

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

**In the Matter of the Interest Arbitration Between:**

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**COUNTY OF BURLINGTON**

**Employer**

**-and-**

**PBA LOCAL No. 249**

**Employee Organization**

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**Interest Arbitration  
Decision  
-and-  
Award**

**Docket No. IA-2009-115**

**Before  
Timothy A. Hundley  
Interest Arbitrator**

**For the Employer:**

**Alan Schmoll, Esq.  
Capehart Scatchard**

**Kendall J. Collins, Esq.  
First Assistant County Solicitor  
On the Briefs**

**For the Employee Organization:**

**James M. Mets, Esq.  
Mets Schiro & McGovern, LLP  
Of Counsel and on the Briefs**

**Brian J. Manetta, Esq.  
On the Briefs**

The County of Burlington (“County” or “Burlington”) and PBA Local No. 249 (“PBA” or “Local 249”) were parties to a negotiated agreement covering the January 1, 2005 through December 31, 2008 time period. The PBA is the exclusive representative for all of the rank-and-file corrections officers employed at the Burlington County Detention Center (“BCDC”) in Mt. Holly, N.J. and the County’s Correction Work Release Center (“CWRC”) in Pemberton, N.J.

The parties began negotiations for a successor agreement on November 20, 2008 and held their final session on May 8, 2009. On June 19, 2009, the PBA filed a petition with the Public Employment Relations Commission (“PERC”), requesting the initiation of compulsory interest arbitration pursuant to *N.J.S.A. 34:13A-14 et seq.* On August 27, 2009, PERC appointed me interest arbitrator pursuant to *N.J.A.C. 19:16-5.6(d)* and the parties’ mutual selection. Accordingly, this case is governed by the interest arbitration procedures in place on August 27, 2009. *L. 2010, c. 105*, which went into effect on January 1, 2011, establishes new interest arbitration procedures and timelines for petitions filed on or after that date. See *L. 2010, c. 105, §4* and *PERC’s Frequently-Asked Questions, Interest Arbitration Procedures (March 14, 2011)*.

On January 11, 2010 and April 8, 2010, I conducted joint mediation sessions that narrowed or resolved some issues. However, the impasse persisted. Therefore, a formal interest arbitration hearing was held on June 8, 2010, June 10,

2010, August 5, 2010, September 15, 2010, and September 23, 2010.<sup>1</sup> At the hearing, the PBA and the Township examined and cross-examined witnesses and introduced numerous exhibits into evidence. Post-hearing briefs were received by January 31, 2011 and reply briefs were received by March 4, 2011. The record was closed on that date.

The pre-2011 version of *N.J.S.A. 34:13A-16f(5)* called for an interest arbitrator to issue an award within 120 days of selection or assignment, albeit the statute also permitted the parties to agree to an extension. Pursuant to this latter provision, the Township and the PBA have agreed to extend the time for issuing an award to August 29, 2011. In addition, the pre-2011 version of *N.J.S.A. 34:13A-16d(2)* provided that the terminal procedure was conventional arbitration, absent the parties' mutual agreement to an alternate procedure. The parties here have not agreed to an alternative method of submission and this dispute therefore will be resolved by conventional arbitration.

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

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<sup>1</sup> Transcripts of the hearing are cited as follows: 1T – June 8, 2010; 2T – June 10, 2010; 3T – August 5, 2010; 4T – September 15, 2010; 5T – September 23, 2010.

## **COUNTY'S FINAL OFFER**

### **Article H – Salary**

1/1/2009	2.5%
1/1/2010	0.0%
1/1/2011	0.0%

### **Article XXXVI – Term of Agreement**

January 1, 2009 to December 31, 2011

### **Article IV – Health Benefits<sup>2</sup>**

A. Health Benefits: Family Hospital, Surgical and Major Medial or other medical benefits shall be available for all full-time employees on the first of the month after three (3) months of service pursuant to the following provisions:

1. All employees shall be covered by a contributory comprehensive County self-funded medical, optical and prescription plan to include co-pays as follows:

<u>Doctor's Visits</u>	<u>Prescription Generic</u>	<u>Brand Preferred</u>	<u>Brand Non-Preferred</u>
01/01/09	\$20.00	\$0.00	\$30.00

Additionally, visits to the emergency room will have the following co-pays: \$50.00.

Pre-certification and second opinion deductible for non-compliance shall be \$500 in addition to any other deductibles that may be assessed.

The annual deductible for using out-of-network providers shall be \$400 for single coverage and \$600 for family coverage.

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<sup>2</sup> I have for the most part reproduced the County's final offer exactly as it appears in Exhibit C-1, although I have not included a few sections in Article IV where there is no change to the language in the 2005-2008 contract. I note that while Exhibit C-1 document underscores some of the proposed new language, other new sections are not underlined.

Effective January 1, 2010, employees shall contribute 15% of the cost of the monthly premium equivalent for their respective category of coverage (e.g., single, husband/wife, etc.) by way of pre-tax payroll contributions using the County's established IRS Sec. 125 cafeteria plan. During any approved leave of absence, employees shall continue to pay toward the monthly premium in order to maintain coverage during said period.

After the first 90 days a prescription has been filled, all maintenance medications (with the exception of insulin for diabetes) must be filled via Mail Order (examples of maintenance medications include high blood pressure, cholesterol, kidney and heart medications, etc.). Mail Order medications for a 90 day supply shall cost one-and-a-half times (1.5x) the applicable retail co-pay indicated above.

All prescription medications must be processed through a pharmaceutical clinical case management program through the prescription third-party administrator (TPA). As a pre-condition to using the prescription benefits plan, all employees must sign a HIPPA compliant release enabling the health benefits third-party administrator to share protected health information (PHI) with the prescription benefits TPA.

A copy of this plan shall be provided to each employee. In the case of a husband and wife working for the County, the employee with the earliest hire date shall be listed for coverage and the other spouse will not have separate coverage. If, for any reason, the subscriber has his/her coverage terminated, the spouse shall be added immediately. The children dependents of the employee shall be covered until the end of the month in which they reach the age of 19, or if the dependent (as evidenced by being claimed on the employee's Federal income tax), is in school as a full-time student, until the end of the month in which they reach age 23. Employees must submit a copy of their Federal 1040 tax form and information from the school that demonstrates that the child is still a dependent and still in school.

2. During the term of this Agreement, there shall be no change in the Health Benefits set forth in paragraph A(1) paid for by the Employer on behalf of the employees as shown above. However, this shall not prevent the Employer from substituting new and equivalent or more beneficial plans for the ones set forth herein. However, whenever the Employer determines that it may be in its interest to change the health care provider or administrator, the County shall give the union at least 30 days advance notice, along with a copy of the proposed contract. In the

event that a change in the health care provider or administrator results in a change in panel providers, all employees will be given advance notice of the change and will be notified of where they can obtain a copy of the list of new health care providers.

3. The County shall extend to a maximum of ninety (90) days the health insurance coverage of eligible employees and their covered dependents upon exhaustion of such employee's accumulated sick leave and who are granted approved sick leave without pay, with the County paying the cost in accordance with Paragraph A above.

In those instances where the leave of absence (or an extension of such leave) without pay is for a period of more than ninety (90) days, the employee's coverage shall be eligible for coverage under the COBRA regulations. Upon returning to work, coverage will be reinstated effective the first of the month following the date of return, provided completed enrollment forms are returned to the Benefits Office within the required timeframe.

4. Effective January 1, 2009, the County shall furnish an annual stipend for opting out of the County's health benefits plan (medical and Rx-so long as employee furnishes proof of other coverage) in the amount of \$750 payable in November of each calendar year. An employee who experiences a catastrophic life event wherein other, available coverage is lost shall be automatically reenrolled in the County's plan, and the stipend shall be pro-rated accordingly.

5. When an employee is in a suspension or W status for more than 10 days in a month, his/her benefits will expire at the end of that month. Benefits shall be restored the first of the month after the employee has resumed working an average of 30 hours per week over the course of a month (provided that completed enrollment forms are returned to the Benefits Office within the required time frame).

B. Dental

1. The Employer shall pay for and provide an 80/20 family dental plan for preventive, diagnostic and basic benefits.

Effective January 1, 2009, employees shall contribute the following amounts each pay period (to be deducted from bi-weekly paychecks twice per month):

\$5.00 (single)  
\$10.00 (husband/wife or parent/child)  
\$15.00 (parent/children, family)

To offset the cost of the dental contributions, employees may sign up under IRA Sec. 125 to have the dental contributions funded with pre-tax dollars.

Employees who provide proof of dental coverage elsewhere (for self and dependents) may elect a non-stipend opt-out for dental coverage. Similarly, for couples employed by the County, one spouse may opt-out of dental coverage so long as s/he becomes a dependent on the remaining spouse's policy (earlier date of hire remains subscriber).

2. The family program of dental care shall include orthodontics for children only and prosthodontics. Employee's eligibility shall be determined in accordance with Paragraph A (Health Benefits).
  - a. Effective January 1, 2009, the maximum payable by the carrier for services other than orthodontic benefits shall be two thousand (\$2,000) per eligible patient in any calendar year.
  - b. Effective January 1, 2009, Orthodontic benefits for new cases are subject to a two thousand dollar (\$2,000) maximum per lifetime, which is separate from the maximum mentioned above.
- C. Eye Med Vision Care: Employees shall be offered participation in the Eye Med Vision Care plan.
- D. Life Insurance (same as current Article IV.C)
- E. Disability Plan (same as current Article IV.F)
- F. IRS plans (new)

The County will continue to provide an opportunity for employees to set aside a portion of their pre-tax salary into an IRS Section 125 account to be utilized for unreimbursed medical, dependent care expenses and dental contributions.

## **Article V – Sick leave**

Revise Par A.: All sick time shall be credited in hours. A new employee shall be credited with 8 hours of sick time if hired between the 1<sup>st</sup> and 8<sup>th</sup> day of the month and 4 hours if hired between the 9<sup>th</sup> and 23<sup>rd</sup> day. 40 hour per week employees shall be credited with 120 hours.

Par. B, C – delete reference to 15 sick days and replace with “120 hours.”

Par. C – revise to explain that sick time is credited at the rate of 10 hours per month.

Par. D – eliminate (there are no part time correction officers).

Par. E, F – replace “days” with “hours”

Par. G, sub. 1, 2 – change 10 and 5 days to 80 hours and 40 hours, respectively.

Par. H – add “legally recognized domestic partner or member of civil union.”

Par. J. – change five (5) consecutive working days to four (4).

## **Article IX – Personal Leave**

Revise Par. A: All personal time shall be credited in hours. Each employee shall be entitled to 24 hours of personal time per year.

Par. B – revise to reflect new employees shall receive eight (8) hours for each four (4) months of service.

## **Article X – Holidays**

Propose buying out holidays by no later than the 15<sup>th</sup> of June and December subject to an agreement on a new work schedule.

## **Article XI - Vacation Leave**

Revised to convert all time to hours consistent with the proposal for Sick Leave. By way of example, an employee entitled to 12 days would receive 96 hours.

Par. A, B, and C, revise to reflect hours, not days.

Par. E – replace “days” with “hours”

Par. G – eliminate

Par. H – renegotiate to reflect changes due to proposed new work schedule

## **Article XII - Overtime**

Par. C – renegotiate to conform to proposed new work schedule. Mandatory overtime shall only be implemented on days officers are regularly scheduled to work (e.g., on the four [4] regularly scheduled days and not on any of the three [3] RDOs) and will be based on inverse seniority; would need to come up with an equitable way to address OT occurring on overnight shift.

### **Article XIII – Seniority**

Par. D – revise sub 1 and 2 to reflect changes due to proposed new work schedule.

### **Article XVI – Retirement**

A. Each employee in the classified service who has been granted sick leave shall be entitled upon retirement to receive a lump sum payment as supplemental compensation for each full day of earned and unused accumulated sick leave which is credited to him on the effective date of his retirement.

1. The amount of the supplemental compensation payment shall be computed at the rate of one half (1/2) of eligible employee's daily rate of pay for each day of earned and unused accumulated sick leave based upon the average annual compensation received during the last year of his employment prior to the effective date of his retirement. Lump sum supplemental compensation payment shall be made in compliance with N.J.SA. 11A:6-19.

2. Payment shall be made in January next following the date of retirement provided the employee has given his Department Head written notice of retirement at least six (6) months prior to date thereof. Failure to give such notice shall result in a delay of payment to the second January next following the day of retirement. In emergent or unusual circumstances, such notice may be waived.

B. All employees who have retired or shall retire with twenty-five (25) years or more of credited service to Burlington County shall be covered by a comprehensive, County self-funded, medical plan. Prior to being eligible for the benefits as listed in paragraphs B and C of this article, all retirees who are sixty-five (65) years or older must be carriers of Medicare A & B. Twenty-five (25) years of service, for the purposes of health benefits in retirement, shall include a minimum of twenty years of full-time service, with the last five years of service being full-time. Any leaves of absence without pay that, collectively, are in excess of twelve months shall not count toward the twenty-five years needed for health benefits to be paid for by the County in retirement, provided, however, that any

FMLA leave, any military leave and or any workers' compensation leave shall count toward the twenty-five years.

C. The County shall continue its current practice of payment of full coverage for the first ninety (90) days following the date of retirement regardless of the number of years of service. If an employee has taken a leave of absence in the twelve months preceding retirement, the employee shall have coverage for the difference between the amount of leave previously taken and the 90 days heretofore described.

## **Article XVII – Work Schedule**

Replace Par. C and Par. D to reflect: All employees shall select by seniority or be assigned a work schedule comprised of four days on and three days off as follows:

Sunday through Wednesday or Wednesday through Saturday

Each work shift shall be comprised of ten and one half hour days (10.5 hours) consisting of a one-half (1/2) hour unpaid lunch (propose retaining language regarding not being completely relieved during lunch period.)

Work shifts shall be as follows

BCDC:

6:00 AM to 4:30 PM  
10:00 AM to 8:30 PM  
12:00 PM to 10:30 PM (supplemental shift)  
8:00 PM to 6:30 AM

(Management retains the right to determine the number of staff needed and post required for each work shift and facility).

CWRC:

6:00 AM to 4:30 PM  
10:00 AM to 8:30 PM  
8:00 PM to 6:30 PM

## **Article XX – Discipline**

New Paragraph: Reinstitute working suspensions/ \$35 per day for fines for attendance violations, minor discipline and other disciplinary infractions as agreed upon by the parties. By way of example, a 40 hour suspension would be served over four, ten hour days and result in a cumulative working suspension/fine of \$140. Major discipline shall occur when management seeks to suspend an employee for 40 or more hours.

Renegotiate time and attendance policy to reflect the change of the length of the workday on account of the proposed new work schedules.

#### **Article XXIV – Rights and Privileges of the Association**

If proposed new work schedule is agreed upon, willing to give the union president full union release time on Wednesdays, subject to any professional obligations that s/he may be required to keep (e.g., annual training pursuant to Title 10A and County Human Resources policies, firearms practice and certifications, etc.).

#### **Article XXXVI – Equal Treatment**

Add/Clarify to include: sex, age, nationality, race, religion, marital status, political status, political affiliation, sexual orientation, gender expression (as defined under NJ State law), national origin, color, handicap, union membership, union activities, or the exercise of any concerted rights or activities or any other legally protected class.

(New): The Association and the Employer shall continue to discourage bias, prejudice and bigotry, and foster understanding of others in the workplace regardless of race, creed, color, national origin, sexual preference, gender and its expression, age or physical condition.

#### **PBA's Final Offer<sup>3</sup>**

#### **Article I – Recognition**

Replace “Ch. 303, P.L. 1968, as amended” with “the Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (“the Act”).

Delete “I.D. Officer” from final sentence

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<sup>3</sup> I have reproduced the PBA's Final Offer as set forth in Exhibit U-1, except that proposed deletions of existing language are denoted by brackets [thus] instead of strikethroughs. In addition, because of the length of the offer, I have sometimes included only proposed additions or deletions instead of the entirety of an existing provision.

## **Article II – Salary**

A. See Salary Schedule set forth below

	<b>Current</b>	<b>1/1/2009</b>	<b>1/1/2010</b>	<b>1/1/2011</b>	<b>1/1/2012</b>
<b>Step 1</b>	<b>\$38,020</b>	<b>\$38,020</b>	<b>\$38,020</b>	<b>\$39,971</b>	<b>\$39,945</b>
<b>Step 2</b>	<b>\$40,360</b>	<b>\$41,369</b>	<b>\$42,403</b>	<b>\$44,745</b>	<b>\$45,863</b>
<b>Step 3</b>	<b>\$42,449</b>	<b>\$43,510</b>	<b>\$44,598</b>	<b>\$46,994</b>	<b>\$48,169</b>
<b>Step 4</b>	<b>\$44,507</b>	<b>\$45,620</b>	<b>\$46,760</b>	<b>\$49,210</b>	<b>\$50,441</b>
<b>Step 5</b>	<b>\$49,134</b>	<b>\$50,362</b>	<b>\$51,621</b>	<b>\$54,193</b>	<b>\$55,548</b>
<b>Step 6</b>	<b>\$53,813</b>	<b>\$55,427</b>	<b>\$57,090</b>	<b>\$60,090</b>	<b>\$61,893</b>
<b>Step 7</b>	<b>\$60,387</b>	<b>\$64,010</b>	<b>\$67,851</b>	<b>\$73,247</b>	<b>\$77,642</b>
<b>Step 8</b>	N/A	<b>\$70,411</b>	<b>\$74,636</b>	<b>\$80,572</b>	<b>\$85,406</b>

**Step 8 requires a minimum of 12 years of service credit as a corrections officer. A senior officer shall wear 2 hashmarks on his uniform sleeve.**

**The step guide shall survive the expiration of the contract.**

B. The above referenced salaries for [2005, 2006, and 2007] 2009, 2010, 2011 and 2012 shall be retroactive to January 1<sup>st</sup> of each of those years, respectively.

C. It is agreed that to be covered by the retroactive wage provision of this agreement, an employee shall have maintained continuous full time employment up to and through December 31, 2009, has retired on or after January 1, 2009, or if the employee has died on or after January 1, 2009, his estate shall receive such retroactive payment [January 20, 2007].

## **Article III – Uniform Allowance**

Modify paragraphs D, E, and H as follows.

D. Annual Allowance

1. Effective and retroactive to 1/1/09 [2005] each eligible officer shall be paid the lump sum of [\$750] \$1,000.00 for the calendar year [retroactive to December 1, 2005].

2. Effective and retroactive to 1/1/10 [2006] each eligible officer shall be paid the lump sum of [\$750] \$1,250 for the calendar year [retroactive to December 1, 2006].
3. Effective January 1, 2011, the uniform allowance shall be eliminated. [Each eligible officer shall be paid the lump sum total of \$750 for the calendar year retroactive to December 1, 2007.]
4. 2008 Each eligible officer shall be paid the lump sum total of \$750 for the calendar year retroactive to December 1, 2008.]
- [5]4. The lump sum payments made under subparagraphs 1,& 2 [3 & 4] of this paragraph are intended by the parties to be utilized for replacement and maintenance of uniforms. It is the officer's sole responsibility to insure he/she reports to work in a proper uniform in compliance with applicable administrative directives, policies/procedures and codes. Failure of the officer to report to work in a proper uniform may result in disciplinary action.
6. Any officer who takes an approved leave of absence without pay shall be entitled to the uniform allowance specified in this Article on a pro rata basis for actual time worked, less applicable taxes.]
- [7. Any officer who takes an approved leave of absence without pay shall be entitled to the difference between the contractual allowance specified in this Article less applicable taxes and the pro-rated amount received pursuant to the above paragraph, provided he/she submits true and accurate receipts/vouchers reflecting the purchase of uniforms or equipment as specified in the Jail's regulations within a reasonable time, not to exceed six (6) weeks after his/her return from approved leave of absence.]
- [8]5. The above direct pay cash allowance shall be paid to each uniformed correction officer after completion of the first year of full service or completion of COTA Training, whichever comes first [,and shall be prorated for the calendar year in which the officer completes the first full year of service or COTA Training].

[9. Officers who leave the employ of the County during the calendar year in which the allowance was paid shall reimburse the County the full amount of the uniform allowance paid in that calendar year less any amount spent on uniform replacement and maintenance prior to the date of separation from service. No credit shall be given to an employee for this purpose unless a receipt is provided to the county.]

- E. All [uniforms and other] equipment that has been issued shall be turned in when the officer leaves the employ of the County. All officers shall be required to make the restitution to the County for any property or equipment that is damaged due to the officer's proven negligence or willful misconduct or not returned.
- H. [The Jail Administrator at his sole discretion shall designate which post(s) are appropriate for the wearing of Battle Dress Uniforms. Upon written notification Corrections Officers shall have the option to purchase, at their own expense, Battle Dress Uniforms (BDU's) for on duty wear. Standards for the wearing of such uniforms shall be established by the Jail Administrator].

## **Article VI – Health Benefits**

The PBA proposes to add the underscored language to Article IV.A.1

There shall be no prescription pre-certification requirement.

The health plan shall provide for well-child and baby care, including vaccinations and gynecological coverage for dependents.

In the case of a husband and wife working for the County, the employee with the earliest hire date shall be listed for the coverage and the other spouse will not have separate coverage. If for any reason the subscriber has his/her coverage terminated, the spouse shall be added immediately as the subscriber.

. . . .

If an employee who does not participate in the benefits plan for the reasons set forth above or because he has alternate coverage, he shall receive an annual payment equal to 50% of the premium that the County would have incurred (based on COBRA rates less the 2.0% administrative charge) for the plan he would have selected had he participated in the plan. The opt-out payment shall be paid in

equal monthly installments. If the employee loses alternate coverage, he shall immediately be placed on the County's plan and the opt-out payments shall cease.

## **Article V – Sick Leave**

Modify Paragraph G as follows:

G. Sick leave is defined as absence of an employee from duty because of a personal illness by reason of which the employee is unable to perform the usual duties of his position, or exposure to contagious disease. Sick leave may also be [requested] used for the following reasons:

1. [Up to (10) working days] Sick leave may be used to attend to [of emergency attendance upon] an immediate family member who is [seriously] ill and requires the presence of such employee. Immediate family shall be defined as set forth in section H below.
2. In the event of the death of a member of employee's immediate family, as defined by Article V (H), an employee shall be granted, at his request, up to five (5) paid working days bereavement leave which shall be in addition to any contractual leave time that the employee may have. Upon written request of the employee and approval of the Jail Administrator, this time may be expanded. [Such time may be taken, at the employee's option, from available sick days, personal leave days, vacation days, or holidays.]

Add these new paragraphs:

P. (New) Each officer shall have the option to cash-in up to 35 days of accumulated unused sick leave annually. To be eligible, the officer must maintain a minimum of 50 days of accumulated sick time and shall provide the County with 30 days' notice prior to April 1 of his intent to cash-in sick time. Payments shall be made in the first pay period of June after notice of cash-in at the officer's hourly rate or pay in effect at the time he elected to cash-in.

Q. (New) Officers shall also be paid the following sick time incentive payments:

1.	0 sick days in a calendar year	\$1,000.00
2.	1 sick day in a calendar year	\$ 800.00

3. 2 sick days in a calendar year \$ 600.00

## **Article VII – Family and Medical Leave**

Family and Medical Leave of Absence shall be in accordance with the federal Family and Medical Leave Act (29 U.S.C. Sec. 2601 *et seq.*) and/or the New Jersey Family Leave Act (*N.J.S.A. 34:11B et seq.*). Officers shall not be required to, but may at their option, use paid leave time prior to or concurrent with FMLA/FLA. In addition, an officer may not be involuntarily placed on FMLA/FLA.

## **Article VIII – Worker's Compensation**

Modify paragraphs A and D as follows.

A. When an employee is injured on duty, he shall notify the Jail Administrator as soon as possible after the injury occurs [immediately] so that a Department report may be prepared. The employee and his immediate supervisor are also required to prepare an accident report.

D. Notwithstanding any terms to the contrary in Paragraph C above, an employee who is injured while acting in the proper and lawful performance of his duties[as a result of the direct action, effort, interference or activity of an inmate or prisoner] shall be entitled to a leave of absence in accordance with the terms of Paragraph B herein and such leave shall be granted with pay for the period of disability or up to one (1) full year whichever is less. In the event the employee is determined to be eligible for workers' compensation wage benefits, such pay shall not be in addition to any such benefits and the employees shall be obligated to assign to the County any such wage benefits which are received as a condition of receiving the wage payments set forth herein.

1. Eligibility Determination – Whether or not an employee is deemed to be eligible for the benefits provided under Paragraph D of this article shall be determined in accordance with the procedure set forth as follows:

a. Upon the occurrence of a work related injury or illness [inmate/prisoner related incident which results in an injury] believed by the employee to be covered by the provisions of this Paragraph D, the employee shall submit to the Jail Administrator a [medical certificate] note from the employee's treating physician stating [certifying] that the employee's disability is the result of a work related injury or illness. The Jail Administrator shall have the right to

require the employee to be evaluated by the County's treating physician pursuant to the provisions of Paragraph E of this Article.

b. No change

c. If the County does not dispute that the employee's disability is work related, but a dispute develops as to whether or not the disability resulted from injuries suffered by an employee while acting in the proper and lawful performance of his duties [as a result of the direct action, effort, interference, or activity or an inmate or prisoner] the Association shall have twenty (20) working days from the date of notice of such dispute to submit the same directly to binding arbitration through the Public Employment Relations Commission, with the cost thereof to be borne equally by the Employer and the Association. The burden of proof shall be on the County.

d. No Change

## **Article IX – Personal Leave**

Paragraph A, amend second sentence to state:

At the option of an employee, personal days may be utilized in half-day increments [to be taken solely during the last four (4) hours of a shift].

Paragraph C, add this sentence

Personal leave shall not be denied except in cases of emergency such as general recall. The fact that a personal day may cause overtime is not an acceptable reason for denial. If a person is denied and a grievance is filed by the Association and it prevails on the grievance, the employee who was denied the personal day shall be paid as liquidated damages of 2 days pay for each day denied.

## **Article X – Holidays**

A. If an employee works a regularly scheduled day on a holiday, the employee shall receive one and one-half (1½) [straight] time pay and the holiday shall be put on the books. If the employee is called in to work a holiday on a scheduled day off, the employee shall receive two [one and one half 1½] time pay and accrue such holiday. If the employee is scheduled off on a holiday, the holiday shall be accrued.

