

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

SOMERSET COUNTY PROSECUTOR,

"Public Employer"

-and-

**SOMERSET COUNTY PROSECUTOR'S
DETECTIVES PBA LOCAL 307**

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No. IA-97-123

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

Mark Diana, Esq.
Stanton, Hughes, Diana,
Zucker & Salsberg, P.C.

For the Union:

Richard D. Loccke, Esq.
Loccke & Correia, P.A.

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on May 14, 1997 in accordance with P.L. 1995, c. 425, in this matter involving the Somerset County Prosecutor (the "Prosecutor") and Somerset County Prosecutor's Detectives, PBA Local 307 (the "PBA"). Pre-arbitration mediations were held on August 27 and September 24, 1997. Because the impasse was not resolved, a formal interest arbitration hearing was held on December 1, 1997. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

At the arbitration hearing, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Post-hearing briefs were received on January 15, 1998. The Prosecutor requested the opportunity to file a reply brief. I granted that request over the objections of the PBA. The Prosecutor's reply brief was received on February 11, 1998.

The PBA represents all employees of the Detectives unit, from the rank of Investigator through Major, employed by the Somerset County Prosecutor. The unit includes 13 Detectives, 13 Sergeants, seven Lieutenants, four Captains and one Major.

FINAL OFFERS OF THE PARTIES

Before beginning the formal hearing, the Prosecutor and the PBA submitted the following final offers:

PBA LOCAL 307

Economic Issues

1. **Duration**--January 1, 1997 to December 31, 1999.
2. **Salaries**--

Across the board salary increases as follows:

6% effective January 1, 1997
6% effective January 1, 1998
6% effective January 1, 1999

3. Automatic step movement for all investigative and detective personnel with singular supervisory rates for each supervisory position.

4. 15% supervisory/rank differential.

5. Modification of Article 16 to provide time and one-half (1 ½) payment for all work beyond the "normal work week" as currently defined.

Non-economic Proposals

6. Add disciplinary procedures to the scope of the grievance procedure.

Somerset County Prosecutor

Economic Issues

1. Duration--January 1, 1997 to December 31, 1999.

2. Salaries--

Across the board salary increases as follows:

3% effective January 1, 1997

3% effective January 1, 1998

3% effective January 1, 1999

3. Creation of a six step salary guide for non-supervisory detectives, which provides for an automatic step increase each year.

4. Equalization of salaries within each supervisory rank so that, as of January 1, 1999, all supervisory detectives holding the same rank receive the same pay.¹

¹The Prosecutor would exempt one Sergeant, First Class from this proposal.

5. Modify compensatory forfeiture provision so that in lieu of forfeiture, a detective may be directed to take time off and use his accrued compensatory time.

Non-economic Proposals

6. Adopt a management rights clause.

7. Adopt a "standard operating procedures" clause which would permit the Prosecutor to "promulgate and maintain" standard operating procedures, including "standards of work performance, standards of performance evaluation, and rules, regulations and policies regarding the daily operation of the Prosecutor's Office."

8. Adopt a clause permitting the Prosecutor to establish a performance management system.

9. Adopt a clause requiring the Prosecutor to maintain liability coverage for employees named in a civil lawsuit "in which bodily injury, property damage or personal injury is alleged to have occurred as a result of the employee's actions in the performance of his or her duties while on duty."

In addition, the parties have agreed to several changes to their agreement. Those changes are as follows: (1) to attach a description of the current health

benefits plan to the contract; (2) to attach the current educational reimbursement policy to the contract; (3) duration; a three year agreement from January 1, 1997 through December 31, 1999; (4) to include a disciplinary procedure article consistent with the Law Enforcement Officers Protection Act; and (5) to include a new personnel file clause.

The Prosecutor and the PBA have offered considerable documentary evidence, testimony and argument in support of their final offers. Forty-nine County and forty-five PBA exhibits were received in evidence. In addition, the Prosecutor presented the testimony of Debbie McLaughlin, Somerset County Human Resource Specialist. The PBA presented testimony from Sergeant Louis Diana and Lieutenant Richard Ike.

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. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. 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

The evidence submitted reflects that the Somerset County Prosecutor's office is an efficient and respected office providing expert investigatory law enforcement services to the 21 local municipalities in the County. Investigatory expertise provided by the Prosecutor's Office includes forensics, narcotics, electronic surveillance, accident reconstruction, fingerprints, and identification specialities. Detective work requires extensive training beyond that required of a municipal police officer and is

inherently dangerous. At least one officer was wounded in an investigation in recent years. The Prosecutor's office often confers with the Prosecutors' offices in neighboring Middlesex, Morris and Union Counties.

Somerset County is home to many high-income residents and, in 1997, anticipated a surplus of \$10,463,773. In 1997, the County used a cap index figure of 2.5% to control expenditures and to maintain its sound fiscal policies. The PBA argues the Cap law does not apply to the Prosecutor as a public employer. The Prosecutor argues that the Cap, and amount allocated to the Prosecutor by the Freeholders, are necessary considerations. The 1997 County budget lists \$109,661,330 as the expenditures permitted by the Cap and use of only \$108,900,000 of that amount. In other words, under the 1997 budget, the County projected \$761,330 remaining in the Cap bank.

In recent years, staffing levels within the Prosecutor's office have dropped from a high of 51 in 1992 to a current low of 38, excluding the Chief and Deputy Chiefs. While several of those leaving the Prosecutor's office have retired or resigned for unrelated reasons, the PBA was able to point to three individuals who left the Prosecutor's office for higher pay and/or better benefits in other law enforcement positions.

This negotiations concerns the third collective bargaining agreement between the Prosecutor and the PBA in a bargaining relationship which began in 1994. In the two prior agreements, from January 1 through December 31, 1994, and from January 1, 1995 through December 31, 1996, the parties began the process of bringing some strongly needed consistency to salary levels. The record reflects that the Somerset County Prosecutor's office and the PBA agree that conformity among salary levels, particularly among senior employees, is necessary. However, each has a different proposal for how to achieve that goal. Changes in overtime and compensatory time, and proposals for wage increases are also central issues in dispute.

The parties' differences regarding the figure which represents total base wage costs for all bargaining unit personnel appear to stem from a disparity in the number of employees in the bargaining unit, with the PBA estimate including 40 employees and the Prosecutor's including 38 employees. Since the PBA and the Prosecutor now acknowledge that there are presently 38 employees in the bargaining unit, I will accept and use the figures offered by the Prosecutor for the purpose of costing out the final offers and the award. That is, the annualized total base salary costs for 1996 were \$2,167,457, and one (1) percentage point costs \$21,674.00.

