

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

COUNTY OF OCEAN,

“Public Employer,”

and

PBA LOCAL 258 (CORRECTIONS
OFFICERS),

“Union.”

INTEREST
ARBITRATION
DECISION & AWARD

Docket No. IA-2020-005

Before
Robert C. Gifford, Esq.
Arbitrator

Appearances:

For the Employer:

Robert T. Clarke, Esq. – Of Counsel and On the Brief
H. Thomas Clarke, Esq. – On the Brief
Apruzzese McDermott Mastro & Murphy

For the Union:

Frank M. Crivelli, Esq. – Of Counsel and On the Brief
Donald C. Barbatì, Esq. – On the Brief
Crivelli & Barbatì

On September 23, 2019, PBA Local 258 filed a Petition to Initiate Compulsory Interest Arbitration with the New Jersey Public Employment Relations Commission. On September 25, 2019, PERC notified the County of the PBA's Petition. On September 26, 2019, the County made a request to utilize PERC's mediation services. On October 2, 2019, the PBA notified PERC that it preferred to have the appointment of an interest arbitrator. Later that day, the County submitted its response to the PBA's Petition. On October 7, 2019, I was appointed through random selection from PERC's Special Panel of Interest Arbitrators to serve as interest arbitrator. The law requires that I issue an Award within 90 days of my appointment.

On October 11, 2019, I conducted mediation sessions with the parties that did not produce a settlement. Final Offers were submitted on October 30, 2019.¹ On November 7, 2019, the PBA filed a motion to exclude two (2) of the County's proposals listed in its response to the PBA's Petition on the basis that the County's submission was not filed within five (5) days of the Petition.² On November 8, 2019, an interest arbitration hearing was held at the County Administration Building located in Toms River, New Jersey. A stenographic record of the

¹ On November 13, 2019, the PBA amended its final offer by withdrawing certain proposals and/or portions thereof along with correcting two (2) scrivener's errors. The County did not oppose the amendment.

² I reserved judgment on the PBA's motion. [T:8]. I now deny the PBA's motion as the County's response appears to have been timely filed. See *N.J.A.C. 19:10-2.1(a)* – "When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations." Further, there is an absence of evidence that suggests or shows that the PBA was prejudiced by the manner in which the County responded to the PBA's Petition.

proceedings was taken. During the proceedings, the parties were afforded the opportunity to argue orally, examine and cross-examine witnesses and submit documentary evidence into the record. Testifying on behalf of the PBA was Lucian Woods – Corrections Officer and Local Union President. Testifying on behalf of the County were Warden Sandra Mueller, Deputy Warden Joseph Valenti, Director of Personnel Keith Goetting, and Business Manager Ryan Reilly. The parties submitted certifications concerning the County's finances on or before November 14, 2019.³ The parties provided past-hearing briefs on or before November 27, 2019, whereupon the record was declared closed.

³ The PBA presented a Certification from Dr. Raphael J. Caprio. The County presented a Certification from County CFO Julie N. Tarrant.

FINAL OFFERS OF THE PARTIES

PBA's Final Offer

Economic Issues

1. Amend Article 4 "Salaries" as follows:

Delete Sections A through C and replace with the following:

A. During the life of this contract and thereafter, Step movement shall occur on July 1st of 2019, July 1st of 2020 and July 1st of 2021 for all employees not at the top step of the salary guide. All Officers not at the top step of the salary guide shall be guaranteed annual automatic step movement on each successive July 1st until he or she reaches the top step of the salary guide.

B. It is the specific intent of the parties that the continuation of step movement shall expressly survive the expiration of this agreement and any and all officers that are not at the top step of the salary guide upon the date of expiration shall continue to advance on the salary guide until a new agreement has been ratified and executed.

C. For those employees that are currently being compensated at a rate that is considered "off guide" as expressed within the terms and conditions of the agreement that expired on the date of June 30, 2019, these employees shall remain "off guide" and receive salary increases as follows:

1. Effective July 1, 2019, all "off guide" wages shall be increased by 3.0%

2. Effective July 1, 2020, all "off guide" wages shall be increased by 3.0%

3. Effective July 1, 2021, all "off guide" wages shall be increased by 3.0%

Other than those employees currently being compensated at a rate that is "off guide", no other employees that are currently at the top step of the salary guide (step 15), or advancing on any other step of the salary guide, shall move "off guide" during the term of this agreement.

Salary Increments

1. Effective July 1, 2019, Steps one (1) through fifteen (15) shall be increased by 3.0%.

2. Effective July 1, 2020, Steps one (1) through fifteen (15) shall be increased by 3.0%.

3. Effective July 1, 2021, Steps one (1) through fifteen (15) shall be increased by 3.0%.

The new salary guide shall be reflected in the contract as the guide exhibited in Appendix A.

**Appendix A
Salary Guide**

STEP	9/1/2018	7/1/2019 3% ATB	7/1/2020 3% ATB	7/1/2021 3% ATB
1	\$40,000	\$41,200	\$42,436	\$43,709
2	\$44,000	\$45,320	\$46,680	\$48,080
3	\$48,000	\$49,440	\$50,923	\$52,451
4	\$52,000	\$53,560	\$55,167	\$56,822
5	\$56,000	\$57,680	\$59,410	\$61,193
6	\$60,000	\$61,800	\$63,654	\$65,564
7	\$64,000	\$65,920	\$67,898	\$69,935
8	\$68,000	\$70,040	\$72,141	\$74,305
9	\$72,000	\$74,160	\$76,385	\$78,676
10	\$76,000	\$78,280	\$80,628	\$83,047
11	\$80,000	\$82,400	\$84,872	\$87,418
12	\$84,000	\$86,520	\$89,116	\$91,789
13	\$88,000	\$90,640	\$93,359	\$96,160
14	\$92,000	\$94,760	\$97,603	\$100,531
15	\$93,748	\$96,560	\$99,457	\$102,441

D. ~~As per the existing contract~~, All probationary Officers **shall** remain on Step 1 for a full calendar year before they advance to Step 2 on the anniversary of their hiring date.

E. All Officers hired prior to November 1, 2012, upon fifteen (15) years and one (1) days of service as a sworn Ocean County Correction Officer, shall be considered a Senior Officer, at which time his/her salary shall be increased by \$1,500 (One Thousand Five Hundred Dollars. Officers hired after November 1, 2012 shall not be eligible for this benefit.

~~F. The application of Article 4, Salaries shall be suspended June 30, 2019, and until the parties reach a voluntary agreement for a successor CBA or by the terms of an Interest Arbitration Award.~~

2. Amend Article 9 "Hospital, Surgical, Major Medical, Prescription and Retirement Benefits" as follows:

Amend Section A. as follows:

A. The County of Ocean currently provides medical coverage to the County employees **and their dependents** through the New Jersey State Health Benefits Program as supplemented by NJ Local Prescription Drug Program and Chapter 88 P.L. 1974, as amended by Chapter 436 P.L. 1981. The parties recognize that the State Health Benefits Program is subject to changes enacted

by the State of New Jersey that may either increase or decrease benefits. The cost of said coverage shall be borne by the County with employees contributing to the cost of said health benefits as follows:

Effective January 1, 2020, all bargaining unit members will make health care contributions calculated on as a percentage of salary as follows:

**HEALTH BENEFITS PREMIUM CONTRIBUTION RATES
FOR SINGLE COVERAGE AS OF JANUARY 1, 2020**

Salary Range	
Less than 20,000	3.38%
20,000-24,999.99	4.13%
25,000-29,999.99	5.63%
30,000-34,999.99	7.50%
35,000-39,999.99	8.25%
40,000-44,999.99	9.00%
45,000-49,999.99	10.50%
50,000-54,999.99	15.00%
55,000-59,999.99	17.25%
60,000-64,999.99	20.25%
65,000-69,999.99	21.75%
70,000-74,999.99	24.00%
75,000-79,999.99	24.75%
80,000-94,999.99	25.50%
95,000 and over	26.25%

**HEALTH BENEFITS PREMIUM CONTRIBUTION RATES
FOR FAMILY COVERAGE AS OF JANUARY 1, 2020**

Salary Range	
Less than 25,000	2.25%
25,000-29,999.99	3.00%
30,000-34,999.99	3.75%
35,000-39,999.99	4.50%
40,000-44,999.99	5.25%
45,000-49,999.99	6.75%
50,000-54,999.99	9.00%
55,000-59,999.99	10.50%
60,000-64,999.99	12.75%
65,000-69,999.99	14.25%
70,000-74,999.99	16.50%
75,000-79,999.99	17.25%

80,000-84,999.99	18.00%
85,000-89,999.99	19.50%
90,000-94,999.99	21.00%
95,000-99,999.99	21.75%
100,000-109,999.99	24.00%
110,000 and over	26.25%

**HEALTH BENEFITS PREMIUM CONTRIBUTION RATES
FOR MEMBER/SPOUSE and PARENT/CHILD COVERAGE
AS OF JANUARY 1, 2020**

Salary Range	
Less than 25,000	2.63%
25,000-29,999.99	3.38%
30,000-34,999.99	4.50%
35,000-39,999.99	5.25%
40,000-44,999.99	6.00%
45,000-49,999.99	7.50%
50,000-54,999.99	11.25%
55,000-59,999.99	12.75%
60,000-64,999.99	15.75%
65,000-69,999.99	17.25%
70,000-74,999.99	19.50%
75,000-79,999.99	20.25%
80,000-84,999.99	21.00%
85,000-99,999.99	22.50%
100,000 and over	26.25%

D(3). In accordance with the County's past practice, employees hired prior to November 1, 2012 shall be reimbursed for the premium and administrative expenses associated with Medicare Part B. Employees hired after November 1, 2012 shall not receive this benefit. The County will no longer reimburse Medical Part B. Premiums

Add the following new sections H.:

H. Surviving spouse and children coverage shall extend for twelve (12) months after the date of death of the employee, with the exception that should a member be killed in the line of duty, said benefits shall continue for the spouse and children until the spouse qualifies for Medicare or remarries, whichever may occur first. Coverage for the children shall extend so long as they are dependent upon the spouse or they reach the age of twenty six (26), whichever shall occur first.

3. **Amend Article 6 “Uniform Maintenance Allowance” as follows:**

Amend Section A. as follows:

A. The County will reimburse new officers for their initial issue of uniforms.

Thereafter, the County will provide each Officer an annual uniform and equipment maintenances allowance of one thousand two hundred and fifty dollars (\$1,250.00).

