

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration	•	
Between	•	
Morris County Prosecutor's Office	•	Docket No. IA-97-18
and	•	Jeffrey B. Tener
Morris County PBA Local 327	•	Interest Arbitrator

Appearances

**For the Prosecutor's Office:
Fredric M. Knapp, Esq.**

**For PBA Local 327:
Sanford R. Oxfeld, Esq.**

OPINION AND AWARD

Background and Procedural History

Pursuant to the request of the parties, I agreed to serve as the interest arbitrator in this matter by letter to the parties dated September 9, 1996. A petition to initiate compulsory interest arbitration was filed by the PBA on or about October 7, 1996 and the Prosecutor submitted a response on or about October 15, 1996. I was appointed to serve as the interest arbitrator by letter to the parties dated October 18, 1996 from Timothy A. Hundley, Acting Director, Arbitration, Public Employment Relations Commission ("PERC").

I met informally with the parties on October 8, 1996 and again on April 8, 1997. I was unable to bring the parties to a voluntary agreement. Formal hearings were held on May 15, June 6 and 13, and July 11, 1997. Following receipt of the transcript, both

parties filed post-hearing briefs and the PBA filed a short reply. The hearing was closed as of September 30, 1997 upon receipt of the PBA's letter reply.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. That Act at N.J.S.A. 34:13A-16f(5) calls for the arbitrator to render the opinion and award within 120 days of selection or assignment. The parties, however, agreed to extend the time for the issuance of this decision to December 1, 1997 as set forth in a letter dated August 8, 1997 to Mr. Hundley from Mr. Knapp.

The parties did not agree upon an alternative terminal procedure. Accordingly, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section."

Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and

conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

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

public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16(g))

Final Offers

Morris County Prosecutor The final offer of the Prosecutor¹ included the following items, all of which were agreed to be economic:

1. Term: The contract term shall commence January 1, 1996 and continue through December 31, 1998.
2. Article VIII: Sick Leave

Section 5: Amend as follows:

Employees Hired Prior to January 1, 1997: Upon retirement from service with the Morris County Prosecutor's Office, an employee shall be paid the equivalent of fifty (50%) percent of accumulated sick leave up to a maximum of \$12,000.

Employees Hired On or After January 1, 1997: Upon retirement from service with the Morris County Prosecutor's Office, an employee shall be paid the equivalent of thirty-five (35%) percent of accumulated sick leave up to a maximum of \$10,000.

3. Article IX: Health Benefits

Section 1(d): Clarify as follows:

Employees hired after September 10, 1993...

¹ While the Prosecutor is the employer, he is represented by the Morris County Counsel. I shall refer to the County and the Prosecutor and the Prosecutor's Office interchangeably.

4. Article XIV: Salaries

Schedule A

Employees hired prior to January 1, 1997

<u>Years of Service</u>	<u>December 31 1995</u>	<u>January 1 1996</u>	<u>January 1 1997</u>	<u>January 1 1998</u>
Entry	\$29,000	\$29,800	\$30,600	\$31,400
After 1	\$30,000	\$30,900	\$31,800	\$32,700
After 2	\$31,500	\$32,500	\$33,500	\$34,500
After 3	\$34,500	\$35,600	\$36,700	\$37,800
After 4	\$36,500	\$37,700	\$38,900	\$40,100
After 5	\$37,500	\$38,800	\$40,100	\$41,400
After 6	\$39,659	\$41,059	\$42,459	\$43,859
After 7	\$42,973	\$44,473	\$45,973	\$47,473
After 8	\$49,200	\$50,900	\$52,600	\$54,300

Schedule B

Employees hired on or after January 1, 1997

<u>Years of Service</u>	<u>January 1 1997</u>	<u>January 1 1998</u>
Entry	\$30,600	\$31,400
After 1	\$31,800	\$32,600
After 2	\$33,500	\$34,500
After 3	\$36,600	\$37,700
After 4	\$38,100	\$39,300
After 5	\$39,600	\$40,900
After 6	\$41,100	\$42,500
After 7	\$42,600	\$44,100
After 8	\$44,600	\$46,200
After 9	\$47,600	\$49,300
After 10	\$52,600	\$54,300

Notes:

Effective January 1, 1997, employees shall advance on the salary step schedule only on their respective anniversary dates of hire.

Retroactive payments due shall be reduced by the same amounts of the premature 1997 anniversary step movements.

5. Article XXVI: Duration

This Agreement shall be in full force and effect as of the first day of January, 1996 and shall remain in full force and effect through December 31, 1998. If

either party desires to modify or terminate this Agreement, it must, no later than October 31, 1998, give written notice of its intention to the other party.

6. New Article: Application of Benefits

Insert the following to codify practice:

The provisions of this Agreement shall not apply to any employee who has left the employ of the Prosecutor's Office prior to the date of signing of this Agreement by both parties. However, the salary provisions shall retroactively apply from January 1, 1996 through the date of retirement of any employee retiring prior to the date of signing of this Agreement. The estate of a deceased employee who dies prior to the date of signing of this Agreement shall receive the employee's adjustment retroactive from January 1, 1996 to the employee's last date of employment.

PBA Local 327 The final offer of PBA Local 327 consisted of the following

items, all of which are economic:

1. A three year agreement.
2. A 5.5% increase each year.
3. All increases to be retroactive to January 1, 1996 and to apply to all members who may have left in the interim.
4. Overtime to be computed on a seven-day cycle and to be paid after 40 hours in cash or compensatory time at the member's discretion.
5. No cap on sick leave.
6. On-call pay to be increased to \$50.00 a day.
7. Clothing allowance to be \$400.00.
8. Increase stipend for "Detective Supervisor" to \$5,000.00 a year. Entire stipend to be pensionable.
9. Vacation days:

<u>Years</u>	<u>Days</u>
1-5	12
6-9	15
10-12	18
13-20	21
21+	25

Items Included in Final Offer

By letter to me dated May 12, 1997, the Prosecutor objected to the inclusion of the last four items relating to on-call pay, clothing allowance, Detective Supervisor stipend and vacation as part of the PBA's final offer because those items were not listed on the petition filed by the PBA. The Prosecutor cited N.J.A.C. 19:16-5.5(b) which provides that, "If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party."

This objection was reiterated at the start of the formal hearing on May 15, 1997 and the Prosecutor cited case support for its position at that time. The PBA agreed to respond subsequently and I agreed to rule on the Employer's objection either in writing prior to the next hearing or at the start of that hearing. The PBA has not responded to the Employer's objection to the inclusion of the last four items in its final offer. The Prosecutor renewed its objection to the consideration of the additional items in its post-hearing brief.

N.J.A.C. 19:16-5.3(a) specifies the contents of a petition requesting the initiation of compulsory interest arbitration. It is to include the following: "9. A statement indicating which issues are in dispute..." Thereafter, as set forth at N.J.A.C. 19:16-5.5(a), there is to be a response listing, "1. Any additional unresolved issues to be submitted to arbitration." N.J.A.C. 19:16-5.5(b) then states that in the absence of a timely response, the party "shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party." [Emphasis added].

PERC has referred disputes as to what issues can be submitted to interest arbitration to interest arbitrators. It also has held that, absent unusual circumstances or

good cause, a responding party which fails to submit a timely response to a petition generally may not submit additional items after the deadline for responding to a petition. County of Middlesex, 23 N.J.P.E.R. 17 (¶28016, 1996)

Applying the regulations and the case law to this situation, the PBA filed the initial petition and it listed certain items but not the last four items included in its final offer. The Prosecutor was entitled to rely on the issues listed in the petition "as submitted by the filing party." If a responding party is precluded from adding issues after the time for filing a timely response to a petition which is to list the issues in dispute, it would seem equally reasonable to preclude the filing party from adding issues after the filing of its initial petition. Accordingly, I shall not consider the issues of on-call pay, clothing allowance, Detective Supervision stipend or vacation days to be properly before me as part of the final offer of the PBA.

Argument of the PBA

The PBA noted that the arbitrator must determine the total net annual economic changes for each year of the agreement and, citing the New Jersey Supreme Court's decision in Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), that he must indicate which of the statutory criteria he finds relevant, explain why the others are not relevant and provide an analysis of the evidence on each relevant factor. It also noted that PERC had adopted comparability guidelines which are set forth at N.J.A.C. 19:16-5.14 which the arbitrator must apply in rendering his decision.

It is the position of the PBA that, by any reasonable measure with other law enforcement salaries throughout the State, with other employers in Morris County, and within Morris County itself, the offer of the Prosecutor is insufficient and inadequate and does not fairly compensate the members of PBA Local 327.

The PBA argues that factors (1) regarding the interests and welfare of the public and (5) regarding the lawful authority of the employer are very similar in that both specifically require the arbitrator to consider the limitations imposed by the New Jersey Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq. ("Cap Law").

The PBA contends that the County could not and really did not attempt to dispute the assertion of the PBA that the County could easily pay the demand of the PBA and that there would be no impact whatsoever in terms of the Cap Law. John Kelly, the PBA's financial expert² and a certified municipal finance officer, testified that the total difference in salaries between the two parties' final offers was \$330,000 over the three years of the new agreement. If the County included some of its miscellaneous revenues that were not anticipated as part of its budget there would be no impact on the budget.

Kelly expressed the opinion that Morris County has acted extremely conservatively in financial matters and that the salary demand of the PBA easily fell within the State Cap index of 3.5% for 1996. The strength of the County's finances is said to be indicated by the fact that the amount raised by taxation has decreased every year since 1993 and that, in real dollars, the reduction in County taxes exceeds 14%.

Kelly also cited the Cap bank provisions of the Cap Law and noted that the County had not budgeted up to its Cap and that the Cap bank had more than doubled since 1994. In 1996, the County levied only \$120,570,000 whereas it was permitted to tax up to \$134,950,000, a difference of over \$14 million. The percentage of the allowable levy has decreased every year since 1994. Thus, not only has the County had a lower tax levy but there has been a decrease in the percentage of the allowable tax which has been raised. The Cap bank stood at \$11,405,998 in 1996. This makes it

² Kelly is the Chief Financial Officer of the City of Orange as well as a consultant.

clear how relatively insignificant is the difference between the costs of the two parties' final offers in this proceeding.

