

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

Docket No. IA-99-124

In the Matter of Interest Arbitration Between:

COUNTY OF HUDSON ,

**-Employer-
and**

P.B.A. LOCAL 109,

-Union-

**OPINION
AND
AWARD**

ARBITRATOR: Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.

**MEDIATION SESSIONS/
FORMAL HEARINGS:** October 11, 1999, January 12, 2000, March 8, 2000, April 5, 2000. Both counsel thereafter filed briefs, replies and supplementary material.

APPEARANCES: For the Employer
Esther Suarez, Esq.
Christopher H. Lowe, Esq.
SCARINCI & HOLLENBECK, LLC

For the PBA
Robert C. Griffin, Esq.
Jennifer L. Alexander, Esq.
GRIFFIN & GRIFFIN, P.C.

BACKGROUND

The undersigned was mutually selected by respective counsel to serve as the Interest Arbitrator in this matter. The Public Employment Relations Commission made the formal appointment of my service pursuant to *N.J.A.C. 19:16-5.6*.

The parties initially met with me on October 11, 1999, in a mediation session. While progress was made, it became apparent that no voluntary settlement would be reached and, as a result, the matter was set down to be decided in a formal interest arbitration hearing with conventional authority resting in the Arbitrator, pursuant to the statute.

Formal hearings were held on January 12, 2000, March 8, 2000, and April 5, 2000. Subsequent to the formal hearings, numerous conference calls were held and, in addition, both parties submitted supplementary materials. Finally, all of the material was submitted to the Arbitrator in early 2001. The Arbitrator has considered all of the materials sent to him in order to base his decision on the entire record, which he has done. At the conclusion of the hearings, the parties submitted briefs and reply briefs. Note should be made that all counsel, namely, Ms. Suarez and Mr. Lowe for the County and Mr. Griffin and Ms. Alexander for the PBA, served their clients extremely well in this complex arbitration.

CONTROLLING STATUTE

The statutory device to resolve labor disputes between municipalities and public safety unions is set forth in *N.J.S.A.* 34:13a-16. The terminal procedure for this binding interest arbitration is outlined in *N.J.S.A.* 34:13a-16(d), which provides in pertinent part:

...d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

- (1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the Commission in writing, indicating all issues in dispute and the reasons for their inability to agree on the procedure. The substance of a written notification shall not be the basis for any delay in effectuating the provisions of this subsection.
- (2) Upon receipt of such notification from either party or on the Commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall 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. of this section...

In determining which final offer to accept, the Arbitrator is required by N.J.S.A.

34:13A-16(g) to consider the following factors:

1. The interest 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 service 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 jurisdiction, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
3. The overall compensation presently received by the employees, 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 effect 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-16g)

FINAL OFFERS

PBA LOCAL 109's FINAL OFFER. The PBA seeks the following contract modifications.

1. **Salary Increases** – implementation of a step system with the following increases and at a cost estimated by the PBA as follows.

	Cost to County	
Year 1	12 Steps-No Step Movement	
	5% Raise distributed among various levels	
	Starting Salary Frozen	
	Gross Cost to County	\$521,400.00
	Minus Slippage Savings (see "Slippage" below)	\$1,400,000.00
	Schedule & Work Hours Savings	\$2,300,000.00
	Total Savings to County in Year 1	\$2,178,600.00
Year 2	12 Steps reduced to 7 Step-No Step Movement	
	5% Raise distributed among various levels	
	Starting Salary Frozen	
	Gross Cost to County	\$549,189.00
	Minus Slippage Savings	\$1,400,000.00
	Schedule & Work Hours Savings	\$2,300,000.00
	Total Savings to County in Year 2	\$2,150,811.00
Year 3	7 Steps - First Step Movement	
	5% Raise distributed among various levels	
	Starting Salary Frozen	
	Gross Cost to County	\$2,302,220.00
	Minus Slippage Savings	\$1,400,000.00
	Schedule & Work Hours Savings	\$2,300,000.00
	Total Savings to County in Year 3	\$2,297,780.00
Year 4	7 Steps - Step Movement	
	5% Raise distributed among various levels	
	Starting Salary no longer frozen	
	Gross Cost to County	\$2,710,700.00
	Minus Slippage	\$1,400,000.00
	Schedule & Work Hours Savings	\$2,300,000.00
	Total Savings to County in Year 4	\$2,999,700.00
Year 5	7 Steps - Step Movement	
	5% Raise distributed among various levels	
	Starting Salary no longer frozen	
	Gross Cost to County	\$3,528,300.00
	Minus Slippage	1,400,000.00
	Schedule & Work Hours Savings	2,300,000.00
	Total Savings to County in Year 5	\$3,028,300.00
TOTAL SAVINGS TO COUNTY OVER LIFE OF THE CONTRACT		\$8,888,191.00

