

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

COUNTY OF ATLANTIC

"County,"

- and -

PBA, LOCAL 77
(PROSECUTOR'S OFFICE)

"Association."

INTEREST ARBITRATION
DECISION AND
AWARD

Docket No. IA-2015-001

Before
James W. Mastriani
Interest Arbitrator

Appearances:

For the County:

James F. Ferguson, Esq.
County Counsel
Richard C. Andrien, Esq.
Assistant County Counsel

For the PBA:

Myron Plotkin
Labor Relations Consultant
Plotkin Associates, LLC

This decision arises out of an impasse to be resolved by an interest arbitration proceeding between the Atlantic County PBA Local 77 [the “PBA” or “Union”] (Atlantic County Prosecutor’s rank and file unit) and the County of Atlantic [the “County” or “Prosecutor”]. On August 11, 2014, I was randomly selected by the New Jersey Public Employment Relations Commission [“PERC”] to serve as interest arbitrator in accordance with N.J.S.A. 34:13A-16e(1). The legal requirements for this case are those set forth in N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9 as amended on June 24, 2014 by P.L. 2014, c. 11. These provisions took effect immediately and were retroactive to April 2, 2014. The existing contract has a termination date of December 31, 2010. Thus, the base salary issues in dispute are not subject to the statutory caps on the amount of base salary items that can be awarded in arbitration pursuant to N.J.S.A. 34:13A-16.7(a) and instead, must be determined based upon the statutory criteria in effect at the time of filing. Because the petition was filed on July 8, 2014, PERC processed the interest arbitration petition under the amended statute. N.J.S.A. 34:13A-16b(3) requires that the arbitrator hold an initial meeting with the parties for the purpose of conducting a mediation. That session was held on August 26, 2014, at which time it was determined that the impasse should proceed to formal interest arbitration.

Final offers were received on August 22, 2014. A formal interest arbitration hearing was held on September 17, 2014. Testimony was received

from Jeff Monroe, County Budget Director, Leon P. Costello, CPA, RMA, Ford, Scott and Associates, L.L.C., and Raphael J. Caprio, PhD. Substantial documentary evidence was submitted into the record on all aspects of the statutory criteria, including detailed financial reports and analysis from Mr. Costello and Dr. Caprio. The parties agreed to incorporate certain exhibits from a recent proceeding between the County and FOP 34 into the record of this proceeding. Most of these exhibits concerned County demographics and financial data. Post-hearing briefs were due and filed on October 7, 2014. They were transmitted to each party on that day. Pursuant to P.L. 2014, c. 11, the arbitrator has 90 days from appointment in which to render an award or be subject to a fine of \$1,000 per day for an award submitted thereafter. The due date for this Award is November 10, 2014.

In accordance with the statute, each party submitted a last and final offer. These offers are as follows:

FINAL OFFERS OF THE PARTIES

The PBA

1. **DURATION** – Retroactive to January 1, 2011 through December 31, 2020 (10 yrs)
2. All provisions of the current 2007-2010 Agreement would remain in full force and effect unless addressed or modified in this Proposal.
3. Change all references from “Dept. of Personnel” or “DOP” to “Civil Service Commission.”

4. Delete all references to "Sergeants." Place in exclusion list in Recognition.
5. All prior agreements reached during negotiations shall be included in the successor agreement.

Article XII - Grievance Procedure -Section C. (11/15/12)

- C. Add the Following to the Beginning of the Paragraph:

"Upon PBA Local #77 finding the grievance to be meritorious"

Article XIV -Miscellaneous Items -New Section D (11/15/12)

- D. Replace Current Section D with the Following:

"All terms and conditions of employment including any past or present benefits, practices or privileges which are enjoyed by the employees covered by this Agreement that have not been included in this Agreement, shall not be reduced nor eliminated and shall be continued in full force and effect"

New Article -Seniority and Reduction in Force (11/15/12)

- A. In the event of a Reduction in Force/layoff, notwithstanding the provisions under Civil Service, the County shall implement and abide by the following procedures:
1. Seniority for purposes of a reduction in force/layoff is defined as total service by appointed employees in the Prosecutor's Office in any position (s) covered under any of the collective bargaining units (R&F, Sergeants and/or Superior Officers). An appointed employee shall lose all accumulated seniority only if he/she resigns or is discharged for cause.
 2. In the event of a reduction in force/layoff, employees shall be laid off in the reverse order of total seniority of all employees in the bargaining unit Any employee laid off shall remain on a recall roster for a period of five (5) years from the date of lay-off. Recalls shall be based on total seniority in the Prosecutor's Office.
 3. In the event that within five (5) years of an employee's layoff, a vacancy/opening occurs in the Prosecutors Office and is covered by this

Agreement, a laid-off employee shall be entitled to a one time recall thereto in order of total seniority and shall be reinstated and credited with all prior seniority.

4. The County shall formally notify the PBA of its intention to possibly reduce force or institute layoffs at least one hundred and twenty (120) days prior to submission of the annual budget.
5. The County agrees that upon notification as per Section 4 above, it shall discuss the matter fully with the PBA and its representatives. Such discussions shall commence no later than two (2) weeks following such notification.

B. Benefits

Should the County effectuate a reduction in force or institute layoffs, it shall provide severance benefits as follows:

1. The County shall pay all affected unit members (those to be laid off) full pay for any and all leave days credited to the employee's account at the employee's per diem rate of pay at time of severance.
2. The County shall provide a re-tooling benefit of one thousand (\$1,000.00) for each year of employment to each employee being laid off.
3. The County shall continue to provide all health insurance benefits for the employee and his/her eligible dependents for a period of six (6) months following the effective date of separation or grace period allowed under the insurance plans, whichever is later.

- C. Any dispute regarding the provisions of this Article shall be subject to the grievance procedure of this Agreement.

6. **ARTICLE II – WORK HOURS AND OVERTIME**

- D. In the second line, delete “*actually*”.

Delete the second and third sentences in their entirety and insert the following:

"For the purpose of calculating time eligible for overtime payment, all time worked including any authorized paid leave of absence shall be considered as time worked."

7. **ARTICLE V – WAGES**

A. **Salary Scale**

Each Step on the 2010 salary scale shall be increased by 2.5% across the board in each year of the Agreement with Officers advancing one Step on the guide in each year except those on Step 9 who would remain on Step 9.

**PBA #77 Proposed Salary Schedules
2011-2020**

Step	2011 (eff. 1/1/11) 2.5%	2012 (eff. 1/1/12) 2.5%	2013 (eff. 1/1/13) 2.5%	2014 (eff. 1/1/14) 2.5%	2015 (eff. 1/1/15) 2.5%
1	50919	52192	53497	54834	56205
2	53848	55195	56574	57989	59439
3	56567	57981	59430	60916	62439
4	59955	61454	62991	64565	66179
5	63344	64928	66551	68215	69920
6	66733	68401	70111	71864	73660
7	70121	71874	73671	75513	77401
8	82356	84415	86525	88688	90905
9	96371	98780	101249	103780	106375

Step	2016 (eff. 1/1/16) 2.5%	2017 (eff. 1/1/17) 2.75%	2018 (eff. 1/1/18) 2.75%	2019 (eff. 1/1/19) 2.5%	2020 (eff. 1/1/20) 2.5%
1	57610	59050	60527	62040	63591
2	60924	62448	64009	65609	67249
3	64000	65560	67240	68921	70644
4	67834	69530	71268	73050	74876
5	71688	73460	75296	77178	79108
6	75502	77389	79324	81307	83340
7*	79336	81319	83352	85436	87572
8	93178	95507	97895	100342	102851
9	109034	111760	114554	117418	120354

8. **ARTICLE IV – INSURANCE**

3. Delete the first sentence in its entirety and insert the following:

“Employees shall be required to contribute to the costs of the Health Insurance Plans as may be mandated by law, including P.L. 2011, Chapter 78 and shall replace and not be in addition to any other contribution. Such payments shall be withheld in equal installments throughout the year from an employee’s pay checks. The City shall establish and adopt a Section 125 Plan including a Flexible Spending Account so that said contributions would be “pre-tax”.”

9. **ARTICLE V – SICK LEAVE**

D. In the 4th line, delete “*nature of the illness and the...*”

The County

1. **CONTRACT TERM.**

The County proposes a five year contract commencing January 1, 2011 and terminating at the end of December 31, 2015.

2. **ARTICLE III— WAGES AND LONGEVITY.**

The County proposes deleting the entirety of Section A which contains the old salary guide and replace it with a salary guide as shown on the Exhibit A annexed hereto.

