
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse between

The Ocean County Prosecutor's Office

DECISION AND AWARD

and

of

Ocean County Prosecutor's Detectives and
Investigators Association, PBA Local 171

Frank A. Mason, Arbitrator

Re: PERC Docket IA-2003-099

APPEARANCES

FOR THE PROSECUTOR: Steven F. Nemeth, Esq., Berry Sahradi Kotzas Riordan
& Benson, Of Counsel

Mark J. Hanson, Esq. On the Brief

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Kevin R. Schaal, President PBA Local 171

Ronald G. Velardi, Chairman of Negotiations

Richard Fiocco, Jr., PBA Delegate

PROCEDURAL BACKGROUND

The Ocean County Prosecutor's Office and the Ocean County Prosecutor's Office
Detectives and Investigators Association, PBA Local 171, are parties to a contract which
was in effect from April 1, 2000 through March 31, 2003 covering a unit of 45 non-
supervisory staff employees in the titles of Investigator and Detective. Negotiations for a
successor agreement reached an impasse and in June of 2003 the PBA petitioned the

PERC to initiate compulsory interest arbitration. On June 16th PERC Docketed the case as IA-2003-099 and in response to the request of the parties appointed this arbitrator on August 8, 2003 to conduct arbitration proceedings in accord with provisions of P. L. 1995, C.425. The first meeting with the parties was on October 3, 2003 at which time there was an attempt to resolve the impasse by mediation. Although there was some progress the fundamental issues were not settled and the parties elected to proceed to a formal hearing on November 24, 2003. At that hearing the parties presented testimony, evidence and argument and were given opportunity to examine and cross examine sworn witnesses. The parties opted to submit post-hearing briefs as well as a further exhibit which was an interest arbitration award concerning two units of employees of the Ocean County Sheriff's Office. This latter was received on February 23, 2004 at which time the record of hearing was closed.

The parties agreed that the arbitrator was to exercise conventional authority in formulating the determination of the terms of the issues in dispute.

POSITIONS OF THE PARTIES

The parties agreed that the term of the new Agreement would be three years extending from April 1, 2003 through March 31, 2006 with the understanding that appropriate salary adjustments would be effected retroactively to April 1, 2003.

FINAL OFFER OF THE PROSECUTOR

SALARIES: The Ocean County Prosecutor proposed across the board salary increases as follows; April 1, 2003, 3.75%; April 1, 2004, 3.75%; April 1, 2005, 3.75%. This rate of increase to be applied to every step in the salary guide in each year of the Agreement.

SICK LEAVE/WORK CONNECTED INJURY: There be a modification of the provision in Article 8, Sick Leave, at Section 5, which would change the maximum period of full salary from 60 days to 90 days for job connected disability due to illness, injury or recuperation therefrom.

All other final offer positions were resolved at hearing.

FINAL OFFER OF THE ASSOCIATION

SALARIES: There be a 5% increase in each year of the proposed three year Agreement effective on April 1, of each year. Prior to the application of the 5% for April 1, 2003 there shall be a \$2500 equity adjustment applied across the board.

SENIOR OFFICER PAY: The proposal is that the senior officer compensation set forth in Article VI, Salary, which is \$1500 added to base pay, be provided to each officer not later than upon the completion of ten years law enforcement service, as defined in the N. J. Police and Fire Retirement System Law, as contrasted to being granted at the discretion of the Prosecutor.

WORK INCURRED INJURY: The Association proposed that the 60 day maximum pay at full salary during a period of absence due to work-connected injury or disability be extended to one year. During the time of disability all benefits accruing under the provision of the Workers' Compensation Act to be paid over to the Employer. The Association added that the injury or illness incurred while the employee is attending an Employer sanctioned training program be considered in the line of duty. In this demand the association also set forth the method to be followed where a dispute as to entitlement had to be resolved.

LONGEVITY: The maximum longevity step be adjusted from the current contract provision of 32 years to 24 years service. It also demands that the calculation of service credits be as defined by the Police and Fire Retirement Law.

GRIEVANCE PROCEDURE: The proposal is to adjust the language of the current Agreement by elimination of that portion of the definition which reads, "...and the Prosecutor's decision on these matters will be final and binding. These non-contract grievances may not be submitted to binding arbitration."

STATUTORY CRITERIA

The statute under which these proceedings are held requires that the arbitrator consider and give due weight to certain criteria and that are laid out. In consideration of these the arbitrator must carefully determine the degree of relevance each criterion should be given and explain why he has reached those conclusions. They are as follows:

1. The interests and welfare of the public. Here he shall include 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 same or 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 with the modification in [a] above.

[c.] In public employment in the same or similar comparable jurisdictions which shall be in consonance with the guidelines for determining the comparability of jurisdictions promulgated by the Commission.

3. The overall compensation presently received by the employees, inclusive of direct wages and all economic benefits.

4. Stipulations of the parties.

5. The lawful authority of the employer.

6. The financial impact on the governing unit, its residents and taxpayers.

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 other terms and conditions of employment. Except as modified by the below stipulation of the parties I shall faithfully abide by the

obligation to carefully consider each of the criteria in the crafting of a determination of all issues at impasse.

STIPULATION OF THE PARTIES

Although this is not in the order of the criteria set forth above it is essential to make note of the fact that the parties have jointly agreed and stipulated that the #5 and #6 criteria are not at issue in these proceedings. Neither party presented proofs or argument as to these in this record and the arbitrator acknowledged to them that they would not be included in considerations as to the determinations to be made as to this impasse. This was the only stipulation entered.

INTRODUCTION

As can be readily perceived in examination of the above information the key issue in this impasse is salary increases. All other issues are of secondary importance although not without significance. Each of the parties approached this key issue from entirely different perspectives and defended their positions based on facts they felt should be dispositive.

The first significant difference in opinion of the parties is the County's assertion that the employer is the County of Ocean and not the County Prosecutor. The importance of this rests on the County's claims that its treatment of other units of employees, both in negotiations settlements and in the circumstance of non-represented employment represents a definitive practice of the Employer. Furthermore it asserts that the pattern of such determinations should be deemed dispositive of the salary increases issue before the arbitrator. It does so with additional arguments concerning the relative fairness of its proposals, the relatively lower cost of living changes and the adequacy of such proposals to assure the continued degree of high morale and performance as is required to satisfy the public interest. To demonstrate this the County presented extensive economic data including comparisons of rates of increases with other County employees and

municipalities within the county as well as pay programs of other Prosecutor's offices elsewhere in the state. Additionally it offered a comprehensive comparison of the costs of improvements offered to this unit of employees as contrasted to the higher costs of the final proposal made by the Association.

