

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between:

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**COUNTY OF MERCER AND  
MERCER COUNTY SHERIFF,**

"Public Employer,"

- and -

**POLICE BENEVOLENT ASSOCIATION,  
LOCAL 187,**

"Employee Organization."

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Docket No. IA-2009-060

**INTEREST ARBITRATION  
DECISION AND  
AWARD**

**Before  
James W. Mastriani  
Interest Arbitrator**

Appearances:

**For the County:**

Brian W. Kronick, Esq.  
Eric W. Ruden, Esq. on the Brief  
Genova, Burns & Giantomasi

**For the PBA:**

Frank M. Crivelli, Esq.  
Donald C. Barbati, Esq. on the Brief  
Pellettieri Rabstein & Altman

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, pursuant to a petition filed by the Mercer County Sheriff's PBA Local 187 [the "PBA"] and the County of Mercer and Mercer County Sheriff's Office [the "County"]. The County and the PBA are parties to a collective negotiations agreement [the "Agreement"] covering Sheriff's Officers that expired on December 31, 2008. An impasse developed between the County and the PBA resulting in the submission of the dispute to interest arbitration pursuant to the rules of the New Jersey Public Relations Employment Commission. Thereafter, I was designated to serve as arbitrator.

I conducted several pre-arbitration mediation sessions. During these sessions, the parties attempted to narrow the issues in dispute but were unable to reach a voluntary agreement. Formal interest arbitration hearings were then held on March 23 and April 26, 2010, at which time the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from James Udijohn , Sheriff's Officer/Detective and member of Shooting Response Team, Jeremy Stewart, Sheriff's Officer – Detective Bureau, member of Fugitive Unit, Jarad Walulak, Sheriff's Officer – Patrol Unit, Pasquale Papero, Sheriff's Officer – K-9 Unit, Pablo Santiago, Sheriff's Officer – Task Force Officer, Andrew Mair, County Administrator, Jack Kemler, Chief Warrant Officer, Carmen Rettzo, Sheriff's Officer – Sergeant,

Executive Board Member – FOP Lodge 140, Maureen Sparano, Senior Personnel Technician – Mercer County Office of Employee Relations, and David Miller, Chief Financial Officer and Director of Finance. A stenographic record of the proceedings was taken. Post hearing briefs were submitted by both parties and transmitted by the arbitrator to each party.

The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party.

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. As reflected in these submissions, there are a substantial number of issues in dispute. Additional submissions were made by PBA Local 187 January 26 and February 11, 2011 to supplement the record with newspaper articles, reflecting additional developments concerning Mercer County since the closing of record. A response was received from the County on February 3, 2011 urging that the PBA's request to supplement the record be denied. The PBA's request was granted.

## FINAL OFFERS OF THE PARTIES

### The PBA

#### 1. Article 4 – Overtime, Section 4.8

Overtime pay shall be computed on the basis of the Employee's base pay divided by 1827 hours. Payment for overtime shall be paid on alternate pay weeks. In other words, all overtime will be paid during the weeks opposite to the normal County paid weeks.

#### 2. Article 5 – Scales or Rates of Pay, Section 5.4

Those Sheriff's Officers functioning in the capacity of Senior Officer within the Civil and Criminal Courthouse, Detectives, Process Servers and those Sheriff's Officers assigned to the Airport, S.E.R.T., Motorcycle detail EMT/Paramedic, Honor Guard, Patrol, K-9, Programs/Project Lifesaver, and CSI Units shall receive an additional sum of 3% added to their base salary of compensation. No Sheriff's Officer shall receive more than 3% despite the fact that they meet more than one of the criteria delineated above.

#### 3. Article 5 – Scales or Rates of Pay

Annual payments for college credit will be made to all Employees who have attained college degrees. Payments will be based on the level of education attained as shown below:

a.	Associate's degree	\$200.00
b.	Bachelor's degree	\$400.00
c.	Masters' degree	\$600.00

Employees must submit proper documentation in order to receive payment. Said payment will be paid once each year during the month of November.

#### 4. Article 5 – Scales or Rates of Pay

There shall be annual payments of Two-Hundred Fifty (\$250.00) dollars per Sheriff's Officer to those Employees who are certified breathalyzer experts, certified radar operators, or weapon repair specialists, provided, however,

that no Employee receives payment for more than one of the criteria delineated above.

5. Article 5 – Scales or Rates of Pay

It is agreed that during the term of this Contract for the period January 1, 2009-December 31, 2012, the following salary improvements shall be provided to eligible Employees in the Union within the applicable policies and practices of the County and in keeping with the conditions set forth herein.

- a. Effective January 1, 2009, there shall be a four percent (4%) across the board increase applied to the then current base salary for all Employees in this Union. The salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each step of each salary range. Each Employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.
- b. Effective January 1, 2010, there shall be a four percent (4%) across the board increase applied to the base salary in effect on December 31, 2009 for all Employees in this Union. The salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each step of each salary range. Each Employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.
- c. Effective January 1, 2011, there shall be a four and one-half percent (4.5%) across the board increase applied to the base salary in effect on December 31, 2010 for all Employees in this Union. The salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each step of each salary range. Each Employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.
- d. Effective January 1, 2012, there shall be a four and one-half percent (4.5%) across the board increase applied to the base salary in effect on December 31, 2011 for all Employees in this Union. The salary

schedule shall be adjusted in accordance with established procedures to incorporate these increases for each step of each salary range. Each Employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.

6. Article 7 – Insurance and Retirement Benefits, Section 7.1

Effective January 1, 2009, each active Employee except for those with single coverage shall have deducted from his or her salary Twenty-Four (\$24.00) Dollars per pay period for all medical, dental and prescription drug insurance. Those Employees with single coverage shall have Nineteen (\$19.00) Dollars per pay period deducted for such medical, dental and prescription drug insurance coverage. There shall be no other increase in this health co-payment for the duration of the contract.

Should a New Jersey law be enacted wherein the members of this Union are required to contribute a certain amount of money or a percentage of their base salary to the payment of their healthcare coverage, the above provision requiring the members to contribute the flat dollar amounts delineated therein will become null and void and said contributions will cease.

7. Article 7 – Insurance and Retirement Benefits

In the event an Employee covered under the terms of this Agreement is killed in the line of duty, or dies from injuries sustained while in the line of duty, the County shall immediately pay the sum of Five-Thousand (\$5,000.00) Dollars towards funeral and connected expenses to his or her surviving spouse and/or dependents or, if none, to his or her heirs and/or estate, regardless of the amount paid from other collateral sources.

8. Article 19 – Shift Pay, Section 19.1

Employees working on shifts of which the majority of working hours fall between 3:00 p.m. and 12:00 midnight shall receive in addition to their regular pay an additional forty (40) cents per hour.

9. Article 19 – Shift Pay, Section 19.2

Employees working on shifts of which the majority of working hours shall fall between 12:00 midnight and 8:00 a.m. shall receive in addition to their regular pay an additional forty-five (45) cents per hour.

10. Article 20 – Longevity, Section 20.2

The annual longevity benefit shall be based upon years of completed service. The benefits shall be as follows:

<u>Years of Completed Service</u>	<u>Annual Longevity</u>
5 Years	1.5% of Employee's Base Salary
10-14 Years	3.0% of Employee's Base Salary
15-19 Years	5.0% of Employee's Base Salary
20-24 Years	6.0% of Employee's Base Salary
24 Years or More	7.5% of Employee's Base Salary

11. Article 21 – Uniform Provisions

Each officer shall receive a \$1,000.00 allowance each year for uniform maintenance and equipment. The allowance shall be paid in bi-annual installments of \$500.00 during the months of January and July of each year. During the officer's first year of employment, they are not entitled to this allowance. During the officer's second year of employment, the allowance is prorated based upon the officer's date of hire and the number of months remaining in the calendar year.

12. New Addition – K-9 Units

After an assigned K-9 dog is retired and the dog continues to reside in the home of the officer to whom the dog was assigned, the Employer agrees to provide and/or pay for routine maintenance, veterinary care, medication and food for the retired K-9 dog for the remainder of its life.

13. New Addition – Twenty-Five (25) Year Stipend

Each officer shall receive a \$2,500.00 benefit upon completion of their twenty-fifth (25<sup>th</sup>) year of County service.

14. Preamble

This Agreement, dated \_\_\_\_\_ between the County of Mercer, a body politic in the State of New Jersey, Kevin

Larkin, Sheriff, hereinafter referred to as the "Employer", and P.B.A. Local 187, hereinafter referred to as the "Union."

15. Article 8 – Paid Leaves of Absence, Section 8.1

Bereavement Days. In the event of the death of a member of the immediate family of any Employee covered by this Agreement, the immediate family being mother, father, sister, brother, spouse, child, mother-in-law, father-in-law, grandparent, grandchild, aunt, uncle, nephew, niece, cousin, or any other person who resides in the Employee's household, said employee shall be excused for a period not to exceed five (5) consecutive working days for bereavement purposes, commencing the day of death or day after date of death. The Employee will be paid his regular hourly rate of any such days of excused absence which occur during his normal work week, but in no event no more than seven (7) hours pay for one day.

16. Article 8 – Paid Leaves of Absence, Section 8.2

The Union President, or his/her designee in the President's absence, shall be granted full release from daily assignments and/or remain permanently unassigned in order to conduct union matters. A shirt and tie or suitable casual business attire may be substituted for a Sheriff's Officer uniform. However, the uniform of the day shall be readily available in the event of an emergency that requires the PBA President to be utilized. In addition, a reserved parking space adjacent to the courts shall be assigned to the Union President or his/her designee to allow him/her to more efficiently perform his/her duties.

17. Article 10 – Child Care/Maternity Leave

Light duty shall be made available and/or provided to an Employee who supplies a doctor's note evidencing the need for same.

18. Article 11 – Seniority, Section 11.1

Seniority is defined as an Employee's continuous length of service with the Sheriff's Office, beginning with the date of hire as a permanent full-time employee, Sheriff's Officer/Investigator. Sheriff's Investigators will be on a separate list by date of hire.

19. Article 12 – Holidays, Section 12.1

The following days are recognized paid holidays whether or not worked

New Year's Day	Labor Day
Martin Luther King's Birthday	Columbus Day
Lincoln's Birthday	General Election Day
President's Day	Veteran's Day
Good Friday	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day

20. Article 13 – Grievance Procedure, Section 13.3

Expenses for the arbitrator's services and the proceedings shall be paid by the losing party to the arbitrator. However, each party shall be responsible for compensating his own representative, witnesses and attorney. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record.

21. Article 13 – Grievance Procedure, Section 13.5

Representatives of the Union, who are not Employees previously accredited to the Employer in writing by the Union, shall be permitted to come on the premises of the Employer for the purpose of investigating and discussing grievances, so long as such right is reasonably exercised and there is no undue interference with work progress, provided, however, they first obtain permission to do so from the Employee's department supervisor or his designated representative, permission for which shall not be unreasonably withheld.

22. Article 15 – Safety and Health, Section 15.1

The Employer shall at all times maintain safe and healthful working conditions and will provide Employees with wearing apparel, tools, or devices deemed necessary in order to ensure their safety and health. When such materials are issued, they shall be used. The Employer will also provide replacement equipment to the Employees for said apparel, tools, or devices deemed unserviceable, damaged or outdated.

23. Article 21 – Uniform Provisions ,Section 21.1

The County agrees to provide each Employee covered by the terms of this Agreement an initial uniform issue consisting of the following:

All seasons:      Six (6) Class A Trousers  
                        Three (3) long sleeve Class A shirts  
                        Three (3) short sleeve Class A shirts  
                        Six (6) Class B trousers  
                        Three (3) long sleeve Class B shirts  
                        Three (3) short sleeve Class B shirts  
                        One (1) all season jacket  
                        One (1) State police type cap  
                        One (1) baseball type cap  
                        One (1) winter trooper hat  
                        One (1) raincoat

24. Article 25 – Outside Employment

All extra duty pay jobs shall be paid through the Employer's payroll system on the weeks opposite to the normal County pay weeks.

25. Article 30 – General Provisions

The County and the Union agree to print a copy of this contract in booklet form for each member of the Union covered by this Agreement. The County will pay the entire cost of printing the aforesaid booklet.

26. Article 30 – General Provisions, Section 30.4

The Employer will provide the Union with a PBA Office at the location where role call is conducted. In addition, said office shall be equipped to service a telephone, fax machine and a computer with internet access. The Union agrees to pay the installation costs for said equipment and the attendant monthly charges.

27. New Addition – Off Duty Police Action

Since all law enforcement officers are presumed to be subject to duty twenty-four (24) hours per day, the parties hereby agree that any action taken by an Employee covered

by this Agreement during his/her time off, while in the State of New Jersey, which would have been taken by a law enforcement officer if present or available, shall be considered a police action, and the Employer shall have all the rights and benefits conferred by this Agreement concerning such actions as if he/she were on active duty.

The County and the Union hereby agree that sworn police personnel covered by this Agreement shall be fully indemnified and defended by the Employer for all circumstances in which said Employee renders first aid, whether on or off duty.

28. New Addition – Collective Bargaining Procedure

Collective bargaining with respect to rates of pay, hours of work or other conditions of employment shall be conducted by the duly authorized bargaining agent of each of the parties. Unless otherwise designated, the County Administrator of Mercer County, or his designee or designees, and the President of the Union, or his designee or designees, shall be the respective bargaining agents for the parties.

Collective bargaining meetings shall be held at time and places mutually convenient at the request of either party.

Employees of the Employer who may be designated by the Union to participate in collective bargaining meetings called for the purpose of the negotiation of a collective bargaining agreement will be excused from their work assignment, provided, however, that no more than four (4) employees shall be excused for any bargaining session.

29. New Addition – Light Duty

If available, temporary light duty assignments will be provided to employees who are covered under this Agreement who, because of injury, illness or disability, are temporarily unable to perform their regular assignments, but who are capable of performing alternative duty assignments. Assignment to temporary light duty shall not affect an employee's pay classification, pay increases, promotions, retirement benefits or other employee benefits.

Temporary light duty shall be made available and/or provided to an Employee who supplies a doctor's note evidencing the need for same.

30. New Addition – Military Leave

The Employer shall permit Employees who serve in the organized National Guard of the State of New Jersey or Reserve component of the United States Army, United States Marine Corps, United States Air Force, United States Navy, United States Coast Guard, or other affiliated organizations to a leave of absence from duty without loss of pay in all days when they are engaged in their respective active duty as provided by law. The Employer is to entitle members to military leave of absence from duty pursuant to the provisions of N.J.A.C. 4A:6-1.11 and N.J.S.A. 38A:4-1 to 4-4.

31. New Addition – Definitions and Reorganization

Please be advised P.B.A. Local No. 187 also proposes a definitions section to the collective bargaining agreement and a reorganization of certain sections of the Agreement so as to clarify same. These definitions and the proposed structure of reorganization will be discussed across the table and/or be provided at a later date.

The County

1. **Term of Agreement:** Three Years, commencing January 1, 2009 through December 31, 2011.

2. **Wages:**

- Effective January 1, 2009: Zero Percent (0%) increase on base pay and a step freeze to eligible employees who are on the payroll as of January 1, 2009 and are still employed by the County when the contract is ratified by the Board of Chosen Freeholders.
- Effective January 1, 2010: Zero Percent (0%) increase on base pay with movement on steps.

- Effective January 1, 2011: Two Percent (2.0%) increase on base pay.

**3. Work Schedules:**

- The County reserves the right to adjust work schedules and/or work shifts upon seventy-two (72) hours notice to the Employee.
- Delete Paragraph 3.3 of the contract.

**4. Overtime:**

Time and one-half shall not be paid for work performed on Saturdays and Sundays.

The County will provide cash or compensatory time at the County's discretion in compliance with the Fair Labor Standards Act and the New Jersey Wage and Hour Law.

**5. Medical Benefits:**

The existing Health Insurance and Prescription Program shall remain in effect for the life of the Agreement except as follows:

**A) Health Care Insurance:**

- Effective January 1, 2009, each active employee except those with single coverage shall have deducted from his or her salary Thirty-Four (\$34.00) Dollars per pay period for all medical, dental and prescription drug insurance. Those employees with single coverage shall have Twenty-Nine (\$29.00) Dollars per pay period deducted for such medical, dental and prescription drug insurance coverage.
- Effective January 1, 2010, each active employee except those with single coverage shall have deducted from his or her salary Forty-Four (\$44.00) Dollars per pay period for all medical, dental and prescription drug insurance. Those employees with single coverage shall have Thirty-Nine (\$39.00) Dollars per pay period deducted for

such medical, dental and prescription drug insurance coverage.

- Effective January 1, 2011, each active employee except those with single coverage shall have deducted from his or her salary Fifty-Four (\$54.00) Dollars per pay period for all medical, dental and prescription drug insurance. Those employees with single coverage shall have Forty-Nine (\$49.00) Dollars per pay period deducted for such medical, dental and prescription drug insurance coverage.
- If an employee voluntarily waives all coverage under the County's Health Care plan and provides a Certification to the County that he/she has other health care coverage, the County will waive the health care contribution for that employee for the period of time the County did not pay for health benefits for the employee.
- The County reserves the right to change, without negotiation, the manner in which Health Benefits are provided as long as substantially similar benefits are provided.

- B) The County agrees to provide a Dental Insurance Program to eligible Employees and their dependents. There shall be three (3) types of coverage as follows: (1) Basic Dental Coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance. The County will pay all of the costs of the basic dental program. Employees shall be responsible for any additional costs associated with the premium dental program or the Eastern Dental Program in excess of the cost for basic coverage.

## 6. **Seniority**

Seniority, for the purpose of calculating benefits, is defined as an employee's continuous length of service with the County Sheriff's Office beginning with initial date of hire.

## 7. **Holidays**

Combine Lincoln's Birthday and Washington's Birthday into President's Day.

Remove Day after Thanksgiving as a paid holiday.

**8. Discipline/Discharge**

Delete Paragraph 14.2(c) of the contract.

**BACKGROUND**

This proceeding concerns Sheriff's Officers employed by the Mercer County Sheriff. The County Sheriff is a statutory position providing court security, prisoner transportation, service of process, and ballistic identification. See N.J.S.A. 40A:9-117.6. Testimony at hearing reflects that the scope of authority and duties performed in Mercer County are far broader than the specific statutory mandate. Among other things, testimony and documentation show that Sheriff's Officers serve on the shooting response team for the City of Trenton Police Department, the U.S. Marshall's Fugitive Task Force and the ATF Federal Task Force. The Patrol Unit of the Department patrols County facilities and supports the City of Trenton Police Department by responding to motor vehicle accidents, domestic violence, assaults, homicide. In this respect there are similarities with the duties performed by the municipal police officer. In addition, the Sheriff's Department houses a K-9 Unit, an Airport Unit serving the Mercer County Airport, a Crime Scene Unit and an Internal Affairs Bureau. The evidence submitted by the PBA concerning the role of the Sheriff's Department was offered in support of its contention that the public interest criterion would be served by providing a compensation package that would maintain an effective

public safety department with high morale. The PBA views the County's last offer as one that, if awarded, would demoralize unit membership. The County does not contest the significance of the work performed by Sheriff's Officers nor the productivity and efficiency of the Department. However, the County contends that the affects of the sharp recession on the economy and the County's finances preclude a contract that would cause budgetary expenditures that would adversely affect the County's finances. In support of this view, the County provides substantial evidence of how it has dealt with declines in the County's fiscal health and budgetary deficits causing difficult decisions to be made in order to balance the budget. In this context the County sees its final offer as "reasonable, rational and the only possible choice under the statutory criteria."

