamble – “... establishing conditions under which Sergeants and Lieutenants shall be employed ...” and “... cooperation and understanding between the University and its Sergeants and Lieutenants.”
- Recognition – “... All regular full-time Sergeants and Lieutenants employed by the University ...”
- Article 3, Section D – “In addition, the Sergeant employee may discuss his/her grievance with ...”
- Art V – “Any Sergeant Member covered by this Agreement ...”

- ... Where a Sergeant member is being interviewed during the course of ...
- ... contemplated charges shall be made known to the Sergeant Member..."
- Art VII, Sec D – "A Sergeant Member may exchange tours of duty with another Sergeant Member in the same title as long as prior written permission has been granted by each Sergeant's Member's supervisor and no overtime accrues to either Sergeant Member.
- Art VII, Sec E – "Sergeants Members assigned to training during a particular ... However, in an emergency situation ... Sergeants Members may be required to work ..."
- Art VIII, Sec A – "Sergeants Members who are covered by this Agreement ..."
- Art VIII, Sec D – "The University will make an effort to rotate major holidays among Sergeants Members in the same title in the unit subject to proper staffing." No other changes to Sec D.
- Art X, Sec A – "All Sergeants Members shall be considered as probationary sergeants to be in probationary status for the first 180 calendar days of employment after being hired or promoted into the unit or within the unit ..." No changes to remainder of Sec A.
- Art X, Sec B – "For retirement and layoff purposes, a Sergeant's Member's seniority shall be the date of hire with the University. For all other purposes, a Sergeant's Member's seniority within his/her title shall be the date he/she was promoted to a Sergeant or Lieutenant, at UMDNJ. If the dates are the same, then the Sergeant's Member's seniority shall be determined by the officer's birthday month and day."
- Art XII, Sec C – "... hazards which are attendant to the employment of employees as Sergeants and Lieutenants and which represent the risks normally ..."
- Art XIII, Sec A – "Where the University requires a Sergeant or Lieutenant to wear a uniform, the University will generally provide the uniforms. However, in those cases where the University requires a Sergeant Member to wear a uniform but chooses not to ..."

- Art XVI, Sec D, #2 – “~~Sergeants~~ Members shall be eligible for military leave in accordance ...”
- Art XVII – “When a Sergeant or Lieutenant is required to appear ...”
No change to sentence 2. “The Sergeant or Lieutenant shall be reimbursed for such expenses as parking fees and toll fees in connection with such appearances in accordance with University policy.”
- Art XXI, Sec A – “... Each ~~Sergeant~~ Member may cancel such written authorization ...”

27. The following language shall be added to Article III:

The University will provide discovery prior to a hearing, if material in the employee’s departmental file is going to be used in a disciplinary matter.

28. The first paragraph of Article V shall be modified as follows:

“Any Member covered by this Agreement who receives a verbal or written request to report to the Human Resources Department, a supervisor, or other administrative officer of the University, on matters that the employee has reason to believe may lead to disciplinary actions against himself/herself, at the employee’s request shall be accompanied by an authorized FOP Lodge 155 representative, providing a Representative is available within two hours of notification to the employee. If the meeting is investigative in nature, the FOP Lodge 155 representative shall serve only as a witness or advisor during subsequent interrogation.”

29. The following language shall be added as Article VI, §A(5) and (6):

“5. Base Compensation Rate: An employee’s base compensation rate is the employee’s rate of pay without any differential(s), premium(s), bonuses, etc.

6. Regular Rate: An employee’s regular rate of pay is the base rate of pay plus the experience differential, if applicable.”

30. Article VI, §B shall be modified as follows:

“When an error in pay has been made by the Payroll Department resulting in an under payment to the employee, the University will issue a check with the correction within two (2) Payroll work days of notification of the error, with proper deductions. When an error in

pay not made by the Payroll Department occurs, the correction will be reflected within the two (2) paychecks of receipt of the correction, unless the error amounts to eight (8) or more hours, in which case, the University shall issue a "manual check" as soon as possible. When error in pay has been made resulting in an overpayment to the employee, the University will provide the employee with an explanation and discuss a repayment plan, where appropriate."

31. Article VII, §B(2) shall be modified as follows:

"Overtime will be paid to non-exempt employees only if authorized in advance by Public Safety management (Captain or above), except in an emergency."

32. With regard to Article VII, §C (Shift Differentials), the parties do not stipulate to the dollar value of the differential - which shall be addressed in the parties' respective position statements - but do agree that shift differential is available only for non-exempt employees, and agree to add the following language:

"Shift differential will be paid to non-exempt members of the bargaining unit for complete shifts only. To be eligible for a shift differential, an employee must work half or more of his/her regularly scheduled hours after 3:00 pm and before 6:00 am.

33. The following language shall be added to Article VII, as §G:

"Any involuntary, temporary transfer of a Member from one campus to another will adhere to the following procedure:

1. The Department shall first ask for volunteers;
2. If there are no volunteers from the campus, then Members will be chosen on a rotational basis beginning with the least senior Member from the campus, which will be determined by the Member's date he/she was promoted or hired into the title at UMDNJ;
3. Seven (7) days notice will be given to the officer for any transfer more than thirty (30) days;
4. Mileage and tolls will be paid by the Department."

34. Article X, §B shall be modified as follows:

"For retirement and layoff purposes, including bumping rights, a sergeant's or lieutenant's seniority shall be his/her date of hire with the University on a university-wide, not campus-wide, basis. For

all other purposes, a sergeant's or lieutenant's seniority shall be the date he/she became a Police Officer at UMDNJ. If hire dates are the same, then the sergeant's or lieutenant's seniority shall be determined by the officer's birthday month and day. "

35. Article XV, §B shall be modified as follows:

"Tuition reimbursement will be up to a maximum of three thousand one hundred twenty dollars (\$3,120) per calendar year."

36. The second paragraph of Article XV, §C (Optional Group Dental Program) shall be deleted.

37. Article XV shall be modified to add the following as §I:

"An employee who separates from the University by resignation will give twenty one (21) calendar days written notice. Employees who resign will be entitled to all accrued but unused vacation and compensatory time, less any sick time advanced but not accrued.

Employees who separate from the University by resignation or for any other reason must return all University property, including but not limited to ID cards, parking tags, keys, and computer software.

After submitting a notice of resignation, an employee shall be eligible to use a maximum of two (2) float holidays within the last three (3) weeks of employment, provided the request(s) for such float holiday(s) are approved."

38. Article XVI, §A shall be modified as follows:

"Sick time and medical leaves of absence shall be governed in accordance with federal and state FMLA statutes, Family Leave statute, and current University policy."

39. Article XVI, §B shall be modified as follows:

"1. Regular full time bargaining unit members shall accrue sick days on the basis of one (1) eight hour day per month. Regular part time employees, working 20 hours or more per week, shall accrue pro-rated sick days based on the regularly scheduled hours per week.

2. Sick pay accruals are cumulative from one year to the next. An employee will be paid for sick leave at the employee's base rate of pay.

3. Employees with five (5) or more years of service will be eligible for an emergency advance of up to one year's worth of sick leave under the following circumstances: ..." [subsections a, b, c, and d remain unchanged]

40. Article XVI, §C(1) shall be modified as follows:

"At the time of a death of a family member, up to three (3) consecutive work days off with pay will be granted to employees provided they are scheduled to work those days, and provided sick pay or other paid leave is accumulated to the credit of the employee, and is so charged. Members of the immediate family are defined as spouse, children, parents, brothers or sisters, parents-in-law, grandparents, grandchildren, or other relatives living in the employees household. In the cases where the death of a brother-in-law, sister-in-law, aunt or uncle, niece or nephew occurs, up to one (1) calendar day off with pay will be granted to attend the funeral services, provided sick pay or other paid leave is accumulated to the credit of the employee, and is so charged. A short period of emergency attendance upon a member of the employee's immediate family who is critically ill and requiring the presence of such employee may be granted in accordance with University Policy."

41. Article XVI, §D (Medical Leave) shall be modified as follows:

"1. An employee may apply for FMLA by completing the appropriate leave application form and presenting documentation to the Human Resources Department from his/her personal health care provider which must state when the Employee's inability to work commenced, the nature of the illness or disability, and the expected date the employee will be able to return to work.

For employees taking medical/FMLA leave for self, the maximum leave allowed will be six (6) months, unless the employee has paid time accruals exceeding six (6) months, then the maximum leave time shall be up to twelve (12) months. All paid sick time accruals must be utilized first, then float holidays and vacation accruals must be used. The statutory 12 week FMLA shall run concurrently with the first 12 weeks of such leave. Staff members hired prior to January 1, 1983, with accrued sick time exceeding twelve (12) months will be entitled to use all such time.

Documentation from the Employee's personal health care provider indicating that he/she is able to return to work must be presented before or at the time of the Employee's return to work."

42. In Article XX, the phrase "Vice President for Human Resources " shall be replaced by the phrase "Director of Labor Relations or his/her designee."
43. Article XXIV shall be modified as follows:

Section A

Employee performance shall be evaluated and reviewed with the employee annually by the employee's immediate supervisor. Each overall evaluation shall be rated either:

5 – This staff member has made significant contributions to advance the position of the department and/or University toward excellence and prominence.

4 – This staff member has been instrumental to the department's success and has performed in an exemplary manner.

3 – This staff member is proficient. Performance is what is expected of a fully qualified and experienced person.

2 – This staff member occasionally fails to exhibit proficiency. Improvement is necessary to meet the expectations for acceptable performance.

1 – This staff member has serious deficiencies in key areas. Performance fails to meet expectations and is not acceptable.

Each employee shall be notified of the rating determined for him/her and given an opportunity to participate in the formulation of performance standards and improvement goals for the next appropriate evaluation.

The employee shall be provided with a copy of his/her performance evaluation and the agreement on performance standards and improvement goals. All University Performance Evaluation forms shall be signed by the supervisor and by the employee, and placed in the employee's central personnel file in Human Resources. The employee's signature shall signify that the employee has seen and reviewed the evaluation, but not that he/she necessarily concurs with its contents.

Section B

Employees receiving a rating of 2 shall not be entitled to receive a merit or step increase, if applicable. The supervisor shall review the performance deficiencies with the employee and shall counsel the employee as to appropriate steps which should be taken to improve

performance and shall review with the employee any warnings or prior counseling received with respect to performance. The employee's performance must be re-evaluated within 90 days. If the re-evaluation rating is a 3 or better, the employee shall receive any applicable merit/step increase as of the re-evaluation. If upon re-evaluation the performance has not come up to a rating of 3, then the re-evaluation shall be considered to be a final warning for purposes of the disciplinary process. The supervisor shall also advise the employee that failure to improve performance may result in further discipline up to and including discharge.

Section C

Employees receiving a rating of 1 shall not be entitled to receive a merit/step increase for that fiscal year. Such performance evaluation shall be considered as a final warning for purposes of the disciplinary process and puts the employee at risk of termination. The supervisor shall review the performance deficiencies with the employee and shall counsel the employee as to appropriate steps which should be taken to improve performance and shall review with the employee any warnings or prior counseling received with respect to performance. The performance of employees receiving a rating of 1 shall be carefully monitored by the supervisor. The supervisor shall advise the staff member that failure to immediately correct and maintain performance to a satisfactory (3) rating or better will result in his/her discharge.