As a further indication of the financial flexibility which is available to the County, the PBA cites the County's surplus or fund balance. It is within the discretion of the County to use any or all of this surplus in the annual budget. It is both unencumbered and unrestricted. The PBA points out that every year since 1993, the County has used a smaller percentage of the preceding year's surplus to fund operations. Thus, in 1993, the County used 97.64% of its surplus to offset appropriations. That figure decreased each year thereafter and stood at only 84.14% in 1996. This is said to show the health and strength of the County's financial situation.

Additionally, the PBA cited the County's miscellaneous revenue not anticipated ("MRNA") and specifically three items listed thereunder: interest on investments, added and omitted taxes, and child support. These three items alone have exceeded \$3 million in each of the last four years and they have exceeded \$4 million in each of the last two years. Each has consistently provided a source of revenue to the County which the County knows it will receive yet the County has not anticipated this revenue. If it were to anticipate a small amount of this revenue, the County could fund the PBA's salary proposal with no impact on the budget. The PBA notes that the total amount of miscellaneous revenue not anticipated by the County has ranged from a low of \$5.98 million in 1993 to a high of \$12.36 million in 1995 and was \$9.1 million in 1996.

The PBA points out that the budget forms which are required by the State to be used has provision for listing interest on investments as a revenue. In spite of this, the County does not include this as an anticipated revenue. The County received \$3.04 million in 1995 and \$2.91 million in 1996 in interest on investments. Thus, the use of

10% of its unreported interest on investments would fund almost the entire difference in the two final offers.

In summarizing the County's financial strength and its ability to fund the final offer of the PBA, Kelly cited the County's sound financial condition and the wealth of its residents who rank at the top of the State in both per capita income and median family income. Furthermore, unlike many counties, the population of Morris County has increased appreciably in the last five years. With unreported miscellaneous revenue, the utilization of a smaller percentage of a growing fund balance, a large Cap bank, net debt of only .57% which is well below the statutory limit of 2%, the need for less bonding due to the receipt of federal and state grants, a growing tax base and decreasing taxes, the County is said to be easily able to pay for the salary and benefit increases proposed by the PBA.

The County really did not dispute that it has the ability to pay the PBA proposal. County Treasurer and Director of Finance Glenn Roe acknowledged that Morris County is one of only a few counties in the entire country to receive the highest bond rating from both Moody's and Standard and Poor's. He took exception to Kelly's statement that, because of its overall financial strength, the County could spend all of its surplus and still retain its AAA rating. This does not matter because the PBA is not asking the County to spend more than a small fraction of its surplus to fund the award for PBA Local 327. Ten percent of the MRNA for one year would fund the entire award.

Furthermore, the PBA notes that in 1990, during a recession, the County used all but \$248,679 of its surplus in its budget yet the County retained its AAA rating. The same thing occurred in 1992 when it used all but \$285,515 and again the County used most of that surplus in 1993 and still retained its AAA rating. This is said to prove that the County could spend much more of its surplus without jeopardizing its AAA rating.

Now, with a more robust economy, the amount of surplus remaining as of December 31, 1996 was \$2,964,020. The utilization of approximately 10% of that amount is all that is needed to fund the PBA proposal. The PBA denies that this would cost the County its AAA rating or that it would be contrary to the interests and welfare of the public or that it would require the employer to exceed its lawful authority. Accordingly, the PBA asks that the arbitrator award its salary and benefit proposals.

The PBA next addressed comparisons. First, it notes that under subsection (a) regarding private employment, the statute speaks of private employment in general because there are no easily defined private sector counterparts to Prosecutor's Investigators. The Bureau of Labor Statistics published a document entitled Employment and Earnings in January 1997 which provides information on employment and earnings. For the service-producing industry, the average hourly earnings in December 1995 were \$11.08 and they were \$11.51 in December 1996, an increase of \$.43 per hour or 3.9%. Using January 1996 to January 1997, the increase was 3.7%. The weekly earnings of manufacturing employees increased by 7.65% from January 1996 to January 1997. While it is true, as the County pointed out, that more hours were worked in January 1997, there was an increase in hourly earnings of 3.9% from March 1996 to January 1997.³

The PBA next pointed out that these comparisons are different from the cost of living criterion set forth in the statute. The PBA cites an increase of 2.83% for the CPI-U in the New York area for the period between March 1996 and March 1997. The CPI-W during that period was reported as 2.71%.

³ While the PBA cited those figures, I believe that the year-to-year figures are a better gauge. The increase in hourly earnings between January 1996 and January 1997 was 2.8%.

The next criterion addressed by the PBA was overall compensation. This factor includes salaries, wages, vacations, holidays, leaves, insurance, pension, medical benefits, etc. Based on the evidence introduced by the County, Exhibit E-14, it can be seen that the Investigators are covered by social security, pension and insurance, workers compensation, health care, unemployment, disability, longevity, vacation and holiday and sick and personal leave, and that this is true not only of the other County law enforcement employees but of the other County employees as well. Much of this coverage is mandated by law. While recognizing that all of the County law enforcement employees receive greater pension benefits than do other County employees, this is established by State statute and is beyond the control of the County.

The most important factor, according to the PBA, is the comparison of the terms and conditions of employment of the Investigators with those of other employees performing the same or similar services. This is said to be especially important because there really are no disputes regarding the other criteria. It is said to be clear that the County has the ability to pay and that there would be not minimal but absolutely no financial impact on the governing residents, its taxpayers and residents if the offer of the PBA were to be awarded. All existing programs could still be maintained and, if necessary, expanded. New programs still could be initiated. Thus, argues the PBA, the only issue is where PBA Local 327 should be placed in terms of appropriate comparable jurisdictions.

The comparisons made by Francis McEnemy,⁴ the PBA's expert witness in this area, took into consideration the comparability guidelines as listed under N.J.A.C.

⁴ McEnemy is employed by the certified public accounting firm of McEnemy, Brady & Co. which concentrates heavily in representing law enforcement unions.

19:16-5.14. The comparisons offered by the PBA related to other investigators throughout the State and to municipal police officers in Morris County.

The County also did a similar analysis. The difference between the parties was whether or not to include longevity. McEnemy decided to exclude longevity for all of the jurisdictions which did not provide for longevity in the current contract. He did that because longevity has been grandfathered in this bargaining unit and is available only to employees actively employed prior to July 26, 1990. By excluding longevity, the PBA argues that the comparisons are direct and consistent.

The PBA also argues that only settlements and awards reached prior to the date of filing of the petition by the PBA should be considered in the comparative analysis. Making an analogy with equitable distribution matters, the PBA asserts that the date of the filing of the petition should control and subsequent settlements or awards should be disregarded.

The PBA disagrees with the Prosecutor that the most appropriate comparison is with Sheriff's Officers in Morris County. Indeed, the County seems to take the position that the only relevant consideration is its claimed pattern of settlement with other employees. If this were intended to be the only factor considered, the PBA argues that the Legislature would not have listed eight criteria. It would have listed only part of one of the eight factors listed: comparisons in public employment in the same jurisdiction. While this is a valid and meaningful consideration, there are many other factors to be considered and the PBA urges the arbitrator to consider these other factors in rendering his decision.

The PBA contends that in the past, the County has resisted this same comparison when the PBA has attempted to gain the same level of benefits that is enjoyed by the Sheriff's Officers in the areas of overtime, call-out pay, college credit

payment, etc. The PBA views the County's present position as a total reversal of the position which it has taken historically when it would not agree to give PBA Local 327 the same benefits as these in effect for the Sheriff's Officers.

Another aspect of the County's offer which, according to the PBA, renders that offer less acceptable is that it is expressed in flat dollars rather than as a percentage. Citing the history of negotiations in the County going back at least to a 1983 interest arbitration award issued by William Weinberg,⁵ the PBA asserts that salary increases have been expressed in percentages, whether achieved through voluntary settlement or through awards. The settlement of the 1992 to 1995 agreement between the Prosecutor's Office and the Superior Officers Association is explicitly stated in percentage terms. See Exhibit PBA-6 at 24. The unique nature of the County's offer in this proceeding is an attempt to break the practice and should not be permitted to prevail absent a mutual agreement.

Going back to the time of the Weinberg award, the PBA asserts that the practice has been to compare Investigators with those in other counties.⁶

The PBA cited a number of areas in which it claims that the Sheriff's Officers receive benefits which are superior to those received by the Investigators. Call-out pay for standby duty and for emergency duty both are compensated with a minimum of four hours' pay when the employee is called out. Overtime is received by employees who work over 40 hours in a week, is paid at time and one-half, and approved leave but not sick leave is considered as time worked for the purposes of calculating overtime. The work week is five consecutive eight-hour shifts followed by at least 48 hours off and is said to be the same as that worked by Investigators. Investigators get an unpaid lunch

⁵ Docket No. IA-83-117 (September 22, 1983) [at 39]

⁶ Weinberg actually listed two keys elements: comparison with other prosecutors' investigators in comparable counties and with Morris County employees in general. [*Id.* at 22]

hour while Sheriff's Officers get a paid lunch hour. There is a uniform allowance of \$595.00 per year. Finally, employees hired on or before December 31, 1995 receive \$25.00 per approved college credit. All employees, regardless of date of hire, are eligible for reimbursement for tuition and books.

These differences in fringe benefits are significant. Using Dan McNamara, President of PBA Local 327 as an example, he would have earned an additional \$5,500 if he were paid as a Sheriff's Officer. His base pay and longevity (which are slightly lower for Sheriff's Officers than for Investigators), uniform allowance, college credits and overtime would have been \$5,500 more. An average Investigator with thirteen years of service would have received an additional \$4,100 if he were paid as a Sheriff's Officer. The PBA contends that Sheriff's Officers receive a uniform allowance even though they do not work in a uniform.

Any comparison between Investigators and Sheriff's Officers must take these differences into account if they are to be accurate and meaningful. The County failed to do so and this is said to detract from the analysis offered by the County. The County cannot point only to salaries in making its comparability arguments and ignore or overlook the fringe benefit packages.

