

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

ATLANTIC COUNTY SHERIFF'S OFFICE

"County,"

- and -

ATLANTIC COUNTY SHERIFF'S SOA

"Association."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2005-006

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the Employer:

James Ferguson, Esq.
Atlantic County Law Department

For the Union:

Stanley Waldman
Labor Relations Consultant

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, pursuant to a petition filed by the Atlantic County Sheriff's Office SOA [the "SOA"] and the County of Atlantic [the "County"]. The County and the SOA are parties to a collective negotiations agreement [the "Agreement"] covering Superior Officers covering the period January 1, 2001 through December 31, 2003. An impasse developed between the County and the SOA resulting in the submission of the dispute to interest arbitration pursuant to the rules of the New Jersey Public Relations Employment Commission. I conducted a pre-arbitration mediation session on September 21, 2004 at which time the parties were not able to reach a voluntary agreement. After the mediation session, the parties narrowed the issues in dispute. They also agreed, in the absence of substantial or material factual disputes requiring testimony, to waive a formal interest arbitration hearing and to submit final offers and documentary evidence in lieu of a formal hearing. Briefs were submitted by both parties on or about February 11, 2005 and the record was closed on that date.

The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

FINAL OFFERS OF THE PARTIES

The SOA

ECONOMIC ISSUES

1. **Article 4 – Work Schedule**

4.6 Add: Any time off given other county employees (such as late opening for inclement weather, etc.) will be given to employees covered under this contract. If employees covered under this contract are required to report in, they will receive compensatory time for the time.

2. **Article 6 – Call-In Time**

6.4 Delete: "4 hours"
Add: 6 hours

3. **Article 5 – Overtime**

5.2 Delete: 5.2.2 (Holidays) for overtime purposes
5.2 Delete: 5.2.4 (Administrative Days) for overtime purposes

This proposal is based upon the County's acceptance of all of the SOA's economic proposals.

4. **Article 9 – Clothing Allowance**

9.1 Delete: Article 9 (Clothing Allowance) from Agreement
Add: \$1,105.00 per unit member to base salary effective January 1, 2004. Agree to sidebar language stating that \$1,150.00 has been paid prospectively and that negotiated raise percentage of 4% of \$1,150.00 or \$46.00 will be owed retroactively for 2004.

5. Article 19 – Longevity

19.1 Add applicable longevity to 2004 base salary prior to applying 4% wage increase.

6. Article 10 – Salary

10 Increase Lieutenants' salaries by 4% on January 1, 2004, subsequent to adding \$1,000, applicable longevity and clothing allowance of \$1,150 into 2003 base salary. Increase 2004 salary by 4% in 2005, 2006 and 2007.

Increase Captains' salaries by 4% on January 1, 2004, subsequent to adding \$1,000, applicable longevity and clothing allowance of \$1,150.00 and into 2003 base salary. Increase 2004 salary by 4% in 2005 and 2006. Do not apply 4% percentage raise in 2007.

7. Article 11 – Sick Leave

11.8 Delete: "\$20,000.00 employees."
Add: \$22,500.00 for Lieutenants and Captains

NON-ECONOMIC ISSUES

8. Article 15 – Grievance Procedure

15.4 The SOA agreed in concept to changes in the grievance procedure but did not finalize language with the County. The SOA will agree to increase the County response time in steps 2 and 3 from five (5) days to ten (10) days.

The County

1. Article 4. Work Schedule

The County agrees to add a section 4.6 dealing with employees working late openings and receiving compensatory time. The proposed language is as follows:

Any time off given other county employees (such as late opening for inclement weather, etc.) will be given to employees covered under this contract. If employees covered under this contract are required to report in they will receive compensatory time for the time.

2. Article 5. Overtime

Section 5.2. The County seeks to delete holidays and administrative days as counting as "hours worked" for purposes of computing overtime.

3. Article 6. Call-In Time

Section 6.4. The County agrees to increase the compensatory hours from 4 hours per month to 6 hours per month.

4. Article 9. Clothing Allowance

Effective 01/01/05, the County agrees to an increase in the clothing allowance from the current figure of \$1,150 to \$1,300 and then effective January 1, 2006 a further increase to \$1,350.

5. Article 10. Salary

The County proposes 4% for each year of a four (4) year contract for lieutenants, and 4% for each of the first three (3) years for captains with no increase for captains in the final year. The salary schedule will appear as follows:

	2004	2005	2006	2007
Lieutenants	67,712	70,421	73,238	76,168
Captains	72,912	75,829	78,862	78,862

This reduces the differential between captains and lieutenants from the current differential of \$5,000 to \$2,694 in the last year of the contract which achieves a goal which was sought by the majority of this bargaining unit from the onset of negotiations.