2. Work Schedule – The PBA seeks to change the existing work schedule and establish a new schedule as set forth below.

Weekdays	8 a.m. - 4 p.m.	110 Officers (40 hours per week)
Weekdays	4 p.m. - 12 midnight	85 Officers (40 hours per week)
3 Squads	12 Midnight - 8 a.m.	105 Officers (3 Squads of 35 officers each)
		Covering weekdays as well as weekends
		working 4 days on, 2 days off, for a total
		of 37.5 hours weekly.
Weekend Squad	Sat. - 8 a.m. - 4 p.m.	80 Officers, working Saturday and Sunday
	Sat.- 4 p.m. - 12 mid.	each weekend. 16 hours each day totaling
	Sun.- 8 a.m. - 4 p.m.	32 hours per week.
	Sun.- 4 p.m. - 12 mid.	

THE COUNTY'S FINAL OFFER

1. Salary Increase

Article XXVI- Salary and Wages: The County offers 3% increases for each year of the five-year contract. It opposes an automatic step system.

2. Work Schedule (Article XXIII) The County proposes a new work schedule, with changes in the hours/overtime provisions:

Section 1: Corrections Officers will work a twelve and a quarter (12.25) hour workday. A typical workday will consist of a twelve-(12) hour shift and all officers

will be required to be at roll call fifteen (15) minutes prior to the shift. Shifts will begin at 10 a.m. and 10 p.m.

Except as may be otherwise provided for corrections officers assigned to specific special details, e.g. canine details, it is agreed and understood by both parties that corrections officers employed by the County of Hudson have historically worked a regular, recurring work period of fourteen (14) days' duration within the meaning of Section 7(k) of the federal Fair Labor Standards Act (FLSA), and shall continue to do so under the new Work Schedule set forth in this Agreement. All proposals made by the County in the negotiations leading to this Agreement were premised upon the prior existence and continuation of this fourteen- (14) day work period. This regular, recurring period of fourteen days' duration has been, and shall continue to be, coextensive with the established fourteen (14) day payroll period, and is reflected in the corrections officers' payroll records. It is the parties' understanding and sole intention that this provision shall incorporate and reaffirm the existing, established policy of the County and practice of the parties regarding the corrections officers' regular, recurring work period of fourteen (14) days' duration within the meaning of Section 7(k) of the FLSA.

Section 2: Correction Officers will work seven (7) twelve and a quarter (12.25) hour workdays within a fourteen- (14) day work period. There will be no rotation between the shifts.

Section 3: Officers will get approximately every other weekend off.

Section 4: Officers will receive overtime payment for all hours worked over eighty-six (86) hours in a fourteen- (14) day work period.

Section 5: Paid time off is converted into hours; example: a sick day will be converted into twelve and a quarter (12.25) hours.

Section 6: The County reserves the right to change this Work Schedule within 30 days of giving notice to the PBA.

Article XXIV- Hours and Overtime:

Section 1: Corrections Officers will work a twelve and a quarter (12.25) hour workday. A typical workday will consist of a twelve- (12) hour shift and all officers will be required to be at roll call fifteen (15) minutes prior to the shift. Correction Officers will work seven (7) twelve and a quarter (12.25) hour workdays within a fourteen- (14) day work period. There will be no rotation between the shifts. Shifts will begin at 10 a.m. and 10 p.m.

Section 2: Officers will receive overtime payment for all hours worked over eighty-six (86) hours in a fourteen- (14) day work period.

Section 4: All overtime shall be reported to the Officer in Charge of each tour and he or she, in turn, shall notify the proper authority as to the hours worked. All overtime shall be paid on an eighty-six (86) hour basis in a fourteen (14) day work period.

Section 11: All newly hired employees being trained will receive compensation time for any time worked over eighty-six (86) hours in a fourteen- (14) day work period.

NON-ECONOMIC PROPOSALS:

New Article proposed by the County- Direct Deposit:

The County will establish a system for the direct deposit of employee checks. When Direct Deposit is established, the current system of providing for the early release of paychecks and the advancement of vacation checks shall be discontinued for all employees.

New Article proposed by the County- Vending Machines:

Section 1: Hudson County Local PBA 109 warrants to the County that the PBA's vending machines are in good condition and repair, and can be operated in a safe manner that will pose no threat of injury to persons, personal property or the County's property.

Section 2: The PBA agrees to maintain, pay for, and keep in force general liability insurance that shall protect the County from any and all claims of any nature for bodily injury, property damage or personal injury, including death, which may arise from the vending machines.

Section 3: The PBA shall forward a copy of all service and maintenance records, as well as a general liability insurance policy to the County within ten (10) days of ratification of this Collective Bargaining Agreement, and said insurance policy shall contain a clause that it may not be cancelled without thirty (30) days' prior written notice to the County.