The PBA notes that while the County presented data comparing Morris County Investigators with those in Fairfax, Virginia, the only county in the country with a higher median family income than Morris County, it included longevity in Morris County even though that benefit has been grandfathered. Thus, the comparison is said not to be apt.

Another argument against reliance on a comparison with the Sheriff's Officers in Morris County is that the County failed to provide the data necessary to compare Morris County's Sheriff's Officers with those in other counties. If the Sheriff's Officers in Morris

County are the highest paid in the State or among the highest paid, then it would make sense that they would accept the County's contract proposal and not proceed to interest arbitration. Without knowing where they stand in relation to other sheriffs' officers, the comparison with Morris County Investigators is said to be invalid. The County's failure to provide the necessary information renders its proposed comparison with Sheriff's Officers meaningless.

The PBA compared the total direct compensation, defined as base salary, longevity and clothing allowance, of investigators throughout the State based on a 25-year career and using the 1995 salary schedules. Morris County ranked 15th of the 18 counties for which data was available. On an hourly basis, Morris County improved slightly to 13th of 18, still in the bottom 27% statewide. Such a ranking is said to be totally unjustified for a county that is first in New Jersey in median family income and per capita income and second in the median value of a single family home, behind only Bergen County. The PBA points out that Bergen County ranks first in terms of total direct compensation and average hourly direct compensation and this is said to be appropriate, given its wealth. Morris County, however, however, also should be in the lead and it is far from the front.

When the salaries of 13-year Investigators are compared to median family incomes, the relationship in Morris County is the least favorable to the Investigators. The salary is only 78.41% of the median family income in Morris County. Only is Somerset close. In the other counties, the base plus longevity is between 145.69% in Hudson County, 136.59% in Passaic County, 131.55% in Atlantic County and down to a low of 86.59% in Sussex County. In terms of per capita income, Morris and Somerset again share the two bottom slots and they are far behind the other counties. A similar

adverse relationship exists when one examines base salary and longevity in comparison to the value of a single family home and median annual rent.

If the arbitrator looks at municipal police officers in Morris County for comparisons, the PBA makes several points. First, it notes that Investigators assume control of investigations when they arrive on the scene. The County Prosecutor by law is the chief law enforcement officer in a county and the Prosecutor prosecutes the cases. Thus, ultimately, all law enforcement agencies which operate in Morris County, including all municipal police forces, report to the Prosecutor.

Comparing the salaries of the Investigators with the 1995 base salaries in the 38 municipal departments in the County, the PBA asserts that the Investigators are poorly paid. Based on the PBA's statistics, after ten years, an Investigator ranks 29th of 39 or in the bottom quartile. After 15 years of service, the rank drops to 31st or the lowest quintile where it remains throughout the rest of the Investigator's career.

The PBA provided data showing salary increases in municipal police departments in Morris County. The range in 1996 was between lows of 2% in Morristown, 3% in Netcong and 3.5% in East Hanover - none of the other settlements were below 4% - and highs of 6% in Mine Hill, 5.7% in Chester Borough and 5.4% in Boonton Township. The other settlements were between 4% and 5.25%. In 1997, there were fewer reported settlements but the nine salary increases reported were all between 4% and 5.1%. There were two 1998 settlements, both of which were 4.25%.

As computed by the PBA, its salary proposal costs \$49,425 more than that of the County in 1996, \$107,088 more in 1997 and \$173,615 more in 1998 or a total over the three years of \$330,128.⁷

⁷ There is some discrepancy between the parties' calculations due to the fact that they used different numbers of employees and distributions of those employees on the salary guide.

The other items which the PBA is seeking should not be considered to be new or different, according to the PBA, because the benefits sought are simply those currently enjoyed by the Sheriff's Officers with whom the County is seeking to compare the Investigators in terms of salaries. The County has long been paying these same benefits to Sheriff's Officers.

The PBA notes that the County paid over \$200,000 in 1996 to Sheriff's Officers in the form of overtime and college credits, neither of which are given to Investigators. Because the number of Sheriff's Officers and Prosecutor's Investigators is similar, the PBA assumes that the cost to the County of providing these benefits to Investigators would be about the same. This should not be considered as a new cost, however, but as a savings which the County has realized for a number of years.

In addition to salary, the PBA is particularly concerned about two items. One is the date upon which increments are received. The County is seeking to change that from January 1 to the employee's anniversary date. The County advanced this position in a proceeding before PERC but it did not prevail. PERC held that the parties' contract expressly provided for payment of increments on January 1 of each year. The PBA asserts that this is the current situation and there is no reason for it to be changed.

The second issue relates to payment for overtime. The Sheriff's Officers receive overtime at time and one-half after 40 hours. The Prosecutor's Investigators have a complicated system but it provides for straight-time pay hours worked beyond 140 in a 28-day cycle up to 160 hours and any time off during that period does not count toward the 160 hours. The first fifteen hours can be placed in the employee's compensatory time bank or paid, at the discretion of the employee. The next five hours are placed in the employee's compensatory time bank. Hours over 160 are accrued in the compensatory time bank at time and one-half up to 480 hours for the year and any

time beyond 480 hours is paid overtime. Compensatory time remaining in the employee's bank at the end of the calendar year is paid the first month of the next year.

While legally permissible, the use of the 28-day cycle is unique to the Morris County Prosecutor and many investigators receive overtime on a daily basis with some receiving overtime after 35 or 37.5 hours in a week. Other units also receive paid overtime rather than compensatory time.

In summary, the PBA argues that the Prosecutor's Investigators and Sheriff's Officers should not have parity because the County historically has taken the position that there is not parity between those groups. Rather, the appropriate comparisons are with investigators in the other counties throughout the State and with other police departments in Morris County, as Weinberg did back in 1983. The Investigators are said to be tremendously underpaid when compared to either of these groups and the offer of the County will not only perpetuate the low placement of the Investigators but it will result in an even lower placement.

The County clearly has the ability to pay the proposal of the PBA and it can do so with absolutely no impact on the tax structure or the citizens. The use of about 10% of one year's MNRA would fund the entire difference between the two salary offers.

Salaries should be raised by 5.5% each year. Overtime should be received after 40 hours. Pay increases should be received on January 1 (as opposed to the anniversary date change proposed by the County) and there should be no limit on who receives retroactive increases (i.e. reject the Employer's Application of Benefits proposal). There should be no change in sick leave. The PBA also is seeking an increase in on-call pay to \$50.00 and a clothing allowance of \$400.00. It asks that the Detective Supervisor stipend be increased to \$5,000.00 and that the vacation days be increased, noting that an Investigator now receives 424 vacation days over the course

of a 25-year career and it is seeking an additional 31 days or a total of 461 days which would place Morris County in the middle of the range on this measure.⁸

Accordingly, the PBA asks that its final offer be accepted in its entirety by the arbitrator and that the offer of the County be rejected.

Argument of the Prosecutor

The Employer looked at the statutory criteria in relation to its proposal and argued that the arbitrator should award that proposal.

The first factor, and one emphasized by the County, is the interests and welfare of the public.⁹ It is the position of the Prosecutor that its economic package provides an equitable compensation plan which will promote and is consistent with a coherent, fair and equitable labor relations environment. This is said to be in the interest of the public and to promote the public welfare. In contrast, the proposal of the PBA is excessive.

The County asserts that its offer and proposed salary structure will provide an incentive for Investigators to remain in the employ of the Prosecutor. It notes that there have been many applications for these jobs and that turnover has been extremely low. There were 154 applications in 1996 and 81 had been received in less than the first half of 1997. There were only three separations in 1996 and two in 1997. The County attributes this to the high compensation, excellent benefits, superior leadership and improving facilities and equipment.

The County notes that its proposed salary increases exceed the cost of living increases of the past several years and contends that these increases will provide an increase in real wages, thus further promoting stability. In fact, over the ten years from

⁸ I stated above that I will not consider on-call pay, the clothing allowance, the Detective Supervisor stipend and vacation increase as part of the final offer of the PBA. These items may be considered, however, in comparing the different bargaining units.

⁹ The County's discussion of this factor also included references to a number of the other criteria.

1985 to 1995, the cost of living (New York/New Jersey CPI-U) increased 47.5% while top salaries for Investigators went up by 76.3% or 28.8% more than the cost of living.

The County notes that the arbitrator must consider the constraints imposed by the Cap Law as part of this criterion. The County asserted that if the County were required to fund an economic package greater than it has proposed - with its wage increases of 10.37% over three years - then other important services would have to be reduced. It points out that 10.37% is approximately 3.5% per year which is the amount by which appropriations have been permitted to increase under the Cap Law. Thus, its offer, unlike that of the PBA, is said to be consistent with and to take into account the limits associated with the Cap Law.

The County argues that its economic position has been difficult. Property values declined dramatically from a high of \$44.1 billion in 1989 to \$39.3 billion in 1993. The amount on which the Cap is applied increased by almost \$3.5 million between 1992 and 1994. Surplus as a percentage of County revenues declined from 10.7% in 1987 to 5.4% in 1993. While it increased to 7.7% in 1995, it decreased again to 6.9% in 1996. Given these factors, the County has been struggling to get back to a more solid and sound economic footing. It is for these reasons that the County has made serious efforts to control expenditures and this must include salary increases.

The PBA's financial expert conceded that it would not be sound policy for an employer to spend the maximum surplus nor to deplete its surplus more than necessary nor to do anything which would jeopardize its AAA bond rating. The Employer's wage proposal is said to provide a reasonable wage increase which will not adversely impact on the County tax rate.

Additionally, the increases sought by the PBA are said to exceed increases received in the private sector. The taxpayers are predominantly employed in the

private sector and have not and will not receive increases as large as those proposed by either the County or the PBA.

One of the major concerns of the County is the potential impact of this award on other County bargaining units. The Employer's offer takes this into account. It is gradually capping payment for accumulated sick leave by grandfathering this benefit and it also is extending the salary guide. It is limiting new contractual benefits to those employees who have not left County employment except through retirement as reflected in its Application of Benefits proposal. As part of its cost containment measures, the County has negotiated the elimination of longevity for new hires, insurance cost sharing, and other measures. County Director of Labor Relations John McGill testified that he had been directed by the Board of Freeholders to negotiate consistent packages and to negotiate salary increases which approximate increases in the cost of living. The economic parameters of all agreements were to be similar.