The Association protests the contention of the County's reliance on comparisons with other employees of the County because the Prosecutor's Office is a distinctly independent employer as is clearly established by the state constitution. It proposes that more appropriate comparison should be made with other Prosecutor's Offices and with police units in the general vicinity. It alleges that these comparisons reveal that the Ocean County Prosecutor's personnel are significantly underpaid and that this should be remedied to some extent in order that these employees be fairly compensated. It asserts the pay program it advanced will only provide a small degree of relative improvement when these comparative bases are considered and therefore its proposals should be adopted by the arbitrator.

SUMMARY OF THE EVIDENCE

THE COUNTY'S POSITION

The first element of the County's position is to reject the appropriateness of comparisons between investigators and municipal police. As part of the rejection the County notes that the ordinary risks involved with police work are not present in that of the Prosecutor's staff and to underscore this contention they note there has been no known injury due to firearms or other personal conflict. Nor are these employees required to work the round the clock schedules of police. Additionally it was noted that Prosecutor's personnel arrive at the scene of a crime only after it is secured by police and that the ordinary response to criminal activity is virtually the exclusive territory of police. From this position the claim is that the proper comparison should be made with other County employees and that the correction officers are the logical base for such as a most similar negotiations unit. In an agreement with the PBA, Local 258, representing correction officers for the period April

1, 2002 through March 31, 2006, the salary program incorporated an increase in each year of 3.75%, the same as is proposed here. Further it is the County's position that these Correction Officers are compensated in much the same way as are the Detectives and Investigators. They enjoy very similar benefits including pension, vacation, health insurance, sick leave and longevity as well as a salary guide which contains annual steps toward maximum pay. These conditions have existed for many years and represent a pattern of settlement which should be continued in this proceeding. Other settlements with negotiations units of county employees for some or most of the anticipated contract period include increases at the rate of 3.75% or less except for the blue collar unit where increases were granted on a dollar basis and appear to provide substantially greater rates than 3.75%; however there is no clarifying detail provided as to that contract.

The County proposal would advance the maximum pay by 3.75% each year and has the effect of advancing the annual rate of \$63895 in 2002 to \$66291 in 2003, to \$68777 in 2004 and to \$71356 in 2005. The Correction Officer agreement sets the maximum pay at \$67114 in 2003, \$69631 in 2004 and \$72242 in 2005. Thus it is claimed there is a parallel between the salary guides although the Corrections Officers receive approximately 1.1% higher pay in addition to their clothing allowance which will be \$1300 in 2005

The County also contrasted the proposal of the Association including \$2500 as an equity raise on April 1, 2003 and 5% increases each year. This would have the effect of advancing the maximum pay to \$69715 on April 1, 2003 and to \$73201 in 2004 and to \$76861 in 2005 and would add 7.7% to the maximum pay rate in 2005 as compared to the County proposal. The amount of these increases are said to be unsupported by the circumstances found to exist at the time of these negotiations. They are substantially inconsistent with the County program especially as contrasted to the improvements negotiated with the correction officers. Additionally it is claimed that the relatively subdued increases in cost of living and other factors relied upon to set pay rates do not

support the Association's program. Such an excess would also be inconsistent with the interests and welfare of the public.

THE ASSOCIATIONS POSITION

The Association claims the County's reliance on practices for its employees to formulate a salary program for the Prosecutor's Office is inappropriate because it is not the employer. Additionally the Association asserts that there are real situations to use for comparison in that each county has a prosecutor's office and that the relationship of investigators and detectives to correction officers is totally inappropriate. The actual work performed is entirely different as are the demands of the job. The Prosecutor's officers perform a wide range of police activities and substantial coordination with other county prosecutor's staffs as well as detective and investigation activities very comparable with other police functions and many special programs; the provision of safeguards against terrorism, the overview of municipal police activities and support for them in the field. Additionally it is claimed the Ocean County Prosecutor's Office personnel are among the most professional in their work among all counties in New Jersey but very close to the lowest paid and far below the average. The PBA introduced evidence to demonstrate that the situation would only worsen when the pay increase plan of the Prosecutor was contrasted to other employers, a group selected by the PBA, wherein the average pay increase for 2003 was 4.75%, 4.52% for 2004 and 4.7% for 2005. Thus the 3.75% offered would, if implemented, widen the gap in actual wages now being paid because of the lower rate of increases and the lower basis for computation. Separately the PBA presented evidence to demonstrate that the salary paid as compared to a group of selected comparables was substantially lower. Of the group chosen six were prosecutors and six were police. Their average salary for the 2003 year was computed to be \$76954 while the offer here would have produced only a maximum of \$66291 or a difference of \$10663 or nearly 14% less. The PBA used the evidence provided by the County wherein all 20 county prosecutors' offices maximum pay for 2003 was set forth. Of the 20, six failed to provide reliable

information and the average maximum salary of the remaining 14 was \$71171. The top salary was \$91000 and the low was \$51549. The median was about \$67000. The pay rate as offered for 2003 at \$66291 would be \$709 below the median, and \$4880 below the average or approximately 6.8%.

The PBA was also critical of the fringe benefit package provided but inadvertently made an error in contrasting vacation allowances, listing the maximum for Ocean County as 22 days when it is actually 25 days at 19 years service. So this criticism is largely washed away. It was also critical of the sick leave at retirement allowance of \$15000 maximum while others received substantially higher amounts. However half of the employers cited were at the \$15000 level and the other half ranged up to 183 days pay. So this is a valid criticism but hardly the core issue in this dispute and mentioned only because it represents a part of the overall compensation and not because it is an outstanding demand item.

