

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

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■ In the Matter of the Interest Arbitration Between:

Hudson County Prosecutor

and

PBA, Local 232

OPINION

AND

AWARD

PERC Case No. IA-96-178

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This interest arbitration proceeding was initiated by the PBA pursuant to the New Jersey Fire and Police Arbitration Act N.J.S.A. 34:13A-14, et seq. After appointment of the undersigned arbitrator on September 13, 1996, a mediation session was held on December 4, 1996, and, when those efforts were unsuccessful, formal hearings were held on February 17, 18, and 19, 1997. The PBA submitted a ~~post-hearing brief in accordance with the briefing schedule~~ mutually agreed to at the final hearing, while a change in the County attorney delayed the submission of the County's brief until June 20, 1997.

Appearances were as follows:

For the PBA: Richard D. Loccke, Esq. Loccke & Correia

For the Prosecutor: Sean D. Dias, Esq. Scarinci & Hollenbeck

At the beginning of the hearings on February 17, 1997, the final offers of the parties were as follows:

FINAL OFFERS

PROSECUTOR

- A. Duration: 2 years: January 1, 1996 to December 31, 1997
- B. Wages: 4 percent increase on January 1 of each year.
- C. Overtime: The overtime cap increases from \$3500 to \$5000 per year per employee.
Vacation time will count as time worked for overtime calculations.
- D. Vacation Advance Notice: The notice period for taking vacation will be decreased from 30 to 21 days.

PBA

- A. Duration: 3 years: January 1, 1996 to December 31, 1998.
- B. Wages: 6 percent effective January 1 of each year. All employees shall move one step annually on an automatic step system.
- C & D. The PBA does not dispute the Prosecutor's final offers regarding overtime and vacation advance notice.

STATUTORY CRITERIA

g. The arbitrator or panel of arbitrators shall 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 relevant 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 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, that each party shall have the right to submit additional evidence concerning the comparability of ~~jurisdictions~~ for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

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

POSITIONS OF THE PARTIES

(1) Interests and Welfare of the Public

The basic argument of the PBA in regard to this criteria is that the interests and welfare of county citizens are not well-served by the “hemorrhaging” turnover of highly trained and highly skilled and productive Prosecutor’s investigators (PBA Brief, 9-32). In regard to the turnover, the PBA presented proof that one third of the investigators had turned over since 1992 (P-3; Tr 88). It asserted that only a small number of these departures were due to promotions, and that most left to pursue careers in other law enforcement agencies. In regard to the skills of the investigators, the PBA indicated that the investigators were college trained and received additional academy training after employment (PBA Brief, 28). The PBA pointed to the Prosecutor’s own annual reports and other actions as proof of the expanding workload, the professionalism, and the productivity of the investigators (P-2, P-4, P-5, P-6). The PBA argued that in virtually every area of measurable criminal activity, Hudson ranked in the top two or three positions among counties state wide.

At the core of this turnover, argued the PBA, was low compensation and the lack of an automatic step system that would permit the investigators to anticipate their career progression on the salary guide. Under the previous agreement, an automatic step system was in place, but it expired with the termination of the prior agreement. As proof of the fact that the compensation system was driving the turnover, the PBA presented the testimony of several former investigators (Tolomeo, Mertz, Mack, Tkaczyk, Feliciano, Hetzel) who testified they basically left Hudson County employment because of the low salaries combined with the absence of an automatic step guide (Tr 10-25, 30-57; PBA Brief, 21-28). Exacerbating the situation, according to the PBA,

were the numerous joint operations conducted with other public agencies in which the employees of these agencies working side by side and usually under the supervision of the Prosecutor's investigators but were earning greater salaries and benefits than the investigators and enjoying the advantages of automatic step increases (Tr 57-75). The PBA concluded that this disparate treatment was key to understanding the high rate of turnover.