The County has succeeded in achieving this consistency in the many units with which negotiations have been concluded and it is viewed as extremely important to maintain the pattern at this late date in the process. It notes that it has negotiated wage increases of approximately 3% per year with all units of County employees. Its offer in this proceeding represents at the top step 3.46% in 1996, 3.34% in 1997 and 3.23% in 1998.

The County points out that the Sheriff's Officers and Correction Officers both accepted increases of \$1,700 at the top step for each year of three-year agreements. The County regards it as extremely important to maintain this pattern in the interest of overall equity and consistency and stability and, thus, vital to the public interest.

The proposal of the PBA is significantly more costly than that of the County and would far outstrip the voluntary agreements reached with the other units. Thus, the

proposal of the PBA costs \$120,897 more than that of the County in 1996, \$201,234 more in 1997 and \$244,030 more in 1998.¹⁰ This is a total difference of \$566,161. Viewed in percentage terms, the County has proposed a cumulative increase of 9.8% whereas the PBA has proposed a cumulative increase of 21.27% or 11.47% more than the County. Furthermore, the Union's proposal would change the relationship which exists between Sheriff's Officers and Prosecutor's Investigators as measured in 25-year earnings so that the Investigators would receive between 6.5% and 8.4% more than Sheriff's Officers, depending upon their date of hire.

To accept the proposal of the PBA would expose the County to whipsawing, thereby creating instability and discouraging voluntary settlements. This clearly would be contrary to the public interest and welfare.

It is asserted that the increases proposed by the PBA would propel the salaries of the Prosecutor's Investigators beyond those of the majority of investigators in the State. Citing the Weinberg decision issued in 1983, the County notes that Morris County ranked below the midpoint at that time. The proposal of the County will result in an improvement in that standing in terms of career earnings, ranking 8th in total direct compensation per hour if longevity is included and 12th if it is not.

Looking at municipal police officers, the Investigators also compare favorably with 10-year and 15-year earnings which essentially match those of the local police officers but which stand at 104.6% and 104.2%, respectively, at the 20 and 25 year levels. They rank ninth of the 39 jurisdictions after 20 and 25 years of service. At mid-career, the Investigators ranked 14th in the County and above the Sheriff's Officers, Correction Officers and Morris County Park Police.

¹⁰ These figures include the cost of fringe benefit changes proposed by the PBA, most of which are not properly before me as discussed above.

Accordingly, the County denies that this is a situation in which catch-up is justified in relation to other investigators, municipal police officers, or other County law enforcement personnel.

The second criterion addressed by the County is comparisons and it first looked at public employment in the same or comparable jurisdictions. There are 49 members in this bargaining unit and the fringe benefits add an additional 56.96% to the County's labor costs. The Employer argues at the outset that too much emphasis has been placed on comparability as opposed to other factors and it cites the Supreme Court's Hillsdale [ibid.] decision in support. Nevertheless, the County recognizes that comparability is a significant criterion.

The most important comparison is said to be with employees of the Sheriff, both Sheriff's Officers and Correction Officers. Career earnings of an Investigator will exceed those of a Sheriff's Officer under the County's proposal. The increases voluntarily accepted by the Correction Officers and the Sheriff's Officers are the same as those offered to the Investigators. The PBA is seeking to change the relationship among these salaries. If the PBA's proposal were accepted, by 1998 Correction Officers and Sheriff's Officers would be earning over 7% less than Investigators.

The County notes that the salary guides of the Sheriff's Officers hired after January 1, 1996 and Correction Officers are identical, thus clearly demonstrating the consistency of treatment that the County values so highly.

Looking at increases in the maximum salaries, the County settled voluntarily with the other law enforcement units. The Sheriff's Officers received a three-year increase of 10.16%, the Correction Officers received 10.16% and the Park Police received 10.22%. The County has offered a virtually identical but slightly higher 10.37% to the Investigators. In contrast, the PBA has proposed a 17.42% salary

increase at the top step over those three years which is over 7% higher than all of the other units.

Turning to private sector comparisons, the County notes that weekly earnings of New Jersey manufacturing production workers rose 42.8% between 1985 and 1995 but that the earnings of Investigators rose 76.3% during that period. The increase in 1995 for these production workers was 2.5% and it was only 1.3% in 1994. Using the Employment Cost Index ("ECI"), which includes benefits as well as wages, the increase for all private industry workers were 2.8% in both 1994 and 1995. In the last ten years, the ECI rose 39.3% but the top rate for Investigators increased by 76.3%, thus clearly demonstrating the magnitude of recent salary increases for the Investigators.

In 1996 and the first part of 1997 (annualized), the ECI for private industry increased by 3.4% in both periods. Weekly earning of New Jersey manufacturing production workers increased by 2.4% in 1996. The increase offered at the top step for an Investigator is 3.46% for 1996 so that exceeds these figures.

Data published by the Bureau of National Affairs shows that settlements in all industries for all years beginning in both 1995 and 1996 have been 3%. The increases for manufacturing workers have been slightly less. Thus, the offer of the County exceeds increases being received in the private sector.

A poll of economists anticipates increases in consumer prices to be about 3% for 1997 so the County's offer will compare favorably in 1997 as well.

The increases received by other state and local government employees have lagged far behind those received by the Investigators over the last ten years: 48.8% versus 76.3%. The ECI for these workers increased by 3.2% in 1995 and by 2.8% in 1996 and the first quarter of 1997. Thus, by this measure as well the offer of the County compares favorably.

The third criterion is overall compensation. The County asserts that the overall compensation received by the Investigators is very similar to that received by the Sheriff's Officers and the Correction Officers. The Correction Officers have received a hazardous duty stipend for many years. It was \$1,550 in 1995 but was reduced to \$1,000 in return for the inclusion of \$400 in base pay effective January 1, 1996. The Sheriffs Officers, who share the same employer with the Correction Officers, also received an adjustment and they agreed to eliminate the stipend and to add \$400 to base salaries. Even with these additions to the base salaries, the top pay of Investigators will exceed that of both Correction Officers and Sheriff's Officers by \$621 in 1998. The County notes that the Correction Officers work in an extremely hostile environment and that they work rotating shifts. The Sheriff's Officers are required to wear uniforms and they, like the Corrections Officers, are in a paramilitary organization.

The Investigators do not wear uniforms and most work in the County Records and Administration Building, a much better atmosphere than the jail or the court rooms. The County points out that Investigators do not perform forensic duties. These duties are performed by the Sheriff's Officers. Investigators rarely intercede to control a criminal or a suspect. Of course, they also are not required to perform patrol duties as are municipal police officers.

While not properly before the arbitrator, the County asserts that the Detective Supervisors in fact do very little supervision. The authority resides in the superior officers, of whom there are many, as well as the Assistant Prosecutors. There is no justification for an increase in this stipend.

There is a great similarity of benefits among Investigators, Sheriff's Officers and Correction Officers: vacations (with a maximum of 25 days after 24 years of service), thirteen paid holidays (which the Investigators, unlike the other two groups, are seldom

required to work), fifteen sick days per year which are cumulative, health and dental benefits including a flexible spending account pursuant to §125 of the Internal Revenue Code, health insurance for retirees paid by the Employer, pensions under the Police and Fire Retirement System, three administrative leave days, bereavement days, disability benefits and worker's compensation benefits.

The Investigators do not wear uniforms and so do not receive a uniform allowance. However, if their clothing is torn or damaged in the line of duty, it is replaced by the County at the County's expense.

There is one major difference which the County is seeking to deal with in these negotiations. It involves payment for unused sick leave at retirement. The Investigators presently receive one day's pay for each two days of accumulated sick leave without limit at the employee's rate at retirement. Both the Sheriff's Officers and Correction Officers have a lesser benefit. Both receive only 35% (rather than 50%) of accumulated sick days and, particularly important, both have caps on these payments. The maximum payment to a Sheriff's Officer is \$10,000 and that for a Correction Officer is \$8,000. All other County employees have caps, the highest of which is \$12,000. Thus, the Investigators are out of line on this benefit.

The Prosecutor is seeking to place a limit on this benefit which has gotten out of hand. Its proposal is to make the benefit for Investigators who are hired after January 1, 1997 the same as it is for Sheriff's Officers: a maximum of \$10,000 with payment of 35% of accumulated sick leave. For current employees, the County would continue to pay 50% of the accumulated days with a cap of \$12,000, the maximum received by any County employees.

Another major difference between the Investigators on one hand and the Sheriff's Officers and Correction Officers on the other is the length of the work week.

The Investigators work a 35-hour work week and the others work a 40-hour work week. This is significant in comparing the groups because of the effect of the shorter work week on hourly compensation. The Sheriff's Officers and Correction Officers work 14.3% more than the Investigators. PBA Local 327 seems to be unwilling to acknowledge this significant difference.

The County points out that a majority of the Investigators - 30 of 49 - still enjoy longevity which reaches a maximum of 9% after sixteen years, although the County has grandfathered this benefit for employees hired after July 26, 1990. The benefit also has been eliminated for the Sheriff's Officers and Correction Officers.

The County insists that the array of benefits received by the Investigators is at least comparable to those received by the Sheriff's Officers and Correction Officers. These benefits add over 56% to base salaries. Thus, according to the County, the sweeping changes urged by the PBA cannot be justified.

The only stipulation of the parties was that the new agreement would cover the term January 1, 1996 through December 31, 1998.

The next criterion is the lawful authority of the Employer. Because this also must be considered as part of the interests and welfare of the public, it was discussed above. The County notes simply that its spending limitations have been restricted to 3.5% per year and while it has the legal authority to exceed that limit, it would not be fiscally responsible for it to do so. The decreasing surplus in relation to revenues makes this point clearly.

The next factor is the financial impact on the governing unit, its residents and taxpayers. The County again asserts that it would have great difficulty in paying an award above its offer. It has been reducing expenditures as its ratables have declined. It has had to use increasing portions of surplus. The County does not want to

jeopardize its AAA bond rating, the importance of which was acknowledged by Kelly for the PBA. The County is only now recovering from the economic decline of the early 1990's.

