

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

In the Matter of Interest Arbitration Between	:
	:
COUNTY OF MORRIS, MORRIS COUNTY	:
SHERIFF'S OFFICE	:
"the Employer"	:
	:
and	:
	:
MORRIS COUNTY PBA LOCAL 298	:
"the PBA or Union"	:

**INTEREST ARBITRATION
AWARD**

Docket No. IA-99-97

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE EMPLOYER:

Fredric M. Knapp, Esq., Special County Counsel
Edward Rochford, Morris County Sheriff
Ralph McGrane, Morris County Undersheriff
John R. McGill, Morris County Director of Labor Relations

FOR THE PBA:

Raymond G. Heineman, Jr., Esq.
Charles E. Schlager, Jr., Esq.
Richard Medwin, President, PBA Local 298
John Kinnecom
Henry John Ruiz
David Dosky
Robert Gonzalez

Background & Procedural History

The County of Morris and Morris County Sheriff's Office (the "Employer") and Morris County Policemen's Benevolent Association, P.B.A. Local 298 (the "PBA") are parties to a collective negotiations agreement which expired on December 31, 1998. Upon expiration of the collective negotiations agreement, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA and the Employer filed a joint petition requesting the initiation of compulsory interest arbitration with the New Jersey Public Employment Relations Commission ("PERC") on April 9, 1999. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 which resulted in my mutual selection by the parties and my subsequent appointment by PERC from its Special Panel of Interest Arbitrators.

I met with the parties in numerous voluntary mediation sessions over approximately eight (8) months. The mediation sessions did not resolve all of the issues involved in the impasse. Formal interest arbitration proceedings were invoked and hearings were conducted on October 15, 1999 and November 2, 1999 at which time the parties presented documentary evidence and testimony in support of their positions. Following receipt of the transcript, both parties filed post-hearing briefs. The hearing was declared closed as of December 18, 1999, upon receipt of the briefs. The parties mutually agreed to extend the time for issuance of the award to January 29, 2000.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension. The parties mutually agreed to extend the time for the issuance of the award to January 29, 2000.

The parties did not agree upon an alternate terminal procedure. Accordingly, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section.”

Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable a dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis the evidence on each factor.

(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 condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 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:4-45.1 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 municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 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 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.

Final Offer - Employer

The final offer of the Employer is as follows:

1. **Duration**

This Agreement shall continue to be in full force and effect as of the first day of January 1999 and shall remain in full force and effect through the thirty-first day of December 2002, except as otherwise specified.

2. **Sick Leave**

(Second Paragraph) Article X, Section 5 - Delete and replace with:

An accumulation of ten (10) sick occurrences, where an occurrence is recognized as one (1), eight (8) hour day or more and the occurrences having been at various times during a calendar year (January through December) may be approved without a physician's certificate. All sick occurrences in excess of ten (10), must be accounted for with a physician's certificate if the time is to be approved with pay. An employee may request that the Undersheriff or Warden review a sick occurrence requiring a physician's certificate. This request must be made in writing prior to the submission of the payroll in which the "sick occurrence" occurred. A copy of this request must also be given to the employee's supervisor. At the discretion of the Undersheriff or Warden, sick leave in excess of the ten (10) occurrences may not require a physician's certificate, depending on the submission of physicians' certificates submitted for prior occurrences and the employee's use of past sick leave.

3. **Sick Leave - Section 4**

Effective January 1, 2000, a certificate from a licensed physician in attendance shall be required as sufficient proof of need of leave of absence or the need of the employee's attendance upon a member of the employee's immediate family. In the event of absence from duty due to illness for four (4) or more days at one time, the employee shall be required to submit a physician's certificate to his/her supervisor to justify payment of sick leave.

4. **Sick Leave - Section 5**

Effective upon execution of this Agreement, upon retirement, with at least twenty-five years of continuous service with the Employer, the Employer will pay the employee thirty-five (35%) of accumulated sick time to a maximum of ten thousand dollars (\$10,000).

5. **College Credits Reimbursement**

Effective upon execution of this Agreement, the Employer shall also provide for reimbursement of approved courses toward the attainment of a Bachelor's degree.

6. **Work Week**

Section 1:

New shift schedules will allow for three (3), eight and one-half (8 ½) hour shifts per day and shall include a one-half (½) hour unpaid lunch period for all employees working at the Morris County Correctional Facility. The work week for all employees working at the Morris County Correctional Facility shall consist of forty-two and one-half (42 ½) hours per seven (7) work days based on the current 5-2 day week which includes a one-half (½) hour unpaid lunch period per shift, in accordance with Section 207(k) of the Fair Labor Standards Act. The one-half (½) hour lunch period shall not constitute compensable time pursuant to FLSA. In the event an officer, due to emergency, is not permitted to have a duty-free lunch period, he/she shall be paid for that time at the applicable rate.

Section 2:

In conjunction with the new schedule, an employee shall be compensated at one and one-half (1 ½) times his/her regular rate of pay for all time worked in excess of forty-two and one-half (42 ½) hours per seven day work week inclusive of the half (½) hour unpaid lunch.

The overtime rate shall be calculated consistent with past practice based upon the number of days in the year and biweekly pay period.

In the event of mandatory overtime, other than for training purposes for the new jail, if an employee is required to work more than two (2) overtime shifts in five (5) consecutive work days, the employee shall be paid two times his/her regular rate of pay for any additional shifts.

In the event that it is subsequently determined that any provisions of this Article or any related Article concerning work week, overtime or leave of any kind is not consistent with the Fair Labor Standards Act or it is determined that the lunch period is compensable pursuant to FLSA, the employer shall have the right to immediately reopen this agreement for the purpose of negotiating pay levels, and/or other economic benefits set forth within this agreement.

7. **Effects of FLSA on Other Benefits**

All Vacation Leave (Art. 8), Holiday Leave (Art. 9), Sick Leave (Art. 10), Personal Leave (Art. 15), Bereavement Leave (Art. 16) shall be earned, used and/or paid based on eight (8) hours a day. No employee shall lose Leave or Overtime benefits as a result of the change in work schedule to forty-two and one-half (42 ½) hours.

8. **Clothing Allowance**

The current clothing allowance of \$595 shall be increased \$55 in 1999 (\$650), \$50 in 2000 (\$700), \$50 in 2001 (\$750) and \$50 in 2002 (\$800).

9. **Wages - Proposed Salary Guide**

Schedule A - Employees Hired Prior to 1/1/01

	1998	1999	2000	2001	2002	Annual Increase
Entry	\$24,550	\$25,850	\$27,150	\$28,450	\$29,750	\$1,300
After 1 yr.	\$28,100	\$29,500	\$30,900	\$32,300	\$33,700	\$1,400
After 2 yr.	\$30,400	\$31,900	\$33,400	\$34,900	\$36,400	\$1,500
After 3 yr.	\$32,700	\$34,300	\$35,900	\$37,500	\$39,100	\$1,600
After 4 yr.	\$35,316	\$37,016	\$38,716	\$40,416	\$42,116	\$1,700
After 5 yr.	\$38,989	\$40,789	\$42,589	\$44,389	\$46,189	\$1,800
After 6 yr.	\$43,779	\$45,679	\$47,579	\$49,479	\$51,379	\$1,900
After 7 yr.	\$48,579	\$50,579	\$52,579	\$54,579	\$56,579	\$2,000
After 8 yr.	\$53,679	\$55,779	\$57,879	\$59,979	\$62,079	\$2,100

Schedule B - Employees Hired after 1/1/01

	1998	1999	2000	2001	2002	Annual
Entry				\$28,450	\$29,750	\$1,300
After 1 yr.				\$30,000	\$31,300	\$1,300
After 2 yr.				\$32,300	\$33,700	\$1,400
After 3 yr.				\$34,900	\$36,400	\$1,500
After 4 yr.				\$37,500	\$39,100	\$1,600
After 5 yr.				\$40,416	\$42,116	\$1,700
After 6 yr.				\$44,389	\$46,189	\$1,800
After 7 yr.				\$49,479	\$51,379	\$1,900
After 8 yr.				\$54,579	\$56,579	\$2,000
After 9 yr.				\$59,579	\$62,079	\$2,100

10. **Article 24, Section 3 (Wages)**

Eliminate the corrections stipend in its entirety effective January 1, 2000.

Final Offer - PBA

The final offer of the PBA is as follows:

1. **Duration**

The PBA stipulates to the Employer's proposal.

2. **Sick Leave**

The PBA stipulates to the Employer's proposal.

3. **Sick Leave - Section 4**

The PBA stipulates to the Employer's proposal

4. **Sick Leave - Section 5**

Effective upon execution of this Agreement, upon retirement, with at least twenty-five (25) years of service with the Employer, the Employer will pay the employee thirty-five percent (35%) of accumulated sick time to a maximum of ten thousand dollars (\$10,000).

5. **College Credits:**

The PBA stipulates to the Employer's proposal.

6-7. **Work Week**

Section 1:

The work week shall consist of forty (40) hours in a five-day period, consisting of five 8-hour shifts on days and evenings and four 10 hour shifts on nights.

Section 2:

Overtime

The County may require an employee to work beyond his work week as defined above. An employee who works in excess of forty (40) hours in any work week shall be paid at one and one half (1-1/2) times his established hourly rate for all hours worked beyond 40 in any work week. All overtime work must be authorized in advance.

In the event of mandatory overtime, other than for training purposes for the new jail, if an employee is required to work more than two (2) overtime shifts in five (5) consecutive work days, the employee shall be paid two times his/her regular rate of pay for any additional shifts.

8. **Clothing Allowance:**

The PBA stipulates to the Employer's proposal.

9. **Wages - Proposed Salary Guide**

	1998	1999	2000	2001	2002	Annual Increase
Entry	\$24,550	\$25,850	\$27,150	\$28,450	\$29,750	\$1,300
After 1 yr.	\$28,100	\$29,500	\$30,900	\$32,300	\$33,700	\$1,400
After 2 yr.	\$30,400	\$31,900	\$33,400	\$34,900	\$36,400	\$1,500
After 3 yr.	\$32,700	\$34,300	\$35,900	\$37,500	\$39,100	\$1,600
After 4 yr.	\$35,316	\$37,016	\$38,716	\$40,416	\$42,116	\$1,700
After 5 yr.	\$38,989	\$40,789	\$42,589	\$44,389	\$46,189	\$1,800
After 6 yr.	\$43,779	\$45,679	\$47,579	\$49,479	\$51,379	\$1,900
After 7 yr.	\$48,579	\$50,579	\$52,579	\$54,579	\$56,579	\$2,000
After 8 yr.	\$53,679	\$55,779	\$57,879	\$59,979	\$62,079	\$2,100

10. **Article 24, Section 3 (Wages)**

Maintain the corrections stipend at the current level of \$882.00.

Resolved Issues

The Employer and the PBA reached agreement on the following issues through the submission of their respective final offers:

1. **Duration**

This Agreement shall continue to be in full force and effect as of the first day of January 1999 and shall remain in full force and effect through the thirty-first day of December 2002, except as otherwise specified.

2. **Sick Leave**

(Second Paragraph) Article X, Section 5 - Delete and replace with:

An accumulation of ten (10) sick occurrences, where an occurrence is recognized as one (1), eight (8) hour day or more and the occurrences having been at various times during a calendar year (January through December) may be approved without a physician's certificate. All sick occurrences in excess of ten (10), must be accounted for with a physician's certificate if the time is to be approved with pay. An employee may request that the Undersheriff or Warden review a sick occurrence requiring a physician's certificate. This request must be made in writing prior to the submission of the payroll in which the "sick occurrence" occurred. A copy of this request must also be given to the employee's supervisor. At the discretion of the Undersheriff or Warden, sick leave in excess of the ten (10) occurrences may not require a physician's certificate, depending on the submission of physicians' certificates submitted for prior occurrences and the employee's use of past sick leave.

3. **Sick Leave - Section 4**

Effective January 1, 2000, a certificate from a licensed physician in attendance shall be required as sufficient proof of need of leave of absence or the need of the employee's attendance upon a member of the employee's immediate family. In the event of absence from duty due to illness for four (4) or more days at one time, the employee shall be required to submit a physician's certificate to his/her supervisor to justify payment of sick leave.

5. **College Credits Reimbursement**

Effective upon execution of this Agreement, the Employer shall also provide for reimbursement of approved courses toward the attainment of a Bachelor's degree.

6. **Work Week**

Section 2:

In the event of mandatory overtime, other than for training purposes for the new jail, if an employee is required to work more than two (2) overtime shifts in five (5) consecutive work days, the employee shall be paid two times his/her regular rate of pay for any additional shifts.

8. **Clothing Allowance**

The current clothing allowance of \$595 shall be increased \$55 in 1999 (\$650), \$50 in 2000 (\$700), \$50 in 2001 (\$750) and \$50 in 2002 (\$800).

9. **Wages - Proposed Salary Guide**

SCHEDULE A - EMPLOYEES HIRED PRIOR TO 1/1/01

	1998	1999	2000	2001	2002	Annual Increase
Entry	\$24,550	\$25,850	\$27,150	\$28,450	\$29,750	\$1,300
After 1 yr.	\$28,100	\$29,500	\$30,900	\$32,300	\$33,700	\$1,400
After 2 yr.	\$30,400	\$31,900	\$33,400	\$34,900	\$36,400	\$1,500
After 3 yr.	\$32,700	\$34,300	\$35,900	\$37,500	\$39,100	\$1,600
After 4 yr.	\$35,316	\$37,016	\$38,716	\$40,416	\$42,116	\$1,700
After 5 yr.	\$38,989	\$40,789	\$42,589	\$44,389	\$46,189	\$1,800
After 6 yr.	\$43,779	\$45,679	\$47,579	\$49,479	\$51,379	\$1,900
After 7 yr.	\$48,579	\$50,579	\$52,579	\$54,579	\$56,579	\$2,000
After 8 yr.	\$53,679	\$55,779	\$57,879	\$59,979	\$62,079	\$2,100

Issues in Dispute

The following issues remain in dispute:

4. Sick Leave - Section 5

PBA Position

Effective upon execution of this Agreement, upon retirement, with at least twenty-five years of service with the Employer, the Employer will pay the employee thirty-five (35%) of accumulated sick time to a maximum of ten thousand dollars (\$10,000).

Employer Position

Effective upon execution of this Agreement, upon retirement, with at least twenty-five years of continuous service with the Employer, the Employer will pay the employee thirty-five (35%) of accumulated sick time to a maximum of ten thousand dollars (\$10,000).

The bolded section of the Employer's position is the difference in the parties position on this issue.

6-7. Work Week

PBA Position

Section 1:

The work week shall consist of forty (40) hours in a five-day period, consisting of five 8-hour shifts on days and evenings and four 10 hour shifts on nights.

Section 2:

Overtime

The County may require an employee to work beyond his work week as defined above. An employee who works in excess of forty (40) hours in any work week shall be paid at one and one half (1-1/2) times his established hourly rate for all hours worked beyond 40 in any work week. All overtime work must be authorized in advance.

Employer Position

Section 1:

New shift schedules will allow for three (3), eight and one-half (8 ½) hour shifts per day and shall include a one-half (½) hour unpaid lunch period for all employees working at the Morris County Correctional Facility. The work week for all employees working at the Morris County Correctional Facility shall consist of forty-two and one-half (42 ½) hours per seven (7) work days based on the current 5-2 day week which includes a one-half (½) hour unpaid lunch period per shift, in accordance with Section 207(k) of the Fair Labor Standards Act. The one-half (½) hour lunch period shall not constitute compensable time pursuant to FLSA. In the event an officer, due to emergency, is not permitted to have a duty-free lunch period, he/she shall be paid for that time at the applicable rate.

Section 2:

In conjunction with the new schedule, an employee shall be compensated at one and one-half (1 ½) times his/her regular rate of pay for all time worked in excess of forty-two and one-half (42 ½) hours per seven day work week inclusive of the half (½) hour unpaid lunch.

The overtime rate shall be calculated consistent with past practice based upon the number of days in the year and biweekly pay period.

In the event of mandatory overtime, other than for training purposes for the new jail, if an employee is required to work more than two (2) overtime shifts in five (5) consecutive work days, the employee shall be paid two times his/her regular rate of pay for any additional shifts.

In the event that it is subsequently determined that any provisions of this Article or any related Article concerning work week, overtime or leave of any kind is not consistent with the Fair Labor Standards Act or it is determined that the lunch period is compensable pursuant to FLSA, the employer shall have the right to immediately reopen this agreement for the purpose of negotiating pay levels, and/or other economic benefits set forth within this agreement.