In weighing this criteria, the County stated that the law required the arbitrator to look beyond the adequacy of the employee compensation package by balancing this package against other budgetary priorities in the employer's budget and by assessing the impact on taxes (County Brief, 21-23). On the latter point, the County argued that the arbitrator cannot simply assert that taxes should be raised to cover the interest arbitration costs. The County argued the 6 percent increase sought by the PBA in addition to automatic steps in each of the three years was excessive in terms of the County's five percent Cap, requiring other budget items to be reduced, including the layoff of employees and reductions in services to the public. The PBAs final offer would also not permit the County to address its structural deficit. The County also believed that such large wage increases would not serve the interests and welfare of the public because it would be "patently unfair" to taxpayers already confronted with unemployment that is above the state average (C-33), the third lowest per capita income in the state, the highest percentage of the population living in poverty, and the second highest number of persons living in poverty (C-34). In regard to the turnover issue (more fully discussed below), the Prosecutor testified that he felt that turnover was remarkably low (Tr 140). The Chief of Investigations testified he did an exit interview with some departees and that none of them had mentioned the absence of automatic step increases as a cause of their departure (Tr 130).

(2a) Wage and benefit comparability with private employment in general.

The PBA argued that comparable public law enforcement agencies were the most relevant comparators and offered the findings of other arbitrators supporting this perspective based on their belief that there were no comparable private sector jobs (PBA Brief, 46-47).

The County offered proof that private sector settlements supported its final offer (Employer Brief, 15, 16). Wage increases in the private sector generally were 3.5 percent in 1995 (C-106), with unions receiving wage increases of 2.5 percent (C-100). In 1996 the wage increases averaged 3.0 percent (C-99). The average increase for New Jersey private sector employees was around 3 percent (C-102). The County also pointed out that the investigators earned substantially more than the average private sector employee and the average New Jersey production worker (C-96, C-104).

(2b) Wage and benefit comparability with public employment in general.

The PBA President testified to the fact that many of the pay rates for the unit members were below the public assistance level (P-45).

The County offered proof that other public employees had accepted wage freezes (C-88, C-90, C-95). Data was also offered by the County that indicated that the investigators earned 17.5 percent more than public service detectives (C-86).

(2c) Wage and benefit comparability in the same or similar comparable jurisdictions.

The PBA argued that the most appropriate comparison were the employees from outside police agencies with whom the investigators frequently worked because they were the natural comparators of the investigators. As proof of the salary disparities with the employees from the outside agencies, the PBA entered the testimony of several former investigators (PBA Brief, 14-

29). The PBA pointed out that these witnesses consistently testified that they left Hudson County employment for larger salaries and automatic step increases.

In regard to other comparable groups, the PBA also concluded that all of the municipal agreements and settlements it placed on the record contained automatic step arrangements, with the exception of the Hudson County Prosecutor's Investigator unit (PBA Brief, Chart 1, 34). It also concluded that the Hudson County Investigators stand alone among county prosecutors' offices ~~in having~~ no automatic step system (PBA Brief, 32). As a result, the PBA believed that, since there is no contractually guaranteed method for reaching maximum pay in Hudson County, the County benchmark that has to be used for comparison is the average salary of \$40,522.94 calculated by the County (C-4; PBA Brief, 34). Consequently, the Hudson County Investigators benchmark pay rate is always at the bottom of every comparison, with the average of the investigators' peers being 25 percent more on base compensation alone (PBA Brief, 35).

The PBA argued ~~that the low compensation and benefit base for the investigators created~~ by the above analysis, as well as the analysis of overall compensation below, meant that its final offer would provide no catch up contribution, but that the final offer of the County would cause the investigators to fall further ~~behind~~ whether compared to ~~settlements in surrounding~~ municipalities (PBA Brief, Chart 6, 42) or to other prosecutors' offices (PBA Brief, Chart 7, 43).

In arguing for the importance of the automatic step guide, the PBA offered proof of the adoption of such a system in other prosecutors' offices (PBA Brief, 43-46), in Ocean County through interest arbitration (Stanley Aiges and Carl Kurtzman awards), Camden County (voluntary Memorandum of Agreement, P-39), Union County (step system plus senior pay based on years of law enforcement service in Union County and elsewhere, P-35), and Bergen County (negotiated step system, P-31). The PBA also pointed out that ~~the recent decisions in Hudson~~

County law enforcement units provided support for an increment system. Arbitrator Michael Murray awarded a step system in an award that was overturned for other reasons (P-44), while Arbitrator Robert Light in a unit with multiple pay rates awarded an across the board increase plus an additional sum for employees not at maximum (P-41), thus creating a career path.