In addition, the County will agree to pay a one time signing bonus of \$500, not added to base.

6. Article 11. Sick Leave

The County agrees to change the terminal sick leave buy out for lieutenants from the current figure of \$20,000 to \$22,500, the same as captains.

The County will also agree to increase the quarterly perfect attendance bonus from \$75.00 per quarter to \$100.00 per quarter. Should there be perfect attendance for the entire year, the officer would receive \$600.00.

7. Article 12. Leave of Absence

This will confirm that the union's proposed change regarding leave of absence was dropped (see letter of August 9, 2004 confirming same)

8. Article 13. Vacation

The SOA has dropped its proposal to increase vacation time (see letter of August 9, 2004 confirming same)

9. Article 14. Insurance and Worker's Comp.

The County rejects the union's request for an increase in post retirement health benefits and seeks to retain the status quo of three (3) years for post retirement health benefits.

10. Article 15. Grievance Procedure

The County proposes to add the following language which would add time limitations to the grievance procedure:

Addition in language in Step Two to indicate that if the grievance is denied at Step One that the union will have 10 days from the time of denial to present the grievance at the Second Step. If the grievance is not presented to the Second Step within this time frame then the grievance is deemed to be waived. Step Three be modified to include language to indicate that if the grievance is denied at Step Two that the union will have 10 days from the date of denial to process the grievance to the Third Step otherwise the grievance is deemed to have been waived.

11. Article 19. Longevity

The SOA has agreed to drop its claim for increased longevity (see letter of August 9, 2004 confirming same)

The parties did not agree upon an alternative terminal procedure and accordingly, pursuant to statute, the arbitration was conducted under the procedure of conventional arbitration. That procedure authorizes the arbitrator to fashion an award without being required to adopt the final offers of the parties. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

(2) 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.

BACKGROUND

Atlantic County, located in Southeastern New Jersey, is home to approximately 259,423 residents and has the seventh lowest population among the State's ten southern counties. Atlantic County also is home to the casino industry located in Atlantic City. Despite its relatively low population, the County has a crime rate of 49.2 out of 1000 inhabitants. The violent crime rate of 5 per 1000 residents is fourth highest among the ten counties in Southern New Jersey.

The County is growing. The net valuation taxable in Atlantic County increased from \$16.1 billion in 1995 to \$21.32 billion in 2003. Recently, the County tax rate has decreased from 0.443 in 2001 to 0.400 in 2004, and decreased by an additional 1.5 cents in 2004.

The Superior Officers Association is a small unit. It consists of three Captains and three Lieutenants. The existing collective negotiations agreement expired on December 31, 2003 and these negotiations will, by stipulation of the parties, result in a new four year agreement with effective dates January 1, 2004

through December 31, 2007. The parties each propose annual increases of 4.0% per year over the four-year period for Lieutenants and to annual increases of 4.0% for each of the first three years of the agreement with no increase in the fourth year for Captains, although they disagree on the SOA's proposals for dollar adjustments of an additional \$1,000 added to base pay. These proposed dollar adjustments would significantly increase the net economic changes beyond the across-the-board percentage increases that have been proposed. As illustrated by the parties' final offers, the parties are in substantial agreement regarding modifications to compensatory time, call in time, overtime, and terminal sick leave benefits. Other economic issues remaining in dispute center around whether certain monies related to longevity and clothing allowance should be "rolled in" to base pay.

Against this general backdrop, the parties have offered the following arguments in support of their respective positions. I summarize them as follows:

THE POSITIONS OF THE PARTIES

The Position of the SOA

The SOA seeks salary enhancements and asserts that comparability studies, cost analysis and previous interest arbitration awards in Atlantic County support its proposals for such enhancements in order to provide "equity". In seeking such equity, the SOA points to the "logic" of rolling certain existing

payments into base pay as a means of raising salaries in a manner asserted to cause minimal financial impact on the County.

Addressing its proposal to roll the \$1150.00 clothing allowance for 2003 into base pay before application of a 4.0% wage increase, the SOA calculates that the retroactive cost to the County would be \$46.00 per officer for 2004 because the clothing allowance has already been paid. The SOA calculates further that in 2005 the total cost would increase by \$287.04, in 2006 by \$298.50 and \$206.96 in 2007 for a total four-year increase in costs of \$1,068.86. The SOA calculates that the total cost of the individual clothing allowance for each year after the "roll-in" is calculated would be \$1196 in 2004; \$1,244 in 2005; \$1294 in 2006 and \$1,346 in 2007. The SOA notes that the average clothing allowance among the 16 police departments in the County is \$1,000 with annual stipends ranging from \$800.00 to \$1,350.00. The SOA contends that the County's ability to afford to roll the clothing allowance into base pay is not in dispute.

