

In the Matter of Interest Arbitration Between:

**COUNTY OF PASSAIC and
PASSAIC COUNTY SHERIFF'S OFFICE**

"Employer,"

- and -

PBA LOCAL 197 (CORRECTIONS OFFICERS),

PBA LOCAL 197 (CORRECTIONS SUPERIOR OFFICERS),

PBA LOCAL 286 (SHERIFF'S OFFICERS),

PBA LOCAL 286 (SHERIFF'S SUPERIOR OFFICERS),

"Union."

**OPINION
AND
AWARD**

Docket No. IA-2007-115

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Brian W. Kronick, Esq.
Genova, Burns & Vernoia

For the Unions:

Richard D. Loccke, Esq.
Loccke, Correia, Schlager,
Limsky & Bukosky

On August 28, 2009, an interest arbitration award issued between the County of Passaic and the Passaic County Sheriff [the "County"] and the individual negotiations units of County Correction Officers and Sheriff's Officers represented by Police Benevolent Association, Local 197 (Correction Officers), Police Benevolent Association, Local 197 (Correction Superior Officers), Police Benevolent Association, Local 286 (Sheriff's Officers), and Police Benevolent Association, Local 286 (Sheriff's Superior Officers) [collectively the "Unions"]. In that proceeding, the arbitrator issued an Award containing the following terms:

A. Economic Package

1. Duration – Five (5) Years – January 1, 2007 to December 31, 2011.

2. Salaries

Effective April 1, 2007, a four percent (4.0%) across-the-board increase at each rank, step and position on the Salary Guide.

Effective April 1, 2008, a four percent (4.0%) across-the-board increase at each rank, step and position on the Salary Guide.

Effective April 1, 2009, a four percent (4.0%) across-the-board increase at each rank, step and position on the Salary Guide.

Effective April 1, 2010, a four percent (4.0%) across-the-board increase at each rank, step and position on the Salary Guide.

Effective April 1, 2011, a four percent (4.0%) across-the-board increase at each rank, step and position on the Salary Guide.

3. Medical Benefits – The County presented sufficient evidence as to the rising costs of health benefits and has shown a need for cost containment.

Article 15, Medical Benefits: Section A. Amend the existing language as follows:

Effective the issuance date of this Award, the County has the right to implement a co-pay program for all employees as follows:

- (i) Ten Dollars (\$10.00) per month for single coverage;
- (ii) Twenty Dollars (\$20.00) per month for Husband/Wife, One (1) Parent and One (1) Child, Employee/Domestic Partner;
- (iii) Thirty Dollars (\$30.00) per month for Family Coverage.

Article 15 – Medical Benefits, Paragraph C. Amend this Paragraph as follows:

Effective the issuance of the date of this Award, the co-pay under this plan shall be Five Dollars (\$5.00) for generic drugs and Ten Dollars (\$10.00) for brand name drugs. Mail order generic drugs shall have a co-pay of Ten Dollars (\$10.00) per prescription (for a 3 month supply). Mail order brand name drugs shall have a co-pay of Twenty Dollars (\$20.00) per prescription (for a 3 month supply). The coverage shall include family members.

4. ALL OTHER ECONOMIC PROPOSALS. To the extent to which either party's economic proposals are inconsistent with the changes award above they are DENIED.

5. Non Economic Proposals

Little, if any, justification has been offered to convince me that the County's non-economic proposals are necessary or require an awarding of same. All of the County's non-economic proposals are DENIED.

The above Award was appealed by the County of Passaic and the Passaic County Sheriff. Thereafter, on December 17, 2009, the New Jersey Public Employment Relations Commission ["PERC"] vacated the award and remanded the case for reconsideration to the arbitrator who had issued the original award [See PERC No. 2010-42]. In doing so, PERC held in relevant part that:

The interest arbitration award is vacated and remanded to the Arbitrator for reconsideration and issuance of a new Award that must explain which of the statutory factors deemed relevant satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

PERC further noted that:

The arbitrator did not explain whether there was a pattern of settlement and, if there was, what evidence or factors justify a deviation from that pattern.

On April 27, 2010, the arbitrator, on remand, issued a second award.

That award contained the following terms:

The Award dated August 28, 2009 is adopted in its entirety herein except to the extent that the wage increases shall be as follows:

Effective April 1, 2007, a 3.75% across-the-board increase at each rank, step and position on the Salary Guide.

Effective April 1, 2008, a 3.75% across-the-board increase at each rank, step and position on the Salary Guide.

Effective April 1, 2009, a 3.50% across-the-board increase at each rank, step and position on the Salary Guide.

Effective April 1, 2010, a 3.50% across-the-board increase at each rank, step and position on the Salary Guide.

Effective April 1, 2011, a 3.50% across-the-board increase at each rank, step and position on the Salary Guide.

As indicated, the arbitrator adopted the remainder of the initial award in its entirety except for the wage revision.

After the issuance of the second award, the County of Passaic and Passaic County Sheriff once again filed an appeal of that award to PERC. On October 28, 2010, the April 27, 2010 award was vacated once again. [See PERC No. 2011-36]. In that decision, PERC issued an explanation for why it vacated the second award. PERC, in relevant part, explained:

... the arbitrator had “issued two awards that did not adequately address all the statutory factors. For example, N.J.S.A. 34-13A-16g(2) requires an arbitrator to make a comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceeding with those of other employees generally. More specifically, this statutory factor requires a comparison with public employees in the same jurisdiction. In our initial decision, we stated:

In addressing the “Comparability” factor, the arbitrator did not make any findings about the County’s alleged pattern of settlement with 13 other negotiations units; and did not decide whether a wage and medical contribution pattern was established or whether the evidence supports a deviation from the pattern. See Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 452 (¶33169 2002). He must do so on remand.

In his decision on remand, the arbitrator did not discuss the alleged internal pattern of settlement that we specifically directed him to address. The County has filed exceptions on that issue and has outlined the evidence it presented supporting a finding of internal pattern of settlement. The arbitrator was required to address that

evidence on remand and did not. We express no opinion on the evidence presented because it is for an arbitrator to review that evidence and apply the statutory factors in the first instance. It is then for us to review an award under the standards affirmed in Teaneck Tp. V. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).”

After vacating the award for the second time, PERC remanded the proceeding back to arbitration but directed that a new arbitrator be appointed. Subsequently, on November 16, 2010, I was designated to serve as interest arbitrator by mutual agreement of the parties. Upon receipt of the appointment, I provided the parties with the opportunity, if they so desired, to supplement the record pursuant to the discretion provided to the arbitrator by PERC to do so. An exchange of correspondence reflected that the County sought to supplement the record with certain specific documents. Upon receipt of a proposed list of documents, the Unions, on January 14, 2011, voiced objection stating, in part, the following:

Under the category of “Fiscal” and “Intra-County Contracts” there are many items listed which were not in existence as of the close of the record in this hearing. Of particular concern are contracts entered into by various parties well after the record closed in this case. These points are relevant because the criticism of the earlier issued Award by Interest Arbitrator Robert E. Light was that he did not consider other settlements. Many of these contracts were not in existence when he issued the Award and therefore was a very clear reason why he could not have considered them. This point was made to the Commission earlier however, it was ignored. Many of the documents with respect to future costs and impacts also were certainly not within the purview of the record at the time that the record closed under Arbitrator Light’s appointment.