The County illustrated the economic value of its bond rating by comparing interest payments of its last three bond issues in 1991, 1993 and 1995. The savings produced by the lower interest rates which accompany the AAA rating are worth \$2.5 million on these three issues alone.

Moody's prefers a fund balance of at least 5% of revenues so that any normal contingencies can be addressed and the County is working to keep its surplus above that level. The trend of financial performance is important to Moody's and the County has worked to limit expenditures and regenerate surplus, particularly in the harsh economic times of the last years. The County admittedly follows a conservative fiscal approach and it does this with a clear purpose. The proposal of the PBA, if adopted, would not only cost more money than the County has planned to spend for this bargaining unit but it would have a disastrous effect on labor relations and finances in the County. The County has over 20 bargaining units and it has struggled to maintain a pattern for these units and especially the law enforcement units since 1991. It would upset the pattern and be extremely disruptive if the Investigators received an anomalous wage increase. A return to whipsawing and the inflationary increases which were experienced in the 1980's would be expected. The County fears the domino effect of a higher award in this unit on other units and the higher potential costs which would be likely to result, if not during the term of this agreement then in the next round of negotiations. The County cited Roe's estimate of a 1% impact if the PBA were to prevail in this proceeding. Even 1% of the County's \$60 or \$62 million payroll is a large amount of money - \$600,000 - and that cost would be recurring. Furthermore, as the

above comparative analysis showed, this is not a case in which a larger wage increase or significant fringe benefits can be justified in order to bring the Investigators up to other investigators or municipal police officers.

The County's offer is competitive and will not result in hardship for the Investigators whereas any additional costs imposed by the arbitrator would be felt by the taxpayers. Revenues increased less rapidly than expenditures from 1987 to 1993 and such a trend cannot be permitted to continue. Surplus declined during that period and the County has been working to increase it by limiting spending and acting responsibly.

Furthermore, the County notes that private sector employees, who pay the County's taxes which, in turn, pay the salaries of the Investigators, have not been increasing significantly in recent years and the differential between the earnings of Investigators and manufacturing production workers in New Jersey is increasing.

The cost of living is the next criterion. The County notes that the top pay of Investigators increased by 76.3% between 1985 and 1995 but the cost of living as measured by the CPI-U for New York and New Jersey increased by only 47.5% during that period. The CPI-U increase in the last few years have been 3% or less. The trend continued in 1996 with a 2.9% CPI-U increase and it was 3% for the first third of 1997. Thus, with the County's offer, the Investigators will realize an increase in real wages. Accordingly, this factor, like the others, favors the position of the County.

Finally, in looking at continuity and stability of employment, the County again focused on the pattern of settlement within the County and especially with the Sheriff's Officers and Correction Officers. Robert Linn, the County's expert witness and a compensation, benefits and labor relations consultant with vast experience not only as Director of Labor Relations for New York City but also with clients throughout the

country, testified regarding the importance to the County of maintaining the pattern of settlement in the interests of sound labor relations (as Roe addressed this topic from the County's financial perspective).

The County points out that only law enforcement officers in the County enjoy a salary guide with step increases. The other County employees do not have this benefit. Nevertheless, the County has offered the Investigators slightly more than it has settled for with other County employees even though those others do not enjoy a salary guide. Step movement increases what the Investigators will actually obtain, sometimes by up to 12% in 1996 and again in 1997.

This leads to another issue for the County. This unit is the only one in the entire County which receives step movement on January 1st. The County contends that this was not intended when it agreed to reinstate the salary guide in the last contract but that has been the interpretation by PERC. The County wants to end this aberration so that step movement will conform to that in the other units which have guides. Step movement would occur on the employee's anniversary date rather than January 1st. The additional cost of step movement on January 1st as opposed to the anniversary date is approximately \$60,000 in this unit although it will be less in subsequent years.¹¹ Nevertheless, it is significant and the current system in effect for the Investigators is said to be illogical and contrary to common sense as well as the prevailing practice. The County asks that consistency and rationality be restored by changing the receipt of step increases to the anniversary date of the employees in this bargaining unit. Furthermore, its salary offer was based on the expectation that it would realize the savings associated with a change in the date.

¹¹ Actually, the annual cost of the step movement was approximately \$60,000 and there would be a savings of 50% of that if the anniversary date rather than January 1st was used as the date of step movement. See Exhibit C-9A, p. 48.

If the pattern of settlement is not respected, then in the future unions will be unwilling to settle with the County. The effects on employee morale would be harsh and there would be ill will and potential turmoil and unrest. It is for that reason that many arbitrators have accepted and followed patterns of settlement.

The County urges acceptance of its offer by the arbitrator because of its respect for the consistent pattern of settlement, the fact that it provides a fair and competitive increase in relation to other investigators and to municipal police officers in Morris County, it exceeds increases in the private sector and in the cost of living, and it takes account of the County's financial situation including its declining rates. These employees currently are well paid and enjoy excellent benefits. The County's proposal is reasonable and the excessive proposal of the PBA cannot be justified. The County urges that its proposal be awarded as being consistent with the statutory criteria.

Discussion

The arbitrator is required "to separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g." Due weight is to be given to those criteria which are judged to be relevant. Each criterion must be considered. Those deemed relevant must be explained and there also must be an explanation as to why any criterion is deemed not to be relevant.

I have considered the evidence which has been presented as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been found to be relevant, although the weight given to different factors varies, as discussed below. I have determined the total net annual economic changes for each year of the agreement.

I shall set forth the terms of the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. Each party, of course, related the evidence and its arguments regarding the criteria primarily to its offer and that of the other party. I shall not do so because, in this conventional arbitration proceeding, I have the authority and responsibility to fashion the terms of the award.

Both parties agree that the term of the new contract should be three years, January 1, 1996 to December 31, 1998. I agree. Salaries shall be increased as proposed by the County as set forth in Schedule A above. There shall not, however, be a separate schedule for employees hired after January 1, 1997. Also, the date of advancement on the salary guide for current employees shall continue to be January 1st of each year with no reduction in retroactive payments.¹² Employees hired after the date of this award shall advance on the salary step schedule on their anniversary date of hire.

Article VIII, Sick Leave, Section 5 shall be amended to provide that employees hired after the date of this award upon retirement from service with the Morris County Prosecutor's Office shall be paid 35% of accumulated sick leave up to a maximum of \$10,000. There shall be no change for employees hired before the date of this award.

Article IX, Health Benefits, Section 1(d) shall be changed so that it begins as follows: "Employees hired after September 10, 1993..."

There shall be no change in Article XXXVI, Duration except regarding the term of the agreement.

There shall be a new article entitled "Application of Benefits" to read as follows:

¹² Employees who have left the employment of the Prosecutor are entitled to receive payment for step movement to the extent that they were not at the top step when their employment ended.

The provisions of this Agreement shall not apply to any employee who has left the employ of the Prosecutor's Office prior to the date of this award. However, the salary provisions shall apply from January 1, 1996 through the date of retirement of any employee retiring prior to the date of this award. The estate of a deceased employee who dies prior to the date of this award shall receive the employee's adjustment retroactive from January 1, 1996 to the employee's last date of employment.

Article XIII, Work Day and Work Week, shall be changed effective January 1, 1998 to provide that,

Work which exceeds forty (40) hours in a week is to be considered overtime and paid at the overtime rate (time and one-half). Approved leave, contractual leave and statutory leave will be considered as hours worked; however, sick leave shall not be considered as hours worked for the purpose of calculating overtime. Employees shall be paid in cash or receive compensatory time at their option. Any compensatory time remaining at the end of the calendar year shall be paid in cash during the first month of the succeeding year.

There shall be no change in on-call pay, no clothing allowance, no increase in the Detective Supervisor stipend and no increase in vacation days.

Before discussing the total net annual economic change, it is helpful to describe the 1995 salary schedule and the salary schedule proposed by the County which I shall award. The 1995 schedule had an entry level and eight additional steps so that the maximum salary was reached after eight years. The schedule was as follows:

<u>Years of Service</u>	<u>Salary</u>
Entry	\$29,000
After 1	\$30,000
After 2	\$31,500
After 3	\$34,500
After 4	\$36,500
After 5	\$37,500
After 6	\$39,659
After 7	\$42,973
After 8	\$49,200

As proposed by the County and as I shall award, each of these salaries will be increased on January 1st of each year of the new agreement. The amount of the increase varies by step but the increase shall be the same each year for each step. Thus, on January 1st of each year, the steps will be increased by the following amounts:

<u>Years of Service</u>	<u>Increase</u>
Entry	\$800.00
After 1	\$900.00
After 2	\$1,000.00
After 3	\$1,100.00
After 4	\$1,200.00
After 5	\$1,300.00
After 6	\$1,400.00
After 7	\$1,500.00
After 8	\$1,700.00

In determining the total net annual economic change in each year of the agreement, it is apparent that the major economic change involves the salary increase. Based on a unit of 49 employees, which was the bargaining unit as of December 31, 1995, the last day of the prior agreement, base salaries cost \$2,127,363. Without step movement, the County's salary offer costs \$73,000 each year or 3.43% in 1996, 3.32% in 1997 and 3.21% in 1998. This is a cumulative increase of 10.29%.

The County is seeking to reduce its net costs by changing the date of step movement from January 1st to the employee's anniversary in 1997 and 1998, a change which would result in a savings of \$27,527 if applied retroactively to 1997 and an additional savings of \$10,594 in 1998. See Exhibit E-9A, p. 48. I am continuing the status quo for current employees, however, so there is no net annual economic change in this area. Nevertheless, the award does exceed the County's total salary offer by \$27,527 in 1997 and \$10,594 in 1998. I also shall provide that employees hired after the date of this award will receive step increments on their anniversary dates rather than on January 1st.

There are, of course, costs associated with advancement on the salary schedule. The total cost of salaries for the 49 employees in 1995 was \$2,127,363. Inclusive of the salary increases and step movement, the cost of salaries for those 49 employees will be \$2,332,565 in 1996, \$2,456,118 in 1997 and \$2,565,605 in 1998. The increase is \$205,202 in 1996, \$132,553 in 1997 and \$100,487 in 1998.