Section 4: The PBA agrees to protect, indemnify, and defend the County and its agents and hold them harmless from and against any and all loss, cost, liability and expense, including but not limited to reasonable counsel fees, arising out of damage to the County's property, injury to, or death of any person, arising from the vending machines.

Section 5: Any money earned by the PBA from the vending machines should only be used for PBA purposes directly related to PBA Local 109.

New Article proposed by the County- Past Practice:

Any past practice not identified in this Agreement shall be deemed waived by the parties and no longer binding.

New Article proposed by the County- American Made Clothing with Uniform

Allowance:

It is the policy of the County that the guidelines for uniforms or other clothing items purchased by voucher or allowance by County employees shall require that the uniforms or other clothing items be made in the USA, unless USA manufactured is unavailable. These guidelines shall also incorporate the labor practices in Section 3B 1-3. Uniform apparel and other clothing items whose providers, manufacturers or subcontractors fail to adhere to these practices shall be deemed unacceptable under the uniform or other clothing guidelines established for any voucher or uniform allowance system.

Article X11 proposed by the County- Sick Leave:

Eliminate "Sick Leave Incentive " provision entirely.

Article XXVII proposed by the County- Shifts, Assignment and Reporting

Time:

Section 6: When more than one (1) officer is assigned to a post, the most senior corrections officer shall be in charge.

The following language proposed by the County to be included under this

section, as agreed by the parties on November 17, 1999:

Former Hudson County Correction Officers are eligible for re-employment at the salary they were earning at the same time of their resignation, provided that:

- a. The former Officers resigned in good standing;
- b. The former Officer had been appointed from a New Jersey Department Of Personnel (Civil Service) Certification and successfully completed the

required one-year working test period;

1. Former Correction Officers who were employed on a provisional basis are eligible for re-employment under this agreement if they meet all other requirements herein and whose names appear on a current Civil Service Certification for Hudson County Correction Officer

2. Former Correction Officers who were appointed from a Civil Service Certification but who were not offered the opportunity to attend a State approved correction officers training academy are also eligible for re-employment under this agreement if they meet the requirements of this agreement except paragraph c.

c. The former Officer successfully completed a State-approved correction officer's training academy while employed as a County Correction Officer;

d. The officer did not commit a major disciplinary offense, as defined by the Civil Service, while employed as a County correction Officer;

e. The former Officer submits a re-employment application within three years of his/her resignation (if the former Officer was a provisional Officer while employed at the County, the Officer must submit a re-employment application within one year of his/her lay-off or resignation;

f. The former Officer receives favorable references from employers she/he worked for since leaving County employment; and

g. The former Officer passes the regular internal Affairs background check, which includes a criminal background investigation.

Officers who return to the County under this Agreement will earn the annual sick, vacation and personal leave they earned at the time of their lay-off/resignation. Officers re-employed after January 1st will have their annual leave prorated for the remainder of the first calendar year of re-employment pursuant to the County Employee Handbook.

Any offer of employment will be conditioned upon the former Officer passing a medical/psychological examination by a County doctor. However, the former Officer will retain all rights under the American With Disabilities Act (ADA) to a reasonable accommodation of any disability he or she may have. A more detailed statement of the ADA and the former Officer's rights are available from the County Division of Personnel.

Section 5: Additional compensation to corrections officers assigned to a 5/2 work schedule is to be eliminated.

TERM OF AGREEMENT

The County and the PBA proposed that the term of the successor agreement shall be five years, effective January 1, 1999, and ending December 31, 2003.

The Arguments on Behalf of PBA's Position

The PBA argues the following points in support of the contention that its Final Offer should be awarded in its entirety:

Interest and Welfare of the Public

In its brief, the PBA asserts that its five year offer will further the interests and welfare of the public because it will save the County nearly \$9 million as a result of adopting the PBA's proposed new schedule, while bringing the officers into a position of parity with salaries paid by other departments. The PBA claims that its offer saves the County money by freezing the starting salary for the first 3 years, freezing top pay for two of the five years of the contract, refraining from establishing a seven step system immediately, and not providing for step movement until the third year of the contract.

The PBA argues that the current contract does not serve the public's interests for several reasons. It states that the County is suffering from excessive turnover among officers. It claims that last year the County lost almost 1/5 of its workforce, or 71 officers. Given that it takes at least six months to replace an officer, the PBA claims that the result is that the jail is running short on staff and that more overtime is required.

At the same time, the PBA asserts that the County saves money when an officer leaves because it does not have to pay his salary after he is gone and the replacement officer is hired at a much lower salary. The PBA claims that this fact is

ignored by the County when it estimates the cost of the PBA's proposal for a step system. The County assumes that all officers will move forward in steps each year of the contract, ignoring the fact that about 70 officers will terminate their employment and be replaced by officers at the lowest pay rate. The PBA argues that this "slippage" factor must be considered in considering the cost of the PBA's salary and step proposal.