In effect the Employer is not seeking to supplement the record but is rather attempting to try a wholly new case. With due respect, this

is a remand not a new contract time frame to commence January 1, 2011. We are satisfied that the terms of the Commissioner's ruling which ultimately resulted in having the case sent to you are sufficient to circumscribe the purpose of the Commissioner's action and your authority. We will, of course, defer to your decision on the subject. The key point however, again stressed, is that this long open case must be brought to an end. Anything which can be done to aid or expedite the issuance of an Award is something both parties should seek.

On January 15, 2011, I responded to the parties' submissions stating:

I am prepared to accept the documents the County seeks to add to the existing record. While doing so, I will consider the PBA's response as to the relevance of certain of these documents and well as to the weight to be accorded to any of them.

Given the above, I will consider the record closed upon receipt of the documents which must be submitted no later than January 26, 2011. While noting that I will be in possession of the briefs from the prior proceedings, I will allow additional closing argument to be submitted no later than February 18, 2011.

In accordance with the above, the County submitted supplementary exhibits on January 24, 2011. Upon review of the documents, on January 31, 2011, the Union reiterated its objection and offered additional argument as to why the County's submissions should not be entertained. The Union's objections are as follows:

We will state at the outset that the PBA strongly objects to much of this submission. This material is, in large part, not in support of "Appeal of Interest Arbitration Award" as indicated on the discs, but rather an attempt by the public employer to try an entirely new case based on Post-Hearing information, and in some cases pure speculation. Much of the material submitted by the Employer did not exist at the time of the hearing. The PBA again asserts that on an appeal the review should be of the record and not of after-acquired information or facts which were not even in existence at

the time of the close of the record which is at issue. To be more specific, our concerns and certainly not the limit of our concerns, may be seen by some of the examples below:

1. Exhibits SS8 through SS13 – these are documents prepared well after the close of the record and while they are County Budgets, they are County Budgets for subsequent years after this case was tried. They are not relevant to an appeal of the hearing in this case. Several of the documents are just in the form of “Budget Presentation”, a political presentation for varying purposes.
2. Exhibit SS14 – This is a projection of cost for health care which is not even available as of this time. It is only a 2011 “Budget Projection”. Of what relevance is something that is projected to possibly occur into a year following the hearing’s close by three (3) years?
3. Exhibit SS18 – Credit Rating approximately one and one-half (1 ½) years after the close of the record.
4. Exhibit SS21 – Municipal Budget Data. The relevance is questioned. Further, this is, along with Exhibit SS22 projections into the future.
5. Exhibit SS27 – This is billing for the year 2011. Certainly not available when the record closed and of questioned reference to that record. The same is true of Exhibit SS30.
6. Exhibit SS31 – This is a reference to a plan made during a highly charged political atmosphere in which the former Sheriff abandoned his run for re-election late in the campaign and another person was put in place to run for Sheriff on the Democratic ticket. It should be noted that date of Exhibit SS31 predates the swearing in of the new Sheriff and the new Administration of said new Sheriff. The same is true of Exhibits SS32 and SS33.
7. The several settlements listed under III “Pattern of Settlement” are for the most part settlements which were reached well after the close of the record in the hearing in this case which is under appeal. It is possible that some of these small groups did not want to have to face the ordeal of never-ending litigation such as has been the circumstance for the bargaining unit in the present case. In any event, this

is after-acquired information which was clearly created well after the close of the hearing.

The employee organizations wish to make it clear that they are not opposing the re-submission of any of the evidence which was available, and in fact submitted, during the course of the Interest Arbitration hearing in this case. Much of the Employer submission within the recently forwarded three-ring binder includes such information. The objection is narrowly focused on after acquired information and settlements and other unrelated bargaining units in non-law enforcement titles which for the most part have little or no relevance to this bargaining unit. The fact that there is an allegation that there is a "pattern" which could not have existed at the time of the hearing and that such argument would be based on settlements occurring two (2) and three (3) years after the hearing, speaks for itself in support of the PBA/SOA position in this letter.

We respectfully request that the relevant material to be considered in this appeal is based upon the facts and testimony elicited by both parties during a lengthy hearing before an Arbitrator with a transcript (previously supplied).

Subsequent to these exchanges, the County submitted a post-hearing submission on February 18, 2011 and the Unions relied upon their objections, as stated above, as well as the extensive post-hearing submissions it had already submitted into the record of the prior proceedings, including those submitted originally to the arbitrator, those submitted upon the two remands of that proceeding and also upon the extensive legal arguments the Unions submitted to PERC in connection with the interest arbitration appeals. On March 4, 2011, I submitted written notice to the parties that the record was closed and that I would proceed to issue an award on PERC remand from the prior proceedings. I then received a submission from the County on May 18, 2011 requesting that I take arbitral notice of the Memorandum of Understanding between the County and PBA Local 203 Passaic County Department of Weights

and Measures entered into on May 11, 2011. The PBA objected to that submission and I sustain that objection as the submission was untimely given the close of record on March 4, 2011.

As I proceed to evaluate the merits of the parties' positions, I initially note that the parties have been without a new Agreement since the contract expired on December 31, 2006. The employees in these bargaining units who perform critical public safety duties have not received a wage increase for over four years despite the fact that both parties have proposed wage increases. The cause of this is the inability of the parties to have reached a mutual agreement resulting in the prior arbitration awards and the litigation that ensued thereafter. As I review the record, the parties are now in the fifth year of the five year duration that each party had originally proposed to each other in 2007.

Over this course in time, for all practical purposes, the scope of the disputed issues have been narrowed to the issues of salary and medical benefits. In the initial award, the scope of its terms was limited to salaries and medical benefits. The Unions had only proposed an increase in salary. The County had proposals on salary, medical benefits and a host of other issues. The initial award addressed salaries. It also, in part, sustained the County's position on medical benefits but rejected other elements of the County's medical benefits proposals, including co-pay amounts for new hires and a scale of payment for retiree medical coverage for those who retired with less than 25

years of service to the County. The remainder of the County's other proposals were denied. In the second arbitration award, the arbitrator revised downward the salary terms that were set forth in the initial Award and he adopted the remainder of his initial award in its entirety. In PERC's initial remand, PERC stressed that the County's exceptions, among other things, were mainly based upon allegations that the arbitrator did not discuss evidence concerning whether there was an internal pattern of settlement and/or the reference in N.J.S.A. 34:13-16(g)(2) that the arbitrator was required to consider comparisons with public employees in the same jurisdiction. Specifically, PERC stated,

In addressing the "comparability" factor, the arbitrator did not make any findings about the County's alleged pattern of settlement with 13 other negotiations units; and did not decide whether a wage and medical contribution pattern was established or whether the evidence supports a deviation from the pattern. See Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 452 (¶33169 2002). He must do so on remand.