The overview provided above has been supported by each party with several hundred exhibits that spread across all of the nine statutory factors that are relevant in the interest arbitrator's analysis of what represents a reasonable determination of the issues. The County and the PBA disagree on whether the other party has provided sufficient credible evidence to support its positions. Because of the extremely broad range of issues, the general overview provided for in this background section cannot fully summarize the evidence and arguments submitted by the parties in a broad and comprehensive manner. For these reasons, and for the purpose of providing a clear structure for the analysis and award that follows, I have laid out each party's proposal on each individual topic and have accompanied each proposal with a concise summary of argument

and evidence presented on that proposal in the Discussion section that follows.

The main compensation issues have been laid out last along with a summary of the evidence and argument each party has provided referencing the relevant statutory criteria. At the end of each individual issue, I have summarized what I have awarded on that issue. In addition, I have included a self-contained award containing all of the awarded issues at the end of the decision. In addition to the standard issues submitted for interest arbitration determination, the parties have mutually agreed to place an issue before me that was deferred to arbitration by the New Jersey Public Employment Relations Commission after the PBA had filed an unfair practice charge. That issue concerns the PBA claim that the County violated Article XXXIV of the Agreement when it did not move unit members through the salary guide set forth in Appendix A of the Agreement after the expiration of the Agreement. In particular, this dispute concerns the meaning of Article 5.3 which states that "all sheriffs' officers not at the maximum rate of pay (Step 8) shall advance one step on each successive July 1 until each said employee reaches the maximum rate of pay (Step 8). Step movement shall be consistent with prior practice." The County asserts that it complied with this contractual provision by not advancing sheriff's officers to the next step on the salary schedule while the PBA charges that the County violated the contract and its statutory obligation by refusing to do so. This issue will be dealt with in a separate heading in the Discussion section.

## DISCUSSION

The County and the PBA 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 (8) which 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.

It is traditional in interest arbitration proceedings for the party that proposes changes to bear the burden of proof for the modifications to the agreement that it has proposed. I apply that principle as part of my analysis to each issue in this dispute. While I must consider the merits of the various proposals individually, I refer to criterion N.J.S.A. 34:13a - 16g(8). This criterion allows for factors which are ordinarily considered in making determinations on wages and benefits to be given consideration when rendering an award. One such factor requires that consideration be given to the totality of the changes to be made to the existing agreement. Thus, any decision to award or deny any individual issue will include consideration as to the reasonableness of that individual decision in relation to the reasonableness of the total terms of the entire award. I proceed next to decide the individual issues in dispute.

**Deferral to Arbitration of the Unfair Practice Charge on Step Movement**

The issue presented is whether the County was obligated to advance each employee to the next step of the salary schedule after the expiration of the Agreement. The parties have offered detailed submissions on this issue and I have set them forth in their entirety.

### Position of the PBA

It is our position that the status quo during the negotiations process for a successor agreement requires the advancement of any and all P.B.A. #187 members not already at maximum pay through the salary guide at least until such time that a successor agreement is reached and executed by the parties. To do otherwise, fails to maintain the status quo. As such, the County violated the collective negotiations agreement with P.B.A. #187 when it failed to advance unit members through the salary guide after the December 31, 2008 agreement expired and during the course of negotiations for a successor agreement.

The clear, unequivocal language in Articles 5, 31, and 34 requires the County to advance P.B.A. #187 members through the salary guide while a new contract is being negotiated. Specifically, Article 34.1 provides:

This Agreement shall have a term from January 1 2005 through December 31, 2008. If the parties have not executed a successor agreement by December 31, 2008, then this Agreement **shall continue in full force and effect until a successor agreement is executed...**

[Emphasis added.]

Article 5.3 further supports this position in stating, “[a]ll Sheriff's Officers not at the maximum rate of pay (Step 8) **shall advance one step on each successive July 1** until said Employee reaches the maximum rate of pay (Step 8)” Reading these articles together, the terms and conditions of the agreement that the parties are obligated to “continue” and to be “in full force and effect” on January 1, 2009 includes the County’s obligation to fulfill the language contained in Article 5.3 that all Sheriff’s Officers “shall advance one step on each successive July 1 until said employee[s] reaches the maximum rate of pay.” In other words, step movement is a term and condition of employment that must be maintained not only by Article 5.3 but also because step movement is part of the County’s obligation to maintain the status quo. The County’s failure to do so is inconsistent with the County’s statutory obligation to maintain the status quo during negotiations under the provisions of N.J.S.A. 34:13A-33 which states:

Notwithstanding the expiration of a collective bargaining agreement... no public employer... shall

unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired ... collective negotiations agreement or unilaterally impose, modify, amend, delete or alter any negotiable terms and conditions of employment, with specific agreement of the majority representative.

[N.J.S.A. 34:13A-33.]

Despite possible assertions to the contrary, no practice exists that allows the County to maintain a P.B.A. #187 member at his or her step on the salary schedule on July 1, 2009 pending collective negotiations for a new agreement. Rather, such an assertion is misplaced because it is inconsistent with Articles 31, and 34. Specifically, any alleged practice is superseded by the clear and unambiguous contract terms.

Moreover, any reliance by the County upon any "past practice" is flawed for several reasons. First, any such "practice", assuming its existence, is violative of the provisions of N.J.S.A. 34:13A-33 and the spirit of N.J.S.A. 34:13A-21 and thus, ultra vires. Second, to the extent that any such "past practice" allegedly exists, the same is contrary to the clear, concise and unambiguous terms of the collective bargaining agreement and, thus, irrelevant. Finally, it is black letter law that the clear, concise, and unambiguous terms of a contract shall take precedent over inconsistent or contrary prior acts or past practices. See How Arbitration Works, Elkouri & Elkouri, Fifth Edition, at pages 651-652; and N.J. Dep't of Educ. and CWA, 14 NJPER 137 (¶ 19055 1998); and Ass'n of Sup'r's School Dist., 311 N.J. Super. 300 (App. Div. 1998). On this point, the Appellate Division specifically and expressly recognized that:

... past practice cannot unilaterally change a written contract. Rather, both parties must mutually agree to modify its terms...

[Ass'n of Sup'r's v. School Dist., supra, 311 N.J. Super. at 311].

Indeed, it is only where a "collective bargaining agreement is silent or ambiguous on an issue that past practice controls." See City of Somers Point, 28 NJPER 554, 557 (¶ 32173 2002).

In this case, the collective bargaining agreement, specifically Articles 5 and 34, mandates that the County continue to "advance" employees "one step" on the salary guide "on each successive July

1.” Furthermore, Article 34 clearly stipulates that the County's obligation to “advance” officers through the salary guide “one step on each successive July 1” shall “continue until “a new agreement” is negotiated.

The County has clearly and unmistakably repudiated its contractual obligation to the P.B.A. by steadfastly refusing to advance officers through the salary guide, albeit at 2008 rates of pay, until the parties negotiate a successor agreement. The obvious purpose, although left unstated by the County, is to gain an unfair advantage in the on-going negotiations. To further bolster this contention, Article 31 of the current agreement requires that any modification of agreement be finalized in writing and signed by the parties with no meaning to be given to any oral modification unless such modification is reduced to writing and incorporated into the agreement. Thus, any prior instance where employees were not advanced on the salary schedule after the expiration of an agreement cannot constitute a practice or an agreement that is inconsistent with the clear and unambiguous obligation of the County to advance an employee on the salary schedule “each successive July 1.”

Finally, the recent arbitration decision in The County of Mercer and PBA, Local 167 (J. Mastriani February 17, 2010), supports a finding that the County has violated the terms of the collective bargaining agreement in this case. That case involved the identical issue presented in this grievance, namely whether the County of Mercer violated the collective negotiations agreement when it failed to advance unit members through the salary guide after the December 31, 2008 agreement expired and during the course of negotiations for a successor agreement. After addressing almost the identical arguments raised in this proceeding, the arbitrator determined the union met its burden in establishing the County violated the terms of the collective bargaining agreement.

Specifically, the arbitrator found that there was no dispute that the salary schedule requires the granting of an annual step on the schedule based upon length of service. Therefore, the issue of whether step movement was required depended on whether step movement was part of the status quo or is discretionary based upon the contract language. Based upon a plain reading of the agreement, the arbitrator concluded that the agreement did not limit step movement subsequent to the expiration of the agreement nor confined movement to only the term of the agreement. Rather, the arbitrator determined that an employee who was eligible for step

movement had a reasonable expectation that they would receive an additional step in accordance with the contract terms.

In rejecting the County's argument of "past practice," the arbitrator noted that a single instance in 2004 when employees were not advanced an additional step after the expiration of an agreement does not satisfy the test of duration and consistency which would be essential to determining the existence of a past practice. The arbitrator explained that this analysis is consistent with the longstanding case law with respect to the denial of step increases based upon length of service in the absence of language that could be construed as a waiver of such right.

Accordingly, the arbitrator concluded that the County violated the agreement when it denied eligible employees step advancement through the negotiated salary schedule. Consequently, the County was directed to advance such employees through the salary schedule according to their length of service until such time that a new collective bargaining agreement dictates otherwise.

The same logic applied in The County of Mercer and PBA Local 167 should be applied here. The issues and arguments presented in both proceedings are identical and, in the interests of uniformity and predictability, so too should the outcomes. In this case, as in the PBA #167 matter, the County has violated the express terms of the collective bargaining agreement in failing to advance eligible members of P.B.A. #187 on July 1, 2009. As such, the County should be directed to advance such employees through the salary schedule according to their length of service.

For all the foregoing reasons and for the reasons set forth in the County of Mercer and PBA Local 167 opinion and award, P.B.A. #187 respectfully requests the entry of an award: (1) deeming the County to have violated the collective bargaining agreement when it denied eligible employees step advancement through the negotiated salary schedule on July 1, 2009; and (2) directing the County to advance such employees through the salary schedule according to the length of service until such time that new collective bargaining agreement dictates otherwise.

#### Position of the County

The County strenuously challenges the PBA's assertion that the language in the Agreement is clear and unambiguous. The PBA

claims that the County was in violation of Article 34 of the Agreement when they failed to advance unit members through the salary guide found in Appendix A of the Agreement. The expired Agreement was effective from January 1, 2005 through December 31, 2008. Appendix A sets forth the 2005-2008 salary range for all employees covered by this Agreement and contains a detailed table of step increases. More specifically, Article 5.3 stipulates that “[a]ll Sheriff's Officers not at the maximum rate of pay (Step 8) shall advance one step on each successive July 1 until said Employee reaches the maximum rate of pay (Step 8). **Step movement shall be consistent with prior practice.**” (Emphasis added). The County understands this Article to mean that during the term of the Agreement (2005-2008), unit members were to be advanced through the salary guide. The County complied with this contractual provision, as it always has.

At the interest arbitration hearing, Maureen Sparano, the Senior Personnel Technician, testified that the County has never moved employees on steps when there was no contract in place. (T330:17-23). The only exception to this past practice was when the County moved Correction's Officers on steps in 2010 to comply with the recent arbitration decision. Id.

In its brief submitted at the interest arbitration hearings, the PBA conveniently excludes the last sentence of 5.3 which directly states “Step movement shall be consistent with prior practice.” There is a clear prior practice that the County has never advanced employees on steps while the contract was expired. (T339:17-23). Thus, the County was consistent with prior practice when it did not advance Sheriffs Officers on steps after the Agreement expired.

In its brief, the PBA cites to the recent arbitration decision involving the County's Correction's Officers. The County of Mercer and PBA Local 167, (J. Mastriani, 2010). This matter is distinguishable from that arbitration because the Agreements of PBA Local 187 and PBA Local 167 are different. The PBA Local 167 Agreement did not contain the language that “Step movement shall be consistent with prior practice.” In addition, the two cases are distinguishable in that the County's past practice argument in the Correction's Officers' cases was based on a single instance when employees were not advanced an additional step after the contract expired. In this matter, there was testimony from Ms. Sparano that the County has never moved its employees on steps when the contract was expired. (T339:17-23).

The PBA further argues that Article 34.1 requires the County to advance unit members through the salary guide even after the expiration of the Agreement. Article 34 provides:

This Agreement shall have a term from January 1, 2005 through December 31, 2008. If the parties have not executed a successor agreement by December 31, 2008, then this Agreement shall continue in full force and effect until a successor agreement is executed.

The County objects to the PBA's liberal reading of this Article, and alternatively argues that they did in fact maintain the status quo by continuing to provide salary payments at 2008 levels, as dictated by the Agreement. Nothing more was required by the Agreement. As a result of these conflicting interpretations, the only thing that is clear is that this Article is ambiguous; and, thus, other extrinsic evidence, such as waiver and past practice, should be considered to determine the intent of the parties.

Therefore, the County respectfully requests that the arbitrator here determine that the Agreement is ambiguous and look to waiver and past practice to make clear the true intent of the parties.

#### **B. Waiver and Past Practice**

Assuming arguendo that the arbitrator determines that the Agreement is ambiguous, the PBA waived its right to file this grievance when it failed to object to the County's past practice of not advancing unit members through the salary guide during the negotiation of a successor agreement. With regard to waiver,

Arbitrators have frequently held that where one party, with actual or constructive knowledge of its rights, stands by and offers no protest with respect to the conduct of the other, thereby reasonably inducing the latter to believe that the conduct is fully concurred in, the matter will be treated as closed insofar as it relates to past transactions; but repeated violations of an express rule by one party or acquiescence on the part of the other ordinarily will not affect application of the rule in future operations.

Elkouri & Elkouri, How Arbitration Works, at p. 577 (5<sup>th</sup> ed. 1997).

Furthermore, an employer may change an existing, negotiable condition of employment where the employee representative has waived its right to negotiate. See Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28, 29-30 (¶ 29016 1997), aff'd 166 N.J. 112 (2000) (citing Tp Bd. of Ed., P.E.R.C. No. 91-18, 16 NJPER 484 (¶ 21210 1990), aff'd NJPER Supp. 2d 268 (¶ 221 App. Div. 1992); Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978). A waiver will be found if the employee representative has expressly agreed to a contractual provision authorizing the change, or it impliedly accepted an established past practice permitting similar actions without prior negotiations. In Re Maywood Bd. of Ed., 168 N.J. Super. 45, 60 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); S. River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶ 17167 1986), aff'd NJPER Supp. 2d 170 (¶ 149 App. Div. 1987).

With regard to past practice,

Under certain circumstances custom and past practice may be held enforceable through arbitration as being in essence a part of the parties' 'whole' agreement ...

Elkouri at 630, 632. The Commission has held that where the terms of a contract are ambiguous, a hearing officer must consider the past practices of the parties. See In the Matter of Township of Middletown, 34 NJPER ¶ 79 (2008) (citing Hall v. Bd. of Educ. of Jefferson, 125 N.J. 299, 306 (1991)). Further, "[o]ne of the most important standards used by arbitrators in the interpretation of ambiguous contract language is the custom or past practice of the parties." Elkouri at 648. Moreover,

The weight to be accorded past practice as an interpretation guide may vary greatly from case to case. In this regard, the degree of mutuality is an important factor. Unilateral interpretations might not bind the other party. **However, continued failure of one party to object to the other party's Interpretation is sometimes held to constitute acceptance of such interpretation so as, in effect to make it mutual.**

Id. (emphasis added). However, custom and past practice will not ordinarily be used to give meaning to a provision that is clear and unambiguous. Id. at 651. The clear language of a contract may be amended by the party contending that clear language has been

modified by “show[ing] the assent of the other party and the minds of the parties must be shown to have met on a definite modification.” Id. at 653 (citations omitted).

In this case, as discussed in greater detail above, the Agreement is ambiguous and thus we respectfully request that the Arbitrator examine the past practice of the parties. Furthermore, the Agreement requires the Arbitrator to examine the past practice of the parties. Here, past practice dictates that the County should not be required to advance unit members through the salary guide during the negotiation of a successor agreement. The parties have been negotiating agreements for years. Over that time, the County has never advanced employees through the salary guide until a successor agreement was finalized. This is exactly what is happening here. During negotiations, the PBA contacted the County demanding that its members be advanced through the salary guide and the County responded that based on past practice, advancement through the salary guide, if at all, would happen when the successor agreement was finalized. The County acted in conformance with past practice and the PBA should not have expected anything different.

Furthermore, the PBA is barred from filing this grievance based on the principle of waiver. Prior to last year, the PBA never filed a charge alleging that this was an unfair labor practice. Thus, the County continued its established procedure of waiting until a successor agreement is signed before advancing unit members through the salary guide. Indeed, the County and PBA have historically negotiated issues with respect to the salary guide. Under Commission case law, this inaction impliedly represents a waiver of the PBA’s right to file a grievance.

Accordingly, this grievance should be denied and dismissed.

#### Relevant Contract Language

5.1: The rates of pay for all Employees covered by this Agreement shall be as set forth in Appendix A annexed.

5.2: During the term of this Agreement, the compensation schedule will not be changed unless by mutual consent of the Employer and the Union.

5.3: The salary package for the years covered by this agreement shall be as set forth at Appendix A annexed. All Sheriff's Officers not at the maximum rate of pay (Step 8) shall advance one step on each successive July 1 until said Employee reaches the maximum rate of pay (Step 8). Step movement shall be consistent with prior practice.

5.6: The automatic annual step movement (increments) shall be paid on July 1 of each year for all Employees who are not then at the maximum rate of pay.

5.7: The six month training step provided in the salary guide shall be effective for new Employees during the first six months of employment with the Mercer County Sheriff's office. After six months of employment with the Mercer County Sheriff's Office then said new Employee shall advance to step 1 on the salary guide and move on said automatic annual salary guide thereafter. This new training step shall be effective for new Employees hired on or after August 1, 1996.

### 31. Oral Modification

31.1: This Agreement is intended to encompass the entire understanding between the parties. Any modification must be formalized in writing and signed by the parties to the Agreement. No oral modification will be deemed valid unless same is reduced to writing and incorporated into this Agreement.