The County argued that the most relevant comparisons were with other Hudson County employees who were paid out of the same limited pool of tax dollars rather than other counties facing much fewer economic difficulties. In that regard it offered proof that no other Hudson County bargaining unit enjoyed salary guides with automatic annual increments (P-41). In addition, the County pointed out that the step system in the prior agreement expired with that agreement (County Brief, 7).

The County pointed out that although the investigators were among the highest paid County employees, they were still seeking increases above the prevailing pattern of five percent annual increases in other County uniformed units. In fact, six percent annual increases plus automatic step increases totaling 14.46 percent would far exceed the increases received by other County employees and private and public sector employees in general, the County argued (County Brief, 10). (It should be noted that the County during the course of the hearing estimated the cost of the steps and the six percent increase to be 11 percent [Tr 118]). In addition, the County pointed out that the 5.47 percent step increase given to this unit in 1994 and the 5.53 percent step increase given in 1995 both exceeded the increases given to comparable units (C-43; Tr 105).

In regard to the superior officers of the investigators, the County pointed out that the unrefuted testimony of the Prosecutor indicated that the superior officers received increases totaling five percent annually for 1994, 1995, 1996, so that if a four percent increase for the investigators for 1996, when added to their 11 percent increases in 1994 and 1995, would

equalized the increases for the two units over that three year period, thus keeping the promise to the superior officers that they would received the same increases as the investigators (Tr 147-148).

In terms of the other employee groups within the Prosecutor's office, the investigators got the largest increases in 1995 (5.53 percent)(C-52). This increase was well ahead of the clerical employees, and, in terms of actual dollars, only 10 percent less than the increase given to the assistant prosecutors. In a comparison with other uniformed rank and file employees in the County, the County offered proof that the investigators earned higher salaries; 60.6 percent more than the average sheriff's officer and 49 percent more than the average corrections officer (C-53). The three percent annual increases in 1994 and 1995 given to non-uniformed County bargaining units was also below those given to the investigators (C-64-C-85).

The County also pointed out that other interest arbitrator awards in New Jersey in recent times commonly had been **in the three to four percent range, with the average for 1995 being 4.3** percent and 1996, 4.01 percent (C-87 to C-95). In a comparison with other Prosecutor's Investigators state-wide, the County offered proof that only 9 counties out of 22 (21?) had higher maximum salaries than Hudson County (C-47). Additionally, the benefits received by the investigators fell within the **range of benefits received in other counties (C-48, 49)**. Only eight out of 21 counties **had automatic steps** in the Prosecutor's office (C-47; Tr 123). (It should be noted that C-47, 48, 49 covered only 18 counties).

In terms of the PBA's witnesses who were former investigators now working for other State, Federal, or municipal employers, the County argued that the comparisons were not as relevant as other Prosecutor's offices, for example, Charles Hetzel who went to the Bayonne Police Department whose agreement contained an automatic step system. In fact, the County

pointed out that the top salaries in the municipal police department agreements submitted by the PBA were higher than the investigators top salary only 27 percent of the time, thus indicating that investigators reaching the top salary in Hudson County will earn more than the vast majority of municipal police officers (Employer Brief, 15). In regard to R. Justin Tolomeo's US Drug Enforcement salary, the County pointed out that without the special differentials his new base was less than the salary he earned in Hudson County and the average base salary of all investigators of \$40,400 (Tr1, 12). Tolomeo also worked more hours (Tr1, 19-20). In regard to former investigator David Mertz who is now employed by the State Commission of Investigation, the County pointed out that he now earned less than the average Hudson County investigator salary, and that less than one-third of the investigators could earn more money by gaining State employment (C-4). In regard to former investigator Raymond Mack who is now employed by the US Navy, the County argued that the fact he left five years ago to join a Federal agency that is not comparable to Hudson County undermined the relevancy of his testimony.

(3) The overall compensation.

The PBA offered proof that the overall compensation of the investigators was also inferior, with working hours longer than surrounding municipal police units (PBA Brief, Chart 2, 36). Longevity pay is also nine percent below the average maximum rate of 11 percent (PBA Brief, Chart 3, 37), which when combined with low base rates placed the investigators far behind their municipal counterparts (PBA Brief, 38-39). The PBA also provided proof that the investigator's holidays and vacations were also below the average for the same municipal comparators (PBA Brief, Chart 4, 40), and that the investigators also received no clothing allowance while the other municipalities averaged \$980.