After the second award issued, the County's second appeal was again largely based upon a claim that the arbitrator failed to comply with PERC's directive contained in the initial remand. PERC sustained the County's position in this regard and found that the second award did not include the findings and analysis that PERC had directed regarding internal comparisons. In particular, PERC held that the arbitrator again did not discuss the alleged internal pattern of settlement that it specifically directed him to address. PERC cautioned that it expressed no opinion on the County's evidentiary submission in support of an

alleged internal pattern of settlement but stated simply, “the arbitrator was required to address that evidence on remand and did not.”

In the County’s supplemental brief in this third proceeding, it contends that its final offer in connection with wages and benefits must be awarded based mainly upon an established pattern of settlement within the County. It then goes on to summarize the alleged pattern of settlement centering on the salary and medical benefits set forth in the agreements it reached with many other County bargaining units. The Unions, in response, dispute the weight to be given to the internal settlements and urges that a determination on the salary and medical benefit issues be made consistent with what had previously been awarded. The Unions did not challenge the salary terms that the arbitrator issued in the second award, although these terms were revised from the initial award. The Unions further emphasize that some of the agreements entered into between the County and certain other bargaining units occurred well after the close of the record in the initial proceedings and, as such, they were beyond the knowledge of the parties during their presentation of evidence during the initial proceeding and should not be considered.

When all of the above is evaluated, I am compelled to conclude that the scope of this proceeding should be limited to the issues of salary and medical benefits rather than to the broad scope of issues that were presented in the County’s final offer and denied in the first two awards. The presentations of the

parties themselves in this proceeding, as well as before PERC during the appeals, have emphasized that these are the two issues are central to the resolution of the dispute as it has evolved. I do not discern any claim or evidence that would cause any of the issues other than salary and health insurance to be revisited once again. Accordingly, I confine the terms of my award to these two issues and will apply the following statutory criteria:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

I will next briefly summarize the parties' final offers. In the initial two proceedings, the parties submitted the following final offers on salary and health insurance. These proposals remain open for consideration in this proceeding, although the County has also submitted evidence as to a legislative change on health insurance which it asserts is relevant as to the disposition of certain aspects of its health insurance proposal. In particular, citing N.J.S.A. 40A:10-21(b), as amended, it asserts that an award of 1.5% of an employee's base salary must be awarded in lieu of its dollar contribution proposal because these parties did not have a newly ratified agreement on or before May 21, 2011 to replace the agreement that expired on December 31, 2006.

The parties' final offers on salary and medical insurance are as set forth below:

Unions

A. ECONOMIC

1. **Term of Agreement:** Five (5) years, succeeding the most recent contract term. [January 1, 2007 through December 31, 2011].
2. **Wages:** The PBA proposed a five percent (5%) across-the-board increase at each rank, step and position on the Salary Guide.

County/Sheriff

Article 7 – Salaries/Compensation, Paragraph A. Add paragraph as follows:

All employees covered by this agreement will receive a COLA increase as follows:

January 1, 2007: 1.50% July 1, 2007: 1.50%
January 1, 2008: 1.375% July 1, 2008: 1.375%
January 1, 2009: 1.375% July 1, 2009: 1.375%
January 1, 2010: 1.375% July 1, 2010: 1.375%
January 1, 2011: 1.375% July 1, 2011: 1.375%

Article 15, Medical Benefits, Section A. Delete existing language and amend as follows:

“Any employee employed by the Employer prior to the ratification of this Agreement shall contribute to the cost of medical benefits as follows:

- (i) Ten Dollars (\$10.00) per month for single coverage;
- (ii) Twenty Dollars (\$20.00) per month for Husband/Wife, One (1) Parent and One (1) Child, Employee/Domestic Partner;
- (iii) Forty Dollars (\$40.00) per month for Family Coverage.

Any employee hired after the ratification of this agreement shall contribute towards the cost of medical benefits as follows:

- (iv) Two Percent (2%) of base salary for single coverage;
- (v) Two and one-half Percent (2 ½%) of base salary for Husband/Wife, One (1) Parent and One (1) Child, Employee/Domestic Partner;
- (vi) Three Percent (3%) of base salary for Family coverage.

Co-pays for doctor’s visits shall be Fifteen Dollars (\$15.00). The deductible for health insurance shall be Two Hundred and Fifty Dollars (\$250.00) for the Employee and Five Hundred Dollars (\$500.00) for family members. Out of pocket maximum contributions for in-network providers shall be Two Hundred Dollars (\$200.00) for employees and Four Hundred Dollars (\$400.00) for family members and for out-of-network providers, Six Hundred Dollars (\$600.00) for employees and One Thousand Dollars (\$1,000.00) for family members.

Upon retirement, the employer will continue to provide and pay for the above programs as stipulated herein.”

Article 15, Medical Benefits, Paragraph C. Amend this Paragraph as follows: “Effective upon execution of this Agreement, the co-pay under this plan shall be Five Dollars (\$5.00) for generic drugs and

Ten Dollars (\$10.00) for brand name drugs. Mail order generic drugs shall have a co-pay of Ten Dollars (\$10.00) per prescription (for a 3 month supply). Mail order brand name drugs shall have a co-pay of Twenty Dollars (\$20.00) per prescription (for a 3 month supply). The coverage shall include family members.”

Article 16, Miscellaneous, Paragraph J, Retirement. Delete the following: “It is noted, upon application for retirement that the Employee may not be out without a doctor’s note for more than one hundred twenty (120) working days prior to retirement.”

Add the following language to the third paragraph of Paragraph J:

“It is noted that those Employees who have more than twenty (20) years of service with the County of Passaic at the time this agreement is signed may be without a doctor’s note for no more than one hundred twenty (120) days. Those Employees who have more than fifteen (15) years of service with the County of Passaic but less than twenty (20) years at the time this agreement is signed may be out without a doctor’s note for no more than ninety (90) days. Those Employees who have more than ten (10) years of service with the County of Passaic but less than fifteen (15) years at the time this agreement is signed maybe out without a Doctor’s note for no more than sixty (60) days.

The County shall paid all medical – prescription premiums for all members who retire with a minimum of twenty-five (25) years of service with the County of Passaic. For Employees with less than twenty-five (25) years, the Employees who retire on a disability shall continue to receive full medical benefits as provided under this article at no cost to the retiree or the retiree’s family as if the Employee were active.

Employees shall pay the following monthly amount to the County of Passaic toward Medical coverage premiums.

10-17 years of County service -	\$103.43 single
	\$214.52 couple
	\$365.00 family
	\$172.68 parent & child
18-24 years of County service -	\$101.08 single
	\$183.53 couple
	\$227.14 family
	\$128.45 parent & child

These rates are subject to change by resolutions of the Board of Chosen Freeholders.”