Section D

The performance rating shall not be subject to the grievance procedure. University Policy regarding performance evaluation will be adhered to.

44. The parties agree to delete Side Letter #1 (Merit Wage Pool Distribution Review).
45. A New Side Letter shall be added to the parties' agreement, and said Side Letter shall read as follows:

"1. In accordance with FMLA, it is agreed that the maximum leave allowed for Intermittent Leave is 12 weeks within a rolling twelve month period.

2. In addition, for FOP 155 members taking medical/FMLA leave to care for a family member for a serious illness, the maximum leave allowed is twelve (12) weeks. Paid leave time will be a maximum of then (10) days of accrued sick days first, then vacation and float holidays."

DISCUSSION

The University and the FOP have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. All submissions have been thoroughly reviewed and considered.

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence

concerning the comparability of jurisdictions for the arbitrator's consideration.

- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

In interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. No proposed issue by either party can be deemed presumptively valid without justification supported by the statutory criteria. I have applied these principles to my analysis of the issues in dispute. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be reached after assessing the merits of any individual issue within the context of an overall award.

DURATION

The University proposes a three year agreement effective July 1, 2007 through June 30, 2010. The FOP proposes a four year agreement effective July 1, 2007 through June 30, 2011. Under all of the facts and circumstances that are present in this record, a contract duration that extends through June 30, 2011 is

a reasonable determination of this issue. The record in this matter did not close until the spring of 2010. An additional year beyond June 30, 2010 will allow for a shorter period of time between contract expiration and the negotiation of future terms. The record in this proceeding is sufficiently comprehensive to allow an award that extends through June 30, 2011.

HEALTH BENEFITS – POLICE OFFICER BENEFITS – EMPLOYEE BENEFITS

UMDNJ advances proposals concerning employee contributions towards health insurance and health insurance benefits coverage. Its proposals for both Lodge 74 and Lodge 155 are identical. In respect to employee contributions, UMDNJ proposes the following language:

Effective July 1, 2007, and on an ongoing basis, for all members of this bargaining unit there will be a one and one-half percent (1.5%) deduction from an employee's bi-weekly pay check based on the employee's regular rate of pay for the New Jersey State Health Care Benefit cost sharing contribution.

UMDNJ also proposes identical language concerning health insurance benefits coverage for both units. Current language exists in the FOP Lodge 74 unit at Article XVII, Section A and in the FOP Lodge 155 unit at Article XV. The revised language would read as follows:

Effective July 1, 2007, all officers represented by the FOP 74/FOP 155 who are eligible for State health insurance benefits coverage shall pay premium or periodic charges, and shall be subject to and shall enjoy other changes in health benefits eligibility, coverage, and costs on the same basis and to the same extent as the State

establishes for State employees for whom there is no majority representative. Should these benefits or costs change during the life of this contract, the benefits and costs for eligible members of the unit shall change accordingly. If the State should notify the University that they will not cover part-time Police Officers, the University will not continue such coverage.

Legislation was enacted requiring unit members to contribute 1.5% of base salary towards health care benefits effective May 21, 2010 pursuant to P.L. 2010, Chapter 2 as a result of legislative action legally mandating the contributions. The parties acknowledge this legislation in their submissions. After the close of the record, there was additional legislative action once again addressing the issue of employee health insurance contributions. The Governor signed P.L. 2011, Chapter 78 into law with an effective date of June 28, 2011 or the first pay period in July pursuant to that legislation. That legislation provides for amounts of health benefit contribution pursuant to a percentage schedule based upon a combination of the type of coverage the employee selects and the amount of base salary that employee earns.

This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider UMDNJ's lawful authority and statutory limitations. One such legal requirement is to implement Chapter 2 and Chapter 78 in accordance with their terms. Accordingly, the Award will reflect that health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. It is assumed that these contributions have been deducted according to these statutes.

The University proposal, in addition to the requirement to implement the aforementioned legislated employee contributions, would require that the health insurance contributions be retroactive to July 1, 2007. In support of this proposal, the UMDNJ points to guidance it received from the Governor's Office of Employee Relations advising that it expects the University to negotiate such contributions for contracts commencing July 1, 2007, comparability evidence between Rutgers and FOP Lodge 62 and NJIT and FOP Lodge 93 and four internal agreements within the University. In the Rutgers and NJIT Agreements, health insurance contributions in the amount of 1.5% were agreed to effective July 1, 2007. UMDNJ also cites agreements that it negotiated with Communications Workers of America, AFL-CIO, Local 1040, the Office of Professional Employees International Union, Local 153, the International Association of EMTs and Paramedics, Local R2-200, SEIU-NAGE, and the International Union of Operating Engineers, Local 68-68A-68B, AFL-CIO, all of which it contends included the 1.5% employee health care cost sharing contribution provision effective July 1, 2007.

The FOP urges rejection of the University's proposal to make health insurance contributions retroactive to July 1, 2007. It notes that UMDNJ is not legally required to implement retroactivity to July 1, 2007. The FOP also points out that under the UMDNJ proposal, there would be a one-time 2.5% wage increase, no movement within the salary scale and nothing else of monetary

value in contrast to having to pay 4.5% retroactivity in health insurance contributions, thereby resulting in a substantial net loss in compensation for unit employees. With respect to UMDNJ's comparability arguments, the FOP contrasts the Rutgers and NJIT agreements which contain wage increases for common years that are well in excess of what UMDNJ has proposed for common years. It also notes that there is no uniform pattern within UMDNJ because two units did not commence contributions on July 1, 2007. The FOP also cites to interest arbitration decisions involving state-wide units of law enforcement employees, NJ State Corrections (IA-2008-014) and State Law Enforcement Supervisors Assn (IA-2008-017), wherein retroactive premium sharing schemes proposed by the State were denied. It also points out that the Fiscal Impact Statement in connection with the Chapter 2 legislation assumed that compensation for public employees will increase 3% annually, a figure far in excess of what UMDNJ has proposed.

I do not award the University's proposal to require these health contributions to be retroactive to July 1, 2007. Such contributions for unit employees commenced at the level the University has proposed on May 22, 2010 and were subsequently increased for most unit employees on or about July 1, 2011. UMDNJ relies mainly upon guidance it received from the State of New Jersey to negotiate over the implementation of the contributions for contracts that expired on June 30, 2007, the other police bargaining units that implemented the

1.5% effective July 1, 2007 at Rutgers and NJIT and the agreements within UMDNJ that provided the July 1, 2007 effective date.

The comparability evidence relied on by UMDNJ is not uniform. The guidance acknowledged that the imposition of contribution was subject to negotiations and was not required by law. The record reflects that one State of New Jersey law enforcement unit (SLEU) voluntarily accepted a 1.5% contribution effective July 1, 2007 but received across the board increases of 3.5% effective July 1, 2007, 3.5% effective July 1, 2008, 3.75% effective July 1, 2009 and 3.75% effective July 1, 2010. There was no pattern of settlement on the health insurance contribution issue inasmuch as the much larger PBA Local 105 Corrections unit, nor the State Law Enforcement Supervisory Association did not make this contribution until January 1, 2011, some three and one-half years later and received lower across the board increases than SLEU. These units received lesser increases than SLEU through increases of 3.5%, 3.5%, 0% (with no step increases) and a 4% (2%/2% split) over the same period. Thus, the comparability evidence with the State law enforcement units is consistent overall with the UMDNJ proposal. Moreover, the University's wage proposal is so distinguishable to the wage terms of the State labor agreements so as to diminish the weight to be given to the State contracts that do provide July 1, 2007 effective dates for the health insurance contribution. A similar analysis applies to the State's non-law enforcement units who, while commencing contributions on

July 1, 2007, received across the board increases of 13% over the applicable contract years.

The comparability evidence with respect to the Rutgers and NJIT agreements, while showing effective dates of July 1, 2007 for health insurance contributions, are also not entitled to the weight sought by UMDNJ. The issue is one of overall compensation. The contributions at these institutions must be evaluated in conjunction with the wage agreements that were negotiated which provided increases far in excess of what UMDNJ has proposed. The effective dates of the contributions cannot be viewed in isolation to the overall comparisons affecting compensation. UMDNJ has also pointed to four bargaining units within the University that agreed to the commencement of health insurance contributions on July 1, 2007. A pattern of settlement, however, does not exist based upon the fact that other University bargaining units, including its largest unit, Teamsters Local 97, did not commence contributions on that date and all of these internal agreements contain wage components that differ from that proposed by the University to the FOP. Based upon all of the above, the University's proposal is denied.

I also do not award the UMDNJ proposal that, in essence, would provide a parity agreement between Lodge 74 and Lodge 155 with the same terms and conditions for health benefits eligibility, coverage and costs with the terms the State of New Jersey establishes for State employees for whom there is no

majority representative. If awarded, this provision would subject unit employees to changed health benefit terms linked to non-represented employees of a different employer thereby waiving their statutory rights to negotiate such issues that are not pre-empted by statute. Accordingly, the proposal is denied.

UNIFORM MAINTENANCE ALLOWANCE

The FOP proposes a Uniform Maintenance Allowance for FOP Lodge 74 and FOP Lodge 155 as follows:

- a. \$325 for contract year covering July 1, 2007 through June 30, 2008;
- b. \$350 for contract year covering July 1, 2008 through June 30, 2009;
- c. \$375 for contract year covering July 1, 2009 through June 30, 2010;
- d. \$400 for contract year covering July 1, 2010 through June 30, 2011

UMDNJ proposes that FOP Lodge 74 receive the same uniform maintenance allowance of \$275 as is currently provided by Article XV. While not specifically mentioned in its final offer, it can be presumed that UMDNJ proposes that FOP Lodge 155 receive the same Uniform Maintenance Allowance of \$325 as is currently provided by Article XIII.

According to the FOP, the current allowances does not allow for police officers and superior officers to maintain required attire at necessary standards

and therefore requires out-of-pocket supplements to the allowance. It also points out that uniform allowances at Rutgers and NJIT far surpass the existing allowances at UMDNJ. In 2008, the allowances at Rutgers was \$865 for police officers and \$860 for superior officers. At NJIT, the allowances were \$1,350 for police officers, \$1,400 for superior officers and \$1,350 for Lieutenants. The FOP estimates that the total cost of its proposal for both units is only \$9,675 over four years. UMDNJ opposes the uniform maintenance allowance increases sought by the FOP. It points out that unlike NJIT, whose agreement requires its police officers to be responsible for all maintenance, repair and replacement of uniforms, UMDNJ provides uniforms and replaces them when they become unserviceable. In light of this and the University's financial situation, UMDNJ urges rejection of the proposal.