Initial issue shall consist of the following:

- 1 ~~Shirt~~ Short sleeve class (B) shirt (with buttons and zipper)
- 1 Uniform pants
- 1 ~~White long-sleeve class (A) shirt (with buttons and zipper)~~
- 1 **French blue long sleeve class (B) shirt**
- 1 Uniform hat
- 1 Jacket (non-leather)
- 1 Name plate
- 1 Set of collar brass
- 1 Garrison style belt
- 1 Tie
- 2 Class (C) – Short sleeve shirts (with buttons and zipper)
- 3 Class(C) - pants

4. **Amend Article 7 “Overtime Compensation” as follows:**

Amend Sections I and K as follows:

I. No Officer shall be assigned “mandatory overtime” for the shift following his or her last shift worked prior to their regularly scheduled days off or **any other** scheduled **vacation day off from work**, absent extreme emergent circumstances as determined by the Warden.

K. Pursuant to Section A., herein regular overtime will continue to be compensated at the rate of time and one-half. Effective April 1, 2015, overtime compensation may be in the form of cash payment or compensatory time off, at the sole discretion of the Officer. Officers may take compensatory time off upon approval by the Warden or his or her designee. The decision to grant a comp time request shall be based upon whether minimum staffing levels are met. **It is understood that a request for the use of compensatory time off will not ordinarily be granted if it results in overtime for another Officer. Officers may accrue a maximum of ninety-six (96) two hundred forty (240) hours of compensatory time per calendar year. Any compensatory time not used by November 15th of in the year in which it is earned shall may be paid to the Officer at his or her current rate of pay, within thirty (30) days thereafter; or in the alternative may be carried over into the next year up to a maximum of 120 hours.**

Add New Section L.

The following list of days shall constitute compensable days for the computation of overtime but not limited to: Sick (code to be provided); Vacation (code 10); Comp time (code 11); Family Sick – paid (code 45); Bereavement (code 7); Jury

Duty (code 8); Worker's Comp (code 23); Military – paid (code 9); Military Vacation (code 10); Military Personal (code 30); Military Comp (code 32); Union Leave – PBA Day (code 34); Reciprocal Switch (code 57); Light Duty – worked (code 2); Conference (code 4); Convention (code 6); offsite Training; Unpaid Family Leave (code 44); and Unpaid Military Day/Leave (code 31).

5. Amend Article 8 “Personal Days” as follows:

Each employee will be granted three (3) Personal Days per annum. ~~Requests for the use of a Personal Day must be submitted on the form provided by the Warden's office at least forty eight (48) hours before the commencement of leave.~~ This leave may not commence if any emergency condition exists in the County, as declared by the Warden or his/her designee. ~~Personal days must not be utilized as compensable days for the purpose of computing overtime.~~

6. Amend Article 13 “Sick Leave” as follows:

Amend Section A. by adding the following:

A member shall be permitted to use sick leave pursuant to the terms and conditions outlined in NJAC 11A and the New Jersey Earned Sick Leave Act, N.J.S.A. 34:11D-1 et seq.

Amend Section B. as follows:

B. Employees in this bargaining unit are also eligible for coverage under the County's reimbursement for unused sick leave at retirement policy. This policy provides for reimbursement for unused sick days at a retirement on the basis of one-half (1/2) pay for each earned and unused sick day to a maximum of \$15,000.00. Employees are responsible for following all of the conditions and controls of this policy and all pertinent forms must be submitted to the Department of Employee Relations at least sixty (60) days prior to the date retirement commences.

Effective July 1, 2019, employees will have a choice of selecting either:

1) receiving a lump sum payment; or

2) receiving payments spread over a three (3) year period;

7. Amend Article 34 “On the Job Injury Policy” as follows:

Amend as follows:

The County's on the job injury policy as it affects Officers represented by PBA Local 258 shall provide that when an injury occurs on the job, the affected Officers shall be covered for up to one (1) year at full pay. All other existing County policies relating to on the job injury benefits shall be continued.

Upon the execution of this agreement, full pay shall be limited to ~~sixty (60) calendar days~~ six (6) months. Should an employee be traumatically injured due

to a violent attack by an individual(s) for the intended purpose of causing severe harm to said employee, and upon application to the ~~Director of Employee Relations Warden or his or her Designee~~, sixty (60) calendar days six (6) months may be extended to a period of up to one (1) calendar year. The ~~Director of Employee Relations' Warden or his or her Designees'~~ determination in this regard is final and not subject to further appeal under the terms of this agreement, or any other judicial forum.

~~Correction Officers who have returned to work on an unrestricted/full duty basis, and who are still receiving prescribed physical therapy as a result of their compensable accident, shall make all efforts to arrange to schedule such prescribed rehabilitation session during off-duty hours. If this is not possible due to the shift the officer works, then they may attend the prescribed rehabilitation session during on-duty hours and may use sick time or any other leave entitlement or may choose to be docked for that time.~~

Corrections Officers who have returned to work on a restricted/light duty basis, shall schedule prescribed rehabilitation sessions during on duty hours. If treatment hours are not available during Officers on duty hours then the Officer shall be paid for those hours attended at the rate of straight time of the Officers current salary.

For the purposes of this Article, injury or illness incurred while the employee is attending a County sanctioned training program shall be considered to arise out of and in the course of employment.

8. Amend Article 16 "Attendance at Association Meetings" as follows:

Amend as follows:

~~A. It is intended that no more than two (2) members may attend Policemen's Benevolent Association meetings during the normal working shift and further, there shall not be more than two (2) days of such meetings in any given month. If possible, Association meetings should be scheduled for those delegates during their off-duty period.~~

A. The County agrees that the PBA President shall be granted two (2) days off per month, without loss of pay or other benefits to tend to union business.

B. The County agrees that the PBA State Delegate shall be granted two (2) days off per month, without loss of pay or other benefits to tend to union business.

C. Convention leave for members of the Local shall be provided in accordance with N.J.S.A. 40A:14-177. The Local shall notify the Warden of the date of such conventions at their earliest convenience. In addition, the PBA shall provide the Warden with the names of all such PBA members who will be

attending such conventions no later than twenty one (21) days prior to each such convention.

B. D. The PBA President or his/her designee shall be granted ~~six (6)~~ **twelve (12)** additional days off from work per contract year to conduct Union business. Said use of time off shall be denied only in the event of a clear and present danger confronting the operations within the jail.

9. Amend Article 12 "Holidays" as follows:

Each full time Officer covered by this agreement shall enjoy the following holidays with pay, to be observed on the dates specified each January by the Board of Chosen Freeholders:

<u>Group A</u>	<u>Group B</u>
<u>Christmas Day</u>	<u>Columbus Day</u>
<u>New Year's Day</u>	<u>Veteran's Day</u>
<u>Thanksgiving Day</u>	<u>General Election Day</u>
<u>July 4th</u>	<u>Martin Luther King Day</u>
<u>Memorial Day</u>	<u>Presidents Day</u>
<u>Labor Day</u>	<u>Good Friday</u>

~~In addition, each full time Officer covered by this Agreement shall enjoy as holidays January 1st, July 4th, and December 25th of each year. If Should the Board of Chosen Freeholders designates a different date for the County celebration of ~~these three holidays~~ New Year's Day, July 4th and Christmas Day, said designation shall not apply to members of this bargaining unit.~~

Amongst each shift and regardless of unit assignment, requests for holiday time off for those holidays designated within "Group A" shall be awarded based upon Departmental Seniority by rotation. Requests for holiday time off for those holidays designated within "Group B" shall be awarded based upon Departmental Seniority by rotation within the Unit and within each shift requested. The holiday selection processes will be completed after the annual shift bidding process is completed but prior to the actual changing of shifts for the new year.

New Section B.

In lieu of accepting payment for work performed on a holiday as referenced in Paragraph A. of this Article, an officer shall be permitted to work a holiday at his or her regular rate of pay and be awarded an "alternate" day off from work with pay. An officer shall be compensated at his or her regular rate of pay for the alternate day off from work. The option to work a holiday in exchange for an "alternate" day off will be at the sole discretion of the Officer.

Alternate days off from work shall be designated by an Officer at the same time that vacation requests are made, or in the alternative, no less than seven (7) days prior to the holiday that he or she will work at their regular rate of pay. Once an alternative day off from work is approved, it may not be revoked by management for any reason.

In an effort to usurp the holiday bidding process, holidays listed in Groups A and B of this Article shall not be designated by an officer as an alternate day off from work.

Non-Economic Issues

1. **Amend Article 14 "Vacation" as follows:**

Delete the last sentence of the article and replace it with the following:
Vacation time requests shall be awarded based upon Departmental Seniority. Vacation time off requests shall be made within the first thirty (30) days of each calendar year after the rebid shift change occurs and the new seniority schedules are implemented, and approval and/or denial of all requests shall be made within fifteen (15) days thereafter. After completion of the initial thirty (30) day request period, any requests for days off will be on a first come first serve basis.

2. **Amend Article 27 "Seniority" as follows:**

Amend as follows: Create new Section B then re-designate the sections.

B. The County shall implement and maintain a shift selection and days off annual bidding process with the following provisions being followed:

1. The employer shall post a seniority list by October 1st of the preceding year.
2. Seniority bidding shall commence November 1st.
3. The new schedule shall be posted by November 7th based upon the bids that have been awarded.
4. The new schedule, which is the result of the seniority bidding process, shall be effective the first full week of January.
5. The employer shall have the right to deviate from the procedure in special needs circumstances, including but not limited to ensuring appropriate staffing levels and ensuring that at least one female officer is working each shift.
6. The parties agree that there is one seniority list regardless of gender.

7. No individual shall be denied their seniority selection due to discrimination.

C. Upon the completion of the annual bidding process each Officer assigned to the Security Unit, on their respective shift, will have the right to bid for their working post(s) for each of their five (5) working days. The bidding of posts will be done in accordance with Departmental Seniority on said shifts.

1. Center Control- Officers assigned to Center Control will be at the discretion of the Officer in Charge. No Officer will be assigned to work in Center Control against his/her will. Center Control will be filled prior to the post bidding process begins.

2. Officers with more than one (1) year as a sworn Officer of the Department will not be moved from their [bided] post, unless an emergency arises as deemed by the Officer in Charge. Officers with one (1) year or less, as a sworn Officer with the Department, may be subject to post reassignment on a daily basis by the Officer in Charge.

3. On or before June 1 of each year, Officers assigned to the Security Unit may re-bid their post assignment(s) in accordance with above mentioned process. Officers will then switch to new post assignment(s) on or before July 1 of that year.

3. Amend Article 32 "Duration" as follows:

The duration of this Agreement shall be from ~~April 1, 2016~~ July 1, 2019 through June 30, ~~2019~~ 2022, and its terms shall remain in full force and effect until a successor agreement is negotiated.