The PBA argues that its work schedule proposal serves the interests of the public by improving the efficiency of the jail. It cites the testimony of witness Captain Krusznis that the schedule would increase staffing on each shift, produce savings in manpower, reduce absenteeism, and improve the morale, quality of life and working conditions of officers. It notes that the current schedule contains three shifts: 8 a.m. to p.m., 4 p.m. to midnight, and midnight to 8 a.m. The PBA states that because of prior contracts, 273 officers work five days a week with two days off and 106 officers work four days a week with two days off. It notes that the Director establishes the minimum number of officers which are necessary to operate the jail.

The PBA points out that the work schedule it is proposing has been in operation in Essex County for about 18 years. Captain Krusznis testified that he was asked by Director Green to devise a schedule which could reduce overtime at the jail. Krusznis said that he learned that the schedule being used by Essex County has received positive reviews in national studies. Krusznis said that the schedule was then established for superior officers at the Hudson County jail as a pilot program and proved to be very successful. He stated that there was a 40% improvement in attendance and a 97% reduction in overtime during the six-month pilot period. Krusznis estimated that the schedule would result in a 66% reduction in overtime if applied to rank and file officers in the PBA's unit, resulting in a savings of \$2.3 million for the County.

The PBA cites the decision of PERC in *Township of Teaneck*, PERC No. 2000-33, 25 NJPER 451 (30199, 1999) holding that an interest arbitrator must carefully consider the fiscal, operational, supervision and managerial implications of a major work schedule change, as well as its impact on working conditions and employee morale. The PBA argues that it has shown that its proposed schedule has been very successful at the Hudson County jail for superior officers, and asserts that it would be inefficient to have superior officers working one schedule and the rank and file officers working another schedule. It claims that the PBA has presented evidence showing the positive implications of its proposal while the County did not produce such evidence concerning its proposed schedule.

The PBA also argues that its proposed schedule would provide officers with the ability to pursue education and handle child care responsibilities, while the County's proposal for 12.5 hour work days would not produce these benefits as easily.

The PBA acknowledged that the Director opposes the schedule because he believes it will result in a substantial loss of man-hours, given the 32-hour workweek of the weekend-scheduled officers. According to the PBA, the number of hours lost by replacing the current schedule with the PBA's schedule is negligible, only 1,120 hours per year or 21.5 hours per week.

The PBA claims that the new schedule proposed by the County will greatly increase the number of hours worked by officers. It states that the County's proposal is that officers will work a 43 hour work week, which results in an annual increase of 286 hours per officer for those working the 4/2 shift and an annual increase of 156 hours for those working the 5/2 shift. The PBA argues that overall the County's new schedule would result in a 14% increase (103,320 hours) in the number of hours

worked by officers. The PBA estimates that based on an average hourly wage of \$13.18, the County is seeking savings of \$1,717,617.60 per year.

The PBA further asserts that the County's proposed schedule seeks a number of other "give-backs." It cites several examples, such as that the hours worked per shift will increase from 8 hours to 12.25 hours; overtime will only be paid after 86 hours in a 2 week period, where as currently overtime is paid for hours worked after a regular shift and after 40 hours in a week; new officers will receive compensatory time, not overtime, for work beyond 86 hours in a two week period; officers working the 10 a.m. shift will be required to commute during rush hour; and sick days will be charged to officers at 12.25 hours whereas currently it is charged as 8 hours. The PBA asserts that these give backs are not justified given that the County is in its best economic condition in 10 years and that no other department in the State has this schedule. The PBA further complains that the County's proposal permits mandatory overtime of 4 hours, resulting in 16-hour workdays.

The PBA also points out the County is seeking to exempt itself from the requirements under the Fair Labor Standards Act that it pay overtime for hours worked in excess of 40 hours a week. It notes that the County's proposal asks the PBA to agree that the work period has "historically been based upon 14 days." The PBA argues that this is false as the current schedule is based on a 7-day and 6 day work period.

The PBA asserts that for several years the jail has been operating without the proper number of officers. It notes that as of June, 2000, the jail had 353 officers, which is 27 short of its regular complement and at least 67 short of the number that Director Green indicated should be the complement of officers. According to the PBA, the County's proposed new schedule has never been used in New Jersey and is only in place at one facility on the East Coast. The PBA claims that the schedule has

received mixed reviews from officers at that facility and has received criticism in a national study of work schedules.

Comparability

The PBA compared its economic position with 13 corrections departments around the state. It claims that all of the departments have a step increment system, with the state average being 8 steps. It also argues that the starting salary of \$21,947 has been frozen for the past two contracts and is \$3,598 below the average of the other 13 departments. The PBA asserts that its officers have been receiving flat 5% increases, which because of the absence of a step system are 5.56% lower than the average of the other departments.