THE PBA'S POSITION AND ARGUMENT

The PBA asserts that its final offer is justified by application of the statutory criteria to the evidence. Specifically, the PBA asserts that, since 1992, a significant number of individuals have left the Prosecutor's office for other employment to take advantage of higher salaries and better benefits in other law enforcement agencies. According to the PBA, these other agencies, unlike Somerset, provide automatic step guides for investigative and detective personnel and have a higher rank differential than that provided by the Somerset County Prosecutor's office. The PBA noted that most law enforcement agencies, including several prosecutors' offices have step guides. Implementing a step guide for the Prosecutor's office would enhance stability and provide opportunity for personal advancement. According to the PBA it is the comparative norm in law enforcement.

The PBA compares the rank differential in the Somerset County Prosecutor's office with that provided by Union County, Middlesex County and the Morris County Prosecutor and finds it lacking. In order to enhance stability and provide opportunity for personal advancement within the higher ranks, which include most of the Prosecutor's employees, the PBA proposes a 15% rank differential.

The PBA compares the salaries of the investigative personnel in the Prosecutor's office and urges that its proposals are justified by comparison with other Somerset County law enforcement personnel, law enforcement personnel in the municipalities in Somerset County, and in the private sector. According to the PBA, investigative personnel in the Prosecutor's office are among the lowest paid among comparable employers. The PBA uses as a "bench mark" officer a non-supervisory detective with an average salary of \$47,573. According to the PBA, that salary ranks 16th out of 19 for 1996 among the municipalities, both within and outside of Somerset County, which it considers comparable. According to the PBA, among the 19 comparables it suggests, the average salary for 1996 was \$51, 339.

The PBA also asserts that each of these municipalities employs a step system of progression to allow movement to a maximum salary. However, the Prosecutor does not have a step system. As further evidence that a step system is appropriate, the PBA cites the Atlantic City Prosecutor's contract as well as the Ocean, Passaic and Warren County contracts with law enforcement personnel, all of which include a salary progression through automatic steps. The PBA also points to the recent settlement between Somerset County and its Corrections Officers which included a new automatic step guide with nine annual steps.

According to the PBA, the prosecutors' offices in Middlesex, Morris, Camden, Mercer, Bergen and Union counties have automatic step movement to maximum pay rates. The PBA also notes that law enforcement personnel in the Prosecutor's office earn significantly less than the average top step salary of \$65,465 of law enforcement personnel in the Middlesex County Prosecutor's office, Union County Prosecutor's office, the Bergen Narcotics Task Force and the Bergen Prosecutor's investigators.

The PBA notes that increases received by law enforcement personnel in prosecutors' offices it deems comparable averaged 4.15%, 4.15% and 4.33% for the last three years of their agreements. For purposes of this comparison, the PBA considers Middlesex County, Camden County, the Mercer County and Bergen County Prosecutor's offices. As a final comparable in support of its salary increase proposal, the PBA points to the salaries received by law enforcement personnel in the municipalities where the County Freeholders reside. These municipalities, which include Bound Brook, Branchburg, Bernardsville, Hillsborough, Bridgewater and North Plainfield, compensate detectives at salaries ranging from \$52,093 in North Plainfield in 1996 to \$58,520 in Bernardsville in 1997.

With respect to comparison with the private sector, citing Arbitrator William Weinberg's award in Ridgewood, the PBA suggests that it should be given limited

weight because there are few private sector occupations which invite sound comparisons with law enforcement personnel.

Addressing the lawful authority of the Prosecutor, specifically with respect to the Cap law, the PBA asserts that the Cap law does not apply the Prosecutor's office because the office of a county prosecutor is not mentioned. The PBA characterizes it as the difference between employees of a New Jersey State Constitutional officer, as here, and employees of a county, which is directly covered and governed by the Cap law. The PBA also notes that the funding of prosecutors' offices is controlled by a statute other than the Cap law, and that law specifically addresses the prosecutors' offices' need for budgetary flexibility and autonomy.

The PBA, citing In re: Application of Begley, 55 N.J. 53 (1969), argues that the County Freeholders do not have authority over the Prosecutor's Office's expenditures. Rather, at the county level, only the Assignment Judge has authority to review the Prosecutor's budget.

The PBA notes that although the County Freeholders do not have authority over the Prosecutor's budget, the revenue for the Prosecutor's office flows through the County. Therefore, in assessing the financial impact of its proposal, the PBA relies on the 1997 budget for the Prosecutor's office as listed in the County budget.

As a basis for its analysis, the PBA uses a weighted average wage of \$56,740 for all employees in the bargaining unit and a gross bargaining unit wage of \$2,269,603. The PBA further calculates that, based upon the gross bargaining unit wage, there is an annual differential of \$68,088 between its proposal of six percent increases and the Prosecutor's proposal of three percent annual increases ($\$22,696 \times 3$). The PBA characterizes the total annual differential of \$68,088 as *de minimis*.

The PBA suggests that the additional cost of its wage proposal has already been made up by the significant reduction in personnel. In particular, the PBA points to a reduction of 13 employees in the Prosecutor's office, including a significant reduction in supervisory staff. By reducing two majors, a captain and a lieutenant, the PBA asserts that the career path has been shortened by fewer supervisory opportunities. The PBA calculates that the savings to the Prosecutor's office is approximately \$737,620. The PBA's conclusion is premised upon multiplying the 13 reduced positions by the weighed average salary of \$56,740. The PBA further calculates that dividing the \$737,620 savings by the annual differential of \$68,088 results in substantial value. Therefore, the PBA asserts that considering only the reduction in positions within the Prosecutor's office more than covers the increase it seeks.

The PBA also evaluates its proposal in light of the County's budget. Based upon the total appropriations for 1997, the PBA calculates that the total difference between the proposals is 0.0004% and that the typical Somerset County taxpayer would pay an additional 12¢, assuming that the Prosecutor did not have sufficient flexibility within its budget to cover the added cost. However, the PBA asserts that the Prosecutor has the flexibility within its budget to cover the added cost of the PBA's proposal. The 1997 budget includes \$4,813,673 for salary and wages in the Prosecutor's office which is \$301,519 more than was appropriated in 1996.

The PBA acknowledges that the Consumer Price Index (CPI) does not favor its position, but urges that it not be considered in a vacuum and that it must be considered only after employees are earning an appropriate salary. Given the assertion that law enforcement personnel in the Prosecutor's office are not seeking an increase that would compensate them sufficiently compared to employees in comparable municipal and county law enforcement agencies, the PBA suggests that the CPI should not be controlling. The PBA also contends that employees of the Prosecutor's office serve without tenure and do not have portable pensions as do some private sector employees. The PBA asserts that these factors should also be considered in determining the weight given to the CPI.