Turning to longevity, the SOA seeks to roll into base salaries the existing longevity benefit of \$ 2,500.00 per officer before application of a 4.0% wage increase. The SOA calculates that the cost of rolling in longevity would be \$100.00 per officer in 2004 and additional total costs for longevity would increase by \$624.00 in 2005, \$648.96 in 2006; and \$449.95 in 2007 for a four year total

increase of \$2,322.92 and the actual longevity payment for each officer would be \$2500.00 in 2004; \$2604.00 in 2005; \$2712.00 in 2006 and \$2824 in 2007.¹

The SOA asserts that there is no consistency with other law enforcement units in the County with 2005 longevity payments ranging from \$1400.00 for PSOA to \$2800.00 for ISOAC. The SOA reiterates that the County is well able to pay for the roll in of annual longevity payments into base pay. The SOA points out that when longevity is rolled into base pay, the SOA members' longevity payments in 2007 will be \$2824 or only \$24.00 more than longevity negotiated by the ISOAC.

In addition to clothing allowance and longevity, the SOA proposes to add \$1,000 to base pay prior to adding a 4.0% across the board increase in 2004 so that effective January 1, 2004, base salaries would increase by \$1150 for clothing allowance, \$2500 for longevity and \$1000 and, thereafter, the salaries would be increased by 4.0%. The SOA explains this salary proposal by first calculating the increases to Lieutenants and Captains salaries without any of these sums being rolled into base pay. The SOA calculates that in the absence of any "roll-ins" over the four-year agreement Lieutenant's salaries would increase from \$65,107 in 2003 to \$76,165 in 2007 and the Captain's salaries would increase from \$70,100 to \$78,853. When the proposed "roll-ins" are included a Lieutenant's salary would be \$81,606 in 2007 and a Captain's salary would be \$84,084 in 2007.

¹ The calculation for 2007 includes projected attrition in the workforce.

The SOA argues that "roll ins" are becoming the rule rather than the exception. As a result, the percentage of increase becomes a more significant basis for comparability. The SOA calculates that maximum salaries, including those for Superior Officers in fifteen Atlantic County municipalities, increased an average of 4.25% in each year for 2004, 2005 and 2006. The SOA points out that unless the \$1000 increase to base salary that it proposes is awarded, the SOA's proposed increases are lower than the 4.25% average in each year. Turning to the comparison with other County law enforcement units, the SOA asserts that those settlements have been inconsistent and that no pattern of settlement has resulted from the negotiations as evidenced by a case by case review. According to the SOA, the Captains and Lieutenants in the Prosecutor's Office received 5.2% and 5.4% respectively in 2003, while Sergeants received 4.5% and rank and file officers received 4.0% for the same period. Also in 2003, the SOA notes that Captains and Lieutenants in Corrections received increases of 4.3%, Sergeants received increases of 3.2% and rank and file officers received increases of 3.1%. During the same period, Sheriff's Office Captains and Lieutenants received 4.0% and 3.7% respectively, Sergeants received 4.5% and rank and file received 4.0%. The SOA maintains that similar inconsistent increases were negotiated for 2004, 2005 and 2006.

Looking to comparisons with police departments in other Southern New Jersey counties and with interest arbitration awards generally in New Jersey in

2003 and 2004, the SOA asserts that interest arbitrators granted salary increases averaging 3.82% in 2003 and in 2004, that many awards included increases averaging 4.0% and that three awards included "roll-ins". Looking to the private sector generally, the SOA asserts that private sector employees nationwide received increases averaging 4% in 2003 and 2004.

Contending that the County has the ability to afford the cost of the roll-ins it has proposed, The SOA asserts that 4.0% without "roll ins" is not the established pattern in Atlantic County and argues that raises above and beyond 4.0% per year have been "explained away". For example, the County distinguishes between the \$1,000 received by the PSOA Officers and asserts that it was due to the "unique and complex nature" of the work performed. Similarly, the SOA, suggests that when the ISOAC Captains were recognized in 2000, they "rolled in" clothing allowance, education bonus and other benefits that the County asserts were "gave up". The SOA contends that the County's explanations for these deviations substantiate the conclusion that there is no pattern of settlement. The SOA claims that its proposed salary increases, including the "roll ins," compare favorably with municipal settlements in Atlantic County and with private sector settlements. The SOA notes that except for the 5.5% increase that will result from the addition of \$1000 to base salaries in 2004, the 4.0% increases in each year for Lieutenants are within settlement ranges. The SOA notes that under its proposal the Lieutenants would receive 16.9% over

four years and Captains would receive 12.5% over four years after factoring in a 0% increase in 2007.

