

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

In the Matter of Interest Arbitration Between :
:
OCEAN COUNTY PROSECUTOR : **INTEREST ARBITRATION**
"the Prosecutor or Employer" : **DECISION**
:
and : **AND**
:
:
OCEAN COUNTY PROSECUTOR'S : Docket No: IA-2011-006
DETECTIVES & INVESTIGATORS ASSN. :
PBA LOCAL 171 :
"the PBA or Union" :

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE PROSECUTOR:

Robert T. Clarke, Esq.
Apruzzese, McDermott, Mastro & Murphy
Of Counsel and on the Brief
Robert J. Merryman, Esq.
On the Brief:

FOR THE PBA/SOA:

Richard D. Loccke, Esq.
Loccke, Correia, Limsky & Bukosky
Of Counsel and On the Brief:

Procedural History

The Ocean County Prosecutor (the “Prosecutor or Employer”) and PBA Local 171 (the “PBA”) are parties to a collective negotiations agreement (the “CNA”) which expired on March 31, 2010. (J-1). On August 17, 2009, the parties entered into an Amendment of the CNA which allows OCPO investigators to be designated as Detective or Detective I at the sole discretion of the Prosecutor. Negotiations for a successor agreement reached an impasse, and the PBA filed a petition with the New Jersey Public Employment Relations Commission (“PERC”) on August 16, 2010, requesting the initiation of compulsory interest arbitration. (J-3). On August 26, 2010, the County files its response to the Petition with PERC. (J-4). The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on September 1, 2010, from its Special Panel of Interest Arbitrators. (J-5).

I conducted several mediation sessions which proved unsuccessful. Formal interest arbitration proceedings were invoked and a hearing was conducted on June 10, 2011, when the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs. I granted the County’s request to file reply briefs and the record was closed on November 23, 2011.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension. The parties agreed to extend the time limits for the issuance of the award to April 6, 2012.

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

Statutory Criteria

The statute requires the arbitrator to:

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

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

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

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

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

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

(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)

PBA's Last Offer

1. **Term of Agreement:** April 1, 2010 to March 31, 2014.

2. **Salary:**

Effective April 1 of each year, a 3.5% across-the-board increase at all steps on the salary schedule.

Prosecutor's Last Offer

1. **Term of Agreement:** April 1, 2010 to March 31, 2012.

2. **Salary:**

Article 6, Section shall be deleted and replaced with the following language:

Effective April 1, 2010, those employees eligible to move to the next step on the salary schedule set forth in the Collective Bargaining Agreement as Appendix A shall move. Those employees at Step 9 shall remain at that salary.

Effective April 1, 2011, the salary schedule set forth in the Collective Bargaining Agreement as Appendix A shall be eliminated. The starting annualized salary for a new hire shall be \$49,275 after the completion of probation. During probation an employee shall receive an annualized salary of \$36,889. Any employee at an annualized salary of \$49,275 or higher shall receive a two (2%) percent increase retroactive to April 1 of 2011. If the employee has already received an increase greater than two (2%) percent because of step advancement, the employee shall reimburse the County the difference between two (2%) percent of his/her March 31, 2011 salary and the April 1, 2011 salary received as a result of the advancement on the salary schedule. Said reimbursement shall occur over a 12-month period, in equal deductions from the employee's periodic compensation.

3. **Longevity:**

Effective April 1, 2011, Article 14 shall be deleted from the Agreement and replaced with the following:

All employees hired on or after April 1, 2011 shall not be eligible for longevity pay. Any employee hired before April 1, 2011 shall receive longevity pay based upon the following schedule:

15 years	-	\$4,000
20 years	-	\$5,000
25 years	-	\$6,000

4. **Holidays:**

Article 7, paragraph 1, shall be deleted and replaced with the following:

Each full-time employee covered by this Agreement shall receive the State employees' holiday schedule with pay.

5. **College Credit:**

Article 16 shall be deleted from the Agreement.

6. **Health Benefits:**

Article 13, Health Benefits shall be changed to "Hospital Surgical, Major Medical, Prescription and Retirement Benefits." Section 1, delete A through E and replace with the following:

A. All full-time employees shall be permitted to enroll in health benefits two (2) months from their date of hire. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits, including employee premium sharing.

B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent to the plan in effect at the time of the change. The parties recognize that if the County leaves the State Health Benefits Plan the HMO plans offered by the new plan provider may be different.

C. All current and future employees who retire on or after April 1, 2010 in order to be eligible for health benefits upon retirement, must have served a minimum of fifteen (15) years with the County and have twenty-five (25) years or more of service credit in a State or locally administered retirement system at the time of retirement.

Effective April 1, 2010, the following changes will affect all new hires:

Employees will be offered the NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense. Continuation of spousal coverage after the death of the retiree will no longer be offered at the County's expense. The County will not longer reimburse retiree Medicare Part B premiums.

D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.

E. When an employee is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.

In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

Delete Section 5 and replace with the following:

Employees after the first month following their full months of employment shall be eligible for the same prescription benefits as are provided to County employees in general.

PARTIES' POSITIONS
PBA POSITION

The following are the PBA's arguments and contentions in support of the statutory criteria:

Interests and Welfare of the Public

The PBA submits that the work and resultant costs of a Prosecutor's Office are not part of the problem, rather they are part of the solution. A Prosecutor's Office does not cost money to the public - it saves money for the public. But for the personnel, skill levels, expertise, training, special equipment and unique legal authority of the Prosecutor's Office, the local law enforcement entities within the County would have a much greater workload and would be greater in both size of force and equipment available. The Prosecutor's Office saves money for the local jurisdictions within the County of Ocean. But for the Prosecutor's Office the many specialties, many of which are only infrequently used by an individual town,

would have to be the subject of preparation, training and necessary equipment to fulfill the law enforcement mission. The Prosecutor's Office, in addition to their pre-eminence in legal authority, jurisdictional power and unique link to State Government, keep the costs of local law enforcement down. There is a direct savings to the citizens of Ocean County due to the presence, expertise and legal authority of the Prosecutor's Office.

The PBA points out that the Detectives and Investigators of the Prosecutor's Office are not employees of the County of Ocean. The case law clearly establishes their employment relationship to be directly with the Prosecutor whose authority runs directly to the State Attorney General. The law is clear on the Employer-Employee relationship between the Prosecutor of a County and the investigators and detectives within the Prosecutor's Office. The chain of authority, both operational and fiscal does not run from the Prosecutor through the Board of Freeholders. The Prosecutor is an individual entity and *sui generis* in the law enforcement hierarchy. All powers, authority, direction and responsibility run directly through the County Prosecutor.

The Detectives and Investigators in Ocean County Prosecutor's Office form an integral part of the law enforcement community at the State and County level. Many of the roles and specific services provided by this office are unique to this operation and *sui generis* in the field of law enforcement. The PBA submits that it established, through testimony and exhibits, the unique nature of the Prosecutor Office within the law enforcement community and the day-to-day working relationship with other Police agencies at the Federal, State and Local level. One of the main purposes of the testimony and proofs introduced at the hearing was to establish, not only the most important public service rendered by this office, but, the specific and unique universe of comparison appropriate for application of the statutory criteria.

A primary consideration in evaluation is that the Detective/Investigator staff of a Prosecutor's Office under New Jersey Law are not County employees. They are direct employees of the Prosecutor. The Prosecutor is a constitutional Officer under New Jersey Law and is completely separate and apart from County government. The Prosecutor chain of command runs to the Attorney General of the State of New Jersey. County government does not control Prosecutor operations and cannot control any aspect of the operational authority of the Prosecutor.

The Supreme Court of New Jersey has issued specific opinions regarding the issue of Prosecutorial autonomy and the special laws applicable to the Office of the Prosecutor. In one case the Supreme Court rejected the argument of a County Freeholder Board that it had final authority on expenditures within the Prosecutor's Office. *In re Application of Bigley*, 55 N.J. 53 (1969). After reviewing the law back to the 1800s, Chief Justice Weintraub wrote as follows:

Hence we conclude under N.J.S.A. 2A:58-7 a judicial officer, now the Assignment Judge for the County, continues to have the final and conclusive authority to approve expenditures beyond the appropriations. The remaining question is whether the statutes dealing with Assistant Prosecutors, County Detectives and County Investigators were intended to negate this overriding authority as to such personnel.

With respect to County Detectives and Investigators, the 1951 revision, N.J.S.A. 2A:157-1 *et seq.*, which fixes the number of such positions, clearly provides in Section 19 (N.J.S.A. 2A:157-19), that the statute shall not be construed 'to limit the power of any Prosecutor, duly conferred upon him by law, to incur expenses in the detection, arrest, indictment and conviction of offenders against the criminal laws of this state.' Thus the Legislature expressly disavowed an intent to restrain the basic statute of 1874 under which the Prosecutor may go beyond the budget appropriations with the approval of the Assignment Judge. *State v. Winne*, 12 N.J. 152, 166-167 (1953). *In re Bigley, supra.*, p. 59.

The Freeholders are not in control of the Prosecutor's Office. The Detectives and Investigators in this bargaining unit are employees of the Prosecutor. It is the Prosecutor that

sets the mission and policy of the Prosecutor's Office. The Freeholder Board is not in the chain of command and has no role whatsoever in the investigative direction of the Office.

The PBA points out that the Prosecutor is the "Chief Law Enforcement Officer in the county." The powers of the County Prosecutor preempt local law enforcement. The role of local law enforcement is subordinate to the role of a Prosecutor. Overview and supervision are elements of the preemptive power of the Prosecutor's Office.

The relationship between the Detectives and Investigators of the Prosecutor's Office and law enforcement personnel of the various jurisdictions within the County is cooperative. The Prosecutor's Office takes a lead role in the training, direction and assistance in the local law enforcement area. These facts were developed through the testimony of Detective Jason Steele. Steele, a ten and one-half year veteran of the Prosecutor's Office, spoke of the uniqueness of the Office, its many highly specialized facilities, training, expertise and its long working relationship at both Local and State levels.

- Q. Have your investigations frequently led you to dealing with other agencies in these other jurisdictions and states?
- A. Absolutely. Ocean County Prosecutor's Office mission statement. The Ocean County Prosecutor's Office is the chief law enforcement officer for Ocean County. The Prosecutor's Office is the nucleus of the Ocean County's criminal justice system, working in conjunction with other local law enforcement agencies, the Judicial Correctional Systems as well as the citizens within Ocean County.
- Q. Is this the official statement of the Ocean County Prosecutor's Office of the mission statement?
- A. Yes, it is.
- Q. With respect to that hierarchy of law enforcement within the county and perhaps other counties, but specifically with respect to Ocean, does the County Prosecutor's Office take preeminence in law enforcement activities on the county?
- A. Yes, they do, all over the state as the chief law enforcement officers.

- Q. With respect to Ocean County, does the County Prosecutor's Office take over the handling and the conducting of investigation of major crimes?
- A. Absolutely.
- Q. Are there protocols in place where, for example, a homicide that may occur in any of the 33 towns, is handled by this Department?
- A. Yes.
- Q. And is that the same, would you give the same response for other types of major crimes?
- A. Every individual unit that responds out to assist local agency or a state agency, once we're there, it is our crime scene and we control the investigation from there on. (Tr. at 16-17).

The PBA asserts that the role of the Prosecutor's Office is clearly not only county-wide but stretches to the greater Metropolitan area. Numerous examples were given of different operations and regular operational lines of authority and action. The County's 2010 population is 565,567, an increase of 12.8% from the 2000 Census making Ocean County the second largest county in the State. Ocean County is a desirable place to live and raise a family and tourism and recreation are also factors in bringing people into Ocean County given its many shore communities. It is readily accessible from both the New York Metropolitan area and the Philadelphia Metropolitan area. Major roadways facilitate access to the County and the many accommodations and tourist amenities are a matter of record. While this is, of course, positive to the County, it is also an element of the workload and the significant and varied work experience of the Prosecutor's personnel.

According to the PBA, the Prosecutor's Office is both a proactive and reactive unit. Extensive training programs and citizens' services are provided, both directly to the citizens of the County and indirectly through local Police Agencies. The varied nature of specific services included numerous investigative units including, but not limited to:

1. Major Crime Unit (Homicide Unit, Vehicular Homicide Unit, Arson Unit, Environmental Crime Unit).
2. Homicide Unit - Works in conjunction with Local Police Departments investigating murders, suicides, suspicious or accidental deaths and assault where a victim sustains life-threatening injuries. This Unit had an increased activity from a 2005 level of 168 Investigations to a 2010 level of 253 Investigations.
3. Vehicular Homicide Unit - Made up of specially trained individuals with specialty equipment and Accident Reconstruction Expertise. This is a very active unit as unfortunately Ocean County typically leads the State in vehicular fatalities. This Unit is responsible for County-Wide DWI Checkpoint Programs. The activity levels in this Unit rose from a 2005 level of thirty-seven (37) investigations to a 2010 level of one hundred thirty-one (131) fatal accident investigations.
4. Arson and Environmental Unit - This Unit is made up of specially trained and equipped personnel who serve the complex needs of this area of law enforcement. In 2005 the Ocean County Prosecutor's Unit had forty-eight arson/environmental investigations which rose to sixty-six in 2010.
5. Special Operations Group - The Special Operations Group is made up of persons with special training and equipment to meet investigative needs in the areas of narcotics, weapons and gang-related offenses. This Unit is made up of personnel from the Ocean County Prosecutor's Office as well as other County and Local Law Enforcement Agencies. Agencies referenced were other municipalities, the New Jersey State Police, and all of the Federal Law Enforcement Agencies.
6. Intelligence Unit - Intelligence Unit works in areas of special projects and includes Homeland Security as a subject area. It provides coordination and support for various Ocean County Response Agencies with knowledge, information and analysis necessary to make informed judgments and take appropriate action. The striking increase in the activity of this Unit shows that in 2005 the Ocean County Prosecutor's Intelligence Unit had eleven (11) cases compared to more than 500 cases in 2010.
7. Ocean County Regional SWAT Team - This is a regional Team coordinated by the Ocean County Prosecutor's Office and made up of both fully assigned Ocean County Prosecutor's Office Detectives as well as other agencies.
8. Special Victims Unit - This was described as a highly specialized Unit where the most vulnerable, children, are protected and specially handled in circumstances of abuse. This is another Unit which shows exceptional

increases in activity. In all of 2010 there were 81 cases handled by this Unit. As of June 1, 2011, there were already 110 cases investigated by the Unit.

9. Computer Crimes Unit - This specialized Unit of highly trained and equipped personnel deal with the evolving area of cyber crimes. Again, this Unit shows exceptional growth in recent years. In 2005 there were 93 cases investigated whereas in 2010 there were 178 cases investigated. This hi-tech Unit is one that could be ill-afforded by most local authorities who rely upon the County Prosecutor's Office to supply trained technical expertise and the most expensive equipment.
10. Economic Crime Unit - The various sub-specialties were described, including theft by deception, credit card fraud, pyramid schemes, *etc.* Once again, substantial growth was evidenced. In 2005, the Economic Crimes Unit investigated seventy (70) cases, compared to one hundred twenty-two (122) in 2010.
11. Trial/Grand Jury Unit - This Unit, working with Assistant Prosecutors in the preparation and prosecution of Courts' proceedings handles approximately five thousand (5,000) cases per year.
12. Megan's Law Unit - While many of the details were not subject to development at hearing, the statutory authority and nature of service were outlined in the *Power Point*.
13. Bias and Elderly Crimes Unit - Once again, a specialty Unit has been developed and has evolved into an essential part of the protection of the elderly.
14. Domestic Violence Unit - This Unit oversees all charges related to violation of Restraining Orders and is responsible for Domestic Violence Training for Police Officers throughout Ocean County.
15. Juvenile Unit - The specifics of this Unit were provided as the general duties were described in the *Power Point* and testimony.

The PBA notes that the Prosecutor's Office, in addition to its investigative and prosecutorial roles, also oversees Police discipline throughout the County. The Prosecutor's Office Internal Affairs Unit responds to each and every complaint of reported misconduct against law enforcement officers within Ocean County. Steele's testimony:

- Q. With respect to that, if there's a claim or charge of misconduct in any of the towns of the county, it may end up on the desk of a member of this office?

- A. Without a doubt, yes.
- Q. Even where they are cleared at the local level, is that still reviewed?
- A. Yes. Every Internal Affairs investigation, not all of the -- I'm sorry. Not all the misdemeanor complaints are, but if there's anything that has to do with any criminal type investigation that is reviewed by our office and by the staff. The office --
- Q. So you are the police department's police department?
- A. That's what, yeah, that's what it says on the bottom. As the Chief Law Enforcement Agency we are required to police the police. And you can see once again in '05, our numbers were 146 for IAS and municipal corruption and now we're at 191 for 2010. (Tr. at 39-40).

The role of the Prosecutor's Office is unique in the law enforcement chain of command. The Prosecutor's Office, upon entering into an investigation, takes control. A homicide within the County is the primary responsibility and lead investigatory obligation of the Prosecutor's Office. Training and coordination and many other areas of law enforcement expertise, both at Academies and training at various sites, are conducted by the Prosecutor's Office. Facilitating communication at various levels of law enforcement is also within the power and authority of the Prosecutor's Office.

The Ocean County Prosecutor's Office Investigative Unit is made up of highly trained and motivated Detectives with unique skill sets based upon experience, training and equipment. Their capabilities are not matched by any other law enforcement agency in the County. In addition to the levels of activities shown to have increased in each subject area earlier in this Brief, it should be noted that where an office such as the Prosecutor's Office deals with a certain type of activity one hundred times a year or more, an individual town may not see that type of law enforcement activity for years. The experience level and the ability to respond as need dictates is with the Ocean County Prosecutor's Office.

The existence of the Prosecutor's Office facilitates full law enforcement services to be provided to the citizens and persons who pass through the County. Without the County Prosecutor's Office the level of services currently available could not be practically or economically maintained. It would be logical to assume that a small town Officer who only sees a certain type of criminal activity on rare occasion simply cannot be as efficient or, for that matter cost effective, as a Prosecutor's Detective working within his/her area of specialty.

The preeminence of the Prosecutor's Office both as a law enforcement/service agency and an economically feasible alternative to additional local costs was a key subject of the PBA's presentation. The graphic in the *Power Point* states "We are part of the solution, not part of the problem.". Steele's testimony on this point:

- Q. Now, here the graphic is "We are part of the solution, not the problem." Please explain.
- A. Exactly. I mean we feel us detectives here at the Prosecutor's Office in Ocean County, we feel we're part of the solution and not part of the problem. We extend our services out to all the police agencies throughout this county, give them assistance with everything and we fall short salary-wise, obviously. With the local and municipal police agency under attack, we've extended our expertise and services. In many cases, our detectives have had to replace and supplement detective services for municipalities that have been affected by layoffs or through attrition. An example I have right off the top of my head is Little Egg Police Department laid off, I think 12, was it, Rich? 12 guys last year. Their Detective Bureau went from seven guys down to one. So that's, that's an example of a Detective Bureau that has shrunk completely. I know there's other Detective Bureaus that have, that have shrunk over the last year or so because of the layoffs and through attrition and, once again, we've had to step up to the plate and fulfill, you know, our commitment to the citizens of Ocean County.
- Q. Individual towns, you've identified a couple, have not increased their Detective Bureaus. Some have actually decreased the Bureaus. In those cases, personnel from this office and specifically this bargaining unit are working in those towns doing work previously done by those detectives?