Although the overall costs of the FOP proposal are not substantial, I do not award the proposal in light of the distinctions in the programs between UMDNJ and NJIT which undermines this particular comparison. However, the distinctions that exist between FOP Lodge 74 and FOP Lodge 155 in the amounts of the allowances currently received between the two units have not been justified by UMDNJ. Therefore, I award an increase in the FOP Lodge 74 uniform maintenance allowance to \$325 effective July 1, 2007 in order to provide the equivalent allowance set forth in the FOP Lodge 155 agreement and no additional increase in the allowance for either unit beyond July 1, 2007. The cost

of this award would be \$3,700 in FY 2008 and would carry forward into the remaining fiscal years in the absence of any additional increase to the allowance.

ACCESS TO PERSONNEL FILES

The FOP proposes to modify Lodge 74 Article XXIII and Lodge 155 Article XXII to reflect that employees shall have access to their "Departmental Files" as well as personnel files.

It is not in dispute that the University maintains two employment files. One is a Personnel File maintained by Human Resources which contains information concerning employment history and prior discipline. The FOP's proposal seeks access to the other employment file known as the Departmental File. That file is maintained by the University's police department. In support of its proposal, the FOP offers the following argument:

The FOP's proposal simply seeks to provide bargaining unit employees the same access to Departmental Files that they have for their Personnel Files. As the two separate files can carry equal weight, and have equal impact (negative or positive) on the employment of bargaining unit members, it seems overwhelmingly equitable to allow similar access to both. Employee access to their Departmental File places absolutely no burden (financial or otherwise) on the University, and the fact that employees may better be able to identify incorrect or outdated information contained therein actually helps the University in ensuring the accuracy of its information.

The University does not deny that the Departmental files contain disciplinary or other potentially damaging information on employees, but simply argues, without justification or explanation that Departmental Files should be confidential because they are "working files kept by managers

which may contain notes, impressions, and other information, which is characterized as deliberative and consultative.” This nonsensical argument is insufficient to support the Employer’s unreasonable objection to this proposal. The Public Employment Relations Commission has long-held that a proposal requiring an employer to provide an employee with notice or copies of information contained in a personnel file does not interfere with the exercise of any managerial prerogative. See Princeton Reg. Bd. of Ed., 28 NJPER ¶33143 (20020; Carteret Bd. of Ed., 35 NJPER 76 (2009).

The harm to bargaining unit employees under the current access restrictions far outweighs the harm, if any, to the University should such access be allowed. Furthermore, basic notions of fairness, equity and due process demand that the FOP’s proposals that bargaining unit employees have the same access to their Departmental Files as they do to their Personnel Files, be adopted by the Arbitrator.

UMDNJ opposes this proposal. It contends that Departmental Files are utilized by supervisors for internal purposes and contain notes and confidential information that it deems deliberative and consultive that are never provided to any outside entity.

It appears, on this record, that there is a distinction between the two types of files and that there are interests on both sides that, depending on the situation, warrant that certain information be kept confidential while other information be kept confidential while other information be made available to the affected employee. In the latter category, information that could be reasonably be used by the University to influence or affect decisions on promotions and discipline could directly and intimately affect an employee. Accordingly, I award the following language:

Departmental Files shall remain within the exclusive domain of the Police Department except that an employee may submit a written request to observe information that reasonably could be used by the University to influence or affect decisions to promote or discipline a unit employee. Any such observation shall be on the employee's own time. Any documentation that the University intends to use in a promotional or disciplinary proceeding involving a unit employee shall, at the employee's request be copied and received by the employee.

WORK SCHEDULES – FOP LODGE 74

The FOP proposes to add new language to the Schedules provision in Article IX for the FOP Lodge 74 unit.

Upon execution of this agreement, all full-time police officers shall be scheduled to work a twelve (12) hour shift, except for those officers assigned to the Scotch Plains Campus or to the Detective Bureau, which shall continue to maintain eight (8) hour shifts. Accrual and use of vacations, sick time and float days shall be modified appropriately to reflect a police officer's twelve (12) hour shift schedule.

According to the FOP, the twelve hour shifts would increase morale, allow officers to spend more time with their families and receive every other weekend off. It contends that the work schedule change would benefit the University because there would be 33% fewer shift changes and therefore less time wasted during shift transition. It also believes that there would be reductions in the costs of overtime. The FOP points out that other UMDNJ bargaining units including HPAE Local 5089, CWA Local 1031 and Teamsters Local 97 all work twelve (12) hour shifts. The FOP further notes that UMDNJ had proposed a similar schedule in 1992 but never effectuated a change.

UMDNJ seeks rejection of the FOP work schedule proposal. It does not foreclose the possibility of implementing a twelve (12) hour shift at some future point, but asserts that the existing staff levels within the public safety department would not adequately cover twelve (12) hour shift assignments without costing a significant amount of overtime. UMDNJ also objects on the basis that its computerized payroll system is unable to accommodate overtime requirements within a four week cycle and that additional costs would be associated with employing a consultant and instituting new payroll software.

Although a change to a twelve (12) hour shift may be potentially feasible at the University, I do not award the FOP's proposal for such change at this time. There is insufficient evidence concerning what the operational impact of such schedule change would be on the Department and whether existing staff levels would routinely be able to provide shift coverage on a straight time basis. These issues may be examined and considered by the parties on a going forward basis but the proposal itself is denied.

OVERTIME PROCEDURES – FOP LODGE 74

The FOP proposes to modify existing contract language in Article IX to add the following language:

Modify existing contract to add the following language: "In instances where posted overtime has not been filled 48 hours prior

to the shift in question, the police officer with the least amount of mandates scheduled to work that day as listed in the mandatory overtime log shall be mandated to work. In instances where overtime has not been filled or is created within 48 hours of the shift in question and the voluntary list has been called, the police officer with the least amount of seniority scheduled to work that day shall be mandated to work. All mandated overtime shall be filled on a rotational basis, and police officers shall not be mandated more than once in a seven (7) day period, except in the case of an emergency. All mandated overtime shall be logged in the mandatory overtime log. No police officer shall be required to work more than sixteen (16) consecutive hours, except in the case of an emergency. Police officers may split mandated overtime.

In its post-hearing submission, the FOP sets forth the rationale in support of its proposal:

Under the current procedure, as articulated in Article IX, §B of the FOP 74 agreement (Ex. I), overtime is to be distributed on a rotational basis without discrimination. In cases where overtime is required and where there are no volunteers, then the least senior police officer on duty shall be required to stay and work the overtime on a rotational basis. In other words, the least senior officer shall work the overtime, but will not be "mandated" again until mandatory overtime has been assigned to the other officers in the campus.

The problem that has arisen is that the procedure outlined above is followed properly in some campuses, but not in others. Consequently, it is the position of the FOP that more clarity is required in order to ensure the process is correctly applied. Under the FOP's proposal, overtime opportunities created more than 48 hours in advance will be filled, absent any volunteers, by the officer scheduled to work that shift, who has been mandated to work overtime the least number of times, as recorded in the overtime mandate log maintained at each campus. If, on the other hand, the overtime is created less than 48 hours in advance, then the least senior officer scheduled to work that day will be required to work, on a rotational basis, regardless of mandates. Finally, in order to ensure that overtime is being fairly distributed, a goal of both the FOP and the University, mandated overtime shall be recorded in a log and maintained at each campus, and officers will not be

mandated to work overtime more than once in a seven day period, absent an emergency.

As the University's Supervisory handbook points out, many of the UMDNJ bargaining units have similar procedures for the fair and equitable distribution of overtime (Ex. E at pg. 13). For example, both Teamsters 97 and HPAE 5089 have procedures that mirror those proposed by FOP 74.

This non-monetary proposal places no burden on the University's operations, and is meant to ensure the core principle of equitable distribution of overtime. Accordingly, FOP 74 urges the Arbitrator to adopt this provision.

UMDNJ responds that the FOP proposal would impair the Department's ability to operate efficiently. It also submits that the proposal would unfairly impact the least senior officers by causing them to be assigned mandated overtime more frequently. The University asserts that the existing language provides for a fair distribution of overtime on a rotational basis and that the existing language should not be disturbed.

After due consideration of the FOP proposal, I am compelled to conclude that insufficient justification has been submitted to award changes to the existing language. There is little or no evidence that the existing procedures have resulted in the inequitable distribution of overtime. Accordingly, the proposal is denied.

SENIORITY – FOP LODGE 74

The FOP proposes that new language be added to Article XII stating that:

Police officers may bid for all newly created or newly available shifts, and such shifts shall be assigned to the bidding officer with the highest seniority.

The FOP contends that an award of its proposal would result in more senior officers having greater opportunities and flexibility to obtain more desirable shifts. The FOP explains that a senior qualified officer would be able to bid to change his or her shift if a vacancy is created or another night shift position is added. According to the FOP, this would prevent the University from placing a junior officer on a more desirable shift and it would serve to attract and retain qualified police officers. UMDNJ opposes the proposal asserting that it would remove its ability to assign the most suitable and most qualified officer to each respective shift, thereby interfering with its managerial prerogative.

Although the FOP argues that its proposal would require the assignment of only those officers who are qualified to fill a vacancy or newly created position, the language of its proposal omits reference to qualifications. Any such proposal must acknowledge the well established prerogatives of the employer with respect to seniority and bidding. In the absence of same, I do not award this proposal.

PRIOR BENEFITS – FOP LODGE 155

The FOP proposes to add language into the FOP Lodge 155 unit to mirror the “prior benefits” provision that exists in the FOP Lodge 74 agreement. That language states the following:

Any and all existing benefits, policies, practices and general working conditions uniformly affecting all Officers in the unit in effect on the date of this Agreement shall remain in effect except to the extent they are modified by this Agreement. If the University changes or intends to make changes which have the effect of eliminating or altering terms and conditions of employment, the University will notify the FOP and, if requested by the FOP within ten (10) days of such notice or of such change or of the date on which the change would reasonably have become known to the officers affected, the University shall within twenty (20) days of such request enter negotiations with the FOP on the matter involved, providing the matter is within the scope of issues which are mandatorily negotiable under the Employer-Employee Relations Act as amended and further, if a dispute arises as to the negotiability of such matters, then the procedures of the Public Employment Relations Commission shall be utilized to resolved such disputes.

The University objects to the proposal and asserts that the language therein is too broad and general and would effectively erode its prerogatives to effectively and efficiently operate the police department.

I am not persuaded by UMDNJ's objection to the proposal. The proposal contains equivalent language that exists in the FOP Lodge 74 Agreement and similar language in the Teamsters Local 97 agreement. The record does not show that the language of the FOP Lodge 74 Agreement has significantly interfered with the exercise of the University's prerogatives. The language provides opportunity for the FOP to assert that prior practices involving terms and conditions of employment can be maintained and not unilaterally altered in the absence of conflicting language in the collective negotiations agreement. Given the existence of similar language in the Lodge 74 Agreement and similar

language in the UMDNJ/Teamsters Local 97 agreement, the proposal to include this provision in the Lodge 155 Agreement is awarded.

EMPLOYEE RIGHTS – FOP LODGE 155

The FOP proposes to modify Article V of the Lodge 155 agreement to include “FOP Attorney” within definition of Lodge 155 representative.

