

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration

between

COUNTY OF UNION

- and -

**UNION COUNTY CORRECTIONS OFFICERS
PBA LOCAL NO. 199**

**PERC Docket No. IA-2001-46 (on remand)
Opinion and Award**

BEFORE: Barbara Zausner, Arbitrator

AWARD DATED: October 15, 2003

APPEARANCES

For the County: Schenck, Price, Smith & King
Attorneys for the County
By, Kathryn V. Hatfield, Esq.

For the Union: Loccke & Correia
Attorneys for the Union
By, Richard D. Loccke, Esq.

BACKGROUND

On May 29, 2003, the Public Employment Relations Commission vacated and remanded to the Director of Arbitration a second interest arbitration award issued in this matter. I was appointed arbitrator by mutual agreement of the parties. I met with the parties on September 15, 2003 and closed the record on that date. To their credit, the parties made serious efforts to resolve this matter without another arbitration decision. The record before me consists of the entire record before the prior arbitrator as well as documents and decisions related to the appeals of the prior decisions. The record in full is incorporated herein by reference.

At issue are the terms of the contract between the Union County Corrections Officers, (PBA Local 199) and the County. The predecessor contract expired on December 31, 2000. The unit consists of approximately 200 correction officers, the vast majority of whom are at the top step on the salary guide.

FINAL OFFERS

PBA:

Duration: January 1, 2001 through December 31, 2003

Wage Increase:

Effective January 1, 2001	5% across the board increase
Effective January 1, 2002	5% across the board increase
Effective January 1, 2003	5% across the board increase

Senior Officer Differential

Increase the current \$1365 to \$1520

Increase the current \$2365 to \$2500

Increase the current \$2865 to \$3000

Highest level shall increase with the general wage increase as was negotiated and incorporated into the prior contract.

S.O.U. Stipend – \$1500 per year.

Defense Policy - (Personal Injury Fund) The PBA proposes to increase the current \$135 defense policy provision in Article XII of the contract to \$158.

Compensatory Time Off Bank – The PBA proposes that any overtime worked can either be paid at the time and one half rate or, at the employee's sole option, be put into a compensatory time off bank not to exceed 100 hours at employee's sole option but subject to employer approval.

Grievance Procedure – The PBA proposes to delete the current statement of panel arbitrator and instead rely on the PERC panel.

Food Pick-up – The PBA proposes that one employee on each shift be allowed sufficient time to go out and pick up food and bring it back to shift personnel to eat at the Employer's facility.

Orthodontic Coverage Definition -- The PBA the addition of eye care coverage and an improved dental insurance plan that includes orthodontia coverage. This is PBA funded.

COUNTY:

Duration: January 1, 2001 to December 31, 2004

Salaries:

Effective 1/1/01 1.5% increase

Effective 6/23/01 1.5% increase

Effective January 1, 2002 3.5% in guide, 4% at maximum

" January 1, 2003 3.5% in guide, 4% at maximum

" January 1, 2004 3.5% in guide, 4% at maximum

Article 7, Add new Section 5: Notwithstanding any Policy to the contrary, when officers are late three (3) times and/or callout late three (3) times for their regularly scheduled shifts during a calendar year, the Administration may begin to employ progressive discipline with regard to that officer.

Article 12, Personal Injury Liability Insurance – delete.

Article 14, Seniority, Section 4: Delete preferential positions.

Article 14, Section 6, Vacation/Shift Schedules: change to allow a total of thirteen (13) officers per day may use vacation, personal or compensatory leave.

Article 14, Section 7, add to Administrative positions: Detention Officers (4), Booking Officers (2), Releasing Officers (2); Booking/Security Rover (2). Eliminate paragraph on Pool Officers.

Article 15, Overtime. Section 2 (B). Add: Officers refusing forced overtime three (3) times during any three (3) month period shall be ineligible to work voluntary overtime for the following three (3) month period. An officer who gives back overtime assignments twice in one month will not be eligible for overtime in the following month.

Section 2P. Delete first paragraph concerning switches and modify remainder of section to eliminate references to switches.

Article 16, Section 4: change use of quarter days to half days.

Delete paragraph following C and replace with:

Any officer who cannot work due to an illness on a holiday will be charged with a sick day and must provide a doctor's note verifying the illness and absence. Officers scheduled to work the holiday who do not work the holiday will not receive the benefits of Section 5 of Article 23, Holidays. For the purposes of this section, the term holiday shall include Christmas Eve and New Year's Eve.

Change last paragraph: Reduce number of officers off per day to 13.

Article 17, Vacations: add one day at 20 years, 2 at 25 and 26; 1 at 27, 28, 29. Increase maximum to 32 days.

Article 20, Sick Leave – increase maximum to \$18,000, increase rate of payout above 201, 301 and 401 accumulated unused sick days.

Article 22, Clothing allowance: increase by \$25 in each of the first three years.

Article 23, Holidays: delete "extra holiday." (Section 6).

Article 25, Section 1. Change first sentence of second paragraph from once a month meetings to meetings on an "as-needed" basis, but no more often than quarterly.

Article 26, Section 1, PBA Delegate: Eliminate full release time. Delete last sentence (permitting one delegate for every fifty correction officers permitted to attend PBA convention).

Section 14, Meals: \$1.35 meal allowance paid as long as the officer works at least four hours of overtime per assignment.

Article 28, Section 4. Eliminate the right to interchange scheduled days off.

Article 29 – Insurance:

Effective January 1, 2002, increase prescription co-payments to \$3.00 for mail order, \$5 for generic, \$15 for single source, and \$20 for multi-source for all active employees.