B. Employees must give ten (10) days minimum notice of a request to take a holiday and the County must respond within forty-eight (48) hours. Holiday leave shall not be denied except in cases of emergency such as general recall. The fact that a holiday leave may cause overtime is not an acceptable reason for denial. If a holiday is denied and a grievance is filed by the Association and it prevails on the grievance, the employee who was denied the holiday shall be paid as liquidated damages 2 days pay for each day denied.

C. An employee may carry [a] holidays for two (2) [one] years from the date the holiday is earned. Each June 1 and December 1 an employee with holidays on the books can elect to receive monetary compensation for said holidays at straight time pay based on the rate of pay at which the holiday was earned. If the employee does not use [or does not elect to be monetarily compensated for] a holiday within [a] 2 years from the date earned, then the employee shall be paid for the holiday on June 1 or December 1 at the rate in effect when the holiday was earned [is lost]. Any payment made by the Employer on June and December 1 shall be paid to the employee by separate checks.

D. Employees must work their last scheduled day before and their first scheduled day after a holiday in order to receive the holiday if they are not scheduled to work on the holiday. For purposes of this Article, all paid time [other than sick leave] shall be considered as time worked. [Sick leave shall not be considered time worked except in the event of an extended period of sick leave of three (3) days or more for which the employee provides appropriate medical documentation. However s]Sick leave [of less than three (3) days] shall be considered time worked in the event that the employee is seen by a doctor and provides a doctor's note concerning the absence. The requirements of this paragraph shall not apply to an employee who works a holiday.

## Article XI – Vacation Leave

### Section B

Amend the vacation schedule as follows:

After 20 years up to 24 years [and over]	25 days
<u>After 24 years</u>	<u>1 additional day per year to 30 days</u>

G. Eliminate paragraph G

H. Add the following language:

Vacation shall be selected in seniority order. A minimum of 8 officers shall be allowed off per shift for vacation. An officer's vacation shall commence at the end of his last regular shift prior to his first vacation day and once designated as "on vacation," an officer may not be mandated to perform overtime. Once scheduled, vacations may not be changed except by agreement of the affected officer.

Delete the following language:

[Where the vacation schedule is established but there is a need to adjust the schedule due to unforeseen pressure of the work, voluntary changes shall be made first. Other employees named and required to make a change will be in inverse order of their seniority except that consideration will be given to a substantial financial commitment made by the employee involved.]

## **Article XII – Overtime**

A. Overtime refers to any time worked beyond the normal workday of an employee [forty (40) hour workweek] and is to be earned only when the employee is ordered to work by a supervisor. Such orders shall be given only when unusual circumstances arise. [Upon the effective date of this agreement t] Time worked over the normal workday [forty (40) hour work week] will be paid at one and one half (1½) times his normal salary and included in the next paycheck for the payroll period in which the overtime was worked. [Whenever possible] Overtime shall be paid in a separate check.

[B. No overtime worked shall be authorized or approved for payment unless the individual making the application for overtime pay has in fact worked his designated position for forty (40) hours during any given week. Sick leave shall not be considered as time worked for this purpose, however, holiday, vacation and personal leave time shall.]

C. Add this sentence:

No officer shall be required to perform mandatory overtime upon completion of his regular shift prior to going on vacation or before using a holiday or personal day.

Add these new sections:

F. (New) If an officer is required to work more than 16 consecutive hours, all hours after the 16<sup>th</sup> shall be paid at two (2) times the officer's hourly rate.

G. (New) An officer's shift shall include a 15 minute paid break.

### **Article XIII – Seniority**

Amend Section E to add this sentence.

However, switching to administrative shifts shall be done only with an officer's agreement.

### **Article XIV – Employee Expenses**

A. Upon the effective date of this Agreement, employees required to use personal vehicles in the pursuit of proper and necessary County business shall be reimbursed at the IRS rate [of thirty-one cents (\$.31)] per mile [for the term of the contract].

### **Article XV – Tuition Reimbursement**

Add:

Courses related to degrees in Public Administration, Business, English, Spanish, Education (with law enforcement emphasis), Police Science, and Criminal Justice shall be considered job-related for the purposes of this Article.

### **Article XVI – Retirement**

B. Employees who have retired or who shall retire with twenty-five (25) years or more of credited service in a State or local retirement system and at least 15 years of service to Burlington County or who have retired on an ordinary or accidental disability shall [be eligible to] have his (and his dependents) Hospital, Surgical, and Major Medical, Rx, or Health Maintenance Organization (HMO) benefits premium paid by the County. Said retirees shall receive the same level of benefits (including any out-of-pocket expenses and co-pays) that were available on the date immediately prior to his retirement. [The employer shall pay up to the same amount toward HMO coverage that it contributes toward alternative coverage for each such retiree. Any additional cost for HMO coverage or coverage for eligible dependents shall be the sole responsibility of the retiree.] Prior to being

eligible for this benefit, all retirees who are Medicare Eligible, [sixty-five (65) years or older] must enroll in [be carriers of] Medicare A & B. The County shall continue its current practice of payment of full coverage for the first 180 [ninety (90)] days following the date of retirement regardless of the number of years of service.

## **Article XIX – Work Rules**

Amend Sections B as follows:

B. Work rules shall be updated by the Employer as necessary. Copies of any changes or new work rules shall be distributed to each employee, posted on the bulletin boards and mailed to the Association to be inserted in said binder. A copy of any changes to the Administrative Plan Manual (“APM”) or post orders shall be provided to the Association. Changes to work rules, APM and Post Orders and new work rules shall not be implemented until the Association has had a minimum of 14 days to review and comment on same, emergencies excepted.

Amend Section D. 3 by adding Current employees/discretionary testing: before the existing text.

Amend Section D. 3 to include this final sentence: The Association shall be provided with the name of the computer program used by the County for random selection.

## **Article XXI – Grievance and Arbitration Procedure**

A. No change

B. Procedures: All members of the collective negotiations unit or the Association should [must] orally present and discuss [his] complaints with the [his] immediate supervisor on an informal[ation] basis prior to filing a formal Step 1 grievance.

Step 1: Within five (5) working days from the date of the grievable event or occurrence, the grievant or the Association shall prepare the [his] grievance in writing stating the remedy desired, and submit the same to the PBA President or his designee,[PBA Local #249] who shall have five (5) additional working days within which to approve the filing and submit same to the Jail Administrator.

Step 2: Replace “PBA Local #249” with “the Association”

Step 3: Replace “PBA Local #249” with “the Association”

C. No Change

D. No change

E. Extensions of time limits may be obtained only by written consent of the Association and the County [person designated to hear and determine the grievance]. The failure to adhere to the time limits herein unless extended shall automatically move the grievance to the next step.

F. The employee and Association shall receive at least [in writing] three (3) days written notice of time, date and location of hearing at all steps excluding Saturday, Sunday and holidays unless all parties agree to a shorter time period.

G. No Change

[H. Any grievable event may proceed to the next step by mutual agreement of the parties.]

I. No change.

J. (NEW) If a grievance involves the denial of a request for time off, the parties shall bypass the grievance procedure set forth above and proceed directly to expedited arbitration. An expedited arbitration hearing shall take place within 48 hours, or less if less time is available, before Arbitrator Gerard Restaino, in person or via telephone, whereupon Arbitrator Restaino shall issue a binding arbitration award at the close of the hearing. The parties may not file post-hearing briefs.

If a grievance involving the denial of a request for time off is sustained and the requested day(s) has already passed, the arbitrator shall award the grievant 2 days pay for each day off denied.

## Article XXIII – Officers’ Bill of Rights

Amend Sections F.6 and 7 as follows.

## F. Departmental Investigations

In an effort to ensure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

6. At every stage of the proceedings, the Department shall afford an opportunity for a member of the department, if he so requests, to consult with counsel and/or his Association representative before being questioned concerning a violation of the rules and regulations during the interrogation of a member of the department, which shall not delay the interrogation beyond 24 [one (1)] hours for consultation with his Association representative or attorney. A member shall also have the right to have counsel or an Association representative (the member's choice) present during the interrogation.

7. In cases other than departmental investigations, if an officer is under arrest or he is the target of a criminal investigation, he shall be given his rights, according to law [pursuant to current decisions of the United States Supreme Court].

10. (NEW) Any time an Officer is involved in a critical incident, which is defined as a shooting, near death experience, policing of fatal traffic crashes, or other situations involving significant human suffering, he/she has a right to immediate medical treatment, psychological treatment, and consultation with counsel, and a reasonable amount of time to give his report or account of the incident. Nothing in this clause is intended to hamper an investigation or incident and a timely report by the Officer involved.

## Article XXIV – Rights and Privileges of the Association

Amend Sections D and E. as follows.

D. The Association President shall have full release time from his regular shift without loss of pay to conduct Association business with the County. The President shall not be required to man a post but shall report to duty for his regular shift and shall thereafter conduct Union business for the remainder of his shift. The State Delegate, Treasurer and Recording Secretary, if on duty, shall be given time off for the purpose of attending the regular monthly meetings of the Association, suffering no loss of time or pay. If the President is ill or on vacation,

then the Vice President shall take his place. They shall in writing give the Employer one (1) week notice of said meetings.

E. In addition to that provided in Paragraph D, above [in each year of the contract the designated Union] representatives designated by the Association shall be granted a total, in the aggregate of 50 [fifteen] paid days of excused absences to conduct Union business away from the workplace. [Unpaid days may also be taken for this purpose according to the following schedule:

2005	13 days
2006	13 days
2007	13 days
2008	13 days]

F. The President of [PBA Local 249] the Association shall be permitted full release time with pay to conduct Union business [for the purpose of grievance proceedings, disciplinary hearings, arbitration, and Union related hearings, conferences and meetings, including but not limited to matters before PERC, the OAL, the DOP and the Superior Court of New Jersey in any matter in which the Union and the County are parties.]

[For this purpose, the term full release time shall mean that, upon notification to his superior officer, the PBA President is permitted to leave his post at any time in order to tend to Union business. The provision shall not apply in the event of a jail emergency.]

#### **Article XXXIV – Jury Duty**

A. If an employee is called to serve on a jury, the service time will not be deducted from any leave, and he will receive full pay, if his jury check is turned over to the Employer. Once an employee is notified of his call to serve he shall immediately notify the Jail Administrator. Employees who are called to jury duty shall be scheduled on a Monday to Friday day shift until jury duty is completed.

#### **Article XXXV - Administrative Rules and Regulations**

The Employer and the Association agree that all mandatory rules promulgated by the New Jersey Department of Personnel, Public Employment Relations Commission, Employment Relations Commission of the New Jersey Police Training Commission concerning hiring, firing, and training practices or

any other matters, whether or not specifically covered on this Agreement, shall be binding upon all parties.

## **Article XXXVII – Term of Agreement**

This agreement shall be effective as of January 1, [2005] 2009 and shall remain in full force and effect through December 31, [2008] 2012. This agreement shall be automatically renewed thereafter, unless notice is given in writing at least one hundred and twenty (120) days, prior to the expiration of this Agreement. In the event that such notice is given, negotiations for a new Agreement shall begin no later than ninety (90) days prior to the expiration of this Agreement. The time limits set forth herein are minimum limits and nothing hearing shall limit the right of any party to request contract negotiations at an earlier date.

## **Proposals Regarding Policies and Procedures Section 1080**

### **Sick Time Usage**

The schedule of discipline below shall apply to any employee who has exhausted all accrued sick leave time. Incidents shall be subject to full just cause review of whether discipline should be imposed based on facts and circumstances including the existence of a bona fide illness or other mitigating circumstance.

### **Distribution**

The language in this section should be eliminated from the policy.

## **Proposal regarding Policies and Procedures Section 1081**

4. Employees who are absent from duty for any of the reasons cited in item #3 above and who are not confined to a health care facility or who do not submit appropriate medical documentation to the jail administration office in advance or during their absence, shall remain at their residence during the hours of their normal work shift on the date(s) of their absence and shall be available for telephone communication with their appointing authority.

12. A discipline imposed under this policy as stated above shall be removed from an employee's record after 24 months provided no discipline for any attendance verification related offense has occurred during that period.

13. No home visits will take place nor will telephone calls be made between the hours of 10:30 p.m. and 6:00 a.m. Home visits and telephone calls shall not be used to harass an employee. Home visits and telephone calls shall be uniformly applied to all personnel on sick leave.

### **Additional Proposals Related to Sick Time Policies**

If the employer requires officers to have a land-line telephone, it shall reimburse the employee for the cost of such phone. If the employer does not agree to reimburse employees, than employees may utilize a cell phone if they do not have a land-line.

#### **Reciprocal Days** **Purpose**

To provide a means by which employees who occupy 24 hour per day, 7 day per week positions can temporarily reorganize their work schedule to attend to personal business.

#### **Procedure**

When circumstances demand an employee's absence from his/her shift on a given day, the employee may submit a request for a Reciprocal Day. A Reciprocal Day is a temporary reassignment between two employees with the same job title who are employed within the same organizational unit. Such reassessments must be mutually agreed upon by both employees, and must take place during the same workweek.

To be eligible for a reciprocal day, the petitioner must identify another employee with the same job title within the organizational unit, who will formally agree to work the shift in question. In exchange, the employee requesting the reciprocal day must formally agree to work a shift during the same workweek for the employee who agreed to the temporary assignments. If one of the assignments requires a current weapons qualification, valid driver's license or commercial driver's license, for example, the employee accepting that assignment must possess that qualification. Applications where employees are not properly qualified for the respective assignments shall be denied. Applications where employees are properly qualified will be approved.

To apply for a Reciprocal Day the petitioner and the co-worker who is willing to be temporarily reassigned will complete their respective portions of the attached Application for Reciprocal Day.<sup>4</sup> The completed application, which has been signed by both parties, will be submitted to the employees' department head at least five (5) days before the first schedule change. Applications that are submitted less than five (5) days in advance may be denied. No request for a reciprocal day will be unreasonably denied.

The department head, or designee, shall render a determination on the application for a Reciprocal Day within two days of receipt. The employees who cosigned the application are responsible for contacting the operations unit (for custody staff) or their department head (for non-custody personnel) to determine the status of their application. When the department approves the request, he or she will forward it to the operations unit (for custody) or the unit's timekeeper (for non-custody). Operations unit staff or the timekeeper will note the necessary scheduling assignments for the days on which the temporary reassessments will occur. When an employee agrees to work, as the applicant or co-worker, he/she shall be subject to all Department of Corrections rules and regulations and shall be subject to appropriate disciplinary action for any violation of rules and regulations on a Reciprocal Day he/she agreed to work.

### **STATUTORY FACTORS**

I am required to resolve this dispute based on a reasonable determination of the issues, giving due weight to those statutory factors set forth in *N.J.S.A. 34:13A-16g* deemed relevant. The nine statutory factors are as follows:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).

(2) Comparisons of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

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<sup>4</sup> I have not included the proposed application in this description of the PBA's final offer.

- (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
- (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
- (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C:34:13A-16.2); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62<sup>5</sup> (C40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services; (b) expand existing local programs and

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<sup>5</sup> In July 2010, N.J.S.A.40A:4-45.45 was amended by L. 2010, c. 44.

services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

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

## **BACKGROUND**

This interest arbitration proceeding involves Burlington County and the approximately 216 rank-and-file corrections officers who staff the BCDC and the CWRC.<sup>6</sup> The County, located in southern New Jersey, comprises 827 square miles; has the largest land area of all of New Jersey's 21 counties; and boasts numerous parks and natural areas as well as the most preserved farmland in the State (PBA Exhibit A-8).<sup>7</sup> In 2009, the County was home to an estimated 446,108 residents. Its population increased 5.4% since 2000, compared to a 3.5% increase

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<sup>6</sup> At the time of the hearing, the unit was comprised of 216 officers but had an approved capacity of approximately 223 positions (4T59-4T60; Exhibit C-22). There were 209 officers in 2009 and 199 in 2008 (Exhibits C-15 & C-21).

<sup>7</sup> County Exhibits are designated as Exhibit C-1 through -28. The first of the PBA's exhibits were marked Exhibit U-1, Exhibit U-2, etc. and I refer to them as such. However, the bulk of the PBA's exhibits are designated A through K, with each lettered exhibit further subdivided into numerical tabs. They are designated as, e.g., PBA Exhibit A-1).

statewide (PBA Exhibits A-2 and A-3). Burlington's 40 constituent municipalities consist of three cities; 31 townships, and six boroughs (PBA Exhibit A-8, p. 4).

For 2007, the County was ranked the seventh wealthiest in the State with a median household income of \$73,566 and a median family income of \$87,270 (PBA Exhibits A-3 and C-4). For 2000, the County was ranked the tenth wealthiest in the State and the 111<sup>th</sup> wealthiest in the nation (PBA Exhibit C-3). In 2008, 5.4% of County residents were living below the poverty line, compared to 8.7% statewide (PBA Exhibit A-2). Employment in the County centers around the agricultural, military, technology and retail sectors (PBA Exhibit A-8), and Burlington is home to both major corporations and 857 farms (PBA Exhibit A-8).

In April 2010, the County's Board of Chosen Freeholders introduced a \$221.2 million budget that, in the words of the County's budget message, reduced the actual amount to be raised by taxation for the third year in a row; cut the county tax rate for the 20<sup>th</sup> year in a row, and also reduced overall spending for the second year in a row (Exhibit C-14, sheet 3c). The budget message further reported that despite "an unprecedented decrease in ratables," between 2009 and 2010, the 2010 county tax rate reflected a decrease from the 2009 final rate and, further, represented an historical low of 0.3097 per \$100 of equalized valuation, the lowest level since before 1962 (Exhibit C-14, sheet 3c).

The message continued that the 2010 budget anticipated the layoff of 87 non-essential personnel (Exhibit C-14, sheet 3d) — although only 40 were ultimately laid off — compared with the layoff of 50 non-essential employees in 2009 (Exhibit C-13, sheet 3d). The budget message also explained that salaries and wages were increasing .14% while other expenses were decreasing 2.1% (Exhibit C-13, sheet 3c). In elaborating on the County's mission and goals, the budget stated that "the Freeholders are committed to providing a County budget that provides high quality basic services which meet the people's priorities and needs and which enhance the long-term common good of the County within the constraints of available financing sources and reasonable taxing policies" (Exhibit C-14, sheet 3e).

The 2009 and 2010 budget documents reflect the wide range of diverse services provided by the County through such departments as Resource Conservation; Economic Development and Regional Planning; Buildings and Grounds; Buttonwood Hospital; the Board of Elections; the Sheriff's Office; Roads and Bridges; and Social Services. The Department of Corrections is of course another such department.

In its role as operator of the BCDC and CWRC, the County provides secure custody to a daily fluctuating population of approximately 525 inmates. This population includes pre-trial detainees; individuals serving County time; and State-

sentenced prisoners. These incarcerated individuals have been charged with, or convicted of, a broad spectrum of offenses ranging from motor vehicle violations and domestic violence to armed robbery and murder (County brief, pp. 1-2).

The BCDC and CWRC operate 24 hours a day, 365 days a year and as such they require around-the-clock staffing. Correction officers currently have a fixed 5/2 schedule whereby they work the same five consecutive days each week, followed by two consecutive days off. They are assigned on a non-rotating basis to one of three shifts: 7:00 a.m. to 3:30 pm.; 3:00 p.m. to 11:30 p.m.; and 11:00 p.m. to 7:30 p.m. (PBA Exhibit J-1, p. 18). Shift selections are made pursuant to a seniority bidding system under which certain assignments may also be bid (PBA Exhibit J-1, p. 16).

BCDC officers guard a population of approximately 380 male inmates, including all maximum security male inmates and some individuals who are classified as medium or minimum security (1T12-1T15). These inmates are housed in six wings or tiers, each of which is divided into two pods. The BCDC was designed to operate under a “direct supervision” model whereby officers interact directly with inmates (3T55-3T57). Thus, inmates are permitted to engage in quiet recreation outside their cells for eight hours a day, during which time they are supervised by a wing officer, two recreation officers, and the officer staffing the control booth for the wing (1T19-1T20; 3T55-3T57). The control booth officer

is able to survey inmate activity via a large TV monitor that is linked to surveillance cameras in the dining hall, recreation room and other common areas (3T73-3T74). When the inmates of one pod are engaged in recreation, the inmates on the other pod are locked down in their cells (3T57).

Corrections officers are not ordinarily armed when they are in the presence of inmates. Instead, they are equipped with a radio and whistle and are instructed to “call a code” and request backup from supervisors in the event an inmate interaction threatens to spin out of control (3T141-3T142). Sergeants, but not rank-and-file corrections officers, are equipped with mace and handcuffs (3T141-3T142). On those occasions when a BCDC inmate must be escorted outside the facility for a medical appointment, two armed corrections officers complete the assignment (1T34-1T35; 2T9-2T10).

The CWRC in turn houses a population of approximately 161, including all female inmates and some minimum security male inmates. In the male wing, minimum security inmates have keys to their own cells and can leave them at will. However, they do not have keys to the gate that secures the wing itself (1T68). On the female side, which consists of four wings, the inmates have a day room and cell, with two to three inmates assigned to each cell (T1T70-1T72). Throughout the CWRC, one officer per shift is assigned to each wing or post. He or she is responsible for overseeing both the wing and the day room associated with it

(1T71-1T72). Some CWRC inmates are released for work details at area hospitals, cemeteries, and landfills. They are escorted to such assignments by unarmed corrections officers (1T71-1T73).

Local 249 unit members, like all New Jersey corrections officers, are empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law. *N.J.S.A. 2A:154-4*. In Burlington County, corrections officers receive one to two weeks of on-site classroom training when they are hired (3T64). In addition, all officers subsequently complete eight to twelve weeks of training at the Correction Officer Training Academy where they are instructed on the entire spectrum of corrections issues including use of force under Titles 2A and 2C of the New Jersey statutes; weapons training; self-defense tactics; techniques for interacting with inmates in different situations and settings; and training at the fire academy (1T11-1T12; 3T66-3T65). Officers are also taught how to take precautionary measures to ensure cleanliness; prevent infection; and avoid contact with bodily fluids. Officers further learn how to conduct a cell extraction, a procedure which is performed while officers are equipped with elbow pads, shin protectors, protective vests and gas masks (1T29; 3T78-3T81). Unlike some institutions, the BCDC and CWRC do not have specialized cell extraction teams and, therefore, all County officers are expected to participate in this procedure as needed (3T98-3T99).

Finally, the County mandates that all corrections officers must be qualified to carry a weapon (3T88). Toward that end, officers must attend a use of force class and then qualify at the County's firing range (3T89). Officers are required to re-qualify every six months (3T89).

In addition to working "on the floor" as a recreation officer, control booth officer, or wing officer (a position available only at the BCDC), County correction officers may serve in units that are in charge of training; inmate classification; and home monitoring electronic devices (1T28-1T36) . Other assignments include supply officer; transport officer; laundry supervisor; recreation officer; visitation area officer; and officer in the detention unit, where inmates with disciplinary problems are segregated from the rest of the population (1T31-1T37; 1T 74; 1T79-1T81). There is also a gang unit that attempts to identify gang members and isolate them from other members (1T35). Finally, a unit member may be a "special assignment officer," where the individual reports to work each day and receives assignments from the shift supervisor (1T7).

Among the dominant issues in this proceeding are wage increases; contract term; and the County's proposed work schedule. In addition, each party has submitted extensive, detailed proposals on such topics as sick leave, vacations, health benefits, seniority, holidays, discipline, and retirement.

The County and the PBA each urge that the nine statutory criteria weigh in favor of their respective proposals on all of these items, and they have each submitted comprehensive briefs and reply briefs as well as voluminous exhibits. The record includes, among other items, State and County census data; excerpts from the 2009 and 2010 County budgets; and the report of the PBA's financial expert Joseph Petrucelli, which he prepared after reviewing the County's budgets and audited financial statements for 2005 through 2009 (Exhibit U-2, p. 12). The parties' submissions also recent interest arbitration awards and PERC-compiled settlement data; contracts pertaining to other County employees; federal and state data on the cost of living; and information on private and public sector salaries and wage increases.

The PBA's witnesses were Local 249 President Robert Swenson; expert financial witness Petrucelli; and Correction Officers Edward Mason, Vernon Scott, Christopher Briggs, and Allen Still. The County's witnesses were Warden Ronald Cox; Senior Captain Lawrence Artis; and Daniel Hornickel, the County's Director of Human Resources.

In addition to this information and testimony, I take arbitral notice of two prior interest arbitration awards involving this unit, one of which is cited by the PBA. I also refer to the 2010 PERC Salary Analysis from the PERC website, as well as budgetary information prepared by the State Department of Community

Affairs, Division of Local Governmental Services (DLGS). Finally, I have reviewed the full budgets for calendar years 2009, 2010, and 2011, which are posted on the County's website.

Recent legislation also has a bearing on this proceeding. *L. 2010, c. 44*, approved July 13, 2010, amended *N.J.S.A. 40A:4-45.44 to 45.47*, to reduce the property tax levy cap for school districts, counties and municipalities from 4% to 2%. The Act states that it "shall be applicable to the next local budget year following enactment." In addition, *L. 2010, c. 2*, mandates that all municipal employees shall pay 1.5% of their base salary as a contribution toward health insurance premiums. It took effect on May 21, 2010, except for employees covered by a collective negotiations agreement in effect on that date. For those employees, the statute applies once the contract expires.

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

The following is a summary of the County's and the PBA's arguments.

## **COUNTY'S POSITION**

The County vigorously argues that each of the statutory factors firmly supports an award of its salary, work schedule, health benefits and other proposals. I start by summarizing the County's arguments in favor of its final offer on salaries and health benefits, and then detail its position with respect to its proposed work schedule. I address the County's arguments on the various other disputed proposals later in this opinion, in the course of ruling on those proposals.

### **Salaries and Health Benefits**

#### **Interest and Welfare of the Public**

The County begins its discussion of this factor by recognizing that correctional facilities constitute an essential public service and police function. As such, it acknowledges that corrections officers perform invaluable work that serves and protects the public. However, the County emphasizes that an arbitrator must carefully evaluate each party's final offer, and it insists that its salary and health benefits proposals are more fiscally responsible, and thus more aligned with the public interest, than those of the PBA.

The County is also not in complete accord with the PBA's view as to the nature and degree of the challenges faced by unit members. It contends that the testimony of various officers did not offer firm evidence that there is more gang activity, or more violent and disrespectful inmates, than in the past. It also

emphasizes that most worker's compensation injuries are sustained, not in altercations with inmates, but while performing more routine tasks. Finally, it questions the relevance of PBA-submitted studies concerning the stresses experienced by corrections officers. It maintains that the reports dealt with State of New Jersey corrections officers or officers in other states.