ANALYSIS OF THE RECORD

In an attempt to find a rational way to find a solid foundation for a determination of this impasse I carefully evaluated the very substantial record. My first objective was to find a comparable base most logical for this unit. In this effort I reached the conclusion that the correction officer unit was not comparable as to the job performed although clearly representative of the County's overall compensation plan. However the argument that the Employer is the Prosecutor and not the County is not without merit. It is clear that the County should be concerned about where tax monies are being spent and to what degree the determinations as to Prosecutor's staff will impact on the attitudes, morale and disposition of other County employee representatives. I shall try to remain cognizant of those concerns while addressing other dimensions of the employment circumstance.

The claim of the County that it has a definitive pattern of settlement is further diminished by the fact that its submissions include several varying compensation plans for other groups of employees. Some are lower than here proposed and others may very well be higher. In its negotiations concerning a new contract with the Sheriff's Officers the

County proposal included a first year plan of increase of 4.5% for some employees and for other ranks either 3.75% or 4.25%. This same negotiation ultimately went to binding arbitration where the determination was made that all ranks should be treated in the same manner resulting in an award of 4.5% for 2003, 3.75% for 2004 and 3.75% for 2005. The arbitrator's reasoning embraced the concepts of maintaining relative pay levels between ranks and to a lesser extent the pattern of raises provided elsewhere by the County. He faced the same question as is posed here as to a valid comparable basis to be considered and found the work and responsibilities of Sheriff's officers not to be more like that of police, as was advanced by the PBA, because of the limited scope of their law enforcement activity and working conditions and more like the correction officers. He then rationalized that the treatment of correction officers should become the framework to be used to set the pattern of wages for the second and third years of the contract period. In that award the salaries of Sheriff's Officers at maximum pay were set for the same period as the term of this contract. As a part of the contract the arbitrator folded into base salary the amount of \$1200 in place of the clothing and maintenance allowance plan which might have provided about the same amount of money but would have been paid in cash separate from base salary. Then he applied the across the board increases described above which produced these maximum annual pay rates: for 2003, \$68817; for 2004, \$71398; for 2005, \$74075. I note that the Prosecutor's staff no longer receives clothing and maintenance allowance, it having been folded into base pay in their prior Agreement but at the rate of only \$900. Of further note is the fact that the correction officers agreement provides, in addition to base pay a clothing and maintenance allowance increasing to \$1300 in 2005. Thus compensation of correction officers will exceed that of the offer to the Prosecutor's staff by the 1.1% noted above and an additional \$1300 in unmatched clothing allowances which will bring the difference in total compensation to 3%. The award to the Sheriff's Office staff would exceed the offer to the Prosecutor's Investigators and Detectives by 3.8% in 2005.

The award for the Sheriff's Officers places their maximum pay beyond that of correction officers but by only about \$500 in each year of their contracts or just \$1553 over the three contract years. In contrast the offer to the Prosecutor's Office staff will produce a negative differential of \$7866 when compared with the Sheriff's Officers or \$6313 when contrasted to Correction Officers over the same three years. In the Sheriff's award the arbitrator went to some length to examine the relativity of Sheriff's Officers to municipal police and to Correction Officers. This was done because the PBA had asserted the proper comparison base was with municipal police in objection to the County's proposal that the most comparable group was the Correction Officers. He found for the latter but did so on the basis of his conclusion that the key elements of the Sheriff's Officers work did not meet the level of that performed by municipal police. In part he noted that their central objectives were to provide effective security for the Superior Court; provide county-wide radio and/or telecommunications systems; provide immediate response to 911 calls for assistance through trained dispatchers; professional process of crime scenes for physical evidence; proper analysis identification and expert presentation in court; maintenance of criminal history files and cataloging latent fingerprints to identify unknown crime perpetrators through available records. He noted a tenth objective was to ensure the ability to respond to police tactical situations when requested. He thus found the Sheriff's Officer duties not compatible with those of municipal police where there is a confrontation with criminal activity, security of persons and possessions on a 24/7 basis and the apprehension of criminals, the performance of preventive patrols and extensive responsibility for investigations. The arbitrator used this finding to refute the PBA claim for higher wage rates as enjoyed by police officers which the PBA had indicated to be a gap of some \$7028, predicated on the presumption that such was the peer group. In part he also noted that the Sheriff's Officers and the Correction Officers had, for many years, been represented as one negotiation unit, receiving the same compensation. He found that long term relationship, as to the value of the two jobs, had not changed or at least there

had been no convincing evidence to suggest same. He thus decided to provide a parallel to the treatment given to Correction Officers but modified his award to incorporate the County's initiative to raise the pay increase offer to some ranks of Sheriff's Officers beyond the increases given to Correction Officers. He gave no special attention to the relative pay status of Ocean County Sheriff's Officers with those of other counties although that information was included in the record of his decision. In an extension of his judgment that there ought be a continuing relativity of the compensation of the various ranks he translated the offer to apply to all ranks using the highest level of increase offered. Thus his award provided 4.5% in the 2003 year and 3.75% in 2004 and 2005. In substance he advanced what had been proposed to a minority of the unit to be applied to all.

In my examination of the same issue, i. e. the proper basis to utilize for comparability, I too am confronted with the claim of the PBA that the peer group is either municipal police or other Prosecutor's Officers as contrasted to the County's position that the peer group is the Correction Officers. My conclusion is that these Prosecutor's Officers do not function as do municipal police or Correction Officers in their primary work. Of course they are all law enforcement personnel. The County Prosecutor is the chief law enforcement officer in the County and in this particular situation has developed a complex of responsibilities and special assignments. There is a major crime function which has units concerned with homicides, including vehicular homicide, arson, environmental crimes and burglary and in each of these fields there is a proactive involvement as to investigation, apprehension and resolution of the crimes. In addition other units include special investigations focusing on criminal acts of police officers, bias/hate crimes, economic crime and governmental corruption as well as organized crime and street gangs. There is a family protection unit which involves investigation of domestic violence and child abuse matters. Officers support the Grand Jury by preparing indictable matters and overseeing preparation of case files. There is a narcotics strike force on which the Prosecutor's staff is a prominent participant and a joint terrorism task force where these officers play

significant roles. In addition there is a cold case unit assigned to unsolved cases, an intelligence unit which collects, examines and relays data as to criminal activity from many sources and many other special assignments. This combination of duties and responsibilities, some around the clock, certainly makes the work of the Prosecutor's personnel more like police than does that of Correction Officers on a daily basis. Their interaction and in many cases overview of municipal police functions adds to this conclusion. The Ocean County Prosecutor's Office has the reputation for having developed the highest level of sophistication in criminal investigation and is called upon for training of many police personnel as well as assistance in law enforcement activities with the County Sheriff's Office, surrounding municipalities, counties and the State. Thus I conclude the function of these officers is unlike that of Correction Officers to any significant degree. This is not meant to suggest that the work of a Correction Officer is not demanding and trying it simply means that it is different.