7. Effects of FLSA on Other Benefits

All Vacation Leave (Art. 8), Holiday Leave (Art. 9), Sick Leave (Art. 10), Personal Leave (Art. 15), Bereavement Leave (Art. 16) shall be earned, used and/or paid based on eight (8) hours a day. No employee shall lose Leave or Overtime benefits as a result of the change in work schedule to forty-two and one-half (42 ½) hours.

9. **Wages - Proposed Salary Guide**

	1998	1999	2000	2001	2002	Annual
Entry	\$24,550	\$25,850	\$27,150	\$28,450	\$29,750	\$1,300
After 1 yr.	\$28,100	\$29,500	\$30,900	\$32,300	\$33,700	\$1,400
After 2 yr.	\$30,400	\$31,900	\$33,400	\$34,900	\$36,400	\$1,500
After 3 yr.	\$32,700	\$34,300	\$35,900	\$37,500	\$39,100	\$1,600
After 4 yr.	\$35,316	\$37,016	\$38,716	\$40,416	\$42,116	\$1,700
After 5 yr.	\$38,989	\$40,789	\$42,589	\$44,389	\$46,189	\$1,800
After 6 yr.	\$43,779	\$45,679	\$47,579	\$49,479	\$51,379	\$1,900
After 7 yr.	\$48,579	\$50,579	\$52,579	\$54,579	\$56,579	\$2,000
After 8 yr.	\$53,679	\$55,779	\$57,879	\$59,979	\$62,079	\$2,100

The parties agreed to the above Salary Guide for all employees currently employed and for all employees hired in 2000. The following is the Employer's proposed Salary Guide which the PBA opposes:

Schedule B - Employees Hired after 1/1/01

	1998	1999	2000	2001	2002	Annual
Entry				\$28,450	\$29,750	\$1,300
After 1				\$30,000	\$31,300	\$1,300
After 2 yr.				\$32,300	\$33,700	\$1,400
After 3 yr.				\$34,900	\$36,400	\$1,500
After 4 yr.				\$37,500	\$39,100	\$1,600
After 5 yr.				\$40,416	\$42,116	\$1,700
After 6 yr.				\$44,389	\$46,189	\$1,800
After 7 yr.				\$49,479	\$51,379	\$1,900
After 8 yr.				\$54,579	\$56,579	\$2,000
After 9 yr.				\$59,579	\$62,079	\$2,100

10. **Article 24, Section 3 (Corrections Stipend)**

The PBA seeks to maintain the corrections stipend at the current level of \$882.00.

The Employer seeks to eliminate the corrections stipend.

Arguments of the Employer

The Employer, in its brief, examined the statutory criteria in relation to its proposal on the issues in dispute.

Interests and welfare of the public

The Employer argues that the interests and welfare of the public require the award of its economic package which represents an equitable compensation plan and, in contrast to the P.B.A. proposal, provides for a coherent, fair and stable labor relations program for the employees. The Employer asserts that this is in the best interest of the public and, indeed, furthers the general welfare. This was also testified to at great length by the Employer's witnesses, including Director of Labor Relations John McGill and Sheriff Edward V. Rochford.

The Employer maintains that its proposed salary structure provides an incentive to the work force to remain in employment. An example of this stability is the great number of job applicants for positions with the Morris County Sheriff's Office and the relatively low rate of turnover. The Employer attributes this to the high rate of compensation, excellent benefits, superior leadership and improving facilities and equipment. The Employer notes that in recent years there has been less turnover in employment in the rank, demonstrating increased stability in employment. The Employer contends that the proposed salary increases for 1999 through 2002 are consistent with and, in fact, exceed the cost-of-living increases over the past years and provide a real wage increase which also promotes stability.

The Employer argues that the interests and welfare of the public are best served by the awarding of its proposal concerning implementation of a new work week contemporaneous with the opening of the new Morris County Correctional Facility. Citing the testimony of Undersheriff Ralph McGrane, the Employer notes that it has expended more

than \$32 million to build a state of the art correctional facility. Chief McGrane, the former Bureau Chief of Corrections at Rikers Island in New York City, where he was responsible for the day to day operations, testified extensively concerning operational needs for the new correctional facility. The Employer notes that McGrane's testimony is based upon his twenty-four years of experience in the New York City correctional system. McGrane testified as an expert witness that the new "direct supervision" facility requires a change in the existing work week and a reconfiguration of the schedule. The Employer asserts that this required change is derived from the design and theory behind the Morris County Correctional Facility.

As a "direct supervision" facility, the new jail will house approximately 64 inmates in each of the main housing units. Smaller housing units will have fewer inmates. The new facility will have a capacity of 528 inmates. One correctional officer will be assigned to each such housing unit and will work directly with the inmates in the housing unit. Unlike the situation in the current Morris County Correctional Facility, inmates in the new jail will be in close proximity to the officers. The purpose in doing so is to maintain greater security and to establish rapport between the officers and the inmates. The Employer cites McGrane's testimony that a direct supervision facility provides a much safer working environment for correction officers than that existing in other configurations, such as that in the current jail.

The Employer notes that the parties and the arbitrator toured both facilities for several hours on April 30, 1999. Although the new correctional facility was not yet completed, the operations were explained in great detail by Undersheriff McGrane during the tour and then lead P.B.A. negotiator George O'Brien had the opportunity to question McGrane extensively throughout the tour concerning the operations of the facility and about officer safety. The Employer notes that McGrane enthusiastically answered O'Brien's pointed questions, especially as to officer safety.

During the tour, McGrane explained that each officer will remain in contact at all times with the central control room by means of a two-way radio. Each officer will also have a personal safety alarm so that he can immediately summon assistance if necessary. Furthermore, in order to avoid the potential for corruption, McGrane testified that officers cannot take their meals in the housing units along with inmates.

McGrane testified that each officer will be released from duty responsibilities for a minimum of thirty (30) minutes during each tour of duty for a meal period during which the inmates will be locked in their cells (locked down) for approximately one hour. McGrane further testified that during the meal period, the officers in the housing units will be excused from duty and will take their meals, duty free, in the officers' cafeteria/kitchen downstairs in the correctional facility, away from the inmates and from the housing units. Officers will be allowed to meet with their co-workers, enjoy their meals, relax and otherwise converse in a non-stressful environment. In the existing facility, to the contrary, officers oftentimes do not have the opportunity to take meals whatsoever. They may be required to work a continuous eight hour shift with no break for a meal. At best, an officer may eat his meal at his post directly outside the housing unit in the old jail.

McGrane testified that the current meal period breeds the probability of corruption since inmates will invariably seek food from officers under those circumstances. If an officer gives food to an inmate, he is in violation of the rules of the Morris County Sheriff's Office. If he subsequently declines to do so he may be subject to blackmail by the inmates and threatened with extortion by them for having violated rules. McGrane further testified that if an officer gives an inmate food, this could lead to the officer being threatened and extorted into bringing other more dangerous contraband into the correctional facility such as drugs, weapons, money, etc. Thus, the very security of the entire facility is threatened as well as the lives of correction officers and inmates by such meal taking with inmates.

The Employer notes that there has been a history of such incidents in the old Morris County Correctional Facility. The Employer cites the testimony of PBA Representative, Correction Officer Robert Gonzalez, who personally testified in a disciplinary case involving Correction Officer Fred Trottie. Trottie had taken cash from inmates on at least two occasions and purchased food from outside the facility. As a result of such actions, Trottie was terminated from employment. Gonzalez also testified that there were several other incidents that he could recall involving former officers who had likewise been subject to disciplinary action for giving inmates contraband food. Gonzalez concurred that the disciplinary action in the Trottie matter was appropriate.

McGrane testified that in order to accommodate the meal period, and also to provide for an overlap of existing shifts, it was necessary to have the officers present in the correctional facility for 8 ½ hours per tour of duty as opposed to the current 8 hours. McGrane testified that the additional half hour was solely for lunch, which would be duty free and, that officers would not be required to participate in any correctional duties except in the case of an emergency. Such emergencies would be limited to circumstances in which an officer's personal safety was threatened. Even in such circumstances, only the initial response team of three officers would be required to react. The response team, or probe team, would not include officers taking their meal. Rather, this would include officers from non-housing units. If the probe team could not quell the disturbance, then and only then would it be necessary to disturb those officers from their otherwise duty free meal.

McGrane testified that in his then eleven months as the Undersheriff in charge of corrections there had been only four incidents in which a true emergency had arisen at the current jail. It was his belief that such incidents would be extremely rare particularly in the new correctional facility.

The Employer points out that the PBA offered no expert testimony or other evidence to refute the expert testimony of McGrane. The PBA only provided anecdotal data from other states in which they allege that direct supervision was not as safe as non-direct supervision facilities. To the contrary, McGrane testified that based upon his extensive experience at the Manhattan House of Detention (Tombs) and at Riker's Island, he had actual experience with direct supervision facilities. Furthermore, in his experience such facilities were vastly safer than non-direct supervision facilities.

McGrane explained that officers developed greater rapport with inmates in direct supervision facilities, thus enhancing their safety and fostering mutual respect between officers and inmates. Thus, the Employer asserts that a direct supervision facility substantially furthers the interests and welfare of the public. The Employer contends that awarding the PBA's proposal would effectively handcuff the Sheriff preventing the full utilization of the new correctional facility contrary to the interests and welfare of the public.

In addition to the need for a lunch period away from their posts, McGrane explained that the modified workweek was necessary in order for him to efficiently deploy personnel and to establish several new posts inside the new Morris County Correctional Facility. This is based upon needs which McGrane observed in his many years of correctional experience and pursuant to Title 10A of the New Jersey Administrative Code. For example, McGrane stated that there currently is not a proper facility census conduction procedure. Furthermore, the new shift of 8-1/2 hours for all three shifts will result in the elimination of the current four day, ten hour midnights shift. Officers previously working on the midnight shift will work just like the day shift and the afternoon shift, that is, five days a week and each will have 8 hour shifts plus a 1/2 hour mealtime.

The Employer maintains that the elimination of the four day, ten hour midnight shift will allow the Sheriff and Undersheriff to better deploy staff. It will allow the conduct of a facility census verification the way counts are traditionally done and allow administration to give officers a meal. McGrane added in his testimony that the new shift and workweek will enable him to deploy the workforce more efficiently. It will also allow the Sheriff to create new positions to accomplish things that are mandated under the New Jersey Administrative Code such as laundry, delivering mail and other functions that take place in the jail. Currently, as testified to by McGrane, there is "helter-skelter" operation with regard to laundry. Right now, a housing unit officer must leave his area of responsibility in order to take care of the laundry. Furthermore, the same practice is taken with regard to delivering mail. With better deployment of staff this "helter-skelter" arrangement will be eliminated. This new procedure is also consistent with the architectural structure of the new jail in which the laundry is located in the basement. Furthermore, inmates working in the laundry will be supervised under the new schedule as opposed to the current situation in which they are not. The current situation invites a major breach of security in McGrane's opinion and is "asking for an escape" based upon his testimony. This could also lead to assault and generally poor management. A similar situation applies to mail delivery.

This deployment of staff will also allow the Sheriff to have a "Meal Relief Officer". The Mail Officer will also relieve other officers during their meals. That officer will go into a housing unit and relieve the Housing Officer so he or she may have his or her meal. In addition, there will be a Main Entrance Officer whose sole responsibility will be to process people in and out of the jail including processing visitors. This will be a function separate and apart from those officers currently maintaining this duty in the control room. The new

work week and schedule will eliminate a lot of the tasks that the Central Control Room Officer performed in the past. Furthermore, McGrane stated that the new jail will have a full-time Medical Officer around the clock in the clinic. There will also be Corridor Officers monitoring inmate movement "whose sole responsibility is to be a traffic cop."

Based upon the new schedule there will be additional officers hired to be deployed throughout the facility in addition to current staff. There will also be an outside patrol officer for the new jail to perform perimeter patrol around the clock. Currently, one officer is required to do sanitation which requires him to supervise an inmate detail to make sure the jail is clean. One officer is simply not adequate to do so. A second officer will be assigned on the afternoon shift to perform the same function as done on the day shift in order to maintain the jail in a "clean" way. Furthermore, McGrane testified that such duties are required and mandated under Title 10A of the New Jersey Administrative Code as promulgated by the State of New Jersey Department of Corrections. The new schedule will allow the Sheriff's Office to comply with all mandates under the Administrative Code. According to McGrane's testimony, currently the Employer is not able to comply with State requirements based upon the current staff, physical plant and staffing pattern. The current schedule also hamstrings the Sheriff from being able to comply with the mandates of the Administrative Code.

In conclusion, the Employer cites McGrane's testimony that "running three shifts, 8-1/2 hours a shift, as opposed to the current way we do the scheduling, is going to allow me to have more officers to spread throughout the three shifts and to do more. It is going to give me a lot more efficient operation."

The Employer asserts that the interests and welfare require the arbitrator to consider the constraints imposed by the “local government CAP law” N.J.S.A. 40A:4-45.1 et seq. , when rendering a compulsory interest arbitration award under the New Jersey Employer - Employee Relations Act, N.J.S.A. 34:13A-14 et seq. See also New Jersey State P.B.A. Local 29 v. Town of Irvington, 80 N.J. 271, 288-290 (1979); City of Atlantic v. Laezza, 80 N.J. 255 (1979); Hillside P.B.A. Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994); Washington Township v. New Jersey P.B.A. Local 206, 137 N.J. 88 (1994); and Fox v. Morris County P.B.A. Local 151, 266 N.J. Super. 501 (App. Div. 1993), *certif. denied*, 137 N.J. 311 (1994).

The Employer notes that the New Jersey Supreme Court in Hillsdale, *supra*, and Washington Township, *supra*, decisions reiterated the need of the arbitrator to consider the statutory Cap on total municipal spending in determining an employer’s financial capacity. P.B.A. Local 207 v. Borough of Hillsdale, *supra* at 86. This has been reiterated by the Legislature specifically in N.J.S.A. 34:13A-16(g)(1) and (5). Accordingly, it is incumbent upon the arbitrator to consider the extent to which financial constraints and budget caps, N.J.S.A. 40A:4-45.2 and 45.3 (setting municipal budget caps) will impact upon the municipal budget when an award is rendered to police or fire departments.

The Employer contends that if it is required to fund an economic package greater than its proposal (with wage increase costs of approximately 15.6% for the four-year period of its term) that are substantially in excess of the 1.5% permitted under the “CAP Law”, other services, perhaps just as essential, would have to be reduced. See N.J.S.A. 34:13A-16(g)(6), requires the arbitrator to consider the impact of the award on the ability of the employer to expand or maintain existing programs or initiate new ones. The policy of the “CAP Law” is to hold increases in expenditures close to prior appropriations, and acceptance of the Employer’s proposal would further this policy.

The Employer maintains that its economic proposal, which includes a reasonable wage increase, enhanced clothing allowance and reimbursement for a Bachelor's degree represent a considerable effort to provide a fair and equitable economic package which, hopefully, will not impact adversely upon the County tax rate. Furthermore, the Employer contends that the aggregate economic increase sought by the PBA is significantly higher than those in the private sector during the same time frame. This is even more pronounced when considering that the hazardous duty stipend would be continued notwithstanding the opening of the new jail as well as the potential cost of additional overtime to accommodate the 8- ½ hour work day. The Employer notes that this does not even take into consideration step increases which range from an additional 12.66% to 3.5% annually for each employee on the current step guide.

The Employer contends that consideration of the parties' economic proposals must include an examination of the impact of such proposals on other County bargaining units. The Employer submits that the most important aspect of its proposal is the vastly improved working conditions at the new correctional facility as was testified to extensively by Sheriff Rochford as well as by Under Sheriff McGrane. Faced with concerns about potential corruption and taxpayer costs, the Sheriff has recognized the need to modify the existing work week. Furthermore, the Employer argues that in order to effectively deploy the workforce of 102 correction officers it is necessary to provide the scheduling flexibility sought by the Sheriff.

The Employer asserts that the testimony overwhelmingly supports its proposal to modify the existing work week. Correction Officers will not be required to perform any additional duties and will receive the benefit of a thirty minute unpaid lunch period, duty free, at which time they will be allowed to relax, leave their posts, enjoy their meal and the

camaraderie of their co-workers. This benefit does not exist in the current correctional facility which is an archaic, decrepit, and an unsafe workplace. The Employer argues that Correction Officers will receive a substantial benefit with the opening of the new correctional facility. Moreover, the Employer asserts that the operational needs of the new correctional facility can only be maintained by the establishment of the new work schedule. Furthermore, the Employer contends that this work schedule will be very consistent with the work schedule of Sheriff's Officers for many years.