The prior arbitrator who issued the two prior awards engaged in a broad summary of the evidence presented and the arguments both parties had submitted in support of their respective positions. Much of the raw and relevant data in support of the parties’ respective final offers consisted of documentary evidence and official government documents. As such, they need not be summarized here at length, although all such evidence has been thoroughly reviewed. The differing interpretations and arguments to be derived from these documents center on the Unions’ claim that the County’s finances are sufficiently healthy to fund the Unions’ proposals. There was testimony in the prior hearings concerned departmental operations, services provided by unit members and details of internal settlements and budgetary data. Upon review of that record and the parties’ arguments in this proceeding, it is apparent that factual disputes are not significant and that each party seeks different conclusions to be drawn from largely undisputed evidence by seeking greater relevance and weight to be given to the documentary evidence that each believes most supports its own final offers.

By way of general background, in the prior proceedings the parties emphasized some of the following main points among the many which were part of their original extensive presentations:

- The Passaic County Sheriff's Department is Passaic County's only full service Countywide law enforcement agency, and there is an interchangeability of duties performed and services provided by County Corrections and Sheriffs Officers.
- The Sheriff's Department often serves as the primary responder to both State and National Park calls, runs the County training academy, patrols the roads within the County with full "Title 39" authority, offers a variety of specialized services (i.e. Internet Crime Unit, K-9 Division, Marine Unit, HAZMAT Unit), and assists local police department with law enforcement – a service that brings significant revenue to the County.
- The jail is old; the percentage of designated capacity is 162%; there is a growing trend of inmates who are gang members and the number of assaults on staff by inmates has increased.
- There is no County Police Force other than the Passaic County Sheriff's Department in Passaic County. Its services are integrated thoroughly with all of the local municipal jurisdictions.
- The Associations maintain that the following jurisdictions should consist of the comparison group: Bloomingdale, Cedar Grove, Belleville, Clifton, Elmwood Park, Essex County Sheriff's Office, Fairfield, Garfield, Glen Rock, Hawthorne, Lyndhurst, Lyndhurst SOA, Mahwah, Mercer County Prosecutor's Office, Midland Park, Oakland, Parsippany, Passaic, Paterson, Prospect Park, Ridgewood, Ridgewood SOA, Ringwood, Riverdale, Rutherford, Somerset County Sheriff's Office, State Troopers STFA, State Troopers NCO, State troopers SOA, Totowa, Wallington, Wayne, West Milford, West Milford SOA, West Paterson, Haledon, Bergen County Prosecutor's Office, Bergen County Sheriff's Office and Little Falls and that the average increases of its public sector

comparisons are 4.1375% in 2007, 4.2037% in 2008, 4.3558% in 2009, and 4.3257% in 2010. When the Associations compare the salaries of its unit members to those in its comparison group, they conclude that they are paid several thousand dollars less on an annual basis.

- In 2007, the County realized \$404,438,903 in budget revenues \$1,745,222 in excess of the \$402,693,681 it anticipated.
- In 2007, the County had a fund balance of \$24,931,589 of which it utilized \$14,931,589.
- The County's tax rate in 2007, at 0.5442, was less than in 2002, 0.5995.
- The Sheriff filed layoff plans with the Department of Personnel in December 2007 and April 2008 which were effectuated in March 2008 and July 2008, resulting in the layoffs of civilian and law enforcement employees.
- The County calculates that the Unions' wage proposal for all four (4) bargaining units has a total cost to the County of over \$14.3 million (including PFRS contributions) over the life of the five (5) year term and that the County's final offer will cost the County over \$5.7 (including PFRS contributions), which is over \$8 million less than the Unions' final offer.
- Contrary to the Unions' claim, the County argues that the bargaining units that are best compared to its Sheriff's Officers and Correction Officers are those performing similar functions in other county agencies. When the County compares the Unions to other county Sheriff's Officers and Correction Officers, the County argues that they rank among the highest paid county employees in the state who perform similar services. The

County contends that the changes to be made to the agreements should follow the pattern of settlements it had achieved with more than fifteen other bargaining units.

- The County's Aaa bond rating has not changed but the County's outlook by Moody's Investor Services has changed from "positive" to "neutral" to "negative."
- The County asserts the reasonableness of its proposal by referencing data showing that:
 - 14.3% of persons below the poverty level resided in the County
 - The per capita income in the County is \$23,305, compared to the State average of \$43,771.
 - The earnings of the Associations' bargaining unit members are approximately two (2) to three (3) times the per capita income of County residents.
 - The median household income for County residents is \$51,016, which is approximately 20.9% less than the State average.
 - In 2007, fixed costs (i.e. debt service, pension costs and utilities) represent 20% of the County's budget.
 - In 2006, the Sheriff's Office and the Correction Department represented approximately 30% of the total budget.
- In 2006, the base salaries of unit members at top step and ranks are:
 - Sheriff's Officer - \$79,568
 - Sheriff's Superior Officer:
 - Sergeant - \$97,892
 - Lieutenant - \$105,876
 - Captain - \$114,695
 - County Correction Officer - \$79,568
 - County Correction Superior Officer:
 - Sergeant - \$97,892
 - Lieutenant - \$105,876
 - Captain - \$114,695

- The cost of living statistics for 2004 through 2006 show an increase in salary for all unit members that are above the CPI in each of those years.
- Total tax levy has increased from \$193,502,856 in 2004 to \$253,177,231 in 2007 and property tax values from \$35,756,408,765 to \$55,623,705,991 during this same time but show declines thereafter due to a changing economic climate.
- The bargaining units contain the following number of members:

Unit	Number of Members
Corrections Rank & File	290
Corrections SOA	45
Sheriff's Officers	205
Sheriff's SOA	43

- Pattern of settlement testimony in the initial arbitration hearing from Anthony DeNova, County Administrator on July 9, 2008 as summarized in the County's brief:

Mr. DeNova testified, without contradiction, that the County's final offer in this proceeding was based on the County's pattern of negotiations with other unit. (2T:13:17 to 20). Specifically, Mr. DeNova described the County pattern of either three (3), four (4) or five (5) year terms with the following wage settlement: three percent (3%) increase to base wage in year one and two and three quarter percent (2.75%) increases to base wage for the remainder of the contract. (2T:13:9 to 16). Specifically, the County has negotiated agreements with thirteen (13) of its twenty (20) bargaining units which follow a pattern of salary increases averaging at (or below) 3% per year. (S83 to S99). The pattern also includes employee contributions to medical insurance. Eleven (11) of those bargaining units settled in accordance with the pattern of medical contributions, with all units currently contributing \$10.00 per month on the single plan for current employees and two percent (2%) of salary for new hires, \$20.00 per month on the husband/wife and parent/child plan for current employees and two and a half percent (2.5%) of base salary for new hires and \$40 per month on the [family] plan for current employees and three percent (3%) of

base salary for new hires. (2T:16:2 to 13). The only units who collective bargaining agreements were recently negotiated which do not follow the medical pattern are Local 32 OPEIU and Local 1032 (Nutrition-Meals on Wheels), which collectively represent approximately forty (40) employees, as those agreements were negotiated prior to the County requesting medical contributions. (2T:14:22 to 25; 2T:15:1 to 3).