The greater complexity and sophistication of the work of the Prosecutor's Officers adds to its inherent value to the citizens of the County. In addition I find the detective and investigation work performed to be very much like those specialized assignments within police departments. The key distinction being the concentration on those activities in the Prosecutor's Office as opposed to police departments where many other activities, such as patrol work, are involved. Thus I conclude that the Prosecutor's Officers are more like police than either the Correction Officers or Sheriff's Officers but still not the same as municipal police

I add to this my conclusion of the fact that Prosecutor's Officers are not truly employees of the County and that the evidence and information presented does not reinforce the posture of the County that there has been established a pattern as to salary increases from which I should not deviate in making an award. This does not answer the question as to what the comparable basis should be. It would seem that the appropriate comparability would be other Prosecutor's Offices. Certainly the statutory criterion speaks to making

comparisons with other employees performing the same or similar services. None could be more comparable than those in other Prosecutor's Offices. Some evidence was presented by both parties which allows a basis for comparative analysis of salaries and rates of increases in other Prosecutor's Offices.

The three adjacent counties are Monmouth, Burlington and Atlantic. Others in the central portion of the state would be Mercer and Middlesex. I will sketch the pay rates at maximum for the period of this anticipated Agreement for these counties. Monmouth, the county on the northern border of Ocean and probably the most comparable in terms of the environment of the Prosecutor's functions, has the simplest plan which pays \$86000 in 2003, \$92000 in 2004 and \$98000 in 2005. Obviously this is very different from Ocean County. The difference is nominally \$20000+ per year greater than proposed by Ocean County. This can be reduced somewhat by subtracting the amount of Ocean County longevity pay which at 17 years service would be 5.7% of salary or near \$3800 in 2003, thus reducing the compensation gap to approximately \$16200, still more than 20% greater than Ocean County proposed.

Burlington County is also immediately adjacent to Ocean on its western border and probably is similarly situated in terms of demands for law enforcement services and is also a combination of rural and urban/suburban areas as is Ocean County. The maximum pay in Burlington for the year 2003 is \$69659, for 2004 it increases to \$72177 and in 2005 it is further adjusted to \$74362 plus a minimum \$1000 to a maximum \$3000 added at the discretion of the Prosecutor. Nominally the increase will average \$2000 so the 2005 maximum may be seen to be \$76362. It should be noted that the amount of salary beyond \$73366 is not paid in base but cash as if a bonus. These figures exceed the Ocean County offer by \$3368 in 2003, by \$3400 in 2004 and by \$5006 in 2005. However, Burlington has no longevity pay plan so that the 17 year Ocean County officer receiving nominally \$3800 would be ahead by \$432 in 2003, by \$400 in 2004 and behind by about \$1200 in

2005. Thus the overall compensation received for the three years would be very comparable with the nod going to Burlington by \$370.

Atlantic County to the south of Ocean is somewhat less comparable in terms of population density, except for Atlantic City, and growth but it is close by. The maximum salary paid in 2003 was \$67566, 2004 is \$70268 and 2005 will be \$73079. These rates compare with Ocean County's offer as follows; greater than Ocean by \$1275 in 2003, by \$1491 in 2004 and by \$1723 in 2005. or about 2% in each year. Their longevity plan pays more than \$2000 less than does Ocean County's

The addition of Mercer County, which is west of Ocean but not adjacent to it, adds another dimension. The figures incorporated in the record include 2003 where the maximum salary is \$69842, in 2004 it is \$73020 and in 2005 it is \$76528 and exceed the Ocean County offer by \$3551 in 2003, \$4243 in 2004 and \$5172 in 2005. Mercer County also provides a longevity plan which pays varying amounts related to service. At the 15 year level it is \$1350 and remains there until 20 years when it moves to \$1850, some \$1950 less than Ocean's plan.

Another county which is relatively close but more densely populated is Middlesex. It is located to the west and somewhat north of Ocean County and shares a major state road connection, the Garden State Parkway, which is readily trafficked by large numbers of motorists. The maximum pay rate published for 2003 is \$81834 and for 2004 at \$85721, a 4.75% improvement. There is an extra step for senior pay which provides an additional movement of 4% to \$85107 in 2003 and \$89150 in 2004. Clearly these rates far outstrip the proposal for Ocean County. Middlesex also provides a longevity plan which is set at 2% for nine years service, 5% at 16 years service and 7% at 21 years. This nominally adds \$1637 in 2003 and \$1714 for 2004 for persons at mid career service levels entitled to the 2%. At 16 years service the payout jumps to nearly \$4300 in 2004.

One other offset should be considered. Ocean County Prosecutor's Officers have opportunity to gain \$1500 as a special salary addition for performance and length of

service at the discretion of the Prosecutor, not to be confused with the longevity plan. In general this extra pay has been added to each employee's compensation by the time 10 years of service have been reached. It is one of the demands of the PBA that this compensation additive be made a contractual obligation. As it has generally been paid to all employed by their tenth year and as the maximum pay is reached after 9 years it seems only practical and fair to consider it for the purpose of adjusting the comparisons as were made above.

In the case of Monmouth and Middlesex there is insufficient impact to suggest that Ocean County's offer has become competitive. In the case of Atlantic County the extra \$1500 virtually closes the gap during the 2003-2005 period. In the Burlington County comparison the additional \$1500 would move Ocean County's offer ahead by \$1932 in 2003, \$1900 in 2004 and \$294 in 2005. In the case of Mercer County the Ocean County seniority differential is about equivalent to the longevity provided but not used in the comparison. The longevity plan in Ocean County which was nominally described above as generating \$3800 would offset the \$3551 lead in Mercer County for 2003 but would only decrease the lead from \$4243 in 2004 to \$643 and in 2005 from \$5172 to \$1372. And when the clothing and service stipend which combine to \$1000 in Mercer County is added the 2003 lead becomes \$751, the 2004 lead becomes \$1643 and the 2005 lead becomes \$2372.