The County argued that the PBA members, in addition to salaries that exceeded the median Hudson County annual wage by 31 percent, also received additional cash benefits “such as longevity, generous time off benefits and a comprehensive health insurance package” (County Brief, 9; C-42,44,45). In addition, the County pointed out that it was proposing in its final offer to improve the overtime Cap as well as a reduction of the notice required for requesting vacation leave. Overtime, alone, the County pointed out, was equivalent to six percent of the 1996 investigator wage bill (C-130, 131; Tr 126), a large increase over prior practice (Tr 151).

Comparisons with the benefits of other county prosecutors’ offices offered by the County indicated that the Hudson County investigators received five days less vacation on average (C-48); that eight of 18 counties had higher longevity, five had the same or lower longevity rates, and five counties had no longevity for the investigators (C-48); that eleven counties had either uniform allowances (6) or replaced damaged clothing (5) (C-48); that 14 counties had one or two additional holidays (C-49); ~~and that most counties had one or two additional personal days than~~ Hudson County (C-49). Comparisons within Hudson County law enforcement units indicated that the rank and file Sheriff’s officers and Corrections officers were paid much less, but tended to have somewhat greater benefits (C-53).

(4) Stipulations of the parties.

There were no substantive stipulations.

(5) The lawful authority of the employer.

The PBA asserted that this criteria was irrelevant since the Prosecutor is not subject to legislative determinations such as the CAP law (PBA Brief, 6-8, 48-50). The PBA pointed out that as a Constitutional officer the Prosecutor’s budget is autonomous from the County since the Prosecutor can petition the County assignment judge if the County disapproves his budget. The

PBA also pointed out that it is the Prosecutor who is the public employer, as indicated by the fact that it is the Prosecutor who signs the collective bargaining agreements (J-1).

The County argued that the five percent CAP, the legal requirement to adopt a balanced budget, and underlying structural deficits requiring one-time solutions all call for the conclusion that the 14.46 annual cost of the PBA's final offer is excessive (County Brief, 24-25). The County also pointed out that the PBA presented no proof as to how the Prosecutor could afford the PBA's final offer without negatively affecting other budget items. The pattern effect of granting the PBA's final offer on the settlements in other County bargaining units was also noted. In regard to the duration of the agreement, the County argued "that it would be unfair to encroach upon the newly appointed Prosecutor's right to negotiate the terms and conditions of employment (County Brief, 8).

(6) The financial impact on the governing unit, its residents and taxpayers.

The PBA also asserted that this criteria is not important in controlling the outcome of this interest arbitrator. The PBA believed that the record supported a conclusion that the financial impact of its final offer was minuscule since the Prosecutor's salary costs for the investigators were only .003 percent of the County's budget or \$1.80 per year for a taxpayer with \$3,000 in total taxes (PBA Brief, 50-53). Furthermore, a one percent wage increase would equate to only .00003 of the County's budget (50-52). In addition, the PBA pointed out the testimony of Chief Financial Officer Abraham Antun that a portion of the Prosecutor's budget was paid from non-tax sources (52), and that overall taxes constituted 45 percent of the total County budget in 1995 and 48 percent in 1996 (Tr, 215).

The PBA also asserted that the County for a period of two contracts with the investigators had borne the cost of the step system they were now trying to take away without undermining the

County's parameters for the Prosecutor's budget (53-59). The PBA pointed out that its last offer required no new costs that had not already been borne by the Prosecutor and the County without a problem (56; Tr 235). The PBA also pointed to the testimony of Antun that County spending was well within CAP (57; Tr 245).

The County argued that substantial evidence proves that Hudson County is economically distressed and cannot afford the PBA's last offer (County Brief, 17-20; Tr 203-260; C-13 to 41). The County indicated that it had "the third lowest per capita income in the state, the second highest number of persons living in poverty, the highest percentage of families, children and elderly persons living in poverty and the sixth lowest net valuation per capita of any county in New Jersey (C-34). Its residents had the second highest county property tax rate and highest average increase in total property tax (C-35, 36). Hudson county taxpayers face the highest ratio of county property taxes to per capita income in the State (C-37). The County is also saddled with a high unemployment rate of 9.5 % while the state average is 6.4% (C-33). Eleven of 12 Hudson County municipalities qualified in 1995 for state assistance as "Distressed Cities" (C-31, 32, 33, 34, 35, 36, 37). Moreover the County's structural deficit ballooned from \$15 to \$47 million from 1988 to 1997.