Amend Schedule D, Retiree Health Benefits by increasing amounts as follows:

Single, under 65	\$189.67
Single, over 65	\$138.39
H/W, under 65	\$540.58
PC Retiree	
Family, under 65	
H/W, over 65	\$276.77
H/W Retiree, over 65	\$276.77
H/W Spouse over 65	
Family, over 65	\$442.88
Family Retiree, over 65	\$477.85
Family Spouse, over 65	
PC Retiree, over 65	\$338.69

For members of Horizon PPO (Blue Select) \$5 co-pay for doctor visits in 2002, \$10 co-pay for 2003 and 2004.

Out-of-network cost share changed from 80/20 to 70/30 (county/employee) respectively for all employees effective on execution of the agreement.

Deductible for any single benefit period effective January 1, 2003 shall be reduced to \$100 for each employee and an additional amount of \$200 for eligible dependents.

Contribution:

Institute an employee contribution toward health benefit premiums. Employees earning under \$65,000 would pay \$10 per month; employees earning between \$65,000 and \$75,000 would pay \$25 per month; employees earning over \$75,000 would pay \$35 per month in 2002; and \$40 per month in 2003 and '04. Contributions are made pre-tax.

Health benefit buyout option. Employees covered by spouse plan could decline additional health coverage and receive \$2500 annually, payable in 26 installments over the next year. Employees opting out shall retain the right to re-enter the County Health Benefit Plan on a monthly basis. Upon re-entering the plan, payments for opting out shall cease.

Effective January 1, 2002, new employees shall receive Physician's Health Service (PHS) or Blue Choice coverage only. In addition, new employees shall contribute \$15 per month for single coverage and \$25 per month for family coverage to be increased by the proportionate annual increase in the plan cost. Employees may opt for a different plan at their own expense; that is they would pay the difference between these plans and their chosen plan. In the event these plans are changed during the term of this agreement, new employees shall receive the least expensive of the then-available plans.

THE STATUTE

This decision is based on an application of the criteria set forth in N.J.S.A.34:13A-16g:

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, exclusive 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 programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

PERC DECISIONS

In Union County I, the first appeal, PERC vacated and remanded the award for reconsideration because "the arbitrator appears to have applied an improper presumption that the proposals should not be awarded in interest arbitration" and "did not fully discuss, or explain how he analyzed and weighed, the parties' arguments and evidence concerning internal settlements." Further, the arbitrator "did not analyze the County's operational proposals and did not explain his salary award."

PERC found that the arbitrator "appropriately placed the burden on the County to justify its [health benefits] proposals." However, "in emphasizing that the proposals were best achieved in negotiations, he appears to have required the County to surmount an additional hurdle of showing why the proposals should be granted in interest arbitration rather than obtained through negotiations." PERC was not "satisfied that the arbitrator fully considered the proposals and weighed the evidence offered by the County against that presented by the PBA, free of any presumption that the proposals should not be awarded in interest arbitration."

With respect to the criterion that requires comparison with other employees performing similar services in the same jurisdiction, the arbitrator must "consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern." PERC further opined, "Pattern is an important labor relations concept that is relied on by both labor and management." Pattern also has a bearing on the "continuity and stability of employment." "Interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units." In PERC's view, the arbitrator "did not make findings as to whether the settlements [in other units] differed from

the offer to this unit; the significance of any differences; and whether ... there was as settlement pattern among the County's negotiations units."

PERC also held that the arbitrator "did not resolve the unsettled issues", specifically, the County's operational proposals. PERC "recognize[d] the principle that benefits and provisions agreed upon through years of collective negotiations should not ordinarily be undone in a single contract." It also found it "difficult to assess what factors the arbitrator weighed most heavily and how he weighed and balanced the other factors."

The decision on remand was also appealed. In Union County II, the Commission found that the arbitrator "did not make explicit findings as to whether or not there was a settlement pattern with respect to health benefits and salary – or either of those items. Nor did he make findings as to whether the settlements differed from the offer to this unit or analyze the significance of any differences." The Reform Act requirement that an arbitrator "explain the reasons for adhering or not adhering to any proven settlement pattern" is quoted.

Arbitrator Light awarded 4% salary increases for 2001 through 2003 and increased the term of the contract to four years with a 4% salary increase in 2003. He also awarded the County's proposal to increase the clothing allowance. He denied all other proposals of both parties. The second award was vacated and referred to "a new arbitrator to consider

all of the County's and PBA's proposals and issue a new opinion and award in accordance with the statutory criteria and the principles ... set out in Union Cty."

DISCUSSION AND OPINION

Summary of the Evidence

Vincent De Louisa had been a correction officer in Union County for about twelve years when he testified at an interest arbitration proceeding on November 13, 2001. He is president of PBA Local 199. He testified that as of November 2001 there were 203 officers employed. In April 2001, there was a layoff of about one third of the unit. In March, there were 297 officers in the unit.

Since the layoff, the job of correction officer has "changed drastically." There were approximately 1700 inmates housed in two facilities before the layoff. In November 2001 there were between 1000 and 1100 inmates housed in one building. The layoff occurred after the closing of what was known as the "old" jail. The inmate census as of October 21, 2001 was 1126.

Officer De Louisa said there was an increase in workload after the layoff. There more violent offenders at the jail. This has raised tensions. The housing units at the new jail are designed for about half the number incarcerated there. There has been an increase in assaults by inmates on

officers and by inmates on other inmates. There is no similar information for the period before the layoff. There is increased tension among inmates because of the crowded conditions. The old jail had space that was used to segregate problem inmates.