The PBA interprets the statutory criteria covering continuity in employment and comparison of collective bargaining in the public and private sectors as requiring comparison with "area standards" or the "going rate." The PBA asserts that its members earn far less than the "going rate" based upon virtually all of the contracts in evidence. The PBA contends that the Prosecutor's attempt to compare its law enforcement personnel with disparate job titles, including county clerical, service and maintenance jobs, does not work because the nature of their work differs drastically from that of law enforcement personnel.

The PBA asserts that the Prosecutor's office is "hemorrhaging" qualified employees because they are leaving for higher pay with other law enforcement agencies and, as a result, the public is bearing the cost of the turnover and of recruitment, training and special education for new employees. The municipalities who are recruiting from the Somerset County Prosecutor's office are receiving the benefits of the training provided by the Prosecutor's office. For these reasons, the PBA asserts that the continuity and stability of employment criterion weighs heavily in favor of its proposal because it would create needed stability.

In addition to its wage package, the PBA seeks to modify the overtime provisions of the agreement to provide for time-and-one-half payment for all work

beyond the "normal work week" which is currently 35 hours. The PBA characterizes this proposal as a request for overtime pay when overtime is worked.

The PBA also seeks to remove the 50-hour limit on the accumulation of compensatory time and to eliminate the forfeiture of compensatory time if it is not used within three months after it is earned and to remove the requirement that the first 50 hours of overtime be paid as compensatory time. According to the PBA, the requirement that the first 50 hours of overtime be paid as compensatory time violates the Fair Labor Standards Act. The PBA further maintains that the requirement that compensatory time be used within three months of when it is earned effectively creates a forfeiture clause.

Finally, the PBA seeks to add disciplinary matters to the grievance procedure.

THE PROSECUTOR'S POSITION AND ARGUMENT

The Prosecutor asserts that the Somerset County detectives unit is a desirable place to work, that its employees are well compensated, and that turnover is low. The Prosecutor contends that its proposal is more reasonable than that proposed by the PBA when considered in light of the statutory criteria.

The Prosecutor has proposed creation of a six step salary guide for non-supervisory detectives providing for automatic annual step increments. The Prosecutor notes that while the PBA has demanded a step system, it has not put forth a specific proposal for such a system. In contrast, the Prosecutor's proposal for a six step system requires fewer steps to reach the top rate than many county detectives' contracts which include step systems. For example, the Prosecutor cites the Mercer and Middlesex County Prosecutors' agreements, each of which include nine steps, and the Hudson County Prosecutor's agreement which includes 11 steps. The Prosecutor notes that most contracts with Prosecutor's offices do not include step systems. According to the Prosecutor, its proposal includes automatic increments ranging from almost 12% from step one to two to nearly 8% from step five to step six. The Prosecutor notes that these increases are in addition to across the board increases that all detectives will receive. Since the PBA has not put forth a specific proposal for a step system, the Prosecutor urges adoption of its proposed step system for non-supervisory detectives.

The Prosecutor also proposes to equalize the salaries within the six supervisory ranks (Major, Captain, Lieutenant, Sergeant First Class, Sergeant and Detective First Class). There are currently two salaries within the Captain rank, two within the Lieutenant rank, and two within the Sergeant First Class (SFC) rank. While the PBA has proposed eliminating the disparity between the ranks so that

every supervisory detective of the same rank receives the same salary, it has not proposed a specific plan to achieve this. According to the Prosecutor, its proposal would pay equalization adjustments to the lower paid Captains and Lieutenants in 1997, 1998 and 1999, to achieve salary equality on January 1, 1999. The Prosecutor proposes to accomplish pay equalization by increasing the base pay of the lower paid Captain by an additional \$1,500 in 1997 and 1998 and by \$1,431 in 1999, and by increasing the base pay of the lower paid Lieutenants by an additional \$750 in 1997 and 1998 and by \$715 in 1999 in addition to across the board increases. With respect to the SFCs, seven SFCs are paid \$57,799 and one is paid \$59,952, and the Prosecutor maintains that it would be too costly to raise the seven SFCs to the rate paid to one SFC. The Prosecutor calculates that it would cost over \$14,000 added on to base salary without compounding the cost of this increase over the years. The Prosecutor asserts that this proposal would leave only one individual with an aberrant salary as a result of the years when no uniform salary administration policy existed. The Prosecutor does not seek to lower this individual's salary.

The Prosecutor asserts that its proposal for a 3% across the board increase in each year of a three year agreement is more reasonable than the PBA's 6% proposal when viewed under the statutory criteria. According to the Prosecutor, the average salary of a Somerset County detective is \$57,038, and based upon 3% across the board increases, would increase to \$61,266 in 1998, and \$63,373 in

1999. The Prosecutor is also mindful that the additional \$301,519 appropriated in 1997 in the Prosecutor's budget covers all employees of the Prosecutor's office, not just those represented by the PBA.

According to the Prosecutor, the salaries of its detectives compare favorably with the average private sector salary in Somerset County of \$43,180 and the average private sector salary of all counties in New Jersey of \$35,351. The Prosecutor notes that only three detectives earned less than the average private sector salary in Somerset County and only one earned less than the average private sector salary in New Jersey. The Prosecutor also notes that its proposal compares favorably to the average private sector wage increases in the United States, which were 2.8% in 1995 and 2.9% in 1996. Consistent with a national trend of low inflation, the Prosecutor points out that average private sector increases in Somerset County decreased from 4.9% in 1995 to 3.8% in 1996.

The Prosecutor asserts that the salaries of its detectives compare favorably with those in the public sector in general because the average Somerset County detective earned \$57,038 in 1996, compared with the average salary of \$42,216 for federal government employees working in New Jersey, and \$41,048 for state government employees and \$37,954 for local government employees. According to

the Prosecutor, wage increases in the public sector in the United States averaged 3.1% in 1995 and 2.8% in 1996.

Turning to comparison with the salaries paid in Somerset County, the Prosecutor maintains that its detectives are the highest paid group of Somerset County government employees. The Prosecutor compares the salaries of County Correction Officers with Detectives noting that 34% of the detectives earn between \$56,000 and \$59,999 while the largest group of correction officers earned between \$30,000 and \$35,999. The comparison continues with 12 detectives earning over \$66,000 versus one correction officer. The Prosecutor notes many director-level positions within Somerset County earn less than \$59,271, which would be the 1997 average detective salary under its proposal.

According to the Prosecutor, its proposal would maintain the Detectives' intra-County superiority in salary because the County's non-union work force received a 3% increase in 1997 and the Corrections Officers have settled for 3% increases for 1995, 1996 and 1997 and the Roads and Bridges Employees have settled for 3% for 1997, 1998 and 1999. The Prosecutor asserts that a "strong public interest" is served by awarding wage increases consistent with those of other County employees, especially other County law enforcement personnel.