Negotiations for a successor Agreement shall be in accordance with the rules and regulations promulgated by the Public Employees Relations Commission (PERC).

4. Add New Article entitled "Employee Rights":

All members of this bargaining unit are citizens of the United States of America and the State of New Jersey and, as such, are entitled to all the rights and privileges guaranteed by the Constitution and Laws of the United States and the State of New Jersey. The members of this bargaining unit also hold a unique status as Public Safety Officers involved in the exercise of the Police powers of the State of New Jersey.

The powers and duties given to the County of Ocean and the Public Safety Officers that are members of this bargaining unit involve them in all manner of contacts and relationships with the public and other individuals

that are within the care and custody of the County of Ocean. Out of these contacts may come questions concerning the actions of the members of the Bargaining Unit.

In an effort to ensure that investigations and or interrogations of members are conducted in a manner which is consistent with both of these principles, the following practices and procedures are hereby adopted whenever an Officer is subject to investigation and/or interrogation by a Superior Officer or the investigatory division of their respective department.

All investigations that are being conducted by the Department shall be conducted in accordance with the New Jersey Attorney General's Guidelines for Internal Affairs Policy and Procedure as may be amended from time to time (hereinafter referred to as the Guidelines). In no way is this article meant to alter the duties and responsibilities of any investigating officer as they may exist under the Guidelines and furthermore, under no circumstances is this article meant to detract from the rights of any law enforcement officer as may be expressed under the guidelines to wit:

- a) Any investigation of a member shall be conducted at a reasonable hour, preferably at a time when the member is on duty, with reasonable notice given, unless the seriousness of the investigation is such that an immediate interrogation is required. If such an interrogation does occur during the off-duty time of the member being interrogated, the member shall be compensated for such off-duty time in accordance with the provision of this Agreement.

- b) Any member being investigated shall be informed of the nature of the investigation before any interrogation commences. If the informant or complainant is anonymous, then the member shall be advised of sufficient information to reasonably apprise the member of the allegations being investigated. If it is known that the member is being interrogated as a witness only, he/she should be so informed of this fact at initial contact.

- c) A member has the right not to incriminate himself/herself by answering questions, oral or written, propounded to him/her in the course of the investigation. In addition to the foregoing, no member shall be compelled to give a statement, oral or written, relating to said investigation without first being read and having waived his/her Miranda rights if the allegation under investigation is criminal in nature, or has the possibility of being criminal in nature.

- d) Prior to the commencement of the interrogation, or at any point during the investigation, a member has the right to retain counsel of his/her choice, at his/her expense, and to have said counsel present to advise at all stages of the criminal proceeding, the administrative proceeding or investigation.
- e) At the request of the member, a Union representative will be present at any interrogation. The Union representative's purpose shall not be to interfere with the interrogation and or investigation, but to witness the conduct of said procedure and to advise the member as to his/her rights under this Article and the law. Under no circumstance does a member's decision to retain counsel infringe upon his or her right to have a Union representative present at any interrogation.
- f) Interrogation of a member shall be reasonable in length. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
- g) The interrogation of the Officer shall be either audio and/or video recorded. "Off the Record" questions or conversations shall be expressly prohibited.
- h) No member shall be subject to any offensive or abusive language or questions that are meant to do nothing more than belittle or demean the member. No member shall be threatened with transfer, dismissal or other disciplinary punishment during the course of the interrogation or investigation. No promise of reward shall be made as an inducement to answering questions. Nothing herein shall be construed as to prevent an investigating officer from informing the member of the possible consequences of the alleged acts that are being investigated.
- i) Prior to the commencement of any interrogation or interview of any member, the investigating officer shall advise the member of his or her rights as follows:

"I am advising you that you are being questioned as part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties."

"You are entitled to all the rights and privileges guaranteed by the laws of the State of New Jersey, the Constitution of this State and the Constitution of the United States of America, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation."

"I further advise you that if you refuse to answer questions relating to the performance of your official duties, you will be subject to Departmental charges which could result in your dismissal from employment."

"If you do answer questions, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, the statements that you make in answering these questions may be used against you in relation to subsequent Departmental disciplinary charges."

- j) No employee covered by this Agreement shall be subjected to any urinalysis or blood screening unless one of the following circumstances exist:
 - 1) Where the employer has probable cause to suspect that there is a job related individualized impact with respect to the specific employee being tested;
 - 2) Random Drug Testing consistent with the applicable Departmental Directive.
- k) Any disciplinary action by the Employer against the employee covered under this Agreement must be in compliance with any and all applicable laws.

The County's Final Offer

1. Duration: 7/1/2019 through 8/31/2021
2. Salaries: Effective 9/1/2019 all officers on steps 1 through 14 shall remain at their step and receive a \$1850 increase. Those officers on step 15 shall move off guide and receive a 1.5% increase. Those officers already off guide shall receive a 1.5% increase.

Effective 9/1/2020 all officers on step 1 through 14 shall remain at their step and receive a \$1905 increase. Those officers on step 15 shall move off guide and receive a 1.5% increase. Those officers already off guide shall receive a 1.5% increase.

3. MODIFICATION TO ARTICLE 9 – HOSPITALS, SURGICAL, MAJOR MEDICAL, PRESCRIPTION AND RETIREMENT BENEFITS – replace sections E and F with the following:

E. When a member from this bargaining unit is granted the privilege of a leave of absence without pay for illness, health coverages will continue at County expense for a maximum of 12 weeks and in 12 month period. After that time has elapsed, if necessary, coverage for an additional period of eighteen (18) months may be purchased by the employee under the C.O.B.R.A. plan. Employee premium sharing will be recouped upon the employee's return to active status.

F. In the case of consecutive leaves of absence without pay, it is understood and agreed that the responsibility of the County to pay for benefits remains limited to the original 12 weeks and in 12 month period. Employee premium sharing will be recouped upon employee's return to active status.

4. MODIFICATION OF ARTICLE 34 – ON THE JOB INJURY POLICY:

*In the first paragraph, first sentence, replace "up to one (1) year at full pay" with "up to sixty (60) calendar days at full pay."

*In the second paragraph, delete first sentence.

*Delete the following from the third paragraph – "on an unrestricted/full – duty basis."

NON-ECONOMIC

5. MODIFICATION TO ARTICLE 6 – UNIFORM MAINTENANCE ALLOWANCE –
Removal of the words "maintenance allowance" in the title and add an "S" to
read "UNIFORMS."

6. ADD TO ARTICLE 21, Section C (5):

Minor discipline, as defined by Civil Service, may be grieved under the
procedures in this agreement. The loser shall pay the full cost of the arbitrator.
Major discipline may be appealed through the Civil Service Commission
procedures.

7. DELETE ARTICLE 28- AGENCY SHOP

BACKGROUND

The County describes itself as “the second largest county in the state containing 638 square miles of pine barrens and barrier islands and a 45-mile coastline along the Atlantic Ocean.” The County's census population in 2010 was 576,567. As of July 1, 2018, the County's population was estimated to be 601,651.

The County has 21 bargaining units, seven (7) of which are law enforcement units. PBA Local No. 258 represents the County's Correction Officers, excluding Sergeants, Lieutenants and Captains. The duration of the parties' most recent Agreement is from April 1, 2016 through June 30, 2019.

As of June 30, 2019, there were 174 bargaining unit members in Local 258. According to PBA Local Union President Lucian Woods, there are currently 171 bargaining unit members in the unit. [T:16].

The parties presented a vast amount of evidence during the proceedings. They also submitted detailed, comprehensive briefs and certifications to support their respective positions and to rebut those of the opposing party. The parties urge the acceptance of their respective proposals. As the arbitrator noted in *W Windsor Tp & PBA Local 271*, IA-2009-014 (Mastriani 2019), the strict and limited

time constraints under the law do not permit the arbitrator to provide an exhaustive summary of the evidence presented. However, these submissions have been thoroughly reviewed and considered in rendering a final Award on the parties' proposals.

DISCUSSION

I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g). 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.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

All of the statutory factors are relevant, but they are not necessarily entitled to equal weight. I am required to make a reasonable determination of the issues with a reasoned explanation for the award. I must also indicate which statutory factors are deemed relevant, the due weight that was given to each factor, and which factors, if any, are deemed to be irrelevant. The criteria also provide me with the authority to consider other such factors not confined to those specifically stated which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. [N.J.S.A. 34:13A-16(g)(8)]. In this case, I conclude that the interests and welfare of the public, the public sector comparisons (internal and external), and the financial impact on the governing unit, its residents, and taxpayers must be given greater weight than such other factors as the cost of living and private sector comparisons. I have also given due weight to the fact that this Award will not require the County to exceed its lawful authority or any statutory restrictions. The party seeking a change to an existing term or condition of employment bears the

burden of justifying the proposed change. I have considered my decision to award or deny any individual issue in dispute as part of the overall terms that I have awarded, along with the continuation of contract terms and benefits that are not in dispute.

Interests and Welfare of the Public

Interest Arbitrators in New Jersey have widely recognized that “[t]he interests and welfare of the public [N.J.S.A. N.J.S.A. 34:13A-16g(1)] is paramount because it is a criterion that embraces many of the other factors and recognizes their relationships.” *Washington Tp & PBA Local 301*, IA-2009-053 (Mastriani 2012); see *Irvington Tp & Irvington Police Superior Officers Association*, IA-2019-010 (Osborn 2019); *W Windsor Tp & PBA Local 271*, IA-2009-014 (Mastriani 2019); *Boonton & PBA Local 212*, IA-2019-021 (Kronick 2019). I now review the interests and welfare criterion through the other statutory factors addressed below.

Lawful Authority of the Employer/Financial Impact on the Governing Unit, Its Residents and Taxpayers/Statutory Restrictions Imposed on the Employer

N.J.S.A. 34:12A-16g(1), (5), (6) and (9) refer to the lawful authority of the employer, the financial impact of the award, and the statutory restrictions imposed on the employer. The PBA contends that the County “has not presented sufficient, substantial, and/or concrete evidence to establish an

inability to pay P.B.A #258 members the wage increases and other economic incentives that have been requested." [PBA Brief, p. 122]. It is true that the County does not claim an inability to pay up to the statutory permitted levels, but it submits that the PBA's Final Offer "is clearly an excessive demand that will have a substantial negative impact on the County both in the short term and in the future; especially since it will have a huge impact on negotiations with the County's other 20 unions." [County Brief, p. 92]. I conclude that the evidentiary record developed during this proceeding does not require the awarding of either party's proposals in their entirety. This Award will not have an adverse impact upon the County, its taxpayers and residents, and it will not prohibit the County from meeting its statutory obligations or cause it to exceed its lawful authority. Further, this Award serves the interests and welfare of the public through a thorough weighing of all of the statutory criteria.