One result of this situation has been a heavy reliance on one-time revenue sources (T3, 204). Another result has been an increase in the County tax rate of 4.5 percent from 1994 to 1995 and a tripling of the rate to 13.2 percent from 1995 to 1996 (C-16, 17). A further result was the layoff of the County police force, crossing guards, parking violations officers, fire department, and JTPA employees (C-19). There has also been a decline in the County's reserves and a 16 percent loss in the County's tax base (C-24; Tr 209). The State has cut aid from 24.91 percent in 1995 to 1.9 percent in 1996 despite the fact that 92 percent of Hudson County is considered

financially distressed by the State (C-31). Additionally, Moody's reduced Hudson County's bond rating (C-24, 25; Tr 208-209). The County concluded that in this economic context, automatic step increases that generate large increases in costs and thus additional layoffs are not justifiable. The County pointed out that the PBA did not call upon a budget expert to testify for them. In terms of the proportion of the County budget accounted for by the investigators' wage costs, Antun testified that it was .3 percent (Tr 224). The Prosecutor testified that only a small portion of his budget was accounted for by grants (Tr 143). The County also pointed out that Arbitrator Robert Light did not grant an automatic step system to PBA 334 in his award (P-41).

(7) The cost of living.

The PBA pointed out that, while its last offer exceeded the increase in inflation, this outcome must be balanced against the below inflation increases that occur when inflation is high. The PBA also pointed out that pay increases in comparable institutions exceeded inflation rates even before the effect of step increases is considered. With the investigators earning so far below comparable law enforcement agencies, the PBA believed the cost of living criteria to be irrelevant (PBA Brief, 59-60).

The County pointed out that even its last offer exceeded the 1996 CPI increase of 2.9 percent, and, therefore, was the most appropriate under this criteria (Tr 126; C 132-138).

(8) The continuity and stability of employment and other factors.

The PBA asserted that under a prevailing wage standard for prosecutors' offices the Hudson County investigators were far below that standard in terms of compensation and an automatic progression system. The PBA pointed out that while it sought with its last offer to make some progress towards that prevailing wage standard, the County, on the other hand sought to take away an existing step system that had been in the last two agreements dating from 1992

and that was already the standard in the industry (Tr 102, 150). The PBA pointed out that it had under the interest and welfare criteria already established that the higher investigator turnover created poor continuity and stability of employment (PBA Brief, 61-62).

The County argued, contrary to the PBA's contention that turnover was very high in the Prosecutor's office for the bargaining unit at issue, that turnover, in fact, was only 7.6 percent (C-51; C-140) per year, and that of that number almost 60 percent of the separations were due to promotion, retirement, or for personal reasons related to the job (C-51). The County thus concluded that the turnover was not due to low wages or the absence of an automated step guide. Additionally, the County was having no difficulty in attracting qualified applicants for vacancies (Tr2, 140). Furthermore, the PBA offered no proof that the turnover of the investigators was any different than any other County Prosecutor's office, according to the County. Finally, although not one investigator had been laid off to date and none was planned, the County asserted that the PBA's final offer increased the likelihood that more County employees would be added to the 755 laid off since 1993, a number that included the disbanding of the County police and other units (C-111 to 113; Tr 214). The County offered proof that 27 percent of the County's workforce had been laid off in 1995, and an additional nine percent in 1996).

ANALYSIS

This interest arbitration will be decided under the default conventional arbitration procedure provided by the Police and Fire Public Interest Arbitration Reform Act. With the exception of the "stipulations of the parties" criteria (there were none), the arbitrator believes all the remaining criteria to be relevant to the determination of this dispute, although the weight of the criteria will vary, as will be clear from the below discussion. The findings will be discussed under each criteria below.