Addressing the County's proposals, the SOA points out that the County has not asserted that it lacks the ability to pay and has not submitted evidence that it does. The SOA asserts further that the removal of holidays and administrative days from the SOA agreement must be rejected unless they are part of a comprehensive salary package. The SOA calculates that the County's proposal to retain a clothing allowance stipend rather than rolling it into base pay would result in an increase of \$0 in 2004, \$150 in 2005, \$50 in 2006 and remain the same for 2007 at a four year total increase individually of \$1,200, assuming predicted attrition in the workforce. The SOA urges the rejection of this proposal in favor of rolling the clothing allowance into base pay.

Turning to the County's salary proposal, the SOA points out that the Sheriff's Superior Officers are not among the "better-paid" law enforcement officers employed by the County or among those employed in municipal police departments in Atlantic County, or in other Southern New Jersey counties. The SOA asserts that the County has not raised sufficient reason for rejection of its proposal to roll the existing \$2500 annual longevity benefit into base pay before application of a 4% wage increase.

The SOA calculates that the cost difference between its proposal and the County's proposal over the four year period is \$3,986.26 per officer, including the \$1000 adjustment per officer, and the "roll-in" of longevity and clothing allowance. The SOA did not include the \$500 signing bonus proposed in the County's final offer as part of its cost analysis.

Addressing the remaining statutory criteria, the SOA asserts that the overall impact of its proposals on other governmental functions would not allocate a disproportionate amount of money to the Sheriff's Superiors and thus would have no impact on the interest and welfare of the public. The SOA is mindful of the CAP law and the lawful authority of the employer and the financial impact on the governing unit, its residents and taxpayers but asserts that its proposal would not force the County to exceed the CAP nor cause adverse financial impact. The SOA points out that Atlantic County has a robust economy and with a per capita income of \$31,702, has the sixth highest per capita income of the ten southern New Jersey counties. The SOA cites the conclusion of its financial analyst Vincent Foti in 2001 that the County more than has the ability to pay as reflected in their financial records. Addressing the cost of living, the SOA asserts that it has a limited role in this dispute due to the role that the other settlements within the County have played in this dispute and the fact that those settlement rates are higher than the cost of living. The SOA maintains that nothing in its proposals would harm employee morale and its proposals encourage the continuity and stability of employment.

Addressing overtime, the SOA notes that its proposal to delete Articles 5.2 (Holidays) and 5.2.4 (Administrative Days) from the calculation for computing overtime is a financial concession that was granted as an element of a negotiated total financial package.

Turning to the non-economic proposals, the SOA agrees to the County's proposal to increase the response time in steps 2 and 3 from five days to ten days, but rejects the additional language proposed by the County which would provide that the grievance is waived at the second and third steps if it is not presented by the SOA within the agreed upon time frame.

The Position of the County

The County describes the main issues in dispute as whether longevity payments of \$2,500, \$1,150 in clothing allowance and \$1,000 (representing the additional amount the SOA seeks to add to base salaries) should be "rolled in" or "folded in" to base salaries. The County maintains that evidence establishes a consistent internal negotiations pattern that supports its final offer and that the proposed fold-ins to base salary would not only skew the negotiations pattern but could also have adverse effects on the stability it has on the other collective negotiations units.

The County asserts that over the last five or six years it has provided annual salary increases of approximately 4.0%, has avoided fold-ins to base salary; and has maintained recognizable differentials in compensation for lieutenants and captains among its units of superior officers. The County asserts that the superior officers in the Prosecutor's Office (PSOA) and the Corrections Superior Officer (ISOAC) received annual percentage increases of 4%. The only major difference was higher percentages granted to the PSOA where, as the result of a Recommended Interest Arbitration Award, \$1000 was added to the prior year's base pay in 2003. The County asserts that the unique circumstances detailed in that case by Atlantic County Department Head of Administrative Services Diana Rutala as follows justify the increase:

During the session PSOA members expressed the number of hours they worked in excess of 40 hours on many investigations, particularly homicide investigations. Furthermore, the job duties of the PSOA members require supervision of a team, discretion and independent judgment to address the unique and complex nature of their work. During discussions it was further identified that due to these job duties and the nature of caseloads it can be extremely difficult to attempt to flex schedules to maintain a more normal 40 hour work week. Since these individuals are overtime exempt the arbitrator recommended resolution of the issue by adding \$1,000 to base salary prior to the annual percentage salary increase (4%). This was in recognition of the unique and complex nature of the work performed by this group....

In contrast, the County points out that SOA members, unlike those in the PSOA unit, are compensated on an hour for hour basis for all hours worked. The County also cites an interest arbitration award covering the PSOA in 2001 where

the duties of the Superiors in the Prosecutor's Office were described as "substantial in nature and unique" from other law enforcement officers.