The FOP Lodge 155 Agreement at Article V currently provides for the following language with respect to employee rights:

Any Member covered by this Agreement who receives a verbal or written request to report to the Human Resources Department, a supervisor, or other administrative officer of the University, on matters that the employee has reason to believe lead to disciplinary actions, at the employee's request shall be accompanied by an authorized FOP Lodge 155 representative, providing a Representative is available within two hours of notification to the employee. If the meeting is investigative in nature, the FOP Lodge 155 representative shall serve only as a witness or advisor during subsequent interrogation.

Where a Sergeant is being interviewed during the course of an investigation and where there is a reasonable likelihood that the individual being questioned may have formal charges preferred against him/her, the nature of those contemplated charges shall be made known to the Sergeant.

Where criminal charges are initiated, the rights of the employee to representation by his/her attorney shall not be violated.

The above provision has been modified pursuant to the parties' Stipulation No. 28 for the Lodge 155 unit to replace the language “any Sergeant” to “any

member” covered by this Agreement. In support of its proposal, the FOP offers the following argument:

While this proposal seems relatively uncontroversial, as it should make no difference to the University who represents the Union or an officer in such a meeting, the University has strongly insisted against such a provision. Indeed, on at least on occasion, when and FOP attorney did accompany a superior officer to such a meeting, the University refused to hold said meeting with the FOP attorney present.

This non-monetary proposal has no impact on the University in that it does not infringe on its ability to conduct investigations, discipline employees, or any other managerial right. Indeed, the FOP attorney, as a representative in such a meeting, would serve the same purpose, maintain the same role, and exercise the same rights as a union steward or other official. One argument that UMDNJ has raised in opposition to this provision is that it would not want to delay the commencement of such a meeting in order to wait for the arrival of the FOP attorney. This objection is simply without merit as the FOP has already agreed that the representative of the employee’s choice, in this case an FOP attorney, be available within two hours of notification to the employee.

There is no basis upon which the University can legitimately object to this proposal. To do so infringes on the FOP’s ability to determine its own internal procedures, including who shall represent the union in such meetings. The logical extension of such a policy would be that an employer could object to who the Union selects as president or grievance chair. Consequently, the Arbitrator is urged to adopt this proposal.

UMDNJ objects to the proposal. It submits that employees are protected by language allowing for an authorized FOP Lodge 155 representative to attend meetings which could lead to discipline. It contends that difficulties could arise by an FOP attorney being present and that it could lead to delays in the timing of the meetings.

In my evaluation of this proposal, I have considered the objections offered by UMDNJ but find that the objections, on balance, provide an insufficient basis to deny the proposal. The presence of an FOP attorney, as the representative selected by the employee, cannot impair the prerogatives of the University to interview or conduct any other aspect of an investigation nor limit its ability to discipline the employee. The existing language already provides for an authorized FOP Lodge 155 representative and requires that the representative be available within two hours of notification to the employee. Thus, an award of the proposal will have no effect whatsoever on the timeliness of the Employer's investigation. The existing language limiting the participation of an FOP representative during meetings that are investigative in nature would also apply to an FOP attorney. Accordingly, the proposal is awarded.

COMPENSATION

There are many issues in dispute that fall within the broad category of compensation and could, if awarded, impact on total annual economic change. Because of this, I have reviewed all of the parties' economic proposals under the general rubric of compensation although each individual proposed issue will be analyzed on its own merit. The FOP has proposed annual across the board percentage salary increases, annual step movement on the salary scales, increases in the experience differential, shift differential increase, special unit officer stipend increase, an hourly stipend for field training officers, uniform maintenance allowances and an hourly salary scale for Lieutenants. UMDNJ has

proposed an across the board increase for all police officers in FY 2008 but none thereafter, no annual step movement in any of the contract years and a "correction" to an alleged mistake to Step 7 of the BH salary table. It rejects all other FOP economic proposals beyond accepting the status quo in existing contract terms. In order to place the parties' proposals in proper context, I will set forth the existing compensation schemes.

The parties have negotiated a compensation structure in each of the two bargaining units. Both Agreements define the structure of a Salary Program including the following standards:

1. A system of position classifications with appropriate position descriptions.
2. A salary range with specific minimum and maximum rates and intermediate merit incremental steps therein for each position.
3. Regulations governing the administration of the plan, including an Employee Performance Evaluation.
4. The authority, method and procedures to effect modifications as such are required.

Each Agreement contains a salary scale that contains steps and incorporates Experience Differentials. The Lodge 74 Agreement contains nine (9) steps and the Lodge 155 Agreement contains five (5) steps. Rates of pay are expressed in hourly rates from which annual compensation can be derived based upon an annual work year of 2,080 hours. The scales contain an Experience Differential that provides for an additional \$0.25 per hour for incumbents with ten

(10) plus years of UMDNJ Police Officer experience and \$0.50 per hour for incumbents with fifteen (15) plus years of UMDNJ Police Officer experience. They are reflected in the salary scales as Grades D and E respectively. Based upon this structure, the respective salary scales for rank and file Police Officers (AH) and Sergeants (BH) showing the last rate of salary received appear as follows:

“AH” Salary Scale
Police Officers
Effective July 1, 2006

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$26.06	\$26.32	\$26.56
Step 2	\$27.31	\$27.57	\$27.81
Step 3	\$28.53	\$28.79	\$29.03
Step 4	\$29.78	\$30.04	\$30.28
Step 5	\$31.45	\$31.71	\$31.95

“BH” Salary Scale
Sergeants
Effective July 1, 2006

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$31.70	\$31.95	\$32.20
Step 2	\$32.66	\$32.91	\$33.16
Step 3	\$33.64	\$33.89	\$34.14
Step 4	\$34.64	\$34.89	\$35.14
Step 5	\$35.68	\$35.93	\$36.18
Step 6	\$36.75	\$37.00	\$37.25
Step 7	\$38.92	\$39.17	\$39.42
Step 8	\$38.99	\$39.24	\$39.49
Step 9	\$40.16	\$40.41	\$40.66

I next address each segment of the compensation issues.

Experience Differential

The FOP proposes the following increase to the existing Experience Differential:

Increase to \$0.75/hr for employees with ten (10) or more years of UMDNJ Police Office experience, and to \$1.00/hr for employees with fifteen (15) or more years of UMDNJ Police Officer experience beginning with contract year covering July 1, 2009 through June 30, 2010 and continuing thereafter.

UMDNJ opposes an increase to the Experience Differential and proposes that the amounts remain as currently set in each of the Agreements.

Both Agreements currently provide for an experience differential at ten (10) plus years and fifteen (15) plus years of service. The FOP proposal would triple the amount currently set at ten (10) plus years and double the amount for fifteen (15) plus years. As is provided, existing amount of pay in the schedules are linked solely to length of service and insufficient justification has been shown by the FOP for an increase in the existing payments. Accordingly, the proposal is denied.

Shift Differential

The FOP proposes that there be an increase in the shift differential in the amount of an additional \$0.25 in each year for each of the respective contracts. Currently, the shift differential for superior officers (Lodge 155) is set at \$2.25 per hour and at \$2.00 per hour for rank and file Police Officers (Lodge 74). UMDNJ proposes that the shift differential remain at \$2.00 per hour for Lodge 74. While it does not make a proposal for superior officers, it must be assumed that it seeks no change for Lodge 155. Neither party has established a basis for deviating from the existing levels of shift differential now set by mutual agreement in the respective labor contracts. Accordingly, the shift differentials shall remain as set forth in the existing agreements.

Special Unit Officers

Article VIII (C)(9) of the FOP Lodge 74 Agreement provides for a \$2,500 payment to Special Unit Police Officers assigned to a special unit. The FOP proposes the following increases for Special Unit Officers in the Lodge 74 bargaining unit:

- i. Special Unit Officers in Lodge 74 bargaining unit shall receive an annual "Special Unit" stipend increase of \$500, from \$2,500 to \$3,000 beginning in the contract year covering July 1, 2008 through June 30, 2009; and an additional "Special Unit" stipend increase of \$500, from \$3,000 to \$3,500 beginning the contract year covering July 1, 2010 through June 30, 2011.

The FOP Lodge 155 Agreement does not presently provide for an annual Special Unit stipend. The FOP proposes that there be such a stipend in accordance with the following schedule:

- ii. Special Unit Officers in Lodge 155 bargaining unit shall receive an annual "Special Unit" stipend increase of \$1,500 beginning in the contract year covering July 1, 2008 through June 30, 2009; and an annual "Special Unit" stipend increase of \$500, from \$1,500 to \$2,000 beginning the contract year covering July 1, 2010 through June 30, 2011.

UMDNJ proposes to maintain the existing level of Special Unit pay as is currently set forth in the FOP Lodge 74 Agreement at \$2,500 and rejects the FOP proposal to extend such payments to FOP Lodge 155 members.

The FOP views its proposal to increase the amount of the Special Unit Stipend as being reasonable for the work that is performed and that it is equitable to extend the Special Unit Stipend, albeit at a lower level, for superior officers. UMDNJ urges rejection of each aspect of the FOP proposal. It asserts that no basis has been shown for an increase in the stipend nor an extension of the stipend to superior officers. UMDNJ claims that the FOP has not established that special units exists for Sergeants and that whatever duties are claimed to fit within that definition are already assumed under current responsibilities for which compensation is already provided.

I do not award the FOP proposal to increase the amount of the stipend or to extend the stipend to the Lodge 155 unit. The financial impact of awarding the

FOP proposal during this contract term has not been justified. It is noted that this stipend increased by \$500 during the term of the last agreement. Maintaining the status quo in this amount for the term of this Agreement is an appropriate resolution of the issue. The part of the proposal that would extend the stipend to Lodge 155 is also not awarded based upon my conclusion that the basis for the stipend in the police officer unit has not been proven on this record to exist for the superior officers.

Field Training Officers

The FOP proposes that officers designated by UMDNJ as “Field Training Officers” receive an additional \$1.25/hr for all hours worked in such a capacity. UMDNJ seeks the denial of this proposal. The FOP points to the Rutgers agreement which provides a \$300 stipend per training period for officers assigned as “Training Officers.” The FOP does not attach a cost to the proposal but believes that the stipend in the Rutgers agreement would exceed its proposal to provide \$1.25 per hour for all hours worked by a police officer in the capacity of a Field Training Officer. UMDNJ seeks the denial of this proposal. It asserts that no police officer or Sergeant has ever been designated as a Field Training Officer and that the job descriptions for both titles include the expectation for training.

The record does reflect that a Field Training Program does exist as provided for in a 2005 document providing for General Operating Procedures for

the Field Training Program. Therein, there is program policy, eligibility requirements and details for the training required to become a Field Training Officer. The main responsibility is to serve as a trainer or evaluator of a probationary officer. The FOP provides mention of several officers who have completed such training. Notwithstanding these arguments, I do not award the FOP proposal. Although it appears that there would not be substantial cost if this proposal were awarded, additional clarity need be required as to when and how often unit members are required to serve in the capacity of a Field Training Officer and whether such service is performed during a normal shift or requires additional duties beyond the normal workday. In the absence of credible evidence on this, the proposal is denied.