Officer De Louisa testified about other issues that affect officers. There are inmates in the facility who have AIDS, hepatitis, tuberculosis and other communicable diseases to which the officers are exposed. The elevators "are constantly breaking down." That has an adverse effect on movement around the building, including the threat of delayed responses when officers need backup. After the layoff there was a great deal of forced overtime. The vacation period exacerbated the staffing problems. The average officer was working 20 to 30 hours overtime per week in the spring and summer of 2001. Some officers have faced discipline for refusing overtime. Since the layoff, morale has deteriorated.

Officer De Louisa testified about the PBA's proposal to allow one employee time off to pick up meals for others. He said it would take about 15 to 20 minutes because the meals would be ordered in advance. One person could pick up food for those who staff the 4-12 shift and not everyone orders out.

On cross-examination, Officer De Louisa testified that the inmate numbers of 1100-1120 includes approximately 250 inmates that have been sent to Delaney House, a private drug rehabilitation facility. Those inmates

return to the jail for booking, etc. They are not housed in the pods. He agreed that the jail has detention cells and a special housing unit.

Asked how overtime has been since the summer of 2001, Officer De Louisa said he hadn't monitored it but the level is "comparable to the facility and the amount of staff." It has "stabilized." The County makes food available to officers, including snacks, crackers, fruit, juices, bread, peanut butter, cold cuts, hard boiled eggs, potato chips, cookies and cakes. The County also provides each officer with \$350 per year for meals. Much of food available in the facility is prepared or handled by inmates. Officer De Louisa had heard of charges against inmates for adulterating food (but that information did not come from this facility).

Michael Lonergan, a correction officer who had been employed 7.5 years in November 2001, is also executive vice president of the Local. He belongs to the special operations unit (SOU). He volunteered in 1997 or '98. They provide first response in a variety of emergencies and have special training. They also handle cell extractions. They are exposed to hostile and violent inmates, some of whom throw feces, blood, urine, saliva, etc. He has not had that experience. SOU officers find contraband, at times. He displayed devices that he characterized as weapons.

Officer Lonergan worked forced overtime on four occasions in May and June, 2001. He said there were approximately 180 incidents of forced overtime in May, 2001. Some voluntary overtime was worked as well.

Before the layoff there were 32 members of the SOU. There were 20-24 in November 2001.

The PBA offered a number of documents, including contracts and interest arbitration awards from Union County and other jurisdictions. (P-4 through P-25). There is also pension data (P-26, 27); CPI information (P-28); the County budget for 2001 (P-29); the audit report for '99 (P-30); the 2000 audit (P-31), and the 2001 budget (P-32).

Joseph Salemmme is director of administrative services. He has responsibility for labor relations and personnel, among other things. He testified about the County's final offers. The County paid an overall increase of 10.6% (from 2001 to 2002) to renew its insurance premiums. Some plans had a larger increase than others. The County has experienced increases in premiums every year. The current annual premium cost for Blue Select is \$3702 for single and \$8305 for a family per employee. The average correction officer's salary is \$60,000.

Most of the officers would pay \$10 per month toward their health insurance premium until January 2003 by which time most would be earning over \$65,000 and would be contributing \$25 per month. The contribution amounts to 1.5% of the family rate and 4% of the single rate.

The County proposes to delete the "extra holiday" provision under which bargaining unit members receive an extra holiday if "all other County employees are given a day off in addition to ... specified

holidays." There are essential personnel at other facilities but no other contract has the extra holiday clause.

The County seeks to limit payment for meals to those who work at least four hours of overtime on a shift. At present, an employee who works only 20 minutes overtime receives the \$1.35.

The County has settled six contracts that run from 2001 through 2004. The PBA's proposal is for a three-year contract. The other contracts contain the same economic proposals, for the most part, as the one proposed by the County here. Mr. Salemm identified "some minor differences." The Council 8, Park Foreman, and EU agreements have a lower threshold for premium contributions; in those agreements, employees earning under \$55,000 contribute \$10; those over that amount contribute \$25. The average Council 8 salary is approximately \$35,000.

The County's other PBA units accepted the same economic proposal with two differences. PBA Local 108 (Sheriff's Rank and File) received \$1365 as a 10-year stipend. Correction officers got that stipend in their last contract and an "additional adjustment of \$1486." The \$1365 was funded by a lower wage increase in this unit's prior contract. The stipend for Sheriff's officers is funded "by the elimination of service of paper allowance that they were receiving, elimination of shift differential and meal money." Their pay increase was 3% in guide in 2002 and 2003.

Sheriff Superior officers, FOP Local 103, also received \$1365 and \$1486 but they agreed to work an additional 78 hours per year. They also gave up the meal allowance, shift differential, and agreed to "a reduced overtime rate for hospital duty." PBA Local 250, Prosecutor's Superiors, received straight salary increases. The three PBA units accepted the County's health care proposals. Mr. Salemme estimated that the County would save about 6% of the cost of the prescription plan through those concessions.

The County employs approximately 2700. Some 1200 are in bargaining units. Council 8 has the largest number of employees, about 840-850. Council 8 representatives do not have full release time like the PBA. None of the other PBA units has it either. This unit has two employees on full release time with about 200 in the unit.

On cross examination, Mr. Salemme discussed an award of Arbitrator Mastriani who awarded "an adjustment of 5% ... in return for the police officers moving from their four on/four off schedule" and "from a 10.75 to an 11.25 hour day." Those officers work fewer hours per year than the correction officers do.