### 34. Term and Renewal

34.1: This Agreement shall have a term from January 1, 2005 through December 31, 2008. If the parties have not executed a successor agreement by December 31, 2008, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

### Award

The PBA relies heavily upon the aforementioned contract language and a prior arbitration award issued by this arbitrator in a matter involving the County of

Mercer and PBA Local 167 (the Correction's Officer unit). The contract language between the two units are similar in part and differ in part. Here, Article 5.3 requires that all "sheriff's officers not at the maximum rate of pay (Step 8) shall advance one step on each successive July 1 until said employee reaches the maximum rate of pay (Step 8)". This language suggests that step movement carries forward upon contract expiration because movement towards Step 8 could take an additional contract year or more to accomplish that, by necessity, would require that step movement occur beyond the contract expiration in the absence of a new agreement. This language is similar to that in the Local 167 agreement. However, Article 5.3 also clearly states that "step movement shall be consistent with prior practice." This language was absent in the Local 167 contract. Thus, although the PBA properly advances the standard that clear contract language would normally trump a contrary past practice, in this instance, the Agreement specifies past practice language in Article 5.3 that is clear. This language falls within the same contract section that covers step movement and creates an ambiguity as to step movement upon contract expiration that would be absent if the past practice language did not exist. Thus, despite the suggestion that employees will automatically move to the next step beyond contract expiration, the language on step movement is coupled with the past practice language that dictates the parties are bound by the practice as to what has occurred in similar situations in the past. The record on this point shows that employees have not moved automatically upon contract expiration. This conclusion does not mean that salary schedule is not enforceable as written or

require an award that step movement be denied. The structure of the salary schedule itself survives the Agreement unless and until it is modified through negotiation or an award. Neither party here seeks to modify the structure of the salary schedule, although the County has proposed that no step movement occur in 2009. Based upon the above, the challenge by PBA Local 187 cannot be sustained on this record. Notwithstanding this conclusion, I have found in the salary portion of this award that annual step movement be awarded during each contract year based upon the terms of the overall salary award. For this reason, employees will move through the salary guide structure on an annual basis.

#### Duration

The PBA proposes a contract duration of January 1, 2009 - December 31, 2012. The County proposes a contract duration of January 1, 2009 through December 31, 2011. Each has submitted argument in support of their respective positions.

I award the PBA's proposed contract duration. I give substantial weight to the interests and welfare of the public criterion. The contract duration proposed by the PBA provides for certainty over personnel costs through December 31, 2012. Further, the contract terms that I have awarded have properly considered the budgetary evidence and cumulative costs based upon sufficient economic data presented into the record by the parties.

## Award

The contract duration shall be January 1, 2009 through December 31, 2012.

### **Article 4 – Overtime, Section 4.8**

The PBA proposes a change in the procedures for receipt of overtime pay.

It proposes the following:

Overtime pay shall be computed on the basis of the Employee's base pay divided by 1827 hours. Payment for overtime shall be paid on alternate pay weeks. In other words, all overtime will be paid during the weeks opposite to the normal County paid weeks.

The underlined portion of the above proposal represents the new language that the PBA seeks to add. It distinguishes between normal pay and overtime pay and seeks to have each paycheck issued on alternate pay weeks.

The County opposes this proposal and offers the following argument:

The PBA proposes that overtime and extra-duty pay jobs be paid to Sheriff's Officers on weeks opposite the normal County pay weeks. The PBA's proposal would lead to increased costs to the County. Mr. Mair testified that the PBA's proposal would be "extremely onerous" to the County as it costs the County the same to run a payroll for "5 employees as it does for 5,000 employees." (T215:16-19). Mr. Miller testified that paying overtime in alternate weeks would require the County to hire another person in payroll. (T428:17 to 429:13). All County employees are paid on the same week and at the same time. (T430:2-6). No other bargaining unit has off-week payment of overtime or extra duty jobs as the PBA's Final Offer proposes. (T430:7-10). Therefore, the PBA's proposal

for overtime and extra duty pay jobs be paid in weeks opposite the normal pay week should be rejected.

### Award

The PBA's proposal is denied. Its desire to have the paychecks issued on alternate weeks must be balanced with the administrative inconvenience and financial impact to the County if it were required to change the existing payroll methodology.

### Article 4 - Overtime

The County has proposed:

Time and one-half shall not be paid for work performed on Saturdays and Sundays.

The County will provide cash or compensatory time at the County's discretion in compliance with the Fair Labor Standards Act and the New Jersey Wage and Hour Law.

In support of its proposal, the County offers the following argument:

The County proposes that overtime of time and one-half the employee's regular rate not be paid for work performed on Saturdays and Sundays. Under the County's proposal, the County will provide cash or compensatory time at the County's discretion in compliance with the Fair Labor Standards Act and the New Jersey Wage and Hour Law.

Currently, Sheriffs Officers receive overtime for working on weekends unless the officer is assigned to the airport. (T314:11-14). Sheriff's Officers are not statutorily entitled to overtime for working on weekends. Paying Sheriff's Officers overtime for working on weekends contributes in the high overtime costs of the Sheriff's Office. Therefore, the County's proposal to not pay

overtime to officers for work on Saturdays and Sundays is appropriate under the statutory criteria.

The PBA urges rejection of the County's proposal noting that the provision is longstanding and does not significantly contribute to overtime costs given the fact that the majority of unit personnel work on a Monday through Friday work schedule.

#### Award

The County has provided insufficient justification to warrant a change in the status quo. The parties have agreed to have a premium provided for weekend work and to rescind that agreement merely because it is not statutorily required would be inconsistent with the parties' prior mutual intent. I also do not find that overtime costs associated with the existing contract language has created adverse financial impact on the County.

#### Article 5 – Scales or Rates of Pay

The PBA has proposed revisions to Section 5.4:

Those Sheriff's Officers functioning in the capacity of Senior Officer within the Civil and Criminal Courthouse, Detectives, Process Servers and those Sheriff's Officers assigned to the Airport, S.E.R.T., Motorcycle detail EMT/Paramedic, Honor Guard, Patrol, K-9, Programs/Project Lifesaver, and CSI Units shall receive an additional sum of 3% added to their base salary of compensation. No Sheriff's Officer shall receive more than 3% despite the fact that they meet more than one of the criteria delineated above.

In support of its proposal, the PBA offers the following arguments:

Currently, Sheriff's Officers functioning in the capacity of Senior Officer receive the annual sum of \$500.00, over and above their base salaries. Those officers designated and functioning as detectives or process servers receive \$600.00 over and above their base salaries. P.B.A. #187 is seeking to alter this stipend from a flat dollar amount to a percentage of a member's base salary. Moreover, P.B.A. #187 desires to extend this stipend to Sheriff's Officers functioning in other specialized units.

Specifically, P.B.A. #187 proposes that this stipend be increased to 3% of a member's base salary and that the stipend be extended to all officers serving in specialty units such as K-9, Airport, and Patrol. Such a proposal would be the Sheriff's Officers on par with the Trenton Police Department, who receive a 3% stipend. . The Sheriff's Officers work very closely with these officers and comparability of pay for performance of the same or very similar duties is warranted. (1T96:6-10).

The County opposes this proposal and offers the following arguments:

The PBA proposes that Sheriff's Officers functioning in the capacity of Senior Officer within the Civil and Criminal Courthouse, Detectives, Process Servers and those Sheriff's Officers assigned to the Airport, S.E.R.T., Motorcycle detail, EMT/Paramedic, Honor Guard, Patrol, K-9, Programs/Project Lifesaver, and CSI Units shall receive an additional sum of 3% added to their base salary of compensation. Currently, Senior Officers receive \$500 annually, and Detectives or Process Servers receive \$600 annually. Officers assigned to the Airport, Motorcycle detail, EMT/Paramedic, Honor Guard, Patrol, K-9 unit, Programs/Project Lifesaver, and CSI units do not receive additional compensation for their assignments.

The PBA testified that its proposal would be a threefold increase of the \$600 annual stipend to \$2,400 for officers earning \$79,000. (T161:17-20). However, by proposing to convert the stipend from a fixed amount to a percentage based on an officer's salary, the stipend will exponentially increase as the, officers' wages increase. In reality, the PBA's proposal to increase stipends is another proposal by the PBA for wage increases. As Mr. Mair testified, the PBA's proposed 3% stipend added to the PBA's proposed 4% and

4.5% wage increases is compounded to over 7% wage increases. (T218:16-18).

The PBA's proposal does not merely seek to greatly increase the stipends but also seeks to greatly increase the number of officers that will receive a stipend. Under the PBA's proposal, officers assigned to the Airport, S.E.R.T., Motorcycle detail, EMT/Paramedic, Honor Guard, Patrol, K-9 unit, Programs/Project Lifesaver, and CSI units will join Detectives and Process Servers in receiving stipends. These officers perform job duties outside the normal job duties of a Sheriffs Officer. (T218:10-15). The PBA testified that a large proportion of the PBA would qualify for the 3% stipend. (T164:22-24). As Mr. Mair testified, it is clear that if the PBA's proposal is granted, it will apply to the majority of the PBA. (T291:22 to 292:5).

Mr. Miller testified that the PBA's proposal would add to the overall cost of employing Sheriff's Officers. (T430:19-20). The proposal will also increase the County's pension costs because the stipend would be added to the officer's base salary. (T431:5-7). The County can simply not afford the additional costs of this proposal.

During the past 15 years, the New Jersey Commission of Investigation has repeatedly examined the nature and fiscal impact of questionable and patently excessive public employee benefits and repeatedly has made recommendations for systematic reform. (The Beat Goes On: Waste and Abuse in Local Government Employee Compensation and Benefits, State of New Jersey Commission of Investigation, December 2009, C-247). The Commission has determined that eighty percent (80%) of public entities examined were providing questionable and excessive benefits. Id. In this proposal, the PBA is seeking questionable and patently excessive stipends for the majority of the County's Sheriff's Officers. The PBA has failed to demonstrate why these proposals are needed and therefore the proposal should be rejected.

#### Award

The PBA's proposal is twofold. It seeks to increase the amount of stipends currently received from \$500 to 3% and to extend the eligibility for the stipend to other specialized units, including those who work in patrol, at the airport and in K-9

capacity. The proposal has economic impact which has not been calculated. It appears from the proposal that the number of unit employees who would receive additional compensation beyond base pay would increase substantially, as well as the amounts of the additional compensation. Given the restraints on financial impact that I have found present in the salary portion of the award, I conclude that the PBA's proposal has not been justified. Accordingly, it is denied.

### **Article 5 – Scales or Rates of Pay – College Credit**

The PBA proposes the addition of new contract language that would establish annual payments to employees who have attained college degrees. The new contract language would be as follows:

Annual payments for college credit will be made to all Employees who have attained college degrees. Payments will be based on the level of education attained as shown below:

a.	Associate's degree	\$200.00
b.	Bachelor's degree	\$400.00
c.	Masters' degree	\$600.00

Employees must submit proper documentation in order to receive payment. Said payment will be paid once each year during the month of November.

In support of its proposal, the PBA argues that putting an educational incentive into the agreement would attract more highly qualified candidates to the Sheriff's Department and thereby increase its effectiveness. The PBA also notes that many Mercer County law enforcement officers receive educational incentives and it provides the following chart:

Ewing Township	Annual Payments \$250.00 for Associate Degree \$450.00 for Bachelor Degree
Hightstown Boro	Associate Degree \$150.00 Bachelor Degree \$250.00 Master's Degree \$350.00 Doctorate Degree \$450.00
Pennington Borough	Annual Payments after 6 <sup>th</sup> Year Associate Degree 2007 \$600.00 2008 \$625.00 2009 \$650.00 Bachelor Degree 2007 \$1,000.00 2008 \$1,200.00 2009 \$1,400.00
West Windsor Township	Annual Payments after 2 <sup>nd</sup> and 4 <sup>th</sup> Year Associate Degree \$500 Bachelor Degree \$1,000.00
Lawrence Township	Associate Degree \$500.00 Bachelor Degree \$1,000.00

The County opposes this proposal and offers the following arguments:

The PBA proposes an annual stipend for Sheriff's Officers that have attained college degrees. Under the PBA's proposal, an officer would receive \$200 for an Associate's degree, \$400 for a Bachelor's degree, and \$600 for a Master's degree.

The PBA indicated that its proposal was below the average of other police departments. (T98:17-18). It should be noted that the Sheriff's Office is not a police department. While some other counties provide an education stipend, the majority do not. (C-379). None of the County's other law enforcement units receive an education stipend. (C-103). Mr. Mair indicated that officers have the ability to attend school and have a portion of their tuition paid for by the County subject to the availability of funds and the approval of their supervisor. (T220:19-23).

The PBA stated that it is introducing this proposal "as a starting point." (T98:19-20). It is clear that the PBA is introducing an education stipend with the intention of increasing the stipend in the future. The PBA failed to meet its burden of establishing why the

education stipend is needed. Thus, the PBA's education stipend proposal should be rejected.

### Award

I do not award the PBA's proposal to add a new provision to include payments for the receipt of college degrees. A review of the many law enforcement agreements for those who are employed by Mercer County reflects that no such benefit is provided. The economic impact of awarding this proposal could be substantial on the County, not only for this unit, but also if it were extended to the other law enforcement units on a countywide basis. Accordingly the proposal is denied.

### Article 5 – Scales or Rates of Pay

#### (\$250.00 Stipends to Certified or Specialized Employees)

The PBA proposes a new \$250 stipend for certain certified or specialized officers as follows:

There shall be annual payments of Two-Hundred Fifty (\$250.00) dollars per Sheriff's Officer to those Employees who are certified breathalyzer experts, certified radar operators, or weapon repair specialists, provided, however, that no Employee receives payment for more than one of the criteria delineated above.

In support of its proposal, the PBA offers the following argument:

P.B.A. #187 is also looking for a \$250.00 annual stipend to these officers who are certified breathalyzer experts, certified radar operators, or weapon repair specialists. Officers who are certified as experts in these areas have to attend training and/or classes to

obtain the same. (1T 99:2-8). This, in turn, creates a higher caliber of officer which increases the overall effectiveness of the Sheriff's Department. Consequently, these officers should be given an incentive and/or compensated for the training they have completed and the expertise they provide.

The County opposes this proposal and offers the following argument:

The PBA proposes annual payments of \$250 to those Sheriff's Officers who are certified breathalyzer experts, certified radar operators, or weapon repair specialists. Under the PBA's proposal, an officer could not receive more than one stipend.

The Sheriff's Officer statute, N.J.S.A. 40A:9-117.6, makes no mention of breathalyzer experts, certified radar operators, or weapon repair specialists. These specialties are not a core function of a Sheriff's Officer. (T292:23 to 293:3). The PBA provided no testimony or evidence providing why these certifications are necessary or other Sheriff's Offices that provide stipends for such certifications. Through this proposal, the PBA, once again, is attempting to expand the number of Sheriff's Officers that receive additional compensation besides their salary.

The PBA testified that through this proposal, they are "trying to get on par with other police departments...." (T169:3-5). The fact remains that the Sheriff's Office is not a police department. Sheriff's Officers perform different job duties and have different job responsibilities than police officers. The PBA has failed to meet its burden of establishing the need for these certification stipends and therefore their proposal should be rejected.

#### Award

The rationale previously stated as the basis for the denial of the PBA's proposal to increase stipends and expand the stipend to additional categories of employment in Article 5.4 is applicable here. Accordingly, this proposal is denied.

## **Article 7 – Insurance and Retirement Benefits**

The PBA proposes to add a section to Article 7 that would apply to officers killed in the line of duty. It states:

In the event an Employee covered under the terms of this Agreement is killed in the line of duty, or dies from injuries sustained while in the line of duty, the County shall immediately pay the sum of Five-Thousand (\$5,000.00) Dollars towards funeral and connected expenses to his or her surviving spouse and/or dependents or, if none, to his or her heirs and/or estate, regardless of the amount paid from other collateral sources.

In support of its proposal, the PBA offers the following argument:

Another important proposal put forth by P.B.A. #187 pertains to the death of an officer who is killed in the line of duty. Under the terms of its proposal, the County would pay the sum of \$5,000.00 to the immediate family of the fallen officer toward funeral and other death related expenses. It goes without saying that, as law enforcement officers, the potential exists for a member of the Sheriff's Department to be killed in the line of duty. As a reward for such service, the families of these officers should be compensated in the event such an unfortunate tragedy occurs. Moreover, similar provisions are contained in the Hamilton Township and Trenton Police Department collective bargaining agreements with its law enforcement officers. Therefore, much support exists for the grant of this proposal.

The County opposes this proposal and offers the following argument in opposition:

The PBA proposes that if an officer is killed in the line of duty, or dies from injuries sustained while in the line of duty, the County shall pay \$5,000 toward funeral and connected expenses to his or her family.

Sheriff's Officers are provided life insurance by the County. (T222:25 to 223:3). The County's pension plan provides insurances through the plan that would make a \$5,000 funeral expenses provision redundant. (T222:22-24). While the loss of a Sheriff's Officer in the line of duty would be tragic, the PBA has failed to establish why the current insurances provided are inadequate and, thus, this provision should be rejected.

#### Award

The reasons cited by the County for the denial of this proposal have merit.

Accordingly, the proposal is denied.

#### Article 19 – Shift Pay

The PBA proposes to revise Article 19.1 to increase shift pay for those who work between the hours of 3 p.m. and 12 a.m. from 30 cents to 40 cents per hour. The PBA also proposes to revise Article 19.2 to increase shift pay from 35 cents per hour to 45 cents per hour for employees working on shifts between 12 a.m. and 8 a.m. The revised Article 19.1 would read:

Employees working on shifts of which the majority of working hours fall between 3:00 p.m. and 12:00 midnight shall receive in addition to their regular pay an additional forty (40) cents per hour.

The revised Article 19.2 would read:

Employees working on shifts of which the majority of working hours shall fall between 12:00 midnight and 8:00 a.m. shall receive in addition to their regular pay an additional forty-five (45) cents per hour.

In support of its proposals, the PBA offers the following argument:

P.B.A. #187 is also seeking to increase the shift differential pay for members whose majority of working hours fall between 3:00 pm. and 12:00 midnight and 12:00 midnight and 8:00 a.m. The proposed increases are to forty (40) cents and forty-five (45) cents per hour, respectively. The majority of Sheriff's Officers work from 8:30 a.m. to 4:30 p.m. However, certain officers are required to work outside these normal work hours. Since the work schedules are vastly different, these officers are compensated with shift differential pay. This proposal seeks a nominal increase of the shift differential amounts to further provide an incentive to Sheriff's Officers to work these shifts.

The County opposes this proposal and offers the following arguments in opposition:

The PBA proposes that the shift pay for employees working between 3:00 p.m. to midnight be increased from thirty (30) to forty (40) cents per hour. The PBA additionally proposes that the shift pay for employees working between midnight and 8:00 a.m. be increased from thirty-five (35) to forty-five (45) cents per hour.