Article VI, Wages – Lieutenant Salary Scale

The FOP proposes that Lieutenants in the Lodge 155 unit be placed into a five step salary scale. Its proposal states the following:

Effective upon the date of the Arbitrator's award, all Lieutenants shall be slotted into a five-step salary scale at a rate which reflects the next highest in value to the Lieutenant's rate at such time. The salary scale for Lieutenants shall be as follows, effective July 1, 2007: Step 1: \$32.20/hr; Step 2: \$35.42/hr; Step 3: \$38.65/hr; Step 4: \$41.87/hr; and Step 5: \$45.09/hr.

The FOP makes the following arguments in support of its proposal:

Historically, lieutenants were not included in the FOP 155 bargaining unit. Accordingly, for many years, lieutenants worked under different terms and conditions than represented sergeants.

For example, instead of having a salary scale with steps, as the sergeants do, the University created a second level to the Captain's "Minimum – Middle Point – Maximum" guide (Ex. V). Specifically, lieutenants are considered Grade 28, with a minimum salary of \$69,001.00, a middle point of \$82,804.00 and a maximum of \$96,613.00 (*Id.*). The sole lieutenant, Frank DeMarzo, earns a salary of \$87,070.00, within the above-referenced range. (Ex. P).

On or about April 9, 2007, just prior to the expiration of the most recent collective negotiations agreements, lieutenants, of which there is now one (1), were included in the Lodge 155 unit by way of a representation petition (PERK Dkt. RO-2007-035). On or about April 9, 2007, the PERC Director of Representation issued a decision adding the lieutenant position to the bargaining unit so that the bargaining unit represented by FOP 155 includes all full-time police lieutenants and sergeants employed by UMDNJ. Based on the submission of authorization cards, the Director also certified the Lodge as the exclusive representative of that bargaining unit. Since the lieutenant position was added just prior to the expiration of the previous collective negotiations agreement, the position was never afforded many of the benefits enjoyed by other members of the unit, e.g., a salary schedule. Indeed, it was agreed that the terms and conditions of employment for a lieutenant position were to be discussed during the instant term negotiations.²¹

Accordingly, in an effort to treat the newly added lieutenant bargaining unit position equally with the existing bargaining unit positions, FOP 155 has proposed implementing the following five-step salary scale, effective July 1, 2007, subject to any general wage increases awarded:

	<u>Hourly Rate</u>	<u>Annual Rate</u>
Step 1	\$32.20	\$66,976.00
Step 2	\$35.42	\$73,673.60
Step 3	\$38.65	\$80,392.00
Step 4	\$41.87	\$87,089.60
Step 5	\$45.09	\$93,787.20

For practical purposes, the existing lieutenant, who earns an annual salary of \$87,070, would be slotted at Step 4 upon implementation

of the scale, which is just \$19.60 more than his current annual salary, and would receive any general wage increases and step moves awarded in this proceeding.

FOP 155's proposal is fair and reasonable for many reasons. First, it treats the lieutenant position in a manner that is equal to its counterparts in the bargaining unit by establishing a step system. The job of a police officer is hindered when her/his morale is reduced by sub-standard working conditions, such as that which would be experienced by UMDNJ lieutenants without a salary scale. Moreover, if the discrepancy in working conditions between sergeants and lieutenants, members of the same bargaining unit, continues, not only would morale be reduced, but the University would face the same difficult task of retaining and hiring qualified lieutenants in its police force. This, of course, negatively impacts the interest and welfare of the students and employees of UMDNJ, as well as the surrounding residents and businesses. The public, therefore, has a strong interest in the lieutenant being treated equitably in relation to fellow bargaining unit members.

Further, it is noteworthy that FOP 155's proposal reduces the salary range for lieutenants by approximately \$2,000 at the bottom of the scale and \$3,000 at the top of the scale. Accordingly, the University, over time, would see a net savings from this proposal. More specifically, were the lieutenant to earn a maximum salary under the existing structure, he would receive a \$9,543 increase from his current annual salary. Under FOP 155's proposal, the increase to reach the top step, from Step 4, would only be \$6,697.60. The net savings to the University would be \$2,845.40 in the first year of the agreement and \$11,381.60 over the course of a four year contract. In fact, it does not matter when the lieutenant reached maximum salary under the existing structure, in the long term, under FOP 155's proposal, the University would recoup any monies paid out. Of course, the savings to the University is increased in the instance where it decides to hire or promote additional officers into the lieutenant position. Accordingly, in the long-term, there is no cost to the University should the lieutenant position be placed on the salary step scale, as described above.²²

It is also important to note that the placing of police lieutenants on a salary scale, like the one proposed in this matter, is not a foreign concept. Indeed, the collective negotiations agreement between Rutgers and the Fraternal Order of Police Superior Officers Assoc., which includes in the bargaining unit Police Sergeants, Senior Sergeants, Detectives, Senior Detectives, and Lieutenants, have

three separate salary guides, with regular step increments, one of which applies specifically to lieutenants.²³

²¹ See, for example, stipulations 26, 31 and 32.

²² Even if the University kept the lieutenant's salary static at \$87,070 for all four (4) years of the agreement, the maximum total cost during the term of said agreement would be a mere \$6,697.60 for each year that the lieutenant is paid at Step 4, or \$26,790.40. As stated above, however, this sum would be recouped by the savings built into FOP 155's proposal in no more than ten (10) years.

²³ It is recognized that the NJIT Lieutenants agreement does not cover sergeants (sergeants have a separate agreement), and the Lieutenants agreement contains a merit pay provision which does not exist in the instant agreement.

The University makes the following argument opposing the FOP proposal:

Due to the nature of the position and the duties involved, the Lieutenant title was created as an "exempt" title under the Fair Labor Standards Act. As such, a minimum, midpoint, and maximum salary range for the titles was established. The classification determination was made by the Compensation Services division which provides the expertise within Human Resources with regard to the appropriate classification of titles.

In an attempt to modify the Lieutenant's status from "exempt" to "non-exempt" under the Fair Labor Standards Act and make the title eligible for overtime, FOP Lodge 155 proposed a five-step salary scale based upon an hourly rate.

UMDNJ respectfully submits that a Lieutenant's role must remain "exempt" under the Fair Labor Standards Act. Any effort to convert a Lieutenant's salary into an hourly rate must be rejected.

I first address the University's objection to the FOP proposal alleging that it attempts to modify the Lieutenant's status from "exempt" to "non-exempt" under the Fair Labor Standards Act. This assertion is based upon the University's view that a conversion from an annual salary to an hourly rate would cause such a conversion. The issue of exempt status is not before me and indeed beyond my authority. Nothing herein is intended to affect such status one way or another. Instead, I address this issue focused solely upon but a reasonable determination

as to what the Lieutenant's salary should be now that the rank of Lieutenant has been included in the superior officer bargaining unit.

The record reflects that there is one Lieutenant who earned a salary of \$87,070. The highest annual salary for the rank of Sergeant under the "BH" salary table at Grade 23C, without crediting the Experience Differential is \$83,533 based upon an hourly rate of \$40.16 at Step 9. In addition, there is a \$0.25 per hour Experience Differential at ten (10) years (Grade 23D) and an additional \$0.25 per hour Experience Differential at fifteen (15) years (Grade 23E).

It is a commonly accepted principle in human resource policy, especially in the para-military law enforcement structure, to provide reasonable rank separation and to avoid vertical compression. In the case of the single Lieutenant, the rank separation as of June 30, 2007 (\$87,070 - \$83,533 – Step 9, Grade 23C) amounted to \$3,537, or 4.23%. I do not award the FOP's proposal for a salary scale structure for Lieutenants on an hourly rate basis. While there may be a legitimate basis to reward a Lieutenant based upon years of service, that can be accomplished through the application of the Experience Differential rather than a salary schedule with steps. I find that there should be a reasonable amount of rank separation at a 5% level for the rank of Lieutenant commencing with the effective date of the first across the board increase for Sergeants under the terms of this Award. In order for the differential to be consistent among the

ranks, the Lieutenant should, if not already provided,¹ have the same access to the Experience Differential as those in the Sergeant Rank. The specific salary level for the Lieutenant will be determined at the end of the discussion for the general wage increases for Lodge 74 and Lodge 155.

Article VIII, Wages – Correction to Step 7 of the BH Salary Table

UMDNJ advances a wage proposal that it contends serves as a “correction to Step 7 of the BH Salary Table. The proposal states:

The parties could not reach agreement on a stipulated side letter addressing the correction to the BH salary table. Therefore, the following is included as part of UMDNJ's proposal relating to wages.

UMDNJ proposes a correction to Step 7 of the BH salary table from \$38.92 to \$37.85. This correction aligns this step with the correct step progression (3%) for this table.

There are two (2) incumbent employees on step 7 who have benefitted from the error and have in actuality been overpaid. UMDNJ proposes the following remedy: The employees currently on Step 7 shall maintain their current rate (\$38.92) and shall receive all general increases. However, these two employees will forego the next contractually scheduled step move, whenever such might occur. They will then resume eligibility for step moves and be placed on step 8, when appropriate, of the then existing salary scale.

The UMDNJ proposal is aimed at addressing what it terms is an “error” in constructing the BH (Sergeants’) salary Step 7 in the salary scale at the Grade 23C levels. The step table is constructed with steps that the University claims

¹ The record is silent on this point. Thus, it cannot be determined whether the \$0.25 or \$0.50 per hour for the single Lieutenant will have any direct cost impact.

should be 3% apart between Step 6 and Step 7, but at \$38.92 per hour is 6% higher than Step 6 (\$36.75 per hour) while Step 8, at \$38.99 is only \$.07 higher than Step 7 (\$38.92). UMDNJ points out that the step move from Step 6 to Step 7 is, erroneously, the equivalent to a double step. It seeks to modify Step 7 to \$37.85 to make this step a 3% difference with Step 6. The main area of dispute is how the salaries for the two Sergeants on Step 7 will be handled. It is a significant issue because of the seven Sergeants who are now at Step 6 and could move to Step 7.

The University makes the following argument:

While FOP Local 155 seems to agree with the concept, it is concerned with the two (2) sergeants currently on step 7 who have benefited from this error by being overpaid. UMDNJ is not asking to reduce their rate when the step is corrected or recoup the overpayment. Rather, UMDNJ proposes the following remedy that the Interest Arbitrator should make as part of his opinion: *that the subject employees be given all general increases, but must forgo the next contractually scheduled step whenever said action occurs. The two employees will then resume eligibility for step moves and be placed on Step 8 of the then existing salary scale.* Contrary to the FOP's contention, UMDNJ's proposal is not "vindictive," nor is UMDNJ attempting to "punish" either of the sergeants presently on Step 7. FOP Local 155 cannot ignore the fact that the two (2) sergeants did receive overpayment. UMDNJ's proposal is therefore the most equitable solution, and as such, must be made part of the new agreement.