**Lawful Authority of the Employer; Financial Impact upon the Governing Body; and Statutory Restrictions Imposed Upon the Employer**

The County reasons that *N.J.S.A. 34:13A-16g(5), (6), and (9)* each require an arbitrator to assess the governmental employer's authority and ability to fund an arbitration award. The County stresses that the paradigm for making such assessments has changed substantially with the enactment of the 2010 amendments to the tax levy CAP, *N.J.S.A. 40A:4-45.44 through 45.47*, which took effect on January 1, 2011.

By way of background, the County explains that, for 2009 and 2010, counties were required to undertake two tax levy CAP calculations, after which they were obligated to adhere to whichever computation yielded the lower figure. Thus, for 2009 and 2010, the choice was between a 4.0% levy CAP, and a levy CAP equal to the lesser of 2.5% or a federally-prepared cost of living adjustment (hereafter "appropriations CAP"). *N.J.S.A. 40A:4-45.1a.*

By contrast, the County observes that for 2011 and subsequent years, counties must abide by the lesser of a 2% tax levy CAP under *N.J.S.A. 40A:4-45.44* through *45.47* or the appropriations CAP.

Within this framework, the County does not dispute that, during 2009 and 2010, it had some capacity to increase spending or taxes beyond the levels that it chose. However, the County emphatically argues that it would have been imprudent for it to have done so, especially in the face of growing public sentiment regarding the need to cut government spending and reduce public employees' salaries and benefits. In particular, the County strongly objects to Petrucelli's conclusion that the PBA's proposed wage increases could be funded using the difference between the actual amount of the 2010 tax levy (\$160,172,090) and the maximum permissible levy (\$165,697,907 (Exhibit U-2, p.2).

The County argues that Petrucelli's analysis ignores the fact that an increased tax levy in one year has a compounding effect; results in an upward adjustment of the CAP levels for the ensuing year; and effectively increases spending in subsequent years. The County also contends that Petrucelli's report does not take into account that the County would have placed itself at future risk because, in order to achieve the maximum permissible tax levy, it would have had to use all of the available CAP bank from 2008 and some of the 2009 bank (Exhibit U-2, p2). The County points out that drawing down on the CAP bank to

increase the tax levy to \$165,697,907, would have left it with only a modest CAP bank of \$1,623,637 going into 2011, when it is bound by tighter restrictions.

In this vein, and as an illustration of the difficulties that the County will likely face in the future, the County highlights that when the 2010 budget numbers are re-computed using a 2% CAP, the maximum allowable amount to be raised by taxation would be \$162,543,665 under the new formula – a difference of only \$357,632 from the 2009 tax levy (County's brief, p. 81). The County also points out that the 2010 amendments reduced the number of expenditures that are exempt from the CAP calculation.

In continuing its financial arguments, the County rejects Petruccielli's more general view that the County is on solid fiscal ground and well positioned to fund the PBA's offer. In this vein, it maintains that Petruccielli's own report (Exhibit U-2), reflects a steady downward trend in the County's finances, as exemplified by a decrease in new tax ratables of almost 50% between 2009 and 2010; a decrease in its equalized property values; and a precipitous drop in the County's available surplus from \$23,152,884 at the end of 2007 to \$16,349,126 in 2008 and \$12,870,650 at the close of 2009 (Exhibit U-2, pp. 2-4). While the County acknowledges that it has consistently appropriated about half of the available surplus for use in the next year's budget, it underscores that there is an enormous difference between using half of a more than \$23 million surplus in 2007 and half

of a 2009 fund balance that is less than \$13 million. In any case, the County does not agree that surplus monies should be used to fund salary increases for just one group of County employees.

The County also points out that its unexpended appropriated reserves declined from \$9.1 million in 2005 to \$3.2 million in 2009. In addition, the County notes that the \$3.2 million does not lapse into surplus until the end of 2010, with the result that this line item may be further reduced once all outstanding bills are paid.

The County similarly insists that an historical analysis of the County's cash balances shows sharp declines, with the County's available cash on hand dropping by almost half, from \$40,073,379 on December 31, 2005 to \$21,817,092 on the same date in 2009. Further, the County contends that Petrucelli "stumbled" when he testified concerning the County's unanticipated miscellaneous revenues.

The County asserts that Petrucelli acknowledged that he mistakenly included added and omitted taxes in the unanticipated miscellaneous revenue figure for 2009, yet did not do so for earlier years. In addition, the County maintains that Petrucelli erred in concluding that the County had substantially underestimated the revenues it would receive from the County Library in 2010. The County contends that a \$3.5 million payment received in 2009 represented the Library's reimbursement for indirect costs incurred by the County for 2006 through 2009;

the annual figures for subsequent years will be much lower (Exhibit C-4). In any case, however, the County maintains that its unanticipated miscellaneous revenues do not constitute a basis on which to fund the union's proposed wage increases.

Finally, the County contends that its low debt ratio does not translate into a conclusion that the County has the ability to pay for the PBA's proposed increases. It cites the fact that any borrowing for capital projects or improvements would require it to plan for additional expenses in the operating budget because an employer must budget monies for a 5% down payment and additional debt service.

The County concludes its analysis of *N.J.S.A. 34:13A-16g(5)(6)* and (9) by highlighting the magnitude of the increases sought by the PBA. It asks that the arbitrator evaluate the PBA proposal in light of the County's "unwavering commitment to providing the most efficient governmental services at the least costs to its constituent taxpayers," as exemplified by the 2009 and 2010 budget messages detailing the County's low tax rate. The County relies on the following cost analysis, as set forth in Exhibits C-15 and Exhibit C-16. This analysis includes the cost of increments attributable to junior officers moving through the salary guide, as it would exist for each year of the agreement under each party's proposal.

	<b>PBA Proposal</b>	<b>County Proposal</b>
2009	\$12,143,299	\$11,452,258
2010	\$13,412,867	\$12,060,457

2011	\$14,828,228	\$12,423,106
2012	\$16,322,970	

The County observes that under the PBA's proposal, the Senior Step salary would increase by a "staggering" 50.4% over the life of the agreement. By contrast, it claims that its proposal is more realistic and fiscally responsible yet would still increase the unit's base salary by \$1,504,622 over three years. Overall, the County urges that its ability to fund the PBA's proposal for 2011, when the 2% levy CAP is in effect, is uncertain at best. Indeed, the County argues that even if the PBA were able to demonstrate that the County could theoretically fund its salary proposals, it would not be prudent for the arbitrator to enter such an award in these fiscally challenging times, where the State and national economies have yet to show signs of sustained improvement.

The County also concludes that fiscal and other considerations warrant the award of its health benefits proposals. The County reasons that it provides corrections officers with outstanding, low-cost health and prescription drug benefits. The County explains that the intent of its proposal is to make PBA co-payments consistent with those being paid by all of the County's other union and non-union employees.

#### Cost of Living

The County writes that a review of BLS data indicates that both parties' proposals are higher than the Consumer Price Index for All Urban Consumers

(CPI-U) for 2009 and 2010. It cites a June 2010 BLS news release for the Philadelphia-Wilmington-Atlantic City region, which indicates that the CPI-U rose 1.9% between June 2009 and June 2010 (Exhibit C-3). The release also reflects that the CPI-U increased 3% between December 2008 and December 2009 (Exhibit C-3).

The County writes that the PBA's proposal will far exceed projected cost of living increases. Evaluated within this context, the County contends that its proposal with respect to the maximum salary guide step is fair and reasonable and will allow officers to keep pace with increases in the cost of living.

#### **Continuity and Stability of Employment**

The County maintains that the current salary system promotes continuity and stability of employment for corrections officers, as evidenced by the fact that Exhibits C-15 and C-16 show that 57% of the unit was hired before 2004 and is still employed. The County believes that these employees are highly likely to continue their employment if the arbitrator awards the County's inherently fair and equitable proposal.

The County also asserts that its proposed salary guide presents a sound plan for encouraging newer employees to pursue a career in Burlington County, because it raises the minimum salary to \$38,971 in 2009 and provides for a maximum salary of \$61,896 for step 7 in 2011. By contrast, the County claims that the

PBA's proposal for increases of 14.27% for 2009; 8.26% for 2010; 10.55% for 2011; and 10.88% for 2012 are astronomical in light of the fact that the average increase for all interest arbitration awards issued in the first half of 2010 was just 2.43% (Exhibit C-17). The County concludes that such increases would impair its ability to grant future raises to this and other negotiations units.

### **Comparison of Wages and Conditions to Employees in Public and Private Employment**

The County observes that "the final and perhaps most contentious" criterion is *N.J.S.A. 3413A-16g(2)*, which requires the arbitrator to compare the unit's compensation package with the wages and working conditions of employees in private employment in general; public employment in general; and public employment within the same or similar jurisdictions. The County turns first to comparisons with the private sector, citing the reports that were prepared by the New Jersey Department of Labor and Workforce Development ("NJWLD"), and that were in turn issued by PERC.

The County notes that between 2007 and 2008, average private sector wages statewide increased 2.5% from \$53,594 to \$54,932 (PBA Exhibit E-1). For Burlington County itself, the County notes that private sector wages increased 2.6% from \$46,028 in 2007 to \$47,223 in 2008 (PBA Exhibit E-1). In light of this data, the County reasons that its proposal for a 2.5% increase for 2009 is very close to the raises received by private sector workers for 2008. In addition, it argues that

its proposal to “hold the line” on raises for 2010 and 2011 reflects the current harsh economic realities, including a recession that lasted throughout 2009 and much of 2010. By contrast, it characterizes the PBA’s proposal as excessive and unreasonable.

With respect to increases received by public employees in general, the County notes that the NJLWD report does not distinguish between federal, State, and local government employees in Burlington County and those categories of workers who are employed throughout the State. As such, it urges that the NJLWD figures, which showed adjustments between 2007 and 2008 of -0.3% for federal workers; 5.8% for State workers; and 3.4% for local government workers, are less relevant than the U.S. Department of Labor National Compensation surveys for Philadelphia– Camden-Vineland City for 2009 and 2010 (Exhibits C-18 and C-19). Those documents show that the median salary for a corrections officer in selected counties in Pennsylvania, Maryland, and New Jersey (including Burlington) area was \$45,053 in both 2009 and 2010 (Exhibits C-18 and C-19). That annual compensation translates into a median salary of \$21.66 per hour.

The County points out that the salaries for its own corrections officers compare favorably to these figures, since the average unit salary was \$54,795 for 2009 or \$26.24 per hour (Exhibit C-21). Under its own proposal, the County states that the average unit salary would increase to \$55,835 in 2010 and \$57,514 in 2011

(Exhibit C-22). Accordingly, it reasons that the U.S. Department of Labor survey favors the award of the County's wage offer rather than that of the PBA, which would result in average salaries of \$58,102 for 2009; \$62,097 for 2010; \$68,649 for 2011; and \$75,569 for 2012.

The County also relies on County Exhibits 21 and 22 in addressing the final sub-factor in *N.J.S.A. 34:13A-16g(2)*, which requires comparisons with employees in the same or comparable jurisdictions. The County maintains that these exhibits show that the average salary in the corrections unit is higher than that in most of the County's eight other negotiations units. The salary information in these exhibits is reproduced below.

#### 2009

<b>Representative</b>	<b>Count</b>	<b>Total Salary</b>	<b>Average Salary</b>	<b>Percentage of Work Force</b>
PBA 320 (Prosecutor's Sgt. & Lt.)	13	\$1,258,517	\$96,809	1%
PBA 249 Superior Correction Officers	33	\$2,273,525	\$68,895	2%
PBA 320 (Prosecutor's Detectives and Investigators)	34	\$2,296,917	\$67,556	2%
FOP 166 (Sheriff's Officers/Sgt./Lt.)	60	\$3,292,88	\$54,881	4%
<b>PBA 249 (Corrections)</b>	<b>209</b>	<b>\$11,452,258</b>	<b>\$54,795</b>	<b>14%</b>
CWA 1034 (Highway Supervisors)	16	\$ 730,314	\$45,645	1%
CWA 1036 County	1,094	\$42,110,296	\$38,492	75%

CWA 1036 Prosecutor's Office Clerical	33	1,173,888	\$35,572	2%
CWA 1034 (Super. Elections)	15	452,355	\$30,157	1%
<b>TOTAL ALL REPRESENTED</b>	<b>1,461</b>	<b>\$61,508,916</b>	<b>\$42,101</b>	<b>100%</b>

### 2010

<b>Representative</b>	<b>Count</b>	<b>Total Salary</b>	<b>Average Salary</b>	<b>Percentage of Work Force</b>
PBA 320 (Prosecutor's Sgt. & Lt)	13	\$1,313,038	\$101,103	1%
PBA 249 Superior Correction Officers	33	\$2,280,835	\$69,116	2%
PBA 320 (Prosecutor's Detectives and Investigators)	26	\$1,883,721	\$72,451	2%
FOP 166 (Sheriff's Officers/Sgt./Lt.)	58	\$3,336,162	\$57,520	4%
<b>PBA 249 (Corrections)</b>	<b>216</b>	<b>\$2,060,457</b>	<b>\$55,835</b>	<b>15%</b>
CWA 1034 (Highway Supervisors)	16	\$ 782,446	\$48,903	1%
CWA 1036 County	1,077	\$40,579,669	\$40,298	72%
CWA 1036 Prosecutor's Office Clerical	33	1,175,446	\$35,620	2%
CWA 1034 (Super. Elections)	15	443,765	\$31,698	1%
<b>TOTAL ALL REPRESENTED</b>	<b>1,403</b>	<b>\$62,542,500</b>	<b>\$44,578</b>	<b>100%</b>

The County asserts that these exhibits demonstrate that the existing compensation structure, as augmented by the County's proposals, will continue to confer financial rewards upon corrections officers that far exceed those enjoyed by

the vast majority of the County’s workforce. Moreover, the County rejects any contention that corrections officer salaries should be on a par with those of detectives and investigators in the County Prosecutor’s Office. The County reasons that the duties and qualifications of the two positions are vastly different, with detectives assuming wide-ranging responsibility for investigating crimes, apprehending suspects, and filing criminal charges. By contrast, the County notes that corrections officer duties are limited to guarding the individuals incarcerated. It adds that detectives must generally hold a four-year college degree or have significant experience as a municipal police officer; further, they must attend agency training at the full police academy.

The County also believes that comparisons with other County negotiations units support the award of its health benefits co-payments proposals. The County contends that it is simply seeking to have this unit pay the same fees as all other County employees.

Finally, the County addresses the compensation of corrections officers in other New Jersey counties, which is a key focus of the PBA’s arguments. The County eschews such comparisons, contending that it would be “patently unfair” to separate out corrections officers from other County employees on the basis of external comparisons. In particular, the County maintains that county correctional

facilities in northern New Jersey are not valid or realistic comparisons in this proceeding.

With respect to southern New Jersey counties, the County cites PBA exhibits showing that violent crime is significantly lower in Burlington than in neighboring Camden and Atlantic counties. While the County also acknowledges that one PBA exhibit shows a recent 6% increase in crime in Burlington County, it argues that the PBA has not proven that this increase corresponds to a rise in the number of inmates incarcerated in the County. In addition, the County asserts that the PBA has not demonstrated that the current group of inmates is any more dangerous to corrections officers than prior populations.

Indeed, the County emphasizes that Burlington has one of the highest officer to inmate ratios among county correctional facilities in New Jersey, thereby making it one of the safest working environments for corrections officers. Relying on Exhibit C-24 (which shows the total number of inmates and officers in each facility), the County calculates the following corrections officers (C/O) to inmate (I/M) ratios:

Atlantic	1 C/O to 3.99 I/M
<b>Burlington</b>	1 C/O to 2.46 I/M
Camden	1 C/O to 4.03 I/M
Cape May	1 C/O to 3.10 I/M
Cumberland	1 C/O to 2.88 I/M
Gloucester	1 C/O to 4.84 I/M
Monmouth	1 C/O to 4.10 I/M
Ocean County	1 C/O to 3.14 I/M
[County's brief, p. 51]	

In concluding its comparability discussion, the County stresses that the record includes insufficient information to compare unit members' salaries with those in other New Jersey corrections departments. It maintains that there is no evidence concerning the design of other correction facilities; their staffing requirements; supervision philosophies; number of officers per shift; or the nature of the inmates in custody.

Overall, based on its analysis of all of the relevant statutory factors, the County urges that its wage proposal is far more prudent in these unprecedented economic times than the exorbitant increases sought by the PBA.

### **Work Schedule**

A major focus of the County's presentation is its proposal to change from a 5/2 to a 4/3 work schedule, wherein all employees would work 10.5 hours per day, four days a week, on either a Sunday through Wednesday or a Wednesday through Saturday schedule (Exhibit C-8h). As a threshold matter, the County believes that it has a firm legal basis on which to unilaterally implement the 4/3 work schedule, and it cites several PERC and Court decisions that restrained arbitration over work schedule changes that had been imposed in order to address supervision or operational issues. Nevertheless, it has submitted the work schedule to this arbitrator "for his determination in relation to the topics that encompass impact bargaining over the changes that accompany a revised work schedule." In

particular, the County points to its proposals to buy back holidays; convert sick and vacation time to hours; and make overtime assignments based on inverse seniority.

With respect to the merits of the 4/3 schedule, the County emphatically argues that this transition is firmly supported by several statutory criteria. For example, the County urges that its “very compelling and credible presentation” demonstrated that it is in public’s interest to award a schedule that will allow for better training; save overtime costs; and permit management to assign sufficient staff during the busiest and most active times of the day.

Similarly, the County asserts that the financial impact of the current schedule is unsustainable and, further, states that the new schedule will enable the County to spend taxpayer funds in a strategic way. Finally, the County strongly maintains that the new schedule will advance the continuity and stability of employment by reducing stress and increasing job satisfaction. In this regard, the County underscores that the 4/3 work schedule will afford officers a greater number of days off, including a portion of each weekend. In support of these claims, the County cites the hearing testimony of Hornickel, Artis, and Cox and the exhibits presented at the hearing, particularly Exhibit C-8, a power point presentation entitled “2009: A Time for Change.”

The County states that it is axiomatic that the party proposing a change in an interest arbitration proceeding bears the burden of justifying it. It maintains that it

has met this burden through the testimony of Hornickel and Cox, and Exhibits C-5a through 5d and Exhibit C-6, all of which establish that there is a chronic problem with absenteeism and productivity among corrections officers. Thus, the County states that Exhibit C-5a shows that most absenteeism at the BCDC and CWRC is attributable to sick leave call outs; family leaves; suspensions; leaves of absence without pay; worker's compensation leaves; absences without approval; union leaves; and no call/no show incidents.

Based on this exhibit, the County extrapolates that the behavior of correctional staff generates approximately 60-66% of all overtime hours incurred. Other causes of absenteeism or overtime, as tabulated in Exhibit C-5a, include training, jury duty, police academy, paperwork, and a broad category "schedule" which generated 21,220.50 hours of overtime in 2005 compared to 24,824.50 hours for paid sick leave. Exhibit C-5a shows the total overtime hours for 2005 through 2010 as follows:

2005	100,880.00
2006	88,651.00
2007	105,051.00
2008	98,515.00
2009	88,464.50
2010	33,991.30 (January through June 30)

In addition, the County asserts that Exhibit C-5b proves that a disproportionate amount of sick leave call outs occur on weekends, even though fewer staff are assigned during that time period. The following chart, derived

from Exhibit C-5b, shows the number of paid and unpaid sick days taken on each day of the week during 2007 through 2010. The figures for 2010 reflect January 1 through June 30 data.

	2007 Paid		2008 Paid		2009 Paid		2010 Paid	
	Paid	Unpaid	Paid	Unpaid	Paid	Unpaid	Paid	Unpaid
<b>Monday</b>	621	228	418	147	423	50	199	14
<b>Tuesday</b>	550	152	407	96	422	60	188	13
<b>Wednesday</b>	563	168	403	98	384	48	217	0
<b>Thursday</b>	583	178	474	114	435	53	228	1
<b>Friday</b>	586	182	529	118	439	64	223	13
<b>Saturday</b>	661	216	524	143	482	71	218	13
<b>Sunday</b>	679	294	569	191	541	82	229	13
<b>Totals</b>	4,243	1,418	3,324	907	3,126	428	1,502	67

The County also highlights Hornickel's testimony to the effect that, over the course of his eleven years as an Assistant Solicitor and then as Director of Human Resources, he has identified several other reasons why the 5/2 schedule does not optimize staffing resources. These include lack of productivity among a large percentage of corrections staff and a history of complaints by officers (during prior labor negotiations), wherein unit members expressed concerns about their lack of time off and the difficulty of striking a balance between work and family.

The County continues that Hornickel also explained that the current schedule generates too much overtime, especially mandatory overtime, because of

too many vacant slots on the work schedule. The County also alleges that the schedule triggers union grievances and employee complaints about being denied paid time off and has given rise to union and management concerns about insufficient time for training on such issues as risk management, loss control and safety issues. Finally, the County maintains that it is difficult to allocate staff among the various shifts under the 5/2 schedule.

Against this backdrop, the County maintains that it has proposed a work schedule that will encourage greater attendance by reducing the number of days that officers would need to report to duty. In addition, the County writes that the new schedule would afford all employees, including those who currently work weekends, either a Saturday or a Sunday off. It reasons that Artis's testimony in particular supports the proposed schedule change since he maintained that many call outs are attributable to officers' desire to obtain a "three piece" – three consecutive days off. In addition, Artis opined that the 4/3 schedule would facilitate training, since all officers would report to duty on Wednesdays. By contrast, Artis explained that training now has to be done shift by shift and entails overtime for both the training officers and the individuals being instructed.

In further explaining its proposed work schedule, the County emphasizes that its proposal is well structured; provides for continuity at every single position throughout both facilities; and is designed to provide coverage that coincides with

the inmates' daily routine. In this regard, the County contends that Exhibit C-8k shows that inmates are most active between 10:00 a.m. and 4:30 p.m. because of lunch, attorney visits, classification meetings, law library hours, visiting hours, and inmate hearings. When the staffing patterns under the proposed schedule (Exhibit C-8h and C-8j) are compared with those under the current schedule (Exhibit C-5d), the County underscores that the 4/3 would enable more officers to be assigned during the busiest part of the day, because there would be an overlap in staff working the 8:00 a.m. to 4:30 p.m. and 10:00 a.m. to 8:30 p.m. shifts. In addition, at the BCDC there would be a supplemental 12:00 p.m. to 10:30 p.m. shift.

The County also espouses the predictability of the proposed work schedule, where every officer would work either Sunday to Wednesday or Wednesday through Saturday. By contrast, the County cites the Warden's testimony to the effect that there are multiple formats under the 5/2 schedule, with some employees (41 senior officers) having both Saturday and Sunday off, while others are off Sunday/Monday, Tuesday/Wednesday, or Wednesday/Thursday. The County suggests that this system is burdensome to supervisors who cannot easily recall who will be reporting on any given day.

The County further stresses that its proposal would double the number of bidden posts, enabling all officers to select their days of work, shift, facility and post. At the same time, the County maintains that the proposal affords

management a measure of flexibility because more employees would be deployed as special assignment officers for a portion of their shifts. Finally, the County argues that the 4/3 schedule would reduce mandatory overtime, which would be available in four hour blocks as opposed to the eight-hour blocks under the current schedule.

Exhibit C-8n, part of the County's power point presentation, includes this slide.

### **How is MOT Addressed**

- OT will still exist but we hope to reduce, if not eliminate the need for MOT
- Voluntary OT lists would still take precedence
- With all staff reporting on Wednesdays, there would be no MOT on Wednesdays
- MOT during your 3 other days would be in 4 hour blocks
- If needed, MOT utilized by inverse seniority

In addition to outlining the above-noted arguments in favor of the 4/3 schedule, the County goes on to state that the PBA has offered very little in the way of testimony or exhibits to counter the County's presentation. The County notes that while union witnesses questioned whether unit members could arrange child care before the start of a 6:00 a.m. shift, they did not rebut Hornickel's counter-assertion that employees now routinely report prior to 7:00 a.m. to obtain voluntary overtime. The County also writes that the union proffered no evidence

that unit members would have to pay for five days of day care even if they required only four.

The County also rejects the union's suggestion that the 4/3 proposal is necessarily flawed because the County neither consulted outside studies on similar schedules nor attempted to ascertain whether a majority of unit members were in favor of it. The County responds that it lacks the authority to directly poll corrections officers on job satisfaction or stress levels. It also comments that outside studies concerning corrections officers in other jurisdictions are not necessarily probative of life as a corrections officer at the BCDC or CWRC. In this regard, it cites Artis's testimony about the merits of the direct supervision approach.

Contrary to the PBA's position, County also strongly disagrees that the denial of the employer-proposed 4/4 work schedule in *City of Englewood and Englewood PBA Local No. 216/Englewood Supervisory Officers' Association*, P.E.R.C. Docket Nos. IA-2007-088 and IA-2007-100 (2008), dictates the same result here. Preliminarily, the County asserts that *Englewood* is not dispositive of the instant work schedule issue because *Englewood* involved a municipal police department, not a County corrections department. In any case, however, the County notes that the arbitrator decided not to award the schedule in *Englewood* because the proposal lacked specificity; did not outline what the new shift hours

would be; and did not detail how many officers would be deployed on each shift. In addition, *Englewood* found that the City had not met its burden of proving that the schedule would reduce sick leave, overtime, and employee injuries; nor did the City show that implementation of a 4/4 schedule was the best way to assign more officers during hours when activity levels were higher.

Unlike the employer in *Englewood*, the County insists that it has put forward a detailed proposal with shift times and staffing levels. In addition, it states that it offered uncontroverted testimony by Artis and Hornickel to the effect that the schedule would reduce sick leave, overtime, and injuries; improve officers' work-life balance; and adjust staffing levels in accordance with workload and inmate activities. For all of the foregoing reasons, the County urges that the 4/3 schedule be awarded.

### **PBA POSITION**

The PBA emphatically argues that its final offer is consistent with all of the statutory criteria and should be awarded in its entirety. Conversely, it contends that the County's proposal would destroy the morale of a negotiations unit that is already underpaid and experiencing relatively high rates of turnover. An overarching point that the PBA makes throughout its discussion is that the County's offer of 2.5% for 2009, followed by 0% increases in 2010 and 2011, translates into .83% per year. Further, the PBA maintains that, when the statutorily

mandated health benefits contribution of 1.5% is taken into account, the overall contractual increase is reduced to 1% over the contract term or .33% per year.