The PERC remands in this dispute have consistently directed that there be an analysis containing conclusions as to the County's contention that it had achieved a pattern of settlement on the issues of salary and health insurance and, if it had, whether there was countervailing evidence that would justify a deviation from that pattern. The Unions dispute the existence of a pattern and seek, even assuming that it exists, a rejection of such pattern for reasons that the County can afford to fund the Unions' last offers, that external comparability with relative salaries in municipal police departments and wage settlements in other county jurisdictions, should be given far more weight when fashioning the award than the settlements the County achieved with its internal bargaining units. The Unions also seek a finding that the settlements the County has entered into subsequent to the close of the initial record of this proceeding be deemed inadmissible. I first address the health insurance issues.

As previously stated, the arbitrator awarded certain portions of the County's health insurance proposal and rejected others in both of his decisions. The arbitrator awarded the following with respect to co-payments towards medical benefit premiums:

Article 15, Medical Benefits: Section A. Amend the existing language as follows:

Effective the issuance date of this Award, the County has the right to implement a co-pay program for all employees as follows:

- (i) Ten Dollars (\$10.00) per month for single coverage;
- (ii) Twenty Dollars (\$20.00) per month for Husband/Wife, One (1) Parent and One (1) Child, Employee/Domestic Partner;
- (iii) Thirty Dollars (\$30.00) per month for Family Coverage.

This portion of the award was consistent with the County's proposal except that he awarded thirty (\$30.00) dollars per month for family coverage instead of the forty (\$40.00) dollars the County had proposed. The arbitrator also awarded the County's proposal with respect to prescription drug co-payments as follows:

Article 15 – Medical Benefits, Paragraph C. Amend this Paragraph as follows:

Effective the issuance of the date of this Award, the co-pay under this plan shall be Five Dollars (\$5.00) for generic drugs and Ten Dollars (\$10.00) for brand name drugs. Mail order generic drugs shall have a co-pay of Ten Dollars (\$10.00) per prescription (for a 3 month supply). Mail order brand name drugs shall have a co-pay of Twenty Dollars (\$20.00) per prescription (for a 3 month supply). The coverage shall include family members.

The arbitrator did not award the portion of the County's proposal that would have required a greater contribution towards the cost of medical benefits for employees hired after the ratification of the Agreement. The County's proposal on this issue that he did not award proposed the following:

Article 15, Medical Benefits, Section A. Delete existing language and amend as follows:

Any employee hired after the ratification of this agreement shall contribute towards the cost of medical benefits as follows:

- (iv) Two Percent (2%) of base salary for single coverage;
- (v) Two and one-half Percent (2 ½%) of base salary for Husband/Wife, One (1) Parent and One (1) Child, Employee/Domestic Partner;
- (vi) Three Percent (3%) of base salary for Family coverage.

The arbitrator also did not award the County's proposals regarding doctor's visits, deductibles and out of pocket maximum contributions. The proposals that he rejected on this issue were the following:

Co-pays for doctor's visits shall be Fifteen Dollars (\$15.00). The deductible for health insurance shall be Two Hundred and Fifty Dollars (\$250.00) for the Employee and Five Hundred Dollars (\$500.00) for family members. Out of pocket maximum contributions for in-network providers shall be Two Hundred Dollars (\$200.00) for employees and Four Hundred Dollars (\$400.00) for family members and for out-of-network providers, Six Hundred Dollars (\$600.00) for employees and One Thousand Dollars (\$1,000.00) for family members.

Upon retirement, the employer will continue to provide and pay for the above programs as stipulated herein."

The evidence with respect to the medical benefits issues show that at the time that the record was closed in the first proceeding at least ten, and as many as thirteen bargaining units, had reached an agreement with the County that provided for substantially the same, if not identical, terms on health insurance that the County has proposed here. These agreements, and the duration of those agreements, include the following:

County of Passaic and Local 11 (Golf Course)
2006-2010

County of Passaic (Preakness Health Care Center) and Local 2273
2006-2009

County of Passaic and OPEIU Local 153
2008-2012

County of Passaic and International Association of Machinists and
Aerospace Workers
2006-2011

County of Passaic and Assistant Prosecutor's Association
2006-2010

County of Passaic and District 1199J (RNs and LPNs)
2007-2010

County of Passaic and District 1199J (Supervisors)
2007-2010

County of Passaic and CWA Local 1032 (Preakness Health Center
Security Officers)
2007-2011

County of Passaic and CWA Local 1032 (Youth Detention
Supervisors)
2007-2011

County of Passaic (Preakness Hospital) and AFSCME Local 2522
2008-2012

Testimony indicates that two employee organizations did receive different terms on health insurance, CWA Local 1032 (Meals on Wheels) and OPEIU Local 32, and that these agreements were negotiated prior to all of the above cited agreements before the County began to request individual contributions. These two units, representing relatively few employees, reached agreements that did not contain medical contributions but the duration of those agreements

were 2004-2008 and 2006-2008 respectively and thus did not extend beyond 2008 at which time the County had achieved its medical contribution proposal for a majority of county units.

While I recognize the PBA's objection to post-hearing evidence being considered in this proceeding, the County has submitted supplementary documents reflecting that additional bargaining units have agreed to its health insurance proposal after the hearings that led to the first award. They include:

County of Passaic Prosecutor's Office & PBA Local 265 (Detectives & Investigators) 2007-2014

County of Passaic Prosecutor's Superior Officers & PBA Local 265 2007-2014

County of Passaic & Sheriff's Professional Association (Clerical Employees) 2007-2011

County of Passaic & Local 11 IBT (Blue Collar) 2010-1015

Although the Unions seek to bar evidence on settlements achieved after the record was closed in the initial proceeding, the supplemental record contains evidence showing that several additional bargaining units reached agreements with the County that were consistent with its medical insurance proposal in this proceeding. As stated above, the Passaic County Prosecutor's Office reached agreements with PBA Local 265 representing detectives and investigators and with the Prosecutor's Superior Officers' Association for a period January 1, 2007 through December 31, 2014. An additional agreement was reached with clerical employees employed by the County/Sheriff represented by the Sheriff's

Professional Association for years 2007-2011 and another, for 2010-2015, with the County's blue collar employees represented by Local 11, IBT. Notably, the two agreements in the Prosecutor's Office were the first that involved law enforcement employees in addition to the non-law enforcement employee units.

The requirement to examine evidence concerning pattern of settlement requires examination of the salary element of the alleged pattern as well as health insurance. The record reflects salary agreements achieved prior to the issuance of the first award.