Comparability

Private Employment

Given the unique nature of public safety positions, the comparison to private employment has not been allotted significant weight in previous interest arbitration awards. There continues to be an absence of evidence to support a deviation from giving greater weight to public sector comparisans.

Public Employment in General/In the Same or Similar Jurisdictions

With respect to public employment, the PBA presented comparisons of this bargaining unit included, but were not limited to (1) law enforcement officers within the municipal police departments in Ocean County, (2) Corrections Officers in county facilities statewide, and (3) the County's civilian bargaining units. The County presented a general comparison of this bargaining unit to public and private employment. The County contends that the internal comparability of its 21 bargaining units, including the likelihood that this award would give substantial weight to the internal comparability factor and/or a pattern of settlement for 2019 and 2020, must be given greater weight than the PBA's comparison with other municipal police officers in Ocean County. I note that the collective negotiations agreements between the County and its six (6) other law enforcement units (Corrections Superiors – PBA Local 258A, Sheriff's Officers – PBA Local 379, Sheriff's Superiors – PBA Local 379A, Prosecutor's Detectives and Investigators – PBA Local 171, Prosecutor's Sergeants' Association, and Prosecutor's Superior Officers Association) all have an expiration date of June 30, 2019 and, as of the date of the interest arbitration hearing, had not reached terms for successor contracts.

PERC's website includes the most recent salary increase analysis for interest arbitration awards for calendar years 2012 through 2017. The average

increase for post-2011 2% cases was 1.71% for calendar year 2015, 1.94% for 2016, and 2.05% for 2017. The average increase for non-interest arbitration settlements in 2016 was 3.16% and 3.53% in 2017. I considered this information in rendering the Award, but I emphasize that the 2% base salary "Hard Cap" has sunset and, therefore, the awards and settlements that were sent under the cap are not dispositive as to the outcome of this matter.

PERC's website also includes four (4) interest arbitration awards that have been issued for post-2% base salary "Hard Cap" impasses: *Hopewell Tp & PBA Loc 342*, IA-2019-016 (Osborn 2019) *appealed but affirmed* by Commission P.E.R.C. No. 2020-11 (8/15/19), *Bedminster Tp & PBA Loc 366*, IA-2019-017 (Kronick 2019) *appealed but affirmed* by Commission P.E.R.C. No. 2020-10 (8/15/19), *W Windsor Tp & PBA Local 271*, IA-2009-014 (Mastriani 2019), and *Boonton & PBA Loc 212*, IA-2019-021 (Kronick). Each award pertained to a law enforcement unit in a municipality. In each instance, the collective negotiations organization proposed to reduce the Tier 4 levels that bargaining unit members were required to contribute towards health benefits. In each instance, the arbitrator did not award the proposal. As to base salary, the arbitrator in *Hopewell* froze the starting salary for 2019 through 2021, increased all other steps on the 2019 guide by 2.2%, increased the top step by 2%, added one (1) step, and froze all other steps in 2020, and for 2021 increased all steps (except starting salary) by 1.8%. Step advancement was provided in each year of the contract. In

Bedminster, the arbitrator froze the salary guide for 2019 except the top step which was increased by 2%. The arbitrator then awarded across-the-board increases of 2% in 2019, 2% in 2020, and 2% in 2021. Step advancement was provided in each year of the contract. In *W Windsor*, the arbitrator awarded across-the-board increases of 2% in 2019, across-the-board increases of 2% in 2020, across-the-board increases 2.25% in 2021, and across-the-board increases of 2.25% in 2022. Step advancement was provided in each year of the contract. Lastly, in *Boonton*, the arbitrator awarded across-the-board increases of 2.25% plus a \$1,000 adjustment at the top step in 2019, across-the-board increases of 2.25% plus a \$1,000 adjustment at the top step in 2020, and across-the-board increases 2.25% plus a \$1,000 adjustment at the top step in 2021. Step advancement was provided in each year of the contract. In each award, the arbitrator reviewed the evidence considered to be the most unique and relevant in each of the municipalities.

I also reviewed the parties' internal comparisons. The PBA emphasized that "the County's civilian bargaining units were not subjected to the restrictions of the two percent (2%) salary cap as their members do not serve as law enforcement officers and, thus, cannot avail themselves of the interest arbitration process. As such, as compared to their law enforcement counterparts, many County civilian bargaining unit employees were able to secure somewhat generous percentage increases to their salaries for the several

years during the two percent (2%) salary cap's existence and applicability." [PBA Brief, p. 69]. Moreover, "during that some period of time the salary guide for P.B.A. #258 members was dramatically expanded and the maximum salary afforded to members remained stagnant." [Id.]. The PBA stressed that "pattern of settlement" does not exist at this time and cannot control the outcome of this matter. The County emphasized other factors. For instance, the County indicated that of its "approximately 1,850 full-time employees and a few hundred part-time employees" that "65 out of the top 300 paid County employees are Corrections Officers." [Id. at 79; see Ex. C-1-103]. Moreover, "all settlements for Ocean County CBAs expiring in 2020 and 2021 provide for a 1.9% or flat dollar increase for 2019 and 2020. [See Ex. C-1-100]. The County also emphasized that all other County employees continue to contribute at Tier 4 levels for their health benefits. All of the internal and external comparisons were considered and weighed along with all of the other statutory factors.

As to corrections officers in other counties in New Jersey, the PBA indicates that the bargaining unit fits within the "middle of the pack" of the comparison group that it views as "the most appropriate comparison" for its salary proposal. [PBA Brief, p. 65]. The PBA presented comparison charts. [Id. at 65-67]. Based upon the PBA's charts, which include comparative data for Bergen, Monmouth, Middlesex, Morris, Passaic and Hudson, top salaries on salary guides range from \$91,278 (Camden) to \$126,642 (Bergen), with Local 258's at \$93,748 (Step 15)

(and off-guide of \$96,581). Based upon the PBA's charts, which include comparative data for Morris, Bergen, Gloucester, Essex and Camden, starting salaries range from Local 258's at \$40,000 to \$47,352 (Morris). Based upon the PBA's charts, which include comparative data for Essex, Mercer, Bergen, Middlesex, Passaic, Warren, Union, Hudson, Salem, Atlantic, Sussex, Camden, Gloucester, Somerset, Monmouth, Morris, Cumberland, Hunterdon and Burlington, steps on the salary guides ranged from six (6) (Essex) to 16 (Burlington and Hunterdon), with Local 258's at 15. The County submits that this bargaining "compares very favorably" to corrections officers in other counties in New Jersey. [County Brief, p. 83]. The County provided comparison charts which include corrections officers in 20 counties. [Exs. C-1-57 & C-1-58]. Based upon the County's comparisons, top salaries on salary guides range from \$63,700 (Hunterdon) to \$126,642 (Bergen), with Local 258's at \$93,748 (and off-guide of \$96,581), starting salaries range from \$29,802 (Union) to \$47,352 (Morris), with Local 258's at \$40,000, and steps on the salary guides ranged from six (6) (Essex) to 16 (Burlington and Hunterdon), with Local 258's at 15.

With respect to 31 local law enforcement units within Ocean County municipalities, the PBA submits that it does not compare favorably to this comparison group. Based upon the PBA's charts, top salaries on salary guides range from \$66,274 (Island Heights) to \$157,481 (Toms Rivers), with Local 258's at \$93,748 (Step 15) (off-guide of \$96,581). [PBA Brief, pp. 60-61]. Based upon the

PBA's charts, starting salaries range from \$34,392 (Ocean Gate) to \$56,290 (Jackson), with Local 258's at 40,000. [*Id.* at 63-64]. Based upon the PBA's charts, steps on the salary guides ranged from seven (7) (Island Heights) to 22 (Long Beach), with Local 258's at 15. [*Id.* at 62].

I have reviewed the parties' comparisons. In sum, the comparables show that the County's Corrections Officers have a competitive salary and benefits package that does not require significant improvement or diminution at this time.

Overall Compensation

The evidence in this matter, as demonstrated by the parties' exhibits and the comparisons outlined above, shows that the overall compensation received by the County's Corrections Officers is competitive. I conclude that the evidence does not require full implementation of either party's final offer. This Award will serve the interests and welfare of the public by striking a balance between maintaining the County's fiscal stability and providing bargaining unit members with measured economic improvements to base salary. This Award takes into consideration that the County has established the existence of strong internal comparisons for its non-law enforcement units in 2019 and 2020 for salary increases and the status quo of Tier 4 contributions toward health benefits, as

well as giving due weight to the comparisons of corrections officers statewide. Local law enforcement settlements were considered but given lesser weight than the other comparison groups as each municipality has its own unique bargaining history, socio-economic profile and tax rate structure. This Award maintains the structural integrity of the current salary guide with some improvement to the top step while allowing off-guide percentage increases that fall in line with the internal comparisons.

Stipulations of the Parties

There were no stipulations.

The Cost of Living

The most recent statistics from the U.S. Bureau of Labor Statistics' website show the following CPI for All Urban Consumers:

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	HALF1	HALF2
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.6	-0.1
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	2.1	1.2
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	2.8	3.5
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.3	1.8
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5	1.4
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.7	1.5
2015	-0.1	0.0	-0.1	-0.2	0.0	0.1	0.2	0.2	0.0	0.2	0.5	0.7	-0.1	0.3
2016	1.4	1.0	0.9	1.1	1.0	1.0	0.8	1.1	1.5	1.6	1.7	2.1	1.1	1.5
2017	2.5	2.7	2.4	2.2	1.9	1.6	1.7	1.9	2.2	2.0	2.2	2.1	2.2	2.0
2018	2.1	2.2	2.4	2.5	2.8	2.9	2.9	2.7	2.3	2.5	2.2	1.9	2.5	2.4
2019	1.6	1.5	1.9	2.0	1.8	1.6	1.8	1.7	1.7	1.8	2.1		1.7	

I considered this criterion but give it lesser weight than such factors as the County's ability to pay, the lack of adverse financial impact, the interests and welfare of the public, and public sector comparability.

Continuity and Stability of Employment

This criterion was considered in my review of the evidence. The evidence does not show a significant deviation in the number of Corrections Officers in the bargaining unit. In 2018, there were 174 Corrections Officers in the bargaining unit. One (1) Corrections Officer resigned that year. [Ex. C-1-85]. In 2019, there were 171 Corrections Officers in the bargaining. That year, three (3) Corrections Officers resigned, one (1) retired, one (1) passed away, and one (1) was terminated. [Id.]. Warden Sandra Mueller testified that the County has maintained a complement of over 170 Corrections Officers despite the fact that the average daily population has decreased from 688 in 2014 to 377 in 2019.