The PBA particularly complains that it takes a very long time for an officer to reach the top pay level. It notes that the current contract provides top pay of \$52,000. Only two Hudson County officers receive this pay rate, with one officer having 35 years of service and the other officer having 29 years of service. It points out that there are officers with significant experience who do not receive the top pay, such as an officer with 21 years on the job who receives \$43,094, two officers with 19 years of service in which one earns \$43,124 and the other earns \$30,883. Other examples include two officers with 17 years of service who earn only \$30,883. The PBA argues that at the other departments in the State, these officers would be at top pay, which averages \$49,000. It further notes that average officer pay in Hudson County is \$27,420.52, whereas the average pay in the other 13 departments is \$39,370.72. Another example cited by the PBA is that a 13-year officer in Hudson County earns \$34,475.00, while an officer with eight years experience in other counties earns an average salary of \$44,000.00. The PBA asserts that after seven years of service, virtually none of the officers are paid at a step commensurate with their number of years on the job. The PBA blames a "sunset" contract provision for preventing the

movement of officers forward on the step system and removing any incentive for the County to negotiate promptly with the PBA. (Article XXVI, Sec.3).

The PBA presented the following charts in support of its arguments:

OTHER COUNTIES

<u>STEP</u>	<u>AVERAGE SALARY</u>
1	\$25,545.27
2	\$29,015.67
3	\$31,959.20
4	\$34,751.80
5	\$37,981.33
6	\$41,009.08
7	\$42,513.42
8	\$44,840.45

AVERAGE # OF STEPS - 8
AVERAGE TOP PAY - \$48,579.20
AVERAGE INCREMENT - 5.56%

PBA LOCAL 109

<u>NO STEP</u>	<u>AVERAGE SALARY</u>
<u>YEARS OF SERVICE</u>	
1	\$21,947.00
2	\$25,909.00
3	\$26,626.00
4	\$27,348.00

5	\$28,012.00
6	\$28,012.00
7	\$28,012.00
8	\$29,446.00
9	\$30,883.00
10	\$30,883.00
11	\$30,883.00
12	\$34,475.00
13	\$34,475.00
14	\$34,475.00
15	\$40,221.00
16	\$40,221.00
17	\$33,357.33
18	\$40,221.00
19	\$37,003.50
20	...
21	\$43,094.00
22	...
23	...
24	...
25	...
26	...
27	...
28	...
29	\$52,000.00
30	...

31	...
32	...
33	...
34	...
35	\$52,000.00

In support of its claim that PBA officers are underpaid in comparison with other corrections officers, the PBA reviewed the expected earnings of officers over a 25-year period. (PBA Exhibit 1(q)). It claims that Hudson County officers would earn only \$571,000 over 25 years, which is half of what officers in Bergen, Morris, Ocean, Middlesex, and Mercer would earn. Additionally, officers in Camden, Sussex, Atlantic, and Gloucester would earn between \$300,000 and \$500,000 more than Hudson County officers.

The PBA points out that several former corrections officers testified at the hearing as to the effect of the low salaries provided by the County. The officers testified that they went to work for other law enforcement departments, such as the State Department of Corrections and other police departments, because they were able to earn much higher salaries and have less overtime.

The PBA claims that its rationale for seeking a contract with a 7-step system is that the parties had a seven-step system for 10 years before the last contract. (PBA Exhibits 1A & 1B). It refers to the testimony by County Deputy Director of Finance Wade Frazee that the County had a number of economically difficult years during the 1990s. The PBA asserts that the County is now enjoying good economic times. The PBA also points out that the Prosecutor's Office and the Sheriff's Department in Hudson County have increments.

Regarding comparisons to public employment in general, the PBA asserts that the evidence presented by the County does not take into account the fact that most other public entities have a reasonable salary scale from which raises are granted. It claims that because Hudson County lacks an increment system, comparisons with other departments are not meaningful.

The PBA asserts that private sector wage data is not applicable to this case because such work is not comparable to work performed by corrections officers. It points out that the work of a corrections officer is undeniably dangerous and stressful. The PBA argues that although the County presented some limited data concerning the private sector, it did not present any testimony on the issue.

The PBA asserts that the County's wage offer of a little under \$4 million over the five year contract term fails to take into account the savings it receives from employees leaving their employment (slippage) or the savings it is seeking from its scheduling proposal. According to the PBA, the County's wage offer is \$3,996,974 over five years, while it will recover \$13,808,788 during this period under its proposed schedule. The result is that the County is not offering anything to its officers, during a period in which it is experiencing the best economic conditions in 10 years. The County is also seeking to freeze the starting salary at \$21,947.00, even though it has been frozen for five years under the current contract.