Atlantic County’s Proposed Salary Schedules (Existing Employees)

Steps	2011	2012	2013	2014	2015
1	\$49,677	\$49,677	\$49,677	\$49,677	\$49,677
2	\$52,535	\$52,535	\$52,535	\$52,535	\$52,535
3	\$55,187	\$55,187	\$55,187	\$55,187	\$55,187
4	\$58,493	\$58,493	\$58,493	\$58,493	\$58,493
5	\$61,799	\$61,799	\$61,799	\$61,799	\$61,799
6	\$65,105	\$65,105	\$65,105	\$65,105	\$65,105
7	\$68,411	\$68,411	\$68,411	\$68,411	\$68,411
8	\$80,347	\$74,379	\$74,379	\$74,379	\$74,379
9	\$94,020	\$80,347	\$80,347	\$80,347	\$80,347
10		\$95,900	\$89,083	\$89,083	\$89,083
11			\$97,818	\$99,775	\$95,426
12					\$101,770

New Hire Salary Schedule Effective January 1, 2014 and After

Steps	2014
1	\$49,677
2	\$52,409
3	\$55,292
4	\$58,333
5	\$61,541
6	\$64,926
7	\$68,497
8	\$72,264
9	\$76,419
10	\$80,813
11	\$85,450
12	\$90,588
13	\$96,023
14	\$101,770

The proposal on salary reflects the following:

2011 - There would be a salary freeze with no movement on the guide.

2012 - There would be no improvement to the guide. The officers would advance one step through the guide on their anniversary date. One step would be added to the guide and a two percent (2%) increase would be added to the new top step.

2013 - There would be no improvement to the guide. Officers would advance one step on the guide on their anniversary date. One step is added to the guide and two percent (2%) is added to the new top step.

2014 - There would no improvement to the guide. Officers would advance one step on the guide on their anniversary date and two percent (2%) is added to the top step.

A new hire guide consisting of fourteen (14) steps and as shown on the right hand side of Exhibit A would apply to all those hired January 1, 2014 and thereafter.

2015 - There would be no improvement to the guide. Officers would advance one step on the guide on their anniversary date. An additional step is added and two percent (2%) is added to the top step.

Sections B, C and D - no change.

Section E - Delete the words "All covered employees who were on the payroll of the Prosecutor's Office as of January 1, 2007 and retired

thereafter and" and replace with the following language. "All covered employees who were on the payroll as of the execution date of this agreement shall be eligible for retroactive payments under this agreement for calendar years 2011, 2012, 2013 and 2014. No retroactive payments shall be made to those employees who resigned or who were terminated from service with the employer."

"The union dismisses and/or withdraws its appeal of the decision rendered by the Public Employment Relations Commission on December 19, 2013 in the case entitled "Atlantic County and PBA 243, FOP 34 and PBA 77."

3. **ARTICLE IV. INSURANCE.**

The County proposes deleting the current language of Sections A, B, C and D and replacing that with the language which is annexed in Exhibit B.

4. **ARTICLE V. SICK LEAVE.**

The County proposes the deletion of the language in Section J which will be replaced with the language on the annexed Exhibit C.

5. **ARTICLE XIX. DURATION AND TERMINATION.**

Delete the provisions of Section C to be replaced with the following language:

"Upon expiration of this contract, there shall be no salary increases or movement through the salary guide of the expired contract. Any additional salary increases or salary guide movements shall not commence until ratification of a successor contract and then in accordance with the terms of the successor agreement."

BACKGROUND

PBA Local 77 represents Detectives and Detective 1 employed by the Atlantic County Prosecutor's Office. At the time that the existing contract expired on December 31, 2010, there were forty-six (46) employees in the bargaining unit. The parties calculate the costs of their respective final offers based upon a scattergram in effect at that time.

As is evident from a review of the parties' final offers, the wage issue is central to the resolution of terms for a new agreement. That issue extends well beyond the amount of the across the board increase. The County proposes a "hard freeze" in 2011, that is; no increase in the salary schedule and no step movement on the schedule. It also proposes a new hire salary schedule consisting of fourteen (14) steps (for those hired on January 1, 2014 and thereafter) and three additional steps on the existing salary schedule for current employees to be added in 2012, 2013 and 2015. The County seeks a termination date of December 31, 2015 and a limit on retroactivity to allow retroactive payments only for those who are "on the payroll" as of the execution date of the new contract. Retroactivity would be prohibited for those employees who resigned or were terminated from service with the employer. The County also proposes that the Union dismiss and/or withdraw its appeal of a decision issued by PERC involving these parties on December 19, 2013. That decision found that the County did not violate the NJEERA by not advancing employees who were eligible for step movement on the salary schedule after the expiration of the agreement on December 31, 2010. In addition, the County proposes to delete reference to relevant language in Section C and replace it with language that would prohibit step movement upon expiration of the contract until such time that the terms of the successor agreement would require step movement.

The County seeks support for its economic position through testimony and documentation from Jeff Monroe, County Budget Director, and Leon P. Costello, CPA, RMA and Financial Consultant employed by Ford, Scott and Associates, LLC. These presentations, in general, depicted the County's financial posture as somewhat dire due to losses in non-tax revenues, erosion in the County's fund balances, budget reductions designed to control employee costs (furloughs, layoffs, wage freezes, position vacancies), increases in pension and insurance costs (despite higher employee contributions) and declines in ratables that are asserted to have deprived the County of additional revenues that, in the past, have been used to support increases in budget expenditures. While not the exclusive source of the County's concern, the County emphasizes that declines in the casino industry over the last several years have aggravated the County's finances, has impacted upon already high unemployment rates and has shifted tax burdens on all of the residents of the County.

The PBA contends that the County's submission gives no consideration to indicators that reflect that it has remained in very good financial condition. It relies in main part on the presentation of its financial consultant, Dr. Ralph Caprio, from which it concludes that the County is able to finance the PBA's economic proposals within its statutory budget and tax levy constraints and without adverse financial impact on itself, its residents and taxpayers. Dr. Caprio's presentation, among other things, shows that the County has had, and has maintained, a healthy budget surplus that utilizes 50% of that amount in

succeeding budget years and that there is a substantial gap between what the County is lawfully able to appropriate and the amount of funds that it has actually spent. The PBA reaches the same conclusion between the limits on what the County can lawfully raise through taxation and the significantly lower amounts that it actually has raised. It notes that the County has not disagreed that it has the “ability” to pay the funds required by the PBA’s proposal. The PBA protests the County’s failure to propose wage increases in the amount that it has granted to its other law enforcement units over the relevant contract years. Citing external comparability data of other County prosecutor’s units in the State of New Jersey and municipal law enforcement jurisdictions within Atlantic County, the PBA contends that its proposal for across the board increases of 2.5% in 2011, 2012, 2013, 2014, 2015, 2019 and 2020 and 2.75% in both 2017 and 2018 are necessary in order to maintain salaries at comparable levels. The PBA proposes a contract of longer duration that extends through 2020 as a response to being without a new agreement over the last four years.

The PBA also urges the rejection of the County’s proposal to include language that would preclude the payments of step increases following the expiration of the agreement. It notes that current case law now prohibits the payment of step increases after the expiration of a contract in the absence of an agreement for a new contract. The PBA asserts that the County is seeking to gain what it already has under present law and that it should not be awarded

language that would only apply in the event that the PBA's appeal of the PERC decision is successful.

There are many other issues in dispute. Each will be reviewed and decided individually based upon the parties' evidentiary submissions.

DISCUSSION

The statute requires the arbitrator to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that are relevant to the resolution of the issues. These factors, commonly called the statutory criteria, are as follows:

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

accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

My review of the criteria must be accomplished based upon the evidence presented as well as the application of the following well established standards in collective negotiations and interest arbitration. 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 be at a level beyond a party seeking additional benefits or concessions to existing terms and conditions of employment without sufficient evidentiary support. No proposed issue by either party will be deemed to be presumptively valid in the absence of justification that is supported by credible evidence. I also observe that a proposal may not be viewed in isolation to all other proposals. 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. In other words, there may be merit to awarding or denying a single issue if it were to stand alone, but a different conclusion may be reached after assessing its merits within the context of all of the changes that are included in the overall award.

ARTICLE XIX – DURATION AND TERMINATION

The existing Agreement expired on December 31, 2010. The County proposes a contract expiration date of December 31, 2015 while the PBA proposes a contract expiration date of December 31, 2020. In addition, the County has proposed to delete Section C. Section C currently reads as follows:

All provisions of this Agreement will continue in effect until a successor Agreement is negotiated.

The County's proposal would replace the above language with the following:

Upon expiration of this contract, there shall be no salary increases or movement through the salary guide of the expired contract. Any additional salary increases or salary guide movements shall not commence until ratification of a successor contract and then in accordance with the terms of the successor agreement.