[T:194]. I conclude that the modifications awarded herein are reasonable under the circumstances presented and will maintain the continuity and stability of employment.

Having addressed all of the statutory criteria I now turn to the modifications/proposals that I award, modify or reject.

Awarded Modifications/Proposals

Term of Agreement (Non-Economic Issue)

The PBA proposes a term of three (3) years – July 1, 2019 through June 30, 2022. The County proposes a 26 month term effective from July 1, 2019 through August 31, 2021. I award a term of three (3) years – July 1, 2019 through June 30, 2022, in order to provide an additional year of labor-management stability.

ECONOMIC ISSUES

Salary, Salary Guide and Salary Related Items

The current salary guide includes 15 steps ranging from \$40,000 at Step 1 to \$93,748 at Step 15. There is an increment of \$4,000 between each step with the exception of advancing from Step 14 to Step 15 which amounts to \$1,748:

STEP	9/1/2018
1	\$40,000
2	\$44,000
3	\$48,000
4	\$52,000
5	\$56,000
6	\$60,000
7	\$64,000
8	\$68,000
9	\$72,000
10	\$76,000
11	\$80,000
12	\$84,000
13	\$88,000
14	\$92,000
15	\$93,748

Corrections Officers who were at Step 15 on or after September 1, 2017 were moved off the salary guide and received yearly increases of 1.5%. The salary schedule above represents the parties' mutual modification to the salary guide that was in place effective March 31, 2016. As of that date, the salary guide had 19 steps and included salaries that ranged from \$38,000 at Step 1 to \$93,161 at Step 19.

As of June 30, 2019, there were 174 bargaining unit members with a total salary of \$11,820,303. The highest base salary for off-guide employees was \$96,581. This amount does not include Senior Officer Pay of \$1,500.00 that 19 Corrections Officers who were hired prior to November 1, 2012 and achieved at least 15 years and 1 day of service as a sworn County Corrections Officer received. The salary schedule also does not include the longevity pay received by Corrections Officers hired before October 6, 2014 (there are 2-tiers). [See PBA-1-5(e), Article 17].

As previously indicated, having considered all of the statutory criteria, I conclude that neither party's economic proposals must be awarded and that this award represents a reasonable determination of the disputed issues. I award the following. The salary guide as structured in Appendix A of the parties' April 1, 2016 through June 30, 2019 Agreement shall remain at current levels from September 1, 2019 through June 30, 2020 with step advancement at times dictated by the current agreement. Off-guide officers shall receive an increase of 1.9%. Effective July 1, 2020, there shall be step advancement and Step 15 shall be increased to \$94,250. Off-guide officers shall receive an increase of 1.9%. Effective July 1, 2021, there shall be step advancement and Step 15 shall be increased to \$95,000. Off-guide officers shall receive an increase of 1.9%. In each year of the Agreement, officers on Step 15 shall be moved off of the guide

in the following year and receive the off-guide increase. The awarded salary schedules are as follows:

Step	9/1/2019	7/1/2020	7/1/2021
1	\$40,000	\$40,000	\$40,000
2	\$44,000	\$44,000	\$44,000
3	\$48,000	\$48,000	\$48,000
4	\$52,000	\$52,000	\$52,000
5	\$56,000	\$56,000	\$56,000
6	\$60,000	\$60,000	\$60,000
7	\$64,000	\$64,000	\$64,000
8	\$68,000	\$68,000	\$68,000
9	\$72,000	\$72,000	\$72,000
10	\$76,000	\$76,000	\$76,000
11	\$80,000	\$80,000	\$80,000
12	\$84,000	\$84,000	\$84,000
13	\$88,000	\$88,000	\$88,000
14	\$92,000	\$92,000	\$92,000
15	\$93,748	\$94,250	\$95,000

Off-Guide	1.90%	1.90%	1.90%
-----------	-------	-------	-------

Assuming the same complement of corrections officers employed by the County as of June 30, 2019 over a term of three (3) years, and assuming for the purposes of comparison there are no resignations, retirements, promotions or additional hires, the increases awarded herein, exclusive of senior officer pay and longevity, will increase the salary as follows:

June 30, 2019	\$11,820,303
Bargaining Unit as of 9/1/19	\$12,422,057

Bargaining Unit
as of 7/1/20 \$13,007,758

Bargaining Unit
as of 7/1/21 \$13,590,432

Holidays – Article 12

The PBA proposes to amend Article 12 – Holidays as follows:

Each full time Officer covered by this agreement shall enjoy the following holidays with pay, to be observed on the dates specified each January by the Board of Chosen Freeholders:

<u>Group A</u>	<u>Group B</u>
<u>Christmas Day</u>	<u>Columbus Day</u>
<u>New Year's Day</u>	<u>Veteran's Day</u>
<u>Thanksgiving Day</u>	<u>General Election Day</u>
<u>July 4th</u>	<u>Martin Luther King Day</u>
<u>Memorial Day</u>	<u>Presidents Day</u>
<u>Labor Day</u>	<u>Good Friday</u>

~~In addition, each full time Officer covered by this Agreement shall enjoy as holidays January 1st, July 4th, and December 25th of each year. If Should the Board of Chosen Freeholders designates a different date for the County celebration of ~~these three holidays~~ New Year's Day, July 4th and Christmas Day, said designation shall not apply to members of this bargaining unit.~~

Amongst each shift and regardless of unit assignment, requests for holiday time off for those holidays designated within "Group A" shall be awarded based upon Departmental Seniority by rotation. Requests for holiday time off for those holidays designated within "Group B" shall be awarded based upon Departmental Seniority by rotation within the Unit and within each shift requested. The holiday selection processes will be completed after the annual shift bidding

process is completed but prior to the actual changing of shifts for the new year.

New Section B.

In lieu of accepting payment for work performed on a holiday as referenced in Paragraph A. of this Article, an officer shall be permitted to work a holiday at his or her regular rate of pay and be awarded an "alternate" day off from work with pay. An officer shall be compensated at his or her regular rate of pay for the alternate day off from work. The option to work a holiday in exchange for an "alternate" day off will be at the sole discretion of the Officer.

Alternate days off from work shall be designated by an Officer at the same time that vacation requests are made, or in the alternative, no less than seven (7) days prior to the holiday that he or she will work at their regular rate of pay. Once an alternative day off from work is approved, it may not be revoked by management for any reason.

In an effort to usurp the holiday bidding process, holidays listed in Groups A and B of this Article shall not be designated by an officer as an alternate day off from work.

The County acknowledges that the PBA's proposal up to "New Section B" memorializes the current practice, but the County opposes the remainder of the PBA's proposal given that no other County employee receives such a benefit, bargaining unit members "already receive a significant amount of time off", and "granting this proposal could increase the County's overtime cost and increase the likelihood of mandatory overtime which would create a hardship for both the County and C.O.s". [County Brief, pp. 56-57].

After due consideration of the entire record, I award a modification that reflects the current practice, but given the economic resources required to

support the salary schedules awarded above, I reject the remainder of the PBA's proposal. Article 12 shall be amended to include the following:

Each full time Officer covered by this agreement shall enjoy the following holidays with pay, to be observed on the dates specified each January by the Board of Chosen Freeholders:

<u>Group A</u>	<u>Group B</u>
<u>Christmas Day</u>	<u>Columbus Day</u>
<u>New Year's Day</u>	<u>Veteran's Day</u>
<u>Thanksgiving Day</u>	<u>General Election Day</u>
<u>July 4th</u>	<u>Martin Luther King Day</u>
<u>Memorial Day</u>	<u>Presidents Day</u>
<u>Labor Day</u>	<u>Good Friday</u>

~~In addition, each full time Officer covered by this Agreement shall enjoy as holidays January 1st, July 4th, and December 25th of each year. If Should the Board of Chosen Freeholders designates a different date for the County celebration of ~~these three holidays~~ New Year's Day, July 4th and Christmas Day, said designation shall not apply to members of this bargaining unit.~~

Amongst each shift and regardless of unit assignment, requests for holiday time off for those holidays designated within "Group A" shall be awarded based upon Departmental Seniority by rotation. Requests for holiday time off for those holidays designated within "Group B" shall be awarded based upon Departmental Seniority by rotation within the Unit and within each shift requested. The holiday selection processes will be completed after the annual shift bidding process is completed but prior to the actual changing of shifts for the new year.

On the Job Injury Policy – Article 34

Article 34 – On the Job Injury Policy provides:

The County's on the job injury policy as it affects Officers represented by PBA Local 258 shall provide that when an injury occurs on the job the affected Officer shall be covered for up to one (1) year at full pay. All other existing County policies relating to on the job injury benefits shall be continued.

Upon the execution of this Agreement, full pay shall be limited to sixty (60) calendar days. Should an employee be traumatically injured due to a violent attack by an individual(s) for the intended purpose of causing severe harm to said employee, and upon application to the Director of Employee Relations, the sixty (60) calendar days may be extended to a period of up to one (1) calendar year. The Director of Employee Relations' determination in this regard is final and not subject to further appeal under the terms of this Agreement, or any other judicial forum.

Corrections Officers who have returned to work on an unrestricted/full-duty basis, and who are still receiving prescribed physical therapy as a result of their compensable accident, shall make all efforts to arrange to schedule such prescribed rehabilitation session during off-duty hours. If this is not possible due to the shift the officer works, then they may attend the prescribed rehabilitation session during on-duty hours and may use sick time or any other leave entitlement or may choose to be docked for that time.

The PBA seeks to enhance the benefits under this provision by amending Article 34 as follows:

The County's on the job injury policy as it affects Officers represented by PBA Local 258 shall provide that when an injury occurs on the job, the affected Officers shall be covered for up to one (1) year at full pay. All other existing County policies relating to on the job injury benefits shall be continued.

Upon the execution of this agreement, full pay shall be limited to ~~sixty (60) calendar days~~ six (6) months. Should an employee be traumatically injured due to a violent attack by an individual(s) for the intended purpose of causing severe harm to said employee, and upon application to the ~~Director of Employee Relations~~ Warden or his or her Designee, ~~sixty (60) calendar days~~ six (6) months may be extended to a period of up to one (1) calendar year. The ~~Director of Employee Relations'~~ Warden or his or her Designees' determination in this regard is final and not subject to further appeal under the terms of this agreement, or any other judicial forum.