Asked about the County's proposal on officers who refuse overtime, Mr. Salemme did not think there was any economic impact. An officer could refuse overtime three times in a month without penalty. The proposal would not eliminate potential discipline. The County's proposal

to eliminate the use of ¼ days leave, he agreed, would require officers who need only two hours off to take (or be charged for) four hours.

The employee would be required to pay for providing documentation of illness on a holiday under the proposal to modify Article 16 on leaves. There are staffing problems on those days.

As to the County's sick leave proposal, it would take 26.7 years of perfect attendance to accumulate 412 sick days. Mr. Salemmme agreed that the cost of an extra holiday is approximately \$60,000. He said that the retiree health subsidy would affect future retirees. He could not assess the savings that would result if this bargaining unit accepted the Horizon PPO proposal but the total saving for the County would be about 2% of the health benefit cost. The total cost for PPO is about \$15.3 million, or about \$300,000 in savings. The County employs about 2700 employees; about 200 (about 7%) are in this bargaining unit. Mr. Salemmme agreed that the savings generated for the first year in this unit is about \$22,600, about \$113 per employee on average. However, that is not a savings but an "offset to a very large cost increase experienced over the past two years." He added, faced with a \$1.6 million increase, a savings of \$300,000 is "a great enhancement."

Council 8 employees work 27.5, 35, and 40 hour work weeks. There are no 35 hour a week employees in this bargaining unit. This unit does not

receive a paid incentive for not using sick time. The incentive described by the PBA does not apply to all employees in Council 8's bargaining unit.

Park Foremen had their meal allowance increased by \$1. Their minimum recall was changed from, three to four hours. The employees receive safety glasses under certain conditions. PBA superior officers did not receive a differential until the 10-year level of service.

James Dougherty, assistant director at the County Jail testified about the County's "operational proposals." He testified that the Division's "biggest problem" is "the ability to start a shift with a full complement." There is a problem "getting people to come to work." In 2000, 736 officers were late. As of October 2001, 432 were tardy. Under the current policy that Mr. Dougherty describes as "too weak", an employee could be late six times before he hit the penalty phase. So far this year, 32 people have been counseled, 9 got reprimands, 3 received minor discipline, 2 got major discipline. The record was similar the year before. The County seeks to begin the progressive discipline program after three occasions of lateness.

The County's proposal on vacation shift schedules would reduce the number of people allowed leave on a day to 13. Leave includes "comp, personal and vacation", not sick leave. Under the current contract, 20 employees may take leave. The reduction is derived from the approximately 1/3 reduction in correction officer staff.

The County now has a progressive discipline policy on employees who refuse forced overtime without a "verified excuse." Mr. Dougherty described this policy as weak, too. As of November 2001, there have been "380 people (incidents) ... who refused to work ... forced overtime." 117 of them have been disciplined. The impact on other employees is that they are "put into a penalty stage; somebody is forced to be stuck." Asked if proposal penalizes someone twice for the same infraction, Mr. Dougherty said "the sanctions right now aren't working...." He said that the provision would be helpful because numerous people have signed up for voluntary overtime and then cancelled shortly before the shift. To date this year, employees have given back voluntary overtime on 1911 occasions. The effect is that officers with less seniority (and experience) are forced to work the overtime or face penalties for refusing. That also causes morale problems.

The County proposes to delete "switches" because they are a "nightmare" to manage. Once an officer "picks his post, he [should] be limited to the number of times he can switch." "As long as [an officer] report[s] ... by Thursday ... that [he] want[s] to change [his] tour ... with another person [he] can do it with the approval of the shift commander." Mr. Dougherty said it is "disruptive to the entire staff" and "administratively a nightmare to track." The County also proposes to eliminate the use of quarter days off because half days are more manageable.

In order to deal with absenteeism on holidays, the County proposes to require medical certification of illness on holidays. The vacancies have to be filled and the work falls to those who report to work. The County also proposes to limit the number of people who are off at one time to 13. There are many people out on sick leave and long term disability. The County opposes the PBA proposal to establish a compensatory time bank. It is hard enough to get people to come to work without increasing leave potential.

Asked about assaults on officers by inmates, Mr. Dougherty said there has not been a dramatic increase. In 2000 ten officers were assaulted. Seven were hurt while restraining inmates. In 2001, there have been 12 people out on work related injuries. Six involved restraining inmates, four were assaulted.

Mr. Dougherty acknowledged that the issue of how many people can be out at one time is (or was at the time) the subject of a grievance that was moved to arbitration. He agreed that the correction officer staff was reduced by about 1/3 but said that the inmate population is also down about 1/3. He did not dispute that in April, May, June and July there was "more stress on scheduling" than there had been the preceding March. Forced overtime in the first ten months of the year were almost double the count of the previous year. Incidents of tardiness have increased.

Mr. Dougherty reiterated that the "biggest problem facing the jail is staffing." That is the basis of his objection to the compensatory time off bank and the reason for many proposals of the County.

John Redling, special assistant to the director at Union County Corrections, testified about the additions to administrative positions. No special training is required for the jobs. There are qualifications for detention officer, for example in terms of people skills. There is on the job training. Posts are picked once a year. The jail no longer has pool officers.

The proposal on meetings with the Union is to reduce the number of formal meetings. The County opposes the PBA's proposal to send one officer per shift out for food because it would take much longer than the 20 minutes the PBA estimates to get all the orders, call them in and then pick them up. The food would have to be checked when it is brought in.