The County notes that the differential between the salaries of an SOA Captain and a captain in the PSOA and the ISOAC would remain consistent with a 4% increase as proposed by the County. The County calculates that at the end of the current agreement (2003) an SOA Captain's salary was 77.41% of the PSOA captain and 93.5% of an ISOAC captain. If \$1000 is folded-in to base salary, the differential with a PSOA captain increases to 78.51% and with the clothing allowance increases to 78.68%. Similarly, if \$1000 is folded-in to base salary, the differential with an ISOAC captain increases to 94.83% and with the clothing allowance increases to 95.03%. The County notes that the ISOAC captains do not receive overtime, clothing allowance or perfect attendance bonuses.

The County calculates that at the end of the current agreement an SOA Lieutenant's salary was 80% of the PSOA lieutenant and 104.61% of an ISOAC lieutenant. If \$1000 is folded-in to base salary, the differential with a PSOA lieutenant increases to 81.23% and with the clothing allowance increases to 81.42%. Similarly, if \$1000 is folded-in to base salary, the differential with an ISOAC lieutenant increases to 106.21% and with the clothing allowance increases to 106.45%.

The County also points to a substantial increase of 10.13% provided to Lieutenants in 2001 when their salary was increased from \$54,578 to \$60,107. This increase compressed the differential between Lieutenants and Captains from 19.3% to 8.32%, which is significantly smaller than the approximately 11.43% differential between lieutenants and captains in the PSOA and 20.48% in the ISOAC.

The County also relies upon the internal pattern that is included in contracts with other law enforcement units. According to the County top step increases for the County rank and file corrections officers received increases of \$500 at each of the initial six steps and the seventh, or top step, increases were 3.23% in 2003; 4.17% in 2004; 3.80% in 2005 and 4.82% in 2006 or an average of 4.005%. Top step increases for the rank and file in the Prosecutor's Office were 4% per year for 2003 through 2006. However, the Arbitrator recommended additional increases for sergeants in order to increase the differential and recommended increases of 4.5% for the initial three years and 4.25% in the fourth year. The Sheriff's Officers received annual increases of 4% per year and the sergeant's received increases of 4.25%, 4.5%, 4.5% and 4.25%. The County emphasizes that in that Award, the existing agreements in law enforcement were described as "not identical" but "reasonably consistent". As a result, the County describes the internal pattern as salary increases of "roughly four (4%) percent" and "fold-ins to base salary have been avoided".

The County maintains that its final offer on fringe benefit items is in keeping with its internal pattern and provides the SOA with fringe benefits that are equal to or better than those provided to other law enforcement units. Specifically, the County has proposed to increase the clothing allowance effective January 1, 2005 from \$1150 to \$1300 with a subsequent increase to \$1350 effective January 1, 2006. Addressing other benefits issues in dispute, the County asserts that the SOA receives longevity that is equal to all other groups with the exception of the senior corrections officers

Addressing the SOA's arguments, the County challenges the comparisons made to municipal police departments because there is no showing that Sheriff's officers perform law enforcement functions comparable to municipal police officers. Additionally, Sheriff's Officers' hours differ from municipal police departments, which operate on a 24/7 basis. The County notes that even if such a comparison is performed, the County points out that increases in excess of 4% per year in Egg Harbor City, Mullica Township, and Northfield all brought superior officer salaries up to levels that are at least \$500 less than those earned by SOA members. The County asserts that comparison with municipal police salaries in Atlantic County shows that a number of municipalities provided 4% raises and that SOA salaries are not lagging behind those of municipal superior officers.

The County calculates the "true cost" of the SOA's proposal as \$28,955. According to the County, the cost of the SOA's "roll-in" proposals is \$7,084 in 2004, \$6,511 in 2005, \$7,975 in 2006 and \$7,975 in 2007.

The County urges that great weight be given to the criterion of internal comparability, in particular to the County's internal pattern of wage increases approximating 4.0% each year with no fold-ins added to base salary. The County notes that the lone exception to its avoidance of fold-ins to base salary is with the Prosecutor's Superior Officers in unique circumstances that do not apply to the SOA. The County emphasizes that the SOA does not have a specific problem in need of redress which would lead to departure from the established negotiations pattern. If fold-ins were to be included in this Agreement, the County foresees that every law enforcement group will seek fold-ins to base salary in future negotiations. While the costs of such fold-ins are limited in a small bargaining unit such as the SOA, the County points out that its larger law enforcement units range from PBA, Local 77 with approximately 58 members to FOP, Local 34 with approximately 175 members. Thus, if the proposed fold-ins were awarded and applied to all law enforcement, the costs would be dramatic.