(1) Interests and Welfare of the Public

The PBA made the point that a third of the bargaining unit had turned over during the past four years, and, therefore, it was not in the interest of the public to have highly trained, productive employees turn over because of the poor compensation system it attributed as the cause of the turnover. However, if that turnover is divided into four years, the annual turnover becomes about eight percent a year, a figure close to what the County calculated as the annual turnover. While the absence of turnover data for other prosecutors' offices makes it impossible to assess relative turnover, in the arbitrator's opinion it does not fall into the excessive area, particularly since over a half of the turnover was accounted for by promotions and retirements. Indeed, given some of the compensation and benefit deficiencies discussed below, the arbitrator would agree with the Prosecutor that the turnover is remarkably low. For example, it is far below the 19 percent annual turnover in the Sheriff's Office reported in the Light arbitration award (P-41). Consequently, this arbitrator cannot conclude from this record that the interests and welfare of the public have been damaged by excessive turnover.

On the other hand, the undisputed precarious financial condition of the County established by the record, and discussed in more detail below, would suggest that the final offer of the PBA would have an adverse impact on an already burdened Hudson County taxpayers.

(2a) Wage and benefit comparability with private employment in general.

It tends to be accurate, as the PBA asserts, that there are few private sector jobs that are comparable to public sector law enforcement positions. However, as an indicator of the health of the private sector labor market, wage trends in the private sector are relevant. As the record established, these private sector wage trends have been below the public sector for a number of years, thus supporting the County on this criteria.

(2b) Wage and benefit comparability with public employment in general.

The record established that wage trends in the public sector in general are not supportive of the PBA's last offer, although, when the automatic increment costs are considered, the difference between the PBA's last offer and the going across-the-board increases is less.

(2c) Wage and benefit comparability in the same or similar comparable jurisdictions.

In terms of **automatic step systems**, the record establishes that in municipal law enforcement agreements, particularly those in the Hudson County area, automatic step systems are almost universal, as they are in most state and federal agencies. However, the record established that no other Hudson County bargaining unit had automatic step increases, and, contrary to the PBA assertion that Hudson County stood alone among other county prosecutors' offices in not having automatic step systems, data from other county prosecutors' offices around the State indicated that automatic step systems are not universal in such units; only eight of the 18 counties for which data was reported by the County had such systems, although more recent data provided by the PBA indicated that Camden County should be added to those with step systems, making the total now 9 (P-39). The PBA also established that automatic step systems in Ocean County had recently been awarded (already reported in the County data).

The record established that the prior agreement contained step arrangements, but there was no provision that they automatically continued into the next agreement. The PBA also established that Arbitrator Murray awarded a step system for County Police unit (now disbanded) and that Arbitrator Light had awarded a larger increase for those employees below maximum in another County Police unit. In sum, the absence of an automatic step system for the investigators would be consistent with other currently existing County units and half the 18 county prosecutors' offices that were reported, but inconsistent with the surrounding municipal law

enforcement units with which they work very closely and the prior collective bargaining agreement.

In terms of **maximum salary levels**, the PBA suggested that average salaries (\$40,522) in Hudson County had to be used since there was no automatic mechanism for reaching the top of the guide. However, approximately a third of the current bargaining unit has reached the top of the current contractual guide, so that maximum amount therefore was a relevant indicator of what individuals could attain after ten years as investigators, assuming the pattern of past wage increases is repeated. Additionally, average salaries can vary significantly across bargaining units depending upon the relative seniority of the unit members, thus making comparisons using the benchmark unreliable. Using this higher figure (\$50,954), Hudson County compares well with other county prosecutors' offices facing similar economic circumstances, and it also compares well with municipal officer maximums at the end of 1995.

In regard to the very relevant comparison with other prosecutors' offices, the average salary maximum for the 18 counties reported was \$51,305, just above Hudson County. But this figure is misleading because the range of variability across counties is very large, from \$37,670 at the maximum in Atlantic County to \$68,500 in Bergen County. Hudson County is in a middle group of eight counties that are paid approximately \$1,000 more or less at maximum. Included in this group are two northern counties that would appear to have similar urban problems and that have similar salary maximums: Essex (\$52,053), and Passaic (\$48,834). All the five counties paid substantially below Hudson County, with the exception of rural Sussex County, are in southern New Jersey. All of the five counties with substantially higher maximums are in northern New Jersey. The average maximum for those counties (Bergen, Union, Middlesex, Somerset, Warren) was \$60,588, substantially above the Hudson County maximum for the investigators. It should

also be noted that three of the five counties in this high group plus Passaic had contractual provisions for automatic step increases, thus guaranteeing progression towards the maximums.