Sheriff's Officers, who primarily work security in the Morris County Courthouse, are required to be on the job for 8-1/2 hours per day inclusive of an unpaid lunch period of approximately thirty minutes. McGrane testified that the proposed schedule for Correction Officers at the new correctional facility would be consistent with the schedule covering Sheriff's Officers at the Morris County Courthouse. In fact, McGrane estimated that officers would actually be off their post for between 45 and 60 minutes per day because of the need to travel from their posts to and from the duty-free lunch in the employee cafeteria. This would, therefore, put the Correction Officers on a par with Sheriff's Officers.

Similarly, it is the position of the Employer that the so-called "corrections stipend" which has been in place since the early 1980's will no longer be warranted in the new jail. As testified to by John McGill, Director of Labor Relations and by Sheriff Edward V. Rochford, the purpose of the corrections stipend was to compensate Corrections Officers for the horrendous working conditions in the current Morris County Jail. This is consistent with the testimony of former Warden John Kinnecom who said it was a way to pay correction officers more money.

As testified to extensively by the Employer's witnesses as well the PBA witnesses, the conditions in the current jail are deplorable. Ventilation is extremely poor, heating and

cooling of the facility are inadequate, overcrowding has been a recurrent problem and the design of the facility is archaic. Temperatures at the current facility can rise to more than 100 degrees in the summer and there are little if any air conditioned posts other than the Control Center. Ventilation and air flow are also a serious problem. Although the advent of a "smoke-free" jail has improved ventilation somewhat, air quality remains a problem.

As testified to by both McGill and Rochford, it has been the Employer's goal to eliminate the stipend for Correction Officers upon the opening of the new jail because of the greatly improved working conditions. The new jail will be fully air conditioned, will have a state of the art heating and ventilation system, and will be free from any potential overcrowding based upon its design to house up to 528 inmates. Correction Officers will be working in a much more comfortable setting, will have a duty-free lunch away from their posts and are being provided with state of art safety equipment at considerable expense to the Employer. McGrane testified that the County will spend approximately \$50,000 on two-way radios with personal alarm systems for each Correction Officer. Additionally, stab resistant vests, to protect officers from injury, are also being provided by the Employer at a cost of approximately \$50,000 to enhance officer safety. The Employer contends that providing these enhanced safety benefits, coupled with the improved working environment at the new correctional facility renders the so-called "hazardous duty stipend" an anachronism. Furthermore, the Employer points out that Sheriff's Officers have never received any stipend whatsoever for "hazardous duty" notwithstanding the fact that Sheriff's Officers may work on very difficult assignments and be required to perform hazardous duty under various settings, either in the Courts, in the warrants squad or elsewhere.

Accordingly, the Employer argues that for the sake of consistency and comparability with Sheriff's Officers, there is no basis to maintain the correction stipend upon the opening of the new correctional facility in 2000.

McGill testified that the corrections stipend reached a maximum of \$1,550 several years ago. Since that time, in each succeeding round of negotiations, the Employer has successfully reduced the amount of that stipend voluntarily through negotiations with the PBA. The stipend has now been reduced to approximately ½ of its maximum and stands at a level of \$882 per Correction Officer per annum. The stipend has never been a part of base salary.

The Employer contends that the elimination of the stipend will have no impact upon Correction Officers' retirement benefits, overtime compensation or any other benefit determined by the hourly rate of pay. Therefore, the Employer submits that the elimination of the corrections stipend is justified based upon comparability standards as well as the concept of pattern settlements.

The policy of a consistent negotiating stance with regard to all County bargaining units was explained by County Director of Labor Relations John McGill. McGill stated that the Board of Freeholders gave him specific direction in negotiating contracts on behalf of the County of Morris and its semi-autonomous agencies, as well as those employed by constitutional officers, such as the Sheriff and Prosecutor. The general bargaining direction has been consistently applied to include cost sharing for certain health benefits by employees, the grand fathering of longevity and educational stipends as well as salary increases somewhat above the cost of living. McGill testified that the County strives to have a coherent, stable, consistent approach in its negotiations. McGill also testified that he was given economic parameters for negotiating this contract for Correction Officers consistent with the terms of the overall outcome of negotiations with other Morris County bargaining units, especially Sheriff's Officers. McGill testified that the employer's final offer was consistent with his direction from the County Freeholders and is consistent with the other

settlements that were negotiated with other units in the County including law enforcement, especially Sheriff's Officers. McGill testified that Sheriff's Officers and Correction Officers salary guides have been virtually identical for at least a decade.

McGill testified that there has been a consistent pattern in the collective negotiations agreements negotiated by the County with its other bargaining units. This includes the salary guide, wages, clothing allowance, thirty (30) minute unpaid lunch, payment of overtime after 40 hours per week and the modified salary guide for new hires effective January 1, 2001.

The Employer argues that acceptance of the PBA's proposal will have the effect of "whipsawing" the County by compounding the disparity between Sheriff's Officers and Correction Officers based upon the corrections stipend. This also will have the effect of creating instability among employees within the Morris County Sheriff's Office and the County of Morris. Thus, the Employer argues that it is contrary to the interests and welfare of the public, and to the interests of the employees themselves, by virtue of the fact that disharmony will be created with other bargaining units by awarding the PBA's proposal.

The Employer notes that the Legislature, in enacting the Local Budget CAP Law, N.J.S.A. 40A:4-1, et seq., sought to prevent fiscal instability and economic chaos by imposing on local governmental agencies certain fiscal procedures and limitations. The New Jersey Supreme Court has repeatedly upheld the legislative intent:

"... The purpose of the Law is to require local governments to follow sound business principles in their budgetary practices. Its aim is to insure that anticipated revenues equal expenditures, State v. Boncelet, 107 N.J. Super., 444, 450-451 (App. Div. 1969), and to prohibit deficit financing. Mount Laurel Township v. Local Finance Board, 166 N.J. Super. 254, 257 (App. Div. 1978), aff'd 79 N.J. 397 (1979)..." [Morris County vs. Skokowski, 86 N.J. 419, 423 (1981).]

A short history of the process of budgeting is expounded in City of Atlantic City vs. Laezza, 80 N.J. 255, 270 (1979):

“ . . . Prior to reaching the merits, we feel constrained to comment upon the procedural aspects of the present controversy. The Local Budget Law, N.J.S.A. 40A:4-1, et seq., assigns to the local governing body primary responsibility for allocating available resources among the various services which it chooses to provide to its inhabitants. See Irvington P.B.A., supra, 80 N.J. at 296.”

The seriousness with which the Legislature viewed these local fiscal restraints can be inferred from the fact that any over-expenditure by a local officer was made a crime of the fourth degree. Furthermore, N.J.S.A. 34:13A-16(g)(6) requires that the local CAP be taken into account by the arbitrator, among other factors. See State P.B.A. Local 29 vs. Town of Irvington, 80 N.J. 271, 296 (1979); P.B.A. Local 207 v. Borough of Hillsdale, 137 N.J. 71, 86 (1994). Given the current economic conditions the importance of the CAP Law and the other “ability to pay” factors have taken on a heightened importance. Comparison with pre-recession, or even early recession, awards and agreements is no longer appropriate in most circumstances.

The Employer asserts that pursuant to the current CAP Law constraints, it is inconceivable that the proposal of the PBA has any justification whatsoever. The County has sought to negotiate wage increases close to its CAP constraints for 1999 through 2002. Any awards or agreements which do not recognize these constraints are no longer appropriate for comparison purposes. The Employer maintains that the interests and welfare of the public are best served by its proposal as it provides a fair and equitable wage and economic benefit to bargaining unit members consistent with that negotiated for other law enforcement officers and non-uniformed County employees.

**Comparison of The Wages, Salaries, Hours
and Conditions of Employment**

(a) **In Private Employment:**

The most recent data provided by the New Jersey Public Employment Relations Commission indicates that wage increases in the private sector have consistently been in the range of 4.5% statewide for 1997. The rate of increase for private sector employment in general, therefore, is consistent with that proposed by the Employer herein.

The parties have not disputed that there is not comparable work to that performed by correction officers in the private sector. Nevertheless, according to PERC's most recent statistics, the wage proposal of the Employer herein is certainly more consistent with that provided to private sectors employees covered by unemployment insurance.

(b) **In Public Employment**

Similarly, PERC has provided data concerning public sector wage settlements generally. That data shows that the Employer's wage proposal is certainly consistent with those parameters. Such settlements have been at the rate of approximately 3.0% for "Total Government" in 1997.

(c) **In Public Employment in the Same or Similar Comparable Jurisdictions**

The bargaining unit in question currently consists of 102 correction officers. The current compensation for all officers in terms of base salary, and all fringe benefits is substantial including the benefits that have been proposed herein and agreed to by the PBA. Fringe benefits of these bargaining unit members and those of Morris County law enforcement officers as a whole compare very favorably to the 40.2 percent average in private sector employment.

The County of Morris, as testified to by McGill, has sought successfully for the last decade to maintain consistency between the salaries of Correction Officers and Sheriff's Officers through the use of pattern bargaining. The County has been able to maintain a stable labor relations environment through pattern bargaining without constant whipsawing between Correction Officers and Sheriff's Officers. The Employer notes that Sheriff's Officers recently negotiated a voluntary settlement with the Sheriff. The Employer further notes that its wage proposal and other economic proposals including the enhanced clothing allowance and enhanced tuition reimbursement program provide increases for Correction Officers which are identical to those recently negotiated with Sheriff's Officers.

The main thrust of the Employer's position is the comparability with Sheriff's Officers. The Employer notes that its proposal is virtually identical to that voluntarily agreed to with the Sheriff's Officers. Furthermore, the elimination of the corrections stipend will remove what is an inherently unfair disparity in the compensation paid to Sheriff's Officers as compared to that of Correction Officers. The Employer argues that the correction stipend has been used as a reward to Correction Officers for working in substandard conditions at the current Morris County Jail which will be alleviated upon moving to the new \$32 million state of the art correctional facility. These improved working conditions will be greatly enhanced safety, quality of work, comfort and general esprit de corp.

Furthermore, the Employer points out that the Sheriff has voluntarily spent approximately \$50,000 for safety alarms, radios and an additional \$50,000 for stab proof vests. None of these safety features have previously been provided at the current jail to Correction Officers.

Thus, the Employer argues that since there will be significantly less hazardous working conditions at the new correctional facility there is no rational basis to continue the corrections stipend.

The Overall Compensation Presently Received

The overall compensation proposed by the Employer for this bargaining unit is identical to that received by Morris County Sheriff's Officers under their most recent settlement. Correction Officers have received the corrections stipend for hazardous duty for many years. This has been voluntarily reduced over the years from a high of \$1,550 in 1995 to the current rate of \$882. These employees will also be working in a safer environment very shortly upon the opening of the new correctional facility. The Employer maintains that there is no basis for any deviation from the benefits received by Correction Officers and that of Sheriff's Officers.

A major difference in determining the compensation for the Correction Officers' bargaining unit as compared to the Sheriff's Officers is that the Sheriff's Officers currently have a thirty minute unpaid lunch. Although both Sheriff's Officers and Correction Officers work a forty-hour work week, Sheriff's Officers, many of whom work in the Courts, are present an additional thirty to sixty minutes for lunch which is not compensated and is not included in the forty-hour work week. Conversely, Correction Officers are only required to work eight hours per day inclusive of a lunch or dinner break.

Therefore, the Employer contends that a comparison of the wages of Sheriff's Officers and Correction Officers should factor in the Correction Officers' work-week which currently requires that they be at their posts two and one-half hours less per week than Sheriff's Officers. This reflects a 7.15% longer work week for Sheriff's Officers. Thus, the

cost per hour for salaries paid to Correction Officers is significantly greater than that paid to Sheriff's Officers. This is even more significant a disparity when the "corrections stipend" is included.

The Employer asserts that the inequities concerning the work week and the corrections stipend are no longer justified given the operational needs of the new correctional facility as well as the vastly improved working conditions. Accordingly, the Employer maintains that this criterion favors the awarding of its final offer.

Stipulations of The Parties

The parties have stipulated on certain economic benefits and non-economic benefits

Lawful Authority of the Employer

The lawful authority of the Employer is statutory. The fiscal constraints set forth in the local government CAP law, N.J.S.A. 40A:4-1 et seq., applies to the County of Morris as a public employer. The County of Morris is constrained by the limitations of the CAP law not to exceed 1.5% for each year of this contract as anticipated.

The parties have both advanced proposals which are in excess of that figure. Nevertheless, by elimination of the correctional stipend the Employer's proposal is more in line with the CAP than the proposal of the PBA which would maintain that cost. Furthermore, the anticipated overtime costs which would occur if the Employer's proposed workweek is not granted would result in a tremendous cost to the Employer well in excess of CAP constraints.

Financial Impact on the Governing Unit, its Residents and Taxpayers

A review of financial impact is required by N.J.S.A. 34:13A-16g(6). Although the so-called "ability to pay" has not been a primary focus in this matter, the Employer points

out that the PBA proposal will cost substantially more than its proposal. Maintenance of the correction stipend alone will result in an additional cost to the Employer of \$89,964 per year based upon the current workforce of 102 Correction Officers.

McGrane testified that approximately 14 additional Correction Officers will be hired in the upcoming year bringing the total workforce to 116 Correction Officers in 2000 increasing the cost of the stipend to \$102,312 annually. This costs \$306,936 over the term of the contract. This is a cost that the taxpayers of Morris County should not be required to bear given the substantial debt service to be incurred due to the building of the new correctional facility costing \$32 million. Furthermore, given the level of benefits and salaries paid under this contract and enjoyed by Correction Officers in Morris County, there is simply no need for them to receive any collateral compensation in this form over and above base salary.

The Employer expressed strong concern with respect to the potential overtime cost to be incurred should the new schedule be implemented without the flexibility it is seeking. There is a potential for thirty minutes overtime per officer per shift. Assuming that there are 116 officers, this would result in an untenable cost to the Employer given the maximum salary for Correction Officers of \$62,079 at the end of the contract. The hourly rate is \$29.85 based upon a 2,080 hour year. One half hour at a 1-1/2 rate would be compensated at \$22.39 per shift, per officer for a total cost of approximately \$392,000 per year, assuming 16 officers per shift. The Employer contends that this overtime cost is unwarranted and should not be required. To accept the analysis of the PBA, which would potentially inflate not only wages for this bargaining unit, but could also cause significant disruption of the established pattern with other bargaining units, and would have disastrous effects on County labor relations and finance.

There are more than twenty bargaining units representing Morris County employees. The Employer submits that it has taken great pains in establishing a pattern for those units, especially law enforcement going back to 1999, and argues that an anomalous award beyond the established pattern would have any extremely disruptive effect upon labor relations in the County. Such an award would lead to whipsawing of bargaining units against the County as well as a return to the inflationary wage spiral of the 1980's.

The Employer asserts that the salaries of Morris County Correction Officers, when compared with Correction Officers in other counties and with police officers in neighboring municipalities, demonstrates that they receive a salary which is very competitive and in fact exceeds that paid to many other law enforcement officers elsewhere. Accordingly, the Employer submits that no hardship will be suffered by Correction Officers by awarding the Employer's financial package.

On the contrary, the Employer argues that should the award deviate from the pattern established by settlements with Sheriff's Officers and other bargaining units in the County, including the continuation of the corrections stipend, that additional burden would be felt by the County's taxpayers. The Employer contends that an award contrary to the pattern could have a domino effect upon other bargaining units and other collective negotiations agreements.

The Employer maintains that it has developed substantial evidence to demonstrate a pattern of settlements throughout the County of Morris, specifically as it pertains to Morris County Sheriff's Officers and Correction Officers. The Employer cited several interest arbitration awards regarding pattern bargaining: Arbitrator Joan Parker in 1991 concerning Correction Officers (In The Matter of the Arbitration between Morris County Sheriff's

Office and Morris County Corrections P.B.A. Local 298, Docket No. IA-90-150; Arbitrator Joel Weisblatt in his award concerning Sheriff's Officers in 1995 (In The Matter of the Interest Arbitration between Morris County Sheriff and P.B.A. Local 151, Docket No. IA-91-105); and Arbitrator James Begin, (In The Matter of the Interest Arbitration between Morris County and Superior Officers Association, Sheriff, Bureau of Corrections, Docket No. IA-93-43).