~~Correction Officers who have returned to work on an unrestricted/full-duty basis, and who are still receiving prescribed physical therapy as a result of their compensable accident, shall make all efforts to arrange to schedule such prescribed rehabilitation session during off-duty hours. If this is not possible due to the shift the officer works, then they may attend the prescribed rehabilitation session during on-duty hours and may use sick time or any other leave entitlement or may choose to be docked for that time.~~

Corrections Officers who have returned to work on a restricted/light duty basis, shall schedule prescribed rehabilitation sessions during on duty hours. If treatment hours are not available during Officers on duty hours then the Officer shall be paid for those hours attended at the rate of straight time of the Officers current salary.

For the purposes of this Article, injury or illness incurred while the employee is attending a County sanctioned training program shall be considered to arise out of and in the course of employment.

The County opposes the PBA's proposal. The County seeks to eliminate language that no longer applies and codify the current benefit through two (2) modifications: (1) in the first sentence of the first paragraph, replace "up to one (1) year at full pay" with "up to sixty (60) calendar days at full pay", and (2) delete the first sentence in the second paragraph. The County also seeks to include an additional limitation on the current provision by proposing to delete the following from the third paragraph – "on an unrestricted/full-duty basis".

Having reviewed the parties' proposals in conjunction the awarded items as a whole and the evidence presented in this matter, the policy in Article 34 does not require modification other than codifying the current benefit as proposed by the County. I award the County's proposal to (1) in the first sentence of the first paragraph, replace "up to one (1) year at full pay" with "up to sixty (60) calendar days at full pay", and (2) delete the first sentence in the second paragraph.

Other Modifications/Proposals on Economic Issues not Awarded

As to the remainder of the parties' modifications and proposals on the economic issues, including but not limited to the PBA's proposals on automatic step movement upon the contract expiration date, reductions to the Tier 4 contribution rates, and uniform allowance, all of which are benefits that do not

exist for any other County bargaining unit, and the County's proposals to modify Articles 9(E) and 9(F), I thoroughly reviewed and considered their respective positions. Having examined these items in conjunction with the supporting evidentiary submissions I do not find sufficient justification to award them in whole or in part at this time. I find that the improved economic changes that I have awarded are reasonable and inclusive of what the financial impact of the award should be while also taking into consideration that the County's overall financial obligations include having to fund the economic terms of all of its 21 bargaining units. The remaining modifications and proposals on the economic issues are therefore rejected.

NON-ECONOMIC ISSUES

Vacation Leave – Article 14

Article 14 establishes vacation day entitlement based upon a requisite number of years of service. The last sentence of Article 14 provides:

Bidding for vacations shall be based upon Civil Service seniority, provided it does not create a shortage of experienced Officers on a given shift.

The PBA proposes to eliminate the sentence above and replace it with the following:

Vacation time requests shall be awarded based upon Departmental Seniority. Vacation time off requests shall be made within the first thirty (30) days of each calendar year after the rebid shift change occurs and the new seniority schedules are implemented, and approval and/or denial of all requests shall be made within fifteen (15) days thereafter. After completion of the initial thirty (30) day request period, any requests for days off will be on a first come first serve basis.

The County is amenable to including a modified version of the language above as long as (1) the superior officers have 30 days to respond to the vacation requests and (2) the sentence that the PBA seeks to eliminate remains in place. The County submits that the elimination of the relevant sentence "could endanger every working C.O. on a particular shift, and of course the inmates." [County Brief, p. 58].

The evidence shows that a memorialization of the use of seniority for the purposes of requesting vacation would mutually benefit the parties, but it does not establish that the sentence that the PBA seeks to eliminate is necessary or best serves the public's interest. I award the following language to be added to Article 14:

Vacation time requests shall be awarded based upon Departmental Seniority. Vacation time off requests shall be made within the first thirty (30) days of each calendar year after the rebid shift change occurs and the new seniority schedules are implemented, and approval and/or denial of all requests shall be made within thirty (30) days thereafter. After completion of the initial thirty (30) day request period,

any requests for days off will be on a first come first serve basis.

Seniority – Article 27

Article 27 – Seniority provides:

A. Seniority shall be defined as an employee's length of unbroken continuous service with the Department of Corrections. Seniority shall commence and begin to accumulate from the employee's first day of appointment by Ocean County as a duly sworn Correction Officer as recognized by Civil Service standards and accordingly by any break in service.

B. The seniority system shall be administered departmentally. An employee will carry his/her seniority from one section, division or unit of the department to another. Employees will not lose seniority rights if transferred from one title or duty assignment to another within the same rank.

C. The Warden shall have the authority to designate employees to a sixty (60) day training period when filling a new position within the Department of Corrections.

D. The Warden shall, regardless of accumulated seniority of employee (s) in question, have the authority to make emergency transfers to positions where needed for a period not to exceed ninety (90) days.

E. Officers shall have the right to bid for their shift as well as days off, when transferred into the division. The Warden shall retain the sole authority for the assignment of Officers to sections, divisions or units within the Department.

The PBA proposes to create new Sections B and C and to re-designate the existing sections. The PBA's proposals provide:

B. The County shall implement and maintain a shift selection and days off annual bidding process with the following provisions being followed:

1. The employer shall post a seniority list by October 1st of the preceding year.
2. Seniority bidding shall commence November 1st.
3. The new schedule shall be posted by November 7th based upon the bids that have been awarded.
4. The new schedule, which is the result of the seniority bidding process, shall be effective the first full week of January.
5. The employer shall have the right to deviate from the procedure in special needs circumstances, including but not limited to ensuring appropriate staffing levels and ensuring that at least one female officer is working each shift.
6. The parties agree that there is one seniority list regardless of gender.
7. No individual shall be denied their seniority selection due to discrimination.

C. Upon the completion of the annual bidding process each Officer assigned to the Security Unit, on their respective shift, will have the right to bid for their working post(s) for each of their five (5) working days. The bidding of posts will be done in accordance with Departmental Seniority on said shifts.

1. Center Control- Officers assigned to Center Control will be at the discretion of the Officer in Charge. No Officer will be assigned to work in Center Control against his/her will.

Center Control will be filled prior to the post bidding process begins.

2. Officers with more than one (1) year as a sworn Officer of the Department will not be moved from their [bidded] post, unless an emergency arises as deemed by the Officer in Charge. Officers with one (1) year or less, as a sworn Officer with the Department, may be subject to post reassignment on a daily basis by the Officer in Charge.
3. On or before June 1 of each year, Officers assigned to the Security Unit may re-bid their post assignment(s) in accordance with above mentioned process. Officers will then switch to new post assignment(s) on or before July 1 of that year.

The PBA's brief includes rationale for this proposal:

Finally, one of the most important proposals put forth by P.B.A. #258 seeks to modify Article 27 entitled "Seniority." To this end, P.B.A. #258's proposal seeks to codify the shift and post bidding process that have been adhered to by the parties for the past several years. For the Arbitrator's reference, shift bidding pertains to the shift a member works, such as 7:00 a.m. to 3:00 p.m., whereas post bidding refers to the specific assignment a member works during his/her shift, such as being assigned to a tower or a certain detention area.

By way of background, in 2014, the then-Warden of the Ocean County Department of Corrections, Theodore Hutler, executed an agreement with P.B.A. #258 referred to as the "Three Year Rule." (Exhibit PBA-1-27). The agreement expressly provided for shift and post bidding for P.B.A. #258 members and was effective for the 2015 and 2016 calendar years. (IT65:3-6). The first section of the agreement outlined the units and/or assignments the Warden retained the unfettered right to assign members to, irrespective of the post bidding process. (IT63:22-64:1). Nevertheless, these units and/or assignments were subject to the shift bidding process, thereby

allowing P.B.A. #258 members to bid upon the specific shift they would work. Ibid.

The second section of the "Three Year Rule" provided post bidding rights for those members assigned to the Security Division (Exhibit PBA-1-27; 1T64:2-11). For clarity, the Security Division contains multiple posts, to include those directly supervising inmates, relief assignments, and roving patrol assignments. Ibid. To this end, this section of the agreement allowed P.B.A. #258 members to bid upon their respective posts and/or assignments based upon seniority. (1T64:8-11).

As explained by President Woods, the agreement was entitled the "Three Year Rule" because any member who possessed less than three (3) years with the Ocean County Department of Corrections was not eligible to engage in the post bidding process:

Q. And this particular agreement, Luke, was called the Three-Year Rule and I think the warden labeled that because it lasted for three years; is that correct?

A. No, that was titled because of any officer that didn't have...three years within the department wouldn't have the right to bid for the post inside the security unit, although the officers in charge allowed them to bid. They also—they understood that they were subject to being replaced or being moved to a different post at will and anyone that had three years or more within a department would be placed—would choose their post and not be able to be moved from their post.

[1T64:12-65:2.]

Upon expiration of the "Three Year Rule" Agreement, a subsequent agreement was reached between P.B.A. #258 and now-Warden Mueller. (1T65:7-10). This agreement was colloquially referred to as "The Five-Year Rule" Agreement. (Exhibit PBA-1-28; 1T66:7-9). This subsequent agreement, in essence, continued the shift and post bidding processes and benefits contained in the "Three Year Rule" Agreement for 2016 through the expiration of the instant collective negotiations agreement. (1T65:16-66:2). However, the name

of the agreement was changed to the "Five Year Rule" because the P.B.A. #258 membership was getting a bit older and, thus, the post bidding process would only be available to those members who possessed five (5) years with the Department, as opposed to three (3) years in the prior agreement. (1T66:7-14).

The "Five Year Rule" Agreement also slightly modified the units and/or assignments the Warden retained discretion over and the units and/or assignments that were subject to the post bidding process. (1T66:15-25). Nevertheless, the "Five Year Rule" Agreement continued the bidding process for all open assignments. Ibid. The Agreement also allowed a "re-bid" halfway through the year so as to allow members to change posts and/or assignments, if they so desired. Ibid. Outside of these minor modifications, everything from the "Three Year Rule" Agreement remained the same. This was concisely explained by President Woods:

This agreement which we came to as we called it the— we ended up changing it to the Five-Year Rule and the reason we changed it to five years is the department was getting a little bit older and we didn't—so anyone with less than five years would be subject to removal from their post that they bid for within security and anyone with more than five years would not.

With that we also changed—came to an agreement on what units the warden could place officers in based upon departmental seniority. We continued the re-bidding of any open assignment posts. We allowed to do a post re-bid halfway through the year, so if officers wanted to and could, you know based upon their seniority, they could change their post halfway through the year. That was basically it. Like I said, everything else was the same.

[1T66:7-25.]