The change in the payment for sick leave upon retirement is important and significant but because I have limited its application to new hires, the impact of that change will not be realized for many years. I have not attributed a savings to this change, although the potential savings can be gleaned if it is assumed that an employee accumulated 10 sick days per year and retired after 25 years. That employee currently would receive payment for 125 days or an amount approximately equal to one half of his or her final year's salary. That figure in 1998 would be approximately \$27,000. With a cap of \$10,000, it can be seen that the savings to the County will be substantial.¹³

The addition of the Application of Benefits language will have only a minimal economic impact, depending upon the number of employees, if any, who have left or will leave the Prosecutor's employment without retiring. It is noted that payment of step increments is due on January 1st of each year and would be received by employees who subsequently leave. Thus, those employees will lose only the benefit of the negotiated increase in the salary schedule and not the step increment.

Finally, the cost of the change in overtime is very difficult to quantify. While the County placed the cost of this change at 1.27% per year based on overtime worked in this unit in 1996, not only have I delayed the implementation of the change to the last year but it is the Employer which assigns and controls overtime. The amount of

¹³ The PBA calculated the maximum benefit to be \$34,285.

overtime assigned may well be reduced considerably if the Prosecutor knows, as he now will, that hours worked beyond 40 in a week will require payment in cash or compensatory at the rate of time and one-half. It is not possible for me to place a cost on this change because I cannot know how much overtime the Prosecutor will authorize in 1998. I do note, however, that because the work week for Investigators is only 35 hours, employees can be assigned to work five hours beyond the normal work week at straight time without incurring the time and one-half charge.

I turn now to a discussion of the evidence and the parties' arguments in relation to the statutory criteria.

Interests and Welfare of the Public The Supreme Court made it clear in Hillsdale, [ibid.], that the interests and welfare of the public must always be considered in rendering an interest arbitration award. The amended statute also explicitly requires the arbitrator to consider the Cap Law in considering this criterion.

The interests and welfare of the public require several things. There must be adequate public services, including those provided by the Prosecutor's Office and the Investigators in that office. The public wants to obtain these services as inexpensively as possible so that taxes and tax increases can be kept to a minimum. Other things being equal, the lower the salaries, the greater the number of employees that the County will be able to employ to provide needed and desired public services. At the same time, the compensation levels of all the employees of the County must be adequate to assure that the County is able to attract and retain a qualified and productive work force. Reasonable levels of compensation contribute to a productive and efficient work force and to the morale of the employees. Reasonable compensation also contributes to harmony and stability in labor relations and to the absence of labor unrest.

The fact that the County - whose residents have the highest per capita incomes and highest median family incomes in the State - might be able to afford to pay the increases proposed by the PBA and that, given the substantial fund balance, large source of revenues which have not been anticipated, and a declining tax rate, this would have a negligible impact on the County's finances does not mean, as the PBA contends, that it would be in the public interest to pay those increases.

In this case, I believe that the interests and welfare of the public require acceptance of the County's salary proposal. This provides increases to those at the top step of 3.46%, 3.34% and 3.23% in the three years of the agreement. As will be discussed more fully below, increases of that magnitude compare favorably to increases in the cost of living and to those received by private employees and by public employees in general. There is absolutely no evidence that such increases will not enable the Prosecutor to continue to attract and retain highly competent Investigators.

What is most important, however, is that the County has settled with virtually all of its other employees for increases similar to those offered by the County to the PBA. Particularly important is the fact that the increases offered are identical to those offered to both the Correction Officers and the Sheriff's Officers in 1997 and 1998. Both of those units voluntarily accepted salary increases ranging between \$800.00 and \$1,700.00 from the entry level to the salary received after seven or eight years.¹⁴ The increases received by those employees were \$150.00 less at each step than the County has offered the Investigators but the picture is complicated by the fact that those two unions both agreed to convert \$550.00 of an equity adjustment payment into an increase in base pay of \$400.00.

¹⁴ The top salary for a Sheriff's Officer is reached after seven years but that will increase to eight years for employees hired after January 1, 1996. The top salary for a Correction Officer is reached after eight years.

The cumulative increase over three years received by the Sheriff's Officers at the top step was 10.16%. The cumulative increase received by the Correction Officers at the top step also was 10.16%. The other County unit which is eligible for interest arbitration is the Park Police represented by PBA Local 264. That unit received increases at the top step of 10.22% over three years. Thus, the County settled with its other units, including the other law enforcement units, on terms which are very similar to those offered to the Prosecutor's Investigators.

I believe that it would be highly disruptive for the Investigators to obtain salary increases which were significantly different from those received by the other County employees and particularly by the other County law enforcement employees. Such a deviation would cause resentment among those other employees and it would serve as a disincentive for them to reach voluntary agreements with the County in the future. They would believe that in the next round of negotiations they should receive an increase to bring them up to the level of the Investigators in addition to what they should otherwise receive. If they were obtain such an increase, the Investigators then would want the same total increase received by those other units. The cycle would be endless.

Accordingly, I believe that the interests and welfare of the public will best be served by acceptance of the County's salary proposal.

The other components of the award also are consistent with the interests and welfare of the public. The County has proposed a new salary schedule for employees hired after January 1, 1997. Under that schedule, it would not be until after ten years that employees would reach the top salary. The County failed to justify this proposal. The Sheriff's Officers, Correction Officers and Park Police all reach the top salary after eight years under their 1996 to 1998 agreements. Aside from the fact that it would

save the County money by delaying the attainment of the top salary in the future, this proposal cannot be justified.

The change in the date of step movement proposed by the County could be justified on the basis that in those County units which have step movement the movement occurs on the employee's anniversary date and not on January 1st. On the other hand, this unit does not have all of the benefits enjoyed by the other units and these parties engaged in litigation over this issue with the PBA prevailing in its interpretation of the meaning of the prior agreement. Any change for current employees should be negotiated by the parties. The change for new employees to the anniversary date, however, will cause them to be treated the same as other County employees who receive increments.

I believe that the change in sick leave for new hires is justified. This will not affect any current employees but will permit the County to bring new hires into line with the benefit received by the Sheriff's Officers. Again, there are other differences in benefits between the Investigators and other law enforcement employees and a change in this benefit for current employees should be negotiated by the parties.

The change in overtime to require payment of time and one-half after 40 hours in a week is consistent with other overtime provisions in the County. The use of a 28-day cycle makes little sense in the context of regular work weeks such as those worked by the Investigators. The Prosecutor controls overtime so the cost of this change is within the control of the Employer.

Finally, the Application of Benefits language proposed by the County does not adversely impact on any current employees and only affects employees who voluntarily

leave County employment without retiring.¹⁵ Most of the County's contracts include this provision so its addition to this contract will contribute to the uniformity of contracts.

I do not believe that there is any need to add language to the Duration article regarding notification of a desire to modify or terminate the agreement. The Police and Fire Interest Arbitration Reform Act at N.J.S.A. 34:13A-16a(1) mandates a negotiations procedure including a date for the commencement of negotiations.

As will be discussed in greater detail in the section on **Lawful Authority**, the limits imposed by the Cap Law will not be exceeded by this award. The cost of this award exceeds the offer of the County by \$28,000 in 1997 and \$11,000 in 1998. The total County budget approximates \$200 million so increases of the magnitude awarded will have a negligible effect on the County's budget.

Comparisons Comparisons are to be made with both other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar comparable jurisdictions. I shall discuss these in order.

The first, **private sector comparisons**, calls for comparisons with private employees performing similar services as well as with private employees generally. As the PBA noted, there are no easily identified comparable private sector employees and no evidence was introduced which suggested that there are other private employees who perform services similar to those performed by the Investigators. I deem this aspect of the comparison to be of no relevance.

Comparisons can be and were made between Investigators and private employees in general. These comparisons are very important because ultimately the

¹⁵ Also, employees who retire are not adversely affected.

private sector supports the public sector. Private employers cannot simply raise taxes to get more money; they have to make a profit to remain in business. Economic considerations rather than political ones are paramount.

The County provided evidence regarding private sector increases. It shows that the earnings of New Jersey manufacturing production workers increased by 2.4% in 1996. Data published by the Bureau of National Affairs regarding private sector contracts covering 1,000 and more organized employees reflect increases of 3% in both 1995 and 1996 for all industries and slightly less in manufacturing. The Bureau of Labor Statistics' ECI, which measures increases in benefits as well as wages, increased by 3.4% for all workers in private industry in 1996 and it increased at that same rate in the first quarter of 1997.

The PBA submitted data from the U. S. Department of Labor's Employment and Earnings publication for January 1997. Using hourly earnings, which I believe must be used to provide fair and meaningful comparisons, hourly manufacturing earnings increased by 3.3% in 1995 and 3.2% in 1996. The figures for service producing employees were 3.4% and 3.7%.

These figures cluster in the 3% to 3.5% range which is the range of increases which will be provided by this award. On the other hand, no evidence was introduced which would justify the 5.5% increases proposed by the PBA.¹⁶

The second comparison with public employees in general leads to the same conclusion. The ECI for state and local government workers, also as reported by the Bureau of Labor Statistics, shows increases for all workers of 2.8% in 1996 and for the

¹⁶ While it is true that weekly earnings in manufacturing increased by 7.6% between January 1996 and January 1997, much of that increase was due to an increase in hours worked from 39.8 to 41.5.

first quarter of 1997. The increases provided by this award modestly exceed those figures.

Over the years between 1985 and 1995, wage increases for Investigators have greatly exceeded those received in both the private sector (76.3% v. 42.8% for New Jersey manufacturing production workers or an ECI increase of 39.3%) and the public sector (76.3% v. 48.8% increase in the ECI for state and local government workers).

The third comparison has two parts: comparisons with public employees in the same jurisdiction and comparisons with those in comparable jurisdictions. I have discussed comparisons with public employees employed by Morris County. As noted, the increases offered to the Investigators are almost the same as, although slightly greater than, those offered to the County's other law enforcement employees. The increases also are very similar to those offered to all of the County's other employees. There are over 20 bargaining units in Morris County and the County has been remarkably consistent in its settlements with these different units. Again, this aspect of the comparisons compels the selection of the County's wage proposal because it provides the same treatment to these employees as has been accorded to other employees.