The PBA points out regarding overall compensation of employees that the average longevity pay for officers in 13 counties is \$868.00, while in Hudson County the average is \$400.00 per year.

The PBA argues that additional givebacks sought by the County include proposals about which it presented no evidence at the hearing. These include holding the PBA responsible for the vending machines (the PBA claims it does not own the machines), and the elimination of all past practices, which the PBA argues would

benefit neither party. Another Employer proposal would require the purchase of American made clothing; the PBA states its officers would consider the proposal if they earned the higher wages of other departments. A County proposal for direct deposit was accepted by the PBA, although it asserts that it did not agree to the abolishment of the current system for early release of paychecks and the advancement of vacation checks.

Stipulations of the Parties

The parties agree that the successor contract should have a term of 5 years.

Lawful Authority

The PBA argues that its proposal does not impair the lawful authority of the employer because it will result in savings to the County of almost \$9 million.

Financial Impact on the Governing Unit

The PBA argues that its proposal is self-funded and will provide \$9 million in savings during the life of the contract. It claims that because its proposed schedule will reduce overtime by 2/3 it will pay for a step system with raises. The PBA also points out that the County is enjoying its best financial condition in 10 years. It states that the County has received positive bond ratings of A+ from Standard and Poors, A- from Fitch, and a BAA from Moody's. It asserts that the County enjoyed a \$18 million surplus in 1998 and a \$15 million surplus in 1999.

The PBA rejects the characterization of the County's financial condition by County Deputy Director of Finance Administration Wade Frazee as "precarious," noting that Standard and Poors said that the County had a stable outlook. The PBA also notes that Frazee acknowledged that in 1999 the County had its best tax

contribution performance in 10 years with a \$900 million addition in ratables. It also points out that Frazee said that although pilot programs may have reduced tax receipts in prior years, the abatements provided by these programs may be running out by now. The PBA further states that in 1999 the County received \$8 million in revenue from housing State and Federal-INS inmates.

Cost of Living

The PBA asserts that even though several Hudson County municipalities are financially challenged, they pay their police departments far better than the Hudson County correction officers receive.

Continuity and Stability of Employment

The PBA argues that there is no stability in the department, noting that 70 officers out of 380 leave each year. It claims that the jail is 27 officers short of its normal complement and 67 officers short of the recommended complement. The PBA asserts that this condition does not serve the public interest, pointing out that there are costs to recruiting and training new officers. According to the PBA, the turnover and its resulting impact on morale is the result of the County not providing a career path for officers.

The Arguments on Behalf of the County's Position

Interest and Welfare of the Public and Financial Impact

The County argues that the PBA's proposal threatens the welfare of the County and its taxpayers. It claims that the County is in precarious financial condition as a

result of various economic changes which took place over the last 10 years, and that even though the most recent economic indicators have been good, the overall condition of the County remains unsteady.

The County asserts that the socio-economic condition of Hudson County must be given careful consideration. It points out the New Jersey Office of Management and Budget issues a Municipal Distress index which measures the socio-economic condition of each municipality in the state and ranks the municipalities based on factors such as unemployment rate, percentage of children on welfare, per capita income, ratio of substandard housing, average equalized tax rate, and population density. It notes that the last available index in 1996 listed ten of the twelve municipalities in Hudson County among the 100 most distressed communities in the state, with Jersey City, Union City and West New York listed among the ten most distressed communities in New Jersey. It points out that in comparison to other counties, Hudson County has the second highest percentage of residents living below the poverty level, does poorly in rankings of residents' per capita income, and has had the highest unemployment rates in the state.

The County asserts that the tax burden is very heavy because of a long decrease in tax ratables over the last 10 years and an increase in tax rates. During the last decade, there was a 74% increase in the tax rate as a result of a \$5.7 billion decrease in tax ratables. The County argues that a large number of tax appeals in the last ten years caused a major decrease in the valuation of properties. Additionally, the PILOT program in which municipalities offer tax abatements to developers has resulted in many properties paying few if any taxes for periods of 5-30 years.

The County contests the PBA's claims that bond ratings demonstrate that the County is in good financial condition. The County claims that its A+ rating from Standard & Poor's indicates that the County is considered to have mediocre financial

performance and marginal stability. It notes that the S&P ratings range from D to AAA. The County acknowledges that the recent S&P report indicated an “upward trend” and stable outlook for the County, but notes that S&P limited the bond rating to A+, citing the County’s high unemployment, declining assessed valuation trends, and thin operating margins.