The County submits that its proposed contract duration would allow sufficient time to negotiate a new agreement that would commence on January 1, 2016. It further contends that it should not be deprived of having future negotiations subject to the statutory base salary caps in the event that the parties were to resort once again to interest arbitration, especially in light of the fact that employees in the Prosecutors unit are among the highest paid employees in the County. In support of its position, the PBA points to the fact that almost four years have passed without unit employees receiving any salary increases. The PBA asserts that longer term stability is necessary and that it should not face the

prospect of having another lengthy period of time elapsing after contract expiration prior to achieving a new agreement. It also notes that many of the labor County's labor agreements extend beyond December 31, 2015.

I do not award either party's position on contract duration. I have concluded, after due consideration of the record and the parties' arguments, that a contract that extends through December 31, 2017 represents a reasonable determination of this issue. The fact that four years has elapsed is not, in and of itself, sufficient justification for the PBA's proposal for a ten year agreement. I am also not convinced that the County proposal for a five year agreement expiring on December 31, 2015 is appropriate in light of the fact that County labor relations policy has embraced labor agreements of longer duration than the one that it has proposed for this bargaining unit. The County has negotiated a labor agreement with Justice Facility Sergeants that extends through December 31, 2016. It also, on November 11, 2013, negotiated a labor agreement with its rank and file Sheriff's Officers (PBA Local 243) that extends through December 31, 2017. A recent award with Local 243 in Corrections contains an expiration date of December 31, 2017. Further support for a contract of longer duration is reflected in the County's negotiation of a successor agreement on December 2, 2013 with its blue and white collar unit (Teamsters Local 331) covering a contract duration of January 1, 2014 through December 31, 2017. These agreements mentioned above were executed late in 2013 and significantly, within a similar budgetary and economic climate that exists in 2014. Accordingly, I award a

contract duration that commences on January 1, 2011 and extends through December 31, 2017.

Under Article XIX – Duration and Termination, the County’s proposal to delete Section C would remove the continuation of provisions language that now exists. The language that the County proposes to substitute for the deleted language would bar salary step movement beyond the contract expiration date of the agreement in the event a successor agreement has not been reached. The County contends that this proposal should be awarded because of the existence of statutory caps on base salary increases and because arbitrators in certain other proceedings have awarded similar language. (See Hudson County and PBA 334, Dkt No. IA-2014-004 and Warren County and FOP 171, IA-2014-001). It further notes that it achieved similar language in the agreement it negotiated with JNESO.

The PBA urges rejection of the County’s proposal. It offers the following argument in support of its position:

Based on the past history of negotiations, this would only allow the County to delay any future settlements so they could realize the savings from officers leave prior to an agreement being reached. The simple fact is no contract language is necessary or called for at this time. The PERC case law as it currently stands provides that increments not be paid upon the expiration of a contract. As such, this language is not necessary. The County is only proposing its inclusion in the event the pending appeal before the Appellate Court is successful. If awarded by the arbitrator, it would not matter how the Court decides. That is an unfair advantage to the County. The matter is currently under appeal and has far reaching

implications and should be left to the Court to decide. To award the County its proposed language would be to give the County what it already has by law but may not have by law based on the outcome of the appeal. The PBA submits that it is imperative that the arbitrator not award the County's proposal and to allow for the matter to be adjudicated by the Court.

Award

I do not award the County's proposal. The denial is not linked in any way to the merits of the pending appeal. The parties are currently in litigation over the determination made by PERC in an unfair labor practice proceeding that the County did not violate the Act when it failed to move eligible officers to the next step of the salary schedule after the agreement expired and while the parties were engaging in negotiations for a new agreement. The County's position on this issue was sustained. I also take administrative notice of a pending appeal of a later PERC decision in a Scope of Negotiations proceeding holding that a grievance or a party's proposal to advance employees to the next step of the salary schedule after contract expiration, but prior to the negotiation of a new agreement, is a non-mandatory managerial prerogative, or an illegal subject of negotiations. [See Township of Bridgewater and PBA Local 174, P.E.R.C. 2015-11 appeal pending A-000107-14]. These decisions have removed the authority of the parties to negotiate over the issue of automatic step movement.

As set forth above, the issue of salary guide movement after the expiration of a contract has been found to be a non-mandatory, or illegal subject of negotiations. As the matter now stands, the County's position reflects the state

of the law. Thus, any proposal by the PBA or the County that addresses the advancement of employees to the next step of a salary schedule after contract expiration would extend the arbitrator's authority to awarding an issue that is a non-mandatory or illegal subject of negotiations. Moreover, the proposal does not, in any event, impact on this proceeding because the salary portion of this award resolves the issue of where Prosecutors Detectives will be placed on the salary schedule through the expiration of the Agreement on December 31, 2017.

DEPARTMENT OF PERSONNEL REFERENCE

The PBA proposes to change all references from "Dept. of Personnel" or "DOP" to "Civil Service Commission." This proposal is only intended to conform contract language with statutory changes in the agency that administers the merit system and does not involve any substantive change. There is no dispute on this issue. Accordingly, it is awarded.

MAINTENANCE OF PRIOR PROVISIONS

The PBA has proposed language concerning the carry forward of language in the 2007-2010 agreement. The PBA has proposed:

All provisions of the current 2007-2010 Agreement would remain in full force and effect unless addressed or modified in this Proposal.

The above proposal is a standard approach to ensuring that the terms of a prior agreement carry forward in the absence of change by mutual agreement, by

statute or by any revisions required by the terms of the Award. I do not award the proposed language as phrased by the PBA but award similar language that achieves the intent that clarifies the scope of terms that will be carried forward to represent the terms of the new Agreement. Accordingly, I award the following:

All proposals by the County and PBA Local 77 not awarded herein are denied and dismissed. All provisions of the existing January 1, 2007 through December 31, 2010 agreement shall be carried forward except for those that have been modified by the terms of this Award or otherwise have been mutually agreed to by the County and PBA Local 77.

ARTICLE 1 – RECOGNITION

The PBA proposes to delete all references to “Sergeants” and to place that title in the exclusion list in the Recognition clause. There is no dispute on this issue. Accordingly, I award the following:

Article 1 – Recognition and Definition

The Employer recognizes the Local as the sole and exclusive bargaining representative for Detectives and Detective I of the Atlantic County Prosecutor’s Office. All positions above the Detective and Detective I rank, up to and including the Chief of County Detectives, shall be excluded from this unit. This recognition, however, shall not be interpreted as having the effect of, or in any way abrogating the rights of, the employees covered by this Agreement established under the Laws of 1968, Chapter 303, Article 2.

PRIOR AGREEMENTS

The PBA proposes that all prior agreements reached during negotiations shall be included in the successor agreement. These are alleged to include the following:

Article XII - Grievance Procedure -Section C. (11/15/12)

- C. Add the Following to the Beginning of the Paragraph:

"Upon PBA Local #77 finding the grievance to be meritorious"

Article XIV -Miscellaneous Items -New Section D (11/15/12)

- D. Replace Current Section D with the Following:

"All terms and conditions of employment including any past or present benefits, practices or privileges which are enjoyed by the employees covered by this Agreement that have not been included in this Agreement, shall not be reduced nor eliminated and shall be continued in full force and effect"

New Article -Seniority and Reduction in Force (11/15/12)

- A. In the event of a Reduction in Force/layoff, notwithstanding the provisions under Civil Service, the County shall implement and abide by the following procedures:
1. Seniority for purposes of a reduction in force/layoff is defined as total service by appointed employees in the Prosecutor's Office in any position (s) covered under any of the collective bargaining units (R&F, Sergeants and/or Superior Officers). An appointed employee shall lose all accumulated seniority only if he/she resigns or is discharged for cause.
 2. In the event of a reduction in force/layoff, employees shall be laid off in the reverse order of total seniority of all employees in the bargaining unit Any employee laid off shall remain on a recall roster for a period of five (5) years from the date of lay-off. Recalls shall be based on total seniority in the Prosecutor's Office.

3. In the event that within five (5) years of an employee's layoff, a vacancy/opening occurs in the Prosecutors Office and is covered by this Agreement, a laid-off employee shall be entitled to a one time recall thereto in order of total seniority and shall be reinstated and credited with all prior seniority.
4. The County shall formally notify the PBA of its intention to possibly reduce force or institute layoffs at least one hundred and twenty (120) days prior to submission of the annual budget.
5. The County agrees that upon notification as per Section 4 above, it shall discuss the matter fully with the PBA and its representatives. Such discussions shall commence no later than two (2) weeks following such notification.

B. Benefits

Should the County effectuate a reduction in force or institute layoffs, it shall provide severance benefits as follows:

1. The County shall pay all affected unit members (those to be laid off) full pay for any and all leave days credited to the employee's account at the employee's per diem rate of pay at time of severance.
2. The County shall provide a re-tooling benefit of one thousand (\$1,000.00) for each year of employment to each employee being laid off.
3. The County shall continue to provide all health insurance benefits for the employee and his/her eligible dependents for a period of six (6) months following the effective date of separation or grace period allowed under the insurance plans, whichever is later.