The County also offers documents in support of its position. Exhibits 4,6,7,8,9 and 10 compare Bergen, Camden, Essex, Hudson, Middlesex, Monmouth and Morris Counties. The Uniform Crime Report for the State for the year 2000 compares prison populations and other facets of law enforcement. Other comparisons, including salaries, leave benefits, holidays, clothing allowances, etc., are shown in Exhibits 12-22. The County's agreements with PBA Local 108 (Sheriff's officers), FOP Local 103 (Sheriff's superior officers, PBA Local 250 (Prosecutor's office, detectives and investigators superior officers, park foremen, park maintenance,

craftsmen, and mechanics association, and Council 8, (non-supervisory blue and white collar employees) are in evidence.

Exhibit 29 is the unit scattergram for 2001 without an increase. Exhibit 30 shows the County's proposed salaries for 2001-2004. The health plan cost document is described in the record. The County also provides CPI information for 2000-2001, general economic information, reports of interest arbitration awards and settlements for 2000-2001, and private sector wage data.

POSITIONS OF THE PARTIES (Abbreviated)

PBA

The PBA points to the impact on this unit of the layoff of one third of its members. It also describes the dangers officers face in the performance of their duties, including injuries and exposure to communicable diseases. The inmate population is more violent and is overcrowded, increasing the tensions among inmates and between inmates and officers. The PBA claims "the increased work load is enormous."

Correction officers, like municipal police, "serve an essential role" in the "law enforcement matrix." Their professionalism, expertise and training are employed in a dangerous environment. The officers provide

special services. They are working "beyond the performance of regular duty," including the burden of extra forced overtime.

Compared with other counties, Union "is a busy law enforcement environment." The Union offers comparison with "peers in law enforcement" and argues that Union County correction officers are "poorly compensat[ed]." It cites an average composed of Union County municipal police officer base salaries. Officers in this unit are paid 5.6% below that average. These officers do not receive a longevity benefit as do correction officers in Middlesex, Passaic, Bergen, and a number of municipal police officers. Other law enforcement officers have a more generous clothing allowance.

The PBA claims the Employer's exhibits support its claim that compensation to this unit "lags behind average." These documents show that this unit has the lowest accumulated sick leave benefit. The maximum is well below that in Bergen and below Morris and Middlesex. Even the holiday benefit is "only average." The average rate of base pay increase, based on the contracts in evidence, is slightly over 4% for each year, 2001, '02, and '03. Using the County's exhibit, the average base rate increase among other correction groups is 5% in 2001, 4.25% in '02, and 4.75% in '03.

Other County units, including Sheriff's PBA and Sheriff's SOA, received a Senior Officer stipend up to \$2,865. That must be added to the

pay increase those groups received. The PBA claims this is a 4.5% enhancement. The Supervisory unit of detectives in the Prosecutor's office eliminated Step 1 from the salary guide and made First Class the new step 4. These changes increase the value of that settlement. In 2001, by the Union's calculations, the Prosecutor's SOA unit received an average percentage increase of 6.3%. Some units received clothing allowance increases.

Private sector comparison should be given little weight because there is no comparable employment in that sector. There are no stipulations of the parties that bear on this decision.

The PBA argues there is "no legal prohibition to an award of the PBA package" and the cost would "be almost imperceptible to the tax payer." The Employer has cap flexibility. The County has saved 1/3 of the bargaining unit's base wages and the cost of benefits. The PBA calculates considerable savings sufficient to fund the cost of its final offer.

The County also has funds available as well as the capacity to raise taxes. Pension abatements have contributed more money.

The cost of living is higher than the settlement sought by the PBA.

The Union argues that its "quality of life" issues should be awarded in order to enhance the continuity and stability of employment.

COUNTY

The County relies primarily on a pattern of settlement among the bargaining units in the Union County. As of November 2002, 1850 out of 2700 County employees have accepted the health care changes. (More have been affected by now). It also offers comparative data about other counties' correctional services. These counties are comparable in terms of geography, socio-economic factors, financial considerations, overall compensation, and conditions of employment. By comparison, Union County correction officers are "extremely well compensated." The County's offer will maintain their position at the top of the group, both in terms of salary and benefits.

The County's evidence shows that before the layoffs there were 295 officers and 45 vacancies for a total of 340 positions. After the layoff, as of April 1, 2001, there were 200 officers. As of November 7, 2001 there were 219 officers and one vacancy, a net loss of 76 positions between the date of the layoffs and the first interest arbitration hearing. There is no hard data to confirm the PBA's claim that its workload has increased dramatically.

The Employer argues that its operational proposals are aimed at improving efficiency and working conditions. The proposals "would create an incentive among officers to come to work and not leave their fellow correction officers having to work their shifts without valid reasons."

FINDINGS AND CONCLUSIONS

The parties supplemented the record with certain economic information when the matter initially was remanded. The PBA estimated the new dollar cost of each of the three years of the agreement. Assuming 208 bargaining unit members, all at maximum at the end of 2000, the costs would be as follows:

<u>Year 2001</u> -- Salaries	\$487,843.20
Clothing Allowance	5,200.00
Total	\$493,043.20
<u>Year 2001</u> -- Salaries	\$507,355.68
Clothing Allowance	5,200.00
Total	\$512,555.68
<u>Year 2002</u> -- Salaries	\$527,650.24
Clothing Allowance	5,200.00
Total	\$532,850.24

The County's estimate is based on the assumption that health benefit contributions would not be awarded. The annual new money cost of the County's final offer is \$431,539 in 2001, \$663,159 in 2002, \$701,294 in 2004. If health concessions are awarded, the costs would be reduced by \$27,000 in 2002 and \$105,671 in 2003.