In regard to recent **salary increases**, the record established that no matter what the comparison group or no matter what the estimated cost of the PBA's proposal (11 percent by one County attorney and 14.46 percent by another County attorney; no calculations were offered by the PBA), the PBA's last offer far exceeded the going rates of increases if automatic increases are not included. The County's last offer was much more consistent with recent interest arbitration awards, not including the costs of automatic increment systems that most agencies have, and with maintaining internal equity with the investigator's superior officers in terms of rate of increases. But a four percent across-the-board increase does not contribute substantially to improved external equity either with prosecutors' offices in northern New Jersey or with surrounding municipal law enforcement units where the cost of automatic increments has not been factored into the published costs of settlements, as they traditionally have not been in law enforcement agencies. The parties did not place on the record the costs of increments for the other settlements placed on the record, and without a seniority scattergram for each law enforcement agency, they cannot be calculated by the arbitrator. So it will have to suffice to say that, in cases where there is an automatic increment system, the actual settlement costs exceed to some degree the across-the-board increases usually publicized by the parties. That is to say, the four per cent average interest arbitration increases for 1996 reported by the County do not reflect the full costs of the settlements, costs that can be substantial for a relatively junior unit like the Hudson County investigators where two-thirds of the investigators are below the maximum rate. It also should be noted that the two-year wage freeze for most New Jersey State employees noted by the County did not freeze the automatic increments for most employees covered by union agreements.

(3) The overall compensation.

The clear conclusion is that, whether comparing Hudson County investigators to municipal law enforcement officers or to investigators in other county prosecutors' offices, the overall compensation of the investigators, while not substantially dissimilar to other Hudson County law enforcement units, is below average. The two additional benefits offered by the County would help to reduce this benefit disparity to some extent.

(4) Stipulations of the parties.

None.

(5) The lawful authority of the employer.

While the PBA asserted that the Prosecutor could autonomously establish a budget approved by the assignment judge, if necessary, there was no proof that the Prosecutor's budget was not subject to the County's CAP as part of the County budget. In any event, to establish a working relationship with the budgetary source of funds, a prosecutor cannot long ignore the budget imperatives of the county.

(6) The financial impact on the governing unit, its residents and taxpayers.

The record clearly established that a taxpayer with a \$3,000 tax bill would pay only \$1.80 annually to fund the Prosecutor's salary budget for the investigators, and that the PBA's last offer would equate to only a fraction of this cost. The PBA also argued that the prior agreement with automatic increments had been funded without problems, but it must be remembered that only increment increases were provided in that agreement, not across-the-board increases. On the other hand, the extension of the the PBA's last offer to other County units likely would reinforce the substantial and undisputed economic difficulties experienced by the County as summarized at pages 5, 13-15 of this award and in the related County exhibits. The arbitrator has never seen a

situation where the negative financial impact of a settlement and its possible extension to other employees through pattern bargaining could have such negative consequences for a public agency, its employees, and its taxpayers.

(7) The cost of living.

Both offers exceed the 1996 CPI of 2.9 percent, but obviously the County's last offer of four percent was the closest to the recent rate of inflation.

(8) The continuity and stability of employment and other factors.

Given that the rate of turnover of investigators was found above to be unremarkable, particularly when over half of the turnover is accounted for by promotions, retirements and other factors, it cannot be concluded that the PBA's last offer would directly contribute to greater continuity and stability of employment by significantly reducing turnover. On the other hand, the extension of the the PBA's last offer to other County units likely would increase the substantial layoffs recently experienced by County employees, thus undermining the continuity and stability of employment of County employees.

In summary, the application of the statutory criteria to the cost of the PBA's last offer of approximately 11 percent produces a clear conclusion that a conventional award in that cost neighborhood cannot be justified in the current economic conditions confronting the County. Additionally, it would far exceed the increases provided to other County employees, including other County law enforcement units. The recent history of County economic conditions described above leaves little doubt that the County cannot absorb large salary increases at this point in time if it is to address its structural deficit, and minimize tax increases, and layoffs. As previously discussed, the PBA's final offer, by itself, would have little direct financial impact on the County,

but extended to other County employees through pattern bargaining effects it would have major consequences.