The PBA's shift pay proposal is "part of a long litany of increases and compensation requests." (T223:13-14), As Mr. Mair testified, it is important not to look at the effect of just this specific proposal but "the entire embodiment of all the economic requests." (T247:14-16). The Sheriff is responsible for filling the Sheriff's Office with the required number of officers on a day-to-day basis. The PBA's proposal would increase the Sheriff's costs in filling the Sheriff's Office. The PBA failed to provide evidence demonstrating why the current shift pay provisions are inadequate. Therefore, the PBA's proposal to increase shift pay should be rejected.

#### Award

The County accurately observes that the overall impact of all economic proposals must be considered rather than the impact of any one specific proposal. This award in the overall has done so. Within that overall impact, I find

that the PBA's proposals to adjust shift pay are reasonable but not to the extent that it has proposed. The amount of shift pay is worthy of revision from time to time based upon the relationship between the amount of shift pay received and the overall salary. In this instance, an adjustment of 5 cents per hour for each category is justified effective January 1, 2012. On that effective date, the amount in Article 19.1 shall be increased to 35 cents per hour and the amount in Article 19.2 shall be increased to 40 cents per hour.

#### **Article 20 – Longevity**

The PBA proposes to increase the amount of the annual longevity benefit that appears in Article 20.2. The existing longevity benefit is as follows:

<u>Years of Completed Service</u>	<u>Annual Longevity</u>
5 Years	\$ 300.00
10-14 Years	\$ 900.00
15-19 Years	\$1,350.00
20-24 Years	\$1,750.00
24 Years or More	\$2,200.00

The PBA's proposal would change the calculation from dollars to percentages resulting in an increase in the longevity payment at each level of years of completed service. The proposal reads as follows:

The annual longevity benefit shall be based upon years of completed service. The benefits shall be as follows:

<u>Years of Completed Service</u>	<u>Annual Longevity</u>
5 Years	1.5% of Employee's Base Salary
10-14 Years	3.0% of Employee's Base Salary
15-19 Years	5.0% of Employee's Base Salary

20-24 Years	6.0% of Employee's Base Salary
24 Years or More	7.5% of Employee's Base Salary

In support of its proposal, the PBA presents a chart reflecting Mercer County law enforcement municipal departments that offer longevity payments based on a percentage of base pay:

Ewing Township	5 Years: 2.5% of base pay 10 Years: 3.5% of base pay 15 Years: 4.5% of base pay 20 Years: 5.5% of base pay 24 Years: 6.5% of base pay
Hamilton Township	5 Years: 1.5% of base pay 10 Years: 2.0% of base pay 15 Years: 2.5% of base pay 20 Years: 3.0% of base pay 24 Years: 3.5% of base pay
Hightstown Boro	5 Years: 1.0% of base pay 10 Years: 2.0% of base pay 15 Years: 3.0% of base pay 20 Years: 4.0% of base pay 24 Years: 5.0% of base pay
Princeton Borough	5 Years: 1% of base pay 8 Years: 2% of base pay 10 Years: 3% of base pay 15 Years: 4% of base pay 20 Years: 5% of base pay 24 Years: 6% of base pay
Princeton Township	5 Years: 1% of base pay 10 Years: 2% of base pay 15 Years: 3% of base pay 20 Years: 4% of base pay 24 Years: 5% of base pay

In the alternative, the PBA submits that if a percentage based longevity payment is not awarded, unit members deserve an increase in the dollar amount of longevity pay received based upon comparability data with County municipal law

enforcement units who receive a greater dollar amount of longevity. The PBA submits a charge in support of this contention:

Lawrence Township	8 Years: \$1,500.00 12 Years: \$2,100.00 16 Years: \$3,000.00 20 Years: \$3,900.00 24 Years: \$5,100.00 28 Years: \$5,500.00
West Windsor Township	6 Years: \$1,011.00 11 Years: \$1,516.00 15 Years: \$2,021.00 20 Years: \$2,526.00 25 Years: \$3,032.00
Mercer Prosecutor's Office	5 Years: \$300.00 10 Years: \$900.00 15 Years: \$1,350.00 20 Years: \$1,850.00 24 Years: \$2,300.00 30 Years: \$3,900.00
Mercer Prosecutor's Superiors	5 Years: \$300.00 10 Years: \$900.00 15 Years: \$1,350.00 20 Years: \$1,850.00 24 Years: \$2,300.00 30 Years: \$3,900.00

The County opposes the PBA's longevity proposal and offers the following arguments in opposition:

The PBA proposes that the longevity section be revised to provide a longevity benefit calculated as a percentage of the employee's base salary based on years of completed service. For an officer that has completed 24 years or more of service, the officer would receive 7.5% of his base salary for a longevity benefit. Currently, the longevity schedule is set forth with flat dollar amounts, with the max benefit being \$2200. (C-1).

The PBA stated that the impact of this proposal would be that Mercer Sheriff's Officers would be compensated similarly to other Sheriff's Officers and police departments. However, in comparing

Mercer Sheriff's Officers to other Sheriff's Officers, which is the only relevant comparison, one-third of New Jersey counties have discontinued or never provided longevity benefits. (C-380). Based on the fact that many other Sheriff's Offices have discontinued longevity benefits, it is clearly not the trend in New Jersey to greatly increase longevity benefits as the PBA's proposal would do. Id. As Mr. Mair and Mr. Miller both indicated, all of the County's other bargaining units receive longevity benefits through a flat dollar amount longevity schedule. (T224:12-16; T435:3-5). Since these units are operating under expired contracts, awarding the PBA's longevity proposal would create a pattern that would ripple through all of the County's law enforcement bargaining units. (T249:14-18).

The PBA's proposal would greatly increase the longevity benefits that Mercer Sheriff's Officers receive. In this economic climate, it is inappropriate for longevity benefits to increase exponentially by calculating the benefit as a percentage of the officer's base salary. Therefore, the PBA's longevity proposal should be rejected.

#### Award

The PBA relies heavily on comparisons with municipal law enforcement units in Mercer County. I find these comparisons to be less relevant than evidence that would show increased longevity benefits within the existing law enforcement longevity scheme in Mercer County. Accordingly, the proposal is denied.

#### Article 21 – Uniform Provisions

The PBA proposes to add a new section to Article 21 that provides an annual allowance for uniform maintenance and equipment. Its proposal is as follows:

Each officer shall receive a \$1,000.00 allowance each year for uniform maintenance and equipment. The allowance shall be paid

in bi-annual installments of \$500.00 during the months of January and July of each year. During the officer's first year of employment, they are not entitled to this allowance. During the officer's second year of employment, the allowance is prorated based upon the officer's date of hire and the number of months remaining in the calendar year.

The PBA also proposes to revise Article 21.1 as it pertains to "all seasons" initial uniform issue. The bolded portion of the proposal represents the newly proposed language. The difference between the new language and the old language is that the new language would require the County to provide Class B uniforms as Class A uniforms. The proposal is as follows.

The County agrees to provide each Employee covered by the terms of this Agreement an initial uniform issue consisting of the following:

All seasons:	<b>Six (6) Class A Trousers</b>
	<b>Three (3) long sleeve Class A shirts</b>
	<b>Three (3) short sleeve Class A shirts</b>
	<b>Six (6) Class B trousers</b>
	<b>Three (3) long sleeve Class B shirts</b>
	<b>Three (3) short sleeve Class B shirts</b>
	<b>One (1) all season jacket</b>
	<b>One (1) State police type cap</b>
	<b>One (1) baseball type cap</b>
	<b>One (1) winter trooper hat</b>
	<b>One (1) raincoat</b>

In support of its proposals, the PBA offers the following argument:

As previously recounted, P.B.A. #187 is also seeking a \$1,000 annual uniform allowance for its members. Currently, if an officer needs a new uniform, they purchase it on their own. (1T 101:19-22). This can prove very costly to the members and reduces the overall compensation they receive during the course of their employment. Officer Papero has estimated that he spends anywhere from \$1,000 to \$1,200 per year on uniforms. (1T 102:17-20). Consequently, a \$1,000 uniform allowance per year would fully

compensate the officers for the out of pocket costs they typically incur. Since the uniforms are required, it follows that such an allowance should be awarded.

During the interest arbitration, the County has taken the position that a uniform allowance is already provided to P.B.A. #187 members. Specifically, the County asserts that a \$500.00 payment was rolled into the base salary of the members, thereby providing the members a clothing allowance already. The County's assertion is misplaced. Beginning in the calendar year 2000, a \$500.00 payment was incorporated into a member's base salary for the maintenance of uniforms, not for a clothing allowance.

Sergeant Carmen Rettzo testified regarding this subject. During his testimony, Sergeant Rettzo made it clear that the payment was earmarked for maintenance, not a clothing allowance. (2T 449:16-20). To support this contention, Sergeant Rettzo indicated that the payment the members received was not sufficient enough to replace old, damaged, or worn out uniforms, nor was it intended to accomplish the same. (2T 449:12-15). As such, it is evident that the payment the members received were to maintain the uniforms, such as dry cleaning, not the replacement of same. Therefore, a clothing allowance should be awarded to P.B.A. #187 members. Without the institution of such a payment, members will continue to be forced to absorb the cost of replacing uniforms on a yearly basis.

In addition, the PBA offers other collective negotiations agreements in evidence that provide uniform allowances:

Ewing Township	\$1,075.00 annual uniform allowance
Hamilton Township	\$600.00 annual uniform allowance
Hightstown Boro	2006: \$810.00 2007-2009: \$850.00
Princeton Borough	Detectives \$1,800 (2008) \$1,900 (2009) Cost of dry cleaning borne by Borough
Princeton Township	\$1,050.00 annual uniform allowance
Mercer Prosecutor's Office	\$250.00 reimbursement for damage in performance
Mercer Corrections Officers Superiors	2005: \$1,100.00 2006: \$1,150.00 2007: \$1,200.00 2008: \$1,250.00

The PBA also offers additional argument concerning initial uniform issuance:

Along these same lines, P.B.A. #187 is looking to alter the initial uniform issuance to its members. Specifically, the Union is seeking its members to initially receive a larger quantity of uniforms and BDU uniforms that include long and short sleeve shirts. When an officer initially comes of the academy, they are not issued these uniforms; rather they are purchased by the individual officer. (1T 89:17-24). As indicated by Officer Papero during his testimony, the face of the Sheriff's Department has changed, wherein approximately half of the Sheriff's Officers work outside the courtroom. (1T 89:4-7). Therefore, the uniforms the Union is seeking are more practical for inclement weather and would reduce the economic burden currently thrust upon these officers in having to purchase the same.

The County opposes the Union's proposals and offers the following arguments in opposition:

The PBA proposes that Sheriff's Officers receive a \$1,000 annual allowance for uniform maintenance and equipment.

The County provided a uniform allowance to Sheriffs Officers until 2000. In 1999, the PBA and the County agreed in a side letter agreement to roll the uniform allowance into officers' base pay. (T343:9-13; C-423). Mr. Rettzo, the PBA's witness, confirmed that the Sheriff's Officers uniform allowance was rolled into base pay. (T455:6, 11).

Based on the fact that the PBA previously agreed to roll the uniform allowance into base pay, it is double dipping for the PBA to propose a new uniform allowance. Sheriff's Officers have benefitted from increased salary in return for ending the uniform allowance. The County is in a precarious financial situation and cannot afford to give each Sheriff's Officer an additional \$1000 annually for uniforms. Therefore, the PBA's proposal for a new uniform allowance should be rejected.

The PBA proposes that the County provide a full Class B uniform in addition the Class A uniform the County currently provides.

Mr. Kemler testified that the PBA asked the Sheriff if Sheriff's Officers could wear Class B uniforms instead of the Class A uniforms that they received from the County. (T308:5-8). The Sheriff gave Sheriff's Officers permission to wear Class B uniforms and the Sheriff's Officers went out and bought the uniforms on their own. *Id.* The PBA failed to demonstrate why the Class A uniform that is issued by the County is not sufficient for Sheriff's Officers to perform their job duties. Therefore, the PBA's proposal on uniform issuance should be rejected.

#### Award

The first part of the PBA's proposal would require the County to provide a \$1,000 annual allowance for uniform maintenance and equipment. Currently, the County provides for an initial uniform issue but thereafter it is the employee's responsibility to replace any uniform item and to maintain the uniform in good order. The County is only obligated to provide a new initial issue in the event that there is any additional uniform requirements or if it requires a change in uniform style. I credit Sergeant Rettzo's testimony that the \$500 payment that was folded into a member's base pay in 2000 was not sufficient to cover all of the costs of uniform maintenance and replacement. This, however, does not establish that a greater sum that has traditionally been provided through the 2000 fold-in should be awarded. Accordingly, this portion of the proposal is denied.

The next issue with respect to uniforms is whether the County should provide Class B trousers and shirts in a manner like what it provides for Class A

trousers and shirts. The County submits that Class B uniforms came into being as a result of a PBA request to wear Class B uniforms and that after being granted such permission, the Class B uniforms were bought by the Sheriff's Officers. As noted in the existing contract language, the County's obligation is limited to providing an initial uniform issue with employee responsibility for replacement. I find merit in the PBA's proposal to provide an initial uniform issue but only to the extent that the County requires that Class B trousers and shirts be worn. If such requirement were to exist, the PBA's proposal would be consistent with the County's obligation under Article 21.1 as it concerns Class A clothing. I do not award the PBA's proposal if no such requirement exists. That is, in the event that the wearing of Class B trousers and shirts is optional, the PBA's proposal to have the County provide an initial uniform is denied.

#### **K-9 Units (New Provision)**

The PBA proposes to add a new article into the Agreement concerning K-9 dogs. The proposal is as follows:

After an assigned K-9 dog is retired and the dog continues to reside in the home of the officer to whom the dog was assigned, the Employer agrees to provide and/or pay for routine maintenance, veterinary care, medication and food for the retired K-9 dog for the remainder of its life.

In support of its proposal, the PBA offers the following arguments:

P.B.A. #187 is also proposing language regarding its K-9 Unit. In the current collective bargaining agreement, there is no specific

language governing the K-9 Unit and, more specifically, the care of the dog. Routinely, a dog in the K-9 Unit is assigned to a particular officer and resides in that officer's household. As such, after a dog is retired, it typically resides in the household of the officer. This forces the officer to pay for its maintenance and care for the remainder of the dog's life. (1T 103:4-9). In its proposal, P.B.A. #187 is seeking to have the County pay and/or provide for the routine maintenance, veterinary care, medication, and food for a retired dog for the remainder of its life. Simply put, the County derived a benefit from the dog during the course of its utilization and, thus, should be responsible for the animal after it is retired. It is patently unfair for an officer to incur the expenses associated with a pet merely because the County is no longer using it for law enforcement purposes.

The County opposes this proposal and offers the following arguments in opposition:

The PBA proposes that after an assigned K-9 dog retires, the County provide and pay for routine maintenance, veterinary care, medication, and food for the retired K-9 dog for the remainder of its life.

The PBA's proposal amounts to retiree benefits for K-9 dogs. (T270:2-13; C-8). K-9 officers are not required to adopt or take care of K-9 dogs after the dog's retirement. (T177:810). K-9 officers that choose to adopt their dog after the dog's retirement do so voluntarily. Id.

The Sheriff's K-9 Unit was set up voluntarily by the Sheriff and is not required by statute. The County pays for routine maintenance, veterinary care, medication, and food for K-9 dogs when they are on active service. It is somewhat comical, in these tough economic times, for the PBA to propose that the County pay these expensive costs when the K-9 dog is retired. New Jersey taxpayers are enraged at the high cost of pensions for New Jersey's public workers and have demanded pension reform. (C-376; C-377). One can imagine that if the PBA's proposal is awarded, Mercer County taxpayers will demand K-9 health care reform to alleviate the high cost of paying for veterinary care of retired K-9 dogs. The County cannot afford to be charitable for retired K-9 dogs, and therefore, the PBA's proposal for K-9 retiree benefits should be rejected.

### Award

The concept underlying the PBA's proposal is an admirable one in that it seeks to have K-9 dogs receive improved care after their retirement from service. Notwithstanding this observation, and for the reasons cited by the County, I cannot conclude that the financial responsibilities associated with this proposal should be borne by the County. Accordingly, the proposal is denied.

### Twenty-Five (25) Year Stipend (New Provision)

The PBA proposes to add a new provision to the Agreement that would provide that "Each officer shall receive a \$2,500.00 benefit upon completion of their twenty-fifth (25<sup>th</sup>) year of County service."

In support of this proposal, the PBA offers the following arguments:

The last stipend that P.B.A. #187 is seeking is for members who complete their 25th year of County service. Specifically, the Union is seeking a one-time payment of \$2,500.00 for these officers. This proposal is self-explanatory and rewards officers who are loyal to the Department and for the County. Moreover, this proposal serves as an incentive to Officers to remain with the Department rather than leaving to join a comparable law enforcement unit with a more favorable compensation package.

The County opposes this proposal and offers the following arguments in opposition:

The PBA proposes that each officer receive a \$2,500 benefit upon completion of their twenty-fifth (25) year of County service. This benefit would be in addition to longevity. (T178:17-20).

As Mr. Mair testified, the PBA's proposal is "just a request for additional funds" that has "no public purpose." (T226:5-11). Sheriff's Officers already receive salary at the top step and longevity benefits when they have worked 25 years for the County. An additional \$2,500 stipend is unnecessary and thus the PBA's proposal should be rejected.

#### Award

As proposed, the \$2,500 stipend would be in addition to the existing longevity benefit. In the absence of any evidence that a longevity type stipend is provided within the County in addition to a longevity allowance or that such dual benefit is provided at 25 years among the comparables in evidence, I decline to award this proposal.

#### Preamble

The PBA proposes to modify the first paragraph of the Preamble to provide the following:

This Agreement, dated \_\_\_\_\_ between the County of Mercer, a body politic in the State of New Jersey, Kevin Larkin, Sheriff, hereinafter referred to as the "Employer", and P.B.A. Local 187, hereinafter referred to as the "Union."

In support of this proposal, the PBA offers the following arguments:

First, P.B.A. #187 is seeking to add the name of the Mercer County Sheriff into the Preamble of the Contract. In previous years, the

name of the Sheriff was part of the Preamble, but, during the negotiations and settlement of the last contract, it was removed. (1T 78:14-19). According to members of P.B.A. #187, the Sheriff, at times, would not honor the collective bargaining agreement because, as he stated, he was not part of and/or named in the contract. *Ibid.* In essence, the Sheriff did not believe he was governed by the agreement because he was not specifically named in the same. As such, P.B.A. #187 members seek the reinstatement of the Sheriff's name into the contract for accountability purposes and to quell any potential discord going forward.

The County objects to this proposal based upon the PBA's alleged failure to provide testimony or evidence demonstrating why the proposal is warranted.

#### Award

I do not award this proposal. The obligations of the Sheriff to acknowledge and honor the collective negotiations agreement is a matter of law and there is no evidence that the terms of the Agreement are merely advisory on the Sheriff. In the event of an alleged violation or repudiation of the terms of the Agreement by the Sheriff, the PBA has legal recourse to have any such complaint reviewed in an appropriate legal forum.