I begin with a summary of the PBA's arguments in favor of its final offer on salaries and health benefits, and then detail its position with respect to the County's proposed work schedule. I address the PBA's arguments concerning the various other disputed proposals toward the end of this opinion, in the course of ruling on those proposals.

### **PBA Overview – Demographics and Finances**

As a precursor to its discussion of the several statutory criteria, the PBA presents an overview of the County's demographics and finances; the unit's existing compensation and benefit structure; and the dangers faced by corrections officers in the course of their work. The PBA characterizes Burlington as dynamic and growing, with a high quality of life. It points out that the County is home to two major military bases (Fort Dix Army Base and McGuire Air Force Base), as well as to such top corporations and businesses such as Lockheed-Martin, Virtua Memorial Hospital, CVS Caremark, Medco Health Solutions, Inc., and several other entities. The PBA highlights the County's 2008 Economic Resource Guide, which extolled the area's potential for growth (PBA Exhibit A-8).

Turning to the County's finances, the PBA maintains that Burlington is financially sound and has not suffered from the economic downturn to the same

extent as other parts of the State and country. The PBA asserts that the County has maintained a healthy surplus and significant cash balances without raising taxes. It adds that this employer is able to fund the PBA's requested increases for prior, current, and future years, a conclusion that it states is supported by Exhibit U-2, the report prepared by its financial expert, Petrucelli, a certified public accountant (CPA); a forensic certified public accountant (FCPA), and a certified valuation analyst (CVA) (Exhibit U-2, p. 13). By contrast, the PBA notes that the County did not present expert financial testimony or analysis and, further, submitted only partial budget documents, which the PBA claims should be disregarded.

In summarizing the County's financial strengths, the PBA claims that the County does not have any tax levy CAP issues because the County's 2010 budget did not come close to the lesser of the two applicable CAP calculations. The PBA notes that Petrucelli's report included computations under the appropriations CAP law (which authorized a 0% increase for 2010 but allowed use of the 2008 and 2009 CAP banks) and the 2007 levy CAP statute, which provided for a 4% levy CAP. Petrucelli observed that:

The County could have utilized the maximum Chapter 62 laws of 2007's CAP levy of \$165,697,907.00. However, in the 2010 proposed Budget the County elected to forego \$5,525,817.00 . . . and instead utilized a lesser levy of \$160,172,090.00. This indicates the County does not have CAP limitation issues. [Exhibit U-2, p. 2]

The PBA continues that Petrucelli's report shows that the County has been able to generate fund balances since 2005 and has also consistently anticipated a

portion of those balances in the ensuing year's budgets, thereby allowing it to hold down taxes. The PBA adds that the County has also repeatedly spent less than it appropriated in any given year, thus providing it with additional revenues not anticipated. The PBA highlights the following charts from Petrucelli's report, which illustrate the County's Use of Surplus and Excess Results from Operations, Unexpended Appropriation Reserves, and Cash Balances.

**Use of Surplus/Excess from Operations**  
**[Exhibit U-2, p. 3]**

Burlington Cty. Surplus	Budgeted 2010	Actual 2009	Actual 2008	Actual 2007	Actual 2006	Actual 2005
<b>Surplus Used in Budget</b>	\$7,600,000)	(\$8,220,586.05)	(\$14,400,00.00)	(\$10,600,000)	\$13,100,000)	\$14,775,00)
<b>Excess from Operations/ Revenue</b>		4,742,110.65	\$7,596,241.32	\$15,654,509.57	\$7,360,044.78	\$13,978,779.95
<b>Expenditures Included Above Are by Statute Deferred Charges to the Budget of the Succeeding Year</b>						
<b>Fund Balance as of January 1</b>	\$12,870,650.12	\$16,349,125.12	\$23,152,884.20	\$18,098,374.63	\$23,838,329.85	\$24,634,549.90
<b>Fund Balance as of December 31</b>		\$12,870,650.12	\$16,349,125.52	\$23,152,884.20	\$18,098,374.63	\$23,838,329.85
<b>Percentage of Surplus Used</b>	59%	50%	62%	59%	55%	60%

**Unexpended Appropriation Reserves**  
**[Exhibit U-2, p.4]**

**YEAR**

<b>2009</b>	<b>\$3,218,182.50</b>
<b>2008</b>	<b>\$4,245,056.67</b>
<b>2007</b>	<b>\$5,190,778.78</b>
<b>2006</b>	<b>\$8,458,922.62</b>
<b>2005</b>	<b>\$9,118,225.22</b>

**Cash Balances**  
**[Exhibit U-2, p. 4]**

<b>Years Ending</b>	<b>Cash</b>
12/31/2009	\$21,817,092.85
12/31/2008	\$27,556,117.94
12/31/2007	\$35,921,438.89
12/31/2006	\$33,600,460.24
12/31/2005	\$40,073,379.17

In elaborating on its fiscal analysis, the PBA maintains that the County's Annual Financial Statements from 2006 through 2009 illustrate that it routinely receives millions of dollars in revenues that were not anticipated in the budget for the relevant year, a circumstance that, according to the PBA, further demonstrates the County's ability to generate surplus. In particular, the PBA notes that, in its 2010 budget, the County substantially underestimated the "indirect cost" line item by anticipating \$1,551,067 for 2010, when \$4,326,067 was realized in 2009. Similarly, it observes that, during 2009, the County received \$21,543,165.49 in miscellaneous section "D" revenues *after* the 2009 budget was adopted. It further underscores that, unlike municipalities, county tax levies are guaranteed.

The PBA also writes that “billions of dollars of stimulus funding” is available from federal and state sources; the County has had many opportunities to request funding; and has been allocated grants in the past, including \$10.5 million in federal funding for road projects for 2009 and \$2 million in State road maintenance grants for 2010. The PBA also compliments the County for its innovative methods of increasing revenue by, *e.g.*, auctioning preserved farmland to farmers and increasing fares on its bus system.

### **PBA Overview – Corrections Officer Responsibilities**

Given this positive budgetary picture, the PBA asserts that its proposed wage increases are fully warranted, especially in view of corrections officers’ hazardous and stressful job responsibilities. In this regard, the PBA notes that tier officers must conduct a minimum of three random cell searches per shift; routinely perform random unscheduled shakedowns throughout the BCDC; and sometimes search inmates in the cafeteria (1T31).

The PBA also highlights that transportation officers must complete their assignments without special protective gear and without being advised whether the inmate in their charge is infectious or carrying any blood-borne pathogens (2T12-2T13). Classification officers who search inmates when they report to the facility face similar exposures (2T16-2T19) and the PBA cites Officer Briggs’s testimony to the effect that several officers have contracted staph infections after being

exposed to inmates (2T21). The PBA adds that union witnesses, as well as Artis himself, described how inmates have thrown urine and feces at them; indeed, Artis recalled one inmate who engaged in this activity quite frequently (1T46; 3T67-3T68).<sup>8</sup>

The PBA further emphasizes that tier and recreation officers routinely come into direct contact with inmates pursuant to the County's direct supervision model. Thus, when inmates are led out of their cells for recreation, two recreation officers are confined in an enclosed "sally port" with numerous prisoners (1T24). At other times, five corrections officers and one superior officer will supervise up to 80 prisoners in the dining hall (1T26-1T27). Because of these working conditions, the PBA describes how corrections officers must wear shank-proof vests to protect themselves from the sharpened spoons, toothbrushes and razors that are routinely uncovered inside the correctional facilities (1T30). The PBA points out that an officer can be attacked by inmates at any time, and it points to Swenson's description of several colleagues who were assaulted by inmates, some of whom were prompted to retire early as a result of the injuries sustained (1T43-1T44).

Citing the testimony of Officers Swenson and Scott, the PBA further maintains that gang membership and activity has increased over the last ten years, a circumstance that the union views as a major threat to unit members (1T14-

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<sup>8</sup> Artis recalled one individual who had "mastered" this practice but also characterized it as rare among the inmate population as a whole (3T66-3T67).

1T15). In part because of this gang presence, Officers Swenson and Scott testified that inmates are coming in at a younger age, and are more violent and disrespectful than in the past (1T14;1T82).

The PBA contends that as a byproduct of these working conditions, corrections officers are at an increased risk for health problems. Indeed, it notes that in 1994, the Society of Actuaries concluded that corrections officers had the second highest mortality rate of all occupations, with an average life expectancy of only 58 years (PBA Exhibit H-1, p. 3). The PBA also cites national statistics showing that, during 2002, an average of 88 officers per day were assaulted by inmates. The same federal study reported that 39 corrections officers were killed in the line of duty between 2000 and 2004 (PBA Exhibit H-1, p.2).

The PBA also observes that the New Jersey Department of Corrections has recognized that occupational stress may prompt corrections officers to turn to self-medication behaviors with drugs, alcohol, or tobacco; in addition, between 2000 and 2002, the Department saw a 22% increase in domestic violence among corrections officers (PBA Exhibit H-1, pp. 2-3). Finally, the PBA comments on the tragic reality that suicide is a major problem affecting law enforcement officers in general and corrections officers in particular. Between 2003 and 2007, the New Jersey Police Suicide Task Force Report recorded 55 suicides among New Jersey

law enforcement officers; nearly 30% of these fatalities were corrections officers (Exhibit H-3, p. 5).

Against this backdrop, the PBA turns to a consideration of each of the statutory factors.

### **Interest and Welfare of the Public**

The core of the PBA's analysis concerning *N.J.S.A. 34:13A-16g(1)* is that the award of the County's final offer would severely undermine the morale of unit members, thus damaging both the public and corrections officers themselves. Conversely, it reasons that award of its own offer would benefit officers and the community. The PBA also insists that its offer is well within the County's financial ability.

In the latter vein, the PBA focuses on the financial data summarized earlier with respect to the County's cash balances, ability to regenerate surplus, and its lack of CAP limitations. The PBA observes that, under the 2010 budget, the County had \$5,525,817 in taxation authority that would allow it fund the wage increases sought by the PBA. The PBA adds that the County could have obtained additional authority if it had passed a resolution to raise the appropriations CAP to 3.5%.

In underscoring the County's financial soundness, the County notes that it has a low debt burden; has historically used only 50% to 62% of its surplus for

budgetary purposes; and, as of December 31, 2009, had an impressive \$21,817,092.85 in cash on hand. Despite these fiscal strengths, the PBA stresses that the County has submitted a final offer that would negligibly increase unit compensation by a mere 1.0% over the term of the contract. The PBA continues that the County's proposed 2009 raise would be whittled away by the statutorily-mandated health care contributions, which commenced in or around May 22, 2010. Indeed, the PBA surmises that if the County's health benefits proposal were also awarded, unit members would likely suffer a net loss in pay, since they would be required to pay 15% of the monthly health benefits premium, or 1.5% of salary, whichever is greater.<sup>9</sup> The PBA argues that this would be a devastating scenario for a unit that is already the third lowest paid among all County corrections officers units in New Jersey.

In elaborating on the health benefits portion of the County's offer, the PBA argues that the premium contribution must be denied because the County has not submitted evidence of the cost of the contribution or shown that any other negotiations unit is subject to it. The union similarly maintains that the County has offered no evidence to justify the proposed increases in prescription drug co-pays. It specifically rejects the argument that unit members' co-pays should be the same as those in the County's non-correctional units, reasoning that clerical

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<sup>9</sup> The PBA reasons that while the County has not provided the actual cost in dollars of the 15% monthly premium contribution, it would have no incentive to put forward such a proposal unless the figure was higher than the statutorily required contributions.

workers do not face the job hazards job as correctional officers. The PBA adds that the proposed co-pays are higher than those required of local employees under New Jersey State Health Benefits Program.

In espousing its own final offer, the PBA writes that it has proposed modest wage increases for officers at Steps 1 through 6 (0% to 2.5%) and higher percentages for steps 7 and 8. It urges that these increases are designed to improve the morale of the unit and are appropriate in light of the County's strong fiscal condition and the dangerous working conditions faced by these highly trained corrections officers. It also maintains that a four-year contract term would serve the public interest because it would offer a respite from tense negotiations and provide two years of relative labor peace — a benefit to both the parties and the public. On the other hand, it states that under the County's final offer, the parties would be back at the negotiating table in a matter of months.

### **Comparisons of Wages, Salaries, Hours and Conditions of Employment Private Sector Employees**

The PBA begins its discussion of *N.J.S.A. 34:13A-16g(2)* by underscoring that this criterion requires a thorough examination of the compensation received by unit members vis-à-vis that received by other employees in comparable public and private employment. It insists that such an appraisal must encompass a consideration of the duties, training, working conditions, and job-related dangers experienced by corrections officers.

At the outset, the PBA maintains that a review of the relevant private sector data indicates that Local 249 members are underpaid when compared to their private sector counterparts. It reaches this conclusion by comparing the increases received by this unit with those afforded New Jersey and Burlington County private sector employees in 2006 through 2009. It cites these County and Statewide figures from the NJWLD reports:

	2005 to 2006	2006 to 2007	2007 to 2008	2008 to 2009
Total Private Sector	4.6%	4.3%	2.5%	-0.7%
Burlington Cty. Private Sector	3.5%	4.0%	2.6%	0.7%
Total Government	3.4%	4.1%	3.4%	2.2%
State Government	2.1%	5.0%	5.8%	2.2%
Local Government	3.3%	3.5%	3.4%	2.2%
Federal Government	6.6%	5.2%	-0.3%	2.2%
TOTAL	4.4%	4.3%	2.6%	-0.2%

[PBA Exhibits E-1; E-2; E-3 & E-5]

Pursuant to the 2005 through 2008 agreement for this unit, all steps of the salary guide were increased 4% for each year of the agreement, with the maximum step receiving additional \$500 equity adjustments for 2007 and 2008 (PBA Exhibit J-1). Within this context, the PBA argues it received lower increases for 2006 and 2007 than were received, on average, by other New Jersey employees in both the public and private sectors. Therefore, it reasons that award of the County's offer would simply compound this inequity. It further notes that once the statutory

health benefits contributions are taken into account, the prorated annual value of the County's proposed wage offer (.33%) is much lower than the 0.7% increase received for 2009 by Burlington's private sector workers.

The PBA also comments that Burlington County corrections officers work in a State that in 2008 had the second highest median income in the nation (\$70,378) and the highest median *family* income (\$85,761) (American Community Survey, PBA Exhibit E-5 (binder 2).<sup>10</sup> It also cites a July 30, 2010 paper by The Economic Policy Institute which compared the wages of private sector employees in New Jersey vs. New Jersey public sector employees (PBA Exhibit N-1). This document concluded that full time state and local employees were under-compensated by 4.0% when compared to their private sector counterparts. Moreover, this gap widened as an employee's educational level increased, with public sector workers with some college earning 4% less than comparable employees; those with a bachelor's degree earning 43% less; and those holding a professional degree earning 94% less. Accordingly, the PBA urges that its final offer should be awarded to reduce the growing disparity between private and public sector employees. The PBA suggests that this private-public sector gap will only increase as the County continues to attract high-quality jobs in the technology and other sectors.

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<sup>10</sup> PBA Exhibit E-5 is also used to designate the 2010 NJLWD report, showing changes in average wages between 2008 and 2009.

The PBA relies heavily on PBA Exhibit K-1, which compares unit members' compensation with that of corrections officers in other New Jersey counties. A portion of this exhibit is reproduced below:

<b>County</b>	<b>Maximum Base Salary</b>	<b>Year</b>	<b>Longevity</b>	<b>Total Compensation</b>
Bergen	\$106,385	2010	\$1,750	\$108,135
Ocean	\$ 86,857	2010	\$6,949	\$93,806
Morris	\$ 85,726	2010	\$6,001	\$91,727
Cape May	\$ 78,372	2012	\$10,972	\$89,344
Union	\$ 88,711	2012		\$88,711
Passaic	\$ 79,568	2006	\$ 7,957	\$87,525
Monmouth	\$ 85,001	2008	0	\$85,001
Somerset	\$ 81,471	2009	\$3,055	\$84,526
Middlesex	\$ 78,002	2008	\$6,240	\$84,242
Mercer*	\$ 79,161	2008	\$2,800	\$82,561
State				
Corrections	\$ 80,396	2011	0	\$80,396
Hudson	\$ 77,079	2009	\$1,100	\$78,179
Gloucester	\$ 71,430	2011	\$5,714	\$77,144
Sussex	\$ 71,526	2009	\$5,007	\$76,533
Warren	\$ 66,863	2010	\$1,000	\$69,863
Essex	\$ 69,690	2007	0	\$69,690
Atlantic	\$ 66,463	2010	\$2,500	\$68,963
Hunterdon**	\$ 62,992	2008	\$3,000	\$65,992
Camden	\$ 59,491	2005	\$1,500	\$60,991
Burlington	\$ 60,387	2008	0	\$60,387
Salem***	\$ 56,139	2008	0	\$56,139
Cumberland	\$ 51,050	2007	\$600	\$51,560

\*Longevity \$1,000 after 10 years; \$100 each additional year (figure based on 30 years)

\*\*Longevity 1,000 after 10 years, 100 each additional year (figure based on 30 years)

\*\*\*Based on 26.99 Hr. x standard 2080 hrs. year

The PBA argues that this exhibit firmly establishes that unit members are "abysmally paid" compared to other New Jersey corrections officers. It emphatically rejects the County's position that such comparisons are irrelevant. To the contrary, the PBA maintains that comparisons with other corrections

departments are expressly contemplated by PERC's comparability regulations, *N.J.A.C. 19:16-5.14(d)* and are the most pertinent comparisons given the unique nature of a correction officer's duties.

The PBA also disputes the County's contention that the low inmate to officer ratio in Burlington makes up for any salary gaps vis-à-vis other New Jersey corrections departments. The PBA contends that the County's direct supervision model requires such a ratio and, therefore, is of no consequence in evaluating unit member salaries. Similarly, the PBA discounts the County's efforts to compare unit members with corrections officers in Pennsylvania, Delaware, and Maryland, contending that the arbitrator should disregard this irrelevant evidence.

In continuing its comparability analysis, the PBA observes that the County's final offer should be contrasted with the raises the County negotiated with the Prosecutor's Detectives and Investigators, PBA Local 320, who garnered increases of approximately 3% for 2009 and 2010 (Exhibit PBA Exhibit J-3). The PBA stresses the similarity between the education and training requirements of this unit and the employees in PBA Local 320. It underscores that both must attend police academy training programs and both must qualify twice a year with their firearms. The PBA asserts there is no justification for the fact that the top step 2008 salary in Local 320 was \$83,500 while that for corrections officers was \$60,387 — a difference of \$23,113 (PBA Exhibit J-1 and J-3).

Conversely, the PBA argues that the arbitrator should not compare Local 249 salaries to those of employees in the County's non-law enforcement units. It maintains that corrections officers are highly trained law enforcement officers who are subject to dangers not common to clerical staff.

Finally, the PBA maintains that the County's final offer does not comport with the recent interest arbitration awards and settlements Statewide. It cites PERC data showing that the average salary increase included in interest arbitrations awards issued in 2009 was 3.75%, while the figure for 2010 was 2.5%. The corresponding figures for voluntary reported interest arbitration settlements were 3.60% for 2009 and 2.5% for 2010. The PBA reiterates that "the majority of increases," under its proposal are below the figures reported by PERC, while the County's proposal of 2.5% over three years is well below the PERC statistics.

Overall, the PBA concludes that if the County's offer is awarded, the unit is in real danger in becoming the second lowest paid unit in the State, despite Burlington's status as a growing, dynamic, and fiscally strong County. By contrast, the PBA contends that its own final offer is much more reasonable because it would revise the salary guide to allocate more dollars to the top step, a measure that would lessen the gap with the higher-paying counties and prevent unit members from falling farther behind. At the same time, the PBA comments that its

offer would not alter the State-wide standing of officers who are still moving through the guide.

### **Overall Compensation**

The PBA maintains that an analysis of unit member's overall compensation plainly shows several areas of inadequacy, with salaries representing the first and foremost deficiency. It points out that while Burlington is ranked tenth in the State in terms of median household income, its corrections officers are ranked 20<sup>th</sup>. Further, the PBA notes that many unit members are eligible or nearly eligible for public housing assistance pursuant to the U.S. Department of Housing and Urban Development (HUD) 2009 Income Guidelines (PBA Exhibit C-6). The PBA highlights that under the 2009 guidelines for Burlington County, many officers are in the moderate or low income categories, depending on whether they are married or have children. These are the income thresholds for households of varying sizes.

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
<b>Low</b>	<b>\$27,25</b>	<b>\$31,100</b>	<b>\$35,000</b>	<b>\$38,900</b>	<b>\$42,000</b>	<b>\$45,100</b>	<b>\$48,250</b>	<b>\$51,350</b>
<b>Moderate</b>	<b>\$43,600</b>	<b>\$49,800</b>	<b>\$56,050</b>	<b>\$62,250</b>	<b>\$67,250</b>	<b>\$72,200</b>	<b>\$77,200</b>	<b>\$82,150</b>

[PBA Exhibit C-6]

## **Lawful Authority of the Employer**

The PBA addresses *N.J.S.A. 34:13A-16g(5)* by contending that the County could satisfy the PBA's final wage proposal without violating its lawful authority. It reprises its earlier discussion to the effect that the County does not have CAP limitation issues, having elected to forego \$5,525,817 in taxation authority in 2010. The PBA has prepared this Salary Cost Comparison.

### **Salary Cost Comparison [PBA's Brief, p. 104]**

**Note: Under both proposals old money or contract conditions currently in existence are factored into the calculation. The difference is the percentage increase between the two proposals. The Increases reflect the current contract terms and the proposed contract increases.**

	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>PBA Total Salary Proposal</b>	<b>\$12,589,710</b>	<b>\$14,140,802</b>	<b>\$15,594,856</b>
<b>County Total Salary Proposal</b>	<b>\$11,918,474.50</b>	<b>\$12,720,119.83</b>	<b>\$13,032,227.20</b>
<b>Difference</b>	<b>\$ 671,235.00</b>	<b>1,420,682.18</b>	<b>\$ 2,562,628.80</b>
	<b>2008 to 2009</b>	<b>2009 to 2010</b>	<b>2010 to 2011</b>
<b>Increase in PBA Proposal year to year</b>	<b>\$ 1,755,240.00</b>	<b>\$ 1,551,092.00</b>	<b>\$1,454,054.00</b>
<b>Increase in County's Proposal year to year</b>	<b>\$1,084,004.50</b>	<b>\$ 801,645.32</b>	<b>\$ 312,107.37</b>
<b>Difference in Proposal increases year by year in dollars</b>	<b>\$ 671,235.50</b>	<b>\$ 749,446.68</b>	<b>\$ 1,141,946.63</b>

[Exhibit U-2, p. 8]

The PBA stresses that its financial expert established that the County has ample spending room to fund the PBA's salary proposal. It adds that the above-noted figures must be considered in light of the County's decision (and ability) not to raise taxes over the last three years, despite the fact that New Jersey was embroiled in a world-wide financial crisis. In this posture, the PBA expresses its view that the County's offer is an attempt to bootstrap its finances to those of the State as a

whole. It suggests that if the County truly had been in a difficult financial position, it would have raised taxes over the last three years. It concludes that it is “dubious at best” for the County to claim an inability to pay any raises in 2010 and 2011 when many experts have predicted an end to the recession.

### **Financial Impact on the Governing Units, Its Residents and Taxpayers**

In addressing *N.J.S.A. 34:13A-16g(6)*, the PBA reiterates that the economic evidence clearly and unequivocally shows that the County has sufficient funds available to pay for the PBA’s proposed wage increase. By contrast, it asserts that the County has not demonstrated any evidence of an inability to pay.

The PBA acknowledges that, under *N.J.S.A. 40A:45-45.14* the levy CAP for 2011 is 2%. However, it underscores that the County itself does not state that this provision will prevent it from funding the PBA’s wage proposal. Indeed, the PBA stresses that the County acknowledges that it would have been able to fund the PBA’s salary offer for 2010 if the CAP for that year had been 2%, albeit the County also contends that it would not have had much money left over after doing so.

The PBA further insists that the arbitrator “must reject out of hand” the County’s invitation to consider the “arbitrator CAP” in this proceeding, even though that CAP pertains only to those interest arbitrations that relate to contracts expiring between January 1, 2011 and April 1, 2014. Similarly, the PBA disputes

the relevance of a bill that would make the 2% CAP applicable to all pending interest arbitrations. Instead, the PBA posits that the arbitrator should use the opportunity in this “CAP-free environment” to award a competitive wage increase for this unit.

### **Cost of Living**

The PBA maintains that the cost of living in the Philadelphia-Wilmington-Atlantic City area is rising and that, as such, the cost of living criterion, *N.J.S.A. 34:13A-16g(7)*, favors its salary proposal. The PBA has submitted news releases and charts from the federal Bureau of Labor Statistics (BLS) that calculate the Consumer Price Index for all Urban Consumers (CPI-U) and for the Philadelphia-Wilmington-Atlantic City region during 2009 and 2010. The PBA points out that for the 12 months prior to December 2009, these documents show that the CPI-U for All Urban Consumers increased 2.7% (PBA Exhibit F-8), while it rose 2.2% between April 2009 and April 2010 (Exhibit F-5). The CPI-U increased 1.1% between June 2009 and June 2010, while the CPI for the Philadelphia-Wilmington-Atlantic City area rose 1.9% between June 2009 and June 2010 (PBA Exhibit F-5, F-6, & F-7).

The PBA observes that under the County’s final offer, unit members would receive one 2.5% increase which would be reduced by either the 1.5% statutory health care contribution or the County’s own proposed health care premium

contribution. As a result, it states that unit members would receive an average annual raise of .33% over the term of the contract – a proposal that is not in line with the CPI and must be rejected.

### **Continuity and Stability of Employment**

The PBA strongly insists that award of the County's final offer would have a disastrous impact on a group that is already underpaid and experiencing relatively high rates of turnover. Conversely, it contends that its own offer would boost the continuity and stability of these corrections officers' employment.

The linchpin of the PBA's analysis is that turnover in this unit is relatively high, in part because many unit members see their employment as a stepping stone to a more lucrative career in municipal law enforcement. Indeed, the PBA maintains that given the pay scales in this jurisdiction, employment as a Burlington County corrections officer is also a stepping stone to obtaining a corrections officer position in another county.

The union relies on PBA Exhibit B-7 to illustrate the history of turnover in this unit.