Turning to comparison with public employees in comparable jurisdictions, the Prosecutor rejects the comparisons with municipal police departments both within and outside of Somerset County as well as Prosecutors' detectives in Morris, Middlesex and Union Counties. Because municipal police officers perform primarily a patrol function rather than an investigative function, and the Prosecutor's office does not follow the typical pyramid structure found in most municipal police departments, municipal police employees are not comparable to the Prosecutor's detectives. Despite the supervisory titles held by many detectives, the Prosecutor notes that most detectives perform similar investigative functions and received supervisory titles in years past as rewards for service.

The Prosecutor submits that comparison with detectives' contracts in Union, Middlesex and Morris Counties is too limited, and comparison should be made with all County Prosecutor's offices in the state. The Prosecutor notes that the functions of detectives across the state is much the same and financial disparities from municipality to municipality do not exist between the counties. Looking to comparison with other Prosecutors' offices, the Prosecutor points out that Somerset County detectives are the 7th highest paid and rank 14th in length of service and size of office.

The Prosecutor details the most recent salary settlements in 13 Prosecutors' offices. These settlements range from a low of from 1 to 3% in each year for 1996, 1997 and 1998 in the Atlantic County Prosecutor's office to 3.5 percent each year for 1996 through 1999 in the Middlesex County Prosecutor's office. The Prosecutor notes that none of the agreements, including Middlesex, Morris and Union County Prosecutors, are near the 6% annually sought by the PBA. While some of the agreements cited by the Prosecutor include increases greater than 3%, the Prosecutor points out that its detectives enjoy other benefits superior to those enjoyed by detectives in other prosecutors' offices. These benefits include a County-provided automobile for the business and personal use of the detectives at no cost to the detective, which the Prosecutor estimates to be worth approximately \$8,500 annually. Other examples cited by the Prosecutor include a 35-hour work week, which the detectives in only eight other prosecutor's offices enjoy and vacation benefits ranging from 12 to 27 days annually; 15 paid holidays; four hours minimum call in pay; an educational reimbursement policy; an overtime meal reimbursement policy; a "generous" release time policy; and a generous policy for cashing out accumulated sick leave upon retirement . According to the Prosecutor, a minority of prosecutor's offices offer some or all of these benefits.

When considering the overall compensation presently received by the detectives, in addition to salaries, the Prosecutor points to the generous benefits

package which in addition to the benefits detailed above includes a fully-paid medical plan for employees and their dependents and a fully-paid dental plan for employees. The Prosecutor provides two examples of the value of the benefits package with one detective's base salary at \$51,341 and his overall compensation, including the benefits package, totaling \$80,409. The second example is a lieutenant whose base salary is \$64,258 and his overall compensation, including the benefits package totals \$98,102.

The Prosecutor submits that the cost of living supports its proposal, noting that the CPI, which has recently been criticized as overstating inflation, has risen 2.9% in 1997, 2.9% in 1996 and 3% in 1995.

The Prosecutor urges consideration of the continuity and stability among detectives and suggests that despite the PBA's arguments to the contrary, turnover has been low. The Prosecutor points to the testimony of PBA witnesses that the Prosecutor's office is a desirable place to work and that they are not aware of a recruitment problem. The Prosecutor notes that PBA witness Sergeant Diana could identify only three individuals who left the Prosecutor's office for better jobs since 1992. The Prosecutor also points to the high level of job security enjoyed by law enforcement personnel generally compared to non-law enforcement employees.

Turning to the financial impact on the taxpayers and the interests and welfare of the public, the Prosecutor argues that a proposal should not be awarded simply because the employer can afford it and that this criteria is not simply a consideration of ability to pay. Rather, the Prosecutor asserts that its detectives already enjoy salaries that are among the highest in the state. The Prosecutor agrees that the interests of the public are served by a competent detective's unit, but suggests that increasing the tax burden beyond the Prosecutor's 3% offer would result in those funds not spent on other County funding obligations. The Prosecutor points out that although Somerset County is home to many wealthy residents, its bankruptcy filings are at an all time high.

In response to the PBA's argument that the Cap Law does not apply to the Prosecutor for interest arbitration purposes, the Prosecutor asserts that if that were true, the arbitrator would need to consider whether an interest arbitrator has the authority to award increases in excess of that appropriated by the County Board of Freeholders. The Prosecutor submits that such authority rests with the Assignment Judge.

According to the Prosecutor, consistent with the Fair Labor Standards Act, 29 U.S.C. § 207 (FLSA), it compensates employees at a rate of time-and-one-half of their regular hourly wage for all hours worked in excess of 40 per week. However,

the Prosecutor argues further that FLSA permits a public employer to pay for overtime with compensatory time off in lieu of cash at a rate of one-and-one-half hours off for each hour of overtime worked. The Prosecutor notes that its compensatory time off plan predates the parties' collective bargaining agreement by several years. The Prosecutor described the parties' bargaining history over compensatory time as follows:

The parties' 1994 agreement (their first agreement) codified the Prosecutor's compensatory time off system, but also modified the past practice in several respects. First, the 1994 agreement provided that only the first 100 hours of overtime worked by a detective each calendar year would be paid in cash. Second, the 1994 agreement provided that detectives who failed to request the use of their banked comp time during the year in which it was earned would forfeit their comp time.

The parties further modified the comp time policy in the 1995-1996 agreement. First, at the Union's request, the Prosecutor agreed to reduce the annual comp time threshold from 100 hours to 50 hours. Thus, at present, only the first 50 hours of overtime worked by a detective each calendar year are paid with comp time; all subsequent overtime hours worked each year are paid in cash. Second, in an effort to encourage the detectives to utilize the accrued comp time each year, the forfeiture provision was modified to require detectives to request the use of their banked comp time within three months after its was earned. (Citations omitted).

The Prosecutor proposes that the present system be maintained with modification of the comp time forfeiture provision to include language which would "permit the Prosecutor to direct a detective to use his accrued comp time if a

detective fails to request it himself." The Prosecutor explains that its proposal would shift the burden to the Prosecutor to direct a detective to use his comp time. If the Prosecutor fails to direct a detective to take time off, the detective would not forfeit his comp time.

With respect to the PBA's overtime proposals, the Prosecutor argues strenuously that there is no basis for the PBA's proposal that overtime be paid after 35 hours each week. The Prosecutor notes that detectives are currently paid at straight time rates for hours worked between 35 and 40 hours. The Prosecutor calculates the additional annual cost of paying overtime for hours worked between 35 and 40 hours as \$160,550. The Prosecutor asserts that there is no basis to support such an expenditure. According to the Prosecutor, the PBA seeks the best of both worlds since they already have a 35-hour work week, which effectively raises their hourly rate compared to other Prosecutor's offices where the standard work week is 40 hours, and they seek overtime for those hours between 35 and 40. Citing the Atlantic, Hudson and Hunterdon County Prosecutors' contracts, the Prosecutor asserts that overtime after a 40-hour work week is the norm.