The County argues that although it has experienced surpluses in the County budget, the surplus cannot be used to fund salary increases. It states that it uses 100% of the surplus to fund appropriations for the next year, and claims that if it used the surplus to pay salary increases it would be forced to cut services or increase taxes. The County also denies that funds from housing state and federal inmates can be used to pay the PBA’s salary demands. It notes that for the first six months of the year 2000, the County has housed 39.4% fewer inmates than it had planned for under its budget, leaving a shortfall of revenue this year and forcing the County to anticipate fewer funds coming from this program next year. The County rejects the PBA’s suggestion that a \$8 million surplus from housing state and federal inmates in past years be used for funding the PBA’s salary proposal. It notes that the freeholders can use those funds for any purpose, including other programs or tax reduction, and that the funds will likely be used to finance a \$35 million expansion and improvement of the correctional facility.

PROPOSAL FOR A NEW SCHEDULE

The County has proposed a new work schedule. It notes that currently officers are assigned to two different schedules. About 2/3 of the staff work 5 days on and 2 days off; the remaining officers work 4 days on and 2 days off. The County points out that the officers working the 4/2 schedule work about 17 fewer days than the other officers. The County claims that this schedule results in the loss of about 1800 man-hours per year. The County contends that this loss of man-hours leads to

excessive mandatory overtime, shortages of staff, and a reduction in the number of shakedowns, all making the jail a more dangerous place for officers and prisoners. Additionally, the County must pay the 5/2 officers a differential for working additional days, which the County contends costs more than \$360,000 per year.

The County asserts that the greatest detriment of the current schedules is that the County has had to pay exorbitant overtime costs. It claims that in 1999, it was required to pay approximately \$3.3 million in overtime because of the loss of 1,800 man-hours – or 33% of its payroll for the year.

The new schedule proposed by the County would establish two shifts, working 3 days on, 2 days off and then 2 days on 3 days off (10 a.m. to 10 p.m. and 10 p.m. to 10 a.m., with employees reporting 15 minutes prior to their shift for role call). The County claims that this schedule will result in 7 shifts of 12.25 hours over a two-week period with officers receiving every other weekend off. The County states that the schedule has been developed by the National Institute of Corrections. It asserts that the new schedule would permit the County to achieve 16,295 man-hours per week at regular pay, thereby reducing the huge overtime payments the County has incurred.

The County states that the PBA's proposal would have 70 of the 380 officers working only 32 hours per week on a weekend shift. It asserts that the PBA's proposal would result in only 14,640 man-hours per week. According to the County, the PBA's proposal would require 1,655 hours of overtime per week to obtain the same staffing levels as the County's proposal provides, and also maintains the 5/2 and 4/2 schedules which have been costly to the Employer. The County states that its proposal will eliminate mandatory overtime except for emergencies while the PBA's proposal will continue to require mandatory overtime.

The County asserts that its proposed schedule will better permit it to operate the jail as a direct supervision facility. It states that direct supervision is the safest way to operate a correctional facility and involves officers being assigned to each housing unit. The County states that because of the current staffing shortages it has been unable to post a sufficient number of officers to housing units and to conduct an adequate number of shakedowns. It states that its proposed schedule will increase the number of man-hours and permit the County to assign officers in a way that will permit it to properly operate the facility as a direct supervision facility. The County also states that the existing schedule and the PBA's proposal will hinder communication between superior officers and rank and file officers because of the varying shifts which the employees work and the constant use of overtime. It claims that under its proposal, officers and their supervisors will be able to work the same shift.

The County contends that its proposal will improve the quality of life for officers because they will be working predictable shifts with mandatory overtime only occurring in rare emergency circumstances. Additionally, all officers will have at least one weekend off per month.

The County asserts that it cannot afford economically or administratively to operate under the existing schedule or any schedule which continues a 4/2 workweek.

Comparability

The County asserts that the Union has relied heavily on the fact that other jurisdictions have an automatic step system. The County argues that that the Supreme Court in *PBA Local 207 v. Borough of Hillsdale*, 137 NJ 71, 81 (1994) made clear that an arbitrator cannot simply rely on a comparison of officers' salaries

in other communities. Instead, the arbitrator must consider the Employer's ability to pay and the other factors referred to in the statute.

The County argues that it offers an array of benefits which compare favorably to other jurisdictions. It notes that a corrections officer in Hudson County receives 20 vacation days after 6 to 15 years on the job and 30 days after 25 years on the job. In comparison, Passaic County officers do not receive 18 vacation days until they have 11 years on the job and never receive more than 22 vacation days. It further notes that Hudson County provides a longevity payment of \$200-\$1000 for eligible employees, while Union County does not pay longevity to its officers.

The County argues that the PBA's wage proposal, which includes automatic steps, calls for an outrageous increase in salaries. It points out that under the PBA's proposal, 29 employees who currently earn \$29,446 will earn \$64,500 in 2003 (a 119% increase). Additionally, 63 employees who currently earn \$30,883 will have their salary more than doubled to \$64,500 by 2003. Further, 54 employees who currently earn \$27,348 will have their salaries increased to \$54,000 by 2003. The County states that the PBA has not shown any settlement or interest award in any other jurisdiction which contains such huge increases.