- A. Correct.
- Q. With respect to the various items of technology, you've identified computer technology and other issues that are expensive for training and also for the equipment itself, but for the Ocean County Prosecutor's Office where would it come from?
- A. I don't know. I don't know.
- Q. So the individual towns do not have to develop that type of expertise using the example of computer forensics, but can rely upon this office to pick up that new mission?
- A. Correct.
- Q. With respect to the different towns' police departments that have been reduced in size and specifically bureaus, this agency is filling in and doing the job in those towns?
- A. Absolutely. You're saving those towns the cost of having on detectives, equipment and training. Absolutely.
- Q. With respect to the increases in demand, you've identified several different types of specific, different types of criminal activity, some of these towns even the ones that aren't laying anybody off or not letting any attrition losses occur, are they able to expand?
- A. They're busier than ever.
- Q. You're picking up more work with them?
- A. We're picking up work with every town, yes.
- Q. With respect to the training program, is the training done by this office at the academy as identified, the outreach examples you gave, training at the local levels that you've identified, is that also a savings to the towns?
- A. I believe it is, yes. Absolutely.
- Q. In your personal experience and to your observation, are the local departments using this office more in recent years than in the past?
- A. Absolutely, no doubt about it. (Tr. at 51-53).

The PBA submits that the interests and welfare of the public are well served by the Ocean County Prosecutor's Office which is an exceptional law enforcement agency providing the highest level of service, expertise and training to the public in a cost efficient and effective manner.

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

The PBA contends that the exceptional productivity and preeminence of the Prosecutor's Office are not matched in compensation. The PBA offered salary data of other Prosecutor's Offices and law enforcement units that the Detectives and Investigators in the Prosecutor's Office regularly work with in the County. The following Chart compares the base compensation of the Ocean County Prosecutor's Detective with the Top Step Police Officers in larger communities in Ocean County.

CHART 1

	Top Step	Year
Berkeley Township	\$108,853	2011
Brick Township	\$113,277	2011
Manchester Township	\$118,767	2011
Toms River Township	\$107,833	2011
Jackson Township	\$105,852	2010
Lakewood Township	\$98,274	2011
Lacey Township	\$94,280	2010
Ocean County Prosecutor's Detective	\$91,240	2009

The PBA points out that the Top Step Police Officer rate is, in most cases, augmented by a “Detective Differential” which would create a higher level of base compensation. The PBA submits that salaries for Detectives in the Prosecutor’s Office are significantly behind their peers in the above departments who they regularly interact with and who refer work to the Prosecutor’s Office.

The PBA submits that Chart 2 comparing Top Step salaries for other County Prosecutor’s Offices Detectives in New Jersey shows that Ocean County Detectives are significantly below salaries in other counties.

CHART 2

County Prosecutor	Top Step Salary	Contract Year
Bergen County Detective	\$120,575	2010
Monmouth County Detective	\$117,328	2008
Middlesex County Detective	\$102,328	2008
Camden County Detective	\$98,099	2009
Ocean County Detective	\$91,240	2009

According to the PBA, even if the entire PBA Proposal were awarded to the bargaining unit, they still would not receive the same compensation as Camden County pays its Prosecutor’s Detectives. An award of the PBA package in this case will continue the last place position among comparables.

The PBA contends that a key consideration is the salary increases negotiated in other jurisdictions. The new CNA will commence in 2010. Listed below in Chart 3 are the base salary increases negotiated or arbitrated in other jurisdictions:

CHART 3

	2010	2011	2012	2013
Lacey Township	3.5			
Toms River	4			
Bergen Prosecutors	3.5	3	3.25	3
Jackson Township	3.9			
Manchester	3.95	3.95		
Berkeley	3.45	2	2	2
Lakewood SOA		2.5	2.875	2.875
Lakewood PBA		3	3	
Seaside Park	4	4		
Point Pleasant Beach	4.25			
Point Pleasant Borough		3.5 (1.5/2)		
Manasquan		2	2.5	
AVERAGES	3.78%	3.24%	2.73%	2.63%

The PBA notes that an award of its Last Offer would result in a salary increase that is below average for the year 2010.

The PBA submits that its salary proposal is structured to account for the increased contribution toward the cost of health insurance pursuant to P.L. 2010, c. 2 effective on May 23, 2010 and requiring a contribution of 1.5% of base salary. Following the arbitration hearing there was another statutory change signed into law by the Governor in the last week of June of 2011. This new legislation, Chapter 78, further increases the contribution to health care for Detectives and Investigators in the Prosecutor's Office. The PBA contends that the Employer's proposal removes key benefits from the CNA, destabilizes the work

environment, undermines long enjoyed and previously negotiated and paid for benefits and has no positive impact whatsoever. The PBA argues that the Employer's proposal is not sustainable under the statutory criteria.

An example of the Employer's overreaching is to delete longevity. Longevity is a benefit which has been in the contract for many years and one which is universally enjoyed in other bargaining units in the County, other jurisdictions within the County and throughout the State among these Officers' peers. Examples of the commonality of the bargaining units with longevity include the following in Chart 4:

CHART 4

Lacey Township	10% @ 23 Years
Middlesex County Prosecutor's Office	8% @ 21 Years
Toms River	10% @ 15 Years
Manchester	10% @ 23 Years
Brick Township	11.5% @ 17 Years
Lakewood SOA	8% @ 20 Years
Lakewood PBA	8% @ 20 Years
Point Pleasant Beach	12% @ 25 Years
Point Pleasant Borough	10% @ 24 Years

The PBA asserts that the Employer's position on holidays is not awardable. It is essentially a parity proposal that would not be able to be costed out in this proceeding. Here, the Employer is seeking to have another entity make a decision which would impact the PBA, a parity agreement, which is not known. It appears, at least up front, that there will be

a reduction of one day. This of course is calculable. However, future calculations are not possible. We do know that the Employer is seeking to delete one day's compensation.

The PBA opposes the Employer's proposal to delete the College Credit Program from the CNA. No evidence was introduced to support the Employer's proposal. In virtually every other contract in evidence, college education is shown as a benefit to the public and a common benefit provided in the contracts. Why is college being deleted here? We do not have an answer.

The PBA characterizes the Employer's health benefit changes as wide ranging and substantially negative. The PBA submits that these subjects may be neither arbitrable nor negotiable. The PBA contends that negotiations on health care has been preempted by State statute for at least the next three years. It would appear, with due respect to the Arbitrator, to be arbitral error to include a modification of the health program when a statutory mandate is now in effect. The PBA contends that health benefit changes have been taken off the negotiations table until the "Sunset" provision in Chapter 78 is reached.

The PBA reiterates that the Ocean County Prosecutor is the employer in this matter - not Ocean County. While the Prosecutor may defer negotiations to the County as has been done here, the County in representing the Prosecutor stands in no different shoes and has no different rights than are asserted by the Prosecutor's Office itself. Here the County attempts to make a case for its proposal on salary and other issues by relying on settlements that the County reaches with other County negotiations units. The PBA contends that the County cannot support its own arguments as the evidence in the record supports the PBA.

The County introduced a number of contracts which the PBA maintains are supportive of its salary proposal since the wage increases closely parallel those sought by the PBA as detailed in the following summary.

1. Contract Between Ocean County Freeholders and CWA Representing Blue Collar Employees (Term through March 31, 2011). This contract provides for a \$2,200 increase across-the-board effective in 2010 (See contract p.13, Article XII, Paragraph B) which translates to increases ranging from 7.8% for Group One employees to 6.0% for Group Eight employees (See Appendix A for minimums as compared to the \$2,200 wage increase (pp. 32 through 34). Notably, there are no changes to the longevity program and these employees continue to enjoy the identical longevity program as bargaining unit employees in this matter. There is also no modification of medical benefits.
2. Ocean County Freeholders and OPEIU Local 32 (Contract Term April 1, 2010 through March 31, 2013). This contract has increases in each contract year of 1.5% per year. There is no change in medical and longevity.
3. Ocean County Board of Freeholders and Ocean County Corrections Professionals Association (Contract through March 31, 2011). This contract provides for \$2,200 across-the-board wage increases for 2010 which calculates to 7.5% for employees earning \$29,000 and 5.6% for employees earning \$39,000. There is no change in medical and longevity.
4. Ocean County Board of Freeholders and OPEIU Local 32 (Engineering Department Employees). This contract runs through March 31, 2011. The salary increases at the low end of the scale, \$28,000 equals 7.9% in 2010 and 4.4% at the higher end of the scale for employees earning \$51,000. There is no change in medical and longevity.
5. Ocean County Board of Freeholders and Ocean County Sheriff and Ocean County Office of the Fire Marshall Local 98. This contract has a term of 2010 through 2013. Salary increases are 1.9% in 2010, 2% in 2011 and 2012. There is no change in medical and longevity.
6. Ocean County Board of Freeholders and OPEIU Local 32. This contract has a term through March 31, 2011 and provides for a 3.5% salary increase in 2010. There is no change in medical and longevity.

7. Ocean County Board of Freeholders and OPEIU Local 32 (Juvenile Detention Center Employees). This contract has a term of 2010 through 2013 and provides for salary increases of 1.9% in 2010, 2% in 2011 and 2012. There is no change in medical and longevity.
8. Contracts between Ocean County Prosecutor, Employer and Ocean County Prosecutor's Office Clerical Association representing Prosecutor Clerical Employees. This contract has a term through March 31, 2011. Employees on a 37.5 hour workweek receive a \$2,067 salary increase in 2010 and employees working a 40-hour week receive a \$2,220 salary increase in 2010. This is equivalent to a 3.2% increase. There is no change in medical and longevity. How does the County present a contract negotiated by the legal employer, Prosecutor, which provides for wage increases that are nearly identical to that sought by the PBA in this case and at the same time try to rip apart the longstanding wage schedule of the Prosecutor's Detectives?
9. Ocean County Board of Freeholders and Ocean County Sheriff and Teamsters Local 97 representing public safety communicators. This contract is effective through 2012 and provides for a salary increase in 2010 of 4.3% for employees at the low end of the salary schedule and 3.6% at the higher end of the salary schedule. In 2011, these employees received a 3.25% wage increase. These wage increases voluntarily given to another constitutional office's employees, here the Sheriff, equate almost exactly to what the PBA is seeking in this Interest Arbitration proceeding. In this voluntarily entered into contract there is no change in the longevity or health care at all. This contract fully supports the PBA Position in this case.
10. Ocean County Board of Freeholders and CWA representing Juvenile Detention Officers. This contract with a term through 2009 provide salary increases similar to those sought by the PBA. There is no change in medical and longevity.
11. Ocean County Board of Freeholders and Ocean County Weights and Measures. This contract with a term through 2012 provides for annual salary increases of 3.25% in each year of the contract. Why is the County proposing for Prosecutor's Detectives a 0.0% change when Weights and Measures Division employees received a 3.25% salary increase for the first two years of contract? There is no change in medical and longevity.
12. Ocean County Board of Freeholders and OPEIU (White Collar Employees). This contract has a term through March 31, 2011. "Section A" employees received a 3.7% salary increase in 2010 and "Section E" employees received a 3.2% salary increase in 2010. There is no change in medical and longevity.

13. Ocean Board of Freeholders and OPEIU representing White Collar Supervisors. This contract has a term through 2011 and provides for a salary increase of 2.4% for 35-hour employees and 2.2% for 40-hour employees in 2010. There is no change in medical and longevity.

The PBA submits that the above summary is supportive of its salary proposal and is not supportive of the employer's salary proposal. The PBA submits that the Employer did not submit any evidence to support its proposals. There are no contracts, settlement agreements, or Memorandums of Agreement that support the Employer's position. In all cases, and without exception, longevity is left in place and medical is unchanged.

The PBA argues that the Employer seeks to totally change the wage schedule creating multiple wage rates which will never end at a single top rate. In addition, it seeks to change longstanding benefits, many of which were directly associated with the quality of performance at the Prosecutor's Office; specifically - College Incentive. There is no supportive evidence in the record that could, in any way, justify the destroying of the wage schedule, taking away longevity, taking away college education, and revising the medical program. The only evidence in the record supports the PBA Position.

Private Sector Comparisons

The Employer introduced some information with respect to private sector wage trends. The PBA respectfully submits that the best comparisons are made with other like employees and the public sector generally. The following represents certain statutory and other precedential laws controlling the relationship of law enforcement officers to their Employers.

1. The Federal Fair Labor Standards Act, 29 *U.S.C.A.* §201, *et seq.* applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the forty (40) hour work week and the seven (7) day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.

2. The New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a, *et seq.* does not apply to the employment relationship between a police officer and the officer's public employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police officer, Perry v. Borough of Swedesboro, 214 N.J. Super. 488 (1986).
3. The very creation of a Police Department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. N.J.S.A. 40A:14-118. There is no such statute covering private employment in New Jersey.
4. N.J.S.A. 40A:14-122 provides for specific qualifications which are statutorily mandated for Police Officer employment. Such requirements as U.S. Citizenship, physical health, moral character, a record free of conviction and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this State.
5. If an Employee in a Police Department is absent from duty without just cause or leave of absence for a continuous period of five (5) days said person, by statute, may be deemed to cease to be a member of such Police Department or force, N.J.S.A. 40A:14-122. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of Police Officers in New Jersey under Title 11 and other specific statutory provisions exist under N.J.S.A. 40A:14-122.2. There are not such private sector limitations on promotion.
7. A Police Officer in New Jersey must be a resident of the State of New Jersey, N.J.S.A. 40A:14-122.8. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute N.J.S.A. 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a Police Officer in New Jersey. No such maximum age requirements exist for private employment in this State. Even if an Employee in a Police Department who has left service seeks to be re-hired there are statutory restrictions on such re-hire with respect to age, N.J.S.A. 40A:14-127.1. No such provision exists for private employees in this State.

10. As a condition for employment in a Police Department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, N.J.S.A. 40A:14-127.3. No such requirement exists in private sector. The actual statutorily created minimum salary for Policemen in New Jersey is set at below minimum wage N.J.S.A. 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to Police work. A Police Officer's work shall not exceed six (6) days in any one week, "except in cases of emergency." N.J.S.A. 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.
11. N.J.S.A. 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a Police Officer is sixty-five (65) years. No such sixty-five (65) year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees' pensions are covered under ERISA.
14. Police Officers are subject to unique statutorily created hearing procedures and complaint procedures regarding Departmental charges. Appeals are only available to the Court after exhaustion of these unique internal proceedings, N.J.S.A. 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with Police personnel.

Perhaps the greatest differentiation between law enforcement officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the State or not. Law enforcement officers are statutorily conferred with specific authority and ". . . have full power of arrest for any crime committed in said Officer's presence and committed anywhere within the territorial limits of the State of New Jersey." N.J.S.A. 40A:14-152.1. A law enforcement officer is specially exempted from the firearms law of the State of New Jersey

and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector.

Law enforcement officers are trained in the basic Police Academy and regularly retrain in such specialities as firearms qualifications. This basic and follow-up training schedule is a matter of New Jersey Statutory law and is controlled by the Police Training Commission, a New Jersey statutorily-created agency. Such initial and follow-up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of law enforcement officer certification and the law enforcement officer's job.

This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one State to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial Employer might move that plant to another State or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The Employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other States, even in Mexico.

The PBA asserts that local comparisons are more relevant with law enforcement wages. These types of issues were considered in the a decision by arbitrator William Weinberg in the *Village of Ridgewood* case.

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g, (2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct Employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, at 29-31).

Lawful Authority and the Financial Impact on the Governing Unit, its Residents and Taxpayers

A review of criteria g5, g6 and g9 of the Act is traditionally one of assessing the impact on the so-called "tax laws" applicable to various government employees by State Statute. In this case, there are significant differences.

The public employer in this case has proposed a modification of health care benefits and premiums. The lawful authority of the Employer in this case, and for that matter the parties generally in such cases, has been significantly limited by recent legislation signed into law by the Governor in the last week of June of 2011 (Chapter 78, P.L. 2011). The referenced statute provides for sweeping changes in various benefits and pension issues covering public employees. With respect to the Employer's position in this case, the referenced statute is preemptive and prevents negotiation/arbitration of the subject matter. As such, the provisions of Chapter 78, P.L. 2011, specifically Sections 77 through 83 are controlling. The Arbitrator is therefore presented with a statute which was enacted after the close of the hearing but before the due date of the Post-Hearing Briefs and which preempts elements of health care bargaining. The PBA asserts that the changes sought by the Employer in this case are not arbitrable in this Interest Arbitration proceeding.

A threshold consideration under a review of this statutory criterion is that the employees in this proceeding are not Ocean County employees. The Constitutional and statutory arguments in support of this fact have been set forth earlier in this Brief. The negotiations unit members are employees of a Constitutional Officer, the County Prosecutor. Ultimate decisions not only on operations, but expenditures are decisions that are beyond the Board of Chosen Freeholders of the County. As stated above, Chief Justice Weintraub clearly wrote in *Bigley* that the correct line of authority with respect to expenditures as well as operations is through the Prosecutor. This principle of a line of authority on both operational issues and financial issues that do not go through a County Board of Freeholders has significant statutory impact in this and other Prosecutor's cases.

The so-called “CAP Law” of which direct citations are found in criteria g5 and g9 under the Act should not be considered as controlling here. The “CAP Law” makes reference to local jurisdictions and counties. The “CAP Law” does not control the State of New Jersey. It is respectfully submitted that such is the case here. Notwithstanding the asserted lack of applicability of the “CAP Law” in this proceeding, the PBA will clearly show that such considerations are not relevant to an ultimate resolution of this case. The turnover of sworn personnel in the immediate past has a significant impact on ultimate cost assessments.

The PBA submits that its proposed salary increase would have a *de minimis* effect on the public. The PBA contends that the impact of its salary proposal is more than offset by the value received from the Prosecutor’s Office personnel in the form of integrated law enforcement services, training, special equipment and the resultant ability to keep local expenditures low. As noted earlier, the Prosecutor’s Office is one that saves local taxpayers money. Without the services provided by the Prosecutor’s Office, local taxpayers would have to assume the cost of investigative, laboratory, special equipment and special training. This is not to mention the additional ability to amass force and provide reserve services when and where needed about the County.

The total cost of this bargaining unit’s base pay, the issue in this case, is an important subject to note. There were 52 employees in the bargaining unit at the close of the hearing. Assuming every bargaining unit member was at the maximum salary of \$91,240, the total base wage cost would be \$4,744,480. It is acknowledged that there is some step movement, however by using this higher rate and the assumption of the fact that all are at maximum rate actually overstates the base rate cost but in exchange removes the need to calculate the cost

of step movement. The cost of a single percentage point based upon the PBA's calculation as noted in the above paragraphs is \$47,444. The public employer's calculations actually show a lower cost. Employer *Exhibit C-58* is a sheet including the base wage rates of bargaining unit employees with a total at the bottom of the column of \$3,468,782. Under the Employer's calculation one percentage point would be \$34,688. The PBA is aware of other calculations on *C-58* however, respectfully submits that many of these calculations are for time off which are not cash consequence time. An example is a category "Comp Hours." The category "Sick Hours" presupposes expense when in fact a person does not get more pay for being sick, they just do not come to work that day. As a result of adding the category "Sick Pay" to base pay results in a double calculation of the same day.

Using the PBA's calculation of the maximum step salary, the cost of implementing the first year salary increase is \$166,054 in 2010, \$171,865 in 2011, \$177,881 in 2012 and \$184,107 in 2013. The PBA maintains that its proposed salary increases are within the Employer's ability to pay, particularly when any difference may be accommodated by resort to a "*Bigley hearing*" or other Prosecutorial option.