Most recently, the concept of pattern bargaining was adhered to by Arbitrator Jeffrey Tener, In The Matter of the Arbitration between the Morris County Prosecutor's Office and Morris County P.B.A. Local 327, Docket No. IA-97-18. Arbitrator Tener gave great deference to the established pattern and noted the close relationship between Correction Officers and Sheriff's Officers as had Arbitrators Weisblatt and Parker in their awards referenced above. As set forth by Arbitrator Tener:

"What is most important, however, is that the County has settled with virtually all of its employees for increases similar to those offered by the County to the P.B.A. Particularly important is the fact that the increases offered are identical to those offered to both the Correction Officers and the Sheriff's Officers in 1997 and 1998." [Id. at page 39.]

Furthermore, Arbitrator Tener acknowledged that he would not disturb the pattern as follows:

"I believe it would be highly disruptive for the investigators to obtain salary increases which were significantly different from those received by other county employees and particularly by the other county law enforcement employees. Such a deviation would cause resentment among those other employees and it would serve as a disincentive for them to reach voluntary agreements with the County in the future. They would believe that in the next round of negotiations they should receive an increase to bring them up to the level of the investigators in addition to what they should otherwise receive. If they were to obtain such an increase, the investigators then would want the same total increase received by the other units. The cycle would be endless.

Accordingly, I believe that the interest and welfare of the public will best be served by acceptance of the County's salary proposal." [Id. at page 40].

The Employer asserts that it has established and maintained a consistent pattern of settlements with law enforcement personnel. The Employer urges additionally that the establishment of a pattern is a criterion dealing with the interests and welfare of the public. Through the utilization of a pattern of settlement, the Sheriff and the County have sought to promote labor harmony and peace and thus, the general welfare.

The Employer contends that if settlements are negotiated or arbitration awards are rendered greater than the pattern of settlement as established by the Employer with its unions, such later improved settlements undermine morale for a particular employer, fostering ill will and thereby providing the seeds for labor and turmoil and unrest. The Employer asserts that it is a well-accepted principle that an established pattern should be given great weight. Arbitrators have given careful consideration to existing patterns and usually uphold them. See City of Camden and FOP Lodge No. 1 (IA-82-7), J. Wildebush; City of Camden and Camden Fire Officers Association, (IA-82-124), L. Hammer; Woodbridge and PBA Local 38, (IA-81-29), L. Hammer; Hudson County and PBA Local 51 (IA-78-181), S. Aiges; Elizabeth and PSOA (IA-80-105), H. Haber; Elizabeth and IAFE, (IA-79-2), E. Levin; Elizabeth and PSOA, (IA-79-109), D. Collins, all quoted in Elizabeth and F.M.B.A. Local 9 (IA-79-109), D. Collins, all quoted in Elizabeth and F.M.B.A. Local 9 (IA-82-134), S. Aiges, pp. 25-26; Morris County Sheriff's Office and PBA Local 151 (IA-91-105), J. Weisblatt, pp. 24-32.

The Employer submits that the key elements of comparison criteria that should be given the greatest weight are: (1) comparison with Morris County employees in general and (2) comparison with other Morris County law enforcement officers. The Employer contends

that the pattern established for all Morris County law enforcement employees in 1999, 2000, 2001 and 2002 is a \$2,100 annual wage increase at maximum salary. The salary increases proposed by the Employer are exactly the same salary increases provided to the Morris County Sheriff's Officers for 1999 through 2002.

In conclusion, given the high rate of compensation, excellent benefits and moderate cost of living, the Employer asserts that its proposal is the more reasonable.

Cost of Living

The Employer submits that the cost of living is not a controlling factor or criterion in this case since both the PBA and the Employer have proposed salary increases considerably in excess of the cost of living.

Continuity and Stability of Employment

The Employer maintains that it has fashioned an economic package that seeks to maintain the current workforce at a level that it has essentially enjoyed. Furthermore, the Employer submits that the building of the new Morris County Correctional Facility will enhance employee benefits, job satisfaction and working conditions thereby maintaining stability in employment. The Employer notes that the record is entirely devoid of any indication by the PBA that the workforce is dissatisfied with employment. Furthermore, the Employer points out that notwithstanding the conditions in the current facility, turnover is not a significant factor at this time.

Accordingly, the Employer maintains that its proposal on the economic package is the most reasonable and asks that its final offer be accepted in its entirety and that the proposal of the PBA be rejected.

Arguments of The PBA

The PBA asserts that the major issues in dispute revolve around the work schedule to be implemented at the new County Jail, which is scheduled to be operational in early 2000. The PBA seeks to preserve the existing shift structure, under which Correction Officers work 40 hours per week, by continuing the current schedule of 5 eight-hour day or evening shifts or 4 ten-hour night shifts. Under the existing structure, officers earn overtime pay for all hours worked over 40 in a week. In contrast, the County seeks to require all Correction Officers to work five consecutive 8½ hour shifts, including a half-hour lunch, every seven days and to earn overtime only over 42½ hours, inclusive of the ½ hour unpaid lunch, pursuant to Section 207(k) of the Fair Labor Standards Act (FLSA). In addition, the County proposes that the additional half-hour per day be declared non-compensable under the FLSA and that the contract be reopened in the event that the proposed lunch period is held to be compensable.

At hearing, neither party contended that their proposals implicated the lawful authority of the County under the CAP Law, N.J.S.A. 40A:4-45:1, *et seq.* Further, neither the County nor the PBA introduced evidence or otherwise contended, that the parties' proposals would have a financial impact on the governing unit. Accordingly, the PBA maintains that the factors outlined in N.J.S.A. 34:13A-16(g)(5) and (6) are irrelevant to the resolution of the instant matter. The PBA asserts that based on the statutory criteria outlined in N.J.S.A. 34:13A-16(g), its proposal is more reasonable and should be awarded.

Sick Leave

The current collective bargaining agreement, at Article 10, Sick Leave, Section 5, provides for a terminal leave benefit as follows:

Upon retirement, with at least twenty-five (25) years service, the employer will pay the employee thirty percent (30%) of the accumulated sick time to a maximum of eight thousand dollars (\$8,000.00).

The parties agree that the benefit should be increased to thirty-five percent (35%) of accumulated sick time to a maximum of ten thousand dollars (\$10,000). Contrary to the Union, the County proposes to limit the terminal leave benefit to those retiring with 25 years of "continuous" employment.

The PBA asserts that the public has a substantial interest in a stable, productive, professional and motivated work force. At the same time, the public has an interest in the Sheriff's Department's ability to provide vital public services within the confines of the County's overall budget. The PBA contends that these interdependent interests need to be carefully balanced by the parties and the interest arbitrator in considering the interests and welfare of the public under N.J.S.A. 34:13A-16(g)(1).

Increases in terminal leave benefits operate to discourage sick leave usage and are generally in the public interest. At the same time, such benefits operate to reward employees for long and faithful service and motivate employees to continue productive public service. The PBA asserts that its proposal supports and enhances the motivational goal of the current benefit. In particular, by providing the same level of benefits provided to Sheriff's Officers in the Bureau of Law Enforcement, the proposal eliminates a disparity in the current departmental benefit structure, which had been noted by a prior interest arbitrator.

The County's proposal, by limiting eligibility to employees with 25 years of continuous service, detracts from employee morale. In this regard, current employees will be disqualified from the terminal leave benefit due to the "continuous" service limitation. In addition, the limitation creates a new disparity between the terminal leave benefits of

officers in the Department of Corrections and the Bureau of Law Enforcement. This disparity detracts from the County's asserted goal of providing uniform benefit levels among law enforcement officers.

The PBA asserts that the record is devoid of any evidence that its proposal will detract from the successful provision of services within the confines of the current budget or would contravene the County's lawful authority under the Cap law. In this regard, the County has not proffered any evidence of its inability to pay for the agreed-upon increase under the current eligibility formula. The modest increase in the terminal leave benefit of \$2,000 to employees under the current eligibility formula is certainly within the County's financial means.

The record evidence at hearing indicates a disparity in the terminal leave benefit between Correction Officers and Sheriff's Officers in the Bureau of Law Enforcement, investigative personnel in the Prosecutor's Office, and Superior Officers in the Bureau of Corrections. This internal disparity will be corrected through the PBA's proposal. In contrast, the record is devoid of evidence that any other County employees are required to have 25 years of "continuous" service prior to being eligible for a terminal sick leave benefit.

Of the collective negotiations agreements in the record for Corrections Officers employed by other county governments, none require 25 years of "continuous" service as a condition of eligibility for terminal leave benefits. Similarly, the record is devoid of any evidence of such a limitation being imposed by other interest arbitrators. Thus, the PBA maintains that the comparability factors of N.J.S.A. 34:13A-16(g)(2) favors its proposal.

The PBA asserts that its proposal is within the County's lawful authority and has no demonstrable financial impact on the County, its residents and taxpayers. The PBA asserts that pursuant to the statutory criteria outlined in N.J.S.A. 34:13A-16(g), its proposal on terminal sick leave is more reasonable and should be awarded.

Salary Guide

The current collective negotiations agreement provides for a six-step salary guide for employees hired prior to May 1, 1993, reaching the maximum after five (5) years, and a nine-step salary guide for employees hired after May 1, 1993, reaching the maximum after eight (8) years. Schedule A of the current agreement is now moot since all employees hired prior to May 1, 1993 reached the top step of the salary scale prior to the expiration of the agreement. The parties have agreed on a nine-step guide for employees hired before January 1, 2001, with employees hired after May 1, 1993 reaching the maximum after eight (8) years. The County proposes a second ten-step guide for employees hired after January 1, 2001, reaching the maximum after nine (9) years.

The PBA asserts that the record is devoid of evidence supporting the addition of a new step into the salary guide. The County relies entirely on its recent voluntary settlement with PBA Local 151, representing Sheriff's Officers in the Bureau of Law Enforcement, as evidence of a "pattern" of settlements. Contrary to the County's argument, the settlement with Local 151 does not create the "pattern" cited by prior interest arbitrators. In this regard, the PBA cites an award in the Morris County Prosecutor's Office, Docket IA-97-18, in which Arbitrator Jeffrey Tener rejected the elongation of a nine-step salary guide, which reached maximum in eight (8) years.

The PBA also cites an award by Arbitrator Joan Parker, In Morris County Sheriff's Office, IA-90-150, wherein Arbitrator Parker relied on a pattern to reject an improvement in the salary guide sought by Local 298. Arbitrator Parker found that acceptance of the Local's proposal would "have the effect of whipsawing the Employer by repeatedly increasing salaries and compounding the differences between respective steps on the salary guide." Other arbitrators were concerned with maintaining the pattern of settlements in order to prevent later parties from upsetting the balance achieved by earlier settlements.

In the instant case, however, the PBA contends that the settlement with Local 151 broke the County's pattern of nine-step guides, reaching the maximum rate after eight (8) years. In this regard, the County's current contracts with Local 298, PBA Local 327, representing investigators in the County Prosecutor's Office, and PBA Local 264, representing park police, all provide for nine-step guides reaching the maximum rate after eight (8) years. The PBA contends that it is the County that is attempting to "whipsaw" the remaining units by extracting a concession from a single unit and then seeking to impose that concession on the remaining units under the guise of a "pattern." Thus, the PBA asks that I reject the County's attempt to impose its contemporaneous voluntary settlement with Local 151 on the Correction Officers represented by Local 298.

The PBA argues that the County's proposal would make the career path for Correction Officers longer and would be inconsistent with the public's interest by making it more difficult to attract applicants. As Sheriff Edward Rochford acknowledged, "Correction Officers have one of the hardest jobs in law enforcement." The PBA contends that the Department is already experiencing a shortage of applicants, particularly among female officers. The PBA contends that the shortage will surely be exacerbated upon the switch to direct supervision, when Chief Ralph McGrane estimates that 10% of the current staff will quit. Similarly, Henry Ruiz, the Corrections Chair of the N.J. State PBA, testified to the high rate of staff turnover during the transition of the Middlesex County Jail to direct supervision and of similar staffing shortages at the Monmouth County Jail.

The PBA points out that the current step structure on the salary guide was developed prior to the June 9, 1995 award of Arbitrator Joel Weisblatt, who noted that the nine-step guide was a "long guide." The PBA notes that the County has not proffered any substantial evidence supporting the change in the status quo which it seeks. The PBA contends that the

County, which enjoys a declining tax rate and an AAA Bond Rating, has the ability to maintain the current step structure. Similarly, nothing in the record suggests an inability to meet the financial requirements of the PBA's proposals.

The PBA asserts that internal consistency also supports its proposal since 3 of 4 rank-and-file law enforcement units currently have a nine-step structure, reaching maximum after eight (8) years. The PBA also points out that the contracts for correction officers employed elsewhere show a range of 4 to 12 steps in salary guides. Thus, the PBA contends that the external comparisons are inconclusive.

The PBA maintains that the County's mere reliance on its voluntary settlement with PBA Local 151 is insufficient to support its proposed change in the status quo, which is currently in place in three of the four rank and file County law enforcement units. Accordingly, based on the statutory criteria outlined in N.J.S.A. 34:13A-16(g), the PBA asserts that its proposal is more reasonable and should be awarded.

Corrections Stipend

The current collective negotiations agreement, at Article 24, Wages, Section 3 provides for a corrections stipend of \$882 annually. The corrections stipend is equivalent to 1.58% of the top rate of the current salary schedule. The County proposes to delete the corrections stipend, while the PBA proposes to maintain the benefit at its current level.

The County contends that the corrections stipend originated as compensation for the adverse working conditions of Correction Officers working in the old jail. According to the County, the improved safety factors in the new jail obviate the rationale for the corrections stipend. However, the PBA contends that the County provided no evidence in support of its belief as to the origin of the corrections stipend.

The PBA maintains that the record evidence shows that the corrections stipend is an integral part of the Corrections Officers' salary and benefit package. Former Warden John Kinnecome testified, without contradiction, that former Sheriff John Fox admitted to him that the corrections stipend was a mechanism to give the Correction Officers a way to achieve parity with the officers in the Bureau of Law Enforcement. Subsequently, the stipend has not been tied to deteriorations or improvements in working conditions at the jail and has been negotiated as part of the overall wage and benefits package. Further, even Correction Officers who do not work in the old jail, such as SLAP officers, have received the stipend.

The PBA points out that effective January 1, 1991, Arbitrator Joan Parker awarded an increase in the corrections stipend to \$1,250 without any discussion of any increase in adverse working conditions in the jail. Effective January 1, 1995, Arbitrator Joel Weisblatt awarded an annual "equity adjustment" of \$550 to Sheriffs' Officers in the Bureau of Law Enforcement "to match the increase in the corrections stipend over the duration of this contract." While Arbitrator Weisblatt acknowledged the County's asserted position that the corrections stipend was "a reflection of the hazards of working in [the jail]," the "equity stipend" was awarded to Sheriff's Officers under the criteria for internal comparisons. The PBA notes that nothing in Arbitrator Weisblatt's award indicated that Sheriff's Officers in the Bureau of Law Enforcement were being subjected to increased hazardous duty or worked in the old jail. Further, there was no discussion of the increase in the corrections stipend being tied to deteriorating conditions in the old jail. Rather, it was treated as another element of the wage and benefit package.

Since 1995, the County has sought to reduce or eliminate the stipend without regard to the hazardous nature of the jail. Prior to the current agreement, the stipend was reduced

to \$1,000 and was partially rolled into the base salary. Effective July 1, 1997, the corrections stipend to Correction Officers was reduced \$118 annually "in consideration of the dental benefit provided for in Section 3 of Article XII," thus reducing the disparity in benefits between Local 298 and Local 151. The corrections stipend for civilian employees assigned to the jail was rolled into their base in 1995. The PBA points out that nothing in the record indicates that conditions in the old jail improved in 1995. Finally, the "equity adjustment" provided to Sheriff's Officers represented by Local 151 was reduced to \$400 and rolled into their base salary effective January 1, 1996.

Based on the record, the PBA asserts that the corrections stipend is an integral part of the contractual wage and benefit structure and has changed independent of working conditions in the jail. Despite the County's asserted interest in achieving uniformity, significant disparities continue to exist between the terms and conditions of employment of officers in the Department of Corrections and the Bureau of Law Enforcement. The contract between Local 151 and the County provides an improved college credit benefit and an improved longevity benefit. Unlike Correction Officers, Sheriff's Officers receive double time for work on holidays. In addition, Sheriff's Officers are eligible for performance incentives of up to 2% of their base salary. Most significantly, Sheriff's Officers, unlike Correction Officers, are off on holidays and weekends and do not work nights. The PBA also notes that the \$1,500 detective differential under the Local 151 agreement is analogous to the corrections stipend.