There is little question that external comparisons tend to favor the implementation of an **automatic step system**. Municipal law enforcement units universally have them, and, while only half of the prosecutors' offices around the State have them, there have been several recent adoptions of automatic step systems. But, with the exception of the investigator's last agreement, no one **else** in Hudson County has automatic increments, and economic conditions in the County are not compatible with the high cost of setting up an automatic step system. In terms of **salary maximums**, despite the fact that maximums changed very little during the last agreement, the investigators are still paid more at maximum than law enforcement staff in most surrounding municipalities, and relatively the **same** as prosecutor's investigators in two nearby counties facing similar urban economic ills, Passaic and Essex.

In terms of **salary increases**, the County's last offer reflects the going rate elsewhere for across-the-board increases, and thus would retain the relative position of the maximum salaries with external public jurisdictions, but this across-the-board compensation strategy does not reflect the fact that most other public jurisdictions also pay automatic increments. As a result, under the County's last offer, the **junior employees** who comprise two-thirds of the bargaining unit would receive **substantially lower salary increases** over the period of the agreement than in other public jurisdictions with **step increases** and make no relative progress towards the guide's maximum salary. On the other hand, if the alternative strategy of providing only step increases was followed, the **senior employees** comprising a third of the bargaining unit would continue to receive low annual increases as occurred under the last contract, and the salary maximums would deteriorate in relation to comparable external public jurisdictions. But one thing is clear, **as the above analysis**

indicates, is that the financial impact of the PBA's last offer on the governing unit, its residents and taxpayers, the interests and welfare of the public, and the continuity and stability of employment is such that the County cannot afford to both give competitive across-the-board increases and fund automatic steps in a bargaining unit that has so many junior employees.

Accordingly, the below award is a compromise aimed at meeting the needs of both junior and senior employees over the three-year term of the award. The first year provides a four (4) across-the-board increase for all unit members applied to the 1995 salary guide. This increase maintains internal equity with the investigator's superiors and other County law enforcement units, provides increases for senior unit members, and contributes to maintaining parity of salary maximums with comparable prosecutors' offices, particularly Essex and Passaic, and surrounding municipalities

For the second year, an across-the-board increase of three (3) percent would be applied to the 1996 guide. This increase would provide senior unit members with an increase and contribute to parity of salary maximums with comparable prosecutors' offices and municipalities.

The third year provides for automatic step movement only, costing approximately five (5) percent to five and one-half (5.5) percent, using a County estimate and the costs of the increments in the two years of the prior agreement as a guide. The costs of the increments calculated by the arbitrator are also in this ballpark. This increase would maintain the guide concept (for the term of this agreement only), and provide increases for junior employees more comparable to public units with automatic steps.

If practicable in terms of implementation, the overtime and vacation alterations proposed by the County would be effective January 1, 1997.

The probable effect of this award is that it will still cause relative loss of comparability with agreements covering municipal police and other prosecutors' investigators that have automatic increment systems, but the finances of the County dictate this outcome at this point in time.

The duration of the award is three years because over half of the three-year period has elapsed at this time, and negotiations for the next agreement would have to commence soon. The longer duration also is more compatible with the fact that economic conditions providing the framework for 1998 negotiations would be unlikely to change substantially in the new few months one way or the other. Finally, it is the only option for providing step movement since it spreads the cost over a longer period.

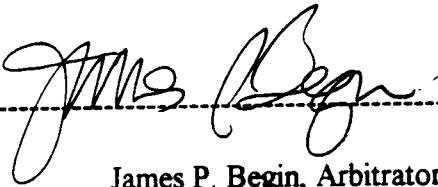
AWARD

1. Retroactively to January 1, 1996, a four (4) percent across-the-board increase shall be applied to the 1995 salary guide.

2. Retroactively to January 1, 1997, a three (3) percent across-the-board increase shall be applied to the 1996 salary guide. The County's proposals regarding vacation and overtime to be effective **January 1, 1997**, where practicable in terms of implementation.

3. Effective January 1, 1998, a one-step movement on the 1997 salary guide for investigators below the top step of the guide.


Dated: July 23, 1997



James P. Begin, Arbitrator

State of New Jersey
County of Mercer

On this 23rd day of July, 1997, before me personally came and appeared JAMES P. BEGIN 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 the same.



An Attorney at Law of the State of New Jersey