The County asserts that as the party seeking a substantial departure from the pattern, the Union bears the burden of establishing a need for such change. The County argues that the SOA evidence does not establish a significant justification for a change beyond seeking fold-ins to increase base salary simply

for the purpose of enhancing pension benefits. In the absence of a compelling need to depart from the established internal pattern, the County urges that its final offer be adopted.

Lieutenants				
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
SOA	67,711	70,420	73,237	76,166
 Captains				
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
SOA	72,911	75,828	78,861	78,861

DISCUSSION

I am required to make a reasonable determination of the narrow issues that remain in dispute giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. The County and the SOA have expertly articulated their positions on the issues and have submitted comprehensive evidence and argument on each statutory criterion to support their respective positions. All of the evidence and arguments have been carefully reviewed, considered and weighed.

The primary issue in dispute is whether three separate sums should be added to or "rolled in" to base salary before the 4.0% annual increase that the parties each propose effective January 1, 2004. The SOA seeks to add to base salary a \$1,000 wage adjustment and to roll in the annual clothing allowance in the amount of \$1,150 and annual longevity pay. All, except for one member of the SOA, earn longevity at the top level of \$2,500. The County opposes these

proposals and instead proposes to provide a one-time \$500 signing bonus, to increase the clothing allowance to \$1,300 effective January 1, 2005 and to \$1,350 effective January 1, 2006.

Both parties focus their analysis on internal comparables, primarily with the other superior officer law enforcement units within the County—the PSOA and the ISOAC, as well as with County law enforcement units generally. The County maintains that there is a pattern of 4.0% annual increases without “fold-ins” to base salary. The SOA maintains that there is no pattern and emphasizes that, as the result of a Recommended Interest Arbitration Award, the PSOA received \$1,000 rolled into base pay before the calculation of a 4.0% increase effective January 1, 2003.

In an Award covering the current contract term between January 1, 2002 and December 31, 2005 for the Atlantic County and PBA., Local 243, representing Sheriff’s Officers, I addressed the issue of internal pattern of settlement within Atlantic County. It was found that recent changes to existing County law enforcement agreements “while not identical, have been reasonably consistent.” In that Award, it was found specifically that “adjustments to those salary schedules have been reasonably consistent and within certain general parameters” and that such “reasonable consistency is a desirable objective in a multi-law enforcement unit county such as Atlantic.” (pp. 57, 61). The record in this case demonstrates that these conclusions continue to apply to law

enforcement settlements within Atlantic County. Both the PSOA and the ISOAC settlements included average annual increases of 4.0% per year through 2006. However, the PSOA received a \$1,000 increase in base pay before application of the 4.0% increase in 2003 as a result of a Recommended Interest Arbitration Award. By its explicit terms, that decision recognized the fact that those superior officers are overtime exempt, an exemption not applicable here. Similarly, the ISOAC settlement included an average increase of 4.0%. Looking to rank and file officers, top step increases for corrections officers were 3.23% for 2003, 4.17% in 2004, 3.8% in 2005 and 4.82% in 2006, or an average of 4.005% over the four years. Rank and file sheriff's officers received annual increases of 4.0% per year at maximum step. Included in that unit are Sheriff's Sergeants who received annual increases of 4.25%, 4.5%, 4.5% and 4.25%. These increases were for 2002 through 2005.

With this background in mind, I evaluate the SOA's proposals to roll \$1,000 into base pay, roll \$2,500 longevity payments into base pay, and roll \$1,150 in clothing allowance into base pay before the calculation of a 4.0% increase effective January 1, 2004 as well as the County's proposals to increase clothing allowance and provide a one-time \$500 payment not added to base.

Looking to the additional costs that would be incurred under the SOA's proposal, the initial increase of \$1,000.00 added to base pay would cost \$1,000 per officer or a total of \$6,000, presuming the present complement of three

Lieutenants and three Captains. The County has proposed a \$500.00 signing bonus, thus the cost difference in those two proposals for 2004 would be \$3,000 for the bargaining unit. But this calculation does not include the incremental or cumulative cost of adding a \$1,000 to base pay. I note that, under the County's proposal, the \$500.00 payment would be a one time lump sum payment not added to base pay and would have no cumulative cost nor have any effect on "roll-up" costs.

Continuing to calculate the cost of the SOA's proposed "roll-ins", the total amount the SOA proposes to roll in before calculation of the 4.0% across the board increase for 2004 is \$4,650 (the \$1,000 added to base pay, plus the \$1,150 in clothing allowance and \$2,500 in longevity payments). Although the SOA members currently receive the clothing allowance and longevity payments, they are not rolled into base pay, and thus do not increase by the annual percentage increase each year. Additional costs are assumed by the pre-existing payments being subject to the annual percentage increases because they would become part of base pay and the increased pension costs from the enhanced base pay.