Additionally, the County computed the earnings of Sheriff's Officers and Investigators over 25 years based on the 1995 salary schedule as it existed and the 1998 salary schedule proposed by the County. Both show extremely similar career earnings for the Investigators and Sheriff's Officers with a very slight edge going to the Investigators. On the other hand, the Union's proposal would create a difference in career base earnings based on the 1998 salary schedule of \$80,000. This change in the relationship between these two similar groups cannot be justified.

Finally, there are to be comparisons with similar comparable jurisdictions. The parties provided evidence comparing the Investigators with other investigators in New Jersey - which I believe is the best external comparison because the jobs are the same and the employing units are all counties - and with municipal police officers in Morris County which have the advantage of geographic proximity but the employers are municipalities rather than counties and the jobs are different. Nevertheless, I have considered both.

Both parties looked at career earnings in making these comparisons. The PBA excluded longevity because that benefit has been grandfathered in Morris County. The County included it because 30 of the 49 members (61%) of the bargaining unit are eligible for this benefit. I do not believe that it is appropriate to ignore a benefit which results in payments of up to 9% of base salary to over 60% of the unit. For those 30 employees who are eligible for longevity, Morris County's Investigators ranked 8th of 19 counties in terms of both total direct compensation and total direct compensation per hour, above the average by 1% or 2%. The employees not eligible for longevity ranked 12th of 19 and were between 2% and 4% below the average in total direct compensation per hour. On a weighted basis, Morris County ranked several cents per hour above the average or several cents per hour below the average, depending upon whether one considers that Burlington's Investigators, who can be assigned to work during their lunch hour, are considered to work a seven hour day or an eight hour day. In either event, Morris County stands very close to the average.

The PBA left out longevity and compared career earnings among investigators in 18 counties. It determined that Morris County ranked 15th of 18 in total direct compensation and 13th of 18 in total direct hourly compensation. Included in the figures were clothing allowance, which Morris County Investigators do not receive, and

longevity for those whose contracts, unlike this one, still provide for longevity as a benefit for all employees.

The differences are due to the inclusion of clothing allowance by the PBA and its exclusion of longevity in Morris County for those employees who receive it.

In assessing this evidence, I note that Arbitrator Weinberg, in a decision involving these same parties in 1983, determined that, "The comparison with other counties shows that Morris is just below the midpoint." [Id. at 31] The top salary was 14th of the 21 counties. [Id. at 23] He also commented that there was no evidence that the Investigators had a different relative position some years ago. Thus, it appears that for many years the Morris County Investigators have ranked somewhat below the average. The current evidence is that this remains true. Thus, no significant catch-up is mandated.

Finally, the parties compared earnings of Investigators and municipal police officers. The PBA showed that, again excluding longevity for Morris County Prosecutor's Investigators, the Investigators ranked 29th of 39 at ten years and 31st of 39 at fifteen, twenty and twenty-five years. Using the same data but including longevity, the County computed that Morris County ranked 21st of 39 at ten years, 15th of 39 at 15 years, and 9th of 39 at twenty years and twenty-five years.

Looking at the mid-career point of thirteen years, the County determined that, when longevity is considered, the Investigators ranked 14th in 1995 of the 38 Morris County municipalities with police departments plus the Investigators, Sheriff's Officers, Correction Officers and Park Police. The Sheriff's Officers and Correction Officers tied for 18th and the Park Police were 37th in this ranking.

The PBA provided data showing wage increases in the municipalities. The range in 1996 was 2% to 6% although the next lowest increase was 3% and the rest

were at least 4%. This indicates that the increases which I shall award are less than the increases being received by municipal police officers in 1996. The same will be true in 1997 when the range of increases is 4% to 5.1%. No data was provided on salary increases received by other investigators throughout the State. This evidence does not change my conclusion that internal comparisons and other factors (including private sector and public sector comparisons in general) strongly support an award which matches the County's wage proposal.

Before concluding this section, I should comment on several arguments of the PBA. First, the PBA contends that only settlements or awards issued as of the filing date of the petition in this matter should be considered. I disagree. I believe that any settlements or awards issued prior to the close of the hearing can be considered, if submitted by either party.¹⁷ In any event, the PBA did not identify any settlements or awards cited by the County it believed should not be considered and the County generally accepted the comparative data of the PBA, although it drew different conclusions from that data.

Second, the PBA objects that the County's offer is expressed in dollars rather than percentages. The County's offer, however, is not a flat dollar offer with the same dollars being applied to each step but rather one in which the increase goes from a low of \$800.00 to a high of \$1,700.00 as one moves from entry level to the top rate. In fact, of course, these dollars could easily be converted into percentages, as the PBA showed in Exhibit PBA-2, 4-6. The range of increases, expressed as percentages, was from 2.61% to 3.3% in 1998. This is a fairly narrow range. Also, as stated above, of course, the other units accepted increases precisely the same as the County has

¹⁷ I shall not deal with the question of considering awards issued after the close of the hearing.

offered the Investigators. The form of the County's offer does not disqualify it from consideration and adoption.

Overall Compensation I have discussed overall compensation in part in the previous section. The ECI figures deal with overall compensation and demonstrate that the increases received by both public and private employees have been increasing by less than the County has offered to the Investigators and other County employees.

Overall compensation levels within the County, in terms of benefits, are reasonably similar. Thus, all employees are covered by or receive social security, workers compensation, disability and health care benefits. They are covered by State pension plans, although the plan depends upon one's job. The Police and Fire Retirement System, to which the Investigators as well as the Correction Officers, Sheriff's Officers and Park Police all belong, is a much richer plan than that available to employees in the Public Employees Retirement System, although employee contributions to PFRS also are appreciably higher than are those to PERS. The significant point, however, is that the law enforcement employees all belong to the same pension system. Additionally, their vacation, holidays and sick and personal leave are the same.¹⁸

Having said that, there also are some differences. A major difference is that Investigators work a seven-hour day and both the Sheriff's Officers and Correction Officers work an eight-hour day. This significantly affects hourly earnings since the Sheriff's Officers and Correction Officers work 14.3% more than do the Investigators. Thus, although the salaries are very similar, the hourly earnings are significantly higher for the Investigators.

¹⁸ I have previously discussed the similarity of salaries among Investigators, Sheriff's Officers and Correction Officers.

Another difference is that Correction Officers still receive a hazardous duty stipend of \$1,000, down from \$1,550.¹⁹

A significant difference involves overtime. Sheriff's Officers and Correction Officers receive overtime after forty hours in a week. At least for Sheriff's Officers, approved leave except for sick leave is included in hours worked for purposes of calculating overtime. Investigators receive overtime after 160 hours of work in twenty-eight day cycle and some is paid at time and one-half and some must be banked. The evidence provided by the PBA shows that investigators throughout the State receive overtime at time and one-half after 40 hours (6), 37.5 hours (1) or 35 hours (1) in a week, or after eight hours (4), seven hours (1), seven and one-half hours (1) or seven and three-quarters hours (1) in a day. One unit receives a flat payment of \$5,000 for overtime and one receives overtime at time and one-half after 80 hours in a two week period. Thus, it is clear that the Morris County Prosecutor's Investigators do not fare well on the basis of overtime compensation either internally or externally.

Another difference relates to payment for unused sick leave. The Sheriff's Officers receive payment for 35% of accumulated sick leave up to a maximum of \$10,000 (which is what I shall award for Investigators hired after the date of this award) and Correction Officers receive payment for 30% of accumulated sick leave up to \$8,000. Investigators receive payment for 50% of accumulated sick leave with no cap or limit.

Sheriff's Officers receive \$25.00 per credit annually plus tuition and book reimbursement but this benefit has been grandfathered and is limited to those hired prior to January 1, 1996. Correction Officers who were participating in the program as of December 31, 1995 receive \$10.00 per credit annually. Both Sheriff's Officers and

¹⁹ As stated above, it was reduced by \$550 and \$400 was added to the base salaries.

Correction Officers receive a clothing allowance of \$595 and they are required to wear uniforms. Investigators do not receive a clothing allowance and they are not required to wear uniforms.

Correction Officers and Sheriff's Officers receive step increments on their anniversary dates and not on January 1st as do the Investigators (but I shall change this for new hires to conform to the County practice). Investigators who are on call on Saturdays, Sundays and holidays receive \$40.00 for being on-call pay. Both Sheriff's Officers and Correction Officers receive a minimum of four hours of pay when called out for active duty when they are on standby duty and they receive a minimum of four hours' pay when called out on emergency duty.

Before leaving this factor, I shall comment on the County's proposal to increase the time required to reach the top step from after eight years to after ten years for employees hired after January 1, 1997. I have rejected that proposal because the other two units with which the County has urged comparisons, the Sheriff's Officers and Correction Officers, have schedules with the top rate reached after eight years. While it is true that a step was added to the Sheriff's Officer schedule so that the top rate for employees hired after January 1, 1996 will be reached after eight years as opposed to seven years, the County already had the benefit of such a schedule for the Investigators. There is no reason to further elongate the salary schedule.

In summary, it is evident that while the general level of benefits is quite consistent, particularly among the law enforcement units, there are some significant differences. Some favor the Investigators (date of step movement, work week, sick leave payment at retirement) and others favor the Sheriff's Officers and Correction Officers (overtime, college credits but grandfathered, clothing allowance but Investigators do not wear uniforms, and the stipend received by Correction Officers).

In this award, I have made changes which move the parties in the direction of greater uniformity and consistency in terms of overall compensation but differences remain which, undoubtedly, will be the subject of future negotiations between the parties.

Stipulations The only stipulation is the parties' agreement that the new agreement should cover the three years from January 1, 1996 to December 31, 1998.

Lawful Authority This factor, among other things, requires the arbitrator to consider the limitations imposed on the Employer by the Cap Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

By most measures, Morris County is well off financially. While the County emphasized the negative in its presentation and referred to "these hard financial times" and "this economic recession," the evidence is that Morris County is in an enviable economic condition. It has been able to hold its tax levy steady at just over \$120 million in each of the last four years and has not utilized its authority to raise that levy. Its fund balances have increased since 1993 and, importantly, it has been able to use a decreasing percentage of its fund balance to offset appropriations in each of the last five budgets. It utilized only 81.9% of its 1996 surplus in the 1997 budget. Its surplus as a percentage of revenues has been increasing after reaching a low of (still enviable) 5.4% in 1993.