According to the PBA, there are two other offsets which may be considered in the cost impact of employees in the bargaining unit. First, there have been significant retirements and restructuring in the Table of Organization at the Prosecutor's Office. *Exhibit U-24* shows ten retirements and seven new hires. Obviously, the higher paid Employees who are retiring have a significantly higher cost impact than those new hires. Second, an offset is provided by Chapter 2 of P.L. 2010 mandating a 1.5% payment of pensionable base salary as a contribution toward medical costs. This was effective as of May 2010. This contribution from all County employees totaled \$1,236,615. Pursuant to Chapter 78, P.L. 2011, the

mandatory contribution rates will increase in future years. Bargaining unit employees will be paying a significant portion of the cost of premiums in the immediate future by virtue of this recently enacted law. All of these savings will enure to the public employer.

The PBA contends that the citizens of Ocean County are favored with a conservative Budget with virtually no tax increase over recent years, an exceptionally high bond rating and a very small debt obligation. The total Ocean County budgetary appropriations for 2011 are \$269,023,301. (*U-21, Sheet 2*). The cost impact of the entire annual base salary (using the higher number of \$4,744,480) is 1.76% of the total appropriations. The impact of each 1% salary increase is \$47,445 which is equivalent on a hypothetical \$7,000 annual real estate tax levy with 10% going to the County, is \$0.84 per year. This is *de minimis*.

The County tax rate has been low for all years in evidence. The tax rate for each year since 2007 is set forth in the Budget at (*U-21/P-21*) at Sheet 3a. Changes are minimal. These figures show that the County tax rate went down from 2007 to 2008. It went up One Cent (\$0.01) in 2009 but it still remained below the 2007 rate. A minimal change occurred in 2010 and the 2011 rate was only estimated, however that appears to be minimal as well.

County Government in New Jersey does not have a problem with the collection rate. Regardless of the collection rate in a given municipality, 100% of the County Levy must be paid on time. This fact was further developed by Comptroller Tarrant:

- Q. And by the way, a county receives its money not directly from the taxpayers but through the municipalities from the real estate tax. Right?
- A. Correct.
- Q. And if a given municipality collected at a rate of let's say 95 percent, what rate does -
- A. One hundred percent.
- Q. So any shortfall is swallowed up by the municipality?

- A. Correct.
- Q. And whatever the tax rate may be one hundred percent is guaranteed payment through the County?
- A. Yes. (Tr. at 181).

Another area for consideration is the County's Bond rating. The PBA asserts that the County's Bond rating is exceptional. The testimony of Employer witness Vijay Kapoor was the subject of specific inquiry of the Comptroller on the subject of the County's Bond rating.

- Q. When Mr. Kapoor testified earlier today, he noted that there was a AAA bond rating for this County. Is that correct?
- A. Yes.
- Q. That's the highest of any he identified. Isn't it?
- A. The highest?
- Q. Of any identified on his - -
- A. No.
- Q. - - comparisons?
- A. What he said is we are AAA just similar to the other ones here.
- Q. Right. Well - -
- A. The highest rates.
- Q. Some have a lesser rating?
- A. Yes.
- Q. Highest rating of anyone listed includes this County?
- A. Yes. (Tr. at 179).

A significant consideration in fiscal assessment is the Annual Debt Obligation. The PBA introduced the "Annual Debt Statement" as *Exhibit U-23* in evidence. The statutory

debt limit is 2% of average valuation and in this County the debt total is only 0.4%. This observation and qualitative assessment was acknowledged by Comptroller Tarrant.

Q. What is the statutory debt limit for a county?

A. Two percent of an average valuation three year average.

Q. The most recent debt statement for this County is U-23. Right?

A. Yes.

Q. We're down by four-tenths?

A. Yes.

Q. That's good. Right?

A. Yes, it is very good. (Tr. at 180). (Correction was made from the Transcript from 223 to U-23).

All of this was further summed up by the newspaper report of a statement by Freeholder John C. Bartlett, who on the Ocean County Democratic Committee website dated March 18, 2011, referred to the County's AAA Bond rating as the "highest in the world." (See PBA Power Point).

In sum, the PBA submits that the citizens of Ocean County are favored with a very strong fiscal picture at the County level. The Budget has been developed with a zero shortfall (See *Employer Exhibit C-115, mid-page*). It is a Budget that was brought well within the Levy CAP (See C-113 and C-114). The Employer may opine about the increase in pension costs however it omits the fact that public employers across-the-State got a "free ride" for four years of non-contribution to the Pension System, followed by four more years of partial contribution to the Pension System. The apparent effect of a short term rise is a misnomer. The Ocean County Prosecutor's PBA is an organization representing employees

of the Prosecutor's Office and no other party. The Prosecutor is a Constitutional Officer in the State of New Jersey who is the Employer. In this case, while the Employer Prosecutor has deferred negotiations/arbitration to County designees, those persons only stand in the shoes of the Prosecutor with the same legal position. Notwithstanding this relationship by operation of law, the County of Ocean is fiscally strong with an exceptional Bond rating, and an almost stable tax rate with the ability to meet and comply with all legal requirements of the CAP Laws. The immediate past has brought a windfall based on the 1.5% employee contribution requirement and the immediate future will result in a higher level of contribution toward health care which is likely to be substantial.

The Cost of Living

The cost of living criteria really must be looked at in two separate ways in New Jersey for its public employees in the immediate past. First, by virtue of the May of 2010 statutory changes, employees have been paying 1.5% of their pensionable base pay toward medical. No matter how one views this change, it is clear that the net result has been a 1.5% reduction in net pay. Further, the recent adoption of Chapter 78 in late June of 2011 will reduce net pay again. Absent a salary increase, employees in the bargaining unit will receive less net pay for 2010, 2011 and thereafter.

The second method of analysis under the Cost of Living criteria is the increases in comparable compensation and Consumer Price Index modification. Here the PBA relies solely upon documents introduced by the Employer. Employer exhibits have established a trend of increases in the noted categories. The following Chart enumerates certain changes in various categories based on Employer exhibits.

CHART 5

Employer Exhibit	Date	Rate of Change
C-65	1-1-10	2.7%
C-66	3-25-10	2.4%
C-73	5-31-11	2.5%
C-64	6-2-11	2.5%

The combined impact of reduced net pay and increased comparable wage settlements and Consumer Price Index data (*C-24*) supports an award of the PBA's salary proposal. The Employer's own data through April of 2011 establishes a 2.5% increase in the Consumer Price Index for all urban consumers (*C-24*). This increase in the CPI coupled with the mandatory health care contributions supports the PBA salary proposal.

Continuity and Stability of Employment

The PBA submits that an analysis of this criterion suggests reliance on the private sector concepts of "prevailing rate" and "area standards." The PBA submits that both concepts strongly support an award of its last offer. Bargaining unit members are exceptionally productive personnel. Their efforts reduce and enable the lowering of local taxes. Absent services provided by the Prosecutor's Office, those costs would clearly be borne by local jurisdictions and ultimately taxpayers at the municipal level. The PBA maintains that the net impact of the PBA's salary proposal is nominal while the benefit to the public is substantial. Net losses in personnel have caused significant savings in the Prosecutor's Investigative ranks. The savings generated by Chapter 2 and Chapter 78 must be considered.

Based upon the evidence and testimony introduced at the hearing, the PBA asks that its salary proposal be awarded.

COUNTY POSITION

Economic Conditions

The Employer asserts that economic conditions that persist after the financial collapse in late 2008 will drive the result of this matter. As our economy continues its struggle to gain traction the negative effects of the business downturn have permeated the public sector. In New Jersey, for example, the discontentment of the taxpayer with “business as usual in the public sector” was a significant factor in the rejection of the Democratic incumbent governor and the election of the Republican to replace him. The public’s desire for significant changes to control the escalating property taxes that residents simply can no longer afford has led to major changes in health insurance and pensions for public employees. Thus, we now have significant pension and healthcare reform; including the imposition of a 1.5% of salary contribution obligation to the cost of health insurance for public employees (C-99), and a 2% cap on increases in the tax levy effective January 1, 2011. (C-100) The legislature also enacted a provision in the Governor’s tool kit imposing a two 2% per annum maximum on increases to base salary, which is defined to include Step increases and longevity that can be awarded by an interest arbitrator. (C-101) While the County understands that the salutatory restriction does not technically apply to the instant proceeding, there is little doubt that the 2% limitation on increases to compensation represents the intent of both the legislature and the executive branch as to what is expected of counties and municipalities when it comes to increases in compensation for law enforcement employees. Without question, therefore, the major changes in the private sector economy have now hit the public sector and the impact is significant. It is this economic impact that will drive the results of this interest arbitration proceeding.

Background

Ocean County has multiple labor contracts which it is legally obligated to renegotiate on a periodic basis. The current negotiating cycle commenced April 1, 2010. Among its many labor contracts the County has seven contracts with its law enforcement community, including:

1. PBA 258 – Correction Officers;
2. PBA 258 – County Correction Superiors;
3. PBA 171 – Prosecutors, Detectives and Investigators Ass'n;
4. PBA 379 – Sheriff's Officers;
5. PBA 379A – Sheriff's Officers Superiors;
6. Prosecutor's Sergeants Ass'n;
7. Prosecutor's Superiors Ass'n;

The agreement with the Prosecutor's Detectives and Investigators expired on March 31, 2010. In an effort to achieve meaningful cost containment, the County made a proposal to the PBA during mediation that provides for the continuation of movement on the salary guide for those officers eligible to move in 2010 along with a 2% across-the-board increase for 2011 consistent with the statutory restrictions imposed on the County, but seeks cost savings by the elimination of the existing salary guide and the unsustainable cost of movement along the steps beginning in 2011; changes to the longevity program to provide longevity only after 15 years of service and to provide longevity as a lump sum benefit rather than a percentage of base salary; and modifications to health benefits that have been accepted and implemented for most of the other bargaining units and the non-aligned employees. The County also seeks elimination of longevity for new hires, as well as the elimination of college credit and a change to the contract provision on holidays to bring the benefit in-line with what State employees receive.

This proposal was rejected by the PBA. The County submits that without meaningful cost containment changes in the contracts, particularly as they related to longevity and movement on the salary guide, there was no way a voluntary settlement could be reached. Moreover, without securing the proposed changes the County would have lost a critical 2-year period in which to address a compensation plan for Investigators that is rapidly becoming unsustainable. Add to that the negative affect on the morale of all other County employees who had already made concessions and sacrifices and it is easy to see why the dispute has been placed in the hands of this Arbitrator for resolution.

In March 2011 the County was facing a significant budget crisis. In order to avoid the need for additional layoffs, the County proposed that each of the bargaining units that have salary guides with automatic increments agree that employees on the salary guide not receive their increment during the pendency of the interest arbitration proceeding. Local 171 rejected this proposal and insisted that all increments be paid. Those increments have been paid resulting in an increase in the cost of wages above the 2% cap that is the target for any wage increase for public sector employees. To offset its increased costs, including wage increases and increment cost, the County was forced to eliminate 62 positions in 2011 resulting in savings of \$2,804,025. This was on top of the elimination of 65 positions in 2010.

In order to allow the County to operate within its statutory restrictions and allow it to meet its budget obligations, in recognition of its declining surplus and increasing costs, the Arbitrator must address the salary guide movement in a fundamental way. Continuation of business as usual with respect to salary guide movement is no longer an option given the direction of the Governor and the legislature.

Rationale for County's Final Offer

The County asserts that its final offer represents its best judgment of how to disburse what limited money is available for a new collective negotiations agreement with the Prosecutor's Detectives, how to reduce and limit costs and, because those means are so limited, that judgment mandates deference by this Arbitrator in the terms of his award. The County offered the following rationale in support of its final offer.

Elimination of Salary Guide: The County asserts that the single most important component of the compensation package for any employee is his/her salary. The 2009 salary guide for Ocean County Investigators provides for 10 steps from date of hire with a maximum salary in 2010 of \$91,246. The salary steps produce significant wage increases that greatly exceed what the County can afford and what could be considered "reasonable" by any measure. For instance, movement from the Probation Step for new hires to Step One provides a salary increase of \$12,386 or 33.6%. Movement between Step 2 and Step 3 provides an increase of \$8,889, or 17.8%. Movement from Step 4 to Step 5 provides a salary increase of \$9,198 or 14.4%. An officer hired at the probation step would, without any additional across wage increases, see their base salary increase by \$54,351, or 147.3% in less than nine years. This represents an average annual increase of 16.37%. This is in addition to the across-the-board salary increases which totaled 17% for the period from 2006 to 2009.

The County contends that with the new restrictions imposed by the Governor's "Toolkit" and the restrictions imposed on tax levies that the County simply cannot sustain this significant increase in salary costs. Simply put, the County cannot comply with the tax levy CAP law while paying automatic increments of more than 16% annually. In order to meet the requirements of the new law imposed as part of the Governor's Toolkit, the County

needs to slow down the increase in compensation and to bring the total cost of wage adjustments in line with the statutory limitation of 2%. To that end, the County has proposed a new salary guide structure that recognizes the restrictions now imposed on the County's ability to increase taxes and increase appropriations. For 2010, the current guide would remain in effect and employees on the salary schedule would move to the next step. Employees at the top of the salary guide (Step 9) would receive no increase in 2010.

Effective April 1, 2011 the salary guide will be eliminated. Under the new salary structure the probation salary will be \$36,989. After probation, employees will move to a starting salary of \$49,275. Any employee with a salary of \$49,275 or higher will receive a 2% increase retroactive to April 1, 2011. Any employee who received more than a 2% increase, due to step advancement, will pay back to the county any increase over 2% over the course of a twelve-month period.

According to the County, this proposal meets squarely with the intention of the Governor and the Legislature when the toolkit legislation was adopted. It is overwhelmingly clear that the goal was to limit spending, including spending on compensation, to no more than 2% per year. That goal simply cannot be achieved if employees are able to move on a salary guide that provides increases in compensation of more than 16% per year. Allowing all employees, with the exception of those moving from the Probation Step to the starting salary, to receive salary increases of 2% is fully consistent with the aims of the legislature and will allow the County to enact a budget that meets its legal obligations.

The County submits that its proposed changes to the salary guide are crucial to sustaining a compensation plan for members of PBA Local 171 while maintaining the same number of investigators. In fact when consideration is given to the new interest arbitration cap that will be applicable to the next contract if the County's two year proposal is granted,

the new salary structure will eliminate the increment cost that would have occurred under the old guide and which must be accounted for in a future proceeding. Thus, the new guide actually helps incumbent employees as well as the County.

A review of the impact of the PBA's final offer and how the step guide will compound that impact is set forth in C-103A and C-103C. As is demonstrated in Exhibit 103C an officer who was at the Probationary Step in 2009 would see their salary increase by 38.25% in 2010, 4.76% in 2011, 21.95% in 2012 and 12.44% in 2013. Over four years, a new Investigator would see their compensation increase by a total of 98.57% under the PBA's final offer. Further, even those Investigators no longer without increments would see their compensation increase by more than \$13,000 over the course of four years or nearly 15%.

Longevity: The County contends that longevity is a significant reason why the present compensation plan for Ocean County Investigators is unsustainable. The County argues that the additional cost of 5.7% or 6.5% above the top pay of \$91,240 creates an unbearable financial burden. Further, the current contract provision on longevity allows investigators to begin receiving longevity while they are still moving on the salary guide. This results in an investigator moving from his sixth year to his seventh year receiving not only a step increase of \$3,147, or 4.2%, but an additional increase of \$2,357 or 3% based on the addition of longevity. Thus, without even considering across the board increases, the total compensation for an Investigator moving into his or her seventh year investigator is \$80,918, an increase of 7.3% over their previous year's salary.

Accordingly, the rationale for the County's position on the issue of longevity is to contain the cost increase of this item recognizing that it is impossible to budget within the

required CAP with compensation continuing to increase at such a dramatic rate. The County also seeks to maintain longevity at a flat amount, without the upward pressure on longevity each time there is an across-the-board wage increase. Thus, the County has proposed three longevity rates that will be at a flat dollar amount and only after 15 years of service. Longevity will be eliminated only for new hires. Thus current employees will continue to receive longevity at a generous level but only after they have demonstrated their commitment to remain with the County for the long term, which is the original intent of longevity pay.

Term of Contract During times of fiscal uncertainty and turmoil it is imperative that a collective negotiations agreement is short-term. It is essential that the County be in a position to negotiate a new collective agreement in 2012, especially with the economy continue to falter as it is. The County proposes a two-year contract that will end March 31, 2012. Given the complexities and uncertainties of the current economic climate a two-year term provides a reasonable level of stability without long term commitments that may not be possible to fund. Beyond that the County's financial circumstances mandate that it have the means to negotiate savings that may be needed to enact a budget. The record demonstrates that the County's Surplus has been on a downward trend for the past five years. (C-119). The County has eliminated 127 employment positions over the past two years. (C-111 and C-116). This reduction in staffing has begun to have a negative impact on the County's ability to provide services as was testified to by the County Comptroller, Julie Tarrant. (Tr. at 145-46).). In order to meet its financial obligations and to prepare a budget that is in compliance with the statutory restrictions, the County must have flexibility to negotiate with its bargaining units when it prepares its budget for 2012.

The legislature has enacted new procedures and limitations with regard to interest arbitration awards. Given the County's fiscal situation it is critical that it have the opportunity to negotiate and, if need be, arbitrate the terms of a new agreement within the legislatively imposed restrictions.

The County's proposal for a two-year contract is much more in line with how negotiations are handled in the private sector. When there is stability in the economy the parties are willing to agree to a long-term agreement. When there is instability the parties will agree to short term agreements. This leaves the employer in a position that it can afford the economic terms to which it has agreed. Further, it must be kept in mind that the taxpayers who will be funding the compensation package for the Investigators are themselves facing significant financial uncertainty. It is unfair to lock the County into a long term agreement that, depending on how quickly the economy can recover, may be difficult for its taxpayers to sustain.

Holidays The County's holiday proposal simply brings the County employees in line with the State of New Jersey with respect to holidays. Given the fact that the operations of the County, and in particular the Courts, are closely entwined with those of the State, it makes sense to align the two holiday schedules. Further, this change in Holidays has already been agreed to by five of the County's other bargaining units. (See CNAs submitted by the County after the hearing).

College Credit The current agreement calls for Investigators to receive an additional lump sum payment of \$500 for an Associate's Degree to \$1,000 for a Master's Degree. This benefit now costs the County almost \$30,000 per year. This is separate from, and in addition to, the financial expense paid by the County in tuition reimbursement for Investigators who

are working toward their degree. The County contends that these are additional financial benefits that it can no longer afford.

Health Benefits The County will continue in the State Health Benefits Plan and will provide benefits to employees two months from their date of hire. The proposal clarifies that in order to receive retiree health benefits the employee must have a minimum of 15 years of service with the County and 25 years in a retirement system. This is consistent with the N.J.S.A. 40A:10-23, and is in line with the retiree health benefits provision agreed to by other bargaining units. (See C-123-126). New hires will be offered the NJDirect 15 Plan or its replacement. New hires may elect another plan at their own additional expense. For new hires, the County will no longer provide spousal coverage at the County's expense after the death of the retiree, and the County will no longer reimburse retiree Medicare part B premiums.

The County has limited its costs in continuing coverage for employees on an unpaid leave of absence by limiting the continuation of County paid coverage to four (4) months.