The FOP opposes the University's proposal. It makes the following arguments in support of denial:

UMDNJ seeks to unfairly penalize the two (2) sergeants who are currently paid at Step 7 (\$38.92), not by reducing their pay, but by

forcing them to forego the first of any future step increases, and when they are thereafter eligible for a step move, said step move shall only be to Step 8, or \$0.07 higher than their current rate. In practical terms, the University's proposal would result in sergeants at the existing Step 7 having to forego two (2) step moves.⁵

As stated in its initial Position Statement, FOP 155 sees the merit in adjusting Step 7 in an effort to maintain the 3% increment between the steps, and accordingly, agree to this portion of UMDNJ's proposal. FOP 155, however, does not agree to the penal nature in which UMDNJ seeks to treat the two sergeants who, by no fault of their own, are caught in the middle. To be clear, to the extent a mistake occurred, it was UMDNJ's mistake, and not the fault of the two Step 7 sergeants. UMDNJ's attempt to punish these sergeants is nothing short of vindictive and seeks to lay blame where it certainly does not belong.

Based on the foregoing, the FOP agrees to UMDNJ's proposal to adjust Step 7 to \$37.85, so long as the two (2) sergeants at the current Step 7 receive no loss in pay, and all wage increases and step moves in concert with their fellow sergeants. The balance of equities favors such a scheme considering the savings (approximately \$15,579.20) that UMDNJ will experience as a result of this adjustment in the first year of a step increase.

Consequently, while the Arbitrator is encouraged to adjust Step 7 on the Sergeant Salary Scale, he is also encouraged to order that the two (2) sergeants currently at Step 7 experience no loss in pay, and that they be granted wage increases and step moves, as the arbitrator may otherwise award, in concert with their colleagues in the bargaining unit.

⁵ The University takes the position that these two (2) sergeants unfairly received a higher hourly rate than they were entitled. On the contrary, the salary scale adopted by the parties in their collective negotiations agreement, clearly lists the rate for Step 7 at \$38.92. Accordingly, these sergeants were paid properly, according to the parties' agreement, though perhaps not according to the intent of the University. Moreover, the fact that these sergeants have received the Step 7 rate for three (3) years is not their fault, but the result of the failure of UMDNJ to negotiate an agreement to implement an adjustment. Accordingly, these Sergeants should not be penalized for events completely outside of their control.

After review of the parties' respective positions on the issue of correction to Step 7 of the BH salary table, I reach the following conclusions which I believe represents a reasonable solution to the issue. The distortion in Step 7 affects

Grades 23C, 23D and 23E. In 2007-2008, there is no step movement. The two incumbents are on Step 7 (23E) receiving \$39.42 per hour. They shall be red-circled at the \$39.42 rate during the 2007-2008 contract year. Effective July 1, 2007, Step 7 of the BH salary table shall be modified to provide a 3% step progression between Step 6 and Step 7 at Grades 23C, D and E. This shall be accomplished by reverting the Step 7 Grade 23C rate to a rate of \$38.37 and then adjusting that rate by the 2.5% increase. Experience differential adjustments will continue to be made to Step 7, 23D and E. All employees occupying Step 6 in 2006-2007 remain there in 2007-2008 and shall move to the newly modified Step 7 rates when they move to Step 7 in contract year 2008-2009. I do not award the proposal to require the two incumbent employees to forego their next contractually scheduled step move. Instead, they will move from their red-circled rate in 2007-2008 to Step 8 (23E) in contract year 2008-2009, to the new Step 9 (23E) during the 2009-2010 contract year and remain at the new Step 9 (23E) in the 2010-2011 contract year.

Annual Wage Increases

The FOP proposes annual wage increases for both Lodge 74 and Lodge 155:

- i. 5.5% retroactive increase for the contract year covering July 1, 2007 through June 30, 2008;
- ii. 5.0% retroactive increase for the contract year covering July 1, 2008 through June 30, 2009;

- iii. 5.5% retroactive increase for the contract year covering July 1, 2009 through June 30, 2010;
- iv. 5.0% increase (retroactive, if necessary) for the contract year covering July 1, 2010 through June 30, 2011;

UMDNJ makes the following wage proposal for Lodge 74:

FISCAL YEAR 2008

- a) Effective the pay period closest to July 1, 2007, Police Officers in the bargaining unit as of the date of Arbitrator Mastriani's final decision, having also been employed in the eligible UMDNJ title as of June 30, 2007, shall receive an across-the-board increase in base rate of pay of 2.5%, plus the Experience Differential of \$.25/hr for incumbents with ten (10) years of UMDNJ Police Officer experience and \$.50/hr for incumbents with fifteen (15) years of UMDNJ Police Officer experience.
- b) The AH salary table step rates shall be increased by 2.5%.

FISCAL YEAR 2009

- a) Effective the pay period closest to July 1, 2008, there shall be a 0% increase to the base rate of pay of the Police Officers. The Experience Differential of \$.25/hr for incumbents with ten (10) years of UMDNJ Police Officer experience and \$.50/hr for incumbents with fifteen (15) years of UMDNJ Police Officer experience shall continue
- b) There shall be no increase to the AH salary table step rates.

FISCAL YEAR 2010

- a) Effective the pay period closest to July 1, 2009, there shall be a 0% increase to the base rates of the Police Officers. The Experience Differential of \$.25/hr for incumbents with ten (10) years of UMDNJ Police Officer experience and \$.50/hr for incumbents with fifteen (15) years of UMDNJ Police Officer experience shall continue
- b) There shall be no increase to the AH salary table step rates.

FISCAL YEAR 2008

- a) Effective the pay period closest to July 1, 2007, Sergeants in the bargaining unit as of the date of Arbitrator Mastriani's final decision, having also been employed in the eligible UMDNJ title as of June 30, 2007, shall receive an across-the-board increase in base rate of pay of two and one-half percent (2.5%), plus the Experience Differential of twenty-five cents (\$.25) per hour for incumbents with ten (10) years of UMDNJ Police Officer experience and fifty cents (\$.50) per hour for incumbents with fifteen (15) years of UMDNJ Police Officer experience.
- b) The BH salary table step rates shall be increased by two and one-half percent (2.5%).
- d) Effective the pay period closest to July 1, 2007, Lieutenants in the bargaining unit as of the date of Arbitrator Mastriani's final decision, having also been employed in the eligible UMDNJ title as of June 30, 2007, shall receive an across-the-board increase in base salary of two and one-half percent (2.5%).

FISCAL YEAR 2009

- a) Effective the pay period closest to July 1, 2008, there shall be a zero percent (0%) increase to the base rate of pay of the Sergeants. The Experience Differential of twenty-five cents (\$.25) per hour for incumbents with ten (10) years of UMDNJ Police Officer experience and fifty cents (\$.50) per hour for incumbents with fifteen (15) years of UMDNJ Police Officer experience shall continue.
- b) There shall be no increase to the BH salary table step rates.
- d) Effective the pay period closest to July 1, 2008, there shall be a zero percent (0%) increase to the base rate of pay of Lieutenants.

FISCAL YEAR 2010

- a) Effective the pay period closest to July 1, 2009, there shall be a zero percent (0%) increase to the base rate of pay of the Sergeants. The Experience Differential of twenty-five cents (\$.25) per hour for incumbents with ten (10) years of UMDNJ Police Officer experience and fifty cents (\$.50) per

hour for incumbents with fifteen (15) years of UMDNJ Police Officer experience shall continue.

- b) There shall be no increase to the BH salary table step rates.
- d) Effective the pay period closest to July 1, 2009, there shall be a zero percent (0%) increase to the base rate of pay of Lieutenants.

In addition to the across the board increases that the FOP has proposed, it also proposes that each eligible police officer or superior officer receive an annual step increase. The proposal states:

Annual Step increases shall be effectuated on a Police Officer's or Superior Officer's anniversary date (For Lodge 74, date hired as UMDNJ Police Officer; For Lodge 155, date promoted into unit) provided she/he receives a satisfactory performance evaluation.

UMDNJ proposes that there be no step movement for any member of either bargaining unit during any years of the Agreement.

I first address the issue of step movement. As has been shown above, each Agreement contains a salary scale. Police officers have a five (5) step scale while sergeants have a nine (9) step scale. If step movement is to occur, the Agreements state that such movement is made on an employee's anniversary date providing that the employee receives at least a satisfactory performance evaluation. The evaluations are based upon a rating system.

Under the stipulations that the parties have made, UMDNJ and FOP Lodge 155 have agreed upon a numerical overall evaluation rating numbering one (1) through five (5) as follows:

- 5 – This staff member has made significant contributions to advance the position of the department and/or University toward excellence and prominence.
- 4 – This staff member has been instrumental to the department's success and has performed in an exemplary manner.
- 3 – This staff member is proficient. Performance is what is expected of a fully qualified and experienced person.
- 2 – This staff member occasionally fails to exhibit proficiency. Improvement is necessary to meet the expectations for acceptable performance.
- 1 – This staff member has serious deficiencies in key areas. Performance fails to meet expectations and is not acceptable.

Under the above system, the parties have also addressed eligibility for receipt of a merit or step increase:

Section B

Employees receiving a rating of 2 shall not be entitled to receive a merit or step increase, if applicable. The supervisor shall review the performance deficiencies with the employee and shall counsel the employee as to appropriate steps which should be taken to improve performance and shall review with the employee any warnings or prior counseling received with respect to performance. The employee's performance must be re-evaluated within 90 days. If the re-evaluation rating is a 3 or better, the employee shall receive any applicable merit/step increase as of the re-evaluation. If upon re-evaluation the performance has not come up to a rating of 3, then the re-evaluation shall be considered to be a final warning for purposes of the disciplinary process. The supervisor shall also advise the employee that failure to improve performance may result in further discipline up to and including discharge.

Section C

Employees receiving a rating of 1 shall not be entitled to receive a merit/step increase for that fiscal year. Such performance evaluation shall be considered as a final warning for purposes of

the disciplinary process and puts the employee at risk of termination. The supervisor shall review the performance deficiencies with the employee and shall counsel the employee as to appropriate steps which should be taken to improve performance and shall review with the employee any warnings or prior counseling received with respect to performance. The performance of employees receiving a rating of 1 shall be carefully monitored by the supervisor. The supervisor shall advise the staff member that failure to immediately correct and maintain performance to a satisfactory (3) rating or better will result in his/her discharge.

The FOP Lodge 74 Agreement does not contain the numerical overall evaluation rating process stipulated to by UMDNJ and FOP Lodge 155 but notes from the mediation/arbitration proceeding reflect that a similar scheme applicable to Lodge 74 exists and is set forth in University policy.

Based upon the above, it is fair to conclude that satisfactory or proficient job performance over the course of a full year would give rise to a reasonable expectation that a police or superior officer would receive advancement to the next step of the salary scale. However, this expectation must be balanced by record evidence showing that step increases on the step scales have been negotiated and have not been deemed an automatic entitlement. Evidence of this is the prior agreement wherein the basic salaries for all police officers and superior officers were annually increased by percentage amounts but without step movement occurring in fiscal years 2005 and 2007. Whether there should be no step movement as the University has proposed or annual step movement as the FOP has proposed or any combination thereto must be subject to the overall analysis on finances and wages that follows rather than the subject of an

individual award in the abstract. As the following analysis will reflect, I have awarded no step increase in 2007-2008 succeeded by annual step movements in 2008-2009, 2009-2010 and 2010-2011. In doing so, I have considered the relationships in cost between the steps and the general wage increase.