From these figures it can be discerned that the Ocean County compensation including longevity and senior officer designation will compare reasonably to the Atlantic, Burlington and Mercer counties but fall short by a very substantial amount when compared with Monmouth and Middlesex counties.

To summarize these figures which include base salary, longevity, clothing and senior service pay:

County	2003	2004	2005
Atlantic	\$69766	\$72468	\$75279

Burlington	69659	72177	76362
Mercer	72192	75370	78818
Middlesex	85926	90007	93157*
Monmouth	86000	92000	98000
Average	\$76709	\$80404	\$84323
Ocean Proposal	71591	74077	76656**
Difference	\$5118-%7.1	\$6327-%8.5	\$7667-%10
PBA Proposal	\$75015	\$78501	\$82161**

Were the comparison limited to the three adjoining counties, Atlantic, Burlington and Monmouth, the average compensation would be reduced to \$75142 for 2003, \$78881 for 2004 and \$83214 for 2005 and the Ocean County proposal would be somewhat closer, trailing the average in 2003 by \$3551 or 5%, in 2004 by \$4804 or 6.5% and in 2005 by \$6558 or 8.6%.

Were the PBA proposal to be contrasted the result would show a shortfall against the average of \$127 in 2003 or .17%, in 2004 by \$380 or .5% and in 2004 \$1053 or 1.3%.

*This figure is conservatively estimated as if a 3.5% increase had been set for 2005.

**These figures represent the overall compensation including salary, mid-service longevity and current senior pay program.

Two additional areas of comparative salary research have to do with the relationship between the Ocean County Sheriff's Officers and those of the Prosecutor. This first matter was not addressed in detail by either party but is in the evidence introduced by the County showing the pay rate of the Ocean County Sheriff's office compared to all other counties using 2002 data. In that display Ocean County ranked fourth highest of the 21 counties. The range of salary was from \$77585 in Bergen to \$38770 in Cumberland. The median salary was \$55996 and the average reporting for 2002 was \$55076. The Ocean County rate was \$65173, ranking fourth, and was the only county paying Sheriff's officers as much or more than their County Prosecutor' Offices paid detectives and investigators.

The average of 12 counties for which I had adequate information to ascertain a comparison showed a salary differential of 24.4% in favor of Prosecutor's staff versus Sheriff's Officers. Except in Ocean County where the Sheriff's Officers were paid approximately 2% more than the Prosecutor's staff the range of higher salaries for Prosecutor's Investigators was a minimum of 9.6% to 43%. In the surrounding counties the differences were: Monmouth 43%, Atlantic 34%, Mercer 14.6% and Middlesex 34.9%. I had no figures for Burlington.

While these statistics do not form a definitive picture of the relative values of the two jobs it certainly demonstrates that Counties generally have determined the Prosecutor's Investigators and Detectives work to have substantially greater value than does that of Sheriff's Officers. It is also noteworthy that Ocean County paid its Sheriff's Officers more than any of the surrounding counties used as comparables in the data above while it paid and is offering the Prosecutor's Investigators substantially less than the averages of those counties. Given the fact that testimony introduced in evidence showed the Ocean County Prosecutor's Office to have been on the cutting edge of law enforcement and public service in the state it seems illogical to find their value to have been inversely established relative to Sheriff's Officers in Ocean County and in most comparisons drawn from the record established here. This is particularly surprising in that both the Sheriff's and Prosecutor's Offices are established constitutionally and perform with the same authority and responsibilities in each county.

An added factor is the overall rate of increases settled for the comparable Prosecutor's jurisdictions. They are as follows: Atlantic 4% in each year; Monmouth 7% in 2003 and 6.5% in 2004; Burlington 3.6% in 2003, 3.6% in 2004 and 5.8% in 2005; Mercer 4% in 2003, 4.5% in 2004 and 4.75% in 2005; Middlesex 4.75% in 2003 and 4.75% in 2004. The average of these increases is 4.67% for 2003, 4.67% for 2004 and 4.75% for 2005. It must be borne in mind that these increases are imposed on salaries which, on average, substantially exceed those paid in Ocean County and thus produce greater dollar increases

and widen the gap between Ocean County proposed salaries and those of comparable and neighboring Prosecutor's Offices.

The second element of research has to do with the fact that the salary guide for the Sheriff's Officers is a step shorter than that of the Prosecutor's Officers and differs as to step values. This is also true of the Correction Officers salary guide. Using the Sheriff's Officers guide to be in effect on April 1, 2004 and contrasting that with the guide proposed by the County for the Prosecutor's Officers several distinctions appear. Of course there need be an assumption in order to make a relevant point. The assumption is that we look at total earnings for a nine or ten year period and in order to simplify this computation assume that 2004 guide were to be in effect for the entire period of time and that we are evaluating the total income of a person starting at step one, not including probation. In the nine year period an Officer in the Sheriff's office would earn \$517771 and would be at top step for two years. An Officer in the Prosecutor's Office would earn \$471050 in those same nine years or approximately 9.9% less money or \$46721 less. If the tenth year is added to this exercise and if we presume the Prosecutor's Officer is granted the \$1500 for senior pay the total earnings of the Sheriff's Officer become \$589169 as contrasted to the Prosecutor's Officer at \$541327 the actual money difference is \$47842 for the period. The reasons for this have to do with the structure of the guide which means each annual step is, on average, of lessor value plus the fact that it takes a year longer to reach maximum rate of pay which maximum is also less for the Prosecutor's Officers than is scheduled for the Sheriff's Officers. This demonstrates a meaningful distinction in the salary structures and treatment for the two offices and illustrates the severe impact on those employed therein. It also underscores the fallacy of presuming that the County pattern, as alleged, really delivers equal treatment to those employed and it raises a serious question as to what should be the remedy to rectify so substantially different earnings in the first ten years of employment. Of course the snapshot I used for this research yields different numbers than would be the case if actual figures for the nine

or ten years ending in 2004 were available and used. But the bottom line would be much like the percent figures found in the hypothetical demonstration above. The elemental evidence of this can be demonstrated by examining just one or two guide steps. In step 5 of the Sheriff's Office contract the employee will earn \$58534 while a Prosecutor's Officer will earn only \$55053 or 6.3% less that year. At step 2 the figures would be \$42828 for the Sheriff's Office and \$37595 in the Prosecutor's Office or a differential of 13.9%.