#### Article 8 – Paid Leaves of Absence

The PBA proposes modifications to Section 8.1 as it concerns bereavement days. The proposal would modify Section 8.1 as follows:

Bereavement Days. In the event of the death of a member of the immediate family of any Employee covered by this Agreement, the immediate family being mother, father, sister, brother, spouse,

child, mother-in-law, father-in-law, grandparent, grandchild, aunt, uncle, nephew, niece, cousin, or any other person who resides in the Employee's household, said employee shall be excused for a period not to exceed five (5) consecutive working days for bereavement purposes, commencing the day of death or day after date of death. The Employee will be paid his regular hourly rate of any such days of excused absence which occur during his normal work week, but in no event no more than seven (7) hours pay for one day.

In support of its proposal, the PBA offers the following arguments:

P.B.A. #187 is seeking an expansion of the persons for whom a member of P.B.A. #187 can utilize bereavement leave. Specifically, the Union is seeking to permit the utilization of bereavement leave for the death of a member's aunt, uncle, nephew, niece, cousin, or any other person who resides in the employee's household. Notably, however, the Union is not seeking to increase the number of bereavement days given to members, only the persons to whom it ultimately extends.

The notion of what constitutes "immediate family" has become redefined over the years. (1T 79:21-24). Today, many people have primary custody of nieces and nephews, are the primary caretakers of grandparents, or have other people residing in their household who fall outside the typical definition of "immediate family." (1T 79:25-80:4). As such, P.B.A. #187 submits that bereavement leave should be extended to its members in the event one of these individuals were to perish. If such an award were rendered, a member would not have to utilize one of their personal days to address the issues surrounding the death of a loved one.

The County opposes this proposal and offers the following argument in opposition:

The PBA proposes that bereavement days be expanded to include the death of an aunt, uncle, nephew, niece, cousin, or any other person residing in the officer's household.

The PBA has never grieved the denial of a bereavement day. (T130.10-18). As Mr. Mair indicated, even though this proposal is

characterized as non-economic, there is a “potential cost in terms of lost time and any overtime that would result from covering for people who are off” during a bereavement day. (T210:15-19). Sheriff’s Officers have other types of leave available to them in the event that a non-immediate family member dies, such as vacation leave or sick leave. (T130:2-9). In addition, as the County’s other law enforcement bargaining units are operating under expired contracts, awarding this proposal would create a pattern that would ripple through the other units. (T249:1448). The Union’s proposal would also have a county-wide effect as the County’s non-law enforcement units would seek the same bereavement days provision as the Sheriff’s Officers. The expansion of bereavement days is unnecessary and thus the PBA’s proposal should be rejected.

The PBA also proposes to modify Article 8.2 – Union Business Days to state the following:

The Union President, or his/her designee in the President’s absence, shall be granted full release from daily assignments and/or remain permanently unassigned in order to conduct union matters. A shirt and tie or suitable casual business attire may be substituted for a Sheriff’s Officer uniform. However, the uniform of the day shall be readily available in the event of an emergency that requires the PBA President to be utilized. In addition, a reserved parking space adjacent to the courts shall be assigned to the Union President or his/her designee to allow him/her to more efficiently perform his/her duties.

In support of its proposal, the PBA offers the following arguments:

P.B.A. #187 is also seeking a specialized Union release for its President. Specifically, P.B.A. #187 is seeking its President’s release from an assignment of daily activities and/or to allow he/she to remain permanently unassigned in order to conduct union matters. (1T 81:46). In essence, the Union is seeking its President to be relieved from being in a very secure position, such as a Court officer, to allow he/she, if necessary, to be available for union business. (1T 81:7-14). Currently, if the Union President were assigned to a specific court and a union matter arose, he/she would be unable to leave his assignment to address the problem. Under

this proposal, the President would be working, but available to the members if the need arose.

Significantly, however, the proposal recognizes that security problems and/or issues could arise during the work day that would require the President's assistance. In short, the President might be required to attend to an emergency and, therefore, the proposal ensures that he/she will have a uniform readily available. Consequently, the Sheriff's Department would not be compromised, but neither would important, pressing union matters. Such a provision would merely allow the President greater flexibility and make he/she more available to the members.

The County opposes this proposal and offers the following arguments:

The PBA proposes that the Union president or his designee be granted a full release from daily assignments and/or remain permanently unassigned to conduct union matters. In addition, the PBA requests that the Union president or his designee be given a reserved parking spot adjacent to the courts.

The PBA has never grieved the denial of Union leave. (T131:23 to 132:10). While this proposal is non-economic, it would increase the County's cost of operating the Sheriff's Office by requiring that another officer be assigned, either through overtime or hiring an additional officer, in the PBA President's place. The PBA has failed to meet its burden to demonstrate why their union leave proposal is necessary. Because this proposal is unnecessary and would increase the County's costs, it should be rejected.

### Award

I first address the changes proposed to Article 8.1 – Bereavement Days.

There is merit to the County's contention that there be some reasonable consistency among the bereavement leave provisions that exist within the County's law enforcement units. In assessing the merits of the PBA's proposal, I take administrative notice of an interest arbitration award issued in the Mercer

County Prosecutor's Office on September 6, 2011 and affirmed in the Appellate Division on October 1, 2012. In that award, the PBA/SOA bereavement leave provision was modified to add stepmother and stepfather. It was noted by the arbitrator that such designations are significant ones in the family structure. I agree with that reasoning. An extension of the provision to include these relatives would expand the current definition in a manner consistent with that award and I award this change to add stepmother and stepfather to Article 8.1 effective on the date of this award. I find insufficient justification to expand the leave provision to the categories proposed by the PBA.

I deny the PBA's proposal to modify Article 8.2 which, if granted, would provide full release time to the Union President (or his designee) and provide a reserved parking spot adjacent to the courts for the Union President (or his designee). I note that the existing language in Article 8.2 states that "[a]n employee who is duly authorized in writing to be a representative of the Union shall be granted a leave of absence with pay for the time necessary to conduct business." The PBA's proposal is not supported by sufficient evidence demonstrating that the existing provision has resulted in either inadequate representation or protections to unit members.

#### **Article 10 – Child Care/Maternity Leave**

Article 10 covers child care/maternity leave. Article 10.1 requires adherence to the Family Leave Act and the Federal Family Medical Leave Act.

Article 10.2 provides for Leave without Pay for child care purposes for a period of one year commencing upon the date of birth. The PBA proposes to add language stating that:

Light duty shall be made available and/or provided to an Employee who supplies a doctor's note evidencing the need for same.

In support of its proposal, the PBA offers the following argument:

The Union is also seeking a provision making light duty available and/or provided to female officers who become pregnant. Recently, there has been an influx of female officers into the Mercer County Sheriff's Department. (1T 83:19-25). As such, the potential exists that many of these officers will become expectant mothers. During that time, light duty should be given to these officers due to the risks associated with pregnancy. In fact, light duty is currently given by the Sheriff's Department to many officers who become injured and/or pregnant in accordance with the Mercer County Sheriff's Department Standard Operating Procedure ("SOP"). Therefore, the provision would merely serve as a codification of same. (1T84:1-8).

The County opposes this proposal and offers the following arguments:

The PBA proposes that the child care/maternity leave section be revised to include a provision stating: Light duty shall be made available and/or provided to an Employee who supplies a doctor's note evidencing the need for same.

A male or female employee has Family Leave available to them for child care/maternity leave purposes. (T133:5-8). An employee also has other types of medical leave available to them for child care or maternity leave purposes. (T133.9-11). A female employee could take disability during and after pregnancy. (T133:12:15). She can tack on her disability leave to Family Medical Leave and continue to stay out of work and keep her job. (T133:12-24).

No other County law enforcement unit has a light duty for child care/maternity leave provision. As the County's other law

enforcement bargaining units are operating under expired contracts, awarding this proposal would create a pattern that would ripple through the other units. (T249:14-18).

The PBA has failed to demonstrate why its light duty provision for child care/maternity leave is necessary. Therefore, the PBA's proposal should be rejected.

#### Award

In my evaluation of the PBA's proposal, I have considered the existing rights that are accorded to female officers and comparable provisions within the County's law enforcement units. The PBA also notes that the Sheriff's Department provides light duty under its SOP. The record does not show that the existing rights or procedures have resulted in any risks associated with pregnancy or have deprived female officers who become pregnant to exercise their rights under the existing terms of employment. Accordingly, the proposal is denied.

#### Article 11 – Seniority

The Union and the County have each proposed a modification to Article 11.1 of the seniority provision. The PBA seeks to substitute "date of hire" for existing language that states "date of appointment." The proposal is as follows:

Seniority is defined as an Employee's continuous length of service with the Sheriff's Office, beginning with the date of hire as a permanent full-time employee, Sheriff's Officer/Investigator. Sheriff's Investigators will be on a separate list by date of hire.

In support of its proposal, the PBA offers the following argument:

P.B.A. #187 is also seeking to change how the term seniority is defined in the, collective bargaining agreement, namely by having seniority defined as beginning with the date of hire. The current collective bargaining agreement provides that seniority begins with the date of appointment. In short, Sheriff's Officers do not have date of appointment, they are hired. (1T 84:19-23). As such, the language is archaic and should be modified. Importantly, the modification of this language would have no substantive impact on the current seniority delineations.

The County also proposes to modify Article 11.1 as follows:

Seniority, for the purpose of calculating benefits, is defined as an employee's continuous length of service with the County Sheriff's Office beginning with initial date of hire.

In support of its proposal, the County offers the following argument:

The County's Final Offer has a proposal to change the definition of seniority, for the purpose of calculating benefits, as an employee's continuous length of service with the County Sheriff's Office beginning with initial date of hire. This proposal would assign shifts, requests for leave time and holiday calculation based on service with the Sheriff's Office rather than overall service. (T207:19-23). Awarding this proposal would allow the County and the Sheriff to reward Sheriff's Officers that have long served the County. Therefore, the County's seniority proposal should be granted.

#### Award

Although each party has a proposal to modify the existing language in Article 11, the record offers no justification that would warrant a change in that language nor does the record provide examples of any practice that would show

why modifications to the existing language are necessary. Accordingly, both proposals are denied and the existing language shall be carried forward.

### **Article 12 – Holidays**

The PBA and the County have each proposed modifications to Article 12 – Holidays. The PBA's proposal is to carry forward, or retain, the fourteen (14) recognized paid holidays that currently exist except for a clarification that would substitute Presidents Day for Washington's Birthday. The PBA offers the following argument:

Another wording issue the Union is attempting to clarify is revising the delineation of Washington's Birthday as a holiday to President's Day. Again, this is merely a codification of the holidays currently recognized by the County. Every year the Sheriff's Department receives a list of approved holidays from the County, which includes President's Day, not Washington's Birthday. (1T 85:10-17). However, the collective bargaining agreement was never modified and/or updated. This provision seeks to make such a revision.

The County proposes to modify Article 12 so as to combine Lincoln's Birthday and Washington's Birthday into President's Day. This would result in one less paid holiday and thus reduce the number of paid holidays from fourteen (14) to thirteen (13). The County also proposes to reduce the number of paid holidays further by eliminating the Day after Thanksgiving as a paid holiday. In support of its proposal, the County offers the following argument:

The County's Final Offer also includes a proposal to combine Lincoln's and Washington's Birthday to President's Day and remove the Day After Thanksgiving as a paid holiday. This

proposal is consistent with the public outcry regarding overall compensation for law enforcement officials and the overly generous benefits they receive. Sheriff Officers currently receive fourteen (14) paid holidays. This is more than most other Sheriff Officers throughout the State (C-92). Seeking to have Mercer Sheriff's Officers equalize their benefits with other Sheriff's Officers is more than reasonable. It would also provide the County with much needed fiscal relief by saving on holiday pay and overtime pay associated with staffing for such holidays. Recently, AFSCME Local 3566 and Teamsters 35 agreed to combine Lincoln's and Washington's Birthday to President's Day. (Attached as Exhibits C and D). Therefore, the County's Final Offer on Holidays should be granted.

#### Award

The PBA seeks to retain the existing number of paid holidays but to clarify the language to properly identify one of the holidays. In reviewing its proposal, I note that where a contract is clear and unambiguous, the language is normally enforced as written. Although the County may, as argued by the Union, recognize President's Day and not Washington's Birthday, the contract requirement is to recognize holidays as they are stated in the Agreement. The PBA does not assert that the County has not honored its existing contractual commitment in this regard. For these reasons, I do not award the change proposed by the PBA.

I also deny the County's proposal to combine Lincoln's Birthday and Washington's Birthday into President's Day and to remove the Day after Thanksgiving as a paid holiday. The County's main rationale is that two non-law enforcement units agreed to combine the two presidential birthdays, that the

existing number of holidays should be reduced because of expense and that the reductions would align the number of paid holidays in similar fashion to the Sheriff's Officer agreement in evidence. The fact that the AFSCME and Teamsters units agreed to combine Lincoln's Birthday and Washington's Birthday into one single President's Day is entitled to some weight. However, it is not entitled to the more substantial, if not compelling weight that would be given to any such change that occurred in the County's other law enforcement units. I find internal comparability among the law enforcement units to be more relevant and entitled to the most weight. I take administrative notice of the interest arbitration award issued on September 6, 2011 in negotiating units representing Detectives and Investigators (PBA Local 339) and Superior Officers units in the Prosecutor's Office that, through December 31, 2013 that did not cause a reduction in the number of paid holidays. No other law enforcement unit settlements or awards are in evidence that establish a result that is consistent with the County's proposal. For these reasons, I do not award the County's proposal.

### **Article 13 – Grievance Procedure**

The PBA proposes two changes to Article 13 – Grievance Procedure. The first proposal addresses Article 13.3 and reads as follows:

Expenses for the arbitrator's services and the proceedings shall be paid by the losing party to the arbitrator. However, each party shall be responsible for compensating his own representative, witnesses and attorney. If either party

desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record.

The PBA's second proposal is to modify Article 13.5 as follows:

Representatives of the Union, who are not Employees previously accredited to the Employer in writing by the Union, shall be permitted to come on the premises of the Employer for the purpose of investigating and discussing grievances, so long as such right is reasonably exercised and there is no undue interference with work progress, provided, however, they first obtain permission to do so from the Employee's department supervisor or his designated representative, permission for which shall not be unreasonably withheld.

The PBA's proposed change to Article 13.3 would require that an arbitrator's expenses be paid by the losing party rather than having such costs be borne equally. The proposed change to Article 13.5 is to delete reference to "the employee's department director or his designated representative" and to add in its stead "the employee's department supervisor or his designated representative." In support of its proposals, the PBA offers the following argument:

Importantly, P.B.A. #187 is also seeking to revert back to its previous contracts with regard to an aspect of its grievance procedure. Specifically, the Union wants to reinstitute the provision wherein the losing party to an arbitration pays for the arbitrator's services. Currently, the collective bargaining agreement provides that the expense for the arbitrator's services is to be borne equally by the County and the Union.

Since the institution of the provision requiring the parties to share the arbitration fees, it is P.B.A. #187's position that the County is more willing to break and/or not comply with the collective bargaining agreement. (1T 87:4-9). In short, the County has a

much stronger financial base than P.B.A. #187 and, as such, is more willing to challenge a provision in the contract knowing that, notwithstanding the ultimate outcome, it will only be responsible for half of the arbitrator's fees. Consequently, a provision requiring the payment of the arbitrator's fees by the losing party would serve as a deterrent to the County from not complying and/or challenging every grievance brought by P.B.A. #187. Moreover, such a provision would serve as an incentive for the parties to settle a dispute rather than utilizing the grievance procedure.

The County opposes the PBA's proposals and offers the following arguments:

The PBA proposes that the expenses for the Arbitrator's services and the proceeding be paid by the losing party. Currently, the County and PBA equally share, the costs of the arbitration. (C-1).

Equaling sharing the costs of arbitration is a new provision from the last contract between the County and PBA. (137:5-9). Since the change has been made, there have been two arbitrations between the County and the PBA. (T139-140). The PBA lost both arbitrations. *Id.* If the PBA's proposal had been in force, the PBA would have had to pay the entire cost of the arbitration instead of sharing the costs equally with the County. As Mr. Mair testified, it is equitable and fair for both parties to accept some level of responsibility for the costs of arbitration. (T214:25 to 215:4). Therefore, the PBA's proposal should be rejected.

### Award

The labor agreements in evidence reflect that bearing the costs equally is by far the norm in how the parties' deal with the expenses for the arbitrator. The record evidence does not show that the County has abused the cost sharing arrangement in the manner alleged by the PBA. Accordingly, this proposal is denied. I also do not award the PBA's proposal to add "department supervisor" instead of "department director." In either case, the language allows for a

“designated representative” to serve and the language proposed by the PBA would remove the authority from the department director to appoint his “designated representative.” Insufficient justification has been provided for this proposed change.

### **Article 15 – Safety and Health**

The PBA proposes to add language to Article 15.1 – Safety and Health. The proposal would maintain the first two sentences that currently exist and add a third sentence. The proposal reads as follows with the added language underlined:

The Employer shall at all times maintain safe and healthful working conditions and will provide Employees with wearing apparel, tools, or devices deemed necessary in order to ensure their safety and health. When such materials are issued, they shall be used. The Employer will also provide replacement equipment to the Employees for said apparel, tools, or devices deemed unserviceable, damaged or outdated.

In support of its proposal, the PBA offers the following arguments:

P.B.A. #187 also desires a provision wherein the County will provide replacement equipment uniform items that are deemed unserviceable, damaged, or outdated such as holsters, gun belts, and BDU packets. Currently, when items such as those are deemed unserviceable, many officers are required to buy their own replacements. (1T 88:8-11). However, some officers, who have a good relationship with their superiors, get those items replaced free of charge. Ibid. Therefore, this proposal seeks to provide consistency and uniformity in the collective bargaining agreement for the Union as a whole.

The County opposes this proposal and offers the following arguments:

The PBA proposes that the County provides replacement equipment to officers for apparel, tools, or devices deemed unserviceable, damaged or outdated.

The PBA has never grieved the denial of replacement equipment. (T142:8-11). In fact, Mr. Kemler, the Chief Sheriff's Officer, testified that he was not aware of anybody who has ever been denied replacement equipment. (T288:5-7). The Sheriff already has a policy in place for replacement equipment. (T287:21:24). The PBA has not met its burden in demonstrating why its replacement equipment proposal is needed and, thus, the proposal should be rejected.

#### Award

Careful review of the parties' positions and departmental practices on this issue reflect that there has been some inconsistency regarding replacement equipment. The existing language speaks directly to the County's obligation to provide employees with wearing apparel. Although the PBA has alleged inconsistencies in the application of this language, there is no evidence that any grievances have ever been filed regarding the denial of replacement equipment. Given this, the appropriate forum for redress of any complaints concerning replacement equipment should initially be contract enforcement procedures through grievance filings. In the event that disputes remain, modifications to existing contract language can be sought in future negotiations.