County of Passaic and Local 11 (Golf Course)
2006-2010

2006 – 3.25%
2007 – 2.75%
2008 – 2.75%
2009 – 2.75%

County of Passaic (Preakness Health Care Center) and Local 2273
2006-2009

2006 – 3.25%
2007 – 2.75%
2008 – 2.75%

County of Passaic and OPEIU Local 153
2008-2012

2006 – 3.0%
2007 – 2.75%
2008 – 2.75%
2009 – 2.75%
1/2010 – 2.0%
7/2010 – 1.0%

**County of Passaic and IBT Local 11 (Blue Collar)
2006-2010**

2006 – 3.25%
2007 – 2.75%
2008 – 2.75%
2009 – 2.75%

**County of Passaic and International Association of Machinists
and Aerospace Workers
2006-2011**

2006 – 3.0%
2007 – 2.75%
2008 – 2.75%
2009 – 2.75%
2010 – 2.75%

**County of Passaic and Assistant Prosecutor's Association
2006-2010**

2006 – 3.0%
2007 – 3.0%
2008 – 3.0%
2009 – 3.0%
2010 – 3.0%

**County of Passaic and District 1199J (RNs and LPNs)
2007-2010**

2007 – 3.0%
2008 – 2.75%
2009 – 2.75%
2010 – 2.75%

**County of Passaic and District 1199J (Supervisors)
2007-2010**

2007 – 3.0%
2008 – 2.75%
2009 – 2.75%
2010 – 2.75%

County of Passaic and CWA Local 1032
(Preakness Health Center Security Officers)
2007-2011

2007 – 3.25%
2008 – 2.75%
2009 – 2.75%
2010 – 2.75%
2011 – 2.75%

County of Passaic and CWA Local 1032
(Youth Detention Supervisors)
2007-2011

2007 – 3.25%
2008 – 2.75%
2009 – 2.75%
2010 – 2.75%
2011 – 2.75%

County of Passaic (Preakness Hospital)
and AFSCME Local 2522
2008-2012

2008 – 3.0%
2009 – 2.75%
2010 – 2.75%
2011 – 2.75%
2012 – 2.75%

I have also examined the post-award salary settlements. They are as follows:

County of Passaic Prosecutor's Office & PBA Local 265
(Detectives & Investigators) 2007-2014

2007 – 2.75%
2008 – 2.75%
2008 – 2.75%
2010 – 2.75%
2011 – 2.0%
2012 – 2.0%
2013 – 2.0%

2014 – 2.0%

County of Passaic Prosecutor's Superior Officers & PBA Local 265
2007-2014

2007 – 2.75%
2008 – 2.75%
2008 – 2.75%
2010 – 2.75%
2011 – 2.0%
2012 – 2.0%
2013 – 2.0%
2014 – 2.0%

County of Passaic & Sheriff's Professional Association
(Clerical Employees) 2007-2011

2007 – 3.0%
2008 – 2.75%
2008 – 2.75%
2010 – 2.75%
2011 – 2.75%

County of Passaic & Local 11 IBT (Blue Collar)
2010-2015

2010 – 2.5%
2011 – 2.5%
2012 – 2.5%
2013 – 2.5%
2014 – 2.5%

A detailed analysis of all of the above clearly reflects the existence of a pattern of settlement among the County's many bargaining units concerning health insurance. The health insurance pattern of settlement is more uniform than the salary pattern because there are some variations in the salary settlements. One variation is contract duration. Some commenced in 2006, others in 2007 and 2008 and the agreements contain expiration dates of either 2010, 2011 or 2012. There is a newer contract with the blue collar unit (Local

11) in 2010 that extends through 2014 and two agreements in the Prosecutor's Office (PBA Local 265 and Superior Officer's Association) that also provided for 2007-2014 durations but salary terms that are generally consistent with all of the settlements.

The settlement ranges in all of the agreements fall within a range of 2% to 3% with isolated increases of 3.25% in 2006 for Local 2273 (Preakness Health Care Center), 3.25% in 2007 for CWA Local 1032 (Preakness Health Care Security Officers) and 3.25% in 2007 for CWA Local 1032 at the Youth Retention Center. The PBA agreements in the Prosecutor's Office include a range between 2.75% and 2% over an eight year period. There are some small variations in settlement figures but in the main, the settlements all fit within a range that is reasonably consistent. It can be concluded from all of the settlement figures that the PBA's offer of 5% and the increases in either of the two prior awards (4% - 2007, 4% - 2008, 4% - 2009, 4% - 2010 and 4% - 2011 Award #1) and (3.75% - 2007, 3.75% - 2008, 3.5% - 2009, 3.5% - 2010 and 3.5% - 2011 Award #2) fall well outside the range of the terms in all of the internal settlements and that the County's proposal of January and July splits totaling 3% - 2007, 2.75% - 2008, 2.75% - 2009, 2.75% - 2010 and 2.75% - 2011 fall cleanly within the range that must be considered to constitute a pattern. Simply because there are variations from uniformity in salary, this does not create any less of a pattern on the salary issue given the volume of the settlements and the range or average increases in the terms of the settlements. Even if the slight

variation in numbers were, for the sake of argument, to fall outside what would constitute a pattern of settlement, the sheer number of settlements that fall within such close parameters over such a long duration constitutes strong evidence of a consistent internal comparison.

Having found a pattern of settlement on the issues of health insurance and salary, the two remands direct that there be an analysis of whether there is evidence that would support a deviation from the pattern [See PERC No. 2010-42 and PERC No. 2011-36]. On this point, because of the strength of the consistency in the internal settlements, the burden to overcome a presumption that the pattern should also apply here, necessarily falls on the PBA. For the reasons that follow, I am compelled to conclude that the burden to prove that there should be terms of settlement that fall beyond the pattern of settlement has not been met.

I first address the PBA's objections to the consideration of settlements achieved after the close of the record in the prior proceeding. I am persuaded that the settlements are admissible. They contain information that would either support or weaken the significance of the County's pattern of settlement argument in the initial proceeding and tend to prove or disprove the parties' original positions as to the significance of the internal settlements. The original evidence supports the existence of a pattern and the supplemental evidence must be considered to ascertain whether that pattern was continued or

abandoned after the issuance of the first or second arbitration awards that were vacated and remanded. Such evidence is key to establishing whether the County's claim to a pattern remains valid. Evidence to the contrary supplied by the PBA would also have been deemed admissible for the same reason. Here, the evidence does support that there has been an extension of the pattern and, significantly, to units that also involve County law enforcement employees. Those units not only followed the pattern between 2007 and 2011 but extended the pattern for an additional three years through 2014. I accept this evidence as supporting the validity of the County's claim in the original proceeding that there was a pattern of settlement and for the purpose of showing a continuation of the pattern thereafter. Moreover, the Unions' arguments concerning admissibility are undermined by the fact that the original arbitrator, in the second proceeding, engaged in the consideration of evidence that was not within the record of the original proceeding as justification for revising the salary portion of his award.

The arbitrator specifically noted:

I must make particular note of the fact that neither party has requested to supplement the record that was closed many months ago. This case has been adjudicated originally and reviewed subsequently based on evidence in the record at hearing. No party has requested that the record be supplemented in any regard nor reopened at any time. Notwithstanding what I believe to be a required reliance upon the record, I, personally, have not been living in a vacuum in the recent past. The original Award of 4% in each of five years was clearly supported by the record at the time it was rendered. The evidence was complete and properly supported my award of 4% per year. Each party requested a 5 year term.