The wage disagreement between the parties reflects substantial differences. Under the conventional arbitration authority given to me, I am not compelled to adopt either party's last offer, although it falls within my judgment to do so. The record evidence on the wage issue, after giving due regard for the statutory criteria, has lead me to the conclusion that neither party's proposals represents a reasonable determination of the salary dispute.

While all of the statutory criteria are relevant, some are entitled to greater weight than others. There is seldom a line of demarcation that isolates the evidence concerning a single criterion from all the rest because there are interrelationships, and in some instances contradictions, between one or more of the criteria. The interests and welfare of the public [N.J.S.A. N.J.S.A. 34:13A-16g(1)] is paramount because it is a criterion that embraces many of the other factors and recognizes their interrelationships. The interests and welfare of the public clearly require that the University support and fund an effective, efficient and productive police force. Much of the University's property lies in high crime areas. Its mission is diverse and includes a higher education setting, hospitals and community outreach. Its population consists of students, patients, visitors,

employees and workers whose safety must be protected. It must provide terms and conditions of employment consistent with maintaining a police force that can meet these demands. This criterion also implicates the financial impact of an award on the University [N.J.S.A. 34:13A-16g(6)] because the University's obligations to fund the police department must be consistent with its financial capabilities to do so. The interests and welfare of the public extend to wage and benefit comparisons [N.J.S.A. 34:13A-16g(2)(a), (b), (c)] because levels of wages and benefits of its police officers compared to similarly situated employees and other employees employed by the University have been recognized by the legislature as one of the criteria and such evidence relates to employee and department morale, job satisfaction and productivity. The interests and welfare of the public are also implicated in the levels of overall compensation and benefits received [N.J.S.A. 34:13A-16g(3)] because levels of existing terms of employment are a reasonable benchmark upon which to evaluate either party's proposals for change and such terms can contribute to, or adversely impact on, the continuity and stability of the Township's police officers [N.J.S.A. 34:13A-16g(8)]. The cost of living criterion [N.J.S.A. 34:13A-16g(7)] also implicates the interests and welfare of the public because it is an indicator that influences the public's sentiment and willingness to support changes in contract terms and it also serves as a measure to evaluate how revised contract terms could affect a police officer's standard of living. I evaluate the parties' proposals based upon all of these considerations and the evidence each party has submitted in connection with the statutory criteria.

The police force is an active one and operates in a difficult environment. While there have been no instances of murder, manslaughter or arson, the crime statistics and the Certification of Director of Public Safety Huertas show the bulk of crimes to involve robbery, aggravated assault, vehicle theft and drug abuse. The nature of the work has not diminished and unit employees warrant improved terms and conditions of employment to the extent that the University's finances and other relevant factors permit

The submission concerning the University's finances is comprehensive. The Certification from Francis X. Colford, the University's Vice President and Treasurer, consisting of 131 points, is descriptive of the University's sources of funding, its facilities, its operations, its expenditures and the changing landscape for its finances. The FOP's proposals, when measured in conjunction with the evidence concerning the University's finances are not consistent with the University's financial resources as described by Vice President Colford. The FOP accurately states that the costs of running the police department are small in relationship to the University's overall budget and assets and therefore have little overall financial impact. This view is based upon the fact that the base salaries on July 1, 2007 are \$3,863,239 for Lodge 74 and \$1,878,363 for Lodge 155 in comparison to the University's overall appropriations, not including grants, of \$268,546,000 in FY 2007. This contention has little support when balanced with facts showing significant declines in the University's appropriations in FY

2008, FY 2009 and FY 2010 and its obligations to fund all of its massive responsibilities including the police department. The FOP's proposals are also not consistent with the data submitted by the University showing sharp declines in the economy towards the end of 2008 and into 2010. The FOP's proposals are more reflective of the robust economy prior to the onset of the recession in 2008. In this context, the FOP's proposals, not including step movement, compounding or accumulated costs, amounts to \$811,280 in the Lodge 74 unit and \$394,445 in the Lodge 155. When such costs are considered, the proposal exceeds 32%. Such costs are excessive and not consistent with the University's financial capacities, even when balanced with the comparability evidence that points to higher wages than the University has proposed.

The University, while effectively countering that the costs of the FOP wage proposals would cause adverse financial impact, has not demonstrated that additional costs beyond its own proposal cannot be funded within its financial capabilities. Further, its proposal does not effectively take comparability evidence into account which establishes wage increases at Rutgers and NJIT well in excess of what the University has proposed. Its proposal carries a cost of \$96,580 for Lodge 74 and \$46,959 for Lodge 155 in 2007-2008, \$0.00 for Lodge 74 and \$0.00 for Lodge 155 in 2008-2009, and \$0.00 for Lodge 74 and \$0.00 for Lodge 155 in 2009-2010. The proposed 2.5% increase over three years also falls well below the University's own cost of living data showing an 8.0% increase over the relevant time period.

When the entire record of this proceeding on wages is evaluated, I conclude that a reasonable determination of the wage issue is 2.5% applied to the AH and BH salary scales effective July 1, 2007 with no step movement, 1.75% applied to the AH and BH salary scales effective July 1, 2008 with step movement, 1.5% applied to the AH and BH salary scales effective July 1, 2009 with step movement, and 1.25% applied to the AH and BH salary scales effective July 1, 2010 through June 30, 2011 with step movement. I will set forth each salary scale for each contract year along with calculations of cost for the terms of the award in each unit for each year.

The AH scale effective July 1, 2007 is as follows:

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$26.71	\$26.98	\$27.22
Step 2	\$27.99	\$28.26	\$28.51
Step 3	\$29.24	\$29.51	\$29.76
Step 4	\$30.52	\$30.79	\$31.04
Step 5	\$32.24	\$32.50	\$32.75

Because the across the board increase of 2.5% is to be applied to each step of the salary scale with no step movement, the costs over the prior year's base are \$96,580 or 2.5% and are identical to the cost of the University's proposal.

The BH scale effective July 1, 2007 is as follows:

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$32.49	\$32.75	\$33.01
Step 2	\$33.48	\$33.73	\$33.99
Step 3	\$34.48	\$34.74	\$34.99
Step 4	\$35.51	\$35.76	\$36.02
Step 5	\$36.57	\$36.83	\$37.08
Step 6	\$37.67	\$37.93	\$38.18
Step 7	\$38.80	\$39.05	\$39.30
Step 8	\$39.96	\$40.22	\$40.48
Step 9	\$41.16	\$41.42	\$41.68

Because the across the board increase of 2.5% is to be applied to each step of the salary scale with no step movement, the costs are \$42,549 over the prior year's base and are identical to the cost of the University's proposal. This sum recognizes that the two incumbents at Step 7 (23E) will not receive the 2.5% increase because their salaries were red-circled on July 1, 2007 at the 2006-2007 rate. This reduces the percentage increase to 2.3% over the prior year's base.

The AH scale effective July 1, 2008 is as follows:

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$27.18	\$27.45	\$27.70
Step 2	\$28.48	\$28.75	\$29.01
Step 3	\$29.75	\$30.03	\$30.28
Step 4	\$31.05	\$31.33	\$31.58
Step 5	\$32.80	\$33.07	\$33.32

Because the across the board increase of 1.75% is to be applied to each step of the salary scale with step movement, the overall costs are \$152,507 or 3.85% over the prior year's base.

The BH scale effective July 1, 2008 is as follows:

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$33.06	\$33.32	\$33.59
Step 2	\$34.07	\$34.32	\$34.58
Step 3	\$35.08	\$35.35	\$35.60
Step 4	\$36.13	\$36.39	\$36.65
Step 5	\$37.21	\$37.47	\$37.73
Step 6	\$38.33	\$38.59	\$38.85
Step 7	\$39.48	\$39.74	\$40.00
Step 8	\$40.66	\$40.92	\$41.19
Step 9	\$41.88	\$42.14	\$42.41

Because the across the board increase of 1.75% is to be applied to each step of the salary scale with step movement, the overall costs over the prior year's base are \$69,929 or 3.5%.

The AH scale effective July 1, 2009 is as follows:

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$27.59	\$27.86	\$28.12
Step 2	\$28.91	\$29.18	\$29.45
Step 3	\$30.20	\$30.48	\$30.73
Step 4	\$31.52	\$31.80	\$32.05
Step 5	\$33.29	\$33.57	\$33.82

Because the across the board increase of 1.5% is to be applied to each step of the salary scale with step movement, the overall costs over the prior year's base are \$139,927 or 3.4%.

The BH scale effective July 1, 2009 is as follows:

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$33.56	\$33.82	\$34.09
Step 2	\$34.58	\$34.83	\$35.10
Step 3	\$35.61	\$35.88	\$36.13
Step 4	\$36.67	\$36.94	\$37.20
Step 5	\$37.77	\$38.03	\$38.30
Step 6	\$38.90	\$39.17	\$39.43
Step 7	\$40.06	\$40.32	\$40.59
Step 8	\$41.27	\$41.53	\$41.81
Step 9	\$42.51	\$42.77	\$43.05

Because the across the board increase of 1.5% is to be applied to each step of the salary scale with step movement, the overall costs over the prior year's base are \$67,990 or 3.4%.

The AH scale effective July 1, 2010 is as follows:

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$27.93	\$28.21	\$28.47
Step 2	\$29.27	\$29.54	\$29.82

Step 3	\$30.58	\$30.86	\$31.11
Step 4	\$31.91	\$32.20	\$32.45
Step 5	\$33.71	\$33.99	\$34.24

Because the across the board increase of 1.25% is to be applied to each step of the salary scale with step movement, the overall costs over the prior year's base are \$130,338 or 3.0%.

The BH scale effective July 1, 2010 is as follows:

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$33.98	\$34.24	\$34.52
Step 2	\$35.01	\$35.27	\$35.54
Step 3	\$36.06	\$36.33	\$36.58
Step 4	\$37.13	\$37.40	\$37.67
Step 5	\$38.24	\$38.51	\$38.78
Step 6	\$39.39	\$39.66	\$39.92
Step 7	\$40.57	\$40.82	\$41.08
Step 8	\$41.79	\$42.05	\$42.33
Step 9	\$43.04	\$43.30	\$43.59

Because the across the board increase of 1.25% is to be applied to each step of the salary scale with no step movement, the overall costs over the prior year's base are \$60,525 or 2.9%.