**2000-2009 Turnover Rates**

	<b>Hired</b>	<b>Retained</b>	<b>Turnover Rate</b>
<b>2000</b>	<b>77</b>	<b>21</b>	<b>73%</b>
<b>2001</b>	<b>62</b>	<b>13</b>	<b>79%</b>
<b>2002</b>	<b>31</b>	<b>12</b>	<b>61%</b>

<b>2003</b>	<b>38</b>	<b>16</b>	<b>58%</b>
<b>2004</b>	<b>12</b>	<b>10</b>	<b>17%</b>
<b>2005</b>	<b>13</b>	<b>7</b>	<b>47%</b>
<b>2006</b>	<b>55</b>	<b>37</b>	<b>33%</b>
<b>2007</b>	<b>7</b>	<b>5</b>	<b>29%</b>
<b>2008</b>	<b>26</b>	<b>22</b>	<b>16%</b>
<b>2009</b>	<b>14</b>	<b>11</b>	<b>23%</b>

In reviewing this history, the PBA notes that turnover had been substantially reduced from 79% in 2001 to 16% in 2008, albeit it had risen to 23% by 2009. It argues that because its final offer includes both modest salary increases and a new salary step for senior officers, it will ensure that corrections officers “will keep working in the jails.” The PBA reinforces this argument by citing a prior arbitration award involving this unit, in which the arbitrator found that improvements in the turnover rate would dissipate without continuing the improvement of those terms and conditions of employment that enhance stability.

*County of Burlington and PBA Local 249, IA-2005-044 (James W. Mastriani, p. 39).*

The PBA also reasons that retention of the County’s most experienced corrections officers will enable the institutions to run more efficiently and safely, because these highly skilled officers are able to reduce and prevent inmate attacks.

Further, the implementation of an additional salary guide step will provide more of an incentive for younger officers to continue on the job.

Conversely, the PBA remarks that the County's final offer is a "sucker-punch" in the face of a unit that has not received a raise since 2008. It writes that because the County's final offer includes "trivial" raises, as well as health benefits contributions beyond those mandated by statute, it would result in an overall decrease in wages and would undermine unit morale. In addition, the PBA states that because senior officers would no longer have weekends off under the County's proposed work schedule, the County's proposals would eliminate one of the few inducements that senior officers now have to remain on the job.

The PBA rejects the County's position that because 57% of the unit already has seven or more years of experience, they are likely to remain on the job. It asserts that the length of a corrections officer's tenure has absolutely no bearing on whether he or she will seek alternative employment. The PBA contends that this "arbitrary and irrelevant statistic" should be given no weight. Overall, the PBA surmises that award of the County's offer would increase turnover and might be the proverbial straw that breaks the camel's back.

### **Statutory Restrictions Imposed on the Employer**

The PBA again urges that the County has sufficient flexibility within its budget to pay the wage increases sought by the PBA. The PBA adds that the

County can fund its offer without raising taxes. As it did in the context of the financial impact criterion, the PBA cites the County's budget surplus; its unanticipated miscellaneous revenues; its low debt ratio; and its long history of keeping taxes low and lowering the tax rate for each of twenty consecutive years.

### **Work Schedule**

The PBA adamantly opposes the County's 4/3 work schedule proposal, and quotes Swenson's description of the proposal as "forcing 230 people into a schedule that 230 people don't want" (1T64). However, as a threshold point, the PBA rejects the County's assertion that it has a managerial prerogative to implement the new schedule. The PBA contends that this position is contrary to a long line of PERC and Court decisions which hold that work schedules are generally mandatorily negotiable. While the PBA recognizes that there are exceptions to this principle, it emphasizes that only PERC or the Courts may determine whether an employer has a managerial prerogative to change or preserve a given schedule.

With respect to the substantive merits of the 4/3 schedule, the PBA cites *Teaneck Tp. and Teaneck FMBA Local No. 42*, 25 NJPER 450 (¶30199 1999), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), for the proposition that a party proposing a major work schedule change has the burden of justifying it.

Applying this principle, the PBA writes that while the County has made numerous self-supporting assertions in support of the schedule, it has failed to justify a drastic change in work hours that would negatively affect child care arrangements, educational pursuits, and supplemental employment. Indeed, the PBA contends that award of the schedule would destroy department morale.

The PBA continues that the arbitration award in *Englewood* strongly militates against granting the 4/3 schedule. The PBA observes that, similar to the case here, the employer in *Englewood* argued that a change from a 5/2 to a 4/4 schedule would reap operational benefits and, in addition, would allow officers to spend more time with their families, thus reducing fatigue and creating a healthier working environment. On this latter point, the PBA underscores that *Englewood* found it crucial that the unions that were charged with representing police officers' interests strongly objected to the schedule change. The PBA argues that its own opposition to the 4/3 schedule should be accorded great if not dispositive weight.

The PBA explains that its opposition to the 4/3 schedule is grounded in a review by its contract committee, which concluded that the proposed schedule would create numerous problems for officers who use daycare facilities for their children. Thus, the PBA cites Swenson's testimony to the effect that the committee found that many such centers offer only five day plans and do not open before 6:00 a.m. As a consequence, officers would be required to arrange for

child care coverage before 6:00 a.m. and would then be obligated to pay for care throughout an extended work day. In addition, the PBA suggests officers might be forced to pay for five days of care, even though they would need only four days.

The PBA continues that a 4/3 work week could also interfere with the weekend visitation schedules of non-custodial parents, since all officers would be forced to work on either a Saturday or Sunday. The PBA further believes that this aspect of the 4/3 schedule is particularly unfair to those unit members who have attained sufficient seniority under the current system to have weekends off.

Overall, the PBA firmly rejects the view that the proposed schedule would improve officers' lives. The PBA insists that extending each work day by two hours could lead to increased fatigue – thereby magnifying the dangers of working in a correctional facility. The PBA reasons that an even larger problem would be presented if an officer were required to work mandatory overtime, which would result in officers working 14.5 hours (Exhibit C-8). The PBA states that mandatory overtime currently results in an officer working only 12.5 hours.

Moreover, the PBA underscores that despite the County's alleged interest in improving officers' well being, it never undertook any polling or analysis to ascertain unit members' opinions on the 4/3 schedule. Instead, the PBA states that Hornickel himself acknowledged that it was only his opinion that officers would benefit from the schedule change (5T37).

The PBA also maintains that the County has failed to prove the alleged operational benefits of the schedule. For example, the PBA states that there is no indication that training is an issue at the BCDC and CWRC facilities; nor can the County state with certainty that training will increase under a 4/3 schedule.

Similarly, the PBA stresses that the County has not shown that it is unable to properly staff its facilities under the 5/2 schedule. To the contrary, the PBA insists that the BCDC and CWRC are both fully staffed at present. Further, the PBA points out that the current 5/2 schedule is enjoyed by all other County employees, including those at the County nursing home, which also operates 24/7. In addition, the PBA points out that there are no other County or State correctional facilities in New Jersey that operate on the 4/3 schedule.

Indeed, the PBA questions whether staffing would be effective under the County's proposal, given that more officers will function as SAs during at least a portion of their shifts. The PBA suggests that this arrangement would result in officers being less familiar with their charges, contrary to Swenson's testimony that such familiarity is essential in a direct supervision facility, where an officer's understanding of individual inmates allows him or her to minimize problems (1T42-1T43).

The PBA also vigorously disputes that the 4/3 schedule would reduce sick leave or overtime. As a starting point, the PBA emphasizes that Warden Cox

testified that he has done a “pretty good job” at reducing overtime (4T43) since he was appointed acting warden in January 2009. The PBA highlights Cox’s acknowledgement that some overtime is a fact of life in corrections facilities since they operate 24/7; officers have contractual time off; and officers will become ill (4T43-4T44). In particular, the PBA maintains that there is no proof that the 4/3 schedule would reduce mandatory overtime, given that Exhibit C-8n simply expresses the County’s “hope” that this need will be lessened.

More specifically, the PBA argues that the County has not met its burden of proving that a 4/3 schedule would reduce sick leave call outs on weekends. The PBA writes that the County ignores the fact that overtime has been reduced over the last several years. In this vein, the PBA notes that Exhibit C-5b reflects that, during the first six months of 2010, officers used 218 sick days on Saturday and 229 on Sunday, compared to 217 on Wednesday and 228 on Thursday. The PBA also cites sick leave statistics from 2007, 2008 and 2009, which show that officers with banked sick days were more often absent on Fridays than on Saturdays, while those without accumulated sick leave were absent more on Mondays than on Saturdays. The PBA reasons that these figures do not justify implementing a schedule that would disrupt the lives of unit members. As an alternative, the PBA notes that the County already has an attendance verification policy that allows it to monitor sick leave use and discipline those officers who make false sick calls.

In concluding its analysis of the 4/3 work schedule proposal, the PBA suggests that the schedule is particularly problematic because it did not originate with Cox or Artis, the County's two top corrections officers, but was rather initiated by civilian employees who have never managed a correctional facility. The PBA further stresses that implementing an unwanted change in work hours to an underpaid and overworked negotiations unit will not improve morale and efficiency. Instead, it insists that, when coupled with management's proposed wage increase, the County is effectively forcing unit members to seek alternative or supplemental employment. The PBA also posits that if the County were truly interested in improving officers' work-life balance, it would endorse the PBA's sick leave incentive program and its reciprocal day proposal. For all of these reasons, the PBA asserts that the 4/3 work schedule proposal is contrary to the public interest and should be rejected.

#### **DISCUSSION AND ANALYSIS**

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

In addition, I note that *N.J.S.A. 34:13A-16g(8)* requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. Accordingly, I have been guided by the decision-making principles that are typically used in deciding interest arbitration disputes. One such principle is that the party proposing a change in an employment condition bears the burden of justifying it. I have applied that principle to the proposals in this proceeding, although I note that PERC has held that the “burden” construct has less import in evaluating salary proposals, where both sides typically propose changes; neither party seeks a continuation of the pre-award salary guide; and the award must contain a salary ruling. *Essex County*, P.E.R.C. No. 2005-52, 31 *NJPER* 86 (¶41 2005).

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

This is a complex interest arbitration in which the parties have submitted quite disparate final salary offers and set forth extensive, detailed proposals on a

range of subjects. These wide-ranging proposals must be evaluated in the context of several pieces of recent State legislation that affect both the County's budget and this unit's overall compensation. That legislation was in turn enacted in the aftermath of a severe, almost unprecedented recession, from which the State and national economies are still struggling to recover.

In arriving at an award, I am mindful of both the extremely difficult and critical public service that corrections officers perform, as well as the budgetary restrictions under which the County must operate. I conclude that all of the statutory factors are relevant but that not all are entitled to equal weight. My weighing and balancing of the nine factors, particularly those pertaining to the public interest, financial impact, lawful authority of the employer, statutory restrictions on the employer, and comparisons with other employees, leads me to award a total economic package that is somewhat more than proposed by the County but substantially less than sought by the PBA. While I believe that the award will maintain a reasonably competitive compensation package for these essential employees, the awarded salary increases are less than would likely have been arrived at in a more favorable budgetary and economic climate. My decision-making has been informed by these factual conclusions and judgments:

- The County has historically been able to regenerate healthy surpluses and maintain substantial cash balances, while retaining a commitment to holding tax rates down. However, recent trends show a sharp decline in several fiscal indicators and, like most public employers in

New Jersey, the County is facing budgetary pressures that militate against the increases sought by the PBA.

- Economic and budgetary difficulties at the State and local level have resulted in a changed negotiations landscape, with recent data showing declines in the percentage increases received by a range of private and public employees, including public safety employees. The salary portion of this award is consistent with, and within the range of, such increases.
- The most appropriate measure for assessing the competitiveness of this unit's maximum salary is comparisons with corrections officers in other southern New Jersey counties. The awarded increases take into account such comparisons but fiscal and other considerations preclude award of the PBA's offer, which would substantially improve this unit's relative standing vis-à-vis other southern New Jersey corrections officers.

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

1. Term of Agreement

The term of the agreement shall be from January 1, 2009 through December 31, 2011.

2. Salary increases

2.5% across-the-board salary increase effective January 1, 2009.

2.0% across-the-board salary increase effective January 1, 2010.

1.5% across-the-board salary increase effective January 1, 2011.

Each salary increase is retroactive to its effective date. In order to be covered by the retroactive wage provisions of this award, an employee shall have maintained continuous full time employment up to and through August 15, 2011.

3. Work Schedule/Reciprocal Days

A joint committee is awarded to study and discuss the feasibility of implementing the 4/3 work schedule and/or the Reciprocal Day proposal, as

well as any adjustments to those proposals that would make either or both proposals mutually agreeable. The scope of the committee's discussion, study, or outreach to unit members shall be determined by the committee. The committee shall be comprised equally of representatives appointed by the County and by Local 249.

#### 4. **Health Benefits**

Article IV is amended to include these co-pays, which shall be instituted as soon as practicable after implementation of this award.

<u>Doctor's Visits</u>	<u>Prescription Generic</u>	<u>Brand Preferred</u>	<u>Brand Non-Preferred</u>
\$20.00	\$0.00	\$30.00	\$45.00

Additionally, visits to the emergency room will have the following co-pays: \$50.00.

Article IV is also amended to include these provisions on maintenance medications and an opt-out stipend:

After the first 90 days a prescription has been filled, all maintenance medications (with the exception of insulin for diabetes) must be filled via Mail Order (examples of maintenance medications include high blood pressure, cholesterol, kidney and heart medications, etc.). Mail Order medications for a 90 day supply shall cost one-and-a-half times (1.5x) the applicable retail co-pay indicated above.

All prescription medications must be processed through a pharmaceutical clinical case management program through the prescription third-party administrator (TPA). As a pre-condition to using the prescription benefits plan, all employees must sign a HIPPA compliant release enabling the health benefits third-party administrator to share protected health information (PHI) with the prescription benefits TPA.

Effective January 1, 2011, the County shall furnish an annual stipend for opting out of the County's health benefits plan (medical and Rx-so long as employee furnishes proof of other coverage) in the amount of \$750 payable in November of each calendar year. An employee who experiences a

catastrophic life event wherein other, available coverage is lost shall be automatically reenrolled in the County's plan, and the stipend shall be pro-rated accordingly.

## 5. Retirement

Article XVI I amended to state that an employee who retires with 25 years or more credited service to Burlington County shall be covered "by a comprehensive, County self-funded retirement plan."

### Cost of Award

A necessary prelude to the analysis mandated by *N.J.S.A. 34:13A-16g* is a costing out of the award. The total 2008 base compensation for the unit (which included 199 members at that time) was \$10,293,997 (Exhibit C-15, p. 5). Assuming no resignations, retirements, or new hires, the cost of the annual across-the-board base salary increases under the employer's offer, the PBA's proposal, and the award are listed below. The chart does not include the cost of increments and the PBA figures take into account the fact that the PBA is proposing different salary increases for different guide steps. The PBA costs were derived from applying the varying percentages in the PBA's proposal to the 2008 scattergram (Exhibit C-15).<sup>11</sup>

	County	PBA	Award
2009	\$257,350	\$423,197	\$257,350
2010	\$0	\$443,368	\$211,027

<sup>11</sup> Thus, for the 72 officers at maximum salary in 2008, the proposed percentage increases are 6% for 2009, 6% for 2010, and 7.95% for 2011. For steps 2 through 5, the proposed increases are 2.5% for 2009; 2.5% for 2010; and between 5.0% and 5.52% (depending on the particular step) for 2011. For step 6, the proposed increases are 3% for 2009; 3% for 2010; and 5.2% for 2011.

2011	\$0	\$717,385	\$161,436
Total	\$275,350	\$1,583,950	\$629,813

For 2009 through 2011, the figures for the County and the PBA assume that the total base salary for the preceding year was enhanced by the across-the-board percentage increase(s) that it has proposed; the same method was used to calculate the cost of the award. These calculations do not take into account the cost of the new step 8 sought by the PBA, which could approach \$800,000 over the term of the agreement, depending on how many officers had the 12 years of service that the PBA proposes would be required to advance from step 7.

The total cost of the awarded across-the-board increases is \$629,813 — \$372,463 more than under the employer's proposal and \$954,137 less than the across-the-board increases proposed by the PBA. The County's final offer presupposes increments for all officers advancing on the guide in 2009, 2010, and 2011. These costs will also be incurred under the award.

In placing the cost of the award in context, it is noteworthy that beginning sometime after May 21, 2010, unit members assumed, by operation of law, a contribution toward their health benefit premiums in the amount of 1.5% of their base salary. Given the May 2010 effective date, this statute's implementation took place during the second half of 2010 and the first half of 2011, with unit members paying over \$154,409 in new premium contributions that would otherwise have

been absorbed by the County. Thus, the cost of the awarded increases is balanced by new revenues of approximately \$77,204 in 2010 and \$77,204 in 2011.<sup>12</sup>

I have also considered whether the County will receive, for 2011, additional revenues in the form of the health benefit premium contributions required by *L. 2011, c. 78*, which were to go into effect as soon as administratively feasible after the June 28, 2011 effective date. Those revenues cannot be quantified because the contributions depend on the employee's salary and the type of coverage chosen; also, the record does not indicate the County's costs for all levels of coverage, even for years prior to 2011. My judgment is that these revenues, if any, will not be substantial because employees' premium contributions are phased-in over four years; the legislation specifies that no employee will pay less than 1.5% of his or her salary; and, given the 2011 phase-in percentages, the premium contributions might well be less than the 1.5% of salary payment that is already in effect. For example, 1.5% of the 2011 top salary under the award will be \$961, while the required 4.25% premium contribution for an \$18,000 family policy would be \$765.

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

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<sup>12</sup> The record does not indicate when payroll deductions began for unit members, so I have allocated one-half of the new revenues to 2010 and one-half to 2011. The proportion might be closer to seven months for 2010 and five months for 2011 if the deductions went into effect in early June 2010. The figures are based on the same 2008 base salary used to calculate across-the-board increases.

the following discussion, in which I analyze the evidence on each statutory factor and describe how it relates to my decision to award the above-noted salary increases. With that discussion as a foundation, I then address the health benefits, work schedule, and other proposals.

## **SALARIES**

### **Interest and Welfare of the Public**

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

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

As a threshold matter, the public interest is pertinent to the issue of contract term, and it favors the award of a three-year agreement from January 1, 2009 through December 31, 2011. I recognize that the award of a 2009-2011 contract will require the parties to resume negotiations shortly after this award is issued. In a different environment, that circumstance might weigh strongly in favor of a four-year agreement. However, this record includes virtually no comparability data for 2012 and, further, it is not possible to gauge whether the County's budgetary pressures will have eased by 2012. There is also great uncertainty about whether the State and national economies will have fully recovered by that point. Further, significant legislation increasing employee health benefits premium and pension contributions went into effect on June 28, 2011. The impact of those enactments on this unit is not entirely clear, particularly because the record does not specify the County's current premium costs for all levels of health coverage. In this posture, the public interest is best served by a three-year contract that will allow the parties greater flexibility to adjust to future economic conditions.

The public interest and welfare must also be considered in resolving the parties' salary dispute. Specifically, the fiscal and compensation components of the criterion must be balanced in light of the particular economic and budgetary circumstances pertaining in Burlington; the current compensation structure for this unit; and the nature of the environment in which Local 249 members work.

Turning to this latter point, the County recognizes that corrections officers perform one of the most essential and fundamental of governmental functions: providing care and custody to incarcerated inmates, including some of the most dangerous individuals in society. Unlike most facilities in the State, inmates are not “caged up” in cells but are instead allowed outside of their cells for extended periods of time (3T56-3T57), thereby requiring unarmed corrections officers to mingle and interact with large numbers of inmates.

As such, Burlington corrections officers must develop and refine their interpersonal skills and learn to be proactive in heading off confrontations with (and among) inmates (3T59-3T60). Officers are also responsible for performing cell inspections, shakedowns, and weapon searches and, in a County where there is no designated cell extraction team, all officers must be able to complete this procedure. Unit members must be weapons qualified and are required to complete extensive academy and on-the-job training.

Against this backdrop, it is beyond cavil that corrections officers are engaged in difficult, dangerous and stressful work that can take a toll on an individual’s physical and mental well-being. The New Jersey Department of Corrections has acknowledged as much (PBA Exhibit H-1).

In these circumstances, there is a compelling public interest in ensuring that the County continues to be served by a stable work force of highly trained and

skilled corrections officers. Preventing excessive turnover is an important objective because of the cost of training new officers (County's brief, pp. 86-87); the desirability of having experienced staff in a direct supervision facility; and this unit's documented past history of high turnover.

That turnover history was addressed in the two prior interest arbitration awards that led to the 2001 to 2004 and 2005 to 2008 contracts. *See County of Burlington, IA-2001-60* (Robert M. Glasson) and *County of Burlington*, Docket No. IA-2005-44 (James W. Mastriani). The Glasson award describes a scenario where, of the 481 officers hired during the 1990 to 2000 time frame, only 149 officers remained as of 2001, a turnover rate of 69%. Arbitrator Glasson observed that this turnover rate was the chief concern of both parties, with each crafting proposals to reverse it (Glasson award, pp. 86-87). The arbitrator ultimately awarded a salary schedule that, by 2004, reduced the number of steps from thirteen to seven and increased the maximum salary by 19.5% over the contract term (Glasson award, p. 93).

In his own award, Arbitrator Mastriani concluded that the previously excessive turnover rate had been reduced because salaries had improved under the 2001 through 2004 agreement and, in addition, the County had hired additional officers, thereby reducing the mandatory overtime that had contributed to high attrition rates. Nevertheless, the arbitrator concluded that the turnover problem had

not been completely eliminated and, toward this end, he awarded \$500 adjustments to the top salary, in addition to across-the-board-increases (Mastriani award, pp. 9, 18, 39, & 41). This proceeding presents the question of what salary adjustments are appropriate in light of this history; current comparability considerations; and the County's fiscal circumstances.

Turning to those circumstances, the County is well-managed and is a desirable place to work and live, with many corporate employers as well as farms, open spaces, and parks. Burlington enjoyed considerable population growth between 2000 and 2009 and, in 2007, ranked as the seventh wealthiest County in the State (PBA Exhibits A-2 and C-4). Nevertheless, its current finances are strained.

As detailed more fully in the financial impact section, there has been a significant decline in several fiscal indicators from the levels enjoyed in 2005 through 2008. For example, the County's December 31 fund balance declined from \$23,838,329 in 2005 to \$12,870,650 in 2009. Similarly, excess results from operations dropped from \$13,978,779 in 2005 to \$4,742,110 in 2009 (Exhibit U-2, p. 3). The County's reserve surpluses for 2009 through 2011 were at the low end of the range recommended by rating agencies and Moody's Investors Service assigned the County's 2009 General Improvement Bonds an Aa3 rating with a "negative outlook" (Exhibit C-13, sheet 3e; Exhibit C-14, sheet 3e; 2011 County

Budget, sheet 3e; Exhibit U-3). In addition, the value of the County's ratable base declined from \$52,632,125,161 in 2009 to \$50,005,099,970 in 2011 (Exhibit C-13, sheet 3d; 2011 County Budget, sheet 3d).

Despite these trends, the County has continued to lower its tax rates (and its tax levy), but this approach has come with some serious costs, including employee layoffs. Further, like all public employers in New Jersey, the County is experienced escalating health benefits costs and a 2% tax levy cap beginning in 2011.

Finally, the economy as a whole is still emerging from a deep recession and continues to be marked by high unemployment, low inflation, a depressed housing market, and reduced tax revenues to state and local governments. These phenomena have the potential to affect the County in the form of reduced investment income and lower construction-related fees (*See, e.g.*, Exhibit C-14, sheet 4; 2011 County Budget, sheet 4). They also create a “perfect storm” in which the County has less budgetary flexibility than in the past while, at the same time, financially stressed citizens are more sensitive to tax increases and more concerned that the County deliver public services at reasonable cost.

The foregoing considerations do not mean that the County is without resources or some budgetary flexibility. However, they do point to caution in

awarding salary increases during this negotiations cycle, even though higher increases might be appropriate in a better economic climate.

In that regard, unit members' existing salaries are adequate but at the low range of reasonable compensation for these valuable employees, an analysis that is set forth more fully in the ensuing comparability discussion. For example, Burlington's 2008 top step total salary of \$60,387, is the third lowest among all County corrections departments in the State and the third lowest among the eight counties that comprise southern New Jersey (PBA Exhibit K-1). Further, this unit does not have the longevity benefit that is present in most corrections officers contracts (PBA Exhibit K-1), and 2008 salaries are substantially below those of the County's Prosecutor's Detectives and Investigators and are also somewhat less than those of the County sheriff's officers (PBA Exhibits J- 3 and J-11).

Correction officer salaries are also within the range of those of many administrative and professional titles represented by CWA, including positions with a public safety component (PBA Exhibit J-9). Other CWA professional and technical titles have higher compensation (PBA Exhibit J-9). Finally, the average 2009 salary for this unit was \$54,795, compared to the average 2009 private sector wage in New Jersey of \$54,542 (Exhibit C-21; PBA Exhibit E-5). Overall, in view of corrections officers' training and responsibilities, this is not a highly-paid unit.

In harmonizing the fiscal and compensation components of the public interest, a threshold inquiry is whether senior officers should receive higher increases than those at lower guide steps, as the PBA proposes, or whether all officers should receive the same across-the-board adjustments, as the County posits. A related question is whether the creation of a new step 8 is appropriate.

The effect of the PBA's proposal would be to substantially raise the maximum salary for the unit and bring it within the ambit of the top three southern New Jersey jurisdictions: Ocean, Gloucester, and Cape May. From a financial perspective, such an enhancement to the compensation package cannot be accommodated within the County's budgetary framework: the cost of the senior step alone could approach \$800,000 over the contract term.

In addition, the PBA has not shown the need for such a substantial re-working of the unit's compensation structure, as opposed to the more modest year-to-year adjustments that, absent unusual circumstances, are the norm in both negotiations and interest arbitration. While the PBA asserts that the unit has a "relatively high" turnover rate, it has not presented evidence that the severe turnover problem of the past has re-emerged. PBA Exhibit B-7 reflects a lower turnover rate for officers hired in the 2007 through 2009 time frame than that

which pertained when Arbitrators Glasson and Mastriani analyzed this issue.<sup>13</sup> In addition, Exhibits C-26 through 28 reflect that several of the officers who left the County during 2007 through 2009 did so because they were terminated, not because they obtained another law enforcement position.

In addition, it is unlikely that turnover rates will spike in the near term in light of the current overall labor market and the law enforcement cutbacks that are occurring throughout the State. I add that to the extent turnover was influenced by high levels of mandatory overtime, the County hired additional officers in 2009 and 2010 and overtime levels have declined in recent years (Exhibit C-15; Exhibit C-5a).