The PBA contends that the loss of the stipend is also contrary to the "pattern" of wage settlements negotiated by the County. Thus, the County negotiated increases in top pay with PBA Local 151 of 3.9% in 1999, 3.76% in 2000, 3.62% in 2001 and 3.5% in 2002, an increase of 14.78% over the life of the agreement. In the event that the corrections

stipend, valued at 1.52% of top pay in 2000, is eliminated, the net increase in 2000 would be 2.24% in 2000 and the increase over the life of the contract would be 13.26%. The elimination of the corrections stipend would also be contrary to the County's "pattern" of rolling corrections or equity stipends into base pay or of trading off the stipend for a new benefit.

The PBA asserts that the net increase for Corrections Officers would also be below the overall trend of interest arbitration awards which currently average 3.88% for 1999, 3.6% for 2000 and 3.6% for 2001. Thus, while the overall trend in increases is 11% over three years, the net increase received by Correction Officers would only be 9.76% over three years. A review of the overall trend indicates that the bulk of the awards with percentage increases below the average concerned public employers in tenuous financial condition relative to Morris County. In this regard, the PBA maintains that the record is devoid of evidence of an issue of financial stability justifying the elimination of a financial benefit.

The PBA asserts that even if the County were correct that the corrections stipend was tied to the hazardous nature of work in the old jail, the elimination of the stipend would not be warranted at this time. The County's argument is premised on the assumed, but yet unsupported, belief that the new podular jail and the system of direct supervision will markedly improve safety conditions for officers in the jail. The County's supporting evidence consisted of the theoretical perspective of its "expert" management and anecdotal remarks by unidentified persons employed at unidentified "direct supervision" jails.

In "Evaluating Jail Reform Inmate Infractions and Disciplinary Response in a Traditional and a Podular/Direct Supervision Jail," American Jails (September/October 1992), p. 14-23, the study concluded, "presumptions about increased safety and reduced inmate problems in the podular/direct supervision facilities may be premature for some types

of inmate behaviors.” In particular, the authors noted that a majority of inmate violations in direct-supervision jails were major rule violations. In Audits of Podular Direct-Supervision Jails, (National Institute of Corrections 1996), the authors noted that while newer podular jails were preferable, staff morale had declined over time due to higher inmate populations, more noise and more assaultive behavior.

The speculative nature of the increase in employee safety under direct supervision is underscored by the murder of correction officer Fred Baker at Bayside State Prison and the recent stabbing of an inmate at the Middlesex County Jail, both of which are podular direct supervision jails. The State of New York Department of Correctional Services’ “Unusual Incident Report, January-December 1998” underscores the continuing nature of assaultive behavior problems, even in podular jails. Interestingly, the PBA points out that New York City’s recent improvements in jail safety, since the end of Chief McGrane’s tenure, does not appear to be correlated to the factors the County is relying upon to justify the elimination of the corrections stipend.

The PBA contends that the presumed increase in jail safety and reduction in inmate problems is assumed to result from increased contact between guards and inmates under direct supervision. Increased inmate contact, however, also raises increased risks for officers. National studies indicate an increase in HIV, tuberculosis and Hepatitis C among the inmate population. The inmate population is increasingly made up of more violent offenders. The lack of backup and a guard-inmate ratio of 64 to 1 at the new Morris County Jail underscores the vulnerable position into which officers will be placed at the new jail. The PBA contends that given the continued danger of assaultive behavior, the Employer’s projected improvements in safety appear to be speculative and the assertion that the officers will have a safer work environment is premature.

In "Staff Stress in Contemporary Jails: Assessing Problem Severity and the Payoff of Progressive Personnel Practices," Journal of Criminal Justice, (1994), p. 313-327, the authors concluded that stress was a serious problem in all facilities, with average stress levels among correctional officers at or approaching dangerous levels. The authors found that stress management was accomplished through personnel and management practices featuring fair compensation and participative management. In contrast, on the eve of the move to the new jail, the County is attempting to impose a new schedule on the Corrections Officers and to eliminate a key financial benefit.

While the PBA is not opposed to the concept of direct supervision, the speculative improvements in officer safety by changing to the new jail are not an excuse to eliminate the corrections stipend. The PBA maintains that based on the statutory criteria outlined in N.J.S.A. 34:13A-16(g), its proposal to maintain the corrections stipend is more reasonable and should be awarded.

Work Week

The current collective bargaining agreement, at Article 23, Section 1 provides, "The work week shall consist of forty (40) hours." The agreement further provides, at Article 23, Section 2, "An employee who works in excess of forty (40) hours in any work week shall be paid at one and one half (1½) times his established hourly rate for all hours worked beyond 40 in any work week." The foregoing provision is consistent with the work week and overtime provisions of the County's contracts with Sheriffs' Officers in the Bureau of Law Enforcement, civilian employees in the Sheriff's Office, and Park Police.

Under the current agreement, corrections officers work the following overlapping shifts:

Day Shift - 8:00 a.m. to 4:00 p.m. for 5 consecutive days;
Evening Shift - 3:30 p.m. to 11:30 p.m. for 5 consecutive days; and
Night Shift - 11:00 p.m. to 9:00 a.m. for 4 consecutive days.

Correction Officers are permitted to take their meals on post and are permitted to take brief breaks, as needed. The ½ hour overlap at the beginning of the evening and night shifts permits muster and roll call. The 1-hour overlap at the beginning of the day shift also permits the opportunity for on-duty training and routine searches of common areas and inmate living quarters. The PBA proposes the retention of the current hours of work and contractual overtime provisions.

The County proposes to modify the hour of work and overtime provisions of the current agreement to institute 8½ hour shifts, inclusive of a ½ hour unpaid lunch. As part of its proposal, the County seeks an award of exemption from the overtime provisions of the FLSA and a re-opener provision in the event that the ½ hour lunch is ultimately held to be compensable.

In Township of Teaneck, PERC No. 2000-33, 25 NJPER 451 (¶ 30199, 1999), PERC held that “before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions.” Further, the PBA notes that PERC recognized that the party proposing a change must justify it through a proffer of evidence. The PBA maintains that the record is insufficient to justify the detailed shift and schedule changes sought by the County.

The County seeks to supplant the current system in order to provide each officer assigned to the jail with an unpaid ½ hour lunch during which they will be confined to the dining room and will function as an emergency response team. The PBA contends that no consideration was given to providing officers with a paid ½ hour lunch off the housing units

within the confines of the current shift structure and nothing indicates that such a system would not be feasible. The PBA points out that the record evidence indicates that many corrections departments, including Middlesex County and New York City, have a permanent squad assigned to standby in the event of an emergency. In Abendschein v. Montgomery County, Maryland, 4 WH Cases 2d 327 (D.Md. 1997), the Federal District Court considered the status of Correction Officers working under a shift structure indistinguishable from that proposed by the County:

It is clear to the Court that the officers listen to their radios and do not leave the premises because Defendant needs them available to provide security services at the facility. Although they may not be recalled often, the officers essentially are in a state of readiness, prepared to provide security assistance when needed. It is true that the officers are not performing as many duties during the meal period as they do when they are at their posts. However, a significant reason correction officers are employed is to have appropriate staff on hand if and when there is a security problem with the inmate population. Correction officers are paid, in part, just to be present at the facility in anticipation of security problems. By keeping Plaintiffs on site and tuned to their radios while they eat their meals, Defendant reaps the benefit of having a full staff of correction officers on hand.

Given the restrictions on Correction Officers during lunch, the absence of recreational opportunities and the requirement to standby, the PBA asserts that the record supports its argument that Correction Officers are serving the County's interest and will not be relieved from duty during the proposed lunch period. Accordingly, like other Correction Officers in New Jersey, the PBA asserts that Morris County Correction Officers should be paid for their restricted lunch period.

The PBA contends that the County's argument that the proposed lunch will be "duty-free" and that interruptions will be minimal is speculative. The PBA notes that the County failed to offer any studies or evidence concerning lunch periods at other direct supervision jails. The physical layout of the jail highlights the intrusive effect of standby status. In the

event of an emergency, officers are required to sprint halfway across the basement and up two flights of stairs to don emergency equipment on the first floor and await further assignments. Further, the PBA contends that Correction Officers may eventually be required to sprint up an additional 100 steps in full gear in the event of an emergency on the third floor. The PBA submits that the record is devoid of any accurate assessment as to the foregoing or duration of such interruptions and the County failed to proffer any statistics of comparative jails. The PBA reiterates its argument that any estimate of the effect of direct supervision on employee safety is premature.

While inmates are on lock down while the officers assigned to housing units are on lunch, the inmates are scheduled to be out of their cells while the remainder of the staff on the day and evening shifts take lunch. During this critical period, manpower resources will be stretched thin. In this regard, officers in the housing units will be isolated with no corridor officers serving as backup. In 1997, an understaffed standby detail exposed the vulnerability of correction officers to a larger number of inmates and resulted in an attack on guards at Trenton State Prison. ("Prison Guards: Lack of Staff Led to Inmates Attack," Trenton Times, August 20, 1997; "Quick and Violent," Trentonian, August 19, 1997; "Furious Felons," Trentonian, August 20, 1997; "Six Correction Officers Hurt in Attack," Trenton Times, August 19, 1997).

Similarly, Officer Fred Baker, who was stationed by himself on a direct supervision pod, was stabbed under circumstances suggesting that a second inmate prevented Officer Baker from calling for backup. ("Suspect's Relations With Cellmate Probed in Killing of Bayside Guard," Daily Journal, August 2, 1997).

On the night shifts, officers are scheduled to be assigned to multiple pods, while officers assigned to housing units take their meal break. Thus, at 3:30 a.m., the officer

assigned to pod 2B will also be responsible for patrolling both pods of 2D and the officer assigned to pod 3B will also be responsible for patrolling both pods of 3D, all in the absence of a corridor officer.

The PBA asserts that by leaving posts unmanned during the night shifts, the County is acting in apparent derogation of N.J.A.C. 10A:31-8.12. Under these circumstances, with one officer patrolling three (3) units without backup, any estimate by County officials as to the likelihood of emergencies is pure speculation. In addition, the PBA notes that the County is unable to proffer any reliable estimate of how quickly the inmate population will increase and there is apparently disagreement between County administrators. "County Unveils Jail," Daily Record, December 8, 1996.

The PBA concedes that the new jail is a significantly improved facility. However, a review of the staffing plan and structure raises significant issues about the feasibility of the County's plan. The housing units are not visible from the corridor, unlike the current structure. Not all housing units have video cameras and there is no experience as to whether there are blind spots or other design flaws, which may only be apparent after the facility is in operation. In addition, no one is designated to watch the video monitors on each unit. Finally, the PBA points out that the administration does not plan on manning the control centers on pods 2D and 3D, even though the facility was designed to operate with operational local control centers and officers on each wing of pods 2D and 3D.

The PBA contends that studies of podular/direct supervision jails have highlighted the importance of adequate staffing since officers are present in the housing units with the inmate population. State PBA Corrections Chair Henry Ruiz testified as to initial staffing problems at both the Monmouth and Middlesex County Jails. Staffing estimates have varied widely for the new jail, from an estimate of 128 officers by the consultants involved in the jails design to 102 officers by the County in the spring of 1999. A comparison of the two

estimates provides little reassurance as to the adequacy of staffing. The County's plan also permits a staff to inmate ratio on the housing units of 1 to 64, which is above those in other New Jersey "direct supervision" jails. The PBA cites the testimony of Corrections Officer David Dosky who stated that at the Middlesex County jail there are two officers on units housing 30 to 50 inmates and one officer goes on lunch at a time, with the second officer remaining on the unit to supervise inmates.

The PBA disputes the County's contention that it will enjoy staffing efficiencies by converting the 10-hour night shift, from 11:00 p.m. to 9:00 a.m., to an 8-hour shift, from 11:00 p.m. to 7:30 a.m. The latest staffing projection indicates that the County will staff the night shift with 11 officers. Under 10-hour shifts, the night shift would be staffed with 770 man hours per week. Under 8-hour shifts, the night shift would be staffed with 616 man hours. Thus, by redeploying the night staff, the County can hope to save 154 man hours per week - or four (4) staff positions. However, the PBA contends that other personnel on the day shift will be forced to overtake the search and other functions which would otherwise be performed during the morning shift overlap, thereby detracting from their assigned duties. The PBA asserts that any savings to the County would come directly through the County's use of officers as a standby force during their unpaid lunch and would also be borne by the night shift, who will be required to work an additional night at the jail each week.

The PBA submits that there is nothing in the record to support the County's need for such savings. The record is devoid of any evidence that the PBA's proposal will detract from the successful provision of services within the confines of the current budget nor would it contravene the County's lawful authority under the Cap law. In this regard, the County has not proffered any evidence of its inability to pay for the four additional staff positions which would be eliminated under the redeployment. Indeed, the County's consultants originally forecast staffing needs of 128 officers under the current shift structure.

The PBA argues that the County's savings will come at the price of employee morale. The Correction Officers have clearly indicated their preference for a continuation of the current shifts. Yet, despite the undisputed stress of moving to direct supervision, the County is adamant on imposing the new work schedule over the Corrections Officers' objections. Night-shift officers will be required to work an additional night a week - without any additional compensation. In addition, under the County's proposal every officer will be required to serve on an emergency response team for a half hour each tour without compensation. In this regard, the PBA contends that the County's proposal would impose a 6.25% increase in officers working time at the jail without any increase in compensation.

The PBA argues that the interests and welfare of the public, as expressed through the policies of the FLSA, also militate against the adoption of the County's proposal. Under the FLSA, covered employers generally must pay their covered employees overtime for all hours worked in excess of 40 during the employee's work week. 29 U.S.C.A. § 207(a)(1). However, the FLSA provides an exemption for law enforcement employees who work periods of at least 7 but less than 28 days. 29 U.S.C.A. § 207(k). The FLSA is administered by the U.S. Department of Labor and the Federal Courts and the Department of Labor has promulgated detailed administrative regulations.

The PBA contends that the County's efforts to have the arbitrator recognize an exemption under § 207(k) and to rule that the unpaid lunch does not constitute compensable time under the FLSA is pre-empted. The PBA contends that these rights cannot be bargained away and cited several federal court decisions in support of its position. In Brooks v. Ridgefield Park, 5 WH Cases 2d 801 (3rd Cir. 1999), (UX-62), and Featsent v. Youngstown, 2 WH Cases 2d 1697 (6th Cir. 1995), the Federal Courts held that rights under the FLSA cannot be bargained away.

Thus, the PBA contends that the County's proposal for a declaration of the Correction Officers rights under the FLSA is contrary to the public interest under N.J.S.A. 34:13A-16(g)(1) and is outside the lawful authority of the arbitrator under N.J.S.A. 34:13A-16(g)(5).

With respect to the County's contention that it should be partially exempt under § 207(k), the PBA contends that the exemption is not applicable since the County proposes to have all officers work a standard five-day work week and be compensated for 40 hours. Contrary to the DOL's regulations, Correction Officers work recurring periods of five consecutive days. In addition, the County's proposal to pay overtime to Correction Officers for work in excess of 40 hours, exclusive of the unpaid lunch, is contrary to § 207(k). Ackley v. Kansas Department of Corrections, 1 WH Cases 2d 1530 (D.Kan. 1994), (UX-14). Thus, the PBA maintains that the § 207(k) exemption would be inapplicable to the work schedules proposed by the County.

The PBA argues that the issue of whether meal periods are compensable under the FLSA is a fact specific question which cannot be answered in the County's favor on the basis of the current record. The Federal District Court in Abendschein v. Montgomery County Maryland, *supra*, held that Correction Officers were entitled to be compensated for their lunch period because they were not completely relieved from duty under circumstances which mirror the County's scheduling proposal. In McGrath v. Philadelphia, 2 WH2d 551 (3rd Cir. 1994), the Court recognized that meal periods are compensable if they are spent primarily for the employer's benefit.

In the instant case, the PBA contends that the facts establish that officers will be confined to the dining room for a half-hour during which they will be required to respond to emergency call and function as a response team. The County clearly would enjoy a

savings in manpower costs if it were permitted to utilize Correction Officers as an emergency response team without compensation. Unlike the police officers in McGrath, however, the Correction Officers will not enjoy any discretion in how to spend their meal period. They will be in radio contact with the control room. They will not be permitted to leave the work site, run personal errands or engage in recreational activities.