The shift and post bidding provided in the "Five Year Rule" Agreement was continued through the expiration of the collective negotiations agreement on June 30, 2019. According to President Woods, the Agreement is being followed at the current time. (1T67:13-68:3). To this end, each

and every component of the Agreement is being followed with the exception of post bidding. Ibid. However, Warden Mueller has deferred to the respective Officers in Charge of each shift as to whether to offer post bidding. Ibid. Of the three (3) shifts available, two (2) of the Officers in Charge have allowed the post bidding to continue. Ibid. The final Officer in Charge has not put the respective posts for bidding, but the post assignments that were awarded based upon the last bidding process have remained in place. Ibid. In other words, there has not yet been a need to put the assignments up for bidding as of yet.

In its proposal, P.B.A. #258 seeks to codify the "Five Year Rule" into the collective negotiations agreement, thereby preserving the shift and post bidding processes that have been followed for the past five (5) years. (1T68:8-12). Moreover, the proposal seeks to institute certain deadlines as to when the respective bidding processes will commence and when the shifts and/or posts will be awarded.

While recognizing the Warden and, by extension, the County retains great discretion as to assigning certain individuals to certain posts and/or assignments, the shift and post bidding processes are of vital importance to the P.B.A. #258 membership. Specifically, these bidding processes promote stability in members' personal lives as well as boost their morale in getting to work a shift, post, or assignment which they desire. This was detailed by President Waads during the course of his direct testimony:

Q. How important, Luke, is it to your members to have the ability to bid for their shifts, their days off, as well as their posts?

A. I mean the shifts and days off, I mean that's just—that's obvious you know. You want to get the best shift and the best days off that work for you and your family...it just boosts morale for the post bidding within the department.

You're stuck within the confines of the jail. It's nice to be able to work whether it's the same post every day or the same post with the same partner every day or

just the post that you want to be working at as opposed to being told that you have to work there.

[1T68:13-69:6.]

President Woods also detailed the importance of the continuity that shift and post bidding provides in maintaining the security of the correctional facility:

Q. And as far as the actual security in running the jail, Luke, with continuity of individuals working at the same post is that important as well?

A. Absolutely. The biggest thing with—goes back to dealing with inmates. Inmates are on a schedule within the facility and that schedule works because the inmates know what to do, when to do it, eat when to eat, sleep when to sleep, so it works for them. And in turn, it goes some for the officers because we're in there just as much as they are, so to allow us to have that continuity of being in the same spot or the same—on the same post or doing the same job with the same people every day, it makes your day go better and I think it gets you a better officer out of it. And that all came about when the new jail was designed.

Warden Hutler had come up with a policy that officers had to work the same post five days a week and then that was done by seniority, not as an agreement, but that's what he wanted because he wanted the continuity of the same officer being in the same unit because it's the same inmates day in and day out and so the unit should run the same if it's the same officer day in and day out which means you'll have less problems.

[1T69:7-70:7.]

Lastly, President Woods explained how the shift and post bidding processes ensure that officers get to know the inmates they are responsible for in their particular unit and/or assignment, thereby furthering security and stability in the facility as well:

Q. And as far as the officers having the ability to actually know the inmates that are housed within their unit with the post that they work, how important is that to safety and security as well?

A. It's very important because if you work with the same inmate every day you may know an inmate, just their attitude. Knowing who the inmate is and how to deal with the inmate because you work there day in and day out makes it, one, makes it easier to work in the unit, but two, makes it safer because one inmate—I may work a unit five days a week and know that inmate so-and-so tends to get heated over a game of cards. And I understand that it's not an argument; it's just how he expresses himself. But if it's someone different every day, that person may not understand that and see that inmate get heated and possibly think that there's something starting to happen. Then the officer could possibly get involved which then could lead into a bunch of different scenarios.

So if you have the same person there, you know, and typically when we bid for our posts the most senior guys are bidding the same post five days a week. Sometimes it's three days here, two days there as a break, but being that it's done by seniority, they typically choose the same spot every day so they have that continuity.

[1T70:8-71:9.]

In opposition to the proposal, the County elicited testimony from Warden Mueller and Deputy Warden Valenti indicating that the Department and, more specifically, Officers in Charge must maintain discretion to assign officers to posts they deem appropriate given each officer's unique set of skills, strengths, and/or weakness. (1T153:13-154:19; 202: Moreover, the County seems to argue that this discretion must be maintained in light of the changes to the correctional facility on account of bail reform, namely the decrease in the inmate population. Thus, according to the County, the Department must be provided the ability to assign officers to different posts when certain posts need to be closed and/or collapsed on account of the population fluctuation.

The County's arguments in opposition to the proposal are somewhat hollow. First, it is undisputed that the County and/or Department have been abiding by either the "Three-Year Rule" or "Five-Year Rule" Agreements for the past five (5) years. Thus, any assertion that the implementation of shift and post bidding processes contained in the agreements have a detrimental impact upon the safety and security of the correctional facility are without merit. Simply put, if the shift and post bidding selection processes had an adverse impact on safety and/or security, the "Three-Year Rule" Agreement would not have been, in essence, renewed through implementation of the "Five-Year Rule" Agreement. Further, as detailed by President Woods, utilization of the shift and post bidding processes actually enhanced safety and security at the facility, not compromised it.

Additionally, cognizant of the Department's need to close certain posts and/or assignments on occasion, President Woods testified that the reassignment of members in such circumstances has been accepted by P.B.A. #258 and, thus, would not constitute a violation of this language if the proposal is ultimately awarded:

Q. And if they [P.B.A. #258 members] have bid on a particular post and the County is moving them someplace else, in effect the County would be in violation of the contract, wouldn't they?

A. No, there's an understanding that if a post closed—we've already had this incident, that if a post closed the officer understands that he's not going to be in that post, or by selecting a post there may be the—because of projects going on within the jail that he may be reassigned to a different post or as an extra because his post is now vacant.

[1T113:9-20.]

Warden Mueller confirmed this understanding during her cross-examination and expressly indicated that the shift and post bidding processes being utilized, subject to reassignments being necessitated due to the closure of

certain posts, have not resulted in any issues in running the facility:

Q. And you were here when Officer Woods testified, correct?

A. Yes.

Q. And Officer Woods, you heard him state that the PBA had no issues with officers being moved during—due to the fact that posts were being closed, correct?

A. Correct...

Q. And you testified that you have two OICs [Officers in Charge] that are still currently following the Five-Year Rule?

A. They're allowing people to bid for their post, but then they have the authority as OIC to move people around as they see fit regardless of where the person bid.

Q. And given that they're still implementing and following the Five-Year Rule since I guess you believe it expired at the end of June, I take it there haven't been any issues with it thus far?

A. There haven't been any issues because when officers needs to be deployed or redeployed it can happen.

[1T158:8-160:4.]

Lastly, the County seems to take the position that P.B.A. #258's proposal in its current form seems to allow P.B.A. #258 members to bid on their posts and/or assignment each and every day. (1T202:3-8). This is not the intention of the proposal. Instead, the proposal allows members to bid for the post and/or assignment they would work five (5) days a week, not allow a bid for each post each and every day. Such an approach would be nonsensical and does not accurately reflect what is being sought by P.B.A. #258 as referenced in President Woods' testimony.

After reviewing the reasoning behind the proposal and acknowledging the fact that shift and post bidding has been utilized by the Department for the past five (5) years, P.B.A. #258's proposal must be awarded. Quite simply, codification of the shift and post bidding processes is necessitated to ensure this benefit is preserved for P.B.A. #258 members going forward. Additionally, the award of this proposal furthers continuity in the operation of the correctional facility, thereby fostering safety and security for not only P.B.A. #258 members, but inmates and civilian personnel as well. [PBA Brief, pp. 104-112].

The County is not opposed to the inclusion of portions of the PBA's proposal as it applies to shift bidding and time off, but it rejects the remainder of the PBA's proposal for operational reasons and contends that it infringes upon the County's managerial rights:

The PBA has proposed to revamp the seniority article of the CBA. The County agrees that seniority as it applies to shift bidding and time off should control, and in fact, it does. Moreover, the procedural aspects of seniority also are appropriate for inclusion in a CBA. (Section B (1), (2), (3) and (4)). However, the County strongly disagrees that seniority should control with regard to assignments. Section B (5) and C (1), (2) and (3) do exactly that.

The Department has been very fair about assignments. First, Warden Hutter entered into the "3-Year Rule" with the PBA regarding assignments. Second, Warden Mueller entered into the "5-Year Rule" with the PBA. Both the "3-Year Rule" and the "5-Year Rule" [sunsetting] on the last day of the agreements. Warden Mueller did not review the "5-Year Rule" because of the dramatic change in the operations of the correction facilities due to the Bail Reform Act.

On cross-examination, C.O. Woods admitted that there has been a dramatic change in operations because of Bail

Reform. Woods conceded that due to the decline in inmate population, posts are frequently closed and the assigned C.O.'s have to be re-assigned. (Tr. 104:6 - 107:1).

Warden Mueller explained that the bidding an assignments provided by the "5-Year Rule" no longer worked because Bail Reform has caused so many changes in a short span of time. At one point, six (6) units in the jail were closed (Tr. 140: 6-19). Mueller explained that re-assignments had to be made based upon the skills needed for the assignment. The Warden relies on the judgement of the OIC (Officer in Charge) to make the appropriate reassignment. Moreover, she explained the assignments can be very different even though they are all in the same facility. (Tr. 140:15 - 143:24).

Since of the "5-Year Rule" has expired, two (2) out of the three (3) OIC's have continued to allow their C.O.'s to bid their posts with the understanding that if the post is closed, the officer will be reassigned. (Tr. 143:22 - 144:12). Mueller stated that the elimination of the "5-Year Rule" has not had a negative impact. (Tr. 144:13-16). At the conclusion of her testimony, Warden Mueller emphasized the importance of having the flexibility and discretion to reassign C.O.'s to those posts where they were the " ... right kind of officer or the right kind of skills and abilities ... everybody is just not across the board the same kind of personality when it comes to dealing with inmates." (Tr. 145: 5-20).

Deputy Warden Valenti corroborated Mueller's testimony and even went into greater detail regarding the difference in the assignments (Tr. 179 - 184:13). Valenti explained the difference between shift bidding and bidding on posts, or in other words, assignments (Tr. 206:20 - 210:11). The Deputy Warden specifically said he supports shift bidding. (Tr. 210:12-14). However, he opposed past bidding. When asked on cross if there were any issues with post bidding, Volenti gave specific examples of C.O.'s balking at reassignments different than their bid post. (Tr. 208: 23 - 210:13).

Officer Woods insinuated in his testimony that if the PBA Seniority Proposal was awarded and C.O.'s had to be reassigned, the PBA would not have a problem with the PBA. (Tr. 107:3-15). Unfortunately, doing that would be in violation

of Proposal Number 2. Seniority and the County would likely be in grievance arbitration. There is a reason why the County has proposed "looser pays" in the County's grievance arbitration proposal.