This exercise can be replicated to contrast the nine or ten year earnings of Prosecutor's Officers with that of Correction Officers using the County's proposal for the Prosecutor's office and the current Agreement for Correction Officers for the 2004 year. The Correction Officers clothing allowance of \$1250 is added to achieve a comparable compensation level. For a nine year period the Correction Officer would receive \$513848 while the Prosecutor's Officers would receive \$471050 or \$42798 less. In a ten year example, and adding the senior pay increment to the Prosecutor's Officer's pay the total for the Correction Officer would be \$584729 and that of the Prosecutor would be \$541327 which produces a negative differential of \$43402 for Prosecutor's Officers.

In both examples the total average annual compensation for Prosecutor's Officers is substantially less than that of Sheriff's Officers where the annual pay average of nine and ten years is -\$4967, and as to Correction Officers the annual average of nine and ten years is -\$4548. Given these figures it is difficult to judge these compensation plans as comparable. They certainly are not equable.

It should also be noted that this exercise, if applied to the other comparable jurisdictions, would produce similar results but at a more exaggerated level of greater earnings from the average comparable County Prosecutor's compensation plan as they generally have shorter salary guides, six to eight years, and higher salaries which, as noted above, produce much higher total earnings during the nine or ten year periods chosen for the comparisons.

REVIEW OF THE APPLICATION OF STATUTORY CRITERIA

1. THE INTERESTS AND WELFARE OF THE PUBLIC

I believe this to be a very significant criterion and very relevant in my determinations of the issues before me. There was no negative testimony concerning the performance of the Prosecutor's personnel and much to reinforce their being responsive to all county needs. The prosecutor has established many important and innovative programs and specialized units fully trained as to the needs of the public. The reputation is very positive and the results of his personnel have been highly commended.

The costs of services must always be reckoned as a burden to taxpayers and adjustments which propel those costs higher must be given serious consideration. The performance of highly trained and specialized personnel who dedicate themselves to the public interest must also be considered. The compensation of such employees plays a significant role in maintaining their morale, satisfaction with their work and performance. It is important to set the terms of employment so they are regarded as fair, equitable and competitive but within the capacity and tolerance of taxpayers. It is my intention to weigh carefully these aspects of this criterion in crafting an award.

2. COMPARISON OF SALARIES COMPENSATION AND OTHER TERMS OF EMPLOYMENT

This criterion is of utmost relevance in this proceeding especially as the parties have determined that other criteria which focus on ability to pay, the limitations of financial flexibility and the impact of a determination on the fiscal circumstance of the County have been, by stipulation, set aside. The primary focus of the parties has been on this criterion and most of the evidence and argument have been directed to assuring it be given foremost consideration. As demonstrated above the real disparity of the parties has to do with the comparative basis for compensation. I have explained much of the elements of evidence which will be the foundation for making a determination of this impasse. This criterion is highly relevant and will be the focal point of my attention and balancing of interests.

Very little has been said as to private sector comparisons but the County did note that its proposals are in excess of the rate of improvements experienced in non-public employment within the County and statewide. Those advances have been significantly less than what has been experienced in the field of law enforcement. This may be a reflection of the increasing dependency of the public on the provision of security in their lives and may also reflect the erosion of the underlying private sector production employment in contrast to the service economy which has taken root. Whatever the reasons there has been a continuing concentration on police services and we are surrounded by the reality of considerably greater salary movement in this sector than is true of private employment. The proposals entered by the parties in this proceeding and the evidence of agreements reached involving other law enforcement employees of the County and throughout the state are demonstrative of this phenomenon as is the stipulation of the parties noted above.

3. THE OVERALL COMPENSATION PRESENTLY RECEIVED.

These law enforcement personnel enjoy a very substantial combination of salary and other benefits. The latter include a generous pension plan, comprehensive health insurance and paid leave allowances. The value of benefits other than salary represents a major portion of the overall compensation. The PBA has made claims as to these employees being less well treated in terms of sick leave payout at retirement and a less generous vacation plan. Both of those items were addressed above and need not be revisited here. I am concerned about this criterion as it is interrelated to the issue of salary growth more than anything else. Those other elements of compensation are well within the norm of most public employers of law enforcement personnel even if they are not rewarded at the maximum level to be found elsewhere. The key issue in this impasse remains the salary adjustments to be incorporated in the contract and as noted I will give this the attention it deserves.

4. STIPULATIONS OF THE PARTIES

This criterion was set forth above to introduce the reader to the framework of this dispute.

5. THE LAWFUL AUTHORITY OF THE EMPLOYER

This criterion was stipulated as not at issue.

6. THE FINANCIAL IMPACT ON THE GOVERNING BODY

This criterion was stipulated as not at issue. It is my understanding that this stipulation was entered after giving full considerations to the potential outer limits of the costs of the demands which were at bar.

7. THE COST OF LIVING

This criterion has played a much smaller role in the determination of salary increases in recent years. Both parties addressed it in a passing way and both submitted proposals which are considerably more costly than would be the case were changes in cost of living alone dispositive. In part I believe this to be a function of the transition of the actual work being performed by the introduction of new technologies, communications systems and generally greater efficiencies. Thus the position title and description remains static but the actual performance is dynamic and is constantly extended. This has contributed to less reliance on cost of living as a significant barometer of what positions are worth and oriented more emphasis toward consideration of market conditions and changing responsibilities as the primary bases for salary determinations.

The County made a special point of detailing the positive relationship of its offer as contrasted to the rate of change in cost of living to underscore the real gains those offers represented. And that position is well taken. But the focus has not been on COL and I do not find this criterion to be particularly significant in the resolution of this dispute. The new value, in terms of salary, of the employees represented here is clearly more a function of the changes in the work, the innovations adopted and the comparative environment than is the modification of their buying power as measured by the changes in cost of living.