Finally, the PBA maintains that there is insufficient record evidence that the officers will even be able to take a full lunch, despite the County's best laid plans. The PBA points out that the Courts have refused to rule summarily on the fact specific issue of whether meal time is compensable under the FLSA where there are divergent pictures of the restrictions on officers during their break or where the extent of interruptions during the meal period is unknown.

The PBA points out that the County has not proffered any evidence as to the operations or work schedules of other podular/direct supervision jails in New Jersey. By contrast, most Correction Officers in direct supervision jails in New Jersey are compensated for lunch. The State of New Jersey employs Correction Officers for five 8½ shifts, including a ½ hour paid lunch in duty status and two 15 minute breaks, with overtime after 40 hours. In Monmouth and Sussex Counties, Correction Officers work 5 shifts of eight hours and 10 minutes, including two 15-minute breaks and a paid lunch, with overtime over 40 hours. In Middlesex County, Correction Officers work 5 eight-hour shifts, including a 30-minute meal and two 15-minute breaks, with overtime over 8 hours in a work day and 1½ a premium if officers work through lunch. In Hudson County, Correction Officers work five 8¼ hour days, including lunch, and are paid overtime after 40 hours and an additional 1½ premium if they work through lunch. The PBA cites the testimony of PBA Corrections Chair Ruiz and Correction Officer Dosky, that other county jails have response officers available

throughout their facilities, while Morris County intends to rely solely on officers on lunch or with other job functions to serve as a response unit. Thus, the PBA asserts that the criterion of external comparisons militate against the adoption of the County's proposal.

The PBA asserts that internal comparisons also favor its proposal. In this regard, no other employees in the Sheriff's Office or County law enforcement work under the terms of the County's final offer, none are exempt from the overtime provisions of the FLSA by virtue of Section 207(k), and none have a reopener provision in their collective negotiations agreement. The contract between the Sheriff and the Civilian Employees Association of the Morris County Sheriff's Office mirrors Local 298's current hours of work language. Sergeants employed in the Bureau of Corrections have an identical schedule and overtime structure to that of Correction Officers, except that they receive an additional 15-minute overtime for muster.

The language of the contract between the County and Local 151 mirrors the hours of work language of Local 298's current agreement. Sheriff's Officers in CIS (Crime Lab), CID, Warrants, Process and Special Service work eight hour shifts and take an unrestricted lunch period at the conclusion of their work day. Only officers who work in the courts have an 8½ shift, inclusive of a ½ hour unpaid lunch — however, these officers are not confined to post and are free to do as they please during lunch.

Officers in the County Prosecutor's office work seven hour shifts, exclusive of a one-hour lunch, and are paid overtime for all hours worked in excess of 40 hours. In an award in Morris County Prosecutor's Office, Docket No. IA-97-18, Arbitrator Jeffery Tener rejected the County's argument that prosecutor's officers should work a 28-day cycle, thereby being exempt under Section 207(k). County Park Police work shifts of eight consecutive hours on ten days in a 14-day period and are paid overtime after eight consecutive hours.

Accordingly, the PBA maintains that neither the statutory criteria for internal nor external comparisons favor the County's proposal on hours of work and overtime.

The PBA contends that the County's proposal for a reopener provision is also contrary to the interests and welfare of the public. The PBA asserts that the sole motivation behind the proposal is to attempt to recoup from the unit the proceeds of a backpay award under the FLSA. Thus, the proposal is contrary to the policies and remedial intent of the FLSA. Further, the proposal injects instability into the parties' bargaining relationship. The PBA argues that the County cannot simultaneously propose the imposition of a scheduling structure which will work a real hardship on Correction Officers, an unlawful overtime system and a mechanism to insure that they will have the opportunity to recoup any remedy paid out to the officers under the FLSA.

The PBA contends that the County, in its hours of work proposal, seeks to achieve operational efficiencies at the expense of the Correction Officers. Under the proposal, night shift officers will be required to work an additional day. Correction Officers assigned to the day shift will be required to assume the duties which could have been performed during the one-hour overlap with the night shift. Finally, all Correction Officers will be required to remain at the jail for an additional half-hour, without compensation. The County's justification for the imposition of this hardship is to free up four positions and permit a lunch period away from the housing units. The PBA maintains that the County has not shown any need for financial relief or cost savings or any evidence supportive of its proposal, as is required by PERC under the Teaneck decision.

The PBA maintains that based on the foregoing and the statutory criteria outline in N.J.S.A. 34:13A-16(g), its proposal to maintain the status quo as to hours of work is more reasonable and should be awarded.

Discussion and Analysis

The arbitrator is required to decide a dispute based on a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence which has been presented as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been found to be relevant, although the weight given to different factors varies, as discussed below. I have discussed the weight I have given to each factor.

The parties have agreed on the salary increases for the term of the agreement for the current members of the negotiations unit. This salary agreement obviates the need to provide a comprehensive analysis of the total economic changes for each year of the agreement. This is a statutory requirement when the parties submit competing final salary proposals. I shall provide a limited analysis of the impact of the parties' positions on the continuation of the corrections stipend as it relates to total economic changes in each year of the agreement.

I shall set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. The parties related the evidence and its arguments regarding the criteria primarily to its offer and to that of the other party. I shall not do so because, in this conventional proceeding, I have the authority and responsibility to fashion a conventional arbitration award.

The parties agreed that the duration of the new four-year agreement shall be January 1, 1999 to December 31, 2002. The parties agreed on salary increases for all current

employees and any new employees hired prior to January 1, 2001. The Employer's proposed Schedule 'B' salary guide for employees hired beginning January 1, 2001 is awarded. The current corrections stipend shall be continued in the new agreement. The Employer's proposal on work week is awarded to be implemented upon the move to the new correctional facility. The Employer's proposal to reopen the contract in the event that it is subsequently determined that it is not in compliance with FLSA is rejected. The Employer's proposal to require twenty-five years of continuous service is rejected. The parties have also agreed to increases in the clothing allowance, improved college credit reimbursements, certain aspects of overtime and modifications in the sick leave provisions.

The total net economic change need not be discussed in great detail since the parties have agreed on salaries for the current employees. There are no differences in the parties direct salary proposals to be calculated to assist the arbitrator in making a determination on a salary increase. However, there are two aspects which impact on net economic change — the Employer's Schedule 'B' salary schedule to be effective January 1, 2001 and the continuation of the corrections stipend — both of which I have awarded. The cost of the continuation of the corrections stipend is \$89,964 per year (\$882 x 102 officers). This is what the Employer has paid out in 1999 and 2000 and will be approximately the same in 2001 and 2002 depending on the number of employees. The cost of the new Schedule 'B' cannot be calculated without knowing the number of new hires in 2001. The entry level for new hires is the same on Schedule 'A' and 'B'. Therefore, the economic impact of Schedule 'B' is not realized until January 1, 2002 when a new hire completes one year of employment. At that time, Step 1 on Schedule 'B' is \$2,400 less than Schedule 'A' (\$31,300 v. \$33,700). The total net economic change is not material to the determination on any of the issues before me.

I shall now discuss the evidence and the parties' arguments in relation to the statutory criteria.

The interests and welfare of the public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority.

The interests and welfare of the public require the arbitrator to balance a number of considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels in order to attract and retain the most qualified employees. It is axiomatic that adequate compensation levels and good working conditions contribute to a productive and efficient work force.

The work of a Correction Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Correction Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increase in compensation to be received by a Correction Officer from one contract to the next. That is not the case in this matter. The parties, for the most part, have agreed on the major aspects of the salary package. The parties acknowledge that the most significant issue in this matter is the work schedule. Before discussing the work schedule, I shall discuss the other open issues with respect to the interests and welfare of the public factor.

Corrections Stipend

The Employer proposes to delete the corrections stipend, while the PBA proposes to maintain the benefit at its current annual level of \$882. The Employer contends that the corrections stipend will not be warranted upon moving to the new jail. The Employer cites the testimony of McGill and Rochford that the purpose of the corrections stipend was to compensate Correction Officers for the horrendous working conditions in the current Morris County Jail. Both parties agree that the conditions in the current jail are deplorable. This was confirmed by my visit to the jail on April 30, 1999. Ventilation is extremely poor, heating and cooling of the facility are inadequate, overcrowding has been a recurrent problem and the design of the facility is archaic. Temperatures at the current facility can rise to more than 100 degrees in the summer and there are few if any air conditioned posts other than the Control Center.

The Employer argued that it has been its goal to eliminate the stipend for Correction Officers upon the opening of the new jail because of the greatly improved working conditions. The new jail will be fully air conditioned, will have a state of the art heating and ventilation system, and will be free from any potential overcrowding based upon its design to house up to 528 inmates. Correction Officers will be working in a much more comfortable setting, will have a duty-free lunch away from their posts and are being provided with new state of art safety equipment at considerable expense to the Employer.

While the Employer is correct that the new correctional facility will be "state-of-the-art", there is no basis in the record to find that the elimination of the corrections stipend is justified because of the move to a new facility. Nor is there any basis to determine that a reduction in the stipend is justified because of a reduction in the "hazardous" working conditions. I am sure that both parties would agree that it would be in everyone's best

interests to see a major reduction in the hazardous nature of a correction officer's job. It is conceivable and likely that the improved design and change to direct supervision will contribute to this reduction. It is also likely that the improved safety items, namely, radios and vests, will also contribute to a reduction in the hazards of the job. However, it should be noted that the vests and radios could have been and may have been provided prior to the move to the new jail. As I previously stated, the work of a Correction Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. The dangers and stress will continue at the new facility. In any event, I find that there is no correlation between improved and safer working conditions and the elimination of the corrections stipend as proposed by the Employer.

The record shows that the corrections stipend was increased to \$1,550 effective January 1, 1995. The record further shows that in subsequent negotiations it was reduced to \$1,000 effective January 1, 1996 as a "trade-off" for "a one-time corrections stipend roll-in of \$400" into base salary and further reduced to \$882 effective January 1, 1997 "in consideration of the dental benefit provided for in Section 3 of Article XII." A review of Article XII, Section 3 shows that "effective July 1, 1997, the employer will provide employees an individual employee coverage dental plan" and that "the employer will pay for the premium cost for employee coverage only to a maximum \$9.83 per month (\$118.00 maximum annually) . . . "

The record amply demonstrates that prior reductions in the corrections stipend were achieved through the "give and take" of negotiations with the reduction in the stipend applied to base salary and the purchase of dental benefits.

There is no evidence in the record to demonstrate that increases or decreases in the corrections stipend were tied to deteriorating or improved working and safety conditions in

the jail. Rather, it was treated as another element of the wage and benefit package. The reduction in the stipend from \$1,500 to \$882 was accomplished through the negotiation of an equivalent economic benefit. I find, in agreement with the PBA, that the corrections stipend is an integral part of the contractual wage and benefit structure and has changed independent of working conditions in the jail. *The interests and welfare of the public* will be best served by continuing the corrections stipend at the current level of \$882 for the full term of the new agreement.

Schedule 'B'

The parties have agreed on a nine-step guide for employees hired before January 1, 2001, with employees hired after May 1, 1993 reaching the maximum after eight (8) years. The County proposes a second ten-step guide for employees hired after January 1, 2001, with such employees reaching the maximum after nine (9) years.

The County relies on its recent voluntary settlement with PBA Local 151, representing Sheriff's Officers in the Bureau of Law Enforcement, as evidence of a "pattern" of settlements. The PBA contends that the record is devoid of sufficient evidence to support the insertion of a new step into the salary guide. The PBA argues that the County's exclusive reliance on its voluntary settlement with PBA Local 151, representing Sheriff's Officers in the Bureau of Law Enforcement, as evidence of a "pattern" of settlements is inadequate. The PBA contends that the County is attempting to "whipsaw" the remaining units by extracting a concession from a single unit and then seeking to impose that concession on the remaining units under the guise of a "pattern."

The PBA is correct that the County's proposal would extend by one year the time that it will take a Correction Officer hired after January 1, 2001 to reach the maximum step on the salary schedule. However, the PBA has not shown that this additional year will make

it more difficult for the Employer to attract applicants for new positions. Nor has the PBA demonstrated that the additional step would be inconsistent with the interests and welfare of the public.

The Sheriff is the employer for both the Sheriff's Officers employed in the Bureau of Law Enforcement and the Correction Officers in the Department of Corrections with an Under Sheriff directly responsible for each bureau/department. It is undisputed that PBA Local 151 reached a voluntary settlement with the County and the Sheriff providing for salary increases for all current employees which are identical to the salary increases agreed to by PBA Local 298 in this matter. I have direct knowledge of the terms of Sheriff's Officers' settlement since I served as interest arbitrator pursuant to the mutual request of the parties and assisted the parties to their voluntary settlement.

There is simply no basis to have two groups of employees who are under the direct supervision of the Sheriff and who have historically enjoyed the same salary schedule to now have two different salary schedules. This is not "whipsawing" as suggested by the PBA — it is simply the continuation of a uniform salary schedule with the same number of steps to reach maximum. It should be noted that recent trends in public safety negotiations and interest arbitration decisions have seen an increase in the number of steps to reach maximum for new hires. This is usually part of the "give and take" of negotiations to encourage the public employer to offer higher salary increases to employees on the maximum steps of the salary schedule. This provides savings to the public employer which is then applied to salary increases for current employees. New hires also benefit from this approach since they receive the benefit of higher maximum salaries when they reach the maximum steps.

I find that *the interests and welfare of the public* favor the Employer's proposed Schedule 'B' providing for a uniform salary schedule for both the Sheriff's Officers in the Bureau of Law Enforcement and the Correction Officers in the Department of Corrections.

Sick Leave

The current collective bargaining agreement, at Article 10, Sick Leave, Section 5, provides for a terminal leave benefit as follows:

Upon retirement, with at least twenty-five (25) years service, the employer will pay the employee thirty percent (30%) of the accumulated sick time to a maximum of eight thousand dollars (\$8,000.00).

The parties agree that the benefit should be increased to thirty-five percent (35%) of accumulated sick time to a maximum of ten thousand dollars (\$10,000). The County proposes to limit the terminal leave benefit to those retiring with 25 years of "continuous" employment. The PBA is opposed to the inclusion of the "continuous" service requirement in the current language.

The PBA contends that the County's proposal, by limiting eligibility to employees with 25 years of continuous service, detracts from employee morale by disqualifying current employees from the terminal leave benefit who are not now subject to a continuous service requirement. The PBA also notes that this limitation will create a new disparity between the terminal leave benefits of Sheriff's Officers in the Bureau of Law Enforcement and Correction Officers in the Department of Corrections.

The PBA is correct that granting the County's proposed "continuous" service requirement in the current contract language will create a new disparity between the terminal leave benefits of Sheriff's Officers in the Bureau of Law Enforcement and Correction Officers in the Department of Corrections. This is inconsistent with the County's goal of providing uniform benefit levels as I discussed above regard Schedule 'B'.

Consistent with my findings on Schedule 'B', I find that *the interests and welfare of the public* favor uniform terminal leave benefits for both the Sheriff's Officers in the Bureau of Law Enforcement and the Correction Officers in the Department of Corrections.

Hours of Work- Week

The current agreement provides as follows:

Article 23: Hours of Work-Week

Section 1:

The work week shall consist of forty (40) hours,

Section 2:

Overtime

The County may require an employee to work beyond his work week as defined above. An employee who works in excess of forty (40) hours in any work week shall be paid at one and one half (1½) time his established hourly rate for all hours worked beyond 40 in any work week. All overtime work must be authorized in advance.

Correction Officers currently work the following schedule:

Day Shift - 8:00 a.m. to 4:00 p.m. for 5 consecutive days;
Evening Shift - 3:30 p.m. to 11:30 p.m. for 5 consecutive days; and
Night Shift - 11:00 p.m. to 9:00 a.m. for 4 consecutive days.

The Employer seeks to change the current work week to allow for three (3), eight and one-half (8 ½) hour shifts per day to include a one-half (½) hour unpaid lunch period. The Employer also seeks to establish a work week consisting of forty-two and one-half (42 ½) hours per seven (7) day week (based on the current 5-2) to include a one-half (½) hour unpaid lunch period per shift. The Employer's proposal further provides that an employee shall be compensated at one and one-half (1 ½) times his/her regular rate of pay for all time worked in excess of forty-two and one-half (42 ½) hours per seven day work week inclusive of the one half (½) hour unpaid lunch. The Employer also seeks to implement this new work schedule in accordance with Section 207(k) of the Fair Labor Standards Act.