## **Article 25 – Outside Employment**

The PBA proposes a change in the procedures for receipt of extra duty pay. It proposes the following:

All extra duty pay jobs shall be paid through the Employer's payroll system on the weeks opposite to the normal County pay weeks.

In support of its proposal, the PBA offers the following argument:

During the course of their employment, Sheriff's Officers are given the opportunity to work overtime and/or obtain extra-duty pay jobs. Typically, payment for overtime and side jobs is managed by the County and included in the members' normal paychecks. However, this practice has allowed the members to be taxed at a higher rate because the amount they are being compensated in their normal paychecks is greater. (1T 90:17-21). This, in turn, reduces the ultimate economic benefit for the members working these side jobs and/or overtime. To rectify this problem, P.B.A. #187 is seeking to have its members paid for side jobs and/or overtime on weeks opposite of the normal County pay weeks. That way, the members will be taxed at their normal rates and receive the full benefit of their extra work.

The County opposes this proposal and offers the following argument:

The PBA proposes that overtime and extra-duty pay jobs be paid to Sheriff's Officers on weeks opposite the normal County pay weeks. The PBA's proposal would lead to increased costs to the County. Mr. Mair testified that the PBA's proposal would be "extremely onerous" to the County as it costs the County the same to run a payroll for "5 employees as it does for 5,000 employees." (T215:16-19). Mr. Miller testified that paying overtime in alternate weeks would require the County to hire another person in payroll. (T428:17 to 429:13). All County employees are paid on the same week and at the same time. (T430:2-6). No other bargaining unit has off-week payment of overtime or extra duty jobs as the PBA's Final Offer proposes. (T430:7-10). Therefore, the PBA's proposal for overtime and extra duty pay jobs be paid in weeks opposite the normal pay week should be rejected.

### Award

The rationale previously stated as the basis for the denial of the PBA's proposal to modify Article 4.8 - Overtime by paying overtime on alternate pay weeks is applicable here. Accordingly, this proposal is denied.

### Article 30 – General Provisions

Article 30 contains subsections that deal with various unrelated topics. The PBA proposes to add a new subsection stating the following:

The County and the Union agree to print a copy of this contract in booklet form for each member of the Union covered by this Agreement. The County will pay the entire cost of printing the aforesaid booklet.

The PBA also proposes to modify Article 30.4 to provide the following language:

The Employer will provide the Union with a PBA Office at the location where role call is conducted. In addition, said office shall be equipped to service a telephone, fax machine and a computer with internet access. The Union agrees to pay the installation costs for said equipment and the attendant monthly charges.

In support of its proposals, the PBA offers the following arguments:

P.B.A. #187 also has submitted a proposal requesting the County to provide its members with copies of the collective bargaining agreement, once the same is complete. The Union is also requesting that it be provided with an office at the location where roll call is conducted. Given the fact that P.B.A. #187 currently maintains an office, the Union requests that the office be equipped to service a telephone, fax machine, and computer with internet

access. Significantly, the Union agrees to pay the installation costs for said equipment and the attendant monthly charges.

Many municipalities provide their officers with copies of their respective collective bargaining agreements in a handheld booklet form. Therefore, P.B.A. #187 is requesting the County to provide the same benefit to its members. The booklets would allow the members to always be in possession of the contract for informational purposes and to reference the same if the need arises. Further, the booklets would be cheaper to print in handheld form rather than full letter size and, therefore, minimize the cost to the County in reproducing the same.

P.B.A. #187 currently has an office in the basement of 209 South Broad Street. (1T 92:6-11). However, the office is not equipped for telephone, facsimile, or computer usage. Without such usage, the Union is limited to the services it can provide its members. For example, the Union's communication with other bargaining units and/or its attorneys is restricted to telephone calls, which, at times, are impossible due to the Executive Board members' daily assignments. Consequently, the Union is requesting the County to provide an office with said capability, with the Union recognizing it is responsible for the equipment and monthly expenses.

The County opposes these proposals and offers the following arguments:

The PBA proposes that the County provide each Sheriff's Officer with a copy of the contract in booklet form and pay for the entire cost of printing the booklet.

The County already provides the PBA with copies of the contract. Nobody in the County has prevented the PBA from taking the contract and getting it copied in booklet form. (T150:12-14) The PBA could choose to pay for the printing of the contract in booklet form and distribute the booklets to its members. (T150:20-22). The PBA testified that it based this proposal off of policies in place in municipal police departments. (T151:2-7). However, the PBA could not point to any other Sheriff's Office that provides contracts to its officers in booklet form. (T151:8-12). The PBA has not met its burden in demonstrating why a contract booklet is needed. Therefore, its proposal should be rejected.

...

The PBA proposes that the County equip the PBA's Office with a fax machine and a computer with internet access. The Union would pay the installation costs for said equipment and the attendant monthly charges.

The PBA testified that it was not aware of what the County currently provides the PBA for their office. (T92:12-18). Because the PBA has failed to provide evidence or testimony that demonstrates why this proposal is needed, the proposal should be rejected.

#### Award

Given the fact that the County provides the PBA with copies of the contract and the fact that there is no evidence that the County provides other law enforcement units with copies of contracts in booklet form, I deny the PBA proposal. I also find that Article 30.4 as it currently exists provides reasonable resources to the PBA:

The current practice of the Employer providing a PBA Office and equipment shall continue. The Union agrees to pay the cost of telephone installation and the attendant monthly charges.

Accordingly, given the existing language, I find that insufficient justification has been presented to expand the language set forth therein.

#### Off Duty Police Action (New Provision)

The PBA proposes to add a new provision that references off duty police action. The proposal states:

Since all law enforcement officers are presumed to be subject to duty twenty-four (24) hours per day, the parties hereby agree that

any action taken by an Employee covered by this Agreement during his/her time off, while in the State of New Jersey, which would have been taken by a law enforcement officer if present or available, shall be considered a police action, and the Employer shall have all the rights and benefits conferred by this Agreement concerning such actions as if he/she were on active duty.

The County and the Union hereby agree that sworn police personnel covered by this Agreement shall be fully indemnified and defended by the Employer for all circumstances in which said Employee renders first aid, whether on or off duty.

In support of its proposal, the PBA offers the following argument:

P.B.A. #187 is also requesting language in the contract pertaining to off-duty police action, light duty, and military leave. With regard to off-duty police action, Sheriff's Officers, much like municipal police officers, are deemed to be on duty 24 hours a day, 7 days a week. Therefore, the Union seeks to have any action taken by any Sheriff's Officer while off-duty, which would have been taken by a law enforcement officer if present, to be considered police action. In turn, the member would be protected by the rights and benefits conferred by the collective bargaining agreement. This identical provision is contained in various collective bargaining agreements for municipal police officers throughout Mercer County and, as such, P.B.A. #187 desires this same protection. Moreover, such language would serve as an incentive for Sheriff's Officers to take off-duty police action when the need arises.

The County opposes this proposal and offers the following arguments in opposition:

The PBA proposes that any action taken by an officer during his or her time off, while in the State of New Jersey, which would have been taken by a law enforcement officer if present or available, shall be considered a police action, and the officer shall have all rights and benefits conferred by this Agreement as if he or she was on active duty. The PBA additionally proposes that officers will be fully indemnified and defended by the County for all circumstances in which said officers render first aid, whether on or off duty.

Mr. Mair testified that “[s]everal years ago, the County passed an indemnification ordinance for all employees working within the scope of their duties.” (T216:14-17). Law enforcement officers are also protected under New Jersey law for off-duty police actions. N.J.S.A. 40A:14-152.1; N.J.S.A. 40A:14-152.2. Because the Sheriff’s Officers are already protected under the County’s indemnification clause and by statute, the PBA’s proposal is unnecessary. The PBA has failed to meet its burden in demonstrating why a separate contractual obligation is needed. Therefore; the PBA’s off duty proposal should be rejected.

### Award

Although the PBA submits that similar provisions exist in municipal law enforcement departments within the County, it offers no evidence that such a provision exists in any of the law enforcement units that have labor agreements with the County. Given this, and the existence of the indemnification ordinance, as well as statutory protection, I conclude that the PBA has not met its burden to prove that its proposal should be added to the existing Agreement.

### Collective Bargaining Procedure (New Provision)

The PBA proposes that a new provision be added to the agreement concerning collective bargaining procedure. It proposes the following language:

Collective bargaining with respect to rates of pay, hours of work or other conditions of employment shall be conducted by the duly authorized bargaining agent of each of the parties. Unless otherwise designated, the County Administrator of Mercer County, or his designee or designees, and the President of the Union, or his designee or designees, shall be the respective bargaining agents for the parties.

Collective bargaining meetings shall be held at time and places mutually convenient at the request of either party.

Employees of the Employer who may be designated by the Union to participate in collective bargaining meetings called for the purpose of the negotiation of a collective bargaining agreement will be excused from their work assignment, provided, however, that no more than four (4) employees shall be excused for any bargaining session.

The County opposes the provision but adds no specific objection other than that the PBA has not met its burden to prove the basis for the inclusion of the proposed language.

#### Award

There is insufficient record evidence that the majority representative has not been able to fully participate in collective negotiations with the County and its designees or that collective negotiations has not been conducted in a full and fair manner as to the timing of collective negotiations, its participation by Union designated employees on its location. Accordingly, the proposal is denied.

#### Light Duty (New Provision)

The PBA proposes that a new provision be added to the agreement concerning light duty. It proposes the following language:

If available, temporary light duty assignments will be provided to employees who are covered under this Agreement who, because of injury, illness or disability, are temporarily unable to perform their regular assignments, but who are capable of performing alternative

duty assignments. Assignment to temporary light duty shall not affect an employee's pay classification, pay increases, promotions, retirement benefits or other employee benefits.

Temporary light duty shall be made available and/or provided to an Employee who supplies a doctor's note evidencing the need for same.

In support of its proposal, the PBA offers the following argument:

Light duty is presently given to officers of the Mercer County Sheriff's Department if it is available. (1T 93:18-19). However, there is no definition in the collective bargaining agreement as to when it is available and/or who qualifies for the same. To ensure uniformity and consistency throughout the Department, language expressly defining light duty is warranted. As previously recounted, the concept of light duty is addressed in the Sheriff's Department SOP and, therefore, P.B.A. #187 seeks a provision in the collective bargaining agreement that mirrors the SOP. Again, this is merely a codification of a practice that is currently utilized by the County.

The County opposes this proposal and offers the following arguments in opposition:

The PBA proposes that temporary light-duty assignments will be provided to employees who because of injury, illness or disability, are temporarily unable to perform their regular assignments, but who are capable of performing alternative duty assignments.

The Sheriff enacted a light duty policy through an SOP. (T284:18-19). Light duty can only be accommodated in limited circumstances.. (T285:2-8). There has been no grievance regarding the denial of light duty. (T285:18-23). The PBA has failed to meet its burden demonstrating why its light duty provision is necessary and therefore its provision should be rejected.

### Award

In the absence of grievances over any denial of a light duty request, it is difficult to evaluate the merits of the PBA's proposal insofar as it is intended to address the scope and practice of light duty assignments. Accordingly, the PBA has not met its burden on this issue and the proposal is denied.

### Military Leave (New Provision)

The PBA proposes that a new provision be added to the agreement concerning military leave. It proposes the following language:

The Employer shall permit Employees who serve in the organized National Guard of the State of New Jersey or Reserve component of the United States Army, United States Marine Corps, United States Air Force, United States Navy, United States Coast Guard, or other affiliated organizations to a leave of absence from duty without loss of pay in all days when they are engaged in their respective active duty as provided by law. The Employer is to entitle members to military leave of absence from duty pursuant to the provisions of N.J.A.C. 4A:6-1.11 and N.J.S.A. 38A:4-1 to 4-4.

In support of its proposal, the PBA offers the following argument:

As with the concept of light duty, there is no provision in the collective bargaining agreement regarding military leave for unit members. As such, P.B.A. 9187 is seeking such a provision in the event one its members is required to utilize the same, they are properly covered. Such language will erase any ambiguity regarding each party's rights and responsibilities. As provided in its proposal, the Union is seeking to have military leave granted in accordance with N.J.S.A. 38A:4-1 to 4-4 and N.J.A.C. 4A:6-1.11. Since this benefit is already provided by law, a reference to the same in the collective bargaining agreement is appropriate.

The County opposes this proposal and offers the following argument in opposition:

The PBA proposes that a new provision be added to the contract stating that officers shall be entitled to a military leave of absence from duty pursuant to the provisions of N.J.A.C. 4A:6-1.11 and N.J.S.A. 38A:4-1 to 4-4. The County already complies with the governing legislation with regard to military service. The PBA has failed to demonstrate the need for a military leave provision, and thus the PBA's proposal should be rejected.

Award

It is commonplace for labor agreements to contain military leave provisions notwithstanding the fact that employees who participate in military service maintain rights as are provided by law. Given this, I award a provision that states the following:

All unit employees who are entitled to a military leave of absence from duty shall receive such leave in a manner that is fully consistent with terms that are prescribed by law.

Definitions and Reorganization (New Provision)

The PBA proposes that a new provision be added to the agreement concerning definitions and reorganization. It proposes the following language:

Please be advised P.B.A. Local No. 187 also proposes a definitions section to the collective bargaining agreement and a reorganization of certain sections of the Agreement so as to clarify same. These definitions and the proposed structure of reorganization will be discussed across the table and/or be provided at a later date.

The County voices no specific objection to this proposal. However, the proposal in the form presented is more appropriately directed towards the efforts of the parties when drafting new contract language rather than incorporating a new contract provision that instructs them to draft language that clarifies or reorganizes the contract provisions.

### Award

No contract language is awarded.

### Work Schedules – Article 3

The County proposes two changes to Article 3. The first change would revise Article 3.1 to state:

- The County reserves the right to adjust work schedules and/or work shifts upon seventy-two (72) hours notice to the Employee.

The second change would:

- Delete Paragraph 3.3 of the contract.

In support of its proposals, the County offers the following arguments:

The County's Final Offer includes a change to the work schedule. The County proposes that it reserves the right to adjust work schedules and/or work shifts upon seventy-two (72) hours notice to the employee. In the current contract, the County must give two (2) weeks' notice to the employee to adjust the employee's work schedule or work shift. (C-1). In 2009, the County paid \$62,000 in overtime for shift coverage. (C-45). The County's proposal will

allow the County to reduce its overtime costs while still giving employees adequate notice of a change in schedule or shift.

The County additionally proposes that Paragraph 3.3 of the contract be removed, which states that employees working at the airport are on a ten (10) hour work schedule. This proposal incorporates the 2009 arbitration decision. (Mercer County and PBA Local 187, Docket No. AR-2007-290 (R. Simmelkjaer 2009); C-381). The PBA alleged that when the County failed to implement a ten hour work schedule at the airport, it violated the Agreement. Id. The Arbitrator determined that the County had discretion to decide against implementing the ten hour work schedule, and denied the PBA's grievance. Id.

Given the above, the County's work schedule proposal is appropriate when evaluating the statutory criteria.

The PBA rejects the County's proposals to change the contract provisions in Article 3 that cover work schedule issues.

#### Award

The existing provision in Article 3.1 is intended to provide employees with sufficient notice when the employer decides to change the employee's work schedule or shift. It also grants the employer the authority to make such changes subject to the two week notice provision. Thus, the parties' rights are balanced by the existing language. I find that the County's desire to reduce claimed overtime costs by sharply reducing the amount of notice to employees inappropriately disturbs the balance that the parties' previously agreed to. Accordingly, the proposal is denied.

The County also seeks to delete Article 3.3 as it concerns the ten (10) hour work schedule for employees working at the airport. It contends that the subject matter has been clarified and interpreted in an Opinion and Award issued in 2009 [Docket No. AR-2007-290]. It is well settled that an arbitration award interpreting contract language normally serves as the proper basis for any future interpretation of the language and becomes the source of the parties' rights going forward. Article 3.3 has been interpreted to not require the County to institute a ten (10) hour work schedule for those who work at the airport. I do not award the removal of Article 3.3 but, in doing so, note that issues that related to Article 3.3 must conform with the terms of the aforementioned Opinion and Award.

### **Medical Benefits**

The County proposes the following change to Article 7, Insurance and Retirement Benefits:

The existing Health Insurance and Prescription Program shall remain in effect for the life of the Agreement except as follows:

A)     Health Care Insurance:

- Effective January 1, 2009, each active employee except those with single coverage shall have deducted from his or her salary Thirty-Four (\$34.00) Dollars per pay period for all medical, dental and prescription drug insurance. Those employees with single coverage shall have Twenty-Nine (\$29.00) Dollars per pay period deducted for such medical, dental and prescription drug insurance coverage.

- Effective January 1, 2010, each active employee except those with single coverage shall have deducted from his or her salary Forty-Four (\$44.00) Dollars per pay period for all medical, dental and prescription drug insurance. Those employees with single coverage shall have Thirty-Nine (\$39.00) Dollars per pay period deducted for such medical, dental and prescription drug insurance coverage.
- Effective January 1, 2011, each active employee except those with single coverage shall have deducted from his or her salary Fifty-Four (\$54.00) Dollars per pay period for all medical, dental and prescription drug insurance. Those employees with single coverage shall have Forty-Nine (\$49.00) Dollars per pay period deducted for such medical, dental and prescription drug insurance coverage.
- If an employee voluntarily waives all coverage under the County's Health Care plan and provides a Certification to the County that he/she has other health care coverage, the County will waive the health care contribution for that employee for the period of time the County did not pay for health benefits for the employee.
- The County reserves the right to change, without negotiation, the manner in which Health Benefits are provided as long as substantially similar benefits are provided.

- B) The County agrees to provide a Dental Insurance Program to eligible Employees and their dependents. There shall be three (3) types of coverage as follows: (1) Basic Dental Coverage (as defined by the current dental contract); (2) Premium Dental Insurance; and (3) Eastern Dental Insurance. The County will pay all of the costs of the basic dental program. Employees shall be responsible for any additional costs associated with the premium dental program or the Eastern Dental Program in excess of the cost for basic coverage.

The County's main argument is that it is consistently confronted with the rising cost of health insurance premiums. It has documented such costs in the record. For this reason, it seeks higher amounts of employee dollar contributions and that such higher contributions be retroactive. It also seeks language changes that refer to the dental program that would incorporate the terms of a grievance arbitration award that interpreted existing contract language and practice in a case involving a different County law enforcement unit:

As Mr. Mair testified, the County's proposal on dental seeks to incorporate the grievance arbitration award won by the County. (T207:9-13). The issue determined by the Arbitrator in that arbitration was whether the County violated the collective negotiations agreements with PBA Local 167 when it deducted additional contributions for unit members for their participating in the enhanced dental benefits plan. Mercer County and PBA Local 167, Docket No. AR-2008-565 (J. Mastriani 2010). The Arbitrator denied the union's grievance and determined that because the enhanced dental benefits plan was optional and was not specifically included in the parties' agreements, it was not covered by the agreements. The County currently provides a base dental coverage at no cost to the employees. (T206:24-25). There are three types of premium coverage available to County employees at an additional out-of-pockets cost to them. (T207:2-6). The current Agreement does not reflect this and thus, the County seeks the change to reflect the current practice and the arbitration award. (T207:9-13).