The Prosecutor also urges rejection of the PBA's proposal to abolish compensatory time, which is currently provided only for the first 50 hours of overtime. Thereafter, all overtime is paid in cash. The Prosecutor views its current

compensatory time policy as a "valuable tool" allowing the Prosecutor to cut overtime costs without limiting services to the public. The Prosecutor notes that this is the policy reason for permitting public employers to compensate employees for overtime in compensatory time off and that there is a trend towards flexible work schedules, which include comp time. While the Prosecutor acknowledges that its detectives are the only Somerset County Employees who receive comp time in lieu of overtime, the Prosecutor notes that, as a separate employer from Somerset County, its longstanding comp time policy should not be abrogated. The Prosecutor points to the Prosecutors' offices in Burlington, Cape May, Hudson and Middlesex Counties, all of which, use comp time policies. The Prosecutor suggests that eliminating the compensatory time policy would increase costs without a return benefit to the Prosecutor.

The Prosecutor proposes four new non-economic contractual terms be added to the agreement. The Prosecutor supports its proposal for a management rights clause by noting that every other detectives' contract on the record includes one. The Prosecutor asserts that its Standard Operating Procedures proposal incorporates the Prosecutor's inherent managerial prerogative to adopt operating procedures for running the Prosecutor's office. The Performance Evaluation proposal would codify the Prosecutor's existing right to evaluate performance. While the Prosecutor acknowledges that certain aspects of a performance evaluation

system may be negotiable, the Prosecutor notes that the PBA did not contest the negotiability of the proposal. The Prosecutor's Liability Insurance proposal is identical to the Liability Insurance clause contained in the Somerset County Correction Officers' contract and was originally submitted as a counter-proposal to the PBA's "Legal Aid" proposal, which has been withdrawn. The Prosecutor remains willing to include the proposal in an agreement.

The Prosecutor objects to the PBA's inclusion of a proposal to modify the grievance procedure to include disciplinary measures. According to the Prosecutor, the PBA withdrew this proposal from its final offer at the start of the hearing.

DISCUSSION

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The Prosecutor and the PBA have skillfully articulated their positions on each issue and have submitted evidence and argument on each statutory criterion to support their respective positions. The evidence and arguments have been carefully reviewed, considered and weighed.

The statutory criteria have been considered and I conclude that all are relevant to the resolution of the dispute, although the weight to be accorded to each varies. As required by law, I have also decided the total net annual economic changes for each year of the three year award.

Although the parties agree that certain issues need to be addressed, they differ in the methods they would use to remedy the problems both perceive. Foremost, the Prosecutor and the PBA agree that the salary disparities within ranks should be reduced or eliminated. Additionally, there is mutual acknowledgment that some form of a step system should be implemented to create a career path within the Prosecutor's office. For the duration of this agreement, I award the Prosecutor's proposal for a step system for the detective rank.

I conclude that with respect to the two salary rates within the Captain rank and within the Lieutenant rank, the Prosecutor's proposal, which would equalize salaries within each rank as of January 1, 1999, is sound and the concept should be adopted. The proposal is responsive to the PBA's demand for an equalization of salaries in this rank.

Although the Prosecutor's proposal provides equalization for Captain and Lieutenant ranks, it stops short of full salary equalization for those in the SFC rank.

Under the Prosecutor's proposal, an SFC would continue to earn a base pay of \$59,952 while the other seven would continue to earn \$57,999. While the Prosecutor notes that it does not seek to reduce the salary of the one SFC earning \$59,952, nor does it seek to raise the other SFCs to the top rate. In order to achieve salary equality within the supervisory ranks, I conclude that the SFCs should also achieve salary equality by January 1, 1999. The costs of this equalization are chargeable and must be computed as part of the total net economic cost.

The PBA seeks a 15% rank differential citing greater differentials in rank within the Prosecutor's offices in Union, Middlesex and Morris Counties. Each of those counties use differentials which vary from rank to rank. For example, in Morris County the rank differential between a Captain and a Lieutenant is 5%, and the rank differential between a Lieutenant and a Sergeant is 8.5%, and the rank differential between a Sergeant and a Detective is 11%. Likewise, Union and Middlesex Counties have similar variance. Given that the rank differential in the Somerset County Prosecutor's office currently varies from a low of 3% to a high of 15.77%, bringing conformity to rank differentials would be extremely costly. In light of the present need to equalize salaries within ranks, and to establish a step system to provide career advancement, conformity among rank differentials is not justified during the term of this agreement.

The PBA has proposed creation of a step system to provide for career advancement within the Prosecutor's office, but has not submitted a specific proposal. The Prosecutor has responded to the PBA's proposal by submitting a six step system providing for annual increments ranging from 8 to 12% for the Detective rank. However, review of the Prosecutor's proposed step system reveals that at present, only one detective is not already at the top step. The Prosecutor's proposal falls short of achieving the mutual goal of providing a career path. The inclusion of a step system beyond the rank of detective to detective first class appears to be a desirable ultimate goal inasmuch as the difference between ranks does not appear to be based on tasks or functions or attainment of supervisory authority. However, I conclude that a step system or a merger of rank is inappropriate at this time due to the high costs associated with implementing this goal during this contract. An additional 3% step effective January 1, 1999 for detectives at minimum would compress the gap between the ranks and be a reasonable and equitable step in this direction. The costs of such step is chargeable and must be computed as part of total net economic cost.

Ordinarily, in the bargaining process in both the public and private sectors, the party seeking a change in wages, hours and conditions of employment bears the burden of demonstrating the need for such modification. I conclude that this burden has not been met with respect to the PBA's proposals for overtime pay for hours

worked over 35 in any week and complete elimination of the compensatory time system. I also note that the two prior agreements provided mechanisms in these areas based upon mutual agreement.

The annual cost of the PBA's proposal to pay overtime after 35 hours would be \$160,550. The financial impact of this proposal during 1997 alone would negatively impact the Prosecutor's ability to fund the remainder of this award without jeopardizing its need to provide all of the services it contemplates within this budget. Nor is there evidence on this record that employees in other Prosecutors' offices receive overtime after 35 hours. Likewise, elimination of the current comp time policy which allows the Prosecutor to compensate the Detectives for their first 50 hours of overtime each year in compensatory time at one and one half hours for each overtime hour worked does not appear to be justified at this time. However, the requirement that Detectives use their comp time within three months of earning it, or forfeit their time is harsh. The Prosecutor's proposal to shift the burden for scheduling the comp time to be used to the Prosecutor does mitigate against the severity of the policy and I conclude that it represents a reasonable accommodation on this issue for the duration of this agreement.