Under the FLSA, an employer usually must pay overtime for all hours worked in excess of forty hours per week. [29 U.S.C. § 207(a)(1)] However, under the FLSA, employers are permitted to elect to use a special exemption for law enforcement officers. This is referred to as a “7(k)” exemption. [29 U.S.C. § 207(k)] This law enforcement exemption requires that overtime be computed if an officer works more than 171 hours in a 28 day work period or if the work period is 7 days, the hours are reduced proportionately to 42¾ hours per week before overtime is required in a 7 day period.

The Employer also seeks contract language declaring that the one-half (½) hour lunch period is not compensable time pursuant to FLSA. However, the Employer proposes that in the event an officer, due to emergency, is not permitted to have a duty-free lunch period, he/she shall be paid for that time at the applicable rate. Finally, the Employer seeks the inclusion of an economic reopener in the event that it is subsequently determined that any provisions concerning work week, overtime or leave of any kind is not consistent with the Fair Labor Standards Act or if it is determined that the lunch period is compensable pursuant to FLSA.

The Employer has put forth numerous operational reasons in support of its proposal on the work week which I will detail in my analysis.

The PBA proposes the retention of the current hours of work and contractual overtime provisions. Currently, Correction Officers are permitted to take their meals on post. These meal periods are within the eight-hour shift. The PBA contends that the operational needs of the facility will be adequately maintained by the current one half (½) hour overlap at the beginning of the evening and night shifts, permitting muster and roll call and by the one-hour overlap at the beginning of the day shift which also permits the opportunity for on-duty training and routine searches of common areas and inmate living quarters.

For the reasons set forth below, I have determined that the Employer's hours of work-week proposal, with certain modifications, will best serve the interests and welfare of the public.

First, the Employer, primarily through the testimony of McGrane, has made persuasive arguments that operational needs at the new correctional facility require a modification in the existing work schedule. McGrane is the former Bureau Chief of Corrections at Rikers Island in New York City, where he was responsible for the day-to-day operations of the facility. McGrane, who served for twenty-four years in the New York City correctional system, was hired specifically to implement the transition from the old jail to the new jail.

McGrane testified that the new jail will be a "direct supervision" facility¹ and that in order to properly operate a direct supervision facility it will require a change in the existing work week and a reconfiguration of the schedule. This required change is derived from the design and theory behind the Morris County Correctional Facility.

I received an extensive tour of both facilities. It is undisputed that the current jail is grossly inadequate and that the new "state-of-the-art" facility will alleviate the major structural problems of the old jail, i.e., overcrowding, poor ventilation, inadequate heating and cooling with temperatures rising to more than 100 degrees in the summer, etc. The work schedule issue is not about better air conditioning and better working and living conditions for the Correction Officers and the inmates, although these changes will contribute to the

¹As a "direct supervision" facility, the new jail will house approximately 64 inmates in each of the main housing units. Smaller housing units will have fewer inmates. The new facility will have a capacity of 528 inmates. One correctional officer will be assigned to each such housing unit and will work directly with the inmates in the housing unit. Unlike the situation in the current Morris County Correctional Facility, inmates in the new jail will be in close proximity to the officers. The purpose is to maintain greater security and to establish rapport between the officers and the inmates. McGrane testified that a direct supervision facility provides a much safer working environment for correction officers than other configurations, such as that in the current jail.

success of the operational modifications sought by the Employer. This work schedule issue is about a long-term plan that began with the design and configuration of the new jail. The change to a direct supervision facility is predicated on the design and configuration of the new jail and I am convinced that the operational requirements needed to make the transition cannot be accomplished by continuing the current work schedule.

Second, McGrane made persuasive arguments that the current practice of Correction Officers taking their meals on post must be discontinued. McGrane testified that this system fosters the potential for corruption since inmates inevitably will seek food from officers and if an officer gives food to an inmate, the officer is in violation of the rules of the Morris County Sheriff's Office. McGrane testified that this could lead to "blackmail" of the officer by the inmate with threats of extortion for violation of the rules. This could then lead to the officer being threatened and extorted into bringing other more dangerous contraband into the correctional facility such as drugs, weapons, money, etc. McGrane testified persuasively that this could undermine the security of the entire facility as well as putting the lives of Correction Officers in jeopardy.

The Employer cited a history of such incidents in the current facility. The most compelling testimony on this issue came from Correction Officer Robert Gonzalez, a PBA representative. Gonzalez had previously testified in a disciplinary case involving former Correction Officer Fred Trottie. Trottie had taken cash from inmates on at least two occasions and purchased food for them from outside the facility. As a result of such actions, Trottie was terminated from employment. Gonzalez also testified that there were several other incidents involving former officers who had likewise been subject to disciplinary action for giving inmates contraband food. It is clear that the current system of Correction Officers taking meals on post is a threat to the security of the facility.

Third, McGrane testified that in order to avoid the potential for corruption officers cannot take their meals in the housing units along with inmates. McGrane testified that in the new facility each officer will be released from duty responsibilities for a minimum of thirty minutes during each tour of duty for a meal period during which the inmates will be locked in their cells (locked down) for approximately one hour. During the meal period, Correction Officers in the housing units will be excused from duty and will take their meals in the cafeteria/kitchen downstairs in the correctional facility, away from the inmates and from the housing units. Officers will be allowed to meet with their co-workers, enjoy their meals, relax and otherwise converse in a non-stressful environment.

McGrane testified that in the existing facility officers oftentimes do not have the opportunity to take a meal. They may be required to work a continuous eight hour shift with no break for a meal whatsoever. At best, an officer may eat his meal at his post directly outside the housing unit in the old jail.

McGrane testified that in order to accommodate the meal period, and also to provide for an overlap of existing shifts, it was necessary to have the officers present in the correctional facility for 8 ½ hours per tour of duty as opposed to the current 8 hours. McGrane testified that the additional half hour was solely for lunch and that the officers would not be required to participate in any correctional duties except in the case of an emergency which would be limited to circumstances in which an officer's personal safety was threatened.

Fourth, McGrane testified persuasively that the modified workweek was necessary in order for him to efficiently deploy personnel and to establish several new posts inside the new facility. This uncontroverted testimony must be relied on when such testimony is based on McGrane's considerable supervisory experience generally in corrections, and primarily

based on his considerable hands-on experience with direct supervision facilities. McGrane cited several requirements of Title 10A of the New Jersey Administrative Code that will be satisfied by more efficient deployment of personnel and the establishment of new posts, i.e., there currently is not a proper facility census conduction procedure. It will also allow for the creation of new positions to satisfy mandates of the New Jersey Administrative Code such as laundry, delivering mail and other functions that take place in the jail.² Better deployment of personnel will be accomplished by the elimination of the four-day, ten-hour midnight shifts allowing the conduct of a facility census verification the way counts are traditionally done. The record includes numerous example of more efficient and safer deployment of personnel. The common ingredient in all of these examples is the need to establish posts, procedures, shift schedules and hours that are consistent with the architectural structure and design of the new facility. The old procedures, shift schedules, hours, etc., in place for many years, if not decades, are woefully inadequate in the current

² McGrane stated that there is "helter-skelter" operation with regard to laundry. A housing unit officer must leave his area of responsibility in order to take care of the laundry. The same practice is taken with regard to delivering mail. Better deployment of staff will eliminate this "helter-skelter" arrangement. This new procedure is also consistent with the architectural structure of the new jail in which the laundry is located in the basement. Furthermore, inmates working in the laundry will be supervised under the new schedule as opposed to the current situation in which they are not. The current situation invites a major breach of security in McGrane's opinion and is "asking for an escape". This could also lead to assault and generally poor management. This deployment of staff will also allow the Sheriff to have a "Meal Relief Officer". The Mail Officer will also relieve other officers during their meals. That officer will go into a housing unit and relieve the Housing Officer so he or she may have his or her meal. In addition, there will be a Main Entrance Officer whose sole responsibility will be to process people in and out of the jail including processing visitors. This will be a function separate and apart from those officers currently maintaining this duty in the control room. The new work week and schedule will eliminate a lot of the tasks that the Central Control Room Officer performed in the past. Furthermore, McGrane stated that the new jail will have a full-time Medical Officer around the clock in the clinic. There will also be Corridor Officers monitoring inmate movement "whose sole responsibility is to be a traffic cop."

Based upon the new schedule there will be additional officers hired to be deployed throughout the facility in addition to current staff. There will also be an outside patrol officer for the new jail to perform perimeter patrol around the clock. Currently, one officer is required to do sanitation which requires him to supervise an inmate detail to make sure the jail is clean. One officer is simply not adequate to do so. A second officer will be assigned on the afternoon shift to perform the same function as done on the day shift in order to maintain the jail in a "clean" way.

facility and there is simply no basis to mandate a continuation in the new facility. McGrane's uncontroverted testimony is that these changes are required and mandated under Title 10A of the New Jersey Administrative Code as promulgated by the State of New Jersey Department of Corrections and that the new work schedule will provide the Employer with the operational means and systems needed to comply with all of the Administrative Code mandates.

Fifth, the PBA raised a number of issues and concerns about the move to a direct supervision facility. This included anecdotal data of incidents at other direct supervision facilities raising doubts about the feasibility of the Employer's plan. The PBA also suggests that the move to direct supervision will reduce employee morale since the Correction Officers have clearly indicated their preference for the continuation of the current work schedule. In this regard, the PBA cites the recent PERC decision in Township of Teaneck, PERC No. 2000-33, 25 NJPER 451 (¶ 30199, 1999), in which PERC held that "before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions." The Teaneck matter involves the award of a "24/72" work schedule to fire officers which was opposed by the Township. PERC has effectively provided a balancing test which must be applied in cases involving major work schedule changes.

I have carefully considered the operational, supervisory and managerial implications of the Employer's work schedule proposal as stated above. I also find that, based on my tour of both facilities, and in full consideration of the significantly improved operational procedures and more efficient deployment of personnel, it is inconceivable that the move to the new facility will have a negative impact on employee morale and working conditions.

For all of the above reasons, I have determined that the Employer's hours of work-week proposal will best serve *the interests and welfare of the public*. This determination is based on the Employer's operational needs in moving to a direct supervision facility. Simply stated, I am convinced that these operational needs require a change from the current work schedule to a work schedule of three (3), eight and one-half (8 ½) hour shifts per day to include a one-half (½) hour unpaid lunch period.

I have found that the Employer's work schedule will best serve the interests and welfare of the public, however there are aspects of the Employer's proposal that require further discussion and analysis. The Employer seeks to implement this new work schedule in accordance with Section 207(k) of the Fair Labor Standards Act. My review of the cases provided by the parties indicates that under the FLSA, employers are permitted to elect to use a special exemption for law enforcement officers. This referred to as a "7(k)" exemption. [29 U.S.C. § 207(k)] The Employer has made this part of its proposal and I see no reason why it should not be included in my award. It appears that a public employer may have the ability to elect such an exemption without negotiations with the PBA, however the Employer did engage in direct negotiations with the PBA seeking a "7(k)" exemption so that issue is properly before me and I include the "7(k)" provision in my award.

The Employer also seeks contract language declaring that the one-half (½) hour lunch period is not compensable time pursuant to FLSA. The PBA is opposed to such and cites several cases in support of its position that the Employer's proposal that the arbitrator rule that the unpaid lunch does not constitute compensable time under the FLSA is pre-empted. The PBA contends that these rights cannot be bargained away and cited several federal court decisions in which the Federal Courts held that rights under the FLSA cannot be bargained away. In Brooks v. Ridgefield Park, 5 WH Cases 2d 801 (3rd Cir. 1999), (UX-62), and Featsent v. Youngstown, 2 WH Cases 2d 1697 (6th Cir. 1995).

Thus, the PBA contends that the County's proposal for a declaration of the Correction Officers rights under the FLSA is contrary to the public interest under N.J.S.A. 34:13A-16(g)(1) and is outside the lawful authority of the arbitrator under N.J.S.A. 34:13A-16(g)(5). The PBA argues that the issue of whether meal periods are compensable under the FLSA is a fact specific question which cannot be answered in the County's favor on the basis of the current record.

I agree with the PBA that it is outside the lawful authority of the arbitrator to find that the one-half ($\frac{1}{2}$) hour meal period is not compensable time pursuant to FLSA and I hereby decline to do so. That matter is best left to the Department of Labor and the Federal Courts. However, by awarding the Employer's work schedule of three (3), eight and one-half ($8\frac{1}{2}$) hour shifts per day to include a one-half ($\frac{1}{2}$) hour unpaid meal period, I make no such FLSA determination. This is best explained as follows:

The parties could have agreed in direct negotiations to a $42\frac{1}{2}$ hour work week to include eight and $\frac{1}{2}$ hour shifts and a $\frac{1}{2}$ hour unpaid meal period. The parties could also agree that an employee shall be compensated at one and one-half ($1\frac{1}{2}$) times his/her regular rate of pay for all time worked in excess of forty-two and one-half ($42\frac{1}{2}$) hours per seven day work week inclusive of the half ($\frac{1}{2}$) hour unpaid meal period as proposed by the Employer in this matter. Since the parties can agree to negotiate such provisions regarding the length of the shift to include an unpaid meal period, an interest arbitrator can also award the same.

The Employer seeks an economic reopener in the event that it is subsequently determined that any provisions concerning work week, overtime or leave of any kind is not consistent with the Fair Labor Standards Act or if it is determined that the lunch period is compensable pursuant to FLSA.

I agree with the PBA that the County's proposal for a reopener provision is contrary to *the interests and welfare of the public*. The PBA is correct that the inclusion of a reopener provision would inject instability into the parties' bargaining relationship by requiring continued negotiations and interest arbitration at a critical time of transition to the new correctional facility.

Finally, the Employer's work schedule proposal includes a statement that all vacation leave, holiday leave, sick leave, personal leave, and bereavement leave shall continue to be earned, used and/or paid based on eight (8) hours a day and that no employee shall lose leave or overtime benefits as a result of the change in the work schedule to forty-two and one-half (42 ½) hours. Additionally, the Employer proposed that the overtime rate shall be calculated consistent with past practice based upon the number of days in the year and biweekly pay period and that in the event an officer, due to emergency, is not permitted to have a duty-free lunch period, he/she shall be paid for that time at the applicable rate. The Employer proposed this language to avoid confusion and to guarantee the current leaves notwithstanding its adoption of a "7(k)" exemption. I find that *the interests and welfare of the public* factor favors the inclusion of this language in the Work Week article.

The parties stipulated that the following agreed-upon language shall be included in Section 2 of the Work Week article:

In the event of mandatory overtime, other than for training purposes for the new jail, if an employee is required to work more than two (2) overtime shifts in five (5) consecutive work days, the employee shall be paid two times his/her regular rate of pay for any additional shifts.

This completes my discussion and analysis of the *interests and welfare of the public* factor. I shall now proceed to a discussion and analysis of the other factors.

Comparison of The Wages, Salaries, Hours and Conditions of Employment

Comparisons are made with both other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions. I shall discuss these in order.

The first, private sector comparisons, calls for comparisons with private sector employees performing similar services as well as private employees generally. As both parties acknowledged, there are no easily identified private sector correction employees who perform services similar to those performed by Correction Officers. I find this aspect of the comparison to be of no relevance.

I also find that comparisons between Correction Officers and private employees in general are also of no relevance since there is no real dispute with regard to salaries and neither party put forth evidence with respect to the hours of private sector employees.

The second comparison with public employees in general is also of no relevance since there is no real dispute with regard to salaries and neither party put forth evidence with respect to the hours of public sector employees in general.

The third comparison has two components: comparisons with public employees in the same jurisdiction and comparisons with those in comparable jurisdictions. I have discussed comparisons with other public employees in Morris County, namely Sheriff's Officers, in my discussion of the corrections stipend, sick leave, and Schedule 'B' under the *interests and welfare of the public* factor. The common element in my findings on sick leave and Schedule 'B' is the need to maintain uniformity of benefits. Therefore, I find that *comparisons with public employees in the same jurisdiction* also favors the Employer's

position on Schedule 'B' and the PBA's position on sick leave. Moreover, I find that this factor favors the PBA's position on the continuation of the corrections stipend since a finding in favor of the Employer's position would result in a reduction in the Correction Officer wages in relation to the Sheriff's Officers. This finding is also consistent with the Employer's position regarding pattern bargaining.

This component is also applicable to the hours of work issue. The Sheriff is the employer for both the Sheriff's Officers employed in the Bureau of Law Enforcement and the Correction Officers in the Department of Corrections with an Under Sheriff directly responsible for each bureau/department. The evidence in the record indicates that a large percentage of the Sheriff's Officers employed in the Bureau of Law Enforcement work a 42½hour work week consisting of an 8 hour day and a ½ hour lunch period. This favors the Employer proposal on work week.