- C. Any dispute regarding the provisions of this Article shall be subject to the grievance procedure of this Agreement.

At hearing, and as reflected in a Certification from County Counsel James

F. Ferguson, the County contends that no prior agreement was reached on the

PBA's proposals concerning Article XIV(D) and the proposed new article concerning "Seniority and Reduction in Force." These proposals, or alleged prior agreements, are set forth above. The County submits that it has no dispute with the PBA's proposal concerning Article XII – Grievance Procedure – Section C. In the absence of substantial credible evidence that prior agreements were in fact reached, I am compelled to evaluate the PBA's proposals concerning Article XIV – Miscellaneous Items – New Section D and Seniority and Reduction in Force as individually disputed items and will review these proposals on their merits, separately and individually. In the absence of a dispute, I will award the PBA's proposal, set forth above, concerning Article XII – Grievance Procedure – Section C. The following language will be added to the beginning of Article XIV, Section C:

"Upon PBA Local #77 finding the grievance to be meritorious"...

ARTICLE XIV – MISCELLANEOUS ITEMS – NEW SECTION D

The PBA proposes to replace Section D of Article XIV – Miscellaneous Items, and replace it with the following language:

"All terms and conditions of employment including any past or present benefits, practices or privileges which are enjoyed by the employees covered by this Agreement that have not been included in this Agreement, shall not be reduced nor eliminated and shall be continued in full force and effect".

The existing Section D required unit members to take three unpaid furlough days in calendar years 2009 and 2010. The language related to events

during a specific time period and is no longer operative. Accordingly, it shall be deleted. In support of the language that the PBA proposes to substitute as a new Section D, the PBA offers the following arguments:

The PBA has proposed this provision to streamline the resolution process for issues that may arise that absent the proposed language, would most likely result in the filing of Unfair Practice Charges and expensive and protracted litigation before PERC. This language would allow these disputes to be resolved through the Grievance Procedure and arbitration agreed upon by the parties in their contract rather than time consuming and extensive litigation before PERC. This same provision was voluntarily agreed to in the last round of negotiations with FOP Lodge 34 and is included in their current collective bargaining agreement. Finally, the County has not provided any reasoning or objection to the inclusion of this language and as such, the PBA asserts that the inclusion of this provision in the Agreement be awarded.

I decline to award the above proposal. There is nothing in the record that would indicate that the PBA has been unable to enforce any term and condition of employment that meets the well established tests of what normally constitutes a binding and enforceable past practice. The fact that the provision exists in the FOP Lodge 34 agreement is an insufficient basis to award it in this proceeding. Each individual contract must be interpreted based upon its own terms and practices and there is no evidence that the PBA has been harmed in any way by the language in the grievance procedure that presently exists.

SENIORITY AND REDUCTION IN FORCE

The PBA proposes that a new provision be included in the Agreement that governs procedures the rising from a reduction in force.

A. In the event of a Reduction in Force/layoff, notwithstanding the provisions under Civil Service, the County shall implement and abide by the following procedures:

1. Seniority for purposes of a reduction in force/layoff is defined as total service by appointed employees in the Prosecutor's Office in any position (s) covered under any of the collective bargaining units (R&F, Sergeants and/or Superior Officers). An appointed employee shall lose all accumulated seniority only if he/she resigns or is discharged for cause.
2. In the event of a reduction in force/layoff, employees shall be laid off in the reverse order of total seniority of all employees in the bargaining unit. Any employee laid off shall remain on a recall roster for a period of five (5) years from the date of lay-off. Recalls shall be based on total seniority in the Prosecutor's Office.
3. In the event that within five (5) years of an employee's layoff, a vacancy/opening occurs in the Prosecutors Office and is covered by this Agreement, a laid-off employee shall be entitled to a one time recall thereto in order of total seniority and shall be reinstated and credited with all prior seniority.
4. The County shall formally notify the PBA of its intention to possibly reduce force or institute layoffs at least one hundred and twenty (120) days prior to submission of the annual budget.
5. The County agrees that upon notification as per Section 4 above, it shall discuss the matter fully with the PBA and its representatives. Such discussions shall commence no later than two (2) weeks following such notification.

B. Benefits

Should the County effectuate a reduction in force or institute layoffs, it shall provide severance benefits as follows:

1. The County shall pay all affected unit members (those to be laid off) full pay for any and all leave days credited to the employee's account at the

employee's per diem rate of pay at time of severance.

2. The County shall provide a re-tooling benefit of one thousand (\$1,000.00) for each year of employment to each employee being laid off.
 3. The County shall continue to provide all health insurance benefits for the employee and his/her eligible dependents for a period of six (6) months following the effective date of separation or grace period allowed under the insurance plans, whichever is later.
- C. Any dispute regarding the provisions of this Article shall be subject to the grievance procedure of this Agreement.

Award

The Agreement does not contain a provision that governs the procedures to be employed in the event of a layoff. However, it acknowledges that the County Prosecutor is subject to the rules and regulations of the Civil Service Commission. Those rules and regulations set forth the conditions and procedures under which a layoff can be undertaken. Although the PBA has the lawful right to negotiate procedures that are not preempted nor significantly interfere with the County's ability to conduct a layoff, the record does not contain sufficient evidence as to how the PBA's proposal could affect the operations of the Prosecutor's Office, including the Prosecutor's right under Article XI "to determine the standard of selection for employment." Accordingly, the proposal is not awarded.

ARTICLE II – WORK HOURS AND OVERTIME

The PBA proposes to revise the above contract article at Section D.

Currently, the provision reads as follows:

Employees are eligible to receive overtime payment of one and one-half (1 ½) times their regular rate of pay for all time actually worked in excess of forty (40) hours per week. For the purpose of calculating time eligible for overtime payment, if an employee is on authorized paid leave other than, sick leave as set forth under Article V of the contract, a leave of absence as established under Article VII of the contract, or personal leave under Article III of the contract, this leave time shall be considered as time worked. If an is on authorized paid sick leave (Article V), a leave of absence (Article VII), or personal leave (Article VIII) during the workweek, he/she will receive straight time payment at their regular rate of pay for all hours worked until such time exceeds forty (40) hours during that work week, at which time he/she will receive overtime payment of one and one-half (1 ½) times the employee's regular rate of pay for all hours that exceed forty (40) hours.

The proposal would delete the word "actually" in the second line of the above provision, delete the second and third sentences in their entirety and in their stead insert the following:

"For the purpose of calculating time eligible for overtime payment, all time worked including any authorized paid leave of absence shall be considered as time worked."

Award

The PBA's proposal would extend the time that would be considered as "time worked" and chargeable to the forty (40) hour threshold to be met for overtime pay eligibility. Although PBA members would benefit by the changes

that it has proposed, the record is devoid of an analysis as to the economic impact of the proposed changes on employee income or employer cost. The modifications have not been supported by sufficient credible evidence and therefore they are denied.

ARTICLE V – SICK LEAVE

Both parties propose changes to Article V. The PBA proposes to delete language in Section D that states “the nature of the illness”. The current language as well as the anticipated length of time that the employee will be absent from work are requirements to be included in a doctor’s certificate if an employee is absent for five consecutive working days or if the Prosecutor notifies an employee that evidence exists that sick leave is being abused.

The County’s proposal is limited to addressing the amount of approved sick leave that can be paid out on retirement. It proposes to delete Section J and replace the language with a new Section J. Currently Section J states the following:

Any employee covered under the terms of this Agreement who “retires” from County service under the Police and Fireman Retirement System or Public Employees Retirement System shall be paid fifty (50%) of accrued sick leave up to a maximum of \$22,500 gross wages. In the event that during the term of this Agreement the County increases the accrued sick leave allowance benefit to current code 33 management employees (lieutenants) in the Atlantic County Prosecutor’s Office, the allowance granted herein shall be increased by an equal amount.

The language the County proposes appears as County Exhibit C as follows:

Any employee covered under the terms of this Agreement hired into the Agency before May 22, 2010 who retires pursuant to the provisions of the P.F.R.S. or other State retirement system, except for retiring under a "deferred retirement," shall be paid fifty percent (50%) of accrued sick leave up to a maximum of \$22,500 gross wages.

Any officers hired into the Agency on or after May 22, 2010 including anyone who is newly hired into the Agency as a captain. Lieutenant or sergeant) shall be paid fifty percent (50%) of accrued sick leave up to a maximum of \$15,000 gross wages with eligibility for a terminal sick leave payout conditioned upon an employee meeting either of the following scenarios:

- a. having at least 25 years of service credit in the State Pension Plan and at least twenty-five (25) years of full time service with Atlantic County, or
- b. being at least 62 years of age and having at least fifteen (15) years of full time service with Atlantic County.