Morris County admittedly and proudly manages its fiscal affairs in a conservative manner. For example, it does not treat investment income as an anticipated revenue so that this income, which was \$1.3 million in 1993 and had risen to \$2.9 million in

1996, is listed as miscellaneous revenue not anticipated. Its miscellaneous revenues have gone from \$6 million in 1993 to \$7.3 million in 1994, \$12.3 million in 1995 and \$9.1 million in 1996.

There is absolutely no evidence that the modest increases I shall award beyond the County's proposal will cause the County to even begin to approach the limits of its financial authority or to breach the constraints imposed by the Cap Law. With a surplus remaining as of December 31, 1996 of just under \$3 million, the County cannot contend that this award conflicts in any way with its lawful authority.

Financial Impact Morris County is among the wealthiest counties in the United States in terms of both per capita income and median family income.²⁰ The tax levy was \$3.13 in 1993 and had dropped to \$2.91 in 1996. The County has not spent to the extent of its authority under the Cap Law and in 1996 levied over \$14 million less than would have been permitted. This is all good news for the County's well-heeled taxpayers.

Morris County is only one of thirteen in the entire country to enjoy a Triple A bond rating from Moody's and Standard and Poor's and this is a reflection of the strength of the County's finances and the strength of the economy in the County which is one of the key variables examined by Moody's. The County has the strong fund balance which causes Moody's to give it the highest rating. The low debt burden in Morris County, .57% as measured against a legal limit of 2%, also is a factor considered by Moody's. The County has enjoyed and benefited from this rating for over 20 years.

²⁰ I acknowledge but am not persuaded by the argument of the PBA that there should be a correlation between income in Morris County and the relative salaries of the Investigators. Comparisons are to be with other investigators and other Morris County employees and not with the residents of Morris County. I do regard as relevant the increases received by other employees, including private sector employees in Morris County as well as others.

The high bond rating means that the County is able to borrow money for less than other counties and this reduces interest payments and the burden on taxpayers. The County will save about \$2.5 million in interest payments on its last three bond issues issued in 1991, 1993 and 1995.

While ratables peaked in 1989 at \$44.1 billion and have not yet returned to that level, they have been increasing each year since 1993.

Surplus was higher in 1987 at \$14 million than it was until 1995 when it was \$15.1 million although that figure was boosted by the receipt of over \$4 million from the State as a settlement. However, surplus has been increasing in the last several years and the amount of surplus as a percentage of revenues also has increased from its low in 1993.

The County is in the process of building a new jail and this will require additional bonding and debt service. The County, however, has anticipated this and is positioning itself to handle this additional expense.

The County follows very conservative fiscal practices and this in itself reflects its financial strength. Many public entities are unable to afford to follow such practices as, for example, not anticipating revenue from investments.

While any expenditure of funds obviously has an impact in that money spent on one thing cannot be spent on something else or go into surplus and while money put into salaries and benefits is a recurring as opposed to a one-time expenditure, the award which I shall issue will have a truly minimal impact on the governing unit, its residents and taxpayers. With an annual budget in the range of \$200 million, an additional expenditure which will total something less than \$50,000 over the term of the

agreement²¹ and which will not put pressure on the County in terms other bargaining units or whipsawing and which, in fact, provides greater uniformity and consistency in several important areas cannot be said to have a meaningful impact.

In view of the fact that I have accepted the basic wage proposal of the County and will award several other changes urged by the County to contribute toward greater uniformity in areas of accumulated sick leave, use of anniversary date for step movement and the addition of Application of Benefits language, the financial impact of this award will be insignificant and the long-term impact will be positive.

Cost of Living The CPI-U for New York and New Jersey increased by 3% in 1995, 2.9% in 1996 and 3% in the first third of 1997. The County cited the results of a survey of economists which revealed a consensus that consumer prices would increase by 3% for all of 1997. Thus, the salary increases proposed by the County, which provide for increases at the top step of 3.46% in 1996, 3.34% in 1997 and 3.23% in 1998, more than equal increases in the CPI-U in 1996 and are almost certain to do so in 1997. There is no evidence to suggest that this will not be true in 1998 as well. Therefore, the County's salary proposal must be deemed to be reasonable on this measure.

Looked at over a longer time horizon, increases of the top salaries of the Morris County Investigators have exceeded increases in the CPI by a substantial amount. Thus, from 1985 to 1995, top salaries increased by 76.3% whereas the area CPI-U increased by only 47.5% in those years. No argument can be made that the Investigators require a large salary increase to make up losses in relation to the cost of living.

²¹ This figure is based on the money not saved by the County by not changing to the use of the anniversary date for current employees (\$27,000 and \$11,00) plus any additional cost of making overtime payable after 40 hours in a week rather than 160 hours in 28 days.

Continuity and Stability of Employment I believe that adherence to the pattern of settlement within the County and particularly within the law enforcement community within the County is of particular importance in this proceeding, as I have discussed above. Sheriff's Officers and Correction Officers voluntarily agreed to accept salary increases which are virtually the same as those offered to the Investigators.²² I am convinced that it would be destabilizing and harmful to the morale of the other employees in the County if the Investigators were to realize salary increases which deviated significantly from those of the other units. It would make future negotiations more difficult and would discourage voluntary settlements.

While this factor, standing alone, is not controlling, it is even more significant than it might otherwise be because the County's proposal is reasonable in relation to a number of the other statutory factors including, most significantly, comparisons with private employment and public employment and the cost of living. This combination of factors makes the pattern of settlement or internal comparisons the compelling underlying basis for the award.

This is even more true in light of the fact that there is virtually no turnover in this unit and there are many people seeking these jobs. The County introduced evidence which indicates that 154 people applied for jobs in 1996 and 81 applied in the first half of 1997. There was only one separation in 1995, three in 1996 and two in 1997. Thus, continuity and stability of employment in this unit is very high and the supply of applicants greatly exceeds the demand.

²² They are identical in the second two years and \$150.00 less in the first year but that is offset by the inclusion of \$400.00 in the base salary.

Summary

I have carefully considered the evidence and the arguments of the parties in light of the statutory criteria. Each criterion has been considered. The most important factors which led to my adoption of the salary proposal of the County - but not a second schedule for new hires or a change for current employees in the date of step movement - were the public interest, comparisons in public employment in the same jurisdiction (internal comparisons) and continuity and stability of employment. All of these point compellingly to acceptance of the County's salary proposal. This is not changed by the fact that the County has the financial means to pay more than that in terms both of its lawful authority and financial impact. The fact that an employer can pay, while a necessary condition for an award compelling payment, does not mean that an employer should pay. The amount to be awarded is dependent upon a consideration of the other statutory factors.

In this case, the proposal of the County also is consistent with comparisons with both public and private employees in general as well as with changes in the cost of living. There is no evidence that it will significantly change the relationship between the Prosecutor's Investigators of Morris County and those of other counties or with municipal police officers in Morris County. Overall levels of compensation have not been shown to be inadequate or wanting and I shall move the parties toward greater consistency and uniformity by changing the overtime provision, the sick leave provision for new hires, date of receipt of step increment for new hires and by adding the Application of Benefits language.

Accordingly, I hereby issue the following:

AWARD

The term of the agreement (Article XXVI) shall be January 1, 1996 through December 31, 1998.

Article VIII, Sick Time, Section 5 shall be amended to provide that employees hired after the date of this award who retire from service with the Morris County Prosecutor after twenty-five years of service shall be paid the equivalent of thirty-five (35%) percent of accumulated sick leave up to a maximum of \$10,000.

Article IX, Health Benefits, Section 1(d) shall be changed to begin as follows:

"Employees hired after September 10, 1993 ..."

Article XIII, Work Day and Work Week, Section 2, now to be called Overtime, shall be changed to read as follows:

Work which exceeds forty (40) hours in a week is to be considered overtime and compensated at the overtime rate (time and one-half). Approved leave, contractual leave and statutory leave will be considered as hours worked; however, sick leave shall not be considered as hours worked for the purpose of calculating overtime. Employees shall be paid in cash or receive compensatory time at their option. Any compensatory time off remaining at the end of each calendar year shall be paid in cash during the first month of the succeeding year.

Salary Schedule A shall be amended to provide as follows:

Schedule A

<u>Years of Service</u>	<u>January 1 1996</u>	<u>January 1 1997</u>	<u>January 1 1998</u>
Entry	\$29,800	\$30,600	\$31,400
After 1	\$30,900	\$31,800	\$32,700
After 2	\$32,500	\$33,500	\$34,500
After 3	\$35,600	\$36,700	\$37,800
After 4	\$37,700	\$38,900	\$40,100
After 5	\$38,800	\$40,100	\$41,400
After 6	\$41,059	\$42,459	\$43,859
After 7	\$44,473	\$45,973	\$47,473
After 8	\$50,900	\$52,600	\$54,300


Employees hired after the date of this award shall advance on the salary schedule on their respective anniversary dates of hire.

A new article entitled Application of Benefits shall be added to read as follows:

The provisions of this Agreement shall not apply to any employee who has left the employ of the Prosecutor's Office prior to the date of this award. However, the salary provisions shall retroactively apply from January 1, 1996 through the date of retirement of any employee retiring prior to the date of this award. The estate of a deceased employee who dies prior to the date of this award shall receive the employee's adjustment retroactively from January 1, 1996 to the employee's last date of employment.

Except as the parties otherwise mutually agree, there shall be no other changes in the 1993 to 1995 collective bargaining agreement.

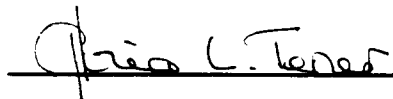
Dated: November 5, 1997
Princeton, NJ



Jeffrey B. Tener
Arbitrator

State of New Jersey)
County of Mercer) ss.:

On this 5th day of November, 1997, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Gloria L. Tener

GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPTEMBER 2009