As is set forth in the County's November 20, 2002 letter, health care costs are a substantial portion of the new money costs. In 2001, the increase is \$140,799 and in 2002 it is \$159,997. The projected increases for

2003 and 2004 are \$157,068 and 176,775, respectively. The increases account for 29% of the total new cost over four years.

The County's submission estimates the savings that would be generated through its health care proposals. A contribution of \$10 per month from each employee earning under \$65,000 in 2002 would yield \$25,920. Over the four years, the various proposals would result in \$108,433 in savings on health care costs. The County documents other savings in this area.

The central issue in this case is whether the pattern of settlement within the County should dispose of the wages and health care issues.

To date, three experienced interest arbitrators¹ have reviewed the County's proposals to its bargaining units. Their findings and conclusions are relevant here and I have summarized or cited them in the appropriate sections below.

The interests and welfare of the public

There is no evidence that the County is constrained by limitations imposed by P.L. 1976, c.68 (C.40A:4-45.1 et seq.) In my opinion, it is in the public interest to have employees contribute to the steadily rising cost of providing health care insurance coverage. A contribution gives employees a stake in helping to keep costs down and in making responsible use of the benefits. Arbitrator Mason employed a similar

¹ The awards are those of Arbitrators Light, Mason and Mastriani dealing with other law enforcement units of the County.

rationale in awarding the County's health care package and Arbitrator Mastriani came to the same conclusion.

This criterion also applies to the duration issue. As Arbitrator Mastriani observed, the longer term will create stability and "promote more harmonious labor relations between the County and all of its law enforcement units." That is in the public interest.

The criterion is of paramount importance in deciding each issue although other criteria may be given greater weight on a particular issue.

Comparisons

Comparisons among similarly situated employees doing the same work are more appropriate, in my view, than comparison among all law enforcement officers in various counties and municipalities. Arbitrators Light, Mastriani and Mason expressed the same opinion in rejecting comparison with municipal police officers to other law enforcement professionals.

Comparison with other County employees is important under several of the criteria. I have reviewed the other agreements and awards and conclude that except for minor differences, the essence of the deals is the same as the one offered here. The County provides a detailed analysis of the new money costs in other units. The data show that the costs are considerably lower in the other units than they would be in this unit even if the pattern of wage increases and health care contributions did not exist.

These substantial similarities "support a strong presumption that a compatible result is warranted here." (Mastriani).

Private sector comparison gets little weight because there is not much private sector employment that is similar. In any case, a review of the private sector wage data show that these correction officers are relatively well off by comparison.

Public employment in general has the same limitation. The similarities are best demonstrated with regard to other correction officers and other law enforcement officers of this employer.

Overall Compensation

No gross inadequacies are demonstrated in this record. As a general rule, the law enforcement personnel of the County receive similar benefits that compare favorably with employees of other counties' correctional facilities. This criterion gets little weight.

Stipulations

There are no stipulations affecting this decision.

Lawful Authority

There is no evidence that an award of either party's position would have an adverse impact or exceed the Employer's lawful authority. As a result, this criterion gets little weight.

Financial Impact

According to the record, the chief impact of an award that differs from the County pattern is to disrupt the stability and harmony of labor relations within the jurisdiction. The evidence supports the County's claim that it needs relief from the burdensome and persistent increases in the cost of providing health care. The financial impact of awarding the County's position will be beneficial to the tax paying public, in small measure in the near future but more significantly in the long run. This criterion is important for that reason.

Cost of living

Both parties' offers result in wage increases that keep pace with increases in the cost of living.

Continuity and Stability of Employment

This criterion is very important in deciding the wage and benefits issues. Because the subject is further explored elsewhere, I will not repeat that discussion here.

DISCUSSION BY ISSUE

Duration

The County points out in its November 20, 2002 letter that the PBA's argument, that three-year contracts are the norm, is not substantiated by the evidence. Half the municipal contracts in evidence as well as the majority of interest arbitration awards and settlements are for four year

terms. The other County law enforcement contracts expire on December 31, 2003.

The Union's final offer would mean that the contract established by this award would expire less than three months after the award issues. That would leave the unit without an agreement again after working for almost three years under an expired one. A longer term is supported by criteria 1,2,6 and 8. It is in the public interest to have the stability and predictability afforded by a longer agreement that expires at the same time as the Employer's other collective bargaining agreements. The longer term also conserves resources. Co-terminus contracts enhance the continuity and stability of employment. The contract for this unit was the only exception to the pattern created in all other units of the County. The County's proposal for a contract termination date of December 31, 2004 is awarded.

Salary Increase and Health Care

There is a relatively small difference between the parties' proposed wage increases. For example, under the County proposal, the top step on the salary guide for employees hired prior to 1/1/97 (the vast majority of the unit) would be \$67,950. The Union's proposal² would result in a top step of \$68,594, a difference of \$644. I have found above, as have several other arbitrators, that the pattern of settlement within the County

² Assuming 4% at maximum for 2004.

outweighs any distinction between this unit and other employees of the County.

As I read the evidence, the workload increases, disruptions and forced overtime that followed in the wake of the layoffs were ameliorated to some extent by the time the interest arbitration proceeding commenced. The statistics show that the ratio of inmates to officers is approximately as it was before the layoffs; there are about six inmates per officer as there were when there were 295 officers. The factors are not sufficient to overcome the persuasiveness of the pattern argument.