Finally, and probably most importantly, the law does not support the PBA's proposal. The Public Employment Commission has ruled for years that the employer has a non-negotiable prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. New Jersey Transit Corp. v. PBA Local 304, 32 NJPER 142, 2006 West Law 6824445 (Oct. 26, 2006) (PERC restrained arbitration, holding that "arbitrator may not second-guess the police chief's determination that two officers were best suited for undercover assignments."); Somerset County Sheriff's Office v. Corr. Officers' PBA Local 177, 33 NJPER 54, 2007 West Law 7563489 (May 31, 2007) (PERC restrained arbitration relating to Sheriff's refusal to consider a sergeant for a permanent assignment as a kitchen officer, holding that permitting him to fill this position would "substantially limit the Sheriff's ability to deploy the more qualified and experienced officer to a position where his skills, rank and experience can better be used."); Burlington County Bd. of Chosen Freeholders v. Corr. Officers PBA Local 249, 28 NJPER 33064, 2002 West Law 34677508 (Mar. 28, 2002) ("County was not required to engage in binding arbitration of Union's grievances challenging deputy warden's designation of post in female housing unit at county corrections center as female-only."); Monmouth County Sheriff's Office v. PBA Local 240, 42 NJPER 152, 2016 West Law 3194650 (May 26, 2016) ("[T]he employer's selection of the purportedly best-qualified candidate for the mail room officer post [in corrections facility] was not subject to binding arbitration.") However, public employers and majority representatives may agree that seniority can be a factor in shift selection where all qualifications are equal, managerial prerogatives are not otherwise compromised, and the employer retains the right to deviate from the procedures where necessary to accomplish a governmental policy goal. County of Hudson v. PBA Local 109A, 42 NJPER 32, 2015 West Law 5604425 (Aug. 13, 2015) (finding that clause in Agreement "was not mandatorily negotiable because it appears to mandate that shift assignments be based solely on seniority and does not appear to preserve management's right to

deviate from a seniority shift assignment system to accomplish its governmental policy goals.").

In conclusion, besides the law being very clear regarding this proposal, the PBA has not demonstrated a need for it. C.O. Woods and Warden Mueller both testified that the County has prudently exercised its discretion regarding assignments. Therefore, given the dramatic changes in operations due to the Bail Reform Act, this proposal should be rejected. [County Brief, pp. 58-61].

Having considered the parties' arguments in conjunction with the evidence presented in support of their respective positions, I award the PBA's proposals to create and include new Section B(1)-(4), but I conclude that the PBA has met its burden to prove that the remainder of the proposal requires implementation at this time.

Agency Shop Provision – Article 28

The current Agreement includes an agency shop provision. The County's proposes to eliminate this provision. The PBA did not expressly address the merits of the County's proposal in its post-hearing brief. Agency shop fees are now illegal pursuant *Janus v. AFSMCE, Council 31, et. al.*, 585 U.S. ____ (2018). Put simply, the provision is inconsistent with prevailing law. I award the elimination of this provision while adding new language in its place as follows:

The parties recognize and shall be guided by the terms of the Workplace Democracy Enhancement Act as set forth in N.J.S.A. 34:13A-5.11.

Other Modifications/Proposals on Non-Economic Issues not Awarded

As to the remainder of the parties' modifications and proposals on the non-economic issues, including but not limited to the PBA's proposal on employee rights which seeks the incorporation of select areas of prevailing law, and the County's proposals with respect to Article 6 – Uniform Maintenance Allowance and Article 21 – Grievance Procedure, I thoroughly reviewed and considered their respective positions. Having examined these items in conjunction with the supporting evidentiary submissions I do not find sufficient justification to award them in whole or in part and, therefore, are rejected.

CONCLUSION

I conclude that the terms of this Award represent a reasonable determination of the issues after applying the statutory criteria. I have weighed the statutory factors as more fully discussed above and conclude there is nothing in the record that compels a different result than I have determined in this proceeding.

AWARD

1. Term. Three (3) years – Effective July 1, 2019 through June 30, 2022.
2. Salary, Salary Guide and Salary Related Items.

The salary guide as structured in Appendix A of the parties' April 1, 2016 through June 30, 2019 Agreement shall remain at current levels from September 1, 2019 through June 30, 2020 with step advancement at times dictated by the current agreement. Off-guide officers shall receive an increase of 1.9%. Effective July 1, 2020, there shall be step advancement and Step 15 shall be increased to \$94,250. Off-guide officers shall receive an increase of 1.9%. Effective July 1, 2021, there shall be step advancement and Step 15 shall be increased to \$95,000. Off-guide officers shall receive an increase of 1.9%. In each year of the Agreement, officers on Step 15 shall be moved off of the guide in the following year and receive the off-guide increase. The awarded solory schedules are as follows:

Step	9/1/2019	7/1/2020	7/1/2021
1	\$40,000	\$40,000	\$40,000
2	\$44,000	\$44,000	\$44,000
3	\$48,000	\$48,000	\$48,000
4	\$52,000	\$52,000	\$52,000
5	\$56,000	\$56,000	\$56,000
6	\$60,000	\$60,000	\$60,000
7	\$64,000	\$64,000	\$64,000
8	\$68,000	\$68,000	\$68,000
9	\$72,000	\$72,000	\$72,000
10	\$76,000	\$76,000	\$76,000
11	\$80,000	\$80,000	\$80,000
12	\$84,000	\$84,000	\$84,000
13	\$88,000	\$88,000	\$88,000
14	\$92,000	\$92,000	\$92,000
15	\$93,748	\$94,250	\$95,000

Off-Guide	1.90%	1.90%	1.90%
-----------	-------	-------	-------

3. Article 12 – Holidays. Amend to include the following:

Each full time Officer covered by this agreement shall enjoy the following holidays with pay, to be observed on the dates specified each January by the Board of Chosen Freeholders:

<u>Group A</u>	<u>Group B</u>
<u>Christmas Day</u>	<u>Columbus Day</u>
<u>New Year's Day</u>	<u>Veteran's Day</u>
<u>Thanksgiving Day</u>	<u>General Election Day</u>
<u>July 4th</u>	<u>Martin Luther King Day</u>
<u>Memorial Day</u>	<u>Presidents Day</u>
<u>Labor Day</u>	<u>Good Friday</u>

~~In addition, each full time Officer covered by this Agreement shall enjoy as holidays January 1st, July 4th, and December 25th of each year. If Should the Board of Chosen Freeholders designates a different date for the County celebration of ~~these three holidays~~ New Year's Day, July 4th and Christmas Day, said designation shall not apply to members of this bargaining unit.~~

Amongst each shift and regardless of unit assignment, requests for holiday time off for those holidays designated within "Group A" shall be awarded based upon Departmental Seniority by rotation. Requests for holiday time off for those holidays designated within "Group B" shall be awarded based upon Departmental Seniority by rotation within the Unit and within each shift requested. The holiday selection processes will be completed after the annual shift bidding process is completed but prior to the actual changing of shifts for the new year.

4. Article 34 – On the Job Injury Policy. Modify as follows:

The County's on the job injury policy as it affects Officers represented by PBA Local 258 shall provide that when an injury occurs on the job the affected Officer shall be covered for up to sixty (60) calendar days at full pay. All other existing County policies relating to on the job injury benefits shall be continued.

Should an employee be traumatically injured due to a violent attack by an individual(s) for the intended purpose of causing severe harm to said employee, and upon application to the Director of Employee Relations, the sixty (60) calendar days may be extended to a period of up to one (1) calendar year. The Director of Employee Relations' determination in this regard is final and not subject to further appeal under the terms of this Agreement, or any other judicial forum.

Corrections Officers who have returned to work on an unrestricted/full-duty basis, and who are still receiving prescribed physical therapy as a result of their compensable accident, shall make all efforts to arrange to schedule such prescribed rehabilitation session during off-duty hours. If this is not possible due to the shift the officer works, then they may attend the prescribed rehabilitation session during on-duty hours and may use sick time or any other leave entitlement or may choose to be docked for that time.

5. Article 14 – Vacation Leave. Add the following language to Article 14:

Vacation time requests shall be awarded based upon Departmental Seniority. Vacation time off requests shall be made within the first thirty (30) days of each calendar year after the rebid shift change occurs and the new seniority schedules are implemented, and approval and/or denial of all requests shall be made within thirty (30) days thereafter. After completion of the initial thirty (30) day request period, any requests for days off will be on a first come first serve basis.

6. Article 27 – Seniority. Amend Article 27 to read as follows:

A. Seniority shall be defined as an employee's length of unbroken continuous service with the Department of Corrections. Seniority shall commence and begin to accumulate from the employee's first day of appointment by Ocean County as a duly sworn Correction Officer as recognized by Civil Service standards and accordingly by any break in service.

B. The County shall implement and maintain a shift selection and days off annual bidding process with the following provisions being followed:

1. The employer shall post a seniority list by October 1st of the preceding year.
2. Seniority bidding shall commence November 1st.
3. The new schedule shall be posted by November 7th based upon the bids that have been awarded.
4. The new schedule, which is the result of the seniority bidding process, shall be effective the first full week of January.

C. The seniority system shall be administered departmentally. An employee will carry his/her seniority from one section, division or unit of the department to another. Employees will not lose seniority rights if transferred from one title or duty assignment to another within the same rank.

D. The Warden shall have the authority to designate employees to a sixty (60) day training period when filling a new position within the Department of Corrections.

E. The Warden shall, regardless of accumulated seniority of employee (s) in question, have the authority to make emergency transfers to positions where needed for a period not to exceed ninety (90) days.

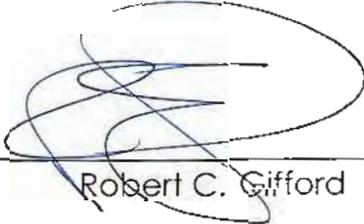
F. Officers shall have the right to bid for their shift as well as days off, when transferred into the division. The Warden shall retain the sole authority for the assignment of Officers to sections, divisions or units within the Department.

7. Article 28 – Agency Shop Provision. Eliminate Article 28 as written in its entirety and replace with the following:

The parties recognize and shall be guided by the terms of the Workplace Democracy Enhancement Act as set forth in N.J.S.A. 34:13A-5.11.

8. All other modifications/proposals on economic and non-economic issues are not awarded. All provisions of the existing agreement shall be carried forward except for those which have sunset or have been modified by the terms of this Award.

Dated: January 6, 2020
Sea Girt, New Jersey



Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this th 6 day of January, 2020, before me personally came and appeared Robert C. Gifford 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.



Linda L. Gifford
Notary Public
Expires 1-10-21