Therefore, the County's proposal to increase contributions to aid its funding of this escalating financial burden is appropriate under the statutory criteria.

The PBA urges rejection of the County's health insurance proposals and offers its own proposal to modify Article 7.1:

Effective January 1, 2009, each active Employee except for those with single coverage shall have deducted from his or her salary

Twenty-Four (\$24.00) Dollars per pay period for all medical, dental and prescription drug insurance. Those Employees with single coverage shall have Nineteen (\$19.00) Dollars per pay period deducted for such medical, dental and prescription drug insurance coverage. There shall be no other increase in this health co-payment for the duration of the contract.

Should a New Jersey law be enacted wherein the members of this Union are required to contribute a certain amount of money or a percentage of their base salary to the payment of their healthcare coverage, the above provision requiring the members to contribute the flat dollar amounts delineated therein will become null and void and said contributions will cease.

The PBA opposes the County's health insurance proposals and the adoption of its own. The dollar amounts in the PBA's proposal reflects what has been paid in the past. The PBA acknowledges the existence of legislation enacted after it submitted its proposal that requires set levels of contributions of base salary towards health insurance premiums and seeks that the statutory amount required cover the prior existing co-pay amounts. It also urges rejection of retroactive health care contributions asserting that any such contributions would be inequitable in light of the County's salary proposal to freeze wages for two years. The PBA submits the following argument on this point:

Coupled with the County's proposals seeking 0% increases in 2009 and 2010, in the event the County's final offers were awarded, P.B.A. #187 members would be losing a significant amount of money during the first two years of the contract without any corresponding wage increase. Consequently, the economic package currently received by P.B.A. #187 members would be drastically reduced. Therefore, in the event it is determined that retroactive contributions and/or any healthcare contributions in excess of the statutory 1.5% are necessary, a wage increase sufficient to offset the same is warranted to ensure the members, at the very least, receive the same economic package they currently possess.

### Award

The parties' proposals fall into three specific areas. One County proposal seeks to clarify the various type of dental insurance programs that are paid for solely by the County and those that require co-payments. Its proposal reflects that the County will pay all of the costs of the basic dental program and that employees be responsible for any additional costs in excess of the costs for basic coverage. The County's proposal is consistent with a prior arbitration award that interpreted the same contract language and practices that occurred under similar language in a different law enforcement unit. Because its proposal simply seeks to clarify the contract language to reflect the terms of that arbitration award and prior practice, it is awarded with modifications that are required to conform the provision to the requirements created by the legislation that mandates employee contributions.

The second proposal from the County would annually increase the amount of deductions per pay period for "all medical, dental and prescription drug insurance coverage." Under the terms of the prior Agreement, employees were required, effective January 1, 2009, to contribute twenty-four (\$24) dollars per pay period except for those with single coverage who were required to pay nineteen (\$19) dollars. The County's proposal on this issue must be considered in conjunction with the PBA's proposals because both proposals are affected by the legislation that requires a minimum level of employee contributions.

The PBA's proposals represent the third area for consideration and would have the employee contributions of specific dollar amounts under the existing language cease and be subsumed under the amount of statutory contributions that are required.

The parties acknowledge that 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. 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 contributions 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 the County'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 must 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 beginning in May 2010. The parties' proposals on health insurance must be considered in light of the legislation.

After due consideration of all of the above, I award the following modifications to Article 7. Initially, I do not award any retroactive contributions that would be in excess of what Article 7 provided as of December 31, 2008 and were carried forward until such time that P.L. 2010, Chapter 2 became effective on May 21, 2010. This conclusion is in harmony with this decision's analysis of the salary issue and I find that retroactive contributions prior to the enactment of the legislation would be an inequitable result impacting on the overall compensation level for unit employees. Effective May 21, 2010, and going forward, the statutory contributions required by both pieces of legislation would subsume the amount of dollar contributions that were previously delineated in Article 7 for medical and prescription coverage and premiums for the County's basic dental program. Thus, effective May 21, 2010, Article 7 need not contain reference to the dollar contributions that were required for those coverages up until that time. Instead, Article 7 shall state that healthcare contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. In addition, the County's proposal regarding the costs of the dental program shall be awarded identifying that the costs of the basic dental program require no additional employee contribution and that employees are responsible for any additional costs associated with the premium dental program or the Eastern Dental Program in excess of the cost for basic coverage.

### **Discipline/Discharge**

The County proposes to delete Paragraph 14.2(c) of the contract. In support of its proposal, the County offers the following argument:

The County's Final Offer includes a proposal to delete Paragraph 14.2(c) of the current contract which allows provisional employees to appeal disciplinary actions to binding arbitration. As Mr. Mair testified, "[t]he County believes that the ability of provisional employees to arbitrate discipline is inconsistent with the intent of Civil Service and, in fact, greatly diminishes the ability of the Sheriff to make decisions with regard to continuing employment during the provisional period." (T209:4-10). Thus, the County's Final Offer on Discipline/Discharge should be granted.

The PBA opposes this proposal.

### **Award**

I do not award the proposal. The term "provisional" is distinct from "probationary" and can apply to longer term employees who await civil service permanent designation. The County's proposal would remove any job protection for employees who may occupy provisional positions for long periods of time and aspire to achieve permanency. Accordingly, the County's proposal is denied.

### **Article 5 – Scales or Rates of Pay - Salaries**

Each party has presented a salary proposal. The PBA's proposal is as follows:

It is agreed that during the term of this Contract for the period January 1, 2009 - December 31, 2012, the following salary improvements shall be provided to eligible Employees in the Union within the applicable policies and practices of the County and in keeping with the conditions set forth herein.

- a. Effective January 1, 2009, there shall be a four percent (4%) across the board increase applied to the then current base salary for all Employees in this Union. The salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each step of each salary range. Each Employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.
- b. Effective January 1, 2010, there shall be a four percent (4%) across the board increase applied to the base salary in effect on December 31, 2009 for all Employees in this Union. The salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each step of each salary range. Each Employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.
- c. Effective January 1, 2011, there shall be a four and one-half percent (4.5%) across the board increase applied to the base salary in effect on December 31, 2010 for all Employees in this Union. The salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each step of each salary range. Each Employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.
- d. Effective January 1, 2012, there shall be a four and one-half percent (4.5%) across the board increase applied to the base salary in effect on December 31, 2011 for all Employees in this Union. The salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each step of each salary range. Each Employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.

The County's salary proposal is as follows:

- Effective January 1, 2009: Zero Percent (0%) increase on base pay and a step freeze to eligible employees who are on the payroll as of January 1, 2009 and are still employed by the County when the contract is ratified by the Board of Chosen Freeholders.
- Effective January 1, 2010: Zero Percent (0%) increase on base pay with movement on steps.
- Effective January 1, 2011: Two Percent (2.0%) increase on base pay.

The PBA contends that its salary proposals are supported by the interests and welfare of the public criterion. It defines that factor to include the specialized and significant services that Sheriff's Officers render. The PBA submits that its proposals fall within the County's fiscal responsibilities and that an award of its proposal would further the morale of the employees. The PBA points to the statutory responsibilities of the County Sheriff (N.J.S.A. 40A:9-117.6) that include court security, prisoner transportation, service of process and ballistics investigation but emphasizes that the Sheriff's Department in Mercer County provides programs and services that extend well beyond the statutory mandate. These extended duties were the subject of testimony by Officer James Udijohn, Officer Jeremy Stewart, Officer Pablo Santiago and Officer Jarad Walulak.

Officer Udijohn serves as a Detective on the Shooting Response Team for the Trenton police department that is composed of local, county and state law enforcement officers. In that capacity, he investigates shootings and gun

violence in Mercer County. Officer Udijohn stated that his duties are very similar to those performed by patrol officers, a position that he previously occupied in the municipalities of Cherry Hill and Hamilton Township. Officer Stewart testified to his assignment in the Detective Bureau's Fugitive Unit where he serves and executes bench warrants. He is also assigned to the U.S. Marshall's Fugitive Task Force, is a member of the SERT Team that performs SWAT responsibilities that includes high risk searches throughout Mercer County. Officer Santiago is assigned to the ATF federal task force and works undercover to combat crime and violence that are linked to guns. Officer Santiago noted that his job duties involve a high degree of risk. Officer Walulak previously worked as a municipal police officer and testified that his current job duties are similar and that he has performed a wide range of support activity to municipal departments such as Hamilton, Robbinsville and Ewing. PBA testimony also reflects specialized work in K-9 units, an Airport Unit that patrols the County airport and many community outreach programs. The PBA offers argument in support of the application of the interests and welfare of the public criterion:

Based upon their vital role in preserving the public safety and the unique circumstances of their employment, an analysis of the services provided by the members of P.B.A. #187 clearly supports the award of the Union's Final Offers in their entirety. Quite simply, awarding P.B.A. #187's Final Offers would promote the County's ability to attract and retain qualified Sheriff's Officers. This in turn, positively impacts the quality of life of the residents of the County in terms of safety and ensuring the effectiveness of law enforcement agencies throughout the County.

Moreover, "arbitrators have reviewed the public interest criterion as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale." See Sayreville and P.B.A.

Local 98, I.A. 2006-047 (Hartigan, T. 11/2/80). Thus, in assessing the interest and welfare of the public, one must consider the impact on the morale of the bargaining unit when rendering an award.

The PBA defines the County's wage proposal of 0%, 0% and 2% as "draconian" and one that would encourage sheriff's officers to apply elsewhere for job opportunities that provide more attractive compensation packages. The PBA points to the testimony of Officer Pat Papero who testified to the turnover of manpower and that money was a major factor. He supports his testimony with a chart showing departures from the Sheriff's Department to various municipal departments and the County Prosecutor's Office.

The PBA also supports its salary proposal by citing comparability data. It points to private sector comparisons showing wage increases of 2.6% from 2007 to 2008 in the State of New Jersey and average annual increases for all state, county and municipal government workers of 3.4% in 2008. The PBA submits a chart comparing top salaries between Local 187 and law enforcement agencies it deems comparable in Mercer County. According to the PBA, the chart demonstrates the following wage disparities

Unit	2006	2007	2008	2009	2010	2011	2012
Hamilton			\$93,353	\$99,279	\$102,505	\$106,093	\$109,806
Hightstown Boro	\$73,153	\$80,056	\$82,858	\$85,759			
Lawrence	\$86,598	\$89,975	\$93,484				
Princeton Boro			\$89,962	\$93,336			
Princeton Twp.			\$90,099	\$93,703	\$97,451	\$101,349	
West Windsor		\$86,417	\$89,658	\$93,199			
P.B.A. #187	\$73,081	\$76,187	\$79,425				

The PBA also constructs a chart of wage increases in certain of these departments and compares these increases with the County's offer of 0%, 0% and 2%:

Year	Hamilton	Lawrence	Trenton	West Windsor
2006		3.90%	3.75%	
2007		3.90%	3.75%	3.50%
2008		3.90%	3.50%	3.75%
2009	6.25%	3.75%	3.95%	
2010	3.25%		3.75%	
2011	3.50%			
2012	3.50%			

The PBA rejects any suggestion by the County that a pattern of settlement exists that justifies the County's salary proposal. The PBA offers argument in support of this contention:

During this interest arbitration, the County also offered evidence regarding the compensation packages given to its civilian bargaining unit employees. In doing so, the County seems to take the position that the pattern of settlement among these groups justifies an award of its economic offers in this case. However, a thorough review of the evidence undermines the County's contentions.

Prior contracts establish that the civilian employees have received different economic packages than P.B.A. #187. For example, the average salary for members of P.B.A. #187 is vastly different from comparable County civilian bargaining units:

<b>Union Affiliation</b>	<b>Union Name</b>	<b>Average Salary</b>
Teamsters Local 102	Communication Officers	\$44,131
AFSCME #2287	Blue Collar	\$44,502
Unaffiliated	Clerical & Tech.	\$44,771
AFSCME #3566	Supervisor's Unit	\$56,761
Teamsters Local 35	Nurses	\$65,138
P.B.A. #187	Sheriff's Officer	\$66,837

When circumstances such as those illustrated above exist, arbitrators have consistently refused to sustain a "pattern of settlement" argument. In Township of Woodbridge and P.B.A. Local 81, PERC No. IA-96-119 (1998), the Township made a "pattern of settlement" argument. The Arbitrator noted that the pattern of settlement was controlling in some years, but "yielded to other factors in other years." Id. At 39. Accordingly, the arbitrator held that the pattern would not govern for the contract years before him. Id.

The logic adopted in Woodbridge should be applied here. The circumstances in this case establish that any pattern argument must be rejected because no consistent pattern exists with the civilian employees to warrant limiting wage increases and applying health insurance givebacks to P.B.A. #187 bargaining unit members.

Furthermore, it must be taken into account that the employment duties of the P.B.A. #187 bargaining unit members are vastly distinguishable from County civilian employees. This is evidenced by the fact that the County has not treated P.B.A. #187 members the same as civilian employees with respect to compensation in past contract negotiations. It is evident the County recognizes the dangers and difficulties faced by members of this bargaining unit and, as a result, this has been reflected in past contracts with higher pay rates as compared to civilian employees. Throughout the years, these higher pay raises have included higher percentage salary increases and different levels of benefit compensation.

The PBA also submits cost of living data showing, among other things, that the CPI increased 2.1% during the 12 months preceding February 12, 2010.

Given this and the statutory requirement to make health insurance contributions, the PBA asserts that its proposed wage increase between 4% to 5% is necessary to maintain the purchasing power of the Sheriff's Officers.

Turning to the financial criteria, the PBA contends that the County has not shown that the PBA's proposed increases would interfere with any of its statutory limitations. The PBA also submits that its proposal would not cause negative financial impact on the County. The PBA submits evidence showing that the County has over \$48 billion in assets based upon aggregate true value of properties in Mercer County and a low net debt of 0.99%. The PBA offers a chart showing consistent increases in the County's fund balance between 1996 and 2008, showing an increase from \$6,403,855 to \$26,374,391 over that time period. It also submits that the County tax rates have been stable and actually decreased by .97 points from 2005 to 2008. The PBA concludes:

After synthesizing all of the financial data provided, it is evident that Mercer County is in very sound financial condition. This is notwithstanding the fact that members of this bargaining unit and, for that matter, every Mercer County employee, recently became mandated to contribute 1.5% of their base salary towards the cost of healthcare. This statutory mandate further increases the revenue and savings to the County and is unaccounted for in any of the proposed budgets and/or financial reports. As a result, an award of salary increase and other economic incentives for the members of P.B.A. #187 would not create any economic stress to the County's financial base. Consequently, the lawful authority of the County will not be exceeded in the event P.B.A. #187's Final Economic Offers were awarded.

The County urges rejection of the PBA's salary proposals and the adoption of its own. It offers extensive documentary evidence, testimony and argument in support of its position on the salary issue. The main points of its submission are summarized herein.

The County asserts that the overall financial and economic climate for contract years 2009 through 2011 reflect dramatic negative impacts on the County's ability to continue to provide the broad services to the public that are required. It points to having a revenue shortfall in 2009 that resulted from realizing \$309 million after having anticipated \$314 million. Because of poor revenue projections relating to the recession, the County only anticipated \$294 in total general revenues in 2010 and budgeted for 0% wage increases for Sheriff's Officers and other law enforcement units in 2009 and 2010. Because of this, if wage increases were to be awarded for these years, it would be at the expense of other budget requirements. Citing the testimony of County Administrator Mair, the County expresses concern that the PBA's proposal, if awarded, would "establish an internal comparable which would ripple through" the County's other law enforcement units.

According to the County, it is facing a two-year \$43 million deficit while having to contend with large increases in the amount that it budgeted for public safety in recent years. The County points to an upsurge in tax appeals among homeowners and businesses throughout Mercer County which have led to tax

reassessments and the shrinking of the tax base. It points to residential foreclosure filings being up almost 40% in August 2009 over the same period in 2008. The County views the PBA's proposed wage increases as being inconsistent with the steps that it has taken to address its fiscal crisis, including 35 layoffs in 2009, a large increase in the amount of surplus that it has had to utilize to balance the budget and the selling of its geriatric center which would result in over 150 layoffs. Pointing to the appropriation and tax levy caps, the County submits that it has limited resources to address its fiscal problems because it is unable to increase taxes in the amount necessary to meet its budgetary requirements. The County submits evidence of revenue losses in other areas that are more limited in nature. For example, it has realized less revenue than anticipated from the County's Clerk's Office and has seen its interest on investments sharply reduced.

The County submits that its fund balance has been sharply reduced since its high of 2006 when it totaled \$37,610,489. It offers the following chart depicting the decreases:

<b>Year</b>	<b>Fund Balance</b>	<b>Variance</b>
2006	\$37,610,489	5,857,718
2007	\$30,901,613	-6,708,876
2008	\$26,350,214	-4,551,399
2009	\$14,000,000	-12,350,214

In addition to substantial decreases in its fund balance, the County submits evidence of increased costs associated with its debt service. The appropriations

for this purpose in 2009 was \$14.4 million compared to the \$13.8 million it appropriated in 2008.

Turning to wage comparisons, the County disagrees with the PBA's use of municipal police departments as serving as the proper basis for such comparisons. Citing prior interest arbitration decisions in various counties, the County argues that the most meaningful comparisons in this case are to various county sheriff's officers rather than municipal police officers. As support for this contention, the County submits a chart depicting comparisons among county sheriff's officers at top salary showing that Mercer County ranks fifth in the State of New Jersey:

**County Comparison  
Top Salary**

<b>County</b>	<b>2005 Top Salary</b>	<b>2006 Top Salary</b>	<b>2007 Top Salary</b>	<b>2008 Top Salary</b>
Bergen	\$87,273	\$90,677	\$94,304	\$98,076
Monmouth	\$74,180	\$79,367	\$82,343	\$85,431
Ocean	\$74,075	\$78,538	\$81,620	\$84,824
Middlesex	\$71,411	\$73,910	\$76,896	\$79,972
<b>Mercer</b>	<b>\$70,102</b>	<b>\$73,081</b>	<b>\$76,187</b>	<b>\$79,425</b>
Union	\$73,532	\$73,532	\$73,532	\$77,065
Salem	\$52,500	\$60,000	\$65,000	\$71,000
Sussex	\$57,505	\$60,579	\$63,723	\$67,427
Atlantic	\$55,000	\$60,528	\$62,949	\$65,467
Gloucester	\$55,381	\$56,765	\$60,803	\$63,539
Cape May	\$63,210	\$63,210	\$63,210	\$63,210
Warren	\$54,082	\$58,284	\$60,470	\$62,778
Hunterdon	\$54,361	\$56,535	\$58,796	\$61,148
Cumberland	\$44,670	\$48,000	\$48,960	\$49,920
Essex	\$68,637	\$71,382	\$74,238	
Somerset	\$68,480	\$71,219	\$74,068	N/A
Camden	\$67,592	\$70,296	\$73,107	N/A
Hudson	\$59,580	\$61,637	\$63,208	N/A
Passaic	\$75,779	\$79,568	N/A	N/A

Morris	\$70,479	\$73,279	N/A	N/A
Burlington	\$52,777	N/A	N/A	N/A
Average	\$64,315	\$68,019	\$69,634	\$72,091

Based upon the above, the County observes that the 2008 top salary of \$79,425 well exceeds the statewide top salary average of \$72,092.