In this context, I conclude that additional adjustments to the unit's maximum salary are not required and that all guide steps should receive the same across-the-board increases. My decision is based on both fiscal considerations and the lack of evidence that this unit is experiencing a severe turnover problem.

In reaching this conclusion, I appreciate the PBA's conviction that the unit's experienced, highly skilled officers should receive a maximum salary that, in the union's view, better reflects Burlington's status as a growing and comparatively

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<sup>13</sup> Arbitrator Glasson took the total number of individuals hired between 1990 and 2000; calculated how many had left as of November 1, 2001; and computed a turnover rate of 69%. The PBA contended that the same method yielded a 48% turnover rate for 2001 through 2006 (Mastriani award, p. 9). The same method yields a 19% turnover rate for officers hired between 2007 to 2009 and a 26% rate for those hired between 2006 through 2009. I add that the PBA's exhibits report a different figure than those of the County, which tabulate the number of officers who, regardless of when they were hired, either retired, resigned, or were terminated during 2007 through 2009.

affluent County. However, this is not the fiscal environment in which to make salary adjustments beyond across-the-board increases, even were I to conclude that they were warranted.

I have also given considerable weight to the County's fiscal circumstances in awarding across-the-board increases. In a more typical negotiations cycle, I would be inclined to award increases close to those received by other County employees, as well as public safety employees Statewide. This is especially so with respect to the internal comparability data, because PERC decisions direct arbitrators to carefully consider internal settlements and fully articulate the rationale for any decision to deviate from them. *Union Cty.*, P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003).

However, a key element of my analysis of the public interest (and financial impact and comparability) criterion is that these are not ordinary times. While CWA unit members received 4.1% increases for 2009 and 4% increases for 2010, those adjustments are not feasible given the budgetary constraints currently faced by the County and the fiscal distress experienced by many County residents. The same analysis pertains to the Prosecutor's Investigators and Detectives unit, where the County agreed to 3% raises for 2009 and 2.9% increases for 2010. These County settlements were part of 2007-2010 agreements and appear to have been arrived at before local governments had felt the effect of the economic downturn.

More recent contracts reflect a decline in the raises received by New Jersey public sector employees, a point I detail further in my comparability analysis.

My decision to award across-the-board increases of 2.5% for 2009; 2.0% for 2010; and 1.5% for 2011 reflects this changed landscape and takes into account the County's budgetary circumstances. At the same time, the awarded increases will provide for some moderate enhancement of officers' compensation package over the contract term and will not change the unit's relative standing vis-à-vis other corrections officers units in southern New Jersey.

While I have awarded percentage increases that are closer to the County's proposal than to the PBA's, some limited adjustment beyond the County's offer is appropriate to maintain adequate compensation for this unit. As the County itself states, I find that, within an annual budget of approximately \$221.2 million, the County has some budgetary flexibility to fund increases within a reasonable range of its own offer (County's brief, pp. 83-84). Accordingly, I conclude that the awarded increases will not have an adverse financial impact on the County or its residents and taxpayers.

A final element that must be considered in connection with the public interest is the CAP established by *N.J.S.A. 40A:4-45.1a et seq.* This CAP limits the amount by which a County may increase its tax levy over that in the preceding year to the lesser of 2.5% or a federally-prepared cost of living adjustment. As

explained in the lawful authority section of this opinion, my award will not cause the County to exceed the limits imposed by *N.J.S.A. 40A:4-45.1a et seq.* For each year of the award the County has additional CAP authority well beyond the amount necessary to fund the difference between the award and the County's offer, albeit it is unlikely that it would have to use that authority.

### **Comparisons with Other Employees**

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

In applying the comparability criterion to a determination of 2009-2011 salary increases, it is useful to start with a review of the unit's existing salary

structure. How it compares with the compensation of similarly situated employees is critical to assessing what if any future adjustments should be awarded.

On balance, the record indicates that the salaries for this unit are adequate but at the lower end of the spectrum for comparable employees. While some enhancement over the contract term is essential to ensure that salaries for this unit do not fall out of the reasonable range, fiscal considerations point toward lower across-the-board salary increases than might be awarded in a more favorable economic climate. Further, current economic and budgetary conditions have begun to result in lower salary increases for public safety employees statewide, thereby providing further support for the increases awarded herein.

The maximum 2008 salary for this group was \$60,387 and officers do not receive longevity, which is a part of the benefits package for most corrections officers in the State (PBA Exhibit J-1; PBA Exhibit K-1). In terms of internal comparisons with other County law enforcement groups, the top step 2008 salary for Prosecutor's Detectives and Investigators was \$83,500 (PBA Exhibit J-3), while that for the Prosecutor's Lieutenants and Sergeants was \$104,742 (lieutenants) and \$93,520 (sergeants) (PBA Exhibit J-4). PBA 320 is the exclusive representative for these units and it and the County negotiated contracts for 2007

through 2010 that provided for these increases to maximum salaries for 2009 and 2010:<sup>14</sup>

	2009	2010
Prosecutor's Detectives & Investigators	3.00%	2.90%
Prosecutor's Lieutenants & Sergeants	3.47% to 3.52%	2.89%

Burlington County Sheriff's Officers, of whom the County is a joint employer with the Sheriff, had a top step 2008 salary of \$62,000 pursuant to a 2006-2008 agreement (PBA Exhibit J-11). The agreement for Corrections Officers Superiors is not included in the record, but the average 2009 salary for the 33 lieutenants and sergeants in the unit was \$68,895 (Exhibit C-21).

With respect to internal comparisons with non-law enforcement employees, the County negotiated a 2007 to 2010 contract with CWA 1036, which represents 72% of the County's workforce in a unit that includes over 1000 employees in a range of professional, blue collar, and administrative titles (Exhibit C-22; PBA Exhibit J-9). The contract lists 35 salary ranges with maximum 2008 salaries ranging from \$35,171 to \$87,517 (PBA Exhibit J-9, final page).

While the County cites an average 2010 salary of \$40,298 for this group, the unit includes such a broad range of titles that it is more meaningful to examine the salaries for particular positions. Such a review shows that titles with a connection

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<sup>14</sup> The increases are rounded to two decimal points. The contracts evidently aimed for specific dollar amount salaries as opposed to particular percentage increases.

to public safety had maximum 2008 salaries that were within the range of, and sometimes better than, those of corrections officers. That situation will continue into 2009 and 2010, since for 2009, CWA unit members received increases of 4.1% or \$1,625, whichever was greater, and for 2010, raises of 4.0% or \$1,650, whichever was greater (PBA Exhibit J-9, p. 4).<sup>15</sup>

	2008	2010
Juvenile Detention Officer	\$53,325	\$56,325
Senior Public Safety Telecommunicator	\$65,003	\$68,003
Senior Fire Instructor	\$57,432	\$60,432
Traffic Safety Coordinator	\$63,857	\$66,857
Senior Juvenile Detention Officer	\$56,432	\$59,432

These salaries compare favorably with the Local 249 salary of \$60,387 for 2008 and, for 2010, a maximum salary under the award of \$63,135. Some titles in the CWA unit (nurse practitioners, dieticians, emergency management planners, land surveyors) are paid more than corrections officers, sometimes significantly so. On the other hand, clerks, laundry workers, library assistants and machine operators are paid significantly less, a compensation structure that is understandable when the duties of those jobs are compared to the critical responsibilities of corrections officers and the inherent dangers of that position.

Thus, while the County suggests that Local 249 unit members are paid “far more” than their colleagues in the County, I conclude that Burlington’s

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<sup>15</sup> These adjustments were similar to the annual adjustments of \$1,600 to \$1,800 received by smaller CWA units for 2009 and 2010 (PBA Exhibits J-5 & J-7).

compensation system is not one that disproportionately or unreasonably rewards corrections officers. Similarly, as noted in the public interest discussion, the average 2009 salary for this unit of \$54,795 aligns very closely with the average 2009 private sector wage in New Jersey of \$54,542, a figure that represents an averaging of several more highly-paid sectors (utilities, construction, manufacturing, wholesale trade, finance, real estate, information, and management), with several lower paid categories such as retail trade, education, accommodation and food services, and arts/recreation. For 2009, the average local government wage in New Jersey was \$55,442, while the average private sector wage in Burlington was \$47,562.

In evaluating dollar amount salaries, it is essential to compare Local 249's salaries and working conditions with those of employees who perform the "same or similar services" in the "same or comparable jurisdictions." *N.J.S.A. 34:13A-16g(2)*. This statutory directive calls for comparisons with other corrections officers and, contrary to the County's position, does not contemplate that unit members will be compared only to other County employees.

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties have historically been considered part of southern New Jersey. Corrections officers in this geographic area share the same statutory mission as this unit and they are an appropriate comparison group. While correctional institutions

in other southern New Jersey counties may operate under different supervision methods and with different inmate/officer ratios than Burlington, the statute does not require that comparisons be made only with employees with identical working conditions. In any case, it appears that Burlington's more favorable officer-inmate ratio is essential under a direct supervision model, which most other counties do not employ (3T60).

On the other hand, comparisons with corrections officers in northern New Jersey are not as pertinent since jurisdictions such as Bergen, Hudson, Union and Passaic are geographically distant from Burlington and are more urban in nature. They are also part of the greater New York as opposed to Philadelphia region. Put simply, they are not comparable jurisdictions.

Similarly, I am not persuaded that the U.S. Department of Labor survey on salaries for corrections officers (and other workers) is a good measure for evaluating Local 249 salaries (Exhibits C-18 and C-19). That report covers selected counties in Pennsylvania, southern New Jersey, Delaware and Maryland, a wide geographic area where the officers are governed by different statutory provisions. Moreover, the document lists mean and median hourly rates for corrections officers, but does not report the experience level of the officers surveyed. As such, the report cannot be used to compare area and County salaries

at different experience levels — the most reliable measure for analyzing a compensation structure.

Against this backdrop, corrections officers in southern New Jersey provide the best frame of reference for comparing unit members to those performing the same or similar services in the same or comparable jurisdictions. The record includes the following salary information for southern New Jersey corrections officers, which I have derived from PBA Exhibit K-1 and prior Local 249 contracts (PBA Exhibit J-1 & J-2).

	Salary	Year	Longevity	Burlington
Atlantic	\$66,463	2010	\$2,500	\$63,135 (under award)
Burlington	\$60,387	2008	0	
Camden	\$59,491	2005	\$1,500	\$52,777
Cape May	\$78,372	2012	\$10,972	N/A
Cumberland	\$51,050	2007	\$600	\$57,584
Gloucester	\$71,430	2011	\$5,714	\$64,082(under award)
Ocean	\$86,857	2010	\$6,949	\$63,135(under award)
Salem	\$56,139	2008	0	\$60,387

Although the above salary information covers different years, it shows a definite relationship among the eight counties in terms of maximum salaries: top step corrections officers in Burlington are the third lowest paid in southern New Jersey, with Burlington, Salem and Cumberland forming the lowest paid grouping. By contrast, the salaries in Gloucester, Ocean and Cape May are significantly higher than those in Burlington, especially when longevity is taken into account. Atlantic County corrections officers are more highly paid than those in Burlington, but the

salaries are not at the level of those in the three most highly paid counties. Finally, the information from Camden is six years old, but the maximum base salary plus longevity for 2005 still exceeds the 2008 salary in Burlington.

The PBA's proposed across-the-board increases, coupled with its proposal to create a senior officer step 8, appear designed to bring Burlington's maximum base salaries close to those in Ocean, Cape May and Gloucester; the proposed step 8 salary of \$85,406 in 2011 would exceed the top salary in the latter community. As outlined in the public interest and financial impact analysis, such major adjustments would entail enormous costs and this aspect of the PBA's proposal is untenable in light of the County's budgetary circumstances and the broader economic picture.

Moreover, adjustments of this magnitude would be highly unusual at any time since negotiators, and interest arbitrators, generally aim to maintain a unit's relative standing vis-à-vis comparable units. Further, as addressed earlier, the PBA has not shown that current turnover rates warrant either a new, higher salary guide step or extraordinary increases to the current step 7. And while I have considered the PBA's argument that this unit's standing is not commensurate with Burlington's status as the seventh wealthiest County in the State, there is no mandate that the unit's compensation be tied to this measure.

Within this framework, I must determine the appropriate across-the-board increases for all salary guide steps for 2009 through 2011. In a more typical negotiations cycle, I would be strongly inclined to award increases close to those received by the County's largest CWA unit and its PBA 320 units. However, those contracts (which commenced in 2007) were negotiated in a substantially different economic and budgetary environment. As discussed throughout this opinion, increases at the 3.0% to 4.0% level are inconsistent with the County's current budgetary stresses and the broader economic picture.

Further, the record reflects a trend away from increases at this level. For example, the NJLWD reported that, during 2009, the average wages of federal, state, and local government workers in New Jersey each increased 2.2%, while average wages for private sector workers in Burlington County increased only 0.7%. Statewide average private-sector wages declined -0.7%.

Similarly, the average annual increase in interest arbitration awards issued in 2009 was 3.75% and the figure declined to 2.88% for 2010 (PERC 2010 Salary analysis). My own analysis of interest arbitration awards issued in 2011 and posted on PERC's website indicates that the average increase in those awards was 2.20%.

This downward trend is also reflected in the average salary increase in reported interest arbitration settlements, where the average increase was 3.6% for

2009 and 2.65% for 2010 (County Exhibit C-17; PERC 2010 salary analysis).

Finally, within the County itself, unrepresented employees received no increase for 2010 (4T128) and those earning over \$50,000 received no increase for 2009 either (4T131). Unrepresented employees earning under \$50,000 in 2009 received a \$1,650 adjustment for that year (4T131).

Within this context, I have decided to award across-the-board increases of 2.5% for 2009, 2.0% for 2010, and 1.5% for 2011 in order to provide some moderate enhancement of unit salaries at all steps. These adjustments will not change the unit's relative standing, but will prevent salaries from moving closer to the lowest level salaries in Salem and Cumberland; they will also help ensure that compensation remains within the range of salaries in Camden and Atlantic.

I note as well that, for 2009 and 2010, the increases are close to the 2.5% increases proposed by the PBA for steps 2 through 5. For 2009, the 2.5% increase is less than that set forth in the PERC Salary Analysis because those figures reflect a negotiations climate where government entities had not yet felt the full impact of new budgetary strictures and recession-related loss of revenues. For 2010 and 2011, the awarded increases are close to, but somewhat lower than, those in other interest arbitration awards, based on my analysis of the specific fiscal challenges faced by this jurisdiction.

At the same time, I have decided against awarding the County's proposal for one 2.5% increase throughout the 2009 to 2011 contract term. An average annual increase of .83% is also not supported by recent settlement or award data and could potentially result in deterioration in unit morale and an eventual re-emergence of prior turnover levels. This is especially so since current compensation for this unit is at the low end of the spectrum for corrections officers in comparable jurisdictions.

Finally, the awarded increases are consistent with the developments that will unfold once the new interest arbitration statute is fully implemented. For all contracts expiring between January 1, 2011 and April 1, 2014, *L. 2010, c. 105* prohibits an arbitrator from rendering an award that increases base salary on an annual basis by more than 2%. Base salary is defined as "the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service."

These provisions will result in a definite downward pressure on awarded increases. Settlements will also trend lower, since negotiations will be conducted within the framework of the amended interest arbitration statute. In this environment, I believe the County's compensation package will remain within the reasonable range.

## **Overall Compensation**

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

Viewed from this perspective, unit members enjoy a comprehensive compensation and benefit package that includes vacation, sick leave, personal days, holiday pay, a uniform allowance, PFRS membership, and full medical coverage. While this is a comprehensive compensation structure, it does not include the longevity benefit that is common in law enforcement contracts. In addition, unit members' contractual benefits package has been diminished by the statutorily mandated health benefits contribution of 1.5% of base salary and the newly enacted provisions in *L. 2011, c. 78*. The latter statute will increase the PFRS pension contribution from 8.5% to 10% of an employee's salary and, once fully implemented, will require employees to pay between 3% and 35% of their health benefits premium, but in no event less than 1.5% of base salary. These changes will be experienced by all New Jersey public safety employees.

Within this framework, the overall compensation criterion does not factor significantly into my assessment of what base salary increases to award, since there

are no marked excesses or deficiencies in overall compensation that would lead me to adjust the percentage increases suggested by the other statutory factors. While the PBA points to a low uniform allowance, this item is not a major element in the total compensation package and the \$750 stipend is not markedly out of line with what other county corrections officers receive: allowances range from \$550 to \$1,350, and some counties have included uniform allowances in base salary (PBA Exhibit K-1). The absence of a longevity benefit does reinforce my decision to award across-the-board increases somewhat higher than those proposed by the County, in order to ensure that this unit's salary remains within the reasonable range vis-à-vis other corrections officers in southern New Jersey.

### **Stipulations**

*N.J.S.A. 34:13A-16g(4)* requires the arbitrators to consider the stipulations of the parties. There are no stipulations that pertain to the issues involved in this interest arbitration.

### **Lawful Authority of the Employer; Statutory Restrictions on the Employer**

*N.J.S.A. 34:13A-16g(1) and (5)* mandate consideration of the lawful authority of the employer, including the limitations on a county's tax levy imposed by *N.J.S.A. 40A:4-45.1a et seq.*, commonly known as the appropriations CAP law. *N.J.S.A. 34:13A-16(g)(9)*, similarly directs an analysis of the statutory restrictions imposed on the employer, including specifically the new tax levy cap

enacted in 2007 and amended in 2010. *See L. 2007 c. 62*, codified at *N.J.S.A. 40A:4-45.44 through 45.47*; *see also L. 2010, c. 44*. Both CAPs were designed to help control the costs of local government and limit increases in the local property tax. Counties must abide by whichever calculation results in the lower levy increase. *See Local Finance Notice No. 2008-3 (February 11, 2008) (Department of Community Affairs, Division of Local Government Services)*. I discuss each CAP in turn and conclude that the award will not cause the County to breach the restrictions that they impose. I turn to the most recently enacted statute first.

For 2009 and 2010, *N.J.S.A. 40A:4-45.44 through 45.47* limited the annual increase in a local entity's tax levy to 4%, with certain expenditures excluded from the CAP. Among these were debt service; increases to replace lost State aid; and health insurance cost increases over 4% but below the State Health Benefits Program index.

For calendar year 2011, *L. 2010, c. 44* lowered the levy CAP to 2%. While it eliminated certain CAP exceptions it maintained add-ons for new ratables and exclusions for pension increases over 2% and health benefits increases over 2% up to the State Health Benefit Program (SHBP) increase. It also allowed a local unit to "bank" the difference between the maximum amount allowed to be raised under the levy CAP in the current year and the actual amount raised. This "levy cap"

balance” is not available cash but constitutes additional expenditure authority that may be used in the ensuing three years.

*N.J.S.A. 40A:4-45.4*, enacted in 1976 contains a different formula. It limits the amount by which a County can increase its total tax levy over that from the previous year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA). Certain items are excluded from the CAP limits including, among other items: revenue generated by applying the preceding year’s tax rate to the apportionment valuation of new construction or improvements; capital expenditures; debt service; and expenditures mandated by statute or court order. In addition, a County may “bank” the difference between the actual tax levy in a given year and the amount that would have been authorized under the appropriations CAP. Under this statutory scheme, the CAP bank may be used for two years.

Because this award covers calendar years 2009 through 2011, it is possible to pinpoint the maximum allowable CAP for each of the contract years and compare it to the amount actually raised by the County through the county purposes tax.

For 2009, the County’s tax levy of \$162,186,033 was \$10,653,069 below the levy CAP and \$10,441,374 below the appropriations CAP. As such, it was bound

by the latter limit (Exhibit C-13, sheet 3d). The award presents no CAP issue for 2009 since the award is the same as the employer's offer.

For 2010, the County's tax levy of \$160,172,090 was \$5,525,817 under the maximum increase permitted by the levy CAP and \$9,596,751 under the increase permitted by the appropriation CAP (Exhibit C-14, sheet 3d). It was therefore bound by the levy CAP (2T45). For 2010, the award will result in \$211,027 more in expenditures for across-the-board increases than would have been incurred under the County's final offer. This figure is partially offset by approximately \$77,204 in new revenues provided by this unit's health benefit contributions. As discussed in the financial impact analysis, these monies can likely be accommodated with the framework of the 2010 adopted budget. However, even if the additional monies are not available in, for example, appropriated reserves for salary increases, the awarded salary increases would not require the County to breach the applicable CAP limitation, given that the County was \$5,525,817 under its applicable levy CAP for 2010.

A similar analysis pertains for 2011. For 2011, the County's tax levy of \$154,250,000 is \$12,492,209 under the maximum increase permitted by the levy CAP and \$6,058,347 under the increase permitted by the appropriation CAP (2011 County Budget, sheet 3d). It was therefore bound by the appropriation CAP. Within this context, the award results in an additional expenditure of \$161,436

above the County's offer for across-the-board increases. This figure is also partially offset by approximately \$77,204 in new revenues from this unit's health benefits contributions. Again, these costs can likely be accommodated within the context of the 2011 adopted budget. In any case, however, the award will not cause the County to exceed its CAP limit or its lawful authority, since it was \$6,058,347 under the maximum allowable CAP for 2011.

### **Financial Impact of the Award**

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

I have given *N.J.S.A. 34:13A-16g(6)* substantial weight in arriving at salary increases that are considerably closer to the County's proposal than they are to the PBA's final offer. I also conclude that my award will not have an adverse financial impact on the County or its residents and taxpayers.

Although the parties have drawn sharply contrasting portraits of the County's financial circumstances, they cite much of the same financial and budgetary information in espousing their positions; for example, each refers to the charts and data in Petrucelli's report.<sup>16</sup>

Overall, the record shows that while the County has had a strong history of financial stability, it has nevertheless faced serious challenges during the 2009 to 2011 time period that warrant caution in awarding salary increases. A key point that emerges from a review of the pertinent financial data, including Exhibit U-2, is that the County has experienced a decline in several fiscal indicators from the levels enjoyed in 2005 through 2008. Thus, while the County was able to regenerate surplus each year from 2005 to 2010, the December 31 fund balance declined from \$23,838,328 in 2005 and \$23,152,884 in 2007 to \$12,870,650 by the

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<sup>16</sup> I have considered the information in Petrucelli's report and the conclusions contained therein. However, I do not endorse the PBA's view that its own offer should be viewed more favorably than the County's because it presented expert testimony and the County did not. The arbitrator must review the record as a whole and make a determination as to what constitutes a reasonable determination of a salary dispute based on all of the relevant factors. Moreover, while Petrucelli focused on whether the County had the "ability to pay" the PBA's final offer (Exhibit U-2, p. 11), I must decide what increases are appropriate in light of the public interest and all of the other criteria. *Compare Hillsdale, supra* (arbitrators must focus on full range of statutory factors, not just police salaries in surrounding jurisdictions and the employer's "ability to pay").

end of 2009.<sup>17</sup> After anticipating a portion of these December 31 fund balances as revenue in the next year's budget, the County was left with surplus reserves of approximately 3.52% of the budget in 2009; 3.33% of the budget in 2010; and 3.5% of the 2011 budget (Exhibit C-13, sheet 3e; Exhibit C-14, sheet 3e; 2011 County Budget, sheet 3e). These figures are at the low end of the 3% to 6% that Petrucelli stated was recommended by rating agencies in order to "hold the rating" of a bond issuer (3T37). In that vein, Standard & Poor's gave a AA rating to the County's Series 2009 General Improvement Bonds, while Moody's assigned an Aa3 rating with a "negative outlook," a classification that Petrucelli agreed was one that issuers seek to avoid (3T50-3T51) (Exhibit U-3).

Similarly, cash balances declined every year from 2005 through 2009, from a high of \$40,073,379 on December 31, 2005 to \$21,817,092 on December 31, 2009. Unexpended appropriation reserves also fell from \$9,118,225 to \$3,218,182, a circumstance that Petrucelli explained was indicative of tighter budgeting (3T25). In addition, between 2008 and 2009, the growth in new ratables declined sharply, while the ratable base decreased by \$729,506,294 between 2009 and 2010 (Exhibit C-13, sheet 3d; Exhibit C-14, sheet 3d). This trend continued from 2010 into 2011, when the property tax base dropped by another \$1,887,748,718 (2011 County Budget, sheet 3d).

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<sup>17</sup> While the balances for 2006 and 2008 were not as high as those in 2005 and 2007 — \$18,098,374 and \$16,349,125, respectively — they were still well above both the 2009 end-of-year fund balance, and the \$13,417,030 generated in 2010 (2011 County Budget, sheet 38).

Within this environment, the County has continued its commitment to reducing spending and maintaining a low tax rate. That policy decision is entitled to deference and is eminently understandable in light of the economy at large and the County's own budgetary circumstances. Nevertheless, the County's decision has come at some cost: the 2009 and 2010 budgets projected the layoff of 50 and 87 employees, respectively (Exhibit C-13, sheet 3d; Exhibit C-14, sheet 3d), although Hornickel explained that the County was ultimately able to limit layoffs to 40 employees in 2010 (5T40). In its 2011 budget message, the County anticipated the elimination of 49 positions in Buildings & Grounds and the Detention Center (2011 County budget, sheet 3c).

I recognize both that the County has remained well under pertinent CAP limitations for 2009 through 2011 and that it has consistently received revenues in excess of those anticipated. However, excess CAP potential represents taxation authority, not cash on hand. And underestimating revenues is a common budgetary practice that allows excess receipts to flow into surplus, thereby providing a jurisdiction with funds that can be used either as reserves or as support for the next year's budget. If anything, the County's ability to regenerate surplus is under some pressure, as outlined earlier. In addition, the County appears to be correct in noting that at least one of the sources of unanticipated revenues that the PBA highlights – the \$3.4 million payment from the Library in 2009 – was a multi-

year obligation that was much higher than the typical annual payment of \$725,000 (Exhibit C-4).

Against this backdrop, I have given substantial weight to the financial impact criterion and awarded moderate increases that are less than what could be supported under the comparability criterion. My decision along these lines is reinforced when the County's fiscal situation is considered in light of the broader economic picture, including the high unemployment rate in the State and County. That environment is a relevant consideration in this proceeding because *N.J.S.A.* 34:13A-16g(6) directs a consideration of an award's impact on taxpayers and residents as well as a governing body. Even if such circumstances as high unemployment and a poor housing market do not immediately and directly impact the County's budget, these realities can deeply affect the residential and business taxpayers who support that budget.