However, as noted, I have been cognizant of the economic changes that have been occurring since my original award was issued, and for that reason alone I will take arbitral notice of said

changes. I will make a reduction in the impact of my Award notwithstanding the party's failure to supplement the record for reopening. I believe that a moderate accommodation could be made to these points addressed and I will reduce my Award appropriately in each of the 5 years that the parties have requested. By this modification I will be at least addressing some of the changes that have occurred globally since my original Award. I must note of course that these hardworking public safety personnel have been without an increase for years and the employer has had access to whatever funds may be due for those years. An appropriate balance I believe is struck by modifying my Award as set forth above effective on each successive January 1 of the contract term. My Award covers five successive years January 1, 2007 through December 31, 2011.

In rendering an award in this matter, I rely mainly upon the interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] criterion by giving substantial weight to internal comparisons and settlement patterns within the County and, in particular, in the County's other law enforcement units. The deviation from internal comparability sought by the Unions would undermine the stability and predictability that is desirable in the negotiations process by the attempt to tie a result here primarily to external evidence while paying little or no attention to internal negotiations results. The Unions' reliance on external comparability is insufficient to provide a basis for deviation. The issue here is not whether such evidence is relevant but whether there is merit to providing substantial weight to that evidence as the Unions have argued. The Unions' proposal would alter the relationships among the many negotiations units and undermine the desirability of maintaining a reasonable consistency during the collective negotiations process absent a demonstrated need for deviation. Of particular significance is the fact that the two PBA negotiations units in the Prosecutor's Office reached

agreements for 2007-2014 that fall within the range of the settlement pattern on salary and health insurance, thus eroding any claim that the settlement pattern is not inclusive of the County's law enforcement units. While the statutory criteria could accommodate the higher amounts sought by the Unions based upon giving primary, if not exclusive weight, to the external comparability evidence, I decline to do so in light of N.J.S.A. 34:13A-16g(2) and N.J.S.A. 34:13A-16g(8) because a disruption in the settlement pattern could reasonably undermine morale in the County's other bargaining units and discourage future settlements thereby leading to labor relations instability. I find it also significant that neither party has offered persuasive evidence that there are changed circumstances that now warrant a deviation from the pattern.

I next turn to the specifics of the award to be issued. The County's proposal, with some reasonable modifications, represents a reasonable determination of the salary issue with due regard for the statutory criteria. The many internal salary settlements in the record all show percentage increases with effective dates of January 1. Reliance upon this pattern dictates a similar approach here rather than salary splits in each year that the County has proposed with the exception of contract year 2007 which, at 3%, yields the highest percentage increase. This results in an award at each step and rank, retroactive to their effective dates, of:

1/1/2007 –1.5%
7/1/2007 – 1.5%
1/1/2008 – 2.75%

1/1/2009 – 2.75%
1/1/2010 – 2.75%
1/1/2011 – 2.75%

An additional modification is the extension of the contract's terms through 2014 as the County has done with its blue collar unit (IBT Local 11) and with PBA Local 265 (Detectives and Investigators) and the Prosecutor's Superior Officers Association. Given the fact that the Unions are now in the fifth year without an agreement and have engaged in arbitration or litigation over much of this time, an immediate return to negotiations would not be desirable. More importantly, these other units concluded negotiations agreements with the County during the pendency of this litigation that extended through 2014 thereby demonstrating, in addition to the strength of pattern bargaining, that the overall evidence in the County's possession at the time of those agreements did not reflect changed circumstances or overall evidence that reflected that the settlement terms it achieved after the prior awards were issued between these parties were inconsistent with the County's financial abilities, needs and statutory requirements. Thus, these terms are consistent with the criteria that concern financial impact and statutory limitations on appropriations and the tax levy. Accordingly, I award an extension of the agreements through 2014 that include the following increases at each step and rank for the employees in the bargaining units involved in this proceeding:

1/1/2012 – 1.75%
1/1/2013 – 1.75%
1/1/2014 – 1.75%

The terms for 2012, 2013 and 2014 are modestly below the 2.0% increases negotiated in the Prosecutor's Office, but on an overall eight year basis, the terms are roughly equivalent with rate increases of 19.25% in the instant units compared with 19.0% in the Prosecutor's Office. The salary terms for these units will provide reasonable and substantive increases in pay to members of all units that favorably supplement the overall compensation currently received and will generally allow for maintenance of comparable rates of pay among similar County law enforcement agencies elsewhere. The Sheriff's and Corrections Officers will, at top step, move from the old rate of \$79,568 to \$96,250 in 2014. Top Step Sergeant will move from \$97,892 to \$118,416. Top Step Lieutenant will move from \$105,876 to \$128,074 and Top Step Captain will move from \$114,695 to \$138,742.

The second term of the Award deals with health insurance. Based upon the pattern of settlement on these issues in the majority of units at the time of the initial hearing and as extended in the settlements that occurred thereafter during the litigation of this proceeding, including the law enforcement employees in the Prosecutor's Office, I award this pattern, as is reflected in the County's proposal. While there may be some minor distinctions among the various units, the terms of the Award on health insurance shall mirror the terms in the PBA units in the Prosecutor's Office. Further, there are certain modifications that are required by law as a result of legislation that was adopted subsequent to the two prior proceedings.

In the initial arbitration award, the arbitrator awarded the County's proposal to provide dollar amount co-pays for health insurance, except for reducing the amount from \$40.00 per month for family coverage to \$30.00 per month. The County correctly notes that P.L. 2010, Chapter 2, effective May 21, 2010 required employees to pay 1.5% of base salary except for employees covered by an existing collective negotiations agreement on that date. Here, in the absence of a newly executed collective negotiations agreement at that time, the County, notwithstanding its dollar amount co-pay proposal, implemented the 1.5% contribution and seeks its inclusion in this award based upon its view that it is required by law. In fact, the County has proceeded to deduct such contributions on May 21, 2010, although the Unions have filed grievances on the issue. Because no new collective negotiations agreement has been executed in these units, I am required to award this level of contribution with a May 21, 2010 effective date but do so with the caution that I am not deciding the merits of the grievances. They are not before me and they apparently allege that the County is barred from making the 1.5% deductions required by law under the terms of the old agreement until a new agreement has been executed rather than the earlier date of May 21, 2010. In other words, this portion of the award is not meant to bar or preempt the Unions from pursuing their claim under the grievances that they have filed nor should these comments be construed to imply any conclusion with respect to the merits of those grievances. I do not award any employee contributions towards health insurance prior to the May 21,

2010 date based upon the County's dollar contribution proposal. Accordingly, I award the following:

The level of employee contribution of 1.5% of base salary shall be as set forth in P.L. 2010, Ch.2, effective May 22, 2010. This level of employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health insurance. This is not intended to bar or preempt the pending grievances which are not before me as they may relate to whether contributions can be required between May 21, 2010 and the execution of the new agreement.

In the initial award, and carried forward into the second award, the arbitrator awarded the County's proposal concerning prescription coverage.