The parties understand that an employee retiring under a "deferred retirement" shall not be eligible for such pay for his or her accumulated sick leave as provided for in this section.

Award

The PBA's proposal would prohibit the prosecutor from inquiring as to the nature of an employee's illness when an employee is absent for five consecutive working days or if an employee is notified that evidence exists that sick leave is being abused. There is no evidence that the existing provision has created any disputes over whether any of the information that is now required to be provided has been unduly burdensome or required an employee disclosure of information that is protected by law. Accordingly, the PBA's proposal is denied.

The County's proposal to reduce the sick leave payout from \$22,500 to \$15,000 for employees hired on or after May 22, 2010 is mandated by N.J.S.A. 11A:6-19.2 (See also P.L. 2010, c. 3). The proposed language has been incorporated in other County law enforcement units. The language preserves the pre-existing benefit for those employees who are allowed to maintain the pre-existing benefit while applying the statutory limitations as mandated by statute. Accordingly, the County's proposal is awarded.

ARTICLE III - SALARY

The PBA has proposed to modify the existing salary schedule in Article III by increasing each of the nine (9) steps by 2.5% on each January 1 in 2011, 2012, 2013, 2014, 2015, 2019 and 2020 and 2.75% in both 2017 and 2018. I have awarded a contract duration that extends through 2017 and will not address the years that go through 2020.

The PBA's proposal is as follows¹:

Step	2011	2012	2013	2014	2015	2016	2017
	(eff. 1/1/11) 2.5%	(eff. 1/1/12) 2.5%	(eff. 1/1/13) 2.5%	(eff. 1/1/14) 2.5%	(eff. 1/1/15) 2.5%	(eff. 1/1/16) 2.5%	(eff. 1/1/17) 2.75%
1	50919	52192	53497	54834	56205	57610	59050
2	53848	55195	56574	57989	59439	60924	62448
3	56567	57981	59430	60916	62439	64000	65560

¹ Because I have determined that the contract expiration shall be December 31, 2017, I have omitted reference to the costs of the PBA proposal for 2018, 2019 and 2020.

4	59955	61454	62991	64565	66179	67834	69530
5	63344	64928	66551	68215	69920	71688	73460
6	66733	68401	70111	71864	73660	75502	77389
7	70121	71874	73671	75513	77401	79336	81319
8	82356	84415	86525	88688	90905	93178	95507
9	96371	98780	101249	103780	106375	109034	111760

The County has proposed several changes to Article III. They are as follows:

The County proposes deleting the entirety of Section A which contains the old salary guide which will be replaced with a salary guide as shown on the Exhibit A annexed hereto.

The proposal on salary reflects the following:

2011 - There would be a salary freeze with no movement on the guide.

2012 - There would be no improvement to the guide. The officers would advance one step through the guide on their anniversary date. One step would be added to the guide and a two percent (2%) increase would be added to the new top step.

2013 - There would be no improvement to the guide. Officers would advance one step on the guide on their anniversary date. One step is added to the guide and two percent (2%) is added to the new top step.

2014 - There would no improvement to the guide. Officers would advance one step on the guide on their anniversary date and two percent (2%) is added to the top step.

A new hire guide consisting of fourteen (14) steps and as shown on the right hand side of Exhibit A would apply to all those hired January 1, 2014 and thereafter.

2015 - There would be no improvement to the guide. Officers would advance one step on the guide on their anniversary date. An additional step is added and two percent (2%) is added to the top step.

Sections B, C and D - no change.

Section E - Delete the words "All covered employees who were on the payroll of the Prosecutor's Office as of January 1, 2007 and retired thereafter and" and replace with the following language. "All covered employees who were on the payroll as of the execution date of this agreement shall be eligible for retroactive payments under this agreement for calendar years 2011, 2012, 2013 and 2014. No retroactive payments shall be made to those employees who resigned or who were terminated from service with the employer."

"The union dismisses and/or withdraws its appeal of the decision rendered by the Public Employment Relations Commission on December 19, 2013 in the case entitled "Atlantic County and PBA 243, FOP 34 and PBA 77."

The County's proposal for current employees is as follows:

Steps	2011	2012	2013	2014	2015
1	\$49,677	\$49,677	\$49,677	\$49,677	\$49,677
2	\$52,535	\$52,535	\$52,535	\$52,535	\$52,535
3	\$55,187	\$55,187	\$55,187	\$55,187	\$55,187
4	\$58,493	\$58,493	\$58,493	\$58,493	\$58,493
5	\$61,799	\$61,799	\$61,799	\$61,799	\$61,799
6	\$65,105	\$65,105	\$65,105	\$65,105	\$65,105
7	\$68,411	\$68,411	\$68,411	\$68,411	\$68,411
8	\$80,347	\$74,379	\$74,379	\$74,379	\$74,379
9	\$94,020	\$80,347	\$80,347	\$80,347	\$80,347
10		\$95,900	\$89,083	\$89,083	\$89,083
11			\$97,818	\$99,775	\$95,426
12					\$101,770

As is evident from the above, the parties' positions on salary are in sharp conflict. The disagreements include the amount of any increase, whether there

should be added steps to the salary schedule, a new hire salary schedule, a limit on the scope of eligibility for retroactivity, a hard freeze on salary in 2011 and/or a dismissal or withdrawal of a PBA appeal of a PERC decision on post-contract expiration increments.

I first address statutory requirements. The parties acknowledge that the salary cap requirements in N.J.S.A. 34:13A-16.7 do not apply to this case because the contract expiration date of the current agreement is December 31, 2010. [See Borough of Bloomingdale and PBA Local 354, P.E.R.C. No. 2011-77, 37 NJPER 195 (¶¶61 2011)]. In the absence of a statutory salary cap, the resolution of the salary issue must solely be based upon giving “due weight” to those factors under N.J.S.A. 34:13A-16(g) that are judged relevant. A reasonable determination of the salary issues must be reached by making a reasoned explanation for the award stating what statutory factors were considered to be the most important, why they were given significant weight and how other evidence or factors were weighed and considered in arriving at the ultimate award. The parties have addressed the statutory factors in each of their submissions.

All of the statutory criteria have some relevance, directly or indirectly, when setting economic terms. The more significant question is the weight to be given to the criteria. Because virtually all of the statutory criteria implicate “the interests and welfare of the public,” this criterion must be given the most weight.

By way of example, statutory financial limitations (on appropriations and taxation) and the financial impact of the terms of an award on the public employer, while separate criteria, are among the items that also fall within the scope of the public interest criterion. The parties do not disagree on this, but disagree on whether the County's financial condition would be adversely affected by an award that is consistent with either final offer. The parties have submitted extensive evidence on financial impact.

Comparability is also a relevant factor that the parties have recognized in this case. However, comparability evidence cannot be weighed independently without considering the financial impact of an award that would rely heavily on comparability data. Each party has submitted evidence and has made strong arguments in support of its respective position based upon comparability, but disagree on what type of comparability evidence is more persuasive. The County emphasizes internal comparability, except for contract year 2011, while the PBA emphasizes comparability evidence among similar detective and investigator units in other counties and data that concerns municipal law enforcement units within the County. On this point, I find that the internal relationships between the County and its own various law enforcement units must carry more weight than external comparisons to law enforcement units that extend to other jurisdictions beyond the County. If this were not the case, sharp inconsistencies in contract changes within the County and the potential for internal labor relations strife could occur by ignoring internal labor policy and by

giving the greatest weight to contract settlements that are made beyond the County's reach over which it has no control. Moreover, it is well established that a reasonable determination of the salary issue must include consideration of evidence that may point to an internal pattern of settlement. [See Union County, P.E.R.C. No. 2003-33, 28 NJPER 459, and N.J.S.A. 34:13A-16(g)(2)]. These cases and others that require analysis into whether a pattern of settlement exists also require consideration of evidence that is alleged to support a party's contention that a deviation from an established pattern of settlement is justified based upon extraordinary factors.

Overall compensation presently received by unit employees is a relevant factor but one that is entitled to more weight when the overall comparison of unit employees is viewed in the context of the units that the County negotiates with and over which it has some control rather than in other counties where overall compensation has developed based upon circumstances that are unique to those outside jurisdictions. The County submits that detectives and investigators receive greater overall compensation than other county law enforcement employees and that this fact justifies the awarding of a salary freeze in 2011 but only for this unit.

Continuity and stability of employment is also a relevant criterion. Here, the evidence does not show that there has been a significant degree of turnover for detectives and investigators. Consideration must be given to whether newly

awarded terms have the potential to lower, maintain or enhance the continuity and stability of employment. The PBA contends that the County's proposal for a new hire salary schedule would undermine employee morale and the continuity and stability of employment.