As this award is issued, it is evident that economic challenges will persist throughout the 2009 through 2011 contract term. For the first half of 2009, New Jersey and the country as a whole were still in the midst of a deep, almost unprecedented recession. While the National Bureau of Economic Research (NBER) found that the recession officially ended in June 2009, NJWLD noted that "it did not conclude that economic conditions are favorable, only that the recession had ended and a national recovery began during June." See *NJLWD, New Jersey*

*Economic Indicators*, No. 530, p. 1. That recovery has been slow, with the latest figures showing that New Jersey's unemployment rate reached 9.5% as of June 2011, when Burlington County's rate edged up to 9.2% (NJLWD website).

However, while the foregoing factors strongly support moderate increases, they do not mandate that wage adjustments be limited to those proposed by the County. I conclude that the award represents a reasonable determination of the salary issue and will not negatively affect the County or its taxpayers.

For 2009, the award aligns with the County's final offer. For 2010, the cost of annual across-the-board increases under the award is \$211,027 more than the County's position. This amount must be considered in the context of a 2010 budget of approximately \$221.2 million, as well as the fact that beginning in or around the second half of 2010, the County's health benefits costs were offset by approximately \$77,204 in new health benefits contributions, amounts that the County would otherwise have had to absorb. Indeed, the County itself comments that County services "will not be adversely impacted by an award in the vicinity of the total figures" it proposes (County's brief, p.84). It also observes that an award of its final offer "or a reasonable variation thereof may not demonstrably change the prior year's appropriations" (County's brief, p. 83).

In this regard, while it is not my role to direct how the County should fund the award, *see County of Essex*, P.E.R.C. No. 2005-52, 31 NJPER 86 (¶41 2005),

citing *New Jersey State PBA, Local 29 v. Irvington*, 80 N.J. 271, 293 (1970), it is reasonable to surmise that the difference between the award and the County's offer might well be accommodated within the framework of the adopted 2010 budget by, for example, drawing on reserved appropriations. *Compare Essex* (because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund).

For 2011, the cost of annual across-the-board increases under the award is \$161,436 more than under the County's final offer, an amount that must also be considered in the context of the overall County budget and the approximately \$77,204 in revenues from new health benefits contributions. For the reasons outlined in connection with the costs for 2010, I believe these differentials can be accommodated with the County's overall budgetary framework.

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

#### **Cost of Living**

*N.J.S.A. 34:13A-16g(7)* mandates consideration of the cost of living, which is typically measured by the Consumer Price Index for all Urban Consumers (CPI-U) published by the federal Bureau of Labor Statistics (BLS). The BLS also

reports annual changes in the CPI-U for Philadelphia-Wilmington-Atlantic City region, a metropolitan statistical area that includes Burlington County (PBA Exhibit F-7, p.3). Each party has submitted BLS charts and news releases for 2009 and 2010 and I have supplemented that information with more recent BLS data. I focus on the annual December to December changes rather than the month-to-month figures set forth in periodic news releases or the annual average percent change in the CPI-U. The December to December figure reflects the most recent 12-month percent change in the CPI-U, while the annual average percent change shows the change in the average index for all 12 months of one year compared to the average index for all 12 months of the next year (PBA Exhibit F-1, p. 5).

For December 2008 to December 2009, the annual percentage change in the CPI-U was 3.0% in the Philadelphia-Wilmington-Atlantic City region (PBA Exhibit F-7), while for 2010, the figure was 1.4%. *See ww.bls.gov.* For the first half of 2011, the CPI-U for the Philadelphia region is increasing at an annual rate of 2.8%. *Ibid.*

These figures are consistent with the awarded increases of 2.5% for 2009 and 2.0% for 2010, since the two-year percentage increases correspond closely to the combined CPI for 2009 and 2010. For 2011, the award may be somewhat below the CPI-U. However, it should be recalled that the CPI-U includes increases

in medical costs (PBA Exhibit F-1) which, even under recent legislation, are still borne largely by the County.

On balance, I have given the cost of living criterion some weight in arriving at salary increases and conclude that it points to increases in the range of those that I have awarded. Lesser increases would result in some erosion of unit members' compensation while the increases proposed by the PBA, especially at the higher steps, substantially exceed CPI increases.

### **Continuity and Stability of Employment**

*N.J.S.A. 34:13A-16g(8)* directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in public and private sector negotiations. It incorporates three concepts that have been discussed at other points in this award. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Absent strong justification, arbitrators are generally reluctant to significantly change a unit's relative standing, reasoning that interest arbitration is an extension of the negotiations process, *Hudson Co. Prosecutor*,

P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997), and is not ordinarily intended to revamp a compensation structure established over many years of negotiations.

Finally, the continuity and stability of employment also implicates the importance of considering internal settlements, since unwarranted deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability within a jurisdiction.

Applying these concepts to the record in this case, the continuity and stability of employment criterion points to increases somewhat higher than those proposed by the County but does not warrant increases at the level sought by the PBA.

I have already addressed the issue of turnover and recognized that it has been a problem in the past. However, the PBA has not shown that the department's turnover rate has returned to the excessive levels that once pertained. Moreover, in this difficult labor market, it is not likely that officers will leave their current positions in the short term. For the same reasons, recruitment should not present a problem. Accordingly, I find that in this environment, the continuity and stability of employment will not be jeopardized by moderate increases that maintain the unit's relative standing. While I appreciate the PBA's desire to improve salaries, especially maximum salaries, for these skilled officers, this is not

the environment to make adjustments beyond the across-the-board increases that are appropriate under all of the criteria, particularly the financial impact criterion.

Finally, although the awarded increases are less than those negotiated with the CWA and PBA 320 units for 2009 and 2010, it is unlikely that this circumstance will have a significant impact on labor relations stability. The CWA and PBA units are on different negotiations cycles and there is no evidence that the two employee groups have traditionally received the same increases. Most important, this award takes place in a changed negotiations environment where the reasons for departing from the settlements have been fully articulated.

In sum, the continuity of stability and employment will not jeopardized by the awarded increases, which are lower than those proposed by the PBA. At the same time, I have also determined that increases as the level sought by the County could jeopardize the morale of this dedicated group of corrections officers.

## **OTHER ECONOMIC & NON-ECONOMIC PROPOSALS**

The foregoing discussion of the statutory factors informs my analysis of the other unresolved issues. In particular, in view of the budgetary constraints and economic environment that have been discussed throughout this opinion, I have decided that improvements to this unit's compensation package should be allocated to across-the-board salary increases that will benefit all unit members, as opposed to enhancements to other benefits.

## **County's Work Schedule Proposal**

The County's proposed 4/3 work schedule is one of the primary and most contentious issues in this proceeding, with the County vigorously espousing the schedule and the PBA just as firmly opposing it. As a threshold point, I stress that I lack the authority to decide whether the County has a managerial prerogative to unilaterally implement the 4/3schedule. That is a scope of negotiations question that rests in the first instance with PERC. *N.J.S.A. 34:13A-5.4d; N.J.A.C. 19:13-1.1 et seq.*; *see also N.J.A.C. 19:16-5.7(h)*. I do note, however, that an extensive body of PERC and judicial case law holds that work schedules are generally mandatorily negotiable unless the facts of a particular case prove the need to preserve or change a work schedule to implement a governmental policy. *See, e.g., City of Trenton*, P.E.R.C. No. 2010-73; *Teaneck Tp.; Maplewood Tp.*, P.E.R.C. No. 97-80, 23 NJPER 106, 113 (¶ 28054 1997).

Of more direct relevance here is the detailed guidance PERC has provided with respect to how an interest arbitrator should analyze a work schedule proposal. First and foremost, PERC has emphasized that before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions. *Teaneck; City of Clifton*, P.E.R.C.

No. 2002-56 , 28 NJPER 201 (¶ 33071 2002). It has also underscored that the party proposing a major work schedule change has the burden of justifying it. *Ibid.* In elaborating on this burden concept, PERC commented that over the course of a negotiations relationship between a particular employer and majority representative, department work schedules are not routinely or frequently changed. *Clifton*. Therefore, it held that work schedules should not be changed by an arbitrator without strong reasons, *Ibid.*

At the same time, *Clifton* also observed that, while arbitrators should consider whether there is evidence of problems with an existing schedule, the proponent of a schedule need not show that the current schedule does not “work.” Interest arbitration must allow for a schedule change that an arbitrator reasonably concludes is warranted after a full and fair consideration of all of the statutory criteria. *Clifton*.

When the County’s proposal is evaluated within this framework, it is evident that the 4/3 schedule would constitute a “major” change on several levels. The proposed schedule would reduce the work week by 20%; increase each work day by nearly 24%; alter the number of posts subject to bid; and require more officers to function as a “special assignment officer” for a portion of their shifts. It would also affect staffing allocations throughout the day; increase the number of officers who have either a Saturday or Sunday off; and eliminate the ability of some

officers to have both Saturday and Sunday off. I conclude that the County has not proved by a preponderance of the evidence that these far-reaching changes are warranted.

My analysis is two-pronged. First, I consider whether there are problems with the current 5/2 schedule. Second, I assess whether the County has shown that implementation of the 4/3 schedule would improve employee morale, reduce sick leave and overtime, and enhance the operations of the County's correctional facilities.

The concept of the 4/3 schedule originated with the Human Resources Department, and was then reviewed and endorsed by Warden Cox and Captain Artis (3T119-3T120; 4T47). The primary objective of the schedule, as designed by Human Resources personnel, was to improve employee morale and work-life balance; Hornickel also anticipated that achievement of this objective would increase officer productivity (4T97; Exhibit C-8).

However, there is no evidence that the inherent features of the 5/2 schedule — or of the three shifts as presently configured and staffed — create operational or supervision problems in the jails that impede the County's core mission of providing care and custody to incarcerated inmates. All indications from this record are that the BCDC and CWRC operate well, with a high officer to inmate ratio that is consistent with the County's direct supervision philosophy. Artis in

particular expressed his view that County facilities operate in a manner that reduces conflict among inmates; allows officers to anticipate and defuse confrontations; and eliminates the “inmate law” that prevails in crowded; indirect supervision jails (3T60-3T61).

While the County states that it experienced high levels of sick leave and overtime during 2005 through 2010, those levels cannot be considered an inevitable byproduct of the 5/2 schedule. As Warden Cox recognized, overtime will occur under any schedule, because officers have contractual time off and will become ill (4T43). Also, as discussed *infra*, the County has reduced overtime and sick leave within the context of the current schedule.

In assessing whether there are problems with the 5/2 schedule, it is also noteworthy that most other correctional facilities in New Jersey operate pursuant to it, as does the County’s 24/7 nursing facility (5T7).<sup>18</sup>

Similarly, the County has not pointed to any out-of-state institution that has adopted the 4/3 work week; nor has it shown that the schedule has been studied or recommended by agencies or organizations that regulate, or advocate for, corrections facilities.

These circumstances do not prevent award of the proposed schedule but they do mean that the County was unable to draw on witnesses who were familiar with

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<sup>18</sup> Hornickel at one point indicated that there might be one or two New Jersey correctional institutions that use 12 – hour shifts; however, he could not recall for certain (5T8-5T9).

the schedule's successful implementation in other jurisdictions. As such, any claimed potential benefits must rest solely on the County's own research, presentation, and projections. *Contrast Clifton and Teaneck* (where PERC noted that the arbitrators had described the 24/72 schedule as a "common" one and, further, had relied in part on evidence that other municipalities had successfully transitioned to the 24/72 format).

Turning to the asserted benefits of a 4/3 schedule, a key feature of the County's presentation is the improvements that would allegedly flow from a four day as opposed to a five-day work week. Thus, the County urges that this change would improve officers' morale by giving them more family and personal time, thereby reducing the likelihood of their taking unnecessary sick leave. The County reasons that this predicted reduction in sick time will in turn reduce overtime (a fiscal benefit), and enhance operations by eliminating vacant slots in the schedule. All these considerations bear on the public interest. Any impact on overtime would also implicate *N.J.S.A. 34:13A-16g(6)*, the financial impact of the award.

In terms of employee morale, there is an abstract plausibility to the County's belief that employees would prefer having three consecutive days off rather than two, especially if they are guaranteed that one of those days will be a Saturday or Sunday. However, I must consider that, in this particular case, the exclusive representative of this corrections officer unit does not perceive such benefits. To

the contrary, the PBA strongly argues that the extended work day would have a negative impact on officers' well-being; supplemental employment; and the child care arrangements of day shift officers. The PBA also emphasizes that the 4/3 proposal would eliminate a highly prized benefit for senior officers – the ability to bid for a schedule with both Saturdays and Sundays off.

PBA President Swenson credibly testified that the Local 249 contract committee received substantial feedback from officers who expressed these and other objections to the schedule (1T38-1T39). Further, the committee itself contacted day care centers and confirmed that it would be difficult to arrange care before 6:00 a.m., when the day shift would start.<sup>19</sup>

In elaborating on these objections, the PBA also expresses the firm view that an extended work day would increase officer stress and fatigue. That assertion cannot be proven or disproven on this record, but it is a reasonable and serious concern in a facility where officers have direct contact with inmates. Put another way, it is just as reasonable to surmise that an increased work day would add to stress and fatigue as it is to predict that a reduced work week would decrease it. This is particularly so since, in the event of mandatory overtime, an officer would be required to work 14.5 hours under the 4/3 schedule (5T39). By contrast, an officer who is now "stuck" with overtime can generally chose to work only four

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<sup>19</sup> That research is not negated by Hornickel's observation that some officers voluntarily report to work before 7:00 a.m. in an effort to obtain overtime. The salient point is that the 4/3 schedule could mandate early reporting for officers for whom that would present child care difficulties.

hours, for a total of 12.5 hours (5T39-5T40).<sup>20</sup> Overall, I conclude that the potential negative impacts on officers, and the PBA’s strong objection to the schedule, outweigh the likelihood that the 4/3 proposal would improve employee morale. The PBA’s opposition is not dispositive but, under all the circumstances of this case, it is an important factor.<sup>21</sup>

I turn next to the potential impact of the 4/3 schedule on overtime and sick leave. The linchpin of the County’s position is that by affording individuals three consecutive days off, the 4/3 schedule would make it less likely that officers would take unnecessary sick leave, a circumstance that in turn would reduce overtime. The County adds that because officers currently take more sick days on Saturdays and Sundays than on weekdays, the 4/3 schedule would help eliminate this pattern, since it would afford all officers either a Saturday or a Sunday off.

I do not discount the possibility that the 4/3 schedule could result in some reduction in sick leave. Artis, a credible and knowledgeable witness, testified that officers often call in sick to obtain a “three-piece” —three days off in a row (3T139-3T140). As such, a 4/3 schedule might well lessen some officers’ inclination to abuse sick leave. However, in evaluating the significance of this

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<sup>20</sup> Officers can work a maximum of 16 hours straight if they get “stuck” prior to and after their regular shift. Artis stated that this does not happen as often as it used to (3T93-3T94).

<sup>21</sup> This analysis is in accord with my award in *Englewood*, where the PBA’s opposition to the employer-proposed schedule, which was also intended to improve employee morale, was one of several reasons that it was denied. I add that there appears to be no prohibition against an employer proposing a new work schedule based on the asserted benefits to employee morale. *Contrast City of Clifton and Clifton PBA*, P.E.R.C. No. 2004-20, 29 NJPER (¶149 2003) (union-proposed work schedule must be justified by its positive impact on employee work and welfare, not any perceived improvement in how to manage the police department).

potential outcome, the relationship between sick leave and overtime must be placed in perspective.

First, a significant portion of overtime is not related to sick leave “call outs” at all but is attributable to jury duty, contractual leave, and approved family leave (Exhibit C-5a). As a result, Cox acknowledged that there will always be overtime at correctional facilities, no matter what the schedule, because they operate 24/7 and officers have contractual time off (4T43). Second, illness does occur, and not all sick leave call outs can be prevented. Third, while floor officers who call out sick must be replaced, that is not true of officers in all positions (4T51; 4T57). In sum, not all sick leave results in overtime and not all overtime is attributable to unnecessary sick leave. Despite these considerations, the County does not offer projections as to approximately how much sick leave would likely be reduced under its proposed schedule; nor does it suggest what its benchmark is for an appropriate level of sick time for the unit.

Moreover, while there are undoubtedly officers who call in sick when they are not ill (4T42), the County has not proven (or suggested) that sick leave abuse is a unit-wide problem. Nor has it shown that misuse of sick leave cannot be addressed through application of its sick leave verification policy, as opposed to implementation of a schedule that affects all officers, even those who do not misuse sick time.

Indeed, the record shows a reduction in both overtime and sick leave hours in the last two years, and Warden Cox recognized that there had been improvement in these inter-related areas under his tenure (4T43). For example, sick leave call-outs declined from 43,843.58 hours in 2007 to 12,095.25 for the first half of 2010 or a projected 24,190.50 for the year. (The total for 2009 was 27,498) (Exhibit C-5b). Total overtime hours (for all reasons) reached highs of 100,880 and 105,051 in 2005 and 2008, but accounted for 33,991 hours for the first half of 2010 or a projected total of 67,982 for 2010 (Exhibit C-5a).

Similarly, the most recent statistics show a relatively even distribution of sick days throughout the week. For the first half of 2010, the days with the lowest use of paid sick days were Monday (199) and Tuesday (188), while the figures for the remainder of the week ranged from 217 for Wednesday; 218 for Saturday; 223 for Friday, 228 for Thursday, and 229 for Sunday.

For 2007 and 2009, the County correctly notes that more paid sick days were taken on Saturdays and Sundays than on most other days of the week. However, the efforts by the current administration to change this pattern appear to be achieving success, and the data from 2007, 2008 and 2009 does not provide a basis to change the work schedule for all officers.

Finally, the County's presentation expresses the hope that mandatory overtime will be reduced if not eliminated under the 4/3 schedule, certainly a

salutary goal (Exhibit C-8n). However, beyond indicating that there would be no MOT on Wednesday, when all officers would report, the County's predictions concerning MOT depend on the same assumptions that underlie its arguments concerning overtime and sick leave generally. Overall, I conclude that the County has not proven by a preponderance of the evidence that potential reductions in overtime and sick leave under a 4/3 schedule justify the award of the schedule. Nor has it proven that the schedule would reduce overtime and sick leave more effectively than would sick leave monitoring.

As noted, the County's primary rationale for the 4/3 schedule was the positive impact on employee morale, sick leave call outs, and overtime that would result from having all employees on a Sunday to Wednesday, or Wednesday to Saturday schedule. However, the County also highlighted the staffing allocation and shift bidding provisions that are outlined in Exhibit C-8h. (These provisions are not detailed in the County's final offer).

In this regard, the County stresses that, under the 4/3 schedule, it would be able to assign more officers during what it characterizes as the busiest period of the day: 10:00 a.m.to 4:30 pm., when inmates may attend church, meet with their attorneys, or visit the law library. Intertwined with the staffing allocations set forth in Exhibit C-8h (and which are to be contrasted with the current allocations described in Exhibit C-5d), is the County's proposal to open all posts to bidding,

an action that Hornickel stated would double the number of bid assignments (4T120). At the same time, however, Hornickel explained that some officers would work the bid assignment for only a portion of their shift, and would function as a special assignment officer for the remainder of their work day. Hornickel added that an individual could be placed anywhere in the facility or, if qualified, outside the facility as well (5T31).

These provisions touch directly on the manner in which the County supervises its inmates; they also impact on officers' every day work environment. On balance, I find that the record is not detailed enough for me to make an informed decision as to whether the changes are necessary or desirable. For example, the proffered benefit of having more staff during the busiest portion of the day has a strong abstract appeal. However, there is little if any particularized testimony about how this new staffing allocation would improve current operations; what, if any, problems it is designed to correct; or the possible impact of having fewer staff between 7:00 a.m. to 10:00 a.m. and 4:30 p.m. to 11:30 p.m. For example, it is unclear how the proposed staffing allocations would affect movement of BCDC inmates to and from quiet recreation, which Artis described as occurring between 7:00 a.m. and 3:00 p.m. for one half of a tier and between 3:00 p.m. and 11:00 p.m. for the second half (3T57). Under the County's proposal, it

appears that the 7:00 a.m. and 11:00 p.m. transitions would occur when there would be fewer staff assigned than at present (Exhibit C-8h; Exhibit 5d).

Similarly, an increase in the number of special assignment officers could result in desirable cross-training and give management flexibility to deploy officers where they are needed at any given time. And an increase in the number of posts that can be bid would give officers more choice in assignment, and would presumably improve morale. However, the PBA also reasonably argues that increased reliance on special assignment officers could potentially lessen an officer's familiarity with the inmates he or she is supervising, a special concern in a direct supervision facility. On this record, the considerations for and against the staff allocation and shift bidding aspects of the 4/3 schedule are at best in equipoise. As such, these factors do not provide a basis for awarding it.

Finally, the County also offered limited testimony and argument concerning the potential of the 4/3 schedule to enhance training and address a lack of "productivity" by officers. It appears that the quoted term was intended to refer to officer absenteeism and use of sick leave, issues that I have already addressed (4T84-4T85;4T97). In any case, the record includes no testimony concerning any deficiencies in officers' performance of their assigned tasks.

Training opportunities theoretically could be enhanced under a schedule where all unit members would report on Wednesdays, thus making it easier to pull

officers off of their regular assignments. Overall, however, the County did not show that lack of training is a significant problem at the BCDC and CWRC. Nor did it present firm or detailed plans for the training that it would implement. For example, Artis testified that it would be easier and less expensive to train officers in cell extraction under a 4/3 schedule, because training officers would not have to be brought in on overtime (3T146-3T147). However, he also described how officers had recently performed a difficult cell extraction, without such additional training (3T81).

Similarly, Hornickel suggested that all officers could complete their firearms qualifications on Wednesdays, but was uncertain whether this objective could be accomplished with the County's current complement of firearms instructors (5T12). And while he offered general testimony about the desirability of risk management training, he also acknowledged that the nature of a correction officer's job makes it impossible to reduce certain types of injuries, such as those that might be sustained in an altercation with an inmate (5T35-5T36).

In light of all of the foregoing, I conclude that the County has not met its burden of justifying the award of the 4/3 work schedule. At the same time, however, I note that both the County's proposal and the PBA's Reciprocal Day proposal focus on providing officers with three consecutive days off. Accordingly, I believe that the parties might benefit from mutual consideration and

discussion of these proposals, and I award a joint committee, comprised equally of Local 249 and County representatives, to discuss the feasibility of implementing the 4/3 work schedule and the Reciprocal Day proposals, as well as any adjustments to those proposals that might make either or both mutually agreeable. The scope of the committee's discussion, study, or outreach to unit members shall be determined by the committee.

**County Proposals on Sick Leave, Personal Leave, Holidays, Vacation, Overtime, Seniority, and Rights & Privileges of the Association**

The County proposes a number of changes that are directly tied to implementation of the 4/3 work schedule. For example, the County proposes to state various types of leave in terms of hours instead of days. It also seeks to revise overtime and seniority provisions to conform to the new work schedule and, subject to the award of the 4/3 work week, the County also proposes holiday buyouts and full release time on Wednesdays for the Local 249 President. In view of my ruling on the work schedule, these proposals are denied but may be reviewed and discussed during meetings of the joint work schedule committee.

**PBA Reciprocal Day Proposal**

The stated purpose of the PBA's reciprocal day proposal is to provide a means by which employees who hold 24/7 positions can temporarily reorganize their work schedule to attend to personal business. Hornickel testified that the proposal had potential in this regard but he expressed concern that the

administrative details were left up to the employee (5T68). This concern is understandable. However, because this proposal shares some goals with the 4/3 work schedule proposal, it is appropriate that the joint committee discuss and review it.

### **County and PBA Health Benefits Proposals**

Each party proposes changes to Article IV, health benefits, which provides that all employees and their dependents shall be covered by a non-contributory comprehensive County self-funded medical, optical and prescription plan (PBA Exhibit J-1, p. 5). Hornickel estimated that the annual 2010 cost for family coverage, including prescription benefits, was \$18,000 (5T81), while the cost for single coverage was about \$8,400 to \$9,000 (5T81). These figures do not appear to include dental coverage, for which the County seeks premium contributions separate from those it proposes for medical and prescription coverage.

The County's final offer includes a reorganized health benefits article that increases doctor's visit co-pays from \$10 to \$20; raises emergency room co-pays from \$25 to \$50; and eliminates the co-pay for generic prescriptions while changing and increasing the contribution structure for brand name drugs. Currently, unit members pay \$15 for prescription drugs for which there is no generic available; this payment would be replaced with a \$30 co-pay for preferred

brand name drugs. The current \$30 co-pay for other brand name drugs would be replaced with a \$45 co-pay for non-preferred brand name drugs.

The County's proposal would also require employees to use a prescription mail order service for maintenance medications beginning 90 days after a prescription is first filled. Further, the County proposes to establish a \$750 opt-out stipend for unit members who have alternative health coverage. It also seeks to implement a \$400/\$600 deductible for out of network coverage.

In addition, the County proposes that where an employee is in a suspension or W status for more than 10 days in a month his health benefits coverage would terminate at the end of the month. Coverage would be restored on the first of the month after the employee has resumed working an average of 30 hours per week over the course of the month.

Finally, the County seeks to require unit members to pay 15% of the premium for medical, optical, and prescription coverage, as well as biweekly payments for dental coverage of \$5.00 for single coverage; \$10.00 for husband/wife or parent/child coverage; and \$15.00 for family coverage. The dental portion of the County proposal would also increase maximum annual non-orthodontic benefits from \$1,000 to \$2,000 per patient annually and would raise the maximum per lifetime orthodontic benefit to \$2,000. It would also provide for a non-stipend opt-out for employees with alternate dental coverage.

For its part, Local 249 proposes to add language requiring well-child and baby care coverage, including vaccinations and gynecological care for dependents. It also proposes to specify that there shall be no prescription pre-certification requirement and seeks an annual opt-out payment in the amount of 50% of the premium charges the County would have incurred for the type of coverage the employee would have selected (at COBRA rates, less the 2% administrative charge).

I turn first to the County's proposal dealing with co-pays and mail order prescription services. While the Sheriff's Officers 2006-2008 agreement includes co-payments similar to those in this unit's 2005-2008 contract, more recent internal settlements mirror the terms of the County's proposal. Thus, the contracts for the Prosecutor's Detectives and Investigators and their superior officers, and the CWA contracts for three units, including the unit representing 72% of County employees, all extend into 2010 and all include co-pays identical to or slightly higher than those proposed for this unit (PBA Exhibits J-3; J-4; J-5; J-7; J-9). They also require use of a mail order service for maintenance medications. These settlements weigh strongly in favor of awarding the proposed co-pay provisions. *Union Cty.* While the PBA emphasizes that civilian employees do not face the same dangers as corrections officers, it has not established a link between the nature of a corrections

officer's position and the frequency with which the employee or his or her dependents incur the noted co-payments. I will therefore award them.