I next turn to the annual salary for the rank of Lieutenant. In accordance with my decision to retain Lieutenant in an annual salary and at a rate of 5%

above the top step Sergeant's rate at Grade 23C, the annual salary for the Lieutenant will be \$89,893² effective July 1, 2007, \$91,466 effective July 1, 2008, \$92,838 effective July 1, 2009 and \$93,999 effective July 1, 2010. I do not award a continuation of the minimum or maximum rates which fall well below or well above the wage rate awarded. In order to maintain the relative relationship between Sergeant and Lieutenant, the rank of Lieutenant should, as is the case with the rank of Sergeant and the police officer title, have access to the \$0.25 and \$0.50 per hour experience differentials that are set forth in the salary scales for those titles. The record does not reflect whether the Lieutenant receives the experience differential. For the sake of clarity, I will set forth a salary schedule for the Lieutenant along with the ten (10) and fifteen (15) year differentials and the person occupying the rank of Lieutenant shall be placed accordingly.

	<u>Lieutenant</u>		
	<u>Grade C</u>	<u>Grade D</u>	<u>Grade E</u>
2007	\$89,893	\$90,393	\$90,893
2008	\$91,466	\$91,966	\$92,466
2009	\$92,838	\$93,338	\$93,838
2010	\$93,999	\$94,499	\$94,999

The wage determination as set forth above is consistent with the University's finances which can fund its terms within its financial resources. Despite decreasing appropriations, the University has characterized its own

² The record shows that the Lieutenant had been receiving an annual salary of \$87,070. The setting of his salary at 5% above the top step Sergeant's rate at Grade 23C yields an additional \$547 effective July 1, 2007 more than had the 2.5% increase been calculated off of his prior rate of \$87,070.

financial posture as strong. It has met its budget in 2009 and had expectations to break even in 2010. Its operating revenues increased by \$148.9 million in 2009 in large part due to growth in professional services, tuition and fees and higher net patient service revenues and it also received \$23 million in stimulus from the Federal government. The adverse financial impact that would be caused by awarding the FOP's wage proposals does not exist in the financial terms required by the Award.

The comparability evidence also reflects that an award that falls within the parties' proposals is justified. This evidence is not controlling because even if, as here, it tends to support the FOP's argument for higher wages, it must be balanced by the financial impact of what the comparability terms would yield. However, it is a relevant factor to be considered and points to a wage award higher than the University has proposed. Of particular note is that the unit salaries would fall below Rutgers and NJIT based upon the University's proposal and the wage increases received in those units in 2007, 2008 and 2009 are considerably higher than the terms awarded here. In the absence of the financial evidence offered by the University, terms beyond what have been awarded would be justifiable if the comparability evidence were to be relied upon to the exclusion of the other criteria.

The remaining statutory criteria are relevant but not persuasive in the sense that they would influence a change in the terms of what has been

awarded. Instead, they are compatible with those terms. The overall compensation package, while somewhat low on the salary level, includes fifteen (15) holidays between those that are scheduled and those that float, there are fifteen (15) to twenty-five (25) vacation days and twelve (12) sick days. The health insurance contributions required by law diminish the overall compensation package but cannot justify higher wages as an offset. The terms of the award do not add or change existing benefit levels in any way, nor suggest a wage award above or below what has been awarded. Although the FOP has argued that turnover has been a problem, I cannot conclude that the terms of the award would interfere with the maintenance of the continuity and stability of employment of police officers employed by the University. In short, the terms of the award are consistent with furthering the interests and welfare of the University by weighing and balancing the more compelling evidence on financial impact, comparability and the cost of living.

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

AWARD

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

2. **Duration**

There shall be a four-year agreement effective July 1, 2007 through June 30, 2011.

3. **Uniform Maintenance Allowance**

The FOP Lodge 74 uniform maintenance allowance shall be increased to \$325 effective July 1, 2007.

4. **Prior Benefits – FOP Lodge 155**

The FOP Lodge 155 Agreement shall include Prior Benefits language as is set forth in the FOP Lodge 74 Agreement:

Any and all existing benefits, policies, practices and general working conditions uniformly affecting all Officers in the unit in effect on the date of this Agreement shall remain in effect except to the extent they are modified by this Agreement. If the University changes or intends to make changes which have the effect of eliminating or altering terms and conditions of employment, the University will notify the FOP and, if requested by the FOP within ten (10) days of such notice or of such change or of the date on which the change would reasonably have become known to the officers affected, the University shall within twenty (20) days of such request enter negotiations with the FOP on the matter involved, providing the matter is within the scope of issues which are mandatorily negotiable under the Employer-Employee Relations Act as amended and further, if a dispute arises as to the negotiability of such matters, then the procedures of the Public Employment Relations Commission shall be utilized to resolved such disputes.

5. **Article V – Employee Rights – FOP Lodge 155**

“FOP Attorney” shall be within definition of Lodge 155 representative.

6. **Health Insurance**

Health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. No retroactive health insurance contributions are awarded prior to the effective date of each of these provisions.

7. **Article VIII, Wages – Correction to Step 7 of the BH Salary Table**

The two incumbents are on Step 7 (23E) receiving \$39.42 per hour as of June 30, 2007 shall be red-circled at the \$39.42 rate during the 2007-2008 contract year. Effective July 1, 2007, Step 7 of the BH salary table shall be modified to provide a 3% step progression between Step 6 and Step 7 at Grades 23C, D and E. This shall be accomplished by reverting the Step 7 Grade 23C rate to a rate of \$38.37 and then adjusting that rate by the 2.5% increase. Experience differential adjustments will continue to be made to Step 7, 23D and E. All employees occupying Step 6 in 2006-2007 remain there in 2007-2008 and shall move to the newly modified Step 7 rates when they move to Step 7 in contract year 2008-2009. I do not award the proposal to require the two incumbent employees to forego their next contractually scheduled step move. Instead, they will move from their red-circled rate in 2007-2008 to Step 8 (23E) in contract year 2008-2009, to the new Step 9 (23E) during the 2009-2010 contract year and remain at the new Step 9 (23E) in the 2010-2011 contract year.

8. **Article VI, Wages – Lieutenant Salary Scale**

Effective July 1, 2007, there shall be a single step salary scale for the rank of Lieutenant. It shall be 5% above the rate of pay for the Sergeant rank at Step 9 (23C) and shall be expressed as an annual salary. It shall contain the ten (10) and fifteen (15) year differentials and will read as follows:

	<u>Grade C</u>	<u>Grade D</u>	<u>Grade E</u>
2007	\$89,893	\$90,393	\$90,893
2008	\$91,466	\$91,966	\$92,466
2009	\$92,838	\$93,338	\$93,838
2010	\$93,999	\$94,499	\$94,999

9. **Salaries**

The existing salary schedules shall be adjusted in accordance with the following salary scales and shall be effective and retroactive to their effective dates. All increases shall be at each step of the salary schedule and at each superior officer rank and shall apply to all unit employees and those who have retired on normal or disability pension and except for those who have voluntarily resigned or have been separated from employment without good standing.

There shall be 2.5% applied to the AH and BH salary scales effective July 1, 2007 with no step movement, 1.75% applied to the AH and BH salary scales effective July 1, 2008 with step movement, 1.5% applied to the AH and BH salary scales effective July 1, 2009 with step movement, and 1.25% applied to the AH and BH salary scales effective July 1, 2010 through June 30, 2011 with step movement. The salary scales shall be:

AH Scale Effective July 1, 2007

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$26.71	\$26.98	\$27.22
Step 2	\$27.99	\$28.26	\$28.51
Step 3	\$29.24	\$29.51	\$29.76
Step 4	\$30.52	\$30.79	\$31.04
Step 5	\$32.24	\$32.50	\$32.75

BH Scale Effective July 1, 2007

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$32.49	\$32.75	\$33.01
Step 2	\$33.48	\$33.73	\$33.99
Step 3	\$34.48	\$34.74	\$34.99
Step 4	\$35.51	\$35.76	\$36.02
Step 5	\$36.57	\$36.83	\$37.08
Step 6	\$37.67	\$37.93	\$38.18

Step 7	\$38.80	\$39.05	\$39.30
Step 8	\$39.96	\$40.22	\$40.48
Step 9	\$41.16	\$41.42	\$41.68

AH Scale Effective July 1, 2008

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$27.18	\$27.45	\$27.70
Step 2	\$28.48	\$28.75	\$29.01
Step 3	\$29.75	\$30.03	\$30.28
Step 4	\$31.05	\$31.33	\$31.58
Step 5	\$32.80	\$33.07	\$33.32

BH Scale Effective July 1, 2008

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$33.06	\$33.32	\$33.59
Step 2	\$34.07	\$34.32	\$34.58
Step 3	\$35.08	\$35.35	\$35.60
Step 4	\$36.13	\$36.39	\$36.65
Step 5	\$37.21	\$37.47	\$37.73
Step 6	\$38.33	\$38.59	\$38.85
Step 7	\$39.48	\$39.74	\$40.00
Step 8	\$40.66	\$40.92	\$41.19
Step 9	\$41.88	\$42.14	\$42.41

AH Scale Effective July 1, 2009

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$27.59	\$27.86	\$28.12
Step 2	\$28.91	\$29.18	\$29.45
Step 3	\$30.20	\$30.48	\$30.73

Step 4	\$31.52	\$31.80	\$32.05
Step 5	\$33.29	\$33.57	\$33.82

BH Scale Effective July 1, 2009

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$33.56	\$33.82	\$34.09
Step 2	\$34.58	\$34.83	\$35.10
Step 3	\$35.61	\$35.88	\$36.13
Step 4	\$36.67	\$36.94	\$37.20
Step 5	\$37.77	\$38.03	\$38.30
Step 6	\$38.90	\$39.17	\$39.43
Step 7	\$40.06	\$40.32	\$40.59
Step 8	\$41.27	\$41.53	\$41.81
Step 9	\$42.51	\$42.77	\$43.05

AH Scale Effective July 1, 2010

	<u>Grade 01C</u>	<u>Grade 01D</u>	<u>Grade 01E</u>
Step 1	\$27.93	\$28.21	\$28.47
Step 2	\$29.27	\$29.54	\$29.82
Step 3	\$30.58	\$30.86	\$31.11
Step 4	\$31.91	\$32.20	\$32.45
Step 5	\$33.71	\$33.99	\$34.24

BH Scale Effective July 1, 2010

	<u>Grade 23C</u>	<u>Grade 23D</u>	<u>Grade 23E</u>
Step 1	\$33.98	\$34.24	\$34.52
Step 2	\$35.01	\$35.27	\$35.54
Step 3	\$36.06	\$36.33	\$36.58
Step 4	\$37.13	\$37.40	\$37.67

Step 5	\$38.24	\$38.51	\$38.78
Step 6	\$39.39	\$39.66	\$39.92
Step 7	\$40.57	\$40.82	\$41.08
Step 8	\$41.79	\$42.05	\$42.33
Step 9	\$43.04	\$43.30	\$43.59

10. **Stipulations**

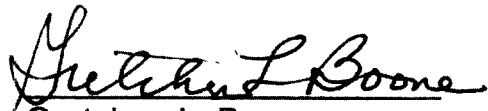
This award shall incorporate the stipulations of the parties set forth on pages 15-27.

Dated: August 20, 2012
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 20th day of August, 2012, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


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