Based upon the positions of the parties and the evidence submitted in support of those positions, the statutory criterion that is most relevant in making a reasonable determination of the issues is the comparison of the wages, salaries, hours and conditions of employment of the sheriff's superior officers with other

law enforcement employees within the County and, to a lesser extent, a comparison of those terms within the county's municipalities [N.J.S.A. 34:13A-16g(2)]. I have also considered the interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] and the financial impact of the award on the governing unit, its residents and taxpayers [N.J.S.A. 34:13A-16g(6)]. The remaining factors, while relevant, are of less significance given the record established by the parties.

The first two years of this Award cover 2004 and 2005. In contract years 2004 and 2005, Sheriff's Officers Sergeants, represented by Local 243, received increases of 4.5% and 4.25%. Within the general parameters of all of the law enforcement settlements, these adjustments are entitled to greater weight when applying the "reasonably consistent" standard. Although the Lieutenants and Captains are in a superior officers unit, the relationship between these ranks and the lower rank of Sergeant reflect commonalities in that all ranks direct the rank and file workforce. These percentages also reflect somewhat more favorable terms than the terms received by rank and file sheriff's officers below the rank of Sergeant. The increases provided for Sergeant are also appropriate for Lieutenants and Captains. For these reasons, I award across-the-board increases of 4.5% in 2004 and 4.25% in 2005. For the remaining contract years, 2006 and 2007, increases of 4.0% represent a reasonable determination of the salary issue. The record evidence is that across-the-board increases generally within Atlantic County for law enforcement personnel are at or near this level. I do not award this increase for the rank of Captain in year 2007 based upon the

reasons articulated by the parties in their presentations with respect to rank differential. These increases shall cause the existing salary schedule in Article 10 for 2003 to be modified as follows:

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Lieutenants	68,036	70,928	73,765	76,716
Captains	73,262	76,375	79,430	79,430
Chief ID	75,874	79,098	82,262	85,553
Chief Sheriff Officer	75,874	79,098	82,262	85,553

I next turn to the remaining salary proposals. The additional increases to base salaries proposed by the SOA are not awarded. The \$1,000 adjustment to base pay prior to the award of the across-the-board percentages represents an additional approximately 1.5% increase in base pay. This would yield a 6% increase. There is simply no basis to support an increase of this magnitude. The sole rationale for this proposal articulated by the SOA is the fact that Prosecutor's Superior Officers received this adjustment. This adjustment has been received by no other law enforcement unit. The grounds for this payment, as set forth in Recommended Interest Arbitration Award involving these employees, was the additional hours the PSOs worked without receiving overtime pay because they are overtime exempt. Without this distinction being applicable to the SOA, the rationale for awarding this adjustment in this instance is lacking.

I also do not award the SOAs proposals to roll clothing allowance and longevity payments into base pay prior to the calculation of the across-the-board percentages. The SOA argues forcefully that the costs of these roll-ins are not

substantial in that the increased costs primarily involve increased pension costs and increases to other kinds of payments due to an enhanced base. While this is true, these types of roll-ins are not prevalent among the County's law enforcement units. While the added costs are not significant, there would be substantially higher costs to the County if these benefits were provided to the many law enforcement officers who stand outside the confines of the SOA unit and do not receive these roll ins. Such costs may be justifiable in the future when viewed in the totality of negotiations when all issues are addressed, but I cannot conclude that the interests and welfare of the public are furthered by the expansion of this type of benefit package for a bargaining unit as small as the SOA in the absence of strong evidence of internal comparability. In light of the rejection of the SOA proposal to roll clothing allowance into base pay, based upon the current payment of \$1,150, the County's proposal to increase this payment by \$150 effective January 1, 2005 and by an additional \$50 effective January 1, 2006 is reasonable and is awarded.

The remaining salary issue is the one-time payment of \$500 not added to base. While I recognize that this proposal was coupled with a County offer of a lower salary percentage increase than was awarded herein, I conclude that this payment is reasonable and appropriate given the reduction in the differential between Captains and Lieutenants from the current differential. This represents an overall payment of \$3,000 but does not increase the salary base and will have no ongoing or cumulative impact on the payroll.

An additional economic issue is the County's proposal to delete holidays and administrative days as counting as "hours worked" for the purposes of computing overtime. This proposal would amend Article 5, Section 5.2. The SOA has proposed to accept this proposal contingent upon an award of its overall economic package. That package has not been awarded. I do not award the County's proposal based upon the consideration that a similar provision that exists in the much larger Local 243 unit would contain terms inconsistent with the smaller SOA unit if the County's proposal were awarded.