Turning to the issue of salary, the Prosecutor and the PBA have spent considerable energy supporting their respective proposals on the salary issue. The

Prosecutor has proposed an across-the-board salary increase of 3.0% per year, not including equalization costs for the ranks of Captain and Lieutenant. There is an annualized base salary figure of \$2,167,457 in 1996. The PBA has proposed an increase of 6.0% each year or an increase of \$130,044 in 1997, \$137,850 in 1998 and an increase of \$146,124 in 1999. These figures do not include unspecified increases for rank differentials and step systems for the ranks which the PBA seeks.

Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that across-the-board wage increases be set at 3.5% in 1997, 3.5% in 1998 and 3.5% in 1999. In addition, there are equalization costs in each of the three years as set forth herein and costs for an additional step for Detectives in 1999. Based only upon across-the-board salary, the new money cost in each year is \$75,860 in 1997, \$79,027 in 1998, and \$82,251 in 1999. In addition, there are equalization costs of \$14,615 in 1997, \$13,080 in 1998, and \$13,112 in 1999. The cost of an additional step for Detectives in 1999 at 3% is \$7,380. The total economic change is \$90,475 in 1997, \$92,107 in 1998 and \$102,743 in 1999. In addition to the across-the-board percentages, the additional costs are 0.67% in 1997, 0.58% in 1998, and 0.87% in 1999. The analysis which leads me to this award is as follows.

The interests and welfare of the public are being served well by the Prosecutor's office. The Prosecutor's office provides investigatory services with specialties in forensics, narcotics, electronic surveillance, accident reconstruction, fingerprinting, and identification to the 21 municipalities in Somerset County. It is an efficient and effective department and, by all accounts, a desirable place to work. The overall level of compensation and benefits play a role in maintaining a desirable atmosphere, as well as promoting efficiency and effectiveness. The Prosecutor's proposal is less than the average settlements in other law enforcement agencies and the PBA's is more. The Prosecutor's efforts to live within its budget as allocated by the County requires a lower increase than that sought by PBA, but one which compares reasonably with detectives' salaries in other Prosecutor's offices and other law enforcement salaries. I place substantial weight on comparable increases to employees performing the same or similar functions. An across-the-board salary increase averaging 3.5% over the three-year term achieves such a balance.

The interest and welfare of the public requires consideration of the limitations of the Cap Law, N.J.S.A. 40A:4-45.2 et seq. This award is within the constraints of the Prosecutor's budget and does not impact upon any constraints which may be imposed by the CAP Law. I do not determine the legal applicability of the CAP law to the Prosecutor's office. If not legally applicable, its practical relevance is strong and is a consideration requiring analysis.

While Somerset County is running a surplus and is not in danger of nearing the limitations of the Cap Law, the Prosecutor is sensitive to the need to stay within its budget and to hold down costs to avoid passing on additional costs to Somerset County taxpayers. The Prosecutor is also sensitive to the fact that this award will be one of the first Somerset County government settlements covering 1998 and 1999 and the Prosecutor seeks to limit potential costs in the event that this award has an impact on future settlements within Somerset County. While the taxpayers' interests in controlling costs may be at odds with the Detectives' desire to be adequately and fairly compensated for their work, the Prosecutor's proposals to equalize salary and to initiate a step system evidence sensitivity to the Detectives' needs. Each of these legitimate and competing needs are harmonized by this award. The award equalizes salary levels for Captains and Lieutenants, and Sergeant First Class, creates a step system for Detectives, and adds an additional step for Detectives. These costs have been phased in over a three year period to provide reasonable costs associated with these goals which both parties recognize are equitable.

The comparability data submitted by both parties has been examined carefully. This criterion includes comparisons with similarly situated law enforcement personnel, and with public and private employment in general. While each of these comparisons reflect different figures, some of which may conflict, all are relevant.

The Prosecutor emphasizes the favorable comparison of its proposal compared to salaries and wages in the public and private sectors generally, as well as in comparison to recent settlements among non-law enforcement personnel in Somerset County government. Most of these settlements for 1995, 1996 and 1997 are 3% annual increases or below. Although these statistics call for an award substantially less than sought by the PBA, they do not control the overall result. There is little dispute that the actual functions and duties of other occupations in both the private and public sectors are difficult to compare with that of law enforcement personnel especially those who serve, as here, a highly specialized function requiring much in the way of training, experience and expertise.

The Prosecutor also emphasizes recent settlements within Somerset County government, which include 3% increases for most County employees, including Corrections Officers and Superior Sheriffs' Officers, in 1997. Additionally, Superior Corrections Officers received 4% in 1997, and the only settlement within County government for 1998 and 1999 on this record is 3% in each year for the Roads and Bridges employees.

The PBA justifies its demands by comparison with police settlements in a variety of municipalities in Somerset and neighboring counties. These settlements average 4.257% in 1997 and 4.125% in 1998. The lone municipal settlement PBA

cited for 1999 was for 3.85% in Bound Brook. The PBA also urges comparison with other Prosecutors' offices, citing average increases of 4.15%, 4.15% and 4.33% in each of three years in Middlesex, Camden, Mercer and Bergen Counties. The Prosecutor also suggests comparison with other Prosecutors' offices, using a broader range of comparisons. Settlements in Prosecutors' offices throughout the state vary widely from 1 to 3% increases each year in Atlantic County from 1996 through 1998, to a split 2/2.5% in each of two years in Mercer County. Only the Middlesex County Prosecutor's office has reached a settlement which extends into 1999. That agreement, as here, calls for 3.5% increases in each year of a four year agreement from 1996 through 1999.

This award provides a modestly higher wage increase than that provided for private and public sector employees generally, as well as for Somerset County government non-law enforcement employees. However, the comparability data for similarly situated law enforcement personnel in municipalities within Somerset County and in adjacent jurisdictions, as well as those in other Prosecutors' offices are also relevant considerations that more directly relate to the work performed and service provided by the detectives employed by the Somerset Prosecutor. In reaching an award, no one feature of the comparability data submitted by either side dictates a specific result. The award which I have entered averaging 3.5% over a three year period, plus an additional 0.67%, 0.58% and 0.87% for each of the three

years, is somewhat higher than the comparability data in both the private and public sectors in general, but generally on par with the comparability data for similarly situated law enforcement personnel within Somerset County, in adjacent jurisdictions, and in other Prosecutors' offices state-wide. The additional costs above the across the board are justified by the need to initiate adjustments toward a long-term goal of an equitable and logical compensation system.