The cost of living criterion is relevant because it is a yardstick that measures overall economic conditions and places salary increases in the context of how an increase affects the relative purchasing power of the employee. The weight to be given to cost of living evidence must take into consideration the role that this factor may have played in relation to terms that the County has negotiated with other bargaining units over similar time periods. Here, it appears that those settlements at salary maximums and in single rank classifications have fallen slightly above, but reasonably within, the cost of living data. The salary increases in units that have salary schedules have somewhat greater increases due to the costs of moving employees who receive less than maximum salaries through the steps of the negotiated salary schedules.

Based upon the entire record of this proceeding, I am persuaded that the interests and welfare of the public will be best served by an award that weighs and balances the evidence that concerns the award's financial impact on the governing unit, its residents and taxpayers, as well as evidence that considers comparisons between unit employees with public employees in the other law enforcement units employed by the County of Atlantic. With respect to internal

comparability, a determination must be made as to whether there is an established pattern of settlement as argued by the County and, if so, whether there is merit to the County's argument that a deviation from that pattern is justified through the imposition of a hard freeze in salary in 2011.

Based upon all of the above, and for the reasons that follow, I award the following salary terms. In all years of the contract, officers shall move one step on the salary schedule on an annual basis, consistent with the terms of the expired Agreement that addresses the timing of such salary advancement as anniversary increments in January, April, July or October. From January 1, 2011 through and including December 31, 2017 there will be a zero percent (0%) increase to all existing and newly created steps in the salary guide, except the top step in each year of the guide shall be increased by two percent (2%) on each January 1. In 2015, there shall be a new Step 9 in the amount of \$92,076.00. Officers at Step 8 in 2014 shall move to the new Step 9 in 2015, consistent with the quarterly requirements after an officer's anniversary date. In 2015, there shall be a new maximum Step 10 in the amount of \$103,805.00, reflecting a 2% increase in the previous maximum Step 9 in 2014. Officers at Step 9 in 2014 shall move to the new Step 10 in 2015, consistent with the quarterly requirements after an officer's anniversary date. There shall be a new salary guide for employees hired on or after November 10, 2014, consisting of 14 steps with step increases of equal dollar amounts with maximum step salaries identical to the salary maximum for current employees. As is the case for the

schedule for current employees, there will be a zero percent (0%) increase to all steps in the new hire salary guide except for the salary maximum which shall increase by 2% annually. Officers shall also move one step on an annual basis, consistent the officers' anniversary dates and the terms of the Agreement that address the timing of salary advancement.

The salary guides that have been awarded for current employees shall be as follows:

Salary Guide through December 31, 2017
for employees hired prior to November 10, 2014

Steps	2011	2012	2013	2014	2015	2016	2017
1	\$49,677	\$49,677	\$49,677	\$49,677	\$49,677	\$49,677	\$49,677
2	\$52,535	\$52,535	\$52,535	\$52,535	\$52,535	\$52,535	\$52,535
3	\$55,187	\$55,187	\$55,187	\$55,187	\$55,187	\$55,187	\$55,187
4	\$58,493	\$58,493	\$58,493	\$58,493	\$58,493	\$58,493	\$58,493
5	\$61,799	\$61,799	\$61,799	\$61,799	\$61,799	\$61,799	\$61,799
6	\$65,105	\$65,105	\$65,105	\$65,105	\$65,105	\$65,105	\$65,105
7	\$68,411	\$68,411	\$68,411	\$68,411	\$68,411	\$68,411	\$68,411
8	\$80,347	\$80,347	\$80,347	\$80,347	\$80,347	\$80,347	\$80,347
9	\$95,900	\$97,818	\$99,774	\$101,770	\$92,076	\$92,076	\$92,076
10					\$103,805	\$105,881	\$107,998

The issue of statutory limitations on appropriations and/or taxation requires an analysis into the costs of the parties' respective salary offers and the costs of the award. The cost calculations of the parties are based upon the forty-six (46) employees in the unit at the time of expiration and their projected

advancement during the contract new terms. This method is well suited for proper calculation because of the many changes in personnel that can occur from year to year that would distort the actual impact of salary increases, including resignations, promotions, new hires and retirements. The financial witnesses of the parties in their testimony and exhibits are consistent in adopting this approach, although the PBA submits that gross salaries have declined since 2010 due to staff reduction. The costs of the County's proposal, including step movement is \$761,767 between years 2011 and 2015. The costs of the PBA's proposal, including step movement is \$1,833,475 between years 2011 and 2017. The costs of the award, beyond what the County has attributed to its own proposal, are the cost of salary step movement in 2011 and the 2% increase solely to the maximum step in 2011. The step movement costs based upon the above calculation method are \$213,341 and the 2% increase at maximum is calculated at an additional \$18,804. The PBA submits that the County's payroll costs actually diminished by almost \$600,000 in 2011 due to reductions in personnel. While this calculation appears to be accurate, I do not adopt this calculation method in favor of projecting the carry forward of existing personnel in 2010 into 2011.

Based upon the forms the County is required to submit to the State of New Jersey for purposes of calculating the maximum amounts allowable to be raised by taxation after all exceptions are applied, the salary costs that would be required by this award would not violate statutory limitations. The fact that the PBA has established that the County has additional legal taxing authority well

beyond the amounts of tax revenues it has raised does not establish that there should be the expenditure of such monies to fund the PBA's proposal. The actual costs of the award will not cause the County to violate its statutory limitations.

The criterion that address financial impact of the award on the County, its residents and taxpayers must not only consider the projected costs of an award on the individual unit in question, but the potential impact on the County's many other bargaining units if the terms of the award were to extend to those employees. The PBA asserts that the additional costs of its proposal on the County are minimal in the context of the entire County budget. When viewed in that narrow context, this observation is generally accurate. However, where, as here, several law enforcement units have achieved labor agreements on substantially lesser terms than what the PBA has proposed, the public interest and labor stability would be impaired by limiting a financial impact analysis solely to a law enforcement unit that is the last unit in the County to have its wage issue resolved. While this motive cannot be attributed to the PBA, the argument that the costs associated to a single unit, without regard to present or, in this instance, future costs to other County employees and the County's budget disregards the practical reality that the already resolved units will more than likely rely upon the higher wage increase awarded to the PBA as support in the future for achieving the difference between what they have negotiated and what was achieved in this unit. When viewed in this context, in conjunction with the record

evidence on internal comparability, the PBA's proposal cannot be determined to be "affordable" and without adverse financial impact on the County, its residents and taxpayers. This conclusion is supported by the evidence that reflects annual individual increases in County taxes paid during an individual contract year by residents of various municipalities (Longport, Hamilton, Ventnor, Weymouth) that ranged from twenty (20%) percent to thirty (30%) percent. In addition to the above, the County has established that the trend of its finances has been on the downside since 2006. Its year end fund balance declined by 33.8% between 2006 and 2013 thus causing less money to be available to apply to each succeeding budget to fund its appropriations. The County has also experienced declines in non-tax revenue ratable while raising its tax levy by 33.5% or an average of 4.8% per year over this time period. Thus, an award at or near the PBA's proposal is inconsistent with the statutory criteria concerning financial impact, as well as unsupportable based upon internal comparables.

The terms of the award closely parallel the terms of the many labor agreements that the County has negotiated with its other law enforcement units and non-law enforcement units over the relevant time period. The County stresses that the terms of its proposal, except for 2011, conform to an internal or established pattern of settlement while the PBA's proposal would break the pattern. These contracts are in evidence. Those agreements form the core of the internal comparability arguments. Among the law enforcement units that are presently covered by a collective bargaining agreement are Prosecutor's

Sergeants, represented by PBA Local 77. This Agreement was executed on August 22, 2012 with effective dates of January 1, 2011 through December 31, 2014. A Prosecutor's Superior Officers, also represented by PBA Local 77, executed an agreement on August 23, 2012 covering time periods January 1, 2011 through December 31, 2013. Another law enforcement unit is Justice Facility Sergeants represented by FOP Lodge No. 112. This agreement was executed on August 2, 2013 and has effective dates of January 1, 2013 through December 31, 2016. Another law enforcement unit is Justice Facility Captains and Lieutenants who are also represented by FOP Lodge No. 112. This agreement was executed on June 4, 2011 and has effective dates of January 1, 2011 through December 31, 2014. Another law enforcement unit includes Sheriff's Officers represented by PBA Local 243. During the relevant time period in question, the County and PBA Local 243 negotiated two agreements. The first agreement came as a result of an interest arbitration award issued on March 14, 2012 covering effective dates of January 1, 2010 through December 31, 2012. Thereafter, the County and PBA Local 243 executed an MOA on November 11, 2013 containing terms effective January 1, 2013 through December 31, 2017. Another law enforcement labor agreement covers Sheriff Superior Officers, represented by SSOA. This agreement was executed on October 18, 2011 and covered the time period January 1, 2010 through December 31, 2013. An interest arbitration award was issued on September 29, 2014 concerning rank and file corrections officers represented by FOP Lodge 34 governing a contract duration of January 1, 2011 through December 31, 2017.