I have examined the various settlements and find that the differences between them are not significant. In some cases, employees achieved benefits that this unit had already gained in earlier contracts. This unit continues to enjoy benefits that the others do not have. The salaries here are at the higher end of the range of salaries among the groups. For these reasons, I believe that the pattern of wage increases that has prevailed across the County should be applied to this unit.

For similar reasons, the burden of health care contributions should be imposed on the correction officers. The cost to an employee in this unit is much smaller than it is in most of the other units. Nothing in the record supports a deviation for correction officers, notwithstanding their stressful working conditions, high level of professionalism and service.

Under the County's proposal, retiree health benefits would improve by covering approximately 75% of the retiree's cost instead of the approximately 25% it now covers. The current \$200/\$400 deductible would be reduced to \$100/\$200. The County's offer also includes an increase in the clothing allowance and other issues covered elsewhere in this decision.

For these reasons, I have awarded the County's health care proposals package and the County's proposed wage increases.

Senior Officer Differential

The PBA seeks an increase in the senior officer differential from \$1365 to \$1520 and from \$2365 to \$2500. The highest level would increase by the same amount as the wage increase. There is no evidence in the record that the existing levels are unreasonable. The increase sought is over 10% at the first level and would cost \$144,000 over the life of the agreement. The argument that the cost to the taxpayer is inconsequential does not meet the Union's burden of proving that the rates should be increased.

SOU Stipend

The PBA proposes a stipend of \$1500 per year for the members of this unit. The twenty or so members of this unit are volunteers who provide a range of emergency services. About 10% of the unit members are in the SOU. It does not appear that extreme emergencies happen very often. All members of the unit are exposed to dangerous inmates, contagious

diseases, assaults of various kinds and a stressful environment. I do not see a basis for adding a stipend for a small portion of the unit. This proposal will not be awarded.

Personal Injury Liability Fund

There is no evidence in the record, such as the history of the Fund's costs or uses since its inception, to establish the need to increase the current Employer contribution to this fund.

Compensatory Time Off Bank

The parties agree that staffing has been a big problem. There is no evidence to support awarding this proposal and the County makes a convincing argument that it should not be awarded.

Grievance Procedure

The PBA makes a good case for changing from a panel consisting of a few busy arbitrators to one with a much larger selection, including those named in the contract. Moreover, all arbitrators are available for direct appointments on selection by mutual agreement of the parties. The change costs nothing and makes good sense.

Food Pick-up

This benefit would be most welcome on the 4-12 shift where the choice of available (and preferred) meals is limited. However, the evidence does not show why the Employer should be contractually bound to provide paid time off for someone to fetch meals for others. As the

County observes, officers may order in or bring in food, free food is available and officers receive a \$350 meal allowance. The little evidence in the record suggests that an estimate of twenty minutes is inadequate.

Orthodontic Coverage Definition

The evidence is that this benefit is available to some other employees at no cost to the Employer but with some possible added administrative work. Assuming there is no cost to the Employer, this convenience should be extended to the bargaining unit members.

Operational Proposals

Each proposal is considered separately below. However, some comments apply to all of them. The County maintains that these proposals should be awarded in light of the burdensome and costly situation it describes. Tardiness, refusals of overtime, and cancellations of overtime have created a serious staffing shortage. The Union complains of forced overtime, inadequate time off, and fewer officers to do a bigger job. Some relief is indicated. However, the County already possesses the means to deal with some of these problems through discipline. It does not appear that full use has been made of the discipline policies in effect.

Article 7 Section 5 (Discipline for tardiness)

The County proposes a new provision allowing the imposition of progressive discipline after an officer has been late for three regularly scheduled shifts in one calendar year. According to County Exhibit 35,

there were 736 total lates in 2000 and 432 as of the beginning of November 2001. Ninety-two people were disciplined (or counseled) in 2000; 46 in 2001.

It is not clear why there is a need for this provision. If management's tardiness policy is weak or ineffective, it can be revised, subject to any other limitations in the parties' agreement or other governing factors. Despite an increase in incidents of tardiness there were fewer disciplinary actions for lateness. It appears that management has not consistently or aggressively enforced the existing policy.

Personal Injury Liability Insurance

The County proposes to delete Article 12. There is no evidence to support deleting this section. Presumably, there were tradeoffs when this provision was negotiated into the agreement. See also the discussion on the PBA's proposal to increase the contribution.

Article 14, Seniority, Section 4 (Preferential positions)

The County proposes to delete this section. The evidence does not support the proposal. There is no evidence of which positions have been eliminated or what purpose they served. The same applies to adding new administrative positions in detention, booking and releasing. There is no special training for the positions and no indication of how efficiency would be improved by adding the positions.

Article 14, Section 6, (Vacation/Shift Schedules)

This proposal is based on the approximately one third reduction of correction officers. A similar reduction in the number of officers who can use the specified leave is reasonable.

Article 14, Section 7 (add to administrative positions)

See discussion above, regarding Article 14, Section 4.

Article 15, Overtime (Forced overtime refusals, switches)

The County's proposal is to deny voluntary overtime for the next three-month period to officers who refuse forced overtime three times during any three-month period. Like other proposals to punish those who thwart the overtime procedures or do not come to work as scheduled, there are existing disciplinary policies that should be employed to deal with the officers who cause the problems. Overtime refusals are a serious problem. There were 195 in 2000 and 380 in 2001 (as of November 7, 2001). Discipline did not increase proportionately.

The current section permits switches with the approval of both officers involved in the switch and the approval of the supervisor. Aside from the opinion that switching is an administrative nightmare, the evidence does not show how switches have an adverse impact. Management has the power to withhold approval if a switch is anticipated to cause problems.