I also conclude that this award is consistent with overall compensation and benefits currently received by law enforcement personnel generally, and by detectives in Prosecutors' offices specifically. The PBA asserts that its members are leaving the Prosecutor's office for greener pastures and emphasize superior salary and benefits in neighboring Prosecutors' offices. On the other hand, the Prosecutor contends that its benefits package is as good as or better than those offered by other Prosecutors. Specifically, the Prosecutor points to fact that each detective is provided an automobile, together with its service and upkeep, for both business and personal use. The Prosecutor values this benefit alone at \$8,460 annually per detective and contrasts it with detectives in other Prosecutors' offices who must use their own vehicles and are reimbursed for mileage. The PBA does not deny the attractiveness of this benefit, but points out that its members have 24 hour law enforcement responsibility with the accompanied risks associated with the duties. The Prosecutor also notes other benefits, including educational reimbursement, and

generous vacation and holiday allowances, in addition to a health insurance, dental insurance, a pension plan, etc. On balance, the Detectives in the Somerset Prosecutor's office are well compensated and receive a generous benefits package. This award will maintain their relative standing in this regard, but the award does not expand upon these benefits.

The cost of living data submitted tends to support the Prosecutor's offer more than the offer of the PBA. The CPI has risen 2.9% in 1997 and 2.9% in 1996. I have given these figures very careful consideration, but I cannot conclude that this factor, standing alone or coupled with any additional factors, weigh against an increase less than awarded here. When this data is weighed, it reduces the reliance and weight the PBA seeks to be given to comparability data it has submitted into the record, but it is not a controlling consideration. It is also a well established principle that increasing productivity reduces unit labor cost which, serves as an offset to increases exceeding slightly the cost of living. In this instance, the number of unit employees has been substantially reduced in the last few years by more than twenty-five percent (25%) without an offsetting reduction in workload.

This award is also consistent with the lawful authority of the employer, including those limitations imposed by the Cap Law. There is no evidence that the County has experienced problems with the Cap and its budget. Somerset County's

expenditures were approximately \$761,330 below that permitted by the Cap Law and it maintains a surplus of approximately \$10,463,773. The funds for the 1997 increase have already been allocated in the Prosecutor's budget and the cost of the 1998 and 1999 increases can be absorbed without jeopardizing the Cap requirement or exceeding the Prosecutor's budget.

I have also considered the financial impact of this award on the Prosecutor's office as well as on Somerset County, its residents and taxpayers. Based upon the record, I conclude the award's financial impact on the governing unit, its residents and taxpayers will not be adverse. The Prosecutor's 1997 budget included \$301,519 more than was allocated for wages and salaries in 1996. Although this entire sum is not devoted to funding an increase for PBA members, it is more than ample to cover the cost of this award in 1997. Likewise, the additional costs in 1998 and in 1999 will not impact adversely the Prosecutor's office or the County and its residents and taxpayers and there is no evidence that the increases will adversely impact on services or taxes.

The final criterion which I consider concerns the continuity and stability of employment. The Prosecutor's office has experienced a significant number of retirements and other turnover in recent years. However, of the several individuals who left the Prosecutor's office in recent years, the PBA could point to only three who

had left for higher salary or benefits in other law enforcement agencies. Nonetheless, in a department consisting of 38 detectives, this turnover is significant and weighs in favor of the salary increases which I have awarded.

Non-Economic Issues

During the course of negotiations, the Prosecutor and PBA Local 307 reached tentative agreement on several proposals concerning contract language. They include Health Insurance (Article XIII), Educational Reimbursement (Article XV), Discipline Procedure (New Article) and Personnel Files (New Article). They are incorporated by reference into this award.

In addition, although I have decided that certain modifications are warranted, I find merit in the Prosecutor's proposals concerning Management Rights, Standard Operating Procedures and Performance Evaluations. The Management Rights clause is a commonly accepted provision and present in some form in virtually all of the dozens of agreements introduced into the record. The modifications represent a more appropriate balance between the exercise of lawful managerial prerogatives and PBA statutory rights. The provision, as modified, reads:

A. The Prosecutor hereby retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by applicable

State and Federal laws, including, but without limiting the generality of the foregoing, the following rights:

1. All management functions not modified by this agreement;
2. The right to establish and administer policies and procedures related to personnel matters, departmental activities, employee training, departmental and work operational functions, and maintenance of the facilities and equipment of the Prosecutor's Office;
3. To reprimand, suspend, or otherwise discipline employees (excluding discharge) for just cause;
4. To discharge employees in accordance with New Jersey law;
5. To hire, promote, transfer, assign and reassign employees to work;
6. To determine the number of employees and the duties to be performed;
7. To maintain the efficiency of employees; to establish, expand, reduce, alter, combine, consolidate or abolish any job or job classification, department operation or service for legitimate governmental policy reasons;
8. To determine staffing patterns and areas worked, to control and regulate the use of facilities, supplies, equipment, materials and other property of the Prosecutor's Office;
9. To determine the number, location and operation of divisions, departments, units and all other work groups of the Prosecutor's Office, the assignment of work, the qualifications required, the performance standards and the size and composition of the work force; and

10. To establish a code of rules and regulations for the operation of the Prosecutor's Office.

B. The exercise of the foregoing powers, rights, authority, duties and responsibilities of the Prosecutor shall only be limited by the terms of this Agreement, and it is agreed that these enumerations of management rights shall not be deemed to exclude other rights not enumerated.

C. In recognition of the rulings of the Courts of New Jersey, the parties recognize that the exercise of managerial rights is a responsibility of the Prosecutor on behalf of the taxpayers and that the Prosecutor cannot bargain away or eliminate any of its managerial prerogatives.

I also award the Prosecutor's proposal, as modified, concerning Standard Operating Procedures. The modification expresses that the PBA's statutory rights not be waived by the exercise of the Prosecutor's authority to promulgate and maintain standard operating procedures. The provision awarded shall read:

The Prosecutor may, in its discretion, promulgate and maintain standard operating procedures. Such procedures may include, but are not limited to, standards of work performance, standards of performance evaluation, and rules, regulations, and policies regarding the daily operation of the Prosecutor's Office. This provision shall not be deemed to be a waiver of the rights or obligations of either party to negotiate pursuant to N.J.S.A. 34:13A-1.1 et seq.

I also award, as modified, the Prosecutor's proposal on Performance Evaluations. The modification expresses the desirability of formal inclusion of PBA input into the development of all aspects of the system. To the extent possible,

bilateral discussion and development of the system will result in a more effective and acceptable system. The provision, as modified, shall read:

The Prosecutor reserves the right to establish a performance evaluation system and to conduct written performance evaluations of all employees covered by this Agreement. The Prosecutor shall meet and confer with PBA Local 307 over all aspects of the performance evaluation system prior to the Prosecutor's adoption of any such system.

I also conclude that the Prosecutor's counter-proposal with respect to overtime is meritorious and should be awarded.