The County further contends that salaries of sheriff's officers compare favorably with correction officers who serve as the most appropriate comparison among Mercer County law enforcement employees. It points to the top salary of \$79,425 for a Sheriff's Officer with the top salary of \$79,161 for a Corrections Officer in 2008. The County acknowledges that Sheriff's Officers have a lower starting salary and a lower top salary than Prosecutor's Detectives and Investigators but submits that the job duties of Sheriff's Officers generally are more comparable to Corrections Officers because a majority of Sheriff's Officers protect the courts while the Corrections Officers protect the correctional facilities. While some duties of the Sheriff's Officers and Corrections Officers are acknowledged to overlap with a municipal police officer, the County contends that the work of the Prosecutor's Detectives and Investigators are more comparable to the overall responsibilities of municipal police officers.

The County also contends that internal comparability with respect to salary increases and pattern of settlement have always been major objectives in prior collective negotiations and that an award that sets or conflicts with evidence of pattern would be destructive of employee morale and the predictability that is an

important factor in the bargaining and budgetary process. The County submits evidence of settlements during these contract years with non-law enforcement units, all of which include 0% increases. The County points to these contracts through the testimony that it offered at hearing:

... Andrew Mair testified that unaffiliated, unclassified employees of the County received a zero percent increase for 2008 and 2009. (T252:3). These zero percent increases are the same increase proposed for Sheriff's Officers in the County's Final Offer. None of the other law enforcement units have reached a settlement with the County. (T201:2-4). The County's recent settlements with non-law enforcement units include zero percent increases. (T202:5 to 203:11). FMBA Local 415, the bargaining unit for 9-1-1 Supervisors, agreed to a 3.5% increase for 2008, a 0% increase with no step movement in 2009, and a 0% increase with step movement on steps in 2010. (T202:16 to 203:3; C-391). Teamsters 102, the bargaining unit for Communication Officers, have received 0% increases in 2009 and 2010. (C-393). Similarly, Teamsters 35 and the Senior Juvenile Detective Officers Association agreed to contracts that included 0% increases in 2009. (C-392; C-400). Most recently, AFSCME Local 3566 reached a settlement with the County where employees receive a zero percent (0%) increase with no step movement in 2009 and a 0% increase with movement on steps in 2010. (Attached as Exhibit C). Teamsters 35 reached a settlement with the County where employees receive a zero percent (0%) increase with no step movement in 2010.

In addition to the above, the County submits evidence and argument from which it argues that the overall compensation received by unit employees is appropriate and supported by the County's final offer, that its offer is more consistent with the cost of living data, with per capita income levels for Mercer County residents, and will maintain the continuity and stability of employment of Sheriff's Officers currently employed.

## Award

The salary proposals of the parties will be analyzed in the context of the awarding of a contract duration that extends through December 31, 2012. This requires the award of salary terms over a four year period. The last contract year that set a salary schedule for Sheriff's Officers shows the following:

Step	1/1/08
Trainer Rate (1 <sup>st</sup> 6 mos. of employment)	\$35,464
1	\$46,768
2	\$50,547
3	\$54,324
4	\$57,522
5	\$61,303
6	\$64,098
7	\$70,193
8 (max)	\$79,425

The statutory criteria must be applied to the record evidence as a requirement in making a reasonable determination of the wage issue. In doing so, I do not believe that any single factor can be isolated and be dispositive of the terms of an entire award. The interests and welfare of the public criterion [N.J.S.A. 34:13A-16g(1)] is not only always relevant, but must be given the most weight because it is a criterion that does not stand alone. It embraces many, if not all, of the other factors and their interrelationships. For example, the maintenance of the productivity, efficiency and morale of the Sheriff's Officers furthers the interests and welfare of the public but this factor also recognizes that

the budgetary expense of operating the Sheriff's Department is only one of the many responsibilities borne by the County. The interests and welfare of the public would not be furthered by an award that would create adverse financial impact not only on the Sheriff's Office but with County operations elsewhere. For this reason, this factor requires consideration of financial impact [N.J.S.A. 34:13A-16g(6)] on the County, its residents and taxpayers and the County's ability to fund all of its responsibilities and obligations, including employment costs associated with its several other law enforcement units. The interest and welfare of the public criterion also specifically references limitations imposed upon the County by the Cap Law [P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)] and by inference, the lawful authority of the employer [N.J.S.A. 34:13A-16g(5)] and statutory restrictions including the limitations imposed upon the employer by Section 10 of P.L. 2007, c. 62.<sup>1</sup> [N.J.S.A. 34:13A-16g(9)]. Evidence on internal and external comparability [N.J.S.A. 34:13A-16g(2)(a), (b) and (c)] is relevant and requires a review of how changes in compensation compare internally with civilian and other law enforcement units within the County of Mercer as well as with like law enforcement units in other jurisdictions. This evidence requires individual consideration but it interrelates with the public interest because how one unit is treated in relationship to another could impact upon the productivity and efficiency and job performance of the overall workforce. Though relevant, private sector wage comparisons are of more limited value given the absence of direct comparisons between Sheriff's Officers and private employees. The overall compensation presently received [N.J.S.A. 34:13A-16g(3)] is relevant in

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<sup>1</sup> I take note of the fact that P.L. 2010, c. 44 reduced the tax levy cap from 4% to 2%.

assessing the totality of existing contract terms and the reasonableness of proposals for change. Contract changes should include an assessment on whether such changes impact upon the continuity and stability of employment [N.J.S.A. 34:13A-16g(8)] of unit members. The cost of living factor [N.J.S.A. 34:13A-16g(7)] is a factor that is not dispositive but it is one standard in which to evaluate the merits of increased expenditures within the context of the broad economy.

During this negotiations process, the parties were confronted with having to set terms for the initial contract year and beyond under circumstances of financial and economic transition and change that had not been seen for many decades. The process was difficult not only for these parties but for all parties whose contracts expired in 2008, 2009 and 2010. Contracts entered into before the onset of the recession show higher wage increases than those negotiated after the onset of the recession. For 2009, and the years going forward, substantial economic uncertainties existed that impacted on the County's ability to forecast budgetary levels that it could realistically fund. An example of this was the County's decision to lower its anticipated total revenue projections by \$20 million from 2009 to 2010 in the face of sharply declining revenues. The County also made a dramatic shift in the amount of surplus it was forced to use to balance its budget in 2009 to replace revenues that it did not receive. These fiscal developments clearly impacted on County negotiations and are reflected in the terms of the voluntary agreements made between the County and several of

its civilian negotiations units and the absence of agreements between the County and any of its law enforcement units at the time that the last submissions of the parties were received on February 3, 2011. Budgetary circumstances were reflected in the terms of settlement that included wage freezes. The settlement terms also show that substantial weight was given by the County and the non-law enforcement units to internal comparability because settlements were reached in several units on substantially similar terms that included wage freezes in 2009 and 2010. Consistent with this, non-union employees received wage freezes in 2008 and 2009. The County's budgeting of zero increases in 2009 and 2010 in the Sheriff's Department establish its intent to have this law enforcement unit fall into line with the terms set for its civilian units.

The internal comparisons are relevant and entitled to substantial, but not controlling weight. The several civilian unit settlements, standing alone, do not dictate a strict application of those terms to this PBA unit despite the County's contention in this proceeding that they must. As the PBA has argued, there has not been a strict pattern of settlement historically between the non-law enforcement units and the law enforcement units and the statutory criteria require consideration of factors that extend beyond the evidence of pattern among the non-law enforcement units.

The absence of settlements in the law enforcement units at the time of this record's close must be read as an ongoing effort by the law enforcement units to

pursue more attractive terms of settlement than those proposed by the County and those achieved by the non-law enforcement units. The only documentation of any contract resolution in law enforcement units are those reflected in an interest arbitration award. An interest arbitration award issued on September 6, 2011 in negotiating units representing Detectives and Investigators (PBA Local 339) and Superior Officers units in the Prosecutor's Office. The salary portion of that award reflected the following terms:

Effective January 1, 2010 – 0.0%  
Effective January 1, 2011 – 2.0%  
Effective January 1, 2012 – 2.5%  
Effective January 1, 2013 – 2.5%

Thereafter, the County filed an appeal with PERC seeking to vacate the award. In the PERC decision that considered the appeal, PERC observed that the County's challenge focused on the wage issue and the contract duration. The County's objections to the award were summarized by PERC as follows:

It asserts that the arbitrator did not properly apply the interest and welfare of the public, financial impact, and the lawful authority of the employer because the arbitrator ignored the evidence of the employer's precarious financial situation that includes increased labor and public safety costs, decreasing revenues and a budget deficit. Further, it asserts that the arbitrator did not adequately explain where the County would get the money to fund the wage increases.

PERC issued a decision on October 14, 2011 affirming the interest arbitration award [See PERC No. 2012-15]. Thereafter, the County appealed the

PERC decision to the Appellate Division of Superior Court. On October 1, 2012, the Appellate Division affirmed the PERC decision. I notified the parties on November 13, 2012 that I took administrative notice of the October 1, 2012 Appellate Division decision which encompassed review of the PERC decision that affirmed the interest arbitration award.

The PBA's salary proposal reflects heavy reliance upon external comparability evidence that shows higher top step salaries for police officers in several Mercer County municipal police departments and wage increases during relevant contract years in those departments that well exceed what the County has offered in this proceeding.<sup>2</sup> This evidence of external comparability tends to support the PBA's proposal for higher wage increases than what the County has offered but, for many reasons, cannot be given the level of weight sought by the PBA. There are many differences between the County and the municipal jurisdictions. These include funding sources and the broader scope and breadth of the County's total obligations to provide a variety of governmental services that fall outside the responsibility of municipal governments. The comparisons that are entitled to the most weight in this proceeding are those that fall within the County of Mercer's own collective negotiations units including those involving law enforcement units. This internal comparability evidence is entitled to greater

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<sup>2</sup> The PBA's figures are somewhat inflated given the fact that contracts entered into prior to 2008 carried higher percentages forward as compared to the percentage increases that were negotiated in 2009 and carried forward.

weight because the results of County negotiations have direct financial impact on the County while external comparability does not. An additional consideration is that the County of Mercer contracts in evidence show a high degree of prior consistency in maintaining wage relationships among the County's law enforcement units.

The interest arbitration award between the County and its two law enforcement units in the Prosecutor's Office reflects that weight was given to both the County's internal settlements with its civilian units and to the unique employment characteristics that concern law enforcement. In short, after examining the County's budgetary evidence, the comparative differences between the duties of law enforcement officers and those in the civilian units, the data concerning external comparability and the County's statutory limitations, the arbitrator struck a balance among these, and other relevant criteria, and made a reasonable determination of the wage issue. The awarding of a wage freeze in 2010 recognized the County's changed budgetary needs and gave weight to wage freezes that occurred in the County's civilian units during 2009 and 2010. However, by limiting the wage freeze to one year, and providing wage increases thereafter that averaged 1.75% annually over the life of the four year contract, the arbitrator found that there was a basis for reasonable deviation from the terms of the civilian settlements.

I am similarly persuaded that a reasonable determination of this wage dispute requires that neither party's final offer be awarded. The PBA's wage proposal is well in excess of the wage increases provided for in the voluntary agreements in the civilian units, in the arbitrated results in the two law enforcement units in the Prosecutor's Office and in the external comparability data. The PBA's proposal ignores the significance of the County's declining revenues and the cost saving measures the County has taken in order to balance its budget. The County's proposal gives little or no weight to the evidence the PBA has submitted that supports any wage increase beyond the County's final offer, including the County's ability to provide modest increases in pay levels that would offer some weight to factors such as external comparability, continuity and stability of employment and cost of living. Moreover, the record shows that there has been consistency in the negotiated changes that have been made in the past among the County's law enforcement units. Given the affirmance of the terms of the interest arbitration award in the two law enforcement units in the County Prosecutor's Office and the absence of any evidence that any other law enforcement unit has deviated from the terms of that award, I am persuaded that substantial weight must be given to the terms of that interest arbitration award. Accordingly, consistent with those terms and consistent with independent review of all of the relevant statutory criteria, I award across the board increases of 0% in 2009, 2% in 2010, and 2.5% in 2011 and 2012 with January 1 effective dates and continuation of the step movement procedures set forth in Article 5 that require Sheriff's Officers not at the maximum rate of pay (Step 8) to advance one

step on each successive July 1 until said employee reaches the maximum rate of pay. The new schedule is as follows:

Step	1/1/09	1/1/10	1/1/11	1/1/12
Trainer Rate (1 <sup>st</sup> 6 mos. of employment)	\$35,464	\$36,173	\$37,078	\$38,005
1	\$46,768	\$47,703	\$48,896	\$50,118
2	\$50,547	\$51,558	\$52,847	\$54,168
3	\$54,324	\$55,410	\$56,796	\$58,216
4	\$57,522	\$58,672	\$60,139	\$61,643
5	\$61,303	\$62,529	\$64,092	\$65,695
6	\$64,098	\$65,380	\$67,014	\$68,690
7	\$70,193	\$71,597	\$73,387	\$75,221
8 (max)	\$79,425	\$81,014	\$83,039	\$85,115

The above terms are also justified by the application of the statutory criteria. The interests and welfare of the public are served by an award that maintains existing relationships within the County's law enforcement units because such maintenance in the absence of extraordinary circumstances results in labor relations predictability and harmony rather than the conflict that could be caused by competition for differing results as may be sought by either party.

I have also considered the financial impact of these terms and the County's statutory limitations. The County has calculated the cost out of the County's final offer for a three year contract term as \$433,932 and the cost out of the PBA's final offer for a four year contract term as \$1,951,059. The costs of the Award, based upon this cost out chart over a four year contract term, is

\$803,377. I have reviewed the County's financial information and conclude that terms of the Award will not place the County outside its cap nor create adverse financial impact on the governing body or the taxpayers in Mercer County.<sup>3</sup> I further find that the terms averaging 1.75% over four years to be compatible with the cost of living data and would support the continuity and stability of employment for County Sheriff's Officers. On this latter point, I have considered the evidence of turnover but do not find that the overall contractual levels of compensation and benefits presently received have created staffing instability nor have prevented potentially interested individuals from the future pursuit of employment as Sheriff's Officers in Mercer County, nor will the adjusted terms required by this Award interfere with the continuity and stability of employment in the future.

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

#### AWARD

1. All proposals by the County and the PBA 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 or otherwise agreed to by the parties.

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<sup>3</sup> It is recognized that increased personnel costs will always create budgetary pressure and these conclusions are not intended to minimize the difficulties placed upon the County to fund any increase in personnel expenditures.

2. **Duration**

The effective date of this Agreement shall be January 1, 2009 through December 31, 2012.

3. **Deferral to Arbitration of the Unfair Practice Charge on Step Movement**

The County did not violate Article 5.3 by not providing automatic annual step movement upon contract expiration. The salary schedule and Article 5.3 shall be carried forward with annual step movement pursuant to the procedures set forth therein provided based upon the terms of the overall salary award.

4. **Article 19 – Shift Pay**

Effective January 1, 2012, the shift pay amount in Article 19.1 shall be increased to 35 cents per hour and the shift pay amount in Article 19.2 shall be increased to 40 cents per hour.

5. **Article 21 – Uniform Provisions**

In the event that the County requires that Class B trousers and shirts be worn, I award the PBA's proposal to include this apparel as an initial uniform issue consistent with the County's obligation to provide an initial uniform issue concerning Class A clothing. In the event that the wearing of Class B trousers and shirts is optional, the PBA's proposal is denied.

6. **Article 8 - Bereavement Leave**

Effective on the date of this award, stepmother and stepfather shall be added to Article 8.1.

7. **Military Leave (New Provision)**

Effective on the date of this award, a new provision shall be added to provide the following:

All unit employees who are entitled to a military leave of absence from duty shall receive such leave in a manner that is fully consistent with terms that are prescribed by law.

8. **Health Insurance**

Health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

I do not award any retroactive contributions that would be in excess of what Article 7 provided as of December 31, 2008 and were carried forward until such time that P.L. 2010, Chapter 2 became effective on May 21, 2010.

Effective May 21, 2010, and going forward, the statutory contributions required by both pieces of legislation shall subsume the amount of dollar contributions that were previously delineated in Article 7 for medical and prescription coverage and premiums for the County's basic dental program.

The costs of the basic dental program shall require no additional employee contribution. Employees shall be responsible for any additional costs associated with the premium dental program or the Eastern Dental Program in excess of the costs required for basic dental coverage.

9. **Salary Schedule – Appendix A**

The existing salary schedule in Appendix A shall be adjusted by the following amounts on each effective date and shall be retroactive to their effective dates. All Sheriff's Officers not at the maximum rate of pay (Step 8) shall advance one step on each successive July 1 until said Employee reaches the maximum rate of pay (Step 8). All increases shall be at each step of the salary schedule and shall apply to all unit employees and those who have retired on normal or disability pension and shall not apply to those who have voluntarily resigned or have been separated from employment without good standing.

Effective January 1, 2009 - 0.0%  
Effective January 1, 2010 - 2.0%  
Effective January 1, 2011 - 2.5%  
Effective January 1, 2012 - 2.5%

The salary schedule for employees shall read as follows:

Step	1/1/09 0%	1/1/10 2.0%	1/1/11 2.5%	1/1/12 2.5%
Trainer Rate (1 <sup>st</sup> 6 mos. of employment)	\$35,464	\$36,173	\$37,078	\$38,005
1	\$46,768	\$47,703	\$48,896	\$50,118
2	\$50,547	\$51,558	\$52,847	\$54,168
3	\$54,324	\$55,410	\$56,796	\$58,216
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6	\$64,098	\$65,380	\$67,014	\$68,690
7	\$70,193	\$71,597	\$73,387	\$75,221
8 (max)	\$79,425	\$81,014	\$83,039	\$85,115

Dated: April 29, 2013  
 Sea Girt, New Jersey

  
 James W. Mastriani

State of New Jersey                    }  
 County of Monmouth                  } ss:

On this 29<sup>th</sup> day of April, 2013, 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