Under all of the circumstances described in this record, I believe it would seriously undermine morale to eliminate a benefit that operates by volunteer action among employees and under the right of management to veto any switch.

Article 16, Section 4, holiday absences, use of quarter days.

The County proposes to eliminate the use of quarter days and require leave to be taken in one half day increments. As the Union points out, a person who needs only a couple of hours of leave should not be required to use more in view of staffing difficulties and forced overtime. A two hour leave can be covered by a shorter overtime shift. That saves money and reduces the impact of overtime on those who work it.

The holiday absence section would require an officer to provide medical documentation if they cannot work due to an illness on a holiday. The officer would be charged with a sick day and would not get an alternate holiday. (Both Christmas Eve and New Years Eve would be considered holidays for purposes of this provision). Under the expired contract, the officer is charged with an occurrence but not with a sick day. The issue is covered by County Policy 3.10. The County's evidence does not document the number of officers scheduled to work on a holiday who call out sick. While this appears to be a useful policy change, it is fairly burdensome to someone who has a genuine short term illness, like a cold or an upset stomach on a holiday. The County has the right to

discipline employees who abuse sick leave. That avenue should be applied before wholesale changes are imposed on the unit.

The section would also be modified to reduce the number of officers permitted to use vacation personal business and religious leave on any work day to thirteen (13). That issue is discussed above. A reduction in the number permitted to use leave should be taken to reflect the reduced number of officers.

Article 17 (Vacations)

The County's proposal would add a day to the vacation allowance at the 20 year level and above and increase the maximum to thirty-two (32) days. The provision is among those cited as improvements to offset some of the other changes sought by the County. For that reason, it is awarded.

Article 20 (Sick time buyout)

This provision, like the one above, is offered as an enhancement to the Employer's package. The evidence is that only someone with many years of perfect attendance could benefit. The award of this issue is consistent with the issue above.

Article 22 (Clothing allowance)

This proposal to increase the clothing allowance by \$25 in each of the first three years is also part of the County's economic package and is, therefore, awarded.

Article 23 (Delete extra holiday)

At the present time, if other employees receive an unscheduled paid day off, this unit also gets an extra holiday. The benefit has to do with the fact that correction officers and some others are essential employees who cannot be excused due to inclement weather. There is no evidence of how often these extra holidays occur and no firm basis on which to remove this existing benefit.

Article 25, (Labor management meetings)

This proposal would change the frequency of meetings to an "as-needed" basis, no more often than quarterly, from the current monthly meetings. There is no evidence that the current schedule of meetings is burdensome. The Employer has not met its burden of proving a need for this change.

Article 26 (PBA Delegate and President, release time)

Under the existing contract, the PBA delegate is given full release time to conduct union business. The practice of permitting one delegate for every fifty officers to attend the PBA convention is codified. The County would eliminate both full release time and the convention practice. This proposal is among the County's operational proposals. The impact on staffing would be minimal. The evidence suggests that this bargaining unit has made good use of the benefits of full time representation. Other units who have not bargained a similar provision

may not need one or may have other more pressing concerns. Absent evidence that the benefit has been abused there is no basis to support removing it.

Article 26 (Meal allowance)

The County would discontinue payment of the \$1.35 meal allowance unless the officer works at least four hours of the overtime shift. Like other proposals, this one is not supported by evidence as to how often officers work less than four hours of overtime and receive the allowance.

Article 28 (Interchange scheduled days off)

Officers now have the right to interchange scheduled days off "subject to the approval of the Department Head and consistent with the efficient operation of the jail." See the discussion on switches in the overtime section. This provision is under the control of management. If a switch is deleterious to staffing or operations then it should not be approved. There is insufficient support for removing this benefit.

AWARD

Duration: January 1, 2001 to December 31, 2004

Salaries:

Effective 1/1/01	1.5%
Effective 6/23/01	1.5%
Effective 1/1/02	3.5% in guide 4.0% at max
Effective 1/1/03	3.5% in guide 4.0% at max
Effective 1/1/04	3.5% in guide 4.0% at max

Article 6, Section 2, Step 4, delete the current panel of arbitrators and rely on the PERC panel.

Article 14. 6 -reduce number of officers who can use leave to 13.

Article 16, last paragraph: reduce number permitted to use leave to 13.

Article 17, Vacations: increase levels as proposed by County.

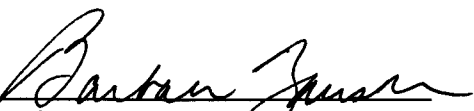
Article 20, Sick leave: increase levels as proposed by County.

Article 22, Clothing allowance: increase by \$25. in each of the first three years of the agreement.

Article 29, Insurance: modify as proposed by County in Section 1.a), Section 3, Section 4, a), b), c), and d).

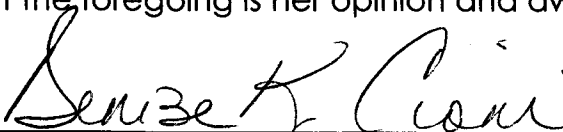
Orthodontic Coverage Definition -- add eye care coverage and an improved dental insurance plan that includes orthodontia coverage to be funded by the PBA.

Other proposals not included in this list are not awarded.

By: 
Barbara Zausner
October 15, 2003 NYSDL 368310267

New York
Ulster

Barbara Zausner appeared before me on October 15, 2003 and affirmed that the foregoing is her opinion and award.



DENISE K. CIONI
Notary Public, State of New York
No. 4608804
Residing in Ulster County
Commission Expires May 22, 2006 