I have already noted that the PBA's proposal to completely overhaul the compensatory time policy was not warranted so soon after the agreement in the last contract to modify this policy. However, the PBA has pointed out certain inequities in this policy which the Prosecutor has responded to, especially in the area of comp time forfeiture. I conclude that the Prosecutor's counter-proposal represents a reasonable accommodation and should be awarded. Thus I award the following changes to the agreement:

Article XVI (C)

Detectives must request the use of their compensatory time off within three (3) months after it is earned. A Detective's request to use his or her compensatory time off shall be granted, unless in the Prosecutor's discretion staffing and manpower restrictions do not allow it at the time requested. If a Detective fails to request to use his or her

compensatory time off within three (3) months after it is earned, the Prosecutor shall have the authority to direct said Detective to take time off of a duration equal to his or accrued compensatory time.

Article XVI (D)

If a Detective has been unable to use his or her accrued compensatory time off within the three (3) month period after it was earned because his or her request(s) has been denied by the Prosecutor under Article 16.2(C), or if the Prosecutor fails to direct a Detective to use his or her accrued compensatory time off under Article 16.2(c), the Detective's accrued compensatory time shall be carried from month to month until the end of the calendar year in which it was earned, subject to the Directive's obligation to request the use of said carried compensatory time off during each calendar month. If, after carrying his or her accrued compensatory time from month to month, the Detective still has been unable to use his or her accrued compensatory time off within the calendar year in which it was earned because his or her request(s) has been denied by the Prosecutor under Article 16.2(c), or if the Prosecutor fails to direct a Detective to use his or her accrued compensatory time off under Article 16.2(c), then, at the option of the Detective, the Detective will be paid in cash for all unused compensatory time off at the end of the calendar year or will be permitted to carry over the unused compensatory time off to the following calendar year.

I also find merit in the inclusion of a provision on Liability Insurance. The Prosecutor has proposed language identical to that which is contained in the Correction Officers labor agreement. This will provide for certain protections for Detectives who are named in a civil suit relating to actions taken in the performance of their duties. The proposal reads:

The County will maintain liability insurance coverage for employees who are named in a civil suit, in which bodily injury, property damage or personal injury is alleged to have occurred as a result of the employee's actions in the performance of his/her duties

while on duty. Said coverage shall indemnify the employee for his/her reasonable defense costs and for a judgment against the employee, within the terms of the policy and not to exceed the policy limits.

Notwithstanding anything else in this Article to the contrary, no liability insurance coverage shall be provided to employees: (1) who are named in a civil action instituted by another employee; (2) who are named in a criminal action; (3) who are involved in disciplinary proceedings; (4) for intentional injuries or damage; or (5) for injuries or damage caused while off duty.

The foregoing description of applicable coverages and exclusions is only a summary. If there is any variation between the foregoing description and the terms of the policy, the policy will control. In addition, the definitions of all terms shall be in accordance with the definitions contained in the policy.

Notwithstanding anything else in this Article to the contrary, the County retains the right to change the level and/or type of liability insurance coverage provided to employees at any time without prior negotiation.

It appears to the arbitrator that paragraph #2 may not be consistent with the provisions of the Law Enforcement Protection Act (LEPA) which delineates certain liability protections for law enforcement officers. I conclude that the parties defer to the provisions of the LEPA and incorporate the relevant portions of that statute into paragraph #2 of the Prosecutor's counter-proposal. I award the counter-proposal as modified.

AWARD

1. Salary - Across-the-Board Increases

Each unit member shall receive an increase of three and one-half percent (3.5%) effective January 1, 1997, an additional three and one-half percent (3.5%) effective January 1, 1998, and an additional three and one-half percent (3.5%) effective January 1, 1999.

2. Step System - Detective Rank

The six step system for the Detective rank proposed by the Prosecutor is awarded. It shall reflect the three and one-half (3.5%) increases awarded in Section #1 of this Award. In addition the salary guide shall provide for an additional step, effective January 1, 1999 at three percent (3%) higher than the sixth step as adjusted by the 3.5% increase in 1999.

3. Except for the rank of Detective, all other ranks shall be equalized by January 1, 1999. Those eligible in the Sergeant First Class rank will receive a bump of \$791, \$719 and \$643 annually to achieve equalization. Those eligible in the Lieutenant rank will receive a bump of \$802, \$722 and \$638 annually to achieve equalization.

Those eligible in the Captain rank shall receive a bump of \$1,526, \$1,436 and \$1,343 annually to achieve equalization.

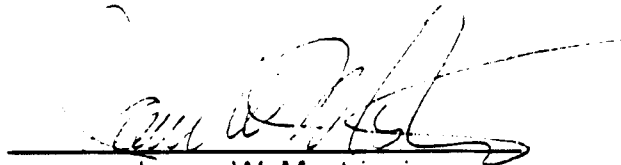
4. The tentatively agreed-to proposals concerning Health Insurance (Article XIII), Educational Reimbursement (Article XV), Discipline Procedure (New Article), and Personnel Files (New Article) are awarded and incorporated herein.

5. The Prosecutor's proposals as set forth and as modified in the text of this decision are awarded concerning Management Rights (New Article), Standard Operating Procedures (New Article), and Performance Evaluations (New Article).

6. The Prosecutor's counter-proposals as set forth in the text of this decision are awarded concerning Overtime (Article XVI) and Liability Insurance (New Article), except that the Liability Insurance provision shall correspond to the provisions of the LEPA concerning Paragraph (2).

7. All proposals of the Prosecutor and the PBA not addressed by sections one through six (1-6) of this Award, nor tentatively agreed to subject to this Award, shall be deemed rejected and withdrawn.

8. All terms of the prior agreement except those modified by the terms of this Award shall be carried forward into the new agreement effective 1/1/97 through 12/31/99.

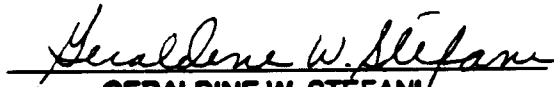


James W. Mastriani

DATED: June 24, 1998
Sea Girt, New Jersey

STATE OF NEW JERSEY }SS.:
COUNTY OF MONMOUTH }

On this 24th day of June 1998, 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.



GERALDINE W. STÉFANI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 27, 2000

7. All proposals of the Prosecutor and the PBA not addressed by sections one through six (1-6) of this Award, nor tentatively agreed to subject to this Award, shall be deemed rejected and withdrawn.

8. All terms of the prior agreement except those modified by the terms of this Award shall be carried forward into the new agreement effective 1/1/97 through 12/31/99.

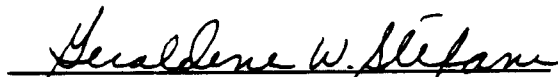


James W. Mastriani

DATED: June 24, 1998
Sea Girt, New Jersey

STATE OF NEW JERSEY }SS.:
COUNTY OF MONMOUTH }

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GERALDINE W. STÉFANI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 27, 2000