I also award the County's proposal for a \$750 payment for those who opt out of County coverage. This type of stipend benefits both parties, and the County's proposal is identical to that in the CWA 1036 and CWA Highway Supervisors contracts. The PBA-proposed stipend would be approximately \$9,000 for an individual who would have selected family coverage during 2010. This payment would be dramatically higher than the \$750 payments in the other County agreements and cannot be justified.

I have decided against awarding other aspects of the County's health benefits proposal, including the proposal to terminate health coverage for a correction officer who is on suspension or W status for 10 days in a given month. I decline to award a provision that would remove health coverage for an individual who works in a dangerous environment and who, for that reason, might not be as proactive in performing his duties as he or she might otherwise have been. While one CWA agreement does include such a clause (PBA Exhibit J-9), this is an instance where the differences between law enforcement and civilian employment warrant different contractual provisions.

I also deny the County's proposal for premium contributions for medical, prescription, and dental coverage. As discussed at the outset of this opinion, *L.*

2011, c. 78 mandates phased-in health benefits premium contributions for all New Jersey public employees. For employers such as the County, who provide coverage outside the SHBP, the required premium contributions pertain to medical, prescription, dental, and any other type of health benefit coverage. *L.* 2011, c. 78, §39.

While this statutory framework certainly does not preclude additional contractual contributions, they are not warranted in the particular circumstances of this case. First, there is some uncertainty about the financial impact of the proposal because the record includes no information about the cost of dental coverage. Second, no other unit is subject to the medical and prescription premium contributions that the County proposes, despite the fact that several have contracts extending into 2009 and 2010. Third, as discussed in the comparability analysis, this is not a highly paid unit. The advisability of directing additional health benefits contributions must be evaluated in the context of the unit's overall compensation package and the award as a whole, which includes lower salary increases than would likely have been awarded in a more favorable economic climate. In this posture, the County has not met its burden of justifying additional health benefits contributions that could erode this unit's standing vis-à-vis fellow County employees and corrections officers in other southern New Jersey counties.

With respect to the County's dental proposal, the above-noted CWA and PBA 320 contracts include provisions virtually identical to those in the County's final offer, and the proposed premium contributions are coupled with enhanced benefits. While these factors might ordinarily weigh in favor of awarding the proposal, I conclude that the additional premium contributions, although not large, would somewhat diminish the overall economic package of a unit that is already at the low end of the range of reasonable compensation for corrections officers. I therefore deny the proposal.

With respect to the proposed \$400/\$600 deductible for out of network coverage, the 2005-2008 contract does not specify the deductible for this coverage, although Hornickel stated that it was \$200/\$400 (4T136). The three CWA contracts have the \$400/\$600 provisions but neither the PBA 320 nor Sheriff's Officer contracts specify deductibles for out-of-network coverage. Absent more particularized information about how often out-of-network coverage is sought, or more specificity as to how much money the suggested change would save the County, I decline to award this provision.

Turning to the health benefits changes that the PBA seeks, the PBA's proposal to contractually require well-child and baby coverage is denied. The County's comprehensive health benefits plan (PBA Exhibit J-10, pp. 17, 39) appears to include this coverage, at least as of 2007, and absent more detailed

discussion of the issue, I am reluctant to mandate the details and specifics of health benefits coverage. Similarly, while the PBA seeks a guarantee that there shall be no prescription pre-certification requirement, it does not state whether this mandate now exists and, if so, what difficulties it has caused. Therefore, the PBA has not met its burden of justifying this proposal.

### **County and PBA Retirement Proposals**

Both parties propose changes to Article XVI, Retirement, which governs retiree health benefits and supplemental compensation for unused accumulated sick leave. The County seeks to:

- Change the payment date for supplemental compensation to the January next following the employee's retirement, provided he or she has given six months notice to the Department Head. Failure to give such notice shall result in a delay of payment to the second January next following the employee's retirement date.
- Amend paragraph B to state that an employee who retires with 25 years or more credited service to Burlington County shall be covered "by a comprehensive, County self-funded, medical plan." The quoted language replaces a guarantee that the retiree shall have "his Hospital, Surgical and Major Medical or Health Maintenance (HMO) benefits premium paid by the County."
- Add language stating that unpaid leaves of absence — other than FMLA, military, and worker's compensation leaves —that collectively exceed 12 months shall not count toward the 25 years of service eligibility threshold. The County also proposes language stating that if an employee has taken an unpaid leave of absence in the twelve months preceding retirement, the amount of the leave shall be deducted from the 90-day period during which the retiree is otherwise entitled to County-paid health coverage.

The PBA proposes to:

- Condition entitlement to retiree health benefits on 25 or more years of credited service “in a State or Local retirement system” and only 15 years of service with Burlington County. It also seeks to obtain health benefits (and their dependents) who have retired on ordinary or accidental disability.
- Provide fully paid coverage for the first 180 days following retirement.
- State that prescription coverage is included in retiree health benefits and guarantee that retirees shall receive the same level of benefits (including out-of-pocket expenses) that were available on the date immediately prior to retirement.

I deny most of these proposals. Local 249 seeks to expand retiree medical coverage in ways that would substantially increase the cost the cost of this benefit. Such adjustments cannot be accomplished in this interest arbitration and in this fiscal environment, where I have concluded that any enhancement to unit members’ compensation package should be in the form of across-the-board increases that will immediately benefit all employees. Moreover, the record does not include any other County contract that provides for retiree coverage after 15 years of service with Burlington (and a total of 25 years in the pension system). Nor does any other County agreement freeze co-pay amounts at the levels in place when an employee retires. Similarly, the PBA has not shown that the sought after benefits are common among other New Jersey corrections officers.

One additional point requires discussion. The PBA seeks to specify that prescription drug coverage is included as part of retiree health benefits. Article VI does not now mention prescription drug coverage for retirees but it appears from the hearing that such benefits are provided (5T80). My intent is to continue the existing practice.

Turning to the employer's retirement proposals, the largest CWA unit and one other CWA unit have provisions that exclude most unpaid leaves in determining whether the 25-year requirement has been met. These contracts also factor in unpaid leaves in assessing the number of days a retiree is entitled to paid health coverage (PBA Exhibits J-7, pp. 21-22; & J-9, p. 22). Analogous provisions are not included in the law enforcement contracts (PBA Exhibits J-4, p. 11; J-11, p. 20), and the County has not made any detailed arguments as to why they should be included here. I decline to award these changes.

The County's proposal to have the lump sum supplemental compensation paid on the January following a member's retirement is similar to the provisions included in two CWA contracts that have this benefit (PBA Exhibits J-7, p. 21; J-9, p. 22).<sup>22</sup> I recognize that the proposal's apparent objective is a salutary one: to enable the County to better anticipate when it will need to make these payments. However, this objective can be furthered by other means. The State

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<sup>22</sup> The other County law enforcement contracts do not appear to have this benefit.

retirement process entails some advance notice to the employer; the County can encourage additional notice; and it can also monitor the sick leave balances of retirement-eligible employees.

Moreover, I am mindful that injury or illness might prompt a corrections officer to retire more precipitously than a civilian employee with a less dangerous and stressful position. As such, this proposal could detrimentally affect a retiring officer, who might have to wait six months for the supplemental payment, which is in the nature of deferred compensation. In this context, I find that the County has not met its burden of justifying the proposal.

Finally, as outlined above, the County seeks to amend the description of the type of retiree health coverage that will be provided. The suggested language reflects the self-funded plan that is now in place (and that is referenced in the health benefits article), and the proposal is therefore awarded.

### **County's Discipline Proposal**

The County proposes to reinstitute working suspensions with a \$35 per day fine for attendance violations, minor discipline “and other disciplinary infractions as agreed upon by the parties.” Hornickel explained that the County sought to revive a program that had been in place in the past, where instead of losing hundreds of dollars for one to four day suspensions, an employee would continue working and incur a fine (4T146-4T147).

This proposal has the potential to benefit both parties: the County would have the ability to impose minor discipline without losing the productivity of the disciplined officer. It could also avoid overtime payments for any replacement officer. For the officer, a daily fine would appear less onerous than a suspension, where he or she would lose the value of a full day or days of work.

Nevertheless, absent more specifics about why this program was discontinued, I decline to award the proposal on this record.

### **PBA Uniform Allowance, Holiday Pay, Vacation, Overtime, Personal Leave and Seniority Proposals**

#### **Proposals Seeking Additional Pay**

The PBA has set forth several proposals that would increase the cost of the overall benefit package by: affording unit members additional vacation days after 24 years; increasing the uniform allowance and then folding it into base pay; providing overtime for hours worked beyond the normal work day (instead of beyond the 40 hour week); requiring additional overtime compensation for working on a holiday; and extending the amount of time within which an employee may seek compensation for working on a holiday. In addition, the PBA proposes that each officer's shift shall include a 15-minute paid break and that overtime shall be paid at twice the hourly rate if an officer is required to work more than 16 hours.

In view of the County's budgetary constraints, I have decided to allocate any economic enhancements to across-the-board salary increases that will benefit all unit members. In addition, a review of the record reflects that this unit does not have sub-par benefits in such areas as vacations and uniform allowance. Instead, their benefits are in the mid-range among corrections officers in southern New Jersey (Exhibit K-1). Further, their vacation benefit is somewhat more favorable than that in some CWA units, which receive the maximum benefit of 25 days after 25 years, instead of 20 years for correction officers (PBA Exhibit J-7, p. 17; PBA Exhibit J-9, p.14).

For these reasons, I deny the PBA proposals to amend:

- Article III, Uniform Allowance, Section D
- Article X, Holidays, Sections A and C
- Article XI, Vacation Leave, Section B
- Article XII, Overtime, Sections A, B, F, & G

### **Proposals Governing Use or Denial of Leave Time**

Other of the PBA's proposals concerning vacation, overtime, personal leave, and holidays seek to change the current standards governing the use of those benefits. I deny these proposals on the grounds that the PBA has not met its burden of justifying them; in addition, some proposals appear to interfere unduly with the County's ability to direct the operations of its correctional facilities.

For example, Article IX now states that personal leave may be taken in half-day increments "to be taken solely during the last four (4) hours of a shift." The

PBA seeks to delete the quoted phrase, thereby permitting offices to take personal leave at the beginning or middle of a shift. The desire for increased flexibility is certainly understandable but without some particularized discussion of this issue I cannot determine whether the proposal would impede departmental operations.

The proposal is therefore denied.

For similar reasons, I deny the PBA's proposal to change the provisions of Article X.D, which sets forth requirements for when an employee must work on the scheduled days before and after a holiday in order to receive the holiday. The proposed change is potentially problematic in view of the testimony about problems with sick leave call outs. The PBA has not met its burden of justifying this proposal.

The PBA also seeks to amend Article IX to state that personal leave shall not be denied except in cases of an emergency such as a general recall; in addition, it proposes to specify that the fact that the County would incur overtime is not a reason to deny the request for personal leave. Further, the PBA asks that in the event that the PBA prevails on a grievance concerning the denial of leave time, the County would be obligated to pay an officer two days liquidated damages for each day of leave denied.

These provisions would unduly restrict the County's ability to make good faith judgments as to when to grant or deny personal days. Officers are afforded

three personal leave days per year and the PBA has not established that officers' use of this benefit has been unreasonably restricted. In particular, the concept of liquidated damages is extremely atypical in the labor relations grievance context. For these reasons, the PBA's proposals concerning the use of personal leave are denied, as are its proposals to make identical changes to Article X.B (holiday leave).

Other PBA proposals touch on vacation scheduling and shift assignments. Thus, the PBA seeks to add language stating that a minimum of eight officers per shift shall be allowed vacation leave. The PBA also seeks to prohibit an officer from being mandated to work overtime after the end of his last regularly scheduled work shift before a scheduled vacation. It also proposes to include a clause stating that, once scheduled, vacations may not be changed except by agreement of the affected officer.

These are broad proposals that could jeopardize the County's ability to maintain minimum staffing levels and complete its core mission of providing care and custody to inmates. They are therefore denied.

Similarly, I deny the PBA's proposal to amend Article XIII, pertaining to seniority and shift bidding, to state that an employee may be switched to an "administrative shift" only with the officer's agreement. It is a well established labor relations precept that an employer has a managerial prerogative to transfer an

employee within his job classification for non-disciplinary, non-discriminatory reasons.

**PBA Proposals Concerning Work Rules, Officers' Bill of Rights, Administrative Rules and Regulations and Rights and Privileges of the Association**

The PBA proposes to amend Article XIX to state that changes to work rules and new work rules shall not be implemented until the Association has had a minimum of 14 days to review and comment on same “emergencies excepted.” The predecessor contract provides for notice to the Association of any changes in work rules and the PBA offered no evidence that this notice has been insufficient. The proposed new language could impede the County’s ability to quickly implement changes that are necessary to improve operations at its correctional facilities. The proposal is denied.

The PBA also seeks to add a sentence to Section D of Article XIX, which pertains to drug and psychological testing. These are extremely detailed provisions and the PBA requests the addition of a new sentence that requires the County to provide the union with the name of the computer program that the County uses to select individuals for random testing. The PBA has not shown that there have been problems with or questions about how individuals are selected for testing. I therefore deny the proposal.

I also deny the proposal to amend Article XXXV to state that the parties are bound only by the “mandatory” rules of PERC, the New Jersey Department of Personnel (DOP), and the Police Training Commission. The impact of adopting the proposal is not clear: it would appear that rules are by their nature mandatory.

Turning to Article XXIII, the PBA seeks to modify sections F.6 & 7, which address departmental investigations. The predecessor contract states that an officer may request that counsel or an Association representative be present before he or she is questioned about a violation of rules or regulations, provided that the request shall not delay the interrogation by more than one hour. The PBA asks to expand this time to 24 hours, urging that the new safeguard would improve morale.

This proposal is denied. The increase in time is substantial and the PBA has not pointed to problems with the existing clause. Similarly, I decline to award the PBA proposal to codify what the PBA states is the current practice of allowing an officer to have an Association representative, or an officer’s attorney, present during an interrogation. There was no testimonial or documentary evidence as to this practice.

The PBA also proposes a new section Article XXIII.F.10, which would entitle a unit member to immediate medical and psychological treatment and consultation with counsel any time the officer is involved in a shooting, near-death experience, policing of fatal traffic crashes, or other situation involving immediate

human suffering. The new F.10 would also state that an officer would have a reasonable amount of time within which to give his report or account of the incident. The PBA maintains that this clause would improve morale by ensuring that an individual would be mentally clear and free of psychological or physical duress when questioned by departmental authorities.

Certainly, an individual involved in an incident of the type described would be profoundly affected. However, the PBA has not shown that the County has been insensitive to that fact. Nor has it demonstrated that the County has unreasonably pressured officers in the course of investigations. In addition, there is an enormous public interest in enabling the department to obtain an accurate and contemporaneous account of a critical incident as soon as possible. In this context, I decline to award the proposal for a new Article XXIII.F.10.

Finally, the PBA proposes to modify Article XXIV to provide full release time for the Association President, who would not be required to man a post but would report for his regular shift and conduct union business. In addition, the proposal seeks a total of 50 days annually, in the aggregate, for designated Association representatives to conduct union business.

Currently, the Association President is entitled to paid release time for union business but, as President Swenson explained, he also serves as a special

assignment officer (1T6-1T7). The contract now provides for a total of 15 days annually for other Association representatives to conduct union business.

This is a large negotiations unit where the President has a substantial amount of union business to conduct. While full release time might be desirable, the President and other representatives have effectively performed their responsibilities within the context of existing provisions. I decline to award the noted proposals in this fiscal environment.

### **PBA Sick Leave Proposals**

The PBA has set forth several proposals that touch on sick leave in various ways. For example, as it now stands, Article V.G provides that a unit member may use up to 10 days of sick leave for “emergency attendance upon” an immediate family member who is “seriously ill.” The PBA seeks to broaden these circumstances by deleting the 10 day limitation and removing the “emergency attendance” and “seriously” ill qualifications.

An employee’s ability to take leave to attend to a family member’s illness or serious health condition is closely intertwined with State and federal family leave statutes, including recent New Jersey legislation allowing employees to apply for State-paid family leave (PBA Exhibit J-8, pp. 1057 to 1059). All employees will at times have difficulty balancing their work obligations with their responsibilities to sick family members. However, the PBA has not shown that officers are more

affected than other workers, especially when existing contractual provisions are read together with the noted statutory protections. I note as well that Article V.G as written is very similar to the language in CWA agreements; the Sheriff's Officers agreement, and the PBA 320 Superior Officer agreement. I therefore deny this proposal.

The PBA also proposes that employees be granted up to five paid working days of bereavement leave for the death of a member of the employee's immediate family. Currently, employees must use sick, personal, vacation, or holiday leave for bereavement purposes. While the PBA's rationale for seeking these changes is self-evident, I decline to award additional bereavement leave in this proceeding, where I have allocated all economic improvements to across-the-board-salary increases.

The PBA also seeks to add two new sections to Article V and maintains that each would help reduce sick leave abuse and minimize overtime. The first would allow any officer with a minimum of 50 days of accumulated sick time to cash-in up to 35 sick days annually, subject to certain notice requirements. The second would provide a \$1,000 incentive payment to officers who use zero sick days in a calendar year. Officers who use one and two days would receive \$800 and \$600, respectively.

The PBA has not met its burden of justifying these proposals. While it is possible that the annual incentive payments could discourage officers from taking unnecessary sick leave, the payments are not appropriate in the context of this interest arbitration where, as I have stated, economic benefits have been allocated to across-the-board increases. Further, upon retirement, officers already receive deferred compensation for accumulated sick leave.

The costs associated with the cash-in proposal also militate against awarding it in this proceeding. In addition, allowing officers to receive payment for such a large number of sick days could deplete an officer's sick leave bank, thereby leaving the officer without sick days should they be needed in the future.

For the foregoing reasons, the proposals for sick leave cash-in and incentive payments are denied.

Finally, the PBA proposes several changes to the County's sick leave policies and procedures, including those set forth in Section 1080 and 1081, which appear to describe the sick verification policy for the County's correctional institutions. The full text of these policies is not included in the record, and it is thus difficult to evaluate proposed changes or additions to them. Moreover, PERC has consistently held that some aspects of sick leave verification policies are not mandatorily or permissively negotiable. Some elements of the PBA's proposals – such as proposed limitations on when home visits or telephone calls can be made –

may fall into that category. Therefore, I deny the PBA proposals regarding the County's sick leave policies.

### **PBA Grievance Procedure Proposal**

The PBA seeks to amend Article XXI to specify that step 1 grievances may be initiated by the Association as well as individual unit members. It proposes as well that such grievances may be filed with the union president's designee, as well as the president himself. The PBA also seeks amendments requiring "at least" three days notice of the date, time and place of any hearing; it also proposes to delete existing language stating that a grievance may proceed to the next step by mutual agreement.

In addition, the PBA sets forth a proposed new expedited process for grievances involving the denial of time off. The proposed Article XXI.J would require the parties to bypass most steps of the grievance procedure and proceed directly to arbitration before Arbitrator Gerard Restaino, who would be required to hold a hearing in person or by telephone within 48 hours. Under this expedited procedure, the arbitrator would be obligated to issue a binding award at the close of the hearing and the parties would be barred from filing post-hearing briefs. If the grievance is sustained, and the requested day or days off have already passed, the arbitrator would be obligated to award the grievant two days pay for each day of leave denied.

The County opposes these measures, commenting that the expedited procedure would deprive the warden of the ability to adjust grievances while other changes would eliminate the current arrangement whereby grievances are systematically funneled through the PBA President (4T167).

The PBA has not explained what problems its proposals are designed to address and it has therefore not met its burden of justifying them. In particular, I note that the expedited procedure outlined is quite unusual and runs counter to the principle that it is desirable to adjust grievances at the earliest stage possible. Further, as discussed in connection with the PBA's personal and holiday leave proposals, the PBA's mandated remedy for the improper denial of leave time is unreasonable and could inhibit the County from making good faith judgments that leave should not be granted.

For these reasons, the above-noted proposed changes to the grievance procedure are denied.

#### **PBA's Worker's Compensation Proposal**

The PBA proposes to change Article VIII, pertaining to worker's compensation, by allowing an employee to report an on-duty injury "as soon as possible" instead of "immediately." I appreciate the PBA's concern that an officer be afforded some time to regain his or her composure after an injury. However,

the County's interest in initiating an investigation predominates. In addition, "as soon as possible" is too elastic a term.

The PBA also seeks to change the current standards governing paid leaves of absence for employees who are injured in the lawful performance of their duties. Under the existing framework, an employee so injured "as a result of the direct, action, effort, interference or activity of an inmate or prisoner" is entitled to a paid leave of up to one year, regardless of whether he or she is ultimately determined to be eligible for worker's compensation. The PBA proposes to extend this entitlement to anyone who is injured while acting in the proper and lawful performance of his duties, whether or not he or she is determined to be eligible for worker's compensation benefits. This proposal could substantially increase the number of officers eligible for this leave, and may also implicate worker's compensation statutes, regulations, and case law. It was not addressed in any detail by either party and, in this posture, there is insufficient basis for me to award a change that has the potential to increase the County's costs.

I also deny the PBA's proposal to amend Article VIII.D.c, which allows for arbitration where the County and the union disagree as to whether an injury was sustained as a result of an interaction with an inmate. The PBA proposes an additional sentence stating the burden shall be on the County in such cases.

Without any description of how such arbitrations have been handled in the past, I find that the PBA has not met its burden of justifying this proposal.

### **Miscellaneous County and PBA Proposals**

The County and PBA each include in their final offer several miscellaneous proposals for which no rationale was offered. While some of the proposals, particularly minor language changes, appear non-controversial or even beneficial to the opposing party, I nevertheless decline to award them where the proponent has not justified the changes. These proposals are:

#### **County Proposals**

Article IV, Health Benefits	Proposal to establish IRS Section 125 plan Proposal to provide 30 days advance notice to union of change of health plan, along with copy of plan and notice to employees of change in providers
Article V, Sick Leave	Proposals to amend paragraphs D and H
Article XXXVI, Equal Treatment	Proposals to include reference to gender expression and to add new section about County and Association fostering understanding in the workplace

#### **PBA Proposals**

Article I, Recognition	Proposals to change statutory references and delete "I.D. Officer"
Article III, Uniform Allowance	Proposal to delete paragraph H, concerning the Jail Administrator's authority to designate posts

	appropriate for the wearing of Battle Dress Uniforms
	Proposals to delete or modify paragraphs concerning return of uniforms and equipment upon separation from service
Article V, Sick Leave	Proposals to amend paragraph G, concerning the definition of sick leave
Article VII, Family and Medical Leave	Proposals to include statutory references and to add new substantive provisions concerning the use of family leave
Article XI, Vacation	Proposal to eliminate section G, pertaining to part-time employees
Article XII, Overtime	Proposal to require that overtime be paid in a separate check
Article XXI, Grievance	Proposals to substitute “the Association” for “Local #249” and to amend section E, concerning extensions of time
Article XIV, Employee Expenses	Proposal to amend section A to refer to IRS mileage rate
Article XV, Tuition Reimbursement	Proposal to specify that certain courses shall be considered job-related
Article XXXIV, Jury Duty	Proposal to require that employees who are called for jury service be scheduled on a Monday to Friday day shift <sup>23</sup>

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<sup>23</sup> It is not clear what the current practice is.

## **AWARD**

### **1. Term of Agreement**

The term agreement shall be from January 1, 2009 through December 31, 2011.

### **2. Salary increases**

The following increases shall apply to each step and position in the PBA unit.

2.5% across-the-board salary increase effective January 1, 2009.

2.0% across-the-board salary increase effective January 1, 2010.

1.5% across-the-board salary increase effective January 1, 2011.

Each salary increase is retroactive to its effective date. In order to be covered by the retroactive wage provisions of this award, an employee shall have maintained continuous full time employment up to and through August 15, 2011.

### **3. Work Schedule/Reciprocal Days**

A joint committee is awarded to study and discuss the feasibility of implementing the 4/3 work schedule and/or the Reciprocal Day proposal, as well as any adjustments to those proposals that would make either or both proposals mutually agreeable. The scope of the committee's discussion, study, or outreach to unit members shall be determined by the committee. The committee shall be comprised equally of representatives appointed by the County and by Local 249.

### **4. Health Benefits**

Article IV is amended to include these co-pays, which shall be instituted as soon as practicable after implementation of this award.

<u>Doctor's Visits</u>	<u>Prescription Generic</u>	<u>Brand Preferred</u>	<u>Brand Non-Preferred</u>
\$20.00	\$0.00	\$30.00	\$45.00

Additionally, visits to the emergency room will have the following co-pays: \$50.00.

Article IV is also amended to include these provisions on maintenance medications and an opt-out stipend:

After the first 90 days a prescription has been filled, all maintenance medications (with the exception of insulin for diabetes) must be filled via Mail Order (examples of maintenance medications include high blood pressure, cholesterol, kidney and heart medications, etc.). Mail Order medications for a 90 day supply shall cost one-and-a-half times (1.5x) the applicable retail co-pay indicated above.

All prescription medications must be processed through a pharmaceutical clinical case management program through the prescription third-party administrator (TPA). As a pre-condition to using the prescription benefits plan, all employees must sign a HIPPA compliant release enabling the health benefits third-party administrator to share protected health information (PHI) with the prescription benefits TPA.

Effective January 1, 2011, the County shall furnish an annual stipend for opting out of the County's health benefits plan (medical and Rx-so long as employee furnishes proof of other coverage) in the amount of \$750 payable in November of each calendar year. An employee who experiences a catastrophic life event wherein other, available coverage is lost shall be automatically reenrolled in the County's plan, and the stipend shall be pro-rated accordingly.

## 5. **Retirement**

Article XVI I amended to state that an employee who retires with 25 years or more credited service to Burlington County shall be covered "by a comprehensive, County self-funded retirement plan."

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

Dated: August 15, 2011  
Princeton, N.J.

Timothy A. Hundley  
Timothy A. Hundley  
Arbitrator

State of New Jersey      }  
County of Mercer      }ss:

On this 15<sup>th</sup> day of August 2011, before me personally came and appeared Timothy A. Hundley to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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