In addition to the labor agreements covering law enforcement employees, the County has negotiated many labor agreements covering non-law enforcement employees. One such non-law enforcement unit presently covered by a collective bargaining agreement covers Meadowview Nurses who are represented by JNESO. This agreement was executed on July 16, 2013 and has effective dates of January 1, 2011 through December 31, 2013. Another non-law enforcement unit covers Assistant Prosecutors who are represented by CWA Local 1036. This agreement was executed on February 18, 2014 and has effective dates of January 1, 2011 through December 31, 2015. Another civilian unit covers white collar and social service employees and is represented by AFSCME Local 2302. This agreement was executed on June 10, 2013 and has effective dates of January 1, 2011 through December 31, 2013. Another unit covers employees in the Department of Human Services who are represented by AFSCME Local 3408. This agreement was executed on July 29, 2013 and has effective dates of January 1, 2011 through December 31, 2013. Another unit covers health services and social workers represented by CWA Local 1040 Intergenerational Services. This agreement was executed on April 2, 2013 and has effective dates of January 1, 2012 through December 31, 2014. Another unit covers Facilities Management and Supported Employment represented by CWA Local 1040 Facilities. This agreement was executed on November 13, 2011 and has effective dates of January 1, 2012 through December 31, 2014. Another unit covers professional employees of the Atlantic County Health Department who

are represented by CWA Locals 1038/1075 Public Health. This agreement was executed on February 18, 2014 and has effective dates of January 1, 2012 through December 31, 2014. Another unit covers various classifications in the Division of Family and Community Development who are represented by CWA Local 1038/1075 Family and Community Development. This agreement was executed on June 16, 2014 and has effective dates of January 1, 2013 through December 31, 2015. During the relevant time period in question, the County and Teamsters 331 White Collar/Blue Collar/Public Safety employees negotiated two agreements. The first agreement was executed on December 2, 2013 with effective dates of January 1, 2011 through December 31, 2013. Thereafter, the County and Teamsters 331 White Collar/Blue Collar/Public Safety unit executed an MOA on December 2, 2013 containing terms effective January 1, 2014 through December 31, 2016. The terms of all of these agreements are in the record through MOAs and labor agreements.

The parties disagree on the relevance and weight to be given to the terms the County has negotiated in its other labor agreements. According to the County, since 2011 its labor agreements have been limited to actual increases of 2.0% except for an interest arbitration award issued on March 14, 2012 that resulted from the filing of a petition by PBA Local 243 (Sheriff's Officers) that was filed on February 16, 2010. The County contends that these labor agreements have included concessions that reduced accrued sick leave payouts upon retirement, reduced longevity, amended sick leave bonus provisions and had

decreases in promotional rates. The County also points to successfully negotiating alternative salary guides in many of its other units that expanded steps, broke up large increments and created separate new hire salary schedules. In particular, the County cites the JNESO agreement that changed the number of steps from 5 to 30 the PBA Local 243 Agreement that included a separate new hire salary schedule. The County also urges that the recently issued FOP Lodge 34 award on September 29, 2014 be viewed as additional support to apply a bargaining pattern within the County to PBA Local 77. A chart it submitted into evidence reflects that as of August 1, 2010, its mean salary of \$87,291 was below the statewide mean of \$93,119 and was below the mean salary in the counties of Bergen, Camden, Essex, Gloucester, Mercer, Middlesex, Monmouth, Morris, Ocean, Somerset, Union and Warren.

The PBA disagrees with the County's analysis of the weight to be given to its other law enforcement agreements and contends that the County's proposal is inferior to the terms that the County voluntarily negotiated with other law enforcement units. In this regard, it places emphasis on the County's proposal to single out PBA Local 77 for a wage freeze in 2011. With respect to the civilian units, the PBA contends that the work responsibilities and work environments of blue and white collar workers are extremely different than the high level and dangerous work of Prosecutor's Detectives. As such, it believes that comparisons between civilian units and the PBA have little relevance. The FOP also urges that the comparison examination extend to the salaries of detectives

and investigators employed in the various counties in the State of New Jersey. It points out that its members receive lower wages and benefits than those employed in many other County jurisdictions.

Internal patterns of settlement, even where they are not identical, are entitled to significant weight under N.J.S.A. 34:13A-16g(2)(c). [See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008)]. Such evidence must be considered even where the alleged pattern of settlement includes non-public safety units. [See County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33, County of Passaic and PBA Local 197 (Corrections Officers), PBA Local 197 (Corrections Superior Officers), PBA Local 286 (Sheriff's Officers) and PBA Local 286 (Sheriff's Superior Officers), Docket No. IA-2007-115 (June 2011), Borough of Ramsey and PBA Local 155, Docket No. IA-2007-081 (July 2009), State of New Jersey, Division of State Police and State Troopers Fraternal Association, State Troopers NCO Association, and State Troopers Superior Officers Association, Docket Nos. IA-2010-039, IA-2010-040, IA-2010-041 (September 2011), State of New Jersey and New Jersey Law Enforcement Supervisors Association, Docket No. IA-2014-003 (January 2014)]. The rank increase for Justice Facility Sergeants was 2% through 2016. The increase at maximum pay for Sheriff's Officers was 2% through 2017 and those below maximum received an annual step increase without an across the board

increase to each step. The FOP Lodge 34 award set terms analogous to that the County agreed to with the Sheriff's Officers.

The deviation from internal comparability sought by the PBA would undermine the stability and predictability that is desirable in the negotiations process by attempting to tie a result here primarily to "ability to pay" (as opposed to financial impact) and to external comparability evidence while paying little or no attention to internal negotiations results. The reliance on these points is not sufficient to provide a basis for deviation from the general consistency of the internal settlement pattern. The issue here is not whether the evidence offered by the PBA is relevant but whether it is entitled to the substantial weight as the PBA has argued. I am compelled to conclude that the PBA's proposal would alter the relationships among the County's many negotiations units absent a demonstrated need for the deviation it has proposed for this single law enforcement unit. Moreover, a disruption in the general settlement pattern could reasonably undermine the morale in the County's other bargaining units and discourage future settlements thereby leading to labor relations instability.

I also find little merit in the County's proposal to award a wage freeze in 2011. The County acknowledges that this aspect of its proposal represents a deviation from the internal settlement pattern that it urges be adopted for the remaining year of the contract. The main basis to support its proposed deviation is the fact that the compensation levels for Detectives exceed that received by

Sheriff's Officers and Corrections Officers. The contracts in evidence do reflect that the Detectives receive higher rates of pay than the County's other law enforcement personnel. This fact does not constitute sufficient justification to award the deviation in the internal settlement pattern that the County has proposed. The simple fact here is that the wage structures for the various law enforcement units in Atlantic County have developed based upon considerations unique to each unit over many years. The differences in pay have been longstanding and not the result of a recent departure from the norm that now requires correction. Moreover, the differences in wage structures is not unique to Atlantic County. The collective negotiations agreements in evidence in various counties generally reflect similar differences in compensation between employees employed in detective and investigator units and those employed in other law enforcement units.

In addition to disagreeing over the amount of salary increases, the County's salary proposal would alter the structure of the existing salary schedule. The County seeks to add three new steps for current employees and to establish a new 14 step salary schedule for employees hired on or after January 1, 2014. The PBA rejects each proposal.

The Sheriff's Officers and Corrections Officers agreements each added one step for current employees. The addition of a step would ease the future costs of step movement and thereby support the costs of the increases that have

been awarded. More importantly, the addition of a step would be consistent with the internal pattern of settlement for those rank and file law enforcement units. This step has been awarded and it appears in the salary guide I have awarded for current employees.

The parties also disagree on whether there shall be a new hire salary schedule. The PBA urges weight to be given to a statement in opposition to the County proposal made by the Prosecutor during a pre-interest arbitration mediation session. The County responds to this argument as follows:

The County objects to the Union's attempt to use an alleged statement by the Prosecutor from a mediation session where the parties are attempting to see if a compromise in position can result in a voluntary settlement. The assertion is improper and not to be given weight in light of the fact that the Union had the opportunity to present testimony on the record from the Prosecutor but did not do so. Whether the Prosecutor likes a two tiered salary system, or not, is not on the record. The alleged statement does not change the pattern of bargaining in the County and the difficult economic conditions in both County Government and the Atlantic City area. Weight should be given to the record of evidence proving difficult economic conditions highlighted in reports and testimony by Jeff Monroe, CPA and Mr. Costello, CPA and RMA. These established facts require that the County manage contracts with the prudence and fiscal caution demonstrated by the record of pattern bargaining throughout the County addressed below. This includes a two tiered approach for law enforcement. See PBA 243 Agreement in County **Exhibit K**. Also take notice of the recent FOP 34 Award under PERC Docket Number IA-2014-014 issued by this Honorable Arbitrator after the close of the record in the instant matter (referenced hereafter as the FOP 34 Award). [emphasis in original].