Cost Analysis of Final Offers

C-103A shows that the cost of the County's offer over the proposed 2-year term of the agreement would be \$240,503, when all of the savings are factored in. For 2010, the added cost of the County's offer is \$119,871 or 2.88%. In 2011, the cost of base salaries will increase by \$83,952 or 2%. The overall change in cost from 2010 to 2011 is less than 1% when the givebacks on longevity and college credit are considered. The givebacks with respect to longevity and college credit total \$83,191. Thus, even with a 2% increase to base salary in 2011, the savings achieved by the County's offer will allow it to continue a very generous compensation package for its Investigators

Thus, over the two years, base salaries for the Investigators increase by a total of \$195,365 or 4.8% over the 2009 base salaries, with an average yearly cost increase of 2.4% per year. In terms of dollars the County will pay \$306,784 more in base salary including steps, but excluding longevity, overtime, extra duty pay, by the end of the 2-year term than it paid in 2009 for the base pay component. This provides an average increase in base salary of \$3,000 over two years for the 50 Investigators in the negotiations unit.

By contrast, the PBA proposal would cost the County \$268,793 or 6.45%, in 2010 alone. (C-103B). In 2011, the total cost of the PBA's offer would grow to \$809,835 over the 2009 cost and would include an increase of 6.1% in 2011. Thus, in 2010 and 2011, the PBA proposal would cost over \$500,000 more than the County's proposal. The PBA's proposal represents a 19.4% increase in the total compensation. Over the course of four years, the PBA's offer would cost the County an additional \$2,766,172, an increase of 66%. Looking just at the impact on base salary alone, it is clear that the County's proposal is more in line with what employees in both the private and public sector should reasonably expect and is consistent with the legislative restrictions now imposed on the County. Under the County's proposal, the increase to base salary in 2010 will be \$111,416 or 2.73% over the 2009 base salaries. In 2011, the increase to base salaries would be \$83,952 or exactly two (2%) percent.

The PBA's four-year proposal would result in increases to base salaries in 2010 of \$258,333 or 6.3%; an increase to base salaries of \$261,996 or 6% in 2011; an increase to base salaries of \$270,476 or 5.9% in 2012 and an increase to base of \$243,081 or 4.9% in 2013. Overall, the PBA's wage proposal will increase base salaries alone by \$1,033,886 or 25% over the four-year term the PBA proposes.

The County submits that the PBA's salary proposal is neither reasonable, nor sustainable. The County simply cannot be expected to continue its operations and services to the taxpayers of Ocean County and, at the same time, fund an increase in compensation for the investigators of more than \$2.7 million. The only way that such a dramatic increase could be funded would be with further significant cuts in personnel. Such cuts would negatively impact on the County's ability to provide services to its residents. Moreover, given the personnel cuts that have already had a negative impact on the County's operations, it seems clear that further cuts would require the elimination of some programs and services for County residents.

Testimony

The County cites the testimony of Vijay Kapoor in support of its proposals. Kapoor serves as Director of Workforce Consulting Works for Public Financial Management ("PFM") Group, which has served as the Financial Advisor for Ocean County for the past decade. The firm works with the County with regard to bond transactions and other financial analysis. Kapoor noted that the Step system results in Officers receiving significant increases even if there is no change in the Steps. Thus, even if all Steps were frozen after 2009, an officer moving from Probation to Step 9 would receive increases of \$54,351 or 147.3%. The value of each step for an Investigator starting at the Probation Step, assuming that the steps remain frozen, is over \$6,000. The average percent increase for each of the steps, assuming they remain frozen, is 11% for an officer starting at the Probation Step and 8.1% for an Investigator starting at Step 1.

When factoring in longevity, an Investigator starting at the Probation Step would see an increase of 154.8% in just nine years while those starting at Step One would see their compensation increase by 90.7%. The average value of each Step increase rises to \$6,343

for Investigators starting at the Probation Step when longevity is factored into the compensation and \$5,588 for Investigators starting at Step 1.

Kapoor testified that when the compounding of wage increases is considered, County Investigators have received at least a 17% increase since the start of the last CNA. Kapoor noted that this rate of increase, which again does not factor in movement on the guide, greatly exceeds all of the pertinent measures of cost of living increases.

With respect to comparisons, Kapoor explained that there are a number of factors that must be considered apart from simply comparing labor contracts for employees in different counties performing the same job. He noted that one must consider key difference such as the relative community economics and demographics, difference in the labor markets from which employees are recruited, financial resources of the County and non-cash compensation levels. Kapoor noted that Ocean County is home to a significant population of older residents ranking 2nd among the 21 counties in New Jersey in percentage of population over the age of 65, 3rd highest in median age of population, last among counties in percentage of population between the ages 15-24 and second to last among counties in percentage of population between the ages of 22-44 years of age.

Economically, Ocean County ranks in the bottom third among the counties with regard to per capita income and median home value, and ranks 14th out of the 21 counties in median household income. Kapoor noted that the County is unusual in that although it is among the least wealthy counties in the State, it has been able to maintain an AAA bond rating, which is typically only found among the wealthiest counties. The County has done this by maintaining its reserves and through conservative fiscal management.

The County's AAA rating allows it to borrow money at a cheaper rate. Unfortunately, the County has now been given a negative outlook by one of the rating agencies based on the reduction in the County reserves. (Tr. at 87-88).

Kapoor compared the compensation and benefits of Ocean County Investigators to those in other counties. Overall, the Investigators compare quite favorably.

Kapoor highlighted the current economic conditions and the impact those conditions have on the County's financial condition and the condition of its taxpayers. Kapoor noted that even if the Country is now moving out of the worst recession since the Great Depression, history has shown that government revenues will lag behind economic growth. The U.S. lost 6.9 million jobs since December 2007. The unemployment rate remains above 9.1% and Ocean County's unemployment rate nearly doubled from December 2007 to April 2011 going from 5% to 9.8%. Ocean County had the 8th highest unemployment rate among New Jersey Counties. (C-106, at 35-36).

Kapoor explained that the economic picture in New Jersey remains bleak. According to the Rutgers Economic Advisory Service, it is anticipated that job growth in New Jersey will lag behind that of the rest of the County, and it will take five more years to recover the jobs lost. The personal income of New Jersey residents is expected to increase slower than the national average. (C-106, at 37).

Typically, after a recession it will take a significant period of time before tax revenues recover to pre-recession levels. For instance, after the 1990-91 recession, which lasted eight months, it took more than 18 months for state revenues to recover. After the 2001 recession, which also lasted eight months, it took more than three years for the state to recover its pre-recession level of revenues. The most recent recession lasted 18 months with State revenue

declines of more than double those in previous recessions. Thus it is quite likely that it could take more than three years for State revenues to fully recover. (C-106, at 40).

The County submits that economic pressures on local employers in New Jersey will continue given rising health care costs, particularly for retirees, rising pension costs, and reduced State revenues that leave less money available to counties and municipalities.

The County also cites the testimony of Julie Tarrant. Tarrant serves as the Comptroller and Chief Financial Officer for Ocean County. Tarrant is responsible for the preparation of the County budget. In Ocean County, taxation makes up between 80% and 85% of the County revenue. In the past few years the County's valuation has decreased. (Tr. at 134-35).

Tarrant explained that there have been changes in the restrictions imposed on counties in preparing their budgets. In 2010 and 2011 there were changes in the law with respect to CAP calculations. The County is required to prepare a Cap calculation based on the 1977 CAP law, and the new 2010 Cap law, and must abide by the lower of the two (2) caps. (Tr. at 137-138). There have been a number of factors that have negatively impacted on the County's ability to prepare a budget over the past few years. From 2009 to 2010 County ratables dropped by over \$4 billion. This impacts on the level of taxation that can be raised for the County. In order to maintain the same amount in taxes, the County had to increase its tax rate. The County also saw deficits in other revenues, such as a decrease in the surplus and a reduction in investment income.

Tarrant testified about the decline in regeneration of surplus. She explained that money left over from prior years becomes surplus in the next year's budget. From 2009 to 2010 the County saw a decline of \$12 million in the regeneration of surplus. (Tr. at 140-141).

Tarrant testified regarding C-109 which was the introduced County budget for 2010 which included no increase in the salary and wage line item. This was achieved by not filling vacancies and by eliminating positions, all of which resulted in over \$3,000,000 in savings from the budget. Operating expenses decreased by 6.75% while capital spending decreased by over \$8 million. The decrease in capital spending may not have an immediate impact but will impact in later years with higher costs as worn out equipment and vehicles are replaced. (Tr. at 142-143).

Tarrant explained the reductions in force of the past two years. In 2010 the County eliminated 65 positions resulting in a savings of \$3.2 million. (C-110). These cuts have had a negative impact on County services such as transportation and buildings and grounds. (Tr. at 145-146). In 2011, the County eliminated an additional 62 positions saving \$2.8 million. (C-116). Tarrant explained that the elimination of the positions in 2011 allowed for the County to provide negotiated salary increases and increment costs. (Tr. at 163-164).

The surplus declined by 26.18% in 2010. (C-109). Tarrant explained that a reduction in surplus has a direct impact on the budget as it reduces the amount that can be raised. In 2010, the reduction in surplus resulted in the elimination of \$7.6 million in revenue in the budget. The reduction in surplus can also impact on the County's bond rating. One of the ratings agencies gave the County a negative outlook due to declining surplus. In order to try to regenerate surplus the County was forced to raise taxes. (Tr. at 147-149). Overall, the 2010 budget was \$9,715,000 less than the 2009 budget. This was a 2.72% reduction. In 2010, the County saw a decrease in Surplus Anticipated and a decrease in Other Revenue that combined totaled more than \$17 million. On the expense side the County saw an increase in health insurance, an increase in debt service and an increase in pension expense totaling more than \$9.2 million. In order to make up the difference an additional \$8.1 million was

raised in taxes. This was the maximum amount the County could legally raise. (Tr. at 147-152).

In 2011, the County was again required to abide by the lower of the two tax levy cap calculations. Tarrant explained that this resulted in the County losing the ability to increase taxes by \$3,500,000. In preparing its 2011 budget, the County utilized nearly all of its Cap bank, leaving only \$2,800 to draw from for 2012 on a budget of \$353 million. (Tr. at 153-155).

As reflected in C-115 the County's valuation again decreased in 2011. This reduces the amount of money that can be raised with the current tax rate. If the County kept the tax rate flat, it would raise \$3,198,762 less than the previous year. (Tr. at 159). There were additional revenue losses in 2011, such as interest on investment which was a \$2.2 million loss. Surplus again decreased reducing the amount the County could use from surplus to help balance the budget by \$500,000. While higher than the 2010 budget, the 2011 budget was still less than the County budget in 2009. (C-115).

Salaries and wages decreased as a budget item by \$1.3 million in 2011. This was due to attrition and the elimination of a number of positions. Other appropriations, however, such as pension and utilities increased significantly. (Tr. at 162-163). Tarrant explained that C-119 demonstrates how the amount of Surplus has been dropping steadily since 2007. From a high of \$54,995,022 the surplus balance dropped to \$33,931,146 in 2011. If the County is unable to regenerate the surplus what has been anticipated this will again reduce what the County could raise in the budget in 2012. (Tr. at 168).

As explained by Tarrant, C-121 shows the steady decrease in revenue from interest on investments and County clerk fees from 2006 through 2010. Going forward into 2012,

Tarrant testified that it appears that investment income will be no better than in 2011 and there is no indication that clerk fees will increase. (Tr. at 174-176).

Tarrant testified that if the Cap law remains the same, it will be more difficult to prepare the budget in 2012 than in other years. This is primarily due to the fact that the County has used up nearly all of its Cap bank. This will dramatically reduce the amount of money the County is able to raise in taxes. (Tr. at 177-178).

The County also cites the testimony of Keith Goetting. Goetting is the Director of Employee Relations for Ocean County, and has held this title since 1991. Goetting explained that Ocean County currently has 1,759 employees. This is down from just under 2000 employees in 2007. With the exception of about 275 employees, all County employees are represented by bargaining units. There are 21 bargaining units in Ocean County and, as of the date of the Arbitration Hearing, June 10, 2011, there were 15 expired CNAs. At the hearing, Goetting identified four recently signed Memorandum of Agreements ("MOAs"). (C-123 through C-126). These MOAs all had nearly identical terms. None of the four bargaining units have increments in their contracts. (Tr. at 209-211). Subsequent to the hearing, ratified contracts with six bargaining units were submitted by the County. These contracts were all for three-year terms and included wage increases of 1.5% annually.

Currently, 12 of the 21 CNAs have language on health benefits similar to what is proposed in the County's final offer in this matter. The primary changes in the health benefits provision is a requirement of 15 years of service with the County, along with the 25 years in the pension system to qualify for retiree health benefits; limiting new hires to the NJDirect 15 Plan, with the option for the employee to pay for other plans; a provision that new hires would not be reimbursed for Medicare Part B coverage at retirement and would

not be eligible for spousal coverage when the employee passes away after retirement. All non-aligned employees have also had these changes in health coverage imposed. (Tr. at 212-213).

Goetting testified that two-thirds of County employees now have the health benefits changes in their contracts. Only three bargaining units, the Prosecutor's Investigators rank-and-file, Corrections Officers rank-and-file and Sheriff's Officers rank-and-file still have increment costs in their contracts. (Tr. at 215).

In 2010, non-aligned employees received a 1.9% salary increase if their longevity plus base pay did not exceed \$98,000. Employees earning more than \$98,000 received no salary increase. (Tr. at 218).

Goetting testified that there has not been an issue with regard to turnover among the Investigators, and there is no difficulty in recruiting new Investigators. Investigators are not required to have a college degree. Most of the Investigators are hired at the Probationary level and work their way up through the salary steps. (Tr. at 218-219).

The following are the County's arguments and contentions in support of the statutory criteria:

Interests and Welfare of the Public

N.J.S.A. 34:13A-16g(1) provides that the Arbitrator must give "due weight" to "the interests and welfare of the public." The Appellate Division has interpreted this criterion as requiring the Arbitrator to consider, among other things:

The priority to be given to the wages and monetary benefits of public employees within the municipality's budget and plans. Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 188, (App. Div. 1993) aff'd in part, rev'd. in part, 137 N.J. 71 (1994). See also Fox v. Morris County, 266 N.J. Super. 501, 516 (App. Div. 1993).

Thus, in ruling on this case, the Arbitrator must determine what is in the public's best interest. There can be no legitimate argument that the interest of the public is always a relevant and significant (many times determinative) factor in deciding the outcome of an interest arbitration proceeding.

Thus Arbitrator Joel Weisblatt opined in his decision In the Matter of Interest Arbitration between the Borough of Ringwood and Ringwood PBA Local 26, Docket No. IA 2005-082 that:

The interests and welfare of the public is always a relevant criterion in resolving an interest arbitration dispute. There are numerous elements to the public interest factor but the arbitrator believes that the initial criterion is always worthy of substantial weight in determining the most reasonable resolution of the parties dispute.

Likewise, Arbitrator James Mastriani noted in his decision involving the State of New Jersey and its Correction Officers:

In rendering the terms of this award, I have given predominant weight to the interest and welfare of the public criterion. That criterion includes, by reference, the financial impact of the cost of the award on the governing unit, its residents and taxpayers. The compensation aspects of the award have considered the overall compensation and benefits currently received, comparability evidence within state employment generally and in jurisdictions where similar work is performed within the State of New Jersey and in other state jurisdictions where correction work is performed. The terms of the award will maintain the continuity and stability of employment for Correction and Parole Officers employed by the State of New Jersey. The criterion covering the cost of living has also been considered.

The issues in dispute in an interest arbitration proceeding always revolve around service to the public and how much it will cost to provide that service. Moreover, it is undisputed that the interest and welfare of the public require the services provided by the investigators who are represented by PBA Local 171. To meet that public interest the elected officials of the County must provide a reasonable compensation package for the employees

providing that service. The County asserts that the record demonstrates that the County has provided a very generous compensation package for its Investigators.

The County maintains that it has fulfilled its public interest responsibility to the Investigators by providing a very generous compensation plan. The other side of that equation is the responsibility of the elected officials to the residents and taxpayers of Ocean County. It is the County's contention that it has met that responsibility by virtue of the terms of its final offer, which provide for reasonable economic improvement for its employees over the course of a two-year contract, and which also provide for reasonable cost containment incentives that will generate the necessary immediate and long-term savings for its taxpayers. It is the County's further contention that its entire package must be awarded so that the appropriate balance between employee and taxpayer can be achieved in this contract.

According to the County, the interests and welfare of the public are informed by many factors. What the County considers to be some of the more significant factors in this dispute are outlined as follows:

The 2% Tax Levy Cap The Legislature and the Governor have determined that public interest requires a limitation on the County's taxing authority. The new Tax Levy Cap in effect as of January 1, 2011 is 2% with certain exclusions, including pension and health insurance increases that exceed 2%. The health insurance exclusion is also capped by the cost increases for State Health Benefits. (C-102).

By design, the State has greatly restricted Ocean County's ability to raise new revenue via taxation, which in turn has a direct and substantial impact on the amount of money that is available for pay raises for its Investigators and all other County employees. As noted above, the County is limited in how much it can raise in taxes. Further, unlike municipalities,

the County must use the lower of the two possible cap calculations (based on the 1977 CAP law and the 2010 CAP law). These calculations (set forth in C-107 and C-112) demonstrate that the County's ability to raise revenues through taxation increased by a total of only 2.2% percent from 2010 to 2011. In order to reach the total tax levy in 2011 the County used all of its Cap Bank. Without the use of the CAP Bank, the County would have been limited to an increase in its tax levy of 1.5% over 2010. The County has no lawful ability to increase taxes beyond this limit. Moreover, given the fact that the County utilized nearly all of its Cap Bank in 2011, it will be unable to utilize a Cap bank to increase its tax levy in 2012.

Pension and Health Benefit Contribution. P.L., 2010 c. 2, which mandated a 1.5% of salary contribution to health care cost effective in May 2010 was followed by P.L., 2011 c. 78, which provides for increases in employee contribution to pensions, and a modification of health benefit contributions to a percentage of premiums beginning at 1.5 % percent of base salary. These laws are an expression from the Legislature and Executive Branch of State government of what is deemed to be needed by the taxpayers of New Jersey. The County contends that any claim by the PBA that they should be reimbursed via additional wage increases must be rejected out of hand.

Similarly, the cost of both pensions and health benefits for public employees are an enormous financial burden for counties and municipalities. C-105 demonstrates the dramatic growth in the cost of pension contributions. In just eight years, the County's obligation has increased by \$17,388,640. Even from the point that the County started funding one hundred (100%) percent of its obligations for both PFRS and PERS 2009, the pension obligations for both systems have increased by \$5,685,950 or 47%.

With respect to medical costs, the cost of the State Health Benefits Plan has increased by \$5,813,604, or more than 20% percent over the past two years despite the elimination of 127 positions by the County. Further, over the past decade, the cost of health insurance premiums has increased by 113.9%. (C-106, at 43). In order to control the growth of this cost, the County must be able to pass some of these costs along to its employees, by way of limits on the plans offered at the County expense and modest reductions in benefits.

The Tool Kit At the strong urging of the Governor, the Legislature passed Chapter 105 of the Public Laws of 2010 which was effective January 1, 2011. This law brought about major changes to the interest arbitration process that were designed to expedite the process and increases to curtail the costs of labor contracts associated with the process. Thus, for example, renewed emphasis was placed on the lawful authority of the employer with particular attention given to the new 2% Tax Levy Cap law. Beyond that, Chapter 105 precludes arbitrators from raising salaries more than 2% including the increased costs of longevity and step increases. The County contends that the legislative intent cannot be ignored. Clearly, the Legislature and the Governor did not intend that public employers and bargaining units, whose contracts expire on a specific date, will now be subject to the 2% cap, while employers and bargaining units who, by happenstance, have contracts that expire before the specified date can ignore the cap on compensation increase altogether. There should be no doubt that when considering a 2% cap on tax levies and a 2% cap on the growth of compensation that can be allowed in Interest Arbitration, a very clear and direct message has been sent to public employers, public bargaining units and interest arbitrators that the total increase in the cost of employee compensation must be no more than 2%.