The sole non-economic issue in dispute is the County's proposal to add language to Steps Two and Three of the Grievance Procedure to indicate that SOA does not present the grievance at each of these steps within the allotted time frame, the grievance is waived. The SOA objects to this addition, but is agreeable to the County's proposal to increase its response time in Steps Two and Three from five to ten days. I do not adopt this portion of the County's proposal. Failure to adhere to contractual time limits may indeed be a strong basis for a grievance being untimely. The County could, under such conditions make that argument. However, whether a particular grievance is waived for that reason should take into consideration whether there are mitigating factors for lack of timeliness. The County's proposal would not allow for consideration of circumstances other than that the time limit has not been met. Accordingly, the County's proposal to include specific language addressing the waiver of the

grievance is denied. The parties' agreement to increase the County's response time from five to ten days at Steps Two and Three is included in this Award.

There are remaining issues that the County and the SOA have agreed upon in this proceeding. They shall be received as stipulations as contemplated by N.J.S.A. 34:13A-16g(4). These include an amendment to Call-In Time in Article 6.4, an amendment to Terminal Leave in Article 11.8 and an amendment to Work Schedule in Article 4.6. These stipulations are reflected in the Award.

Addressing the lawful authority of the employer, the County acknowledges that the terms of the SOA proposal would not compel the County to exceed its lawful spending limitations under the Cap law. I also conclude that there is no evidence reflecting that the terms of the award would adversely impact on the governing body, its residents and/or taxpayers.

I have also considered the remaining statutory factors. Since the terms of the Award are reasonably consistent with the County's other law enforcement units, and that the parties' across-the-board percentage increase proposals are above the cost of living, I conclude that the cost of living data is not a controlling factor. The continuity and stability of employment will be maintained by providing increases comparable to those received by other superior officers in Atlantic County and there is no evidence that this factor will be negatively impacted by the terms of this Award.

Accordingly, and based upon all of the above, I respectfully enter the following Award.

AWARD

1. All proposals by the County and the SOA 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.
2. **Duration** – There shall be a four-year agreement effective January 1, 2004 through December 31, 2007.
3. **Stipulations** – Given the common positions of the SOA and the County on Work Schedule, Call-In Time and Terminal Leave, I award the following:
 - a. **Work Schedule** — Article 4.6 shall be amended to add the following provision:

Any time off given other county employees (such as late opening for inclement weather, etc.) will be given to employees covered under this contract. If employees covered under this contract are required to report in, they will receive compensatory time for the time.
 - b. **Call-In Time** — Article 6.4 shall be amended to increase compensatory hours from 4 hours to 6 hours per month.
 - c. **Terminal Leave** – Article 11.8 shall be amended to provide as follows:

Any employee covered under the terms of this agreement who retires from county service under the police and Firemen's Retirement System or Public Employees Retirement system shall be paid for fifty percent (50%) of his accrued sick leave, up to a maximum of \$22,500.00 for Lieutenants, \$22,500.00 for other covered employees.

4. **Clothing Allowance**

Effective January 1, 2005, the clothing allowance shall be increased by \$150 and by an additional \$50 effective January 1, 2006.

5. **Salary** – Article 10 shall be amended to provide that salaries for all ranks shall increase by 4.5% per year effective January 1, 2004, 4.25% effective January 1, 2005, 4.0% effective January 1, 2006 and 4.0% effective January 1, 2007 with the exception of the Captain rank for 2007 which shall remain unaltered from 2006.

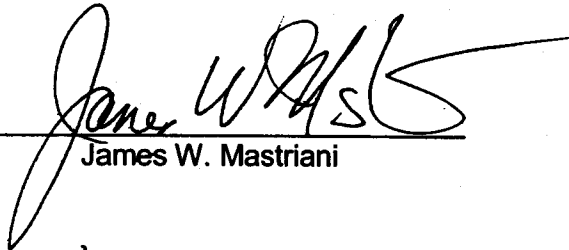
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Lieutenants	68,036	70,928	73,765	76,716
Captains	73,262	76,375	79,430	79,430
Chief ID	75,874	79,098	82,262	85,553
Chief Sheriff Officer	75,874	79,098	82,262	85,553

The increases in salary shall be retroactive to their effective date pursuant to the existing requirements in Article 10.

Unit employees shall receive a one-time payment of \$500 not be added to base salary upon the signing of the Agreement.

6. **Grievance Procedure** – Article 15 is amended to provide that the SOA shall have ten (10) calendar days to advance a grievance to Steps Two and Three and that the County's response time at Steps Two and Three shall be changed from five (5) days to ten (10) calendar days.

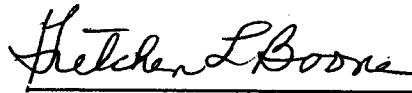
Dated: May 9, 2005
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 9th day of May, 2005, 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
My Commission Expires 8/13/2008