That proposal amends Article 15, paragraph C to state:

"Effective upon execution of this Agreement, the co-pay under this plan shall be Five Dollars (\$5.00) for generic drugs and Ten Dollars (\$10.00) for brand name drugs. Mail order generic drugs shall have a co-pay of Ten Dollars (\$10.00) per prescription (for a 3 month supply). Mail order brand name drugs shall have a co-pay of Twenty Dollars (\$20.00) per prescription (for a 3 month supply). The coverage shall include family members."

This language is not in dispute, it is consistent with the County pattern of settlement and it is awarded.

The original arbitrator rejected the remaining portion of the County's medical insurance proposals. Those proposals are as follows:

Any employee hired after the ratification of this agreement shall contribute towards the cost of medical benefits as follows:

- (iv) Two Percent (2%) of base salary for single coverage;
- (v) Two and one-half Percent (2 ½%) of base salary for Husband/Wife, One (1) Parent and One (1) Child, Employee/Domestic Partner;
- (vi) Three Percent (3%) of base salary for Family coverage.

Co-pays for doctor's visits shall be Fifteen Dollars (\$15.00). The deductible for health insurance shall be Two Hundred and Fifty Dollars (\$250.00) for the Employee and Five Hundred Dollars (\$500.00) for family members. Out of pocket maximum contributions for in-network providers shall be Two Hundred Dollars (\$200.00) for employees and Four Hundred Dollars (\$400.00) for family members and for out-of-network providers, Six Hundred Dollars (\$600.00) for employees and One Thousand Dollars (\$1,000.00) for family members.

Upon retirement, the employer will continue to provide and pay for the above programs as stipulated herein.”

The County's proposals on these issues are consistent with its pattern of settlement with other employee units whose settlements were achieved prior to the date of the original award as well as to those subsequent to that date including the two law enforcement units in the Prosecutor's Office. For the reasons previously set forth, I award these proposals.

In my earlier analysis, I provided reasons as to why the scope of this award was limited to the issues of salary and medical insurance. These reasons need not be repeated at this juncture. I do note that the County has proposed a modification to Article 16, Miscellaneous, Paragraph J, Retirement. It reads as follows:

Article 16, Miscellaneous, Paragraph J, Retirement. Delete the following: “It is noted, upon application for retirement that the

Employee may not be out without a doctor's note for more than one hundred twenty (120) working days prior to retirement."

Add the following language to the third paragraph of Paragraph J:

"It is noted that those Employees who have more than twenty (20) years of service with the County of Passaic at the time this agreement is signed may be without a doctor's note for no more than one hundred twenty (120) days. Those Employees who have more than fifteen (15) years of service with the County of Passaic but less than twenty (20) years at the time this agreement is signed may be out without a doctor's note for no more than ninety (90) days. Those Employees who have more than ten (10) years of service with the County of Passaic but less than fifteen (15) years at the time this agreement is signed maybe out without a Doctor's note for no more than sixty (60) days.

The County shall paid all medical – prescription premiums for all members who retire with a minimum of twenty-five (25) years of service with the County of Passaic. For Employees with less than twenty-five (25) years, the Employees who retire on a disability shall continue to receive full medical benefits as provided under this article at no cost to the retiree or the retiree's family as if the Employee were active.

Employees shall pay the following monthly amount to the County of Passaic toward Medical coverage premiums.

10-17 years of County service - \$103.43 single
\$214.52 couple
\$365.00 family
\$172.68 parent & child

18-24 years of County service - \$101.08 single
\$183.53 couple
\$227.14 family
\$128.45 parent & child

These rates are subject to change by resolutions of the Board of Chosen Freeholders."

The record reflects that the more recent settlements in the PBA units in the Prosecutor's Office did not include this portion of the County's proposal.

Notwithstanding whether this proposal has been included in some of the County's non-law enforcement agreements, I decline to award this proposal which would result in incongruous terms between the law enforcement units interfere with my conclusion that there should be consistency on the health insurance issue between these units and the County's other law enforcement units.

As previously stated, this award relies heavily upon N.J.S.A. 34:13A-16g(1), interests and welfare of the public, N.J.S.A. 34:13A-16g(2)(c), comparisons in public employment in the same jurisdictions and N.J.S.A. 34:13A-16g(8), the continuity and stability of employment including ... "factors ... which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment." Given the general consistency of the award with the County's proposal and the voluntary terms of settlement set forth in the collective negotiations agreements between the County and various bargaining units during the pendency of this litigation, I conclude that the award is in harmony with the remaining statutory criteria including N.J.S.A. 34:13A-16g(5), the lawful authority of the employer, N.J.S.A. 34:13A-16g(6), the financial impact on the governing unit, its residents and taxpayers and the statutory limitations on the County's appropriations and tax levy caps.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

AWARD

1. All proposals by the County and the Unions not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this award or by mutual agreement of the parties.

2. **Duration**

The collective negotiations agreement shall be effective January 1, 2007 through December 31, 2014.

3. **Salaries**

The salary schedules for each of the four bargaining units shall be modified at each step and rank by the following percentages on each effective date and retroactive to each effective date as applicable. The existing contractual procedures and/or practices concerning step movement shall remain in effect:

1/1/2007 – 1.5%
7/1/2007 – 1.5%
1/1/2008 – 2.75%
1/1/2009 – 2.75%
1/1/2010 – 2.75%
1/1/2011 – 2.75%
1/1/2012 – 1.75%
1/1/2013 – 1.75%
1/1/2014 – 1.75%

4. **Health Insurance**

The level of employee contribution of 1.5% of base salary shall be as set forth in P.L. 2010, Ch.2, effective May 22, 2010. This level of employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health insurance. This is not intended to bar or preempt the pending grievances which are not before me as they may relate to whether contributions can be required prior to the execution of the new agreement.

Effective upon execution of this Agreement, the co-pay under this plan shall be Five Dollars (\$5.00) for generic drugs and Ten Dollars

(\$10.00) for brand name drugs. Mail order generic drugs shall have a co-pay of Ten Dollars (\$10.00) per prescription (for a 3 month supply). Mail order brand name drugs shall have a co-pay of Twenty Dollars (\$20.00) per prescription (for a 3 month supply). The coverage shall include family members.

Any employee hired after the ratification of this agreement shall contribute towards the cost of medical benefits as follows:

- (iv) Two Percent (2%) of base salary for single coverage;
- (v) Two and one-half Percent (2 ½%) of base salary for Husband/Wife, One (1) Parent and One (1) Child, Employee/Domestic Partner;
- (vi) Three Percent (3%) of base salary for Family coverage.

Co-pays for doctor's visits shall be Fifteen Dollars (\$15.00). The deductible for health insurance shall be Two Hundred and Fifty Dollars (\$250.00) for the Employee and Five Hundred Dollars (\$500.00) for family members. Out of pocket maximum contributions for in-network providers shall be Two Hundred Dollars (\$200.00) for employees and Four Hundred Dollars (\$400.00) for family members and for out-of-network providers, Six Hundred Dollars (\$600.00) for employees and One Thousand Dollars (\$1,000.00) for family members.


Upon retirement, the employer will continue to provide and pay for the above programs as stipulated herein."

Dated: June 18, 2011
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 18th day of June, 2011, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2013