Keeping the growth of overall compensation to 2% was the goal of the County in crafting its final offer, and it must be the goal of the Arbitrator in making his award.

Mind Set of the Public From the onset of the Great Recession until today, the public has been inundated with events and statistics that directly and substantially affect their lives. The anxiety created by continued weakness in the job market and high unemployment as outlined in Exhibits (C-87 through C-92) is real and ongoing. C-95 reinforces this point:

Over the long term, analysts say it will take years for employment to recover and for labor force participation to return to its prerecession level, if it ever does.

The hope of an upturn in the economy has been tempered by slowdowns in manufacturing and continued job losses in both the public and private sector. (C-96) These job statistics are relevant to this proceeding because the public sector, including police departments, is not immune to layoffs as cities such as Camden, Trenton, Newark and Jersey City verify. The proposals set forth by the County in its final offer to the PBA are designed to prevent the need for additional layoffs by the County that will be even more difficult to absorb while allowing the County to continue providing a generous wage and benefit package for members of PBA Local 171. The County believes, therefore, that if its final offer is awarded it can address the public with a win-win business plan that will provide a reasonable wage and benefits package to current employees, while keeping the growth of the compensation package to the statutory limit of 2%.

County Demographics. The demographics of Ocean County are set forth in exhibits (C-1 through C-6, and C-106, pages 16-17), and show among other facts, that Ocean County has the second highest number of residents over age 65. Approximately 21% of the County's population is 65 or older and thus eligible for Social Security, which has not received a cost of living adjustment for two years. (C-1 and C-2). Nearly 25% of the County population is over age 62. This is a group that is most likely to be on a fixed income and, thus, more significantly impacted by tax increases.

Some 5.7% of families and 7.9% of individuals in Ocean County have income that is under the poverty level. (C-3). Further, only twenty-four (24%) percent of the population over age 25 has a Bachelor's Degree or better, ten (10%) percent less than the State's average. (C-6). The County's median household income in 2009 was \$59,706, nearly nine thousand (\$9,000) dollars less than the statewide median income of \$68,342. The median home value is in the bottom third among all Counties in New Jersey. (C-106, at18). The unemployment rate in Ocean County has exceeded the rate for the State. (C-6).

These numbers are significant because they represent the residents who will be primarily responsible for funding the award. Any award must be cognizant of the difficulty experienced by the County residents as this economic downturn continues into a fourth year. Further, in crafting an Award it must be kept in mind that it is the public for whom the interest arbitration statute and procedures were enacted. The New Jersey Supreme Court has noted that while interest arbitration is "essentially adversarial, the public is a silent party to the process." Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. at 82.

When all of these public interest factors are analyzed and applied to the facts of this case, it is clear that significant cost containment measures must be implemented. This is in large measure based upon legislated changes and revenue shortfalls that confront the County. The plan of the County to maintain the continued operation of its Prosecutor's Investigators as set forth in its final offer to the PBA constructively deals with those issues. The PBA's final offer simply makes a difficult situation even worse by adding excessive costs to the compensation plan with no effort at cost containment either now or for the future. Its proposal is completely self-serving and detrimental to the public interest and must, therefore, be rejected.

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

According to the County, comparability is not a factor in this dispute but the application of the criterion is supportive of the County's last offer. From the advent of interest arbitration police and fire unions have used the comparability criterion to advance their contractual economic demands – and overall quite successfully. In today's market, however, the watch word is moderation and control of costs of public sector employees. In 2009, Ocean County Investigators earned a combined base salary and longevity of nearly \$94,000 after less than nine years of service. This does not even take into consideration the value of pension, health benefits and overtime.

The County submits that C-106 shows that its wage and benefit package for Investigators is very competitive. Ocean County ranks in the top third of counties in terms of cash compensation. With respect to vacation days, personal days and holidays, the County is on par with nearly every other county. With respect to tuition reimbursement, Ocean County provides one of the most generous benefit provisions among the counties. The County rejects the comparability data with municipal police officers submitted by the PBA since County Investigators do not perform the same job functions as municipal police officers. Unlike municipal Police Officers, Investigators do not work a 24/7 schedule. While Investigators assist municipal detective bureaus, such work is more in line with their work as investigators. Thus, it simply makes no sense to use CNAs for municipal Police Officers as a comparison for County employees performing a very different job function.

On the issue of comparability, the statute requires the Arbitrator to compare "wages, salaries, hours and other conditions of employment of the employees involved in this arbitration with employees performing the same or similar services and with other employees

generally.” This comparison is done with private sector employees, public sector employees in general, and public sector employees in the same or similar comparable jurisdictions.

The County has presented extensive evidence on the issue of comparability, which demonstrates that its offer enables investigators to maintain a compensation plan that is very competitive with the private sector. Private sector wage increases have remained at record lows with average first year wage increases at 1.6% in 2010, and 1.5% in 2011. (C-45 & C-47). Moreover, these are actual wage increases and not percentage increases to which an increment is then added. When compared to private sector wage increases over the past six years, Ocean County Investigators’ salaries have faired very well. Senior Investigators have seen their salaries increased by an average of 50% over the past six years compared to an average increase of 19.7% nationwide. (C-38). Junior Investigators have seen their wages increase by 45% higher than private sector employees in New Jersey. (C-39).

Moreover, even with the statutory imposition of the 1.5% salary contribution to health insurance costs, the private sector generally requires much more from its employees. (C-48 to C-51). Thus, the County submits that its salary proposal is substantially greater than settlements in the private sector.

With respect to the public sector, bargaining unit members have again compared extremely well in terms of salary increases. While other local government employees saw their wages increase by a total of 18.4% over the past six years, less senior Investigators received an average increase of 62.71% over the same six years. Senior Investigators received a 28.4% increase over the same period. (C-52).

Finally, when compared to other County employees, Investigators have fared extremely well. Investigators receive incremental step increases whereas employees in the other 18 negotiations units receive straight percentage or lump sum increases added to their

base salary without any increments. For 2011, the five bargaining units that recently settled their contracts with the County agreed to annual wage increases of 1.5%. Non-aligned employees received wage increases of 1.9% in 2010 unless their salary and longevity was in excess of \$98,000 in which case they received no wage increase. (Tr. At 215-216).

Twelve of the twenty-one bargaining units, representing two-thirds of the County employees, have now agreed to the changes to health benefits proposed by the County in its final offer. (Tr. At 215). Further, those changes have been imposed for the County employees not aligned with a bargaining unit. The five recently executed CNAs all include language changing the holidays received by County employees to match the holidays provided by State employees. This pattern of settlement is entitled to great weight by the Arbitrator. It certainly is not in the public's best interest to treat one group of employees more favorably than all others. Arbitrator Joel Weisblatt faced the issue of disparate treatment In the Matter of the Interest Arbitration Between Township of Holmdel and PBA Local 239, Docket No. IA-93-163 (Arb. Weisblatt 1995) and found that:

The Township presents a compelling argument with respect to the reasonableness of consistency among bargaining units under the public interest criterion. Consistency in treatment among bargaining units of the same employer is unquestionably a generally accepted element of good labor relations policy. Sound and consistent labor relations are certainly in the public interest. It prevents "whipsawing" in negotiations and it reduces the potential for the decline in morale, which often accompanies the perception of disparate treatment. The morale issue is a double-edged sword. Unreasonably favorable treatment of police units could likely cause the morale of the other public employees in the municipality to wane. Such a result would certainly not be in the public interest.

PERC has recognized the importance of maintaining a pattern of settlement among bargaining units of the same employer. In County of Union, IA-2001-46, 28 NJPER 459, 461 (¶33169 2002), the Commission emphasized that "[P]attern is an important labor relations concept that is relied on by both labor and management." The Commission noted

that “[I]nterest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuing and stability of employment by discouraging future settlements and undermining employee morale in other units.” Id.

The regulations specifically require the interest arbitrator to consider the “[P]attern of settlement and benefit changes...” when considering the issue of comparability within the same jurisdiction. N.J.A.C. 19:16-5.14(c) (5). Thus, when, as is the case in the instant matter, the employer has demonstrated a clear pattern of settlement with respect to changes in benefits, the Arbitrator should give significant weight to such pattern. In fact, the Arbitrator is required to justify a departure from an internal pattern of settlement, and to show why such a departure, which would give compensation for law enforcement employees a priority over other employees, is permissible.

When comparing salary increases to other County employees it is critical to note the significant disparity that now exists between County Investigators and employees in other bargaining units. A 2% salary increase for a County Investigator earning \$91,240 after just nine years is worth considerably more than a 3% or higher salary increase for an Equipment Operator earning \$48,419 after 25 years; a Senior Electrician earning \$48,523 after 19 years; or a Senior Data Entry Machine Operator earning \$47,900 after 27 years. (C-60).

Thus, when comparing the compensation packages received by Investigators with other employees in the private and public sector, as well as within Ocean County, it is clear that the Investigators compare favorably, and will continue to do so under the County’s final offer. Further, by awarding the County’s final offer the Arbitrator will not only help to keep Investigator salaries from significantly outpacing the growth of other employee salaries, but will also keep Investigator benefits consistent with the pattern established among the County’s other bargaining units.

Overall Compensation

The County submits that the overall compensation package provided to Investigators is excellent. In 2010, an Investigator's salary in the 15th year of employment was \$97,236. C-58 shows that on average Investigators received more than \$7,500 in overtime and more than \$1,000 in standby pay in 2010. This brings the total compensation up to nearly \$106,000. This does not include the value of the Health, Prescription and Dental Benefits provided for Investigators, or the value of the cost of the Pension Contributions made on their behalf by the County. In addition, the 15-year Investigator is entitled to 14 holidays, 15 sick days, 20 vacation days and three personal days. At present an Investigator can retire after 25 years of service, regardless of age, and receive health benefits for themselves and their family and a pension for the rest of his or her life. This is a benefit practically unheard of in the private sector. The value of those benefits is enormous for each Investigator.

Few employees in the public or private sector are entitled to this level of benefits, compensation and time off. There is no question that County Investigators are very well compensated now and with the minor modifications to the compensation package proposed by the County in its final offer will continue to be very well compensated going forward.

Lawful Authority and the Financial Impact on the Governing Unit, its Residents and Taxpayers

N.J.S.A. 34:13A-16g (5) requires the Arbitrator to give due weight to the lawful authority of the employer. In 1976, the Legislature passed N.J.S.A. 40A:4-45.1 et seq., commonly referred to as the Local Government Cap Law, which included the following declaration of policy:

It is hereby declared to be the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads. At the same time the Legislature recognizes that local government cannot be constrained to the

point that it is impossible to provide necessary services to its residents. In recognition that the two concepts may be at cross purposes, the Legislature recommends that the program proposed hereunder be instituted on an experimental basis with a review at the end of the period to adjust the program based upon experience.

The County submits that the concerns expressed in that legislative policy statement 34 years ago are even more compelling today.

On July 13, 2010, P.L. 2010, Chapter 44 was approved as “An Act concerning the calculation of the local tax levy cap and revising parts of the statutory law.” The adjustment to the Tax Levy Cap that this amendment provides is to reduce that cap from 4% to 2% effective January 1, 2011. The law that was enacted provides for limited exclusions for items, such as health insurance and pension costs that exceed 2%, but otherwise provide for a 2% cap on the tax levy. (C-100 at 18).

The final piece of current legislation that needs to be mentioned is a bill that was passed by the Legislature on December 13, 2010, and signed by the Governor on December 21, 2010, P.L. 2010, C.105, (C-101), which amends and supplements the Police and Fire Interest Arbitration Act. By its terms this legislation becomes effective January 1, 2011 and applies to contracts that expire on or after the effective date of the legislation. Leaving aside the legal applicability of this legislation to the contract dispute hereunder consideration, the spirit and intent of the legislation reflect current economic conditions that must be considered in these proceedings. Moreover, certainly the existence of this new law, regardless of its effective date, will impact on the County’s funding sources. Thus, a proposed statutory mandate that places a 2% cap on salary increases, including the cost of increments, longevity and senior officer pay requires serious reflection by the Arbitrator regardless of the current applicability of the terms of that statute.

The biggest restrictions placed upon the lawful authority of the County are the restrictions imposed by the tax levy caps. As noted, the County is required to use the lower of the two caps, the 1977 Cap or the 2% limit now imposed by the 2010 Cap law. The tax levy cap must be given great weight in deciding the issues here in dispute. Not only does the obligation of the County to comply with the lower of the two cap calculations present limitations on the major revenue source available to the County, but the Tax Levy Cap evidences a political direction or course for the future of this State that is being chartered by the Executive and Legislative branches of the government. The Arbitrator must give due deference to that direction in rendering his award, just as the County did in crafting its final offer.

Pursuant to Chapter 78, the County is legally required to deduct a graduated percentage of the cost of health insurance premiums for each member of the bargaining unit, which shall be a minimum of 1.5% of salary, as a contribution for the cost of health benefits. While the health benefits contribution simply reduces the overall cost of health benefits and does not provide any additional benefit with respect to the County's cap law limitation, such legislation is a dramatic departure from the conduct of public sector labor relations. But for the severity of the economic crisis, such legislation would never have been proposed, much less passed. The passage of such legislation, however, signifies a number of important principles that the Executive and Legislative branches of State government agree upon.

1. Public employees, like their counterparts in the private sector, should contribute to the cost of their health insurance.
2. That contribution should be uniform in amount (at least in terms of a minimum amount of contribution) and it needs to be implemented promptly to provide needed relief.
3. As a statutorily mandated contribution, it should not be used to justify payment of a corresponding wage increase to offset the new employee contributions.

Thus, the arbitrator is not only legally required to consider the lawful authority of the employer but once again is presented with the opportunity to use this criterion in a constructive way to make the interest arbitration process responsive to current economic conditions.

The Appellate Division in PBA Local 207 v. Borough of Hillsdale stated that the financial impact requirement in the statute does not equate with the public employer's ability to pay. 263 N.J.Super. at 188. In fact, the Supreme Court stated in Hillsdale that a public employer should not have to prove that it is not financially able to afford the PBA's Final Offer, 137 N.J. at 86. The County contends that it has shown that an award of the PBA's Final Offer would have an adverse financial impact upon the County's taxpayers and that the County cannot afford to pay the wage increases sought by the PBA.

The testimony and documents presented by the County clearly established that the County is in a precarious situation with respect to its budget. The County's surplus balance has been decreasing significantly each year. This leaves less surplus available for an emergency and less surplus that can be used as part of the budget to cover any shortfall.

The requirements of the legislatively imposed cap resulted in the County losing the ability to increase taxes by \$3,500,000 in 2011. In 2012, the County has a cap bank of \$2,800 to draw from for 2012 on a budget of \$353 million.

The reduction in the County's valuation (C-115) will reduce the amount of money the County can raise at the current tax rate by more than \$3,000,000. Thus, on the revenue side, the County is in a position that it cannot raise any more revenue even if it opts to increase taxes on its residents. On the expense side, the County is again anticipating an increase in health insurance premiums. When combined with compensation increases for

other County employees, there simply is no way that the County can absorb an increase in compensation costs of nearly 17% percent per year as proposed by the PBA. However, the County's offer will contain costs in 2011, and put the County in the position of budgeting salary increases within the constraints of the statutory caps and the County's financial condition going forward.

Cost of Living

The cost of living criterion has generally received but a passing reference in the interest arbitration process. This is particularly true over the past several years when increases in the cost of living have been relatively modest. For the past two years the cost of living has remained at levels below 1.7% annually. For the current year, the CPI-U has reached 2.5%. However, the index excluding more volatile food and energy demonstrated an increase of only 1.4%. (C-73).

The chart set out in C-63 demonstrates how the wage increases received by Investigators greatly exceeded the increase in the CPI. When the increment is included, non-Senior officers saw their salaries increase by a total of 67.47% over the period from 2004 through 2010, compared to an increase in the CPI-U of 20% over that same time period. Even senior Officers, who were not impacted as much by increment, saw their wages increase by 30.39% over the same 7-year period, a full 10.39 % above the increase in the cost of living.

A more significant development over the past two years has been the elimination of cost of living increases for those who receive Social Security Benefits and Pensions. In 2010 and 2011, more than 58,000,000 Social Security recipients saw no increase in their benefits for the first time since automatic adjustments were adopted in 1975. (C-74 & C-76). This

was based on falling consumer prices. For a County like Ocean County, this is a significant development given the fact that 21% of the County's population is over age 65, and thus eligible for Social Security benefits. This means that more than one-fifth of the County's population received no increase in a significant part of their compensation in 2010 and 2011. Given the fact that one-fifth of the County residents did not receive an increase in their compensation based on the minimal change in the cost of living, there is no reason to expect that these same residents should be expected to pay more to guarantee significant wage increases for Investigators far in excess of the cost of living.

With the County's two-year final offer base salaries for the Investigators will increase by a total of \$195,365 or 4.8% over the 2009 base salaries, with an average yearly cost increase of 2.4% per year. This is very reasonable given the trend with respect to CPI over the past few years, and given the significant increases over the CPI that Investigators have enjoyed over the past seven years.

In Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 77-79 (1994) the New Jersey Supreme Court found the evidence of the relationship between the cost of living and recent salary increases very relevant to the decision making process under Section g(7) of the statute. As noted above, recent salary increases have exceeded cost of living to a significant extent. Moreover, the trend in changes in cost of living is down and the position of the County comports with that trend. When the Arbitrator applies this criterion he must conclude that the County proposal is supported by this statutory factor. Accordingly, the cost of living criterion provides strong, if not, dispositive weight to support a decision that awards the County's proposal.

Continuity and Stability of Employment

The County contends that this factor weighs heavily in favor of its Final Offer. County Investigators are extremely well paid. There is little turnover and Investigators have never been laid off. In addition, the salary increases received by County Investigators have consistently been higher than wage increases received by other public and private sector employees throughout the State and Nation.

The job security point bears particular notice. While it is of course possible that a New Jersey resident with a high school diploma could obtain a job with better salary and benefits than that of a County Investigator , those “private sector” salary and benefits, not to mention job security, are in no way guaranteed. This is what makes working as a County Investigator, like other law enforcement positions throughout New Jersey, so attractive, County Investigators simply do not lose their jobs when there is a change in the economy.

Unfortunately, for other Ocean County employees this has not been the case. In order to meet its contractual obligations with respect to salary increases and increments the County has been forced to eliminate 127 positions over the past two years. Going forward, the County has very little ability to increase its tax revenues, and is limited in how much it can increase its appropriations. This means that if employee compensation increases by more than 2%, the County will need to eliminate additional positions, thereby reducing the County’s ability to deliver needed services. Both Goetting and Tarrant testified that the elimination of these jobs over the past two years has already had an impact on the County’s ability to provide services. Additional cuts simply are not an acceptable option.

The situation in Ocean County provides a very clear cut choice with respect to the future of County finances and services. The County has reached the point where it can no

longer increase the size of its budget to accommodate demands for increasing salary and benefits. The County's surplus has been steadily and rapidly declining. The County must rely less and less each year on its surplus to help make up revenue shortfalls in the budget. Further, there is no cap bank available to the County. The \$2,800 left over from the 2010 budget is essentially meaningless when considering a budget of \$353 million. This leaves the County with a very clear choice. Either control spending by way of limiting compensation increases to the cap of 2% percent, or cut staff in order to find savings to pay for increases in compensation above 2%. Choosing the latter, however, will not only unnecessarily impose hardship on those employees who will lose their jobs and benefits, but will also impose hardship on the County residents who will see both the quality and level of services decline due to the loss of employees.