The PBA cited internal comparisons that appear to favor its proposal: 1) no other employees in the Sheriff's Office or County law enforcement are exempt from the overtime provisions of the FLSA by virtue of Section 207(k), and none have a reopener provision in their collective negotiations agreement; 2) the contract between the Sheriff and the Civilian Employees Association of the Morris County Sheriff's Office mirrors Local 298's current hours of work language; 3) Sergeants in the Bureau of Corrections have an identical schedule and overtime structure to that of Correction Officers, except that they receive an additional 15-minute overtime for muster; 4) Sheriffs' Officers in CIS (Crime Lab), CID, Warrants, Process and Special Service work eight hour shifts and take an unrestricted lunch period at the conclusion of their work day with only officers who work in the courts have an 8½ hour shift, inclusive of a ½ hour unpaid lunch — however, these officers are not

confined to post and are free to do as they please during lunch; 5) Investigators in the County Prosecutor's office work seven hour shifts, exclusive of a one-hour lunch, and are paid overtime for all hours worked in excess of 40 hours.

The appearance is somewhat deceiving since the common factor in all of the PBA's internal comparisons is that no other County employees are paid for taking lunch. The large majority of the Sheriff's Officers are assigned to the courts — these officers work an 8 hour shift and take a ½ hour unpaid lunch — the same that is proposed for Correction Officers. Unlike other County employees, Correction Officers have always taken their lunch as a “working lunch” at their assigned posts within their eight-hour shift. The PBA would prefer to keep this “working lunch” within the 8 hour day at the new facility and denies that the ½ hour unpaid lunch, as proposed by the Employer, is a benefit.

The PBA notes that Investigators in the County Prosecutor's office work a 40 hour week consisting of five, 7-hour shifts and a one-hour unpaid daily lunch period. The Investigators are paid straight time for all hours up to forty hours and are paid overtime for all hours worked in excess of 40 hours. A fair comparison to the Prosecutor's office reveals that the Investigators would have to work forty hours a week before receiving overtime. This is over and above the daily one-hour lunch period. This exceeds the Employer's work week proposal for the Correction Officers. The PBA is correct that Sergeants in the Bureau of Corrections have an identical schedule and overtime structure to that of Correction Officers, except that they receive an additional 15-minute overtime for muster. However, this matter is now pending in a separate interest arbitration matter. The *internal comparisons* cited by the PBA favor the Employer's work week proposal since these comparisons demonstrate that no other employees are paid for lunch.

The PBA cited external comparisons demonstrating that most Correction Officers in direct supervision jails in New Jersey are compensated for lunch: 1) the State of New Jersey employs Correction Officers for five 8½ hour shifts, including a ½ hour paid lunch in duty status and two 15 minute breaks, with overtime after 40 hours; 2) in both Monmouth and Sussex Counties, Correction Officers work 5 shifts of eight hours and 10 minutes, including two 15-minute breaks and a paid lunch, with overtime over 40 hours; 3) in Middlesex County, Correction Officers work 5 eight-hour shifts, including a 30-minute meal and two 15-minute breaks, with overtime over 8 hours in a work day and a 1½ premium if officers work through lunch; 4) in Hudson County, Correction Officers work five 8¼ hour days, including lunch, and are paid overtime after 40 hours and an additional 1½ premium if they work through lunch.

The Employer did not submit any evidence with respect to external comparisons. The *external comparisons* factor cited by the PBA favor its work week proposal since these comparisons demonstrate that other correction officers are paid for lunch.

Overall Compensation

Overall compensation levels within the County, in terms of benefits are reasonably similar. All employees are covered by or receive social security, workers compensation, disability and health care benefits. They are covered by State pension plans. The Police and Fire Retirement System, to which Correction Officers, Sheriff's Officers, Prosecutor's Investigators and Park Police all belong, is much richer than that available to employees in the Public Employees Retirement System, although employee contributions to PFSR are appreciably higher than those to PERS. All law enforcement personnel belong to the same pension system and enjoy the same vacation, holidays, sick leave and personal leave.

There are some differences. As previously stated, the vast majority of Sheriff's Officers work an 8½ hour shift inclusive of a ½ hour unpaid meal period. Correction Officers currently work an 8 hour shift inclusive of a ½ hour paid meal period. This is a major difference reflecting a 6.25% longer work week for Sheriff's Officers. The Employer is seeking a change to an 8½ hour shift inclusive of a ½ hour unpaid meal period to conform to the work schedule of Sheriff's Officers. This aspect of the *overall compensation* factor favors the Employer's position on the work schedule and the overtime provisions.

The *overall compensation* factor favors the PBA's position on the sick leave issue since the inclusion of the Employer's "continuous service" requirement would effectively reduce the overall compensation received by Correction Officers in relation to other County law enforcement employees.

The *overall compensation* favors the Employer's Schedule 'B' proposal since a rejection would effectively create less uniformity and consistency in terms of overall compensation. Uniformity and consistency in overall compensation is particularly important when, as here, Sheriff's Officers and Correction Officers are supervised by two Under Sheriffs who report directly to the Sheriff. Disparate compensation and benefits could lead to an undermining of employee morale.

The *overall compensation* factor favors the PBA's position to retain the corrections stipend. The record indicates that reductions in the corrections stipend have been applied to base salary and that Sheriff's Officers were previously awarded an annual "equity adjustment" of \$550 "to match the increase in the corrections stipend." The removal of the corrections stipend would result in less overall compensation for the Correction Officers when compared with Sheriff's Officers.

Stipulations

The parties have stipulated to certain economic benefits and non-economic benefits which I have enumerated in their respective fair and final offers.

Lawful Authority of the Employer

This factor, among other things, requires the arbitrator to consider the limitations imposed on the Employer by the CAP Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

This factor can be a significant factor in interest arbitration matters when the parties fair and final offers on salary are extreme or one or both parties is asserting that the CAP Law affects their ability to fund salary increases. The parties have stipulated their agreement to salary increases for the four years of the new agreement. Neither party contended that their proposals implicated the lawful authority of the County under the CAP Law and neither party introduced evidence or otherwise contended, that the parties' proposals would have a financial impact on the governing unit.³

There is absolutely no evidence in the record to demonstrate that any aspects of this award will cause the Employer to approach the limits of its financial authority or to breach the constraints imposed by the CAP Law.

³The Employer argued, in its brief, that the elimination of the corrections stipend places its proposal more in line with CAP than the proposal of the PBA. The Employer also argued, in its brief, that the anticipated overtime costs which would occur if the Employer's work week proposal is not granted would result in costs to the Employer well in excess of the CAP constraints. I must reject both of these arguments since the Employer offered absolutely no evidence to support these contentions. The impact on the work week proposal is moot since I shall award the Employer's proposal on the work week.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

Again, this factor can be a significant factor in interest arbitration matters when the parties fair and final offers on salary are extreme or one or both parties is asserting that the CAP Law affects their ability to fund salary increases. The parties have stipulated their agreement to salary increases for the four years of the new agreement. Neither party contended that the voluntary salary settlement or any other issues will have a significant financial impact on the governing unit, its residents or its taxpayers.

Cost of Living

The cost of living is not a controlling factor in this matter since the parties have agreed to salary increases that exceed the cost of living.

Continuity and Stability of Employment

I have previously assigned considerable weight to maintaining the pattern of settlement within the County and within the law enforcement units within the County. I have attached particular significance to maintaining the relationship between Correction Officers and Sheriff's Officers, as discussed above. The Sheriff is the employer for both the Sheriff's Officers employed in the Bureau of Law Enforcement and the Correction Officers in the Department of Corrections with an Under Sheriff directly responsible for each bureau/department. It is undisputed that PBA Local 151 reached a voluntary settlement with the County and the Sheriff providing for salary increases for all current employees which are identical to the salary increases agreed to by PBA Local 298 in this matter.

The final offers of both the PBA and the Employer are identical to the settlement reached with the Sheriff's Officers on Schedule "B" and sick leave. I have previously discussed the need to maintain uniformity and consistency in terms of overall compensation

and level of benefits. This principle of uniformity and consistency also applies to maintaining the continuity and stability of employment. I am convinced that it would be harmful to the morale of the Correction Officers and other law enforcement employees if patterns of settlement are not maintained, as they have been in the past. I am also persuaded that deviations from patterns of settlement and failure to maintain uniformity and consistency in terms and conditions of employment creates disruption in future negotiations making it more difficult to reach voluntary settlements.

Neither party has submitted compelling evidence that an award in favor of any of the final offers will have a negative impact on the Employer's ability to retain current employees or to attract qualified applicants. The current jail is grossly inadequate and the new "state-of-the-art" facility will alleviate the major structural problems of the old jail, i.e., overcrowding, poor ventilation, inadequate heating and cooling resulting in dramatically improved working conditions. As I discussed under the interests and welfare of the public factor, it is inconceivable that the move to the new correctional facility will have a negative impact on employee morale and working conditions.

Accordingly, I find the *continuity and stability of employment* factor favors the Employer's position on the work schedule issue and Schedule 'B' and favors the PBA's position on sick leave and the corrections stipend.

Summary

I have carefully considered the evidentiary record in this matter including the testimony of the parties' witnesses and the numerous exhibits. I have also carefully considered the arguments advanced by the parties in support of their respective positions. I have considered the evidence and arguments in relation to the statutory criteria which I am bound to consider and apply.

Each of the statutory criteria have been considered. The most important factors which led to my adoption of the Employer's work schedule proposal were the interests and welfare of the public, comparisons in public employment in the same jurisdiction (internal comparisons) and continuity and stability of employment. The PBA did show that external comparisons favor its work schedule proposal that employees receive a paid meal period but not with respect to the issue of the length of the work day. However, I have applied more weight to the interests and welfare of the public, comparisons in public employment in the same jurisdiction (internal comparisons) and continuity and stability of employment in awarding the Employer's work schedule.

I rejected the Employer's proposal to eliminate the corrections stipend finding that the interests and welfare of the public, comparisons in public employment in the same jurisdiction (internal comparisons), overall compensation and continuity and stability of employment weighed heavily in favor of continuation of the stipend. I accepted the Employer's Schedule 'B' proposal and the PBA's sick leave proposal for the same reasons.

The financial impact of this award will be modest in view of the fact that the parties reached a voluntary agreement on salaries for the current employees. Neither party contended that their proposals had any impact on the lawful authority of the County under the CAP Law and neither party introduced evidence or otherwise contended, that the parties' proposals would have a financial impact on the governing unit. Therefore, I have attached little weight to these factors.

Accordingly, I hereby issue the following:

AWARD

The duration of the new agreement (Article 29) shall be January 1, 1999 through December 31, 2002.

Article 10, Sick Leave, Section 4 shall read as follows:

Effective January 1, 2000, a certificate from a licensed physician in attendance shall be required as sufficient proof of need of leave of absence or the need of the employee's attendance upon a member of the employee's immediate family. In the event of absence from duty due to illness for four (4) or more days at one time, the employee shall be required to submit a physician's certificate to his/her supervisor to justify payment of sick leave.

Article 10, Sick Leave, Section 5 shall be amended to provide as follows:

Effective upon execution of this Agreement, upon retirement, with at least twenty-five years of service with the Employer, the Employer will pay the employee thirty-five (35%) of accumulated sick time to a maximum of ten thousand dollars (\$10,000).

Article 10, Sick Leave, Section 5 shall replace the second paragraph of the current Section 4 as follows:

An accumulation of ten (10) sick occurrences, where an occurrence is recognized as one (1), eight (8) hour day or more and the occurrences having been at various times during a calendar year (January through December) may be approved without a physician's certificate. All sick occurrences in excess of ten (10), must be accounted for with a physician's certificate if the time is to be approved with pay. An employee may request that the Undersheriff or Warden review a sick occurrence requiring a physician's certificate. This request must be made in writing prior to the submission of the payroll in which the "sick occurrence" occurred. A copy of this request must also be given to the employee's supervisor. At the discretion of the Undersheriff or Warden, sick leave in excess of the ten (10) occurrences may not require a physician's certificate, depending on the submission of physicians' certificates submitted for prior occurrences and the employee's use of past sick leave.

Article 22, Uniform Allowance, Section 1 shall be amended to provide that the current uniform allowance of \$595 shall be increased \$55 in 1999 (\$650), \$50 in 2000 (\$700), \$50 in 2001 (\$750) and \$50 in 2002 (\$800).

Article 21, College Credits, shall be amended to provide as follows:

Effective upon execution of this Agreement, the Employer shall also provide for reimbursement of approved courses toward the attainment of a Bachelor's degree.

Article 23, Hours of Work-Week shall be amended to include the following changes which shall be effective upon the move to the new correctional facility:

Section 1:

New shift schedules will allow for three (3), eight and one-half (8 ½) hour shifts per day and shall include a one-half (½) hour unpaid lunch period for all employees working at the Morris County Correctional Facility. The work week for all employees working at the Morris County Correctional Facility shall consist of forty-two and one-half (42 ½) hours per seven (7) work days based on the current 5-2 day week which includes a one-half (½) hour unpaid lunch period per shift, in accordance with Section 207(k) of the Fair Labor Standards Act. In the event an officer, due to emergency, is not permitted to have a duty-free lunch period, he/she shall be paid for that time at the applicable rate.

Section 2:

In conjunction with the new schedule, an employee shall be compensated at one and one-half (1 ½) times his/her regular rate of pay for all time worked in excess of forty-two and one-half (42 ½) hours per seven day work week inclusive of the half (½) hour unpaid lunch.

The overtime rate shall be calculated consistent with past practice based upon the number of days in the year and biweekly pay period.

In the event of mandatory overtime, other than for training purposes for the new jail, if an employee is required to work more than two (2) overtime shifts in five (5) consecutive work days, the employee shall be paid two times his/her regular rate of pay for any additional shifts.

All Vacation Leave (Art. 8), Holiday Leave (Art. 9), Sick Leave (Art. 10), Personal Leave (Art. 15), Bereavement Leave (Art. 16) shall be earned, used and/or paid based on eight (8) hours a day. No employee shall lose Leave or Overtime benefits as a result of the change in work schedule to forty-two and one-half (42 ½) hours.

Salary Schedule 'A' and Salary Schedule 'B' shall be modified as follows:

Schedule A

Employees hired prior to January 1, 2001

Years of service	1/1/99	1/1/00	1/1/01	1/1/02
Entry	\$25,850	\$27,150	\$28,450	\$29,750
After 1 year	\$29,500	\$30,900	\$32,300	\$33,700
After 2 years	\$31,900	\$33,400	\$34,900	\$36,400
After 3 years	\$34,300	\$35,900	\$37,500	\$39,100
After 4 years	\$37,016	\$38,716	\$40,416	\$42,116
After 5 years	\$40,789	\$42,589	\$44,389	\$46,189
After 6 years	\$45,679	\$47,579	\$49,479	\$51,379
After 7 years	\$50,579	\$52,579	\$54,579	\$56,579
After 8 years	\$55,779	\$57,879	\$59,979	\$62,079

Schedule B

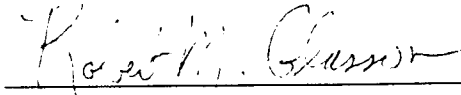
Employees hired on or after January 1, 2001

Years of service	1/1/01	1/1/02
Entry	\$28,450	\$29,750
After 1 year	\$30,000	\$31,300
After 2 years	\$32,300	\$33,700
After 3 years	\$34,900	\$36,400
After 4 years	\$37,500	\$39,100
After 5 years	\$40,416	\$42,116
After 6 years	\$44,389	\$46,189
After 7 years	\$49,479	\$51,379
After 8 years	\$54,579	\$56,579
After 9 years	\$59,579	\$62,079

Article 24, Section 3, Corrections Stipend shall be maintained at the current level of \$882 annually.

Except as the parties otherwise mutually agree, there shall be no other changes in the 1999 to 2002 collective bargaining agreement.

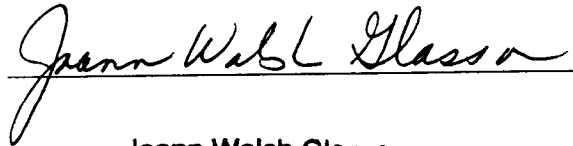
Dated: January 29, 2000
Pennington, NJ



Robert M. Glasson
Arbitrator

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

On this 29th day of January 2000, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Joann Walsh Glasson
Notary Public
State of New Jersey
Commission Expires 12-11-01