8. THE CONTINUITY AND STABILITY OF EMPLOYMENT

Notwithstanding the criticism of the PBA as to the experienced turnover of 13% of Investigators in the past ten years due to departures for higher paying positions I do not find that to be excessive. With 45 employees the voluntary turnover is only just over one

person per two years. The more important consideration to be made is the investment in training and gained experience which could be lost should there not be a fair settlement of the terms of the new Agreement. It was clearly demonstrated that the Prosecutor's staff is highly regarded within the law enforcement community and is performing at an exceptional level of competent service to the County. Thus the continuity and stability of employment is an issue which should be treated with real regard. Until this time there has been an excellent level of service performed. It is important that this not be taken for granted and to recognize the potential influence of the negotiated terms of an agreement. I therefore see this as a criterion worthy of note and of high relative importance in this proceeding. It is my expectation that this award will reasonably assure the parties of continued stability of employment at least to the extent that such might be influenced by the terms of the Agreement.

THE REMAINING ISSUES

In an attempt to influence the value of overall compensation the PBA demanded that the longevity plan be altered so that the highest percent be achieved in the 24th year of service as contrasted to the 32nd year. This was chosen because these police employees have an option to retire with 25 years service and the earlier achievement of maximum longevity would then be built into the pensionable income. There is no evidence of richer longevity plans being available in the Prosecutor's Offices in the above analysis. The County has negotiated an exact replica of the longevity plan for other units. It would be counter productive and unjustified for me to upset that plan in order to deliver something less than a 1% modification to these employees compensation. No real justification was made other than to build up the pre-retirement earnings and in much of the evidence provided the opposite trend is clearly emerging. This is particularly true in Prosecutor's Offices where most have provided a much less generous longevity plan and where some have phased those plans out entirely. Because of these considerations I will not disturb the current plan.

The PBA also has demanded change in the sick leave payout at retirement. However, as noted above, the current plan is equal to most even though it is also at the lowest level of those offered for comparison. A change would seriously threaten the consistency of the benefits offered by the County to other groups and I do not find great justification for doing so in the record presented. There does not appear a particular level of change which could be set with conviction as to the rationale for same.

The PBA also proposed a modification of Article 8, Sick Leave, to provide the extension of full pay for periods of job connected disability due to illness, injury or recuperation therefrom from the current maximum of 60 days to one year. The County countered with a proposal to extend the 60 days to 90 days. Very little evidence was introduced to demonstrate the injury frequency or seriousness was such as to warrant the sought change. There was also very little in the sense of response from the County except to indicate that they had acceded to making a change in other situations to extend the term from 60 to 90 days and would do so here. While there hasn't been notable experience to justify a claim of necessity for this demand neither has there been any substantive reason offered to suggest that such leave should not be the responsibility of the Employer. In my review of many of the contracts which cover personnel employed in Prosecutor's Offices it is my reading that most do offer a one year plan. As these employees are subject to inherent dangerous situations in the work place and potentially while off duty it would seem rational to offer them assurances of financial stability should such an emergency be experienced. The lack of such incidents in the past suggests this would not pose an immediate financial burden on the Employer but the security assurances of a one year plan certainly would provide some added peace of mind to the Officers and their families. Ordinarily such job connected injury is covered by Worker's Compensation. In this case the County has opted to self insure. The County should have the option of continuing the self insurance of the plan, replacing it or combining it with an insured plan. The new plan shall incorporate the concept of extending the term of full pay to one year. Should the

County decide to utilize Worker's Compensation Insurance when an employee has an approved claim for Worker's Compensation benefits for job connected injury or illness the employee shall be compensated in an amount which together with the Worker's Compensation payment will equal the ordinary base salary which would have been paid for a maximum period of up to one year. A rejected claim for Worker's Compensation, should such be selected by the County, shall be determinative as to any additional compensation from the County. All claims and challenges as to eligibility for such Worker's Compensation insured situations shall be made to the Division of Worker's Compensation and the decision of the Division or a determination by a reviewing court shall be binding.

The PBA also has demanded that the senior officer compensation plan be altered so that the Prosecutor's discretion as to granting such status be truncated by the imposition of an obligation to grant that status to each employee not previously promoted to it by making it mandatory at ten years of service and that the definition of such service be inclusive of any law enforcement service beyond that to the County. This element of compensation has become a significant way of bridging the gap between these employees and those of the Sheriff or Correction Department. It also represents an opportunity to award exceptional performance by the exercise of the discretion as to when it is granted. The question I find before me is whether the need to improve the overall compensation plan exceeds the desirability of maintaining the discretion of the Prosecutor. I shall treat of this issue in the conclusions part of this opinion and award.

The final demand of the PBA has to do with the Grievance Procedure. In particular it addresses the definition of a grievance and the alternatives as to remedy. The current Agreement defines a grievance as an allegation that there has been a violation of specific provisions of the Agreement and provides that they may be appealed to binding arbitration. All allegations of violation or misapplication of policies or practices etc. may only be appealed to the Prosecutor. It then sets forth that the Prosecutor's determination of these item is final and binding and that such claims may not be moved to arbitration. It

is this latter condition which the PBA wishes to remove. The demand was not to seek expansion of the type of issues which might be appealed to binding arbitration. It is my judgment that the removal of plain language of an Agreement tends to imply an alternate meaning to what has been understood by the parties. Should the request of the PBA be granted that may be the result. This is not in the interest of either party. It may be that the intent of this demand was simply to remove what may have been seen as redundant language. But the removal would also remove the final and determinative authority of the Prosecutor without exchanging it for an agreed upon alternate. This could lead to claims that the intent was to litigate such matters in court and thus be counter to the underlying basis for a negotiated grievance procedure which is to set a method of dispute resolution at the least formal level. There was no evidence introduced to suggest the current plan is insufficient or that it has led to many unresolved grievances. I also note that this reserve of authority to a Prosecutor is contractually common in other Offices. I do not see that the parties are best served by this change and will reject the proposal.