The County asserts that its final offer is fully supported by all of the statutory criteria. It will keep the economic package or benefits received by County Investigators at a very competitive and generous level. It will assist the County in meeting its budget obligations without the need to make dramatic and harmful cuts in personnel, and it will set the County on a course that it can continue to provide a generous salary and benefits package to its employees while controlling and limiting the growth of that salary and benefits package. Finally, the public, who is the single most important factor in this proceeding, will benefit the most from the County's final offer, which will help to continue the same level of all County services without requiring higher taxes that residents simply cannot afford.

For all of the above reasons and in consideration of the evidence in the record, the County submits that it has proven its case and asks that its final offer be awarded.

1. Funding: The County questions the PBA's argument regarding the employment relationship between the County and the members of the PBA Local No. 171. There appears to be little dispute that the funding for the Prosecutor's Office and to pay the salaries of PBA members comes from the County of Ocean and that the major source of that funding is County tax revenues. Thus, consistent with the requirements of the Interest Arbitration Act, the County's ability to pay and the interest and welfare of the residents and taxpayers of Ocean County must be the primary focus in this proceeding.
2. Longevity: Contrary to the PBA's assertion, the County's final offer does not eliminate longevity for current employees. Presently, PBA members begin receiving longevity after only seven years of service. This is while they are still in the salary guide. This results in the anomaly of an employee moving up on the salary guide while receiving longevity. This compounding effect of two compensation increases is not only excessive and unjustified, but has contributed directly to the unsustainably of the current compensation scheme. The County's offer would continue longevity for current employees but only after 15 years of service.
3. Medical Benefits: The County disputes the PBA's assertion that the County did not negotiate changes in medical benefits with its non-police negotiations units. The County cites ten CNAs showing "nearly identical changes to medical insurance as those sought by the County in its final offer in this proceeding were agreed to by the bargaining units." Further, the six CNAs between the County and other bargaining units, which were added to the record after the hearing date, also contain the same changes in health benefits contained in the County's final offer along with the proposed change in holidays to confirm with the State holiday schedule and the elimination of longevity for new hires. The County submits that these agreements show a clear pattern of settlement has been established with respect to the changes in health benefits, holidays, and the elimination of longevity for new hires.
4. Costing: The County disputes the PBA's method of costing out the respective salary proposals. The County submits that the PBA's approach avoids the issue of increments which is a significant portion of salary by assuming that all Investigators are at the maximum salary. However, if one were make that assumption one would also have to assume an initial increase to base salaries of \$658,329 over the 2009 base salary figure, an increase of 16%. Adding 3.5% each year to the base salary total would result in a total base salary in 2013 of \$5,444,400. Thus, under the PBA's own cost analysis, over the four years there would be an increase to the base salary total of \$1,385,248 which equals a 34% or an average of 8.5% per year.

For all of the above reasons, and in consideration of the evidence in the record, the County submits that it has proven its case and asks that its final offer be awarded.

Discussion

The parties presented testimony and hundreds of documentary exhibits totaling thousands of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to their own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals. The following are the terms of my award:

1. I shall award a three-year agreement. The duration of the new three-year agreement shall be April 1, 2010 to March 31, 2013.
2. I shall award the following changes to the salary and longevity schedules:
 - (a) Effective April 1, 2010, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen.
 - (b) Effective April 1, 2011, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen.
 - (c) Effective April 1, 2012, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen. Article 6, Section 1 shall be modified to make the "automatic annual step guide" salary increases effective January 1, 2013.
 - (d) Article 6, Section 1 of the CNA shall be modified as follows:

Section 1: The annual salaries for employees covered by this contract shall be set forth in Appendix A annexed. The Salary Guide is an automatic annual step guide with movement from one step to the next effective April 1 of each year. This shall be applicable to annual step guide movement in 2010-2011 and 2011-2012.

In 2012-2013, the "automatic annual step guide" salary increases shall not be paid on April 1, 2012. The "automatic annual step guide" salary increases shall be delayed until January 1, 2013. Effective February 1, 2013, the continued application of the April 1st increment payment date shall be suspended. This suspension shall be effective until the parties reach a voluntary agreement for a successor CNA or by the terms of an interest arbitration award.

- (e) Effective April 1, 2012, all new hires will be hired pursuant to a new Salary Guide (Appendix A-1) which will include two additional steps. The "Probation" step shall be eliminated and replaced by Step 1 which shall be a full, twelve-month step. Thus, the new Salary Guide shall have twelve steps to maximum. The new Step 1 shall be \$38,000. All other steps shall be equalized between Step 1 and Step

12, the maximum step of \$96,350. The Senior Investigator stipend shall be eliminated for new hires.

- (f) All salary increases are fully retroactive to the above effective dates.
- (g) Effective April 1, 2012, the longevity schedule for new hires shall be as follows:

Completion of 15 years	2% of base rate
Completion of 20 years	4% of base rate
Completion of 25 years	6% of base rate

- 3. The language of Article 13, Health Benefits, shall be replaced by the following:

ARTICLE 13
HOSPITAL, SURGICAL, MAJOR MEDICAL, PRESCRIPTION
AND RETIREMENT BENEFITS

Section 1:

All full-time employees covered by this bargaining unit shall be permitted to enroll in health benefits two (2) months from their date of hire.

- A. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits.
- B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent or better. Provided, however, that the parties expressly recognize that the components of HMO plans are changed periodically by the plan providers and that the County has no control over or any obligations regarding such changes.
- C. All employees current and future who retire on or after January 1, 2013, in order to be eligible for the lifetime health benefits upon retirement, must have served a minimum of fifteen (15) of the required twenty-five (25) years with the County. This applies to all types of retirements, including disability.
- D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.

E. When a member of this bargaining unit is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.

F. In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

G Effective April 1, 2012, the following changes will affect all new hires:

1. Employees will be offered the NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense.
2. Continuation of spousal coverage after the death of the retiree will no longer be offered at the County's expense.
3. The County will no longer reimburse retiree Medicare Part B premiums.

Sections 2, 3 and 4 shall remain unchanged. Section 5 shall be deleted from the CNA effective May 1, 2012.

4. All other proposals of the County and the PBA are denied.

Cost Analysis

The bargaining unit (at the close of the record) in 2010 includes 51 Investigators. The total base pay salary for 51 bargaining unit members in January 2010 is \$4,135,720. The total cost of longevity for 17 Investigators in 2010 is \$49,755. The salary cost-out shall be calculated on base salary including longevity of \$4,185,475. The cost of incremental movement on April 1, 2011 is \$112,823. The 2010 and 2011 increments have been paid by the County and are now in base salary. In 2010, 23 of 51 Investigators received incremental salary increases totaling \$133,870. In 2011, 19 of 51 Investigators received incremental salary increases totaling \$112,823 in 2011. (C-58 & C-127).

The following calculations do not assume any resignations, retirements, promotions or additional new hires. Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making substantially less than a maximum step officer's salary. The PBA bargaining unit has above average incremental costs as 45% of the bargaining unit received automatic increments in 2010.

2010

The PBA proposed a 3.5% across-the-board increase to be effective April 1, 2010. The cost of the PBA proposal (excluding increments) in 2010 is \$146,491. The total cost of the PBA's salary proposal in 2010 is \$4,331,967. The Prosecutor proposed no salary increases in 2010. In 2010, 23 of 51 Investigators received incremental salary increases totaling \$133,870. The total cost of the Prosecutor's salary proposal, including the payment of increments in 2010, is \$4,319,345.

I awarded a 2.0% salary increase at Step 9 to be effective April 1, 2010. The cost of the 2.0% increase in 2010 is applied to the 32 Investigators at Step 9. The salary for the 32 Investigators in 2010 is \$2,894,328. The cost of the awarded 2.0% salary increase in 2010 is \$57,877. The 2% salary increase is applicable only to Step 9. All other steps on the salary guide shall be frozen in 2010. I have frozen the steps to reduce the impact of incremental increases. 23 Investigators (including the four Investigators that moved to Step 9 on April 1, 2010) received incremental increases in 2010 totaling \$133,870 which is 3.24% of the

total salary base. More significantly, this is equivalent to an average increase of 8.4% for those 23 Investigators that received incremental increases in 2010. There is simply no basis to add additional dollars to those Investigators that received automatic incremental salary increases in 2010.

2011

The PBA proposed a 3.5% across-the-board increase to be effective April 1, 2011. The cost of the PBA proposal (excluding increments) in 2011 is \$151,619. The total cost of the PBA's salary proposal in 2011 is \$4,483,356. The Prosecutor proposed a 2% salary increase for all employees with an annualized salary of \$49,275 or higher. The Prosecutor's proposal limits the increase to 2% annually including those employees that received incremental payments in 2011. The salary for the 35 Investigators in 2010 is \$3,257,268. The total cost of the Prosecutor's salary proposal in 2011 for the 35 Investigators at the maximum salary is \$65,145.

I awarded a 2.0% salary increase at Step 9 to be effective April 1, 2010. The cost of the 2.0% increase in 2011 is applied to the 35 Investigators at Step 9. The cost of the awarded 2.0% salary increase in 2011 is \$65,145. The 2% salary increase is applicable only to Step 9. All other steps on the salary guide shall be frozen in 2011. I have frozen the steps to reduce the impact of incremental increases. 19 Investigators received incremental increases in 2011 (including the three Investigators that moved to Step 9 on April 1, 2011) totaling \$112,823 which is 2.5% of the total salary base. This is equivalent to an average increase of 7.14% for those 19 Investigators that received incremental increases in 2011. As stated above, there is no basis to add additional dollars to those Investigators that received automatic incremental salary increases in 2011.

2012

The PBA proposed a 3.5% across-the-board increase to be effective April 1, 2012. The cost of the PBA proposal (excluding increments) in 2012 is \$156,917. The total cost of the PBA's salary proposal in 2012 is \$4,640,273. The Prosecutor proposed a two-year contract. Thus, there is no basis to cost out a salary proposal for the Prosecutor in 2012.

I awarded a 2% salary increase at Step 9 to be effective April 1, 2012. The 2% increase is applied to the 35 Investigators at Step 9. The total salary of the 35 Investigators in 2012 is \$3,322,410. The cost of the awarded 2% salary increase in 2012 is \$66,448. This is an average increase of \$1,898 for all 35 Investigators at Step 9. The 2% salary increase is applicable only to Step 9. All other steps on the salary guide shall be frozen in 2012. I have frozen the steps to reduce the impact of incremental increases.

The incremental costs for 16 Investigators in 2012 is \$119,063 if the automatic increments are paid on April 1, 2012. This includes the five Investigators that would move to Step 9 on April 1, 2012. This is an average increase of \$7,440 for each of the 16 Investigators. This is a disproportionate increase given the average \$1,898 salary increase awarded to the more senior Investigators. Therefore, I shall modify Article 6, Section 1 and make the "automatic annual step guide" salary increases effective January 1, 2013. This will significantly reduce the impact of the incremental costs in 2012. This will reduce the annual increase for the 2012-2013 contract year (April 1, 2012 to March 31, 2013) to \$1,860 which is more in line with the increases at maximum. The total cost of increments in the 2012-2013 contract year is \$29,766. An additional consideration for the delay of the incremental increases in 2012-2013 is the fact that the Prosecutor has already paid the increments to all sixteen of the affected Investigators in 2010-2011 and 2011-12. In both of these years, the

Investigators received significant salary increases well above those received by Senior Investigators.

Finally, I shall suspend the application of Article 6, Section 1 which provides: "The Salary Guide is an automatic annual step guide with movement from one step to the next effective April 1 of each year." This suspension shall be effective until the parties reach a voluntary agreement for a successor CNA to the 2010-2013 CNA or by the terms of an interest arbitration award. This will permit the parties to negotiate a successor agreement without the burden of paying out the increments. I am convinced that this will improve the parties' ability to negotiate a voluntary resolution. If not, it will give the interest arbitrator more flexibility in crafting an award that satisfies the needs of the Employer and the needs of all of the employees in the bargaining unit.

Article 6, Section 1 of the CNA shall be modified as follows:

Section 1: The annual salaries for employees covered by this contract shall be set forth in Appendix A annexed. The Salary Guide is an automatic annual step guide with movement from one step to the next effective April 1 of each year. This shall be applicable to annual step guide movement in 2010-2011 and 2011-2012. Effective March 25, 2012, the application of Article 6, Section 1 shall be suspended. This suspension shall be effective until the parties reach a voluntary agreement for a successor CNA or by the terms of an interest arbitration award.

Interests and Welfare of the Public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this criterion might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the County to

exceed its authority under the CAP law. The award can be funded without the County exceeding its spending authority.

The interests and welfare of the public require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of an Investigator is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Investigators are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by an Investigator from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony." (In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall now discuss the issues with respect to the interests and welfare of the public factor and comparability.

Term of Agreement

I shall award a three-year agreement effective April 1, 2010 to March 31, 2013. The County seeks a two-year contract and the PBA seeks a four-year contract. Normally, I would be inclined to award a four-year contract given that a new contract would only be for two years going forward. This is usually based on providing more stability in their relationship which can be undermined by continuous negotiations and interest arbitration. Another consideration favoring a longer contractual duration is the cost associated with negotiations and interest arbitration. However, the changing and difficult budgetary/funding issues do not favor the award of a four-year contract. Therefore, given that the award of a two-year CNA would mean that the parties will commence negotiations within days of the receipt of the award, I shall award a three-year contract. This will give the parties some “breathing room” before commencing negotiations for a successor agreement . . .

Salary

The major issue in this matter is salary and the payment of increments. While I am required to evaluate the merits of the disputed issues individually, I am guided by criterion N.J.S.A. 34:13A-16 (g) (8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced

with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award and the requirement to balance all of the major components included in the award.

PERC has recognized that arriving at an economic award is not a “precise mathematical process” and given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgement and discretion and an arbitrator will rarely be able to demonstrate that an award is the only “correct” one. See Borough of Lodi, 24 NJPER 466 (29214 1998). I have awarded the above salary increases and a new salary and longevity schedule for new hires for the following reasons:

First, salary and health care are often linked in bargaining. Modifications on health care influence the level of salary increases. It is undisputed that the cost of health insurance coverage is a significant component of employee benefits exceeded only by the cost of pension contributions. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

Since the close of the hearing, P.L. 2010, c. 2 was amended by P.L. 2011 c.78. Chapter 78 mandates contributions from public employees to defray the cost of health insurance benefits. Chapter 78 further provides for a minimum contribution of 1.5% of base salary up to a maximum of 35% of the cost of the health insurance coverage. This will greatly increase the contributions to the cost of health insurance for the vast majority of the PBA bargaining unit members. The mandated contributions are phased in over four years. The mandatory contributions range from 3% to 35% of the cost of coverage. The percentage of contribution ranges from 3% of family coverage premium costs for an employee earning

\$25,000 annually to 35% of family coverage premium costs for an employee earning \$110,000 or more annually. The following shows the percentage cost of family coverage:

\$70,000 to less than \$75,000	22% of the cost of coverage
\$75,000 to less than \$80,000	23% of the cost of coverage
\$80,000 to less than \$85,000	24% of the cost of coverage
\$85,000 to less than \$90,000	26% of the cost of coverage
\$90,000 to less than \$95,000	28% of the cost of coverage
\$95,000 to less than \$100,000	29% of the cost of coverage
\$100,000 to less than \$110,000	32% of the cost of coverage
\$110,000 or more	35% of the cost of coverage

This means that a bargaining unit member earning \$90,000 annually will be paying 28% of the cost of family coverage when Chapter 78 is fully implemented. 2012 is the second year of the phase-in at 50% of the annual contribution rate. Thus, an Investigator earning \$90,000 annually would contribute 14% of the cost of coverage. The County calculated the cost of Family coverage in 2012 as more than \$20,000 annually. Thus, the cost to an Investigator earning \$90,000 annually will be \$2,800 annually. This will increase to \$4,200 in 2013 and to \$5,600 in 2014. The former 1.5% contribution in effect from May 22, 2010 through the first six months of 2011 was \$1,350 annually.

In 2014, an Investigator earning \$100,000 will contribute \$6,400 (32% of \$20,000) or 6.4% of base salary toward the cost of full family health coverage. This is equal to 5.6% at \$90,000. The above numbers are based on the County's 2011 premium rates. However, if the premium rates increase in 2012, 2013 and 2014, the County will receive even higher contributions from its Investigators since the percentage contributions are applied to the premiums not an Investigator's base salary. The above analysis shows that the enactment of Chapter 78 provides the County with substantial cost containment of health benefits. The County will realize a significant increase in health benefit contributions from its Investigators as the health benefit premium sharing is phased in between 2011 and 2014. The

former 1.5% of base salary contribution will be equivalent to more than 5.5% of base salary for a significant portion of the bargaining unit by 2014.

The true value of increased cost sharing is shown by calculating the contributions in 2012, 2013, and 2014. In 2012, the total base salary under the terms of the award will be approximately \$4.8 Million. The former 1.5% contribution would have yielded \$72,000. Under the new premium sharing formula, the contribution will be the equivalent of \$132,000 in 2012; \$198,000 in 2013; and to \$264,000 in 2014.

The County will achieve a significant increase in health care contributions and its Investigators will see a commensurate decrease in their annual salary. This is equivalent to approximately 4% annually in 2014. Chapter 78, when fully phased in, will provide a significant offset against current premiums. It will also provide protection against future premium increases as such increases will be shared by the Investigators.

I fully recognize, as argued by the County, that the savings to the County cannot be balanced by the award of salary increases to Investigators to cover such increased premium sharing costs. The terms of my award provide for an average increase at maximum of 2.0% annually; the freezing of any increases in the steps on the salary guide; the award of a new salary guide for new hires; the award of a new longevity schedule for new hires; the elimination of the Senior Investigator stipend for new hires; and the suspension of the terms of Article 6, Section 1 requiring the payment of increments on April 1, 2012. I have shown that I have not increased the salary of the County's Investigators to offset the increased cost of premium sharing. The analysis of Chapter 78 simply shows the impact on both the County and the Investigators.

Second, effective April 1, 2012, all new hires will be hired pursuant to a new salary schedule (Appendix A-1). The "Probation" step shall be eliminated and replaced by Step 1

which shall be a full, twelve-month step. Appendix A-1 will have two additional steps. Thus, the new salary schedule shall have twelve one-year steps to maximum. A new Investigator will reach maximum salary after eleven full years of service. The new Step 1 shall be \$38,000. All other steps shall be equalized between Step 1 and Step 12, the maximum step of \$96,825. This is the same maximum salary on Appendix A applicable to all officers hired before April 1, 2012. The new salary schedule (with two additional steps and the conversion of the “Probation” step to a full one-year step) will result in future savings to the County of nearly \$60,000 in cumulative earnings as each new Investigator progresses through the steps of the salary schedule to maximum. Appendix A, if not modified, would have provided a 34% salary increase after only six months of service.

The cumulative salary savings generated by a new salary schedule also benefits the bargaining unit as a whole. Salary schedules that allow accelerated movement to the maximum step will eventually undermine the ability of the parties to negotiate salaries for maximum step Investigators since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced Investigators continue to receive competitive salary increases. Ignoring this issue will create serious problems for the parties in future negotiations. This is becoming increasingly important as resources decline and the cost of annual increments becomes a bigger part of the funds available for salary increases. During the last several years, it has become commonplace to see arbitrated and negotiated contracts with extended salary schedules for new hires. The above analysis is applicable to my decision to delay the payment of step increases to January 1, 2013 and the suspension of their application on April

1, 2013 until such time as the parties reach a voluntary agreement or an interest arbitrator issues an award.