Although case law supports the County's legal argument, the resolution of the new hire salary schedule issue is not dependent upon a legal analysis as to

whether the Prosecutor's statement during a mediation session is admissible. There is an established pattern of settlement on the issue of a new hire salary schedule. The County is the fiscal agent for the Prosecutor's Office. It has argued persuasively that the contract improvements for current employees must be linked to contract terms for future employees that would assist the County in meeting its future financial commitments. There is no record evidence that would show that the continuity and stability of employment would be adversely affected by a new hire salary schedule, especially one that establishes salary maximums at the same level as that which has been set for current employees. Accordingly, I award a new hire salary schedule as follows:

Salary Guide through December 31, 2017
for employees hired after November 10, 2014

Steps	2014	2015	2016	2017
1	\$49,677	\$49,677	\$49,677	\$49,677
2	\$53,684	\$53,684	\$53,684	\$53,684
3	\$57,691	\$57,691	\$57,691	\$57,691
4	\$61,698	\$61,698	\$61,698	\$61,698
5	\$65,705	\$65,705	\$65,705	\$65,705
6	\$69,712	\$69,712	\$69,712	\$69,712
7	\$73,719	\$73,719	\$73,719	\$73,719
8	\$77,726	\$77,726	\$77,726	\$77,726
9	\$81,733	\$81,733	\$81,733	\$81,733
10	\$85,740	\$85,740	\$85,740	\$85,740
11	\$89,747	\$89,747	\$89,747	\$89,747
12	\$93,754	\$93,754	\$93,754	\$93,754
13	\$97,761	\$97,761	\$97,761	\$97,761
14	\$101,770	\$103,805	\$105,881	\$107,998

A remaining issue is the County's proposal to limit retroactivity by the inclusion of the following language:

All covered employees who were on the payroll as of the execution date of this agreement shall be eligible for retroactive payments under this agreement for calendar years 2011, 2012, 2013 and 2014. No retroactive payments shall be made to those employees who resigned or who were terminated from service with the employer.

The exclusion of payments to those employees who have resigned or to those who were terminated from service is a reasonable proposal and would limit the cost impact of the award. This shall not apply to Detectives who have retired in good standing during the life of this agreement. The proposal is awarded.

In sum, the terms of the award are consistent with the interests and welfare of the public criterion and the application of the statutory criteria as a whole. The terms of the award will not cause the County to violate the limitations on appropriations or taxation, and thus, the costs of the award fall within the lawful authority of the employer. I also conclude that there is ample record support for the conclusion that the terms can be implemented without adverse financial impact on the County, its residents and taxpayers. I have given substantial weight to the terms the County voluntarily negotiated with the rank and file Sheriff's unit represented by PBA Local 243 and the terms awarded in the corrections officers unit represented by FOP Lodge 34. While not identical in all respects, I have found the key elements of those settlements persuasive in deciding the terms of this award, including a freezing of all salary steps for the

duration of the Agreement except the salary maximum, 2% increases for officers at the salary maximum, the addition of a new step in the salary schedule for "grandfathered" officers and a fourteen (14) step new hire salary schedule. The terms of the award will adjust the overall compensation presently received by PBA Local 77 in a manner similar to the units that I have deemed to be most comparable. The terms are also generally consistent with the terms the County has negotiated in its many other bargaining units. I have not given significant weight to private sector comparisons due to the absence of comparable occupations in the private sector and the conclusion that internal comparables represent the most relevant comparisons.

Accordingly, and based upon all of the above, I respectfully enter the terms of this Award.

AWARD

1. **Duration** – There shall be a seven-year agreement effective January 1, 2011 through December 31, 2017.

2. **Maintenance of Prior Provisions**

All proposals by the County and PBA Local 77 not awarded herein are denied and dismissed. All provisions of the existing January 1, 2007 through December 31, 2010 agreement shall be carried forward except for those that have been modified by the terms of this Award or otherwise have been mutually agreed to by the County and PBA Local 77.

3. **Article XII – Grievance Procedure, Section C**

Add the following to the beginning of the paragraph:

Upon PBA Local #77 finding the grievance to be meritorious” ...

4. **Department of Personnel**

Change all references from “Dept. of Personnel” or “DOP” to “Civil Service Commission.

5. **Article I – Recognition and Definition**

The Employer recognizes the Local as the sole and exclusive bargaining representative for Detectives and Detective I of the Atlantic County Prosecutor’s Office. All positions above the Detective and Detective I rank, up to and including the Chief of County Detectives, shall be excluded from this unit. This recognition, however, shall not be interpreted as having the effect of, or in any way abrogating the rights of, the employees covered by this Agreement established under the Laws of 1968, Chapter 303, Article 2.

6. **Salary**

In all years of the contract, officers shall move one step on an annual basis, consistent with the officers’ anniversary dates and the terms of the Agreement that addresses the timing of such salary advancement. From January 1, 2011 through and including December 31, 2017 there will be a zero percent (0%) increase to all existing and newly created steps in the salary guide, except the top

step in each year of the guide shall be increased by two percent (2%) on each January 1. In 2015, there shall be a new Step 9 in the amount of \$92,076.00. Officers at Step 8 in 2014 shall move to the new Step 9 in 2015, consistent with the officer's anniversary date. In 2015, there shall be a new Step 10 in the amount of \$103,805.00. Officers at Step 9 in 2014 shall move to the new Step 10 in 2015, consistent with the quarterly requirements after an officer's anniversary date. There shall be a new salary guide for employees hired on or after November 10, 2014, consisting of 14 steps. There will be a zero percent (0%) increase to all steps in the salary guide except for the salary maximum which shall increase by 2% annually. All salary increases are fully retroactive to January 1 of the year in which those increases apply. All covered employees who were on the payroll as of the execution date of this agreement shall be eligible for retroactive payments under this agreement for calendar years 2011, 2012, 2013 and 2014. No retroactive payments shall be made to those employees who resigned or who were terminated from service with the employer. The preceding sentence does not apply to Officers who retire during the life of this Agreement.

The salary guides shall be as follows:

Salary Guide through December 31, 2017
for employees hired prior to November 10, 2014

Steps	2011	2012	2013	2014	2015	2016	2017
1	\$49,677	\$49,677	\$49,677	\$49,677	\$49,677	\$49,677	\$49,677
2	\$52,535	\$52,535	\$52,535	\$52,535	\$52,535	\$52,535	\$52,535
3	\$55,187	\$55,187	\$55,187	\$55,187	\$55,187	\$55,187	\$55,187
4	\$58,493	\$58,493	\$58,493	\$58,493	\$58,493	\$58,493	\$58,493
5	\$61,799	\$61,799	\$61,799	\$61,799	\$61,799	\$61,799	\$61,799
6	\$65,105	\$65,105	\$65,105	\$65,105	\$65,105	\$65,105	\$65,105
7	\$68,411	\$68,411	\$68,411	\$68,411	\$68,411	\$68,411	\$68,411
8	\$80,347	\$80,347	\$80,347	\$80,347	\$80,347	\$80,347	\$80,347
9	\$95,900	\$97,818	\$99,774	\$101,770	\$92,076	\$92,076	\$92,076
10					\$103,805	\$105,881	\$107,998

Salary Guide through December 31, 2017
for employees hired on or after November 10, 2014

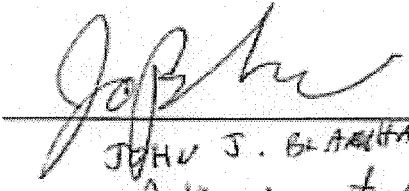
Steps	2014	2015	2016	2017
1	\$49,677	\$49,677	\$49,677	\$49,677
2	\$53,684	\$53,684	\$53,684	\$53,684
3	\$57,691	\$57,691	\$57,691	\$57,691
4	\$61,698	\$61,698	\$61,698	\$61,698
5	\$65,705	\$65,705	\$65,705	\$65,705
6	\$69,712	\$69,712	\$69,712	\$69,712
7	\$73,719	\$73,719	\$73,719	\$73,719
8	\$77,726	\$77,726	\$77,726	\$77,726
9	\$81,733	\$81,733	\$81,733	\$81,733
10	\$85,740	\$85,740	\$85,740	\$85,740
11	\$89,747	\$89,747	\$89,747	\$89,747
12	\$93,754	\$93,754	\$93,754	\$93,754
13	\$97,761	\$97,761	\$97,761	\$97,761
14	\$101,770	\$103,805	\$105,881	\$107,998

Dated: November 10, 2014
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 10th day of November, 2014, 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.


JOHN J. BLAWIE
Attorney at Law
of New Jersey