CONCLUSIONS

As I believe has been demonstrated above this impasse is highly focused on compensation. With my determination not to grant the only non-economic demand of the PBA the remaining issues all concern salary changes and related elements of overall economic benefits. To some degree I have determined that the foundation for the County's arguments are flawed. The County is not the Employer as was advanced by its statements as to the mandate that its pattern of settlements with other units of County employees should be determinative of the issues at impasse. The Prosecutor is an independent Employer but an integral part of the County and recipient of funding from it. The County's claims of equal treatment for all employees is likewise misleading. Even in those situations where there is, on the surface, the appearance of equal treatment my research has illustrated substantial variation in the total compensation. Most of the differences between Prosecutor's Officers and Correction or Sheriff's Officers tend to put the

Prosecutor's staff at distinct disadvantage. In addition the comparisons between Ocean County Prosecutor's Officers and those of other County Prosecutors, the comparison which most logically should be used to measure and determine what should be awarded for this three year contract period, illustrate the relative inadequacy of the County's proposal. For not only do those other County's uniformly place significantly higher relative value on Prosecutor's Officers salaries, as compared to Sheriff's Officers, but they pay more on average, in some cases very much more, for similar performance and the rate of pay increases on an annual basis is higher than proposed here. This means that the derivative salary in Ocean County would not be particularly competitive with the average of others and that the dollar value of Ocean County compensation will deteriorate further as a result of the application of the terms offered.

My determination as to the proper salary increases for the three years of this Agreement is that the comparable rate established between Prosecutor's Offices should be implemented. Thus the annual increase to be awarded will be 4.67%. This most logically flows from the discussion above concerning what the appropriate comparability base for salary determinations should be using a fair interpretation of that criterion of the law. This will exceed the County's offer in each year by .92% or 2.76% for the three years and as to the Sheriff's Office contract it will exceed the first year by .17% and the second and third years by .92% or a total of 2.01%. The result will not provide any catch-up between Ocean and the average of other Prosecutor's offices and will mean a further dollar gap between them but it seen as creating a parallel rate of improvement in a situation where there is considerable resistance to acknowledging the real differences in employment now experienced by this unit of employees.

In addition to this salary increase plan I am modifying the senior benefit to provide that it be adjusted by the change in overall salary compensation. This will have the effect of providing a comparable level of benefit relative to base salary in future years and to prevent this element of overall compensation from deterioration thus continuing its

incentive value. The option of the Prosecutor to award this beneficial part of compensation at his discretion shall be continued, however, should an employee reach fifteen completed years of service and not previously have been granted the senior benefit it shall become part of that employee's base pay automatically. I do not alter the eligibility basis for computing the years of service as no evidence was provided to suggest a change.

COMPARISON OF COSTS

The County prepared a chart depicting the costs of its final offer. Those costs included the ordinary increments payable under prior contract. In 2003 the across the board increase of 3.75% yielded \$94957 and at 4.67% it was \$118253. In 2004 the figures would be \$101934 and \$128030 respectively. In 2005 they would be \$108298 and \$137134. These figures are inclusive of the percent impact on the cost of increments. The net effect for 2005 would have been a total payroll of \$3053610 under the County proposal which becomes \$3131878 with the 4.67% applied for each year, an increase in 2005 of \$78268 or 2.56%.

The proposal of the PBA would have yielded an increase in payroll for 2005 of 7.92% and the payroll would have been \$3295413 according to the calculations of the County.

Given the unfair treatment these employees have received over the many years of service I do not believe the added costs to be unrealistic. While the offer of the County would have increased the maximum pay for Prosecutor's Officers to \$71356 in 2005 the changes awarded will raise that maximum to \$73271. In contrast the maximum for Correction Officers in 2005 will be \$72242 plus clothing allowance of \$1300 or a total of \$73542 and the maximum for Sheriff's Officers will become \$74075. The Prosecutor's Officers will also be entitled to the Senior category increase at the discretion of the Prosecutor or at 15 years of completed service.

After giving very careful consideration of the criteria which I determined to be of greatest relevance I conclude this award fully serves the parties in a fair and equitable manner. The comparability criterion was reviewed at length and I believe my conclusions to have

rationaly represented consideration of the key elements of that factor. In doing so I have tried to create a balance between the positions of the County and those of the PBA so as to produce a compensation plan which does necessary justice to these employees and does not compromise the reasonable continuity of County interests. The salary program equates reasonably with the determined comparability base but does little to overcome the very substantial degree to which these employees trail either the Correction Officers or the Sheriff's Officers in career earnings, but it does rectify the base maximum earnings going forward. The award of these changes will produce an acceptable level of improvement in real earnings as contrasted to the cost of living which I believe to be well deserved.

I believe the interests and welfare of the public will be well served by this award. I feel confident the inherent value of a fair and equitable compensation plan will be seen as a proper means of shoring up morale and of providing incentive and encouragement for these officers to continue their notable level of accomplishment. It is my belief that the elements of this award will serve to maintain the continuity and stability of employment as is now enjoyed by the parties and prove acceptable to the public.

Having carefully considered all of the evidence and the arguments and testimony of the parties and having weighed the elements at impasse with cognizance of my obligation as to the application of the statutory criteria I respectfully issue the following award:

AWARD

SALARY

1. There shall be a 4.67% across the board increase applied to the salary guide at each step for the three years of this Agreement to be effective on April 1, 2003, April 1, 2004 and April 1, 2005 with full retroactivity.
2. The Senior Officer designation shall be continued as in the prior Agreement except that the \$1500 shall be adjusted by each of the across the board increases set forth in section 1. above and, further, that should an employee complete 15 years service without having been granted Senior status it shall be accorded on the basis of that service.

ON THE JOB INJURY

Section 5. of Article 8, Sick Leave, shall be modified to provide that payment for job connected injury resulting in absence be extended from 60 days to one year. The details of this element of the award appear on page 25 and 26 and are to be considered as if repeated here beginning with, "The new plan shall incorporate the concept...".

All other demands of either party not part of the award above are to be deemed as denied and dismissed. All elements of the prior Agreement not in conflict with this award are intended to be continued for the duration of this new Agreement which will expire on March 31, 2006 except necessary changes as to dates.

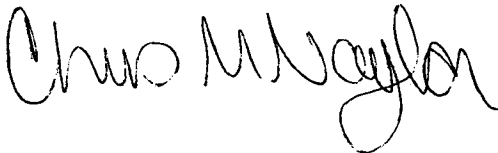


Frank A. Mason

Pennington, Mercer County, New Jersey

March 17, 2004

On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who, in my presence, executed the foregoing opinion and award and he acknowledged to me that he executed the same.



CHRIS M. NAYLOR
COUNTY PUBLIC - NEW JERSEY
Commission Expires 2/25/2005