The modifications to the salary schedule will give the County considerable future savings which will offset the cost of senior Investigator salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective department. These changes will not impact on the County's ability to recruit and retain Investigators since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all Investigators.

This will become more significant in 2013-2014 when salary increases will be limited to 2% of base salary inclusive of incremental costs and longevity costs. The additional steps will decrease the County's incremental costs. These higher incremental salary increases would have diminished the PBA's ability to negotiate salary increases for experienced Investigators.

Third, I awarded a modified longevity schedule applicable to all employees hired on or after April 1, 2012. The new longevity schedule eliminates the 3.0% longevity step at seven years. This means that an Investigator currently receives a 3% salary increase, an automatic step increase and an across-the-board salary increase upon reaching the seven-year threshold. This may have made sense when there were salary guides with less than seven steps. However, there is no sound basis to continue a seven-year longevity step when the new salary schedule (Appendix A-1) requires the completion of eleven (11) years of service to reach maximum.

The new longevity schedule is 2% after completion of fifteen (15) years of service; 4% after the completion of twenty (20) years of service; and 6% after the completion of twenty-five (25) years of service. Thus, there will be no longevity costs to the County for

new hires until at least 2027. The modified longevity schedule and the additional steps on the salary schedule will provide for a more equitable distribution of future salary increases to the County's experienced Investigators. This will become more significant in 2013-2014 when salary increases will be limited to 2% of base salary inclusive of incremental costs and longevity costs. The additional steps will decrease the County's incremental costs.

Fourth, while the PBA has submitted considerable comparability salary data showing that the average annual increase is higher than the awarded salary increases, I find that much of the comparability data relied upon by the PBA is "dated" as many of the CBAs in the record were negotiated or arbitrated in better economic times. Comparability data is deserving of considerable weight in negotiations and arbitration. Comparability data must be measured against and balanced with the other statutory criteria. In past years, comparability data was measured against annual cost-of-living increases which were consistent with the average annual salary increases and the Employer's ability to fund salary increases. In other words, when the CPI was between 3.5% and 4%, the average salary increases were between 3.5% and 4%. In 2007, the CPI was 3.7% and the average increases in PERC reported awards and voluntary settlements were 3.77% and 3.97%. However, the CPI has declined dramatically in recent years and there has not been an equivalent decline in the average salary increases. The CPI was 1.6% in 2008 and 2.3% in 2009 and the average increase in PERC reported voluntary settlements and awards in 2008 and 2009 ranged from 3.6% to 3.92%. In both 2008 and 2009, Investigators received a 4% across-the-board salary increase. This is more than double the CPI in 2008 and 2009 and higher than the PERC reported voluntary settlements and awards in 2008 and 2009. Obviously, the salary increases lagged behind the changes in the CPI. This commonly occurs since comparability data is

derived from multiple year contracts whereas the CPI is measured on a monthly and annual basis.

The most recent cost of living data shows that the Consumer Price Index (“CPI”), as published by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”), for New York-Northern New Jersey increased by 1.4% in 2010 and by 2.7% in 2011. Thus, the average increase in the CPI during the last four years is 2.0%. This dramatic decline in the CPI must be given considerable weight. I note that this decline in the CPI is mirrored by a significant decline in the most recent PERC salary data. The average increase in awards posted on the PERC webpage in 2011 is 2% in 2010, 1.8% in 2011 and 2% in 2012. This is significantly below the average of the PERC reported settlements and awards in recent years. This decline in salary increases in 2010 and 2011 is a recognition of not only the decline in the CPI but it is also a recognition of the decline in the ability of a public employer to fund salary increases at prior levels. It is undisputed that a public employer’s ability to maintain revenue levels in 2010 and beyond has been severely diminished. The Tax Levy Cap in 2011 is 2%. Also, the Appropriations Cap has been reduced from 3.5% annually to 2.5% annually. This will severely limit the ability of a public employer to maintain the current level of services if salary increases continue to exceed increases in the CPI by up to 2% annually. Salary increases at 2008 and 2009 levels will only further reduce a public employer’s ability to maintain the current level of services and will result in layoffs and/or furloughs. It is well established that many police and fire departments throughout the State have experienced massive layoffs, demotions and furloughs. We have also seen the parties working together to avoid layoffs and/or demotions by agreeing to postpone or modify certain economic benefits.

In prior years, the economy was much stronger than it is currently. We have experienced one of the worst recessions since the 1930s with high unemployment; a massive deficit in the State budget; hundreds of millions of dollars in reduced State Aid to municipalities; and tens of thousands of municipal, county and state employees being laid off or furloughed. Furloughed employees effectively receive a salary reduction of 2% for each week they are furloughed. State employees have experienced not only furloughs but wage freezes as well. Municipalities are experiencing a record number of tax appeals with significant potential loss of tax revenues and increased costs to defend such appeals, thereby undermining the tax base. Moreover, pension costs are at an all-time high with municipalities and counties contributing 25% or more of a public safety officer's salary to PFRS. The above events must be factored into the analysis of what weight to give to the statutory criteria.

Fifth, the County's proposal to eliminate the salary guide (Appendix A) effective April 1, 2011 is not justified on the evidentiary record in this matter. The County submitted no evidence that any other County had eliminated an incremental salary schedule for its Prosecutor's Investigators. Nor did the County submit any evidence to show that any other county had eliminated an incremental salary schedule for any other public safety bargaining units including Correction Officers, Sheriff's Officers, and Park Police. Further, the County did not submit any evidence to show that a municipality had eliminated an incremental salary schedule in a police or firefighter bargaining unit. Finally, the County did not submit any evidence to show that the State had eliminated an incremental salary schedule in a Correction Officer, State Police or any other public safety bargaining unit.

The County proposed the elimination of longevity for all new hires and the capping of longevity for all current bargaining unit members. A review of the salary data in the record

is not supportive of the County's proposal. I have awarded a new longevity schedule for new hires which significantly reduces the current longevity benefit for new hires.

Accordingly, I find that the evidentiary record does not support the County's proposal to eliminate longevity for all new hires and to cap longevity for all current bargaining unit members at a fixed dollar amount.

In summary, I find that the PBA and the County salary proposals are both outside the current trends in negotiated settlements and awards as well as the average increase in the CPI. The PBA is significantly above these currents trends and the County is significantly below the current trends. I find that comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and recent declining salary increases. Comparability data from prior years cannot be given as much weight as more current salary data, cost-of-living and budget data. I have awarded salary increases that recognize the significant decline in the cost-of-living, acknowledged the County's (and other public employers) reduced ability to fund salary increases at prior levels, and noted the substantial decline in average salary increases in 2010, 2011 and 2012.

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

Comparisons of the wages, salaries, hours and conditions of employment of the County's Investigators are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions.

It is well established that there are no easily identified private sector employees that perform services similar to those performed by the County's Investigators. Neither party submitted salary data on this sub-factor since none exists. An Investigator's position is a uniquely public sector position that does not lend itself to private sector comparisons.

I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement:

. . . troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers. The weight given to the standard for comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data. (*Village of Ridgewood*, PERC Docket No. IA-94-141 at 29-31).

There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight.

The second part of this sub-factor requires a comparison with other employees generally in private employment. The County, in its brief, noted that private sector wages increased by 1.6% in 2010, and 1.5% in 2011. The awarded salary increases which average 2.0% annually, are higher than average salary increases in private employment. I conclude that the awarded salary increases, while higher than private employment salary increases in

general, are acceptable when measured against the totality of the terms of the award. This sub-factor is not entitled to significant weight.

The next comparison is with public employment in general. The County notes that other local government employees saw their wages increase by a total of 18.4% over the past six years. Neither party submitted specific salary data on public employment in general. The awarded salary increases which average 2.0% annually are within the range of salary increases for public employees in general in 2010, 2011 and 2012. This sub-factor is supportive of the awarded salary increases.

I shall now address the third sub-factor which includes several elements. The first element is internal comparability with other County employees. The County notes that Investigators receive incremental step increases whereas employees in the other 18 negotiations units receive straight percentage or lump sum increases added to their base salary without any increments. Further, the County notes that five bargaining units agreed to annual wage increases of 1.5%. Non-aligned employees received wage increases of 1.9% in 2010 unless their salary and longevity was in excess of \$98,000 in which case they received no wage increase. The County points out that a 2% salary increase for a County Investigator earning \$91,240 after nine years is worth considerably more than a 3% or higher salary increase for an Equipment Operator earning \$48,419; a Senior Electrician earning \$48,523; or a Senior Data Entry Machine Operator earning \$47,900 after 27 years.

The PBA, in its brief, summarized the salary increases in the 21 CNAs submitted in C-122. The PBA contends that the salary increases in C-122 are supportive of its salary proposals in 2010, 2011 and 2012.

A review of the CNAs in C-122 as well as the terms included in C-123, C-124, C-125 and C-126 reveal the following:

1. The four CNAs (2011-2014) in C-123, C-124, C-125 and C-126 provide for annual salary increases of 1.5% annually effective April 1 of 2011, 2012 and 2013 and eliminate longevity for new hires effective April 1, 2013.
2. The 2008-2011 CNA covering blue collar employees include salary increases of \$2,200 effective April 1 of 2008, 2009 and 2010. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
3. The 2010-2013 CNA covering blue collar supervisors include salary increases of 1.5% annually effective April 1 of 2010, 2011 and 2012. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
4. The 2008-2011 CNA covering Correction Department professional employees include salary increases of \$2,200 effective April 1 of 2008, 2009 and 2010. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
5. The 2008-2011 CNA covering Engineering Department employees include salary increases of \$2,200 effective April 1 of 2008, 2009 and 2010. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
6. The 2010-2013 CNA covering Assistant Fire Marshals includes salary increases of 1.9% effective April 1, 2010, 2% effective April 1, 2011 and 2% effective April 1, 2012. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
7. The 2007-2011 CNA covering Information Technology employees includes salary increases of \$1,000 annually on April 1 of 2007, 2008, 2009 and 2010. The salary increase in 2010 ranges from 1.6% to 3.44%. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
8. The 2010-2013 CNA covering Juvenile Detention employees includes salary increases of 1.9% effective April 1, 2010, 2% effective April 1, 2011 and 2% effective April 1, 2012. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
9. The 2006-2010 CNAs covering Correction Officers, Correction SOA, Sheriff's Officers, Sheriff's Officers SOA, Prosecutors Sergeants, Prosecutors SOA all include the same longevity benefits as Prosecutor's Investigators with no limitation on new hires. The Sheriff's Officer and Correction Officer CNAs also include a \$1,500 "Senior Officer" payment upon completion of 15 years of service.

10. The 2008-2011 CNA covering Prosecutor's clerical employees includes salary increases of \$2,200 effective April 1 of 2008, 2009 and 2010 for 40-hour employees and \$2,067 for 37½-hour employees. C-59 shows two Principal Clerk Typists at a salary of \$43,652 in 2010 and one Principal Clerk Typist at a salary of \$45,666 in 2010. These employees received an average salary increase of approximately 5% over the term of the 2008-2011 CNA. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
11. The 2009-2012 CNA covering Public Safety Telecommunicators in the Sheriff's Department includes salary increases of \$1,321 effective April 1, 2010, and 3.25% effective April 1, 2011 and 2% effective April 1, 2012. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
12. The 2008-2012 CNA covering Supervising JDOs in the Sheriff's Department includes salary increases of \$2,200 effective April 1 of 2008, 2009, 2010 and 2011. C-59 shows two Supervising JDOs at a salary of \$59,891 in 2010 and two Supervising JDOs at a salary of \$55,241 in 2010. These employees received an average salary increase of 3.67% and 3.98% effective April 1, 2010. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
13. The 2009-2012 CNA covering Weights and Measures Department employees include salary increases of 3.25% effective April 1, 2009, April 1, 2010, and April 1, 2011. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.
14. The 2008-2011 CNA covering white collar employees includes salary increases of \$1,791 to \$2,200 effective April 1, 2008, April 1, 2009, and April 1, 2010 for employees working 32½, 35, 37½ and 40 hours per week. Longevity is identical to the longevity in the Investigator's CNA and is continued for new hires.

First, I conclude that the County has not established a pattern of eliminating longevity for new hires. The vast majority of bargaining units continue to receive longevity for all employees in the negotiations unit including new hires. The four CNAs (C-123-126) that remove longevity for new hires effective April 1, 2013 also delay the implementation of Chapter 78 to April 1, 2014. This delay, coupled with the annual 1.5% salary increases, would appear to be the trade-off for the elimination of longevity for new hires. I have no

authority to delay the implementation of Chapter 78 which, as I described above, provides the County with considerable health care premium savings and effectively reduces the compensation received by the Investigators. Thus, I conclude that internal comparability does not favor the elimination of longevity for new hires. As discussed above, I have modified longevity for new hires which effectively eliminates the payment of longevity for new hires until 2027.

Second, the salary increases detailed above that are effective April 1, 2010, April 1, 2011 and April 1, 2012 ranges from 1.5% to 5% annually. There are no additional incremental costs for these employees whereas Investigators did receive full increments effective April 1, 2010 and April 2011. While there are no additional incremental costs (above the 1.5% to 5% range) in the above cited CNAs, the terms of my award have frozen the steps on the salary guide in 2010, 2011 and 2012 and “suspended” the implementation of automatic increments in 2012 pending a voluntary agreement by the parties or the issuance of an interest arbitration award. In addition, I have limited the payout of increments in 2012 by delaying the payment until January 1, 2013. Moreover, I note that the vast majority of the CNAs, detailed above, delayed the implementation of either Chapters 2 or Chapter 78 and in some cases both Chapter 2 and Chapter 78. This means that employees in those negotiations units are not required to contribute 1.5% of base salary mandated under Chapter 2 or the applicable percentage of premium costs mandated under Chapter 78 until their current CNAs expire whereas Investigators have been making mandatory health care contributions since the enactment of both Chapter 2 and Chapter 78 in May of 2010.

Accordingly, I conclude that the internal salary data is not supportive of the PBA’s last offer on salary nor is it supportive of the County’s last offer on salary. I find that this

sub-factor is supportive of the awarded salary increases in 2010, 2011 and 2012 which average 2.0% annually and are applicable only to the maximum step on the salary guide with the increments frozen at the 2010 level.

The third sub-factor is comparison to the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with employees performing the same services in public employment. The PBA submitted comparability data showing that certain local police departments had higher maximum salaries than the Prosecutor's Investigators. In addition, the PBA submitted salary data showing that Detectives in four other counties received higher salaries than the Detectives (Investigators) in Ocean County. I provided analysis of this sub-factor in my discussion of *Salary* on pages 88-90. I found that the comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and declining salary increases. I have awarded salary increases that recognize the significant decline in the cost-of-living, acknowledge the County's (and other public employer's) reduced ability to fund salary increases at prior levels, and the substantial decline in average salary increases in 2010 and 2011.

Lawful Authority of the Employer

Three of the statutory criteria, N.J.S.A 34:12A-16g(1), (5) and (9), refer to the lawful authority of the employer. These factors, among other things, require the arbitrator to consider the limitations imposed on the County by the CAP law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect

homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

More specifically, g(1) refers to the original 1976 Cap law; g(5) refers to the lawful authority of the employer and cites the 1976 Cap law; and g(9) refers to the recently amended Tax Levy Cap law which limits tax levy increases from year-to-year. The significant change in the Levy Cap is the reduction of the Levy Cap from 4% annually to 2% annually. The Appropriations Cap has also been reduced from 3.5% to 2.5%. It is well established that arbitrators must recognize and respect the statutory limits which have been placed on public employers. Ocean County and all other municipalities and counties in the State face constraints on their ability to increase appropriations and their ability to raise taxes. The expenditure or appropriations cap applies to the total current expense portion of the budget and not to any particular line item within the budget.

The cost of the award is 6.0% over three years at the maximum step on the salary guide. I have limited the 6.0% increase to the maximum step on the salary guide by freezing the steps on the salary guide at the 2010 level. Further, I have limited the payout of the 2012 increments due on April 1, 2012 to 25% of their value by delaying the implementation to January 1, 2013. Moreover, I suspended the payment of the April 1, 2013 increments until such time as the parties reach a voluntary agreement or an interest arbitrator issues an award. I have not added an across-the-board increase to the steps on the salary guide in 2010, 2011 and 2012 because of the disproportionate increase received by the less senior Investigators moving on the guide in 2010 and 2011. These increments were paid by the County in 2010 and 2011 and are not attributable to my award. The County proposed a “roll back” the increments paid in 2011. While it is questionable that I have such authority, I see no basis in this record to order repayment of contractual salary increases received in 2011.

The incremental costs will be significantly reduced in 2012 when the new salary guide is implemented. I have modified the longevity schedule for new hires which effectively means that the County will not pay longevity to new hires until 2027. Finally, I have eliminated the \$1,500 “Senior Officer” stipend for new hires given the implementation of a new 12-step salary schedule in 2012.

The cost of the awarded salary increase for Investigators at maximum is \$57,877 in 2010, \$65,145 in 2011 and \$66,448 in 2012. The total cost of my award in 2012, including increments, is \$96,214. The cost of the increments is \$133,870 in 2010, \$112,823 in 2011 and \$29,766 in 2012. The additional incremental cost attributable to my award is \$29,766 in 2012 which I reduced from \$119,063 by delaying the implementation to January 1, 2013. This is intended to offset the disproportionate increases received by the Investigators moving through the steps on the salary guide in 2010 and 2011.

The cost of the award is reduced by the cost containment savings generated by the premium sharing contributions mandated by the enactment of P.L. 2010, c. 2 and P.L. 2011 c.78. This is approximately 0.6% in 2010 and at least 1.5% in 2011. The cost containment savings will be more than 1.5% in 2012. As discussed above, when fully implemented, the majority of the County’s Investigators will be contributing more than 6% of base salary toward the cost of health insurance premiums. As discussed above, this is equivalent to \$6,400 annually under the current SHBP premiums for a family plan.

Finally, I awarded a new salary schedule and longevity schedule for new hires to be effective April 1, 2012. The new salary schedule (with two additional steps) will result in future savings to the County of nearly \$60,000 in cumulative earnings as each new Investigator progresses through the steps of the salary schedule to maximum. While the County will not realize these savings immediately, the new salary schedule will benefit both

the PBA and County as more funds will be available to pay senior Investigator salaries. The new longevity schedule will provide a significant reduction in costs in the future with no additional longevity costs until 2027.

The PBA contends that the Prosecutor is a constitutional officer and is therefore not subject to the Cap Law. I find that the Cap Law is applicable to this matter since the budget for the Prosecutor's Office is funded within the budget of Ocean County which is undeniably subject to the limitations of the Cap Law regarding appropriations and the tax levy.

There is absolutely no evidence in the record to show that the terms of the awarded salary increases or any other aspect of this award will cause the County to approach the limits of its financial authority or to breach the constraints imposed by the three statutory criteria, N.J.S.A 34:12A-16g(1), (5) and (9), in funding the salary increases awarded herein.

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

The above discussion under the *lawful authority* is applicable to the *financial impact* factor and need not be repeated. For all of the reasons cited above, I conclude that there is no evidence that the terms of my award will require the County to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the Township's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

The total Ocean County budgetary appropriations in 2011 was \$269,023,301. (U-21). The cost impact of the entire annual base salary is approximately 1.5% of total appropriations. The impact of the awarded salary increases, when measured against the other terms of the award and cost contained from Chapter 2 and Chapter 78, clearly shows that the

financial impact is minimal. The terms of the award will not impact on the ability of the County to maintain existing local programs and services, expand existing programs and services or to initiate any new programs and services.

I am aware that the County has seen a serious reduction in its surplus balance which has dropped from a high of \$54,995,022 to \$33,931,146 in 2011. However, the \$33 Million surplus will not be impacted by the cost of the awarded salary increases of \$58,877 in 2010, \$65,145 in 2011 and \$96,214 in 2012.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

Cost of Living

Arbitrators must consider changes in the cost of living. The CPI has declined dramatically in recent years and there has not been an equivalent decline in the average salary increases. The CPI was 1.6% in 2008 and 2.3% in 2009 and the average increase in PERC reported voluntary settlements and awards in 2008 and 2009 ranged from 3.6% to 3.92%. Obviously, the salary increases lagged behind the changes in the CPI. This commonly occurs since comparability data is derived from multiple year contracts whereas the CPI is measured on a monthly and annual basis.

The most recent cost of living data shows that the Consumer Price Index (“CPI”), as published by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”), for New York-Northern New Jersey increased by 1.4% in 2010 and by 2.7% in 2011. Thus, the average increase in the CPI during the last four years is 2.0%. This dramatic decline in the CPI must be given considerable weight. I note that this decline in the CPI is mirrored by a significant decline in the most recent PERC salary data. The average increase in awards posted on the PERC webpage in 2011 is 2% in 2010, 1.8% in 2011 and 2% in 2012. This is

significantly below the average of the PERC reported settlements and awards in recent years. This decline in salary increases in 2010 and 2011 is a recognition of not only the decline in the CPI but it is also a recognition of the decline in the ability of a public employer to fund salary increases at prior levels.

I conclude that the awarded base salary increases are similar to the average increase in the cost of living. I have given this sub-factor considerable weight and find that in a period of sustained low inflation, the sharp reduction in the CPI must trump comparability data that lags behind the current economic and budgetary data and legislative mandates.

Continuity and Stability of Employment

The terms of my Award will maintain the continuity and stability of employment for the Prosecutor's Investigators. The salary award in this matter will not jeopardize employment levels or other governmental services. The salary award will maintain a competitive salary and permit the County to continue to recruit and retain qualified Investigators. This factor was given considerable weight in the awarding of a new salary schedule for new hires. The cumulative salary savings to the County also benefits the bargaining unit as a whole. The modifications to the salary schedule will give the County considerable future savings which will offset the cost of senior Investigator salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective department. These changes will not impact on the County's ability to recruit and retain Investigators since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for Investigators.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

Overall Compensation

A review of this factor requires consideration of 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.” I have considered the overall compensation received by the County’s Investigators and find that the terms of my Award will maintain existing levels for all current employees and provide competitive benefit levels for all future Investigators.

Other Issues

I shall now address the other issues. A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. I shall apply that principle in my analysis of each issue in dispute. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award.

Holidays

The County proposes that Article 7, paragraph one, shall be deleted and replaced with the following:

Each full-time employee covered by this Agreement shall receive the State employees’ holiday schedule with pay.

The County relies on the agreements reached in C-123, C-124, C-125 and C-126. The PBA is opposed to the County’s proposal and has characterized the County’s proposal as an illegal parity agreement.

A review of the above agreements shows that the implementation of the “State Government” holiday schedule is predicated on the requirement that “all existing Collective Bargaining Units agree to the inclusion in their Collective Bargaining Agreements.” Thus, the County’s reliance on the “agreement” by four bargaining units is flawed. A review of the County CNAs in C-122 shows that all bargaining units currently enjoy 14 holidays. The County has offered no justification to tie the current holiday schedule to the State schedule.

Accordingly, I find that the evidentiary record does not support the County’s holiday proposal. The County’s proposal is denied.

College Credit

The County seeks to eliminate Article 16 from the CNA. Article 16 is an “educational incentive” clause that pays \$500 annually to employees with an Associate of Arts degree; \$800 annually to employees with a Bachelor’s Degree; and \$1,000 to employees with an M.A. or M.S. degree. The County seeks to eliminate the annual \$30,000 cost of the college credit payments. The PBA is opposed to the County’s proposal. The PBA submits that no evidence was introduced to support the County’s proposal. The PBA contends that college education is a benefit to the public and a common benefit provided in public safety contracts.

A review of C-122 shows that six other CNAs covering Sheriff’s Officers, Sheriff’s Supervisors, Correction Officers, Correction Superiors, Prosecutor’s Sergeants, and Prosecutor’s SOA have the same \$500, \$800 and \$1,000 college credit payment. This is a benefit that is enjoyed by all of the County’s public safety bargaining units. In 2011, 44 of the 51 Investigators received college payments. 33 Investigators hold BA degrees, seven Investigators hold Masters’ degrees and nine Investigators hold an Associate’s degree. This bargaining unit is highly educated which contributes to the professionalism of the

Prosecutor's Office. The County's financial argument is not persuasive given that the total cost of the college credit benefit is less than 1/10th of 1% of the total salary budget for the bargaining unit.

Accordingly, I find that the evidentiary record does not support the County's college credit proposal. The County's proposal is denied.

Health Benefits

The County proposes that Article 13, Health Benefits be changed to "Hospital Surgical, Major Medical, Prescription and Retirement Benefits." The County also seeks to delete paragraphs A through E to be replaced with the following:

A. All full-time employees shall be permitted to enroll in health benefits two (2) months from their date of hire. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits, including employee premium sharing.

B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent to the plan in effect at the time of the change. The parties recognize that if the County leaves the State Health Benefits Plan the HMO plans offered by the new plan provider may be different.

C. All current and future employees who retire on or after April 1, 2010 in order to be eligible for health benefits upon retirement, must have served a minimum of fifteen (15) years with the County and have twenty-five (25) years or more of service credit in a State or locally administered retirement system at the time of retirement.

Effective April 1, 2010, the following changes will affect all new hires:

Employees will be offered the NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense. Continuation of spousal coverage after the death of the retiree will no longer be offered at the County's expense. The County will no longer reimburse retiree Medicare Part B premiums.

D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.

E. When an employee is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.

In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

Delete Section 5 and replace with the following:

Employees after the first month following their full months of employment shall be eligible for the same prescription benefits as are provided to County employees in general.

The County relies on the testimony of Keith Goetting, the County's Director of Employee Relations and its Chief Negotiator in contract negotiations. Currently, 12 of the 21 CNAs have language on health benefits that is similar to what is proposed in the County's final offer. The primary changes in the health benefits provision is a requirement of 15 years of service with the County, along with the 25 years in the pension system to qualify for retiree health benefits; limiting new hires to the NJDirect 15 Plan, with the option for the employee to pay for other plans; and a provision that new hires would not be reimbursed for Medicare Part B coverage at retirement and would not be eligible for spousal coverage when the employee passes away after retirement. Goetting testified that all non-aligned employees have also had these changes in health coverage imposed. Goetting testified that two-thirds of County employees now have the County's proposed health benefits changes in their contracts. (Tr. at 212-213).

The PBA is opposed to the County's health care proposal which it characterizes as "wide ranging and substantially negative." The PBA contends that negotiations on health care is preempted by State statute for at least the next three years by Chapter 78 and therefore, the County's proposal is not a negotiable subject nor is it arbitrable. The PBA

contends that health benefit changes have been taken off the negotiations table until the “Sunset” provision in Chapter 78 is reached.

I find no basis to conclude that the County’s health benefits proposal is not arbitrable. The PBA is keenly aware of its obligation to file a Scope of Negotiations petition with PERC if it believed that this issue is outside the scope of negotiations and not arbitrable. Further, the PBA has not cited any PERC or judicial case law in support of its position. Therefore, I conclude that the County’s health care proposal is properly before me.

The County argues that pattern of settlement is entitled to great weight by the Arbitrator. Interest arbitration awards and PERC decisions are replete with references to “pattern” bargaining and maintaining uniformity of benefits. The County notes that when an employer has demonstrated a clear pattern of settlement with respect to changes in benefits, the Arbitrator should give significant weight to such pattern. The County disputes the PBA’s assertion that the County did not negotiate changes in health benefits with its non-police negotiations units. The County cites ten CNAs showing “nearly identical changes to health benefits as those sought by the County in its final offer in this proceeding were agreed to by the bargaining units.” The County also notes that the CNAs between the County and other bargaining units, which were added to the record after the hearing date, also contain the same changes in health benefits contained in the County’s final offer. The County submits that these agreements show a clear pattern of settlement has been established with respect to the County’s proposed health benefits changes.

A review of the County CNAs in the record shows that the County’s health benefits proposal is similar, but not identical, to the language in the CNAs with other bargaining units. (C-122). The County’s argument regarding pattern of settlement and uniformity of

benefits means that any changes, if awarded, must be identical to the current language in the negotiated CNAs, not the similar, but not identical language, in its last offer.

The health benefits language in the CNAs in C-122 is as follows:

All full-time employees shall be permitted to enroll in health benefits two (2) months from their date of hire.

- A. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits.
- B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent or better. Provided, however, that the parties expressly recognize that the components of HMO plans are changed periodically by the plan providers and that the County has no control over or any obligations regarding such changes.
- C. All employees current and future who retire on or after April 1, 2010 (this date varies in each CNA) in order to be eligible for the lifetime health benefits upon retirement, must have served a minimum of fifteen (15) of the required twenty-five (25) years with the County. This applies to all types of retirements , including disability.

Effective April 1, 2010, the following changes will affect all new hires:

Employees will be offered the NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense.

Continuation of spousal coverage after the death of the retiree will no longer be offered at the County's expense.

The County will not longer reimburse retiree Medicare Part B premiums.

- D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.
- E. When a member of this bargaining unit is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences.

After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.

In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

C-126 is the MOA between the County and OPEIU Local 32 covering the white collar supervisors. The language on health benefits is identical to the language in the CNAs in C-122.

The Health Benefits language in paragraphs B, C, D and E of Section 1 of Article 13 of the Investigators' CNA is identical to the language in paragraphs B, D, E and the four-month limitation in the last paragraph. Paragraph A in Section 1 is not identical. The Investigators' CNA provides as follows:

A. Effective April 1, 1994, the Employer shall provide medical coverage to the employees covered by this Agreement through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. This health benefit program is specifically recognized to include full retiree coverage (full family coverage including retiree's family) at the Employer's sole cost and expense.

In addition, Section 5 provides as follows:

Section 5: Members of this bargaining unit, after the first month following three (3) full months of employment shall be eligible for a comprehensive family prescription plan under the State Health Benefit Plan. Coverage for legend prescription drugs will be provided for the employee, spouse and children to age 23 and to include contraceptives. Employees will be responsible for a \$5.00 co-payment for all brand name drugs (regardless of availability of a generic substitute) per prescription.

I am persuaded that the County has established a pattern wherein the majority of its bargaining units and the majority of its employees have agreed to changes in health benefits. These changes are similar to changes negotiated in other counties and other municipalities. The only bargaining units that have not agreed to the changes are the seven public safety units in the Sheriff's Department, the Department of Corrections and the Prosecutor's Office.

I reviewed the current language in the six other public safety units. The current language in the Prosecutor's Sergeants contract and Prosecutor's SOA contract (Lieutenants & Captains) provides the following identical language:

- A. The County of Ocean shall provide medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits including reestablishing the benchmark threshold. Qualified retirees shall be provided health insurance benefits in a manner consistent with those afforded to active employees, pursuant to the provisions of Chapter 88, P.L. 1974 as the same may be amended from time to time.

The above language in the two Prosecutor's Office superior officer CNAs is consistent with the language in the County's civilian bargaining units which recognizes that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits. I conclude that the pattern of settlement with twelve county-wide negotiations units including the Prosecutor's Clerical Association and the need to establish uniformity of health benefits within the Prosecutor's Office among the Investigators, the Sergeants, Lieutenants and Captains favors a modification in paragraph A to conform to the language included in the civilian CNAs and the Prosecutor's superior officer bargaining units. In addition, Section 5 which provides for a \$5.00 co-payment for all brand name drugs shall be deleted from Article 13. This will bring the Investigators' prescription coverage in line with all other County employees including all other County public safety employees.

I conclude that the County has established a pattern requiring all current and future employees to serve a minimum of fifteen (15) of the required twenty-five (25) years with the County to be eligible for lifetime health benefits. I shall make this change effective January 1, 2013 to give current employees proper notice of the change.

Finally, I conclude that the County has established a pattern regarding the changes for new hires regarding enrollment in NJ Direct 15, the discontinuation of spousal coverage after the death of a retiree; and the termination reimbursement of retiree Medicare Part B premiums. This shall be applicable to all employees hired on or after April 1, 2012.

Accordingly, Article 13 shall be modified as follows:

ARTICLE 13

HOSPITAL, SURGICAL, MAJOR MEDICAL, PRESCRIPTION AND RETIREMENT BENEFITS

All full-time employees covered by this bargaining unit shall be permitted to enroll in health benefits two (2) months from their date of hire.

- A. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits.
- B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent or better. Provided, however, that the parties expressly recognize that the components of HMO plans are changed periodically by the plan providers and that the County has no control over or any obligations regarding such changes.
- C. All employees current and future who retire on or after January 1, 2013, in order to be eligible for the lifetime health benefits upon retirement, must have served a minimum of fifteen (15) of the required twenty-five (25) years with the County. This applies to all types of retirements, including disability.
- D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.
- E. When a member of this bargaining unit is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.

F. In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

G Effective April 1, 2012, the following changes will affect all new hires:

1. Employees will be offered the NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense.
2. Continuation of spousal coverage after the death of the retiree will no longer be offered at the County's expense.
3. The County will no longer reimburse retiree Medicare Part B premiums.

Sections 2, 3 and 4 shall remain unchanged. Section 5 shall be deleted from the CNA effective May 1, 2012.

Summary

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year and concluded that the changes are reasonable under the statutory criteria.

In summary, I found that the comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and declining salary increases. Comparability data from prior years cannot be given as much weight as more current salary, cost-of-living and budget data. I have awarded salary increases that recognize the significant decline in the cost-of-living and the substantial decline in average salary increases in 2010 and 2011. I have acknowledged the County's (and other public employers) reduced ability to fund salary increases at prior levels.

Accordingly, I hereby issue the following award:

AWARD

1. **Term of Agreement**

April 1, 2010 through March 31, 2013.

2. **Salary & Salary Guide**

I shall award the following changes to the salary and longevity schedules:

- (a) Effective April 1, 2010, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen.
- (b) Effective April 1, 2011, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen.
- (c) Effective April 1, 2012, Step 9, the maximum step on Appendix A, the Salary Guide, shall be increased by 2.0%. All other steps shall be frozen. Article 6, Section 1 shall be modified to make the "automatic annual step guide" salary increases effective January 1, 2013.
- (d) Article 6, Section 1 of the CNA shall be modified as follows:

Section 1: The annual salaries for employees covered by this contract shall be set forth in Appendix A annexed. The Salary Guide is an automatic annual step guide with movement from one step to the next effective April 1 of each year. This shall be applicable to annual step guide movement in 2010-2011 and 2011-2012.

In 2012-2013, the "automatic annual step guide" salary increases shall not be paid on April 1, 2012. The "automatic annual step guide" salary increases shall be delayed until January 1, 2013. Effective February 1, 2013, the continued application of the April 1st increment payment date shall be suspended. This suspension shall be effective until the parties reach a voluntary agreement for a successor CNA or by the terms of an interest arbitration award.

- (e) Effective April 1, 2012, all new hires will be hired pursuant to a new Salary Guide (Appendix A-1) which will include two additional steps. The "Probation" step shall be eliminated and replaced by Step 1 which shall be a full, twelve-month step. Thus, the new Salary Guide shall have twelve steps to maximum. The new Step 1 shall be \$38,000. All other steps shall be equalized between Step 1 and Step 12, the maximum step of \$96,825. The Senior Investigator stipend shall be eliminated for new hires.

- (f) All salary increases are fully retroactive to the above effective dates.
- (g) Effective April 1, 2012, the longevity schedule for new hires shall be as follows:

Completion of 15 years	2% of base rate
Completion of 20 years	4% of base rate
Completion of 25 years	6% of base rate

- 3. The language of Article 13, Health Benefits, shall be replaced by the following:

ARTICLE 13
HOSPITAL, SURGICAL, MAJOR MEDICAL, PRESCRIPTION
AND RETIREMENT BENEFITS

Section 1:

All full-time employees covered by this bargaining unit shall be permitted to enroll in health benefits two (2) months from their date of hire.

- A. The County of Ocean currently provides medical coverage to the County employees through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted by the State of New Jersey that may either increase or decrease benefits.
- B. The County shall not change the health insurance coverage referred to in paragraph A except for a Plan that is equivalent or better. Provided, however, that the parties expressly recognize that the components of HMO plans are changed periodically by the plan providers and that the County has no control over or any obligations regarding such changes.
- C. All employees current and future who retire on or after January 1, 2013, in order to be eligible for the lifetime health benefits upon retirement, must have served a minimum of fifteen (15) of the required twenty-five (25) years with the County. This applies to all types of retirements , including disability.
- D. An eligible employee may change his/her coverage only during the announced open enrollment period for each year after having been enrolled in the former plan for a minimum of one (1) full year. Regardless of this election, employees are specifically ineligible for any deductible reimbursement.
- E. When a member of this bargaining unit is granted the privilege of a leave of absence without pay for illness, health coverage will continue at County expense for the balance of the calendar month in which the leave commences

plus up to three (3) additional calendar months next following the month in which the leave commences. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan.

F. In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibilities of the County to pay for benefits remains limited to the original period of up to four (4) months.

G Effective April 1, 2012, the following changes will affect all new hires:

1. Employees will be offered the NJ Direct 15 plan, or its replacement. New Hires may elect a higher level of coverage at their expense.
2. Continuation of spousal coverage after the death of the retiree will no longer be offered at the County's expense.
3. The County will no longer reimburse retiree Medicare Part B premiums.

Sections 2, 3 and 4 shall remain unchanged. Section 5 shall be deleted from the CNA effective May 1, 2012.

4. All other proposals of the County and the PBA are denied.



ROBERT M. GLASSON
ARBITRATOR

Dated: March 26, 2012
Pennington, NJ

APPENDIX A
(Applicable to Investigators hired before April 1, 2012)

	<u>04/01/10</u>	<u>04/01/11</u>	<u>04/01/12</u>
PROBATION	\$36,889	\$36,889	\$36,889
STEP 1	\$49,275	\$49,275	\$49,275
STEP 2	\$49,873	\$49,873	\$49,873
STEP 3	\$58,762	\$58,762	\$58,762
STEP 4	\$63,835	\$63,835	\$63,835
STEP 5	\$73,033	\$73,033	\$73,033
STEP 6	\$75,415	\$75,415	\$75,415
STEP 7	\$78,562	\$78,562	\$78,562
STEP 8	\$84,902	\$84,902	\$84,902
STEP 9	\$93,065	\$94,926	\$96,825

APPENDIX A-1
(Applicable to Investigators hired on or after April 1, 2012)

04/01/12

STEP 1	\$38,000
STEP 2	\$43,350
STEP 3	\$48,700
STEP 4	\$54,050
STEP 5	\$59,400
STEP 6	\$64,750
STEP 7	\$70,100
STEP 8	\$75,450
STEP 9	\$80,800
STEP 10	\$86,150
STEP 11	\$91,500
STEP 12	\$96,825

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

On this 26th day of March 2012, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Joann Walsh Glass