The County cites a recent interest arbitration award issued regarding Hudson County. *In the Matter of Compulsory Interest Arbitration between Hudson County Prosecutor's Office and PBA 232, Investigators, IA-99-74* (April 26, 2000, Arbitrator Mason). The County points out that Arbitrator Mason recognized the financial stress that Hudson County has experienced in the last ten years and acknowledged that even though there has recently been some good economic news, the County still faces economic concerns. Arbitrator Mason awarded wage increases of 30.5% over five years.

The County also pointed to a recent settlement approved by PBA Local 232 Superior Officers Association on May 31, 2000, with the Hudson County Prosecutor. The agreement provides for wage increases of 2% effective 1/1/98, 3% effective 1/1/99, 3% effective 1/1/00, 3% effective 1/1/01, 3% effective 1/1/02, and 3% effective 1/1/03. The County asserts that the agreement does not contain automatic salary steps.

The County referred to settlements with non-uniformed County employees which contained increases of 0% in 1996, 2.75% in 1997, 3% in 1998, 3% in 1999 and 3% in 2000. The County notes that the twelve non-uniformed bargaining units do not have automatic steps in their contracts and that those agreements are reaching expiration. The County states that the award entered in this case will have an impact on the negotiations in the other units.

The County claims that other counties have provided wage increases at rates below the County's offer in this case. It notes that the Monmouth County corrections officers' contract provides increases of 18% to 20% for 1999-2001. The Bergen County corrections officers received increases of 24% to 40% for 1997-1999. The County cited various statistics showing that Monmouth and Bergen counties are in much better economic condition than Hudson County. The County argues that it cannot afford the huge increases sought by the PBA and that the increases it has proposed are close in line with these other more affluent counties.

The County rejects as not particularly relevant the testimony presented by the PBA concerning five former officers who left to take positions offering more money. It notes that four of the officers left corrections to become police officers and three of the five left Hudson County.

Lawful Authority

The County asserts that under *Hillsdale PBA Local 207 v. Borough of Hillsdale, supra*, this criterion requires the arbitrator to consider the effect of an award on the County's CAP law restraints and its entire budget. The County argues that the PBA's proposal amounts to a 91.48% increase. It claims that such an increase would place the County at risk of exceeding the 5% cap and the 1.5% index rate permitted under the CAP law. Additionally, it argues that any increase above the County's offer could force reductions in other services provided by the County.

Cost of Living

The County argues that its offer is very fair given the CPI. It asserts that it has offered a five-year agreement with an increase in salaries of 38.37%. The County points out that the CPI has been at 2.1% or below for the period of 1997-1999 and that it is projected to be only 2.4% in 2000. According to the County, its offer is fair in comparison to the cost of living.

Continuity and Stability of Employment

The County argues, as set forth above, that the adoption of its new work schedule will reduce or eliminate mandatory overtime and have other benefits to employees which will support the continuity and stability of employment.

OTHER PROPOSALS

The County states that its salary proposal assumes that officers Gonzalez and Carpenter will be excluded from any salary award. It cites the fact that an arbitration award resulted in these two officers receiving a pay rate which is far greater than

other officers with similar seniority. It claims that the officers have received a windfall and should be excluded from any salary award in this case and that their salaries should be frozen for the life of the agreement.

The County proposed a direct deposit system. It states that this will provide convenience to employees, as they will not have to pick up their paychecks at the corrections center. It also states that direct deposit will make it unnecessary for an employee to obtain salary advances because the funds will be available on payday.

The County asserts that the vending machines at the facility are leased and operated by the PBA for its profit. It requests that the PBA keep the machines in good repair and maintain liability insurance naming the County for the machines. It also seeks defense and indemnification from the PBA in the event of any injuries resulting from the operation of the machines. The County claims that the PBA did not present any evidence opposing this proposal.

The County has proposed that uniforms and items purchased with County vouchers be made in the USA, if available. It states that the PBA did not present evidence in opposition to the proposal.

The County has proposed to eliminate the sick leave incentive provision in the contract because it is burdensome to administer. It claims that the PBA did not present evidence in opposition to this proposal.

The County has proposed to add to the agreement a provision that the most senior officer on a post will be the responsible officer. It states that this provision will put officers on notice and reduce confusion. It states that the PBA has not presented evidence in opposition to the proposal.

The County has proposed that all past practices must be identified in the agreement or they will be waived and no longer binding. It states that this provision will apply to both parties and will provide a clear understanding as to the rights and

entitlements of the parties. It claims that the PBA did not present any evidence opposing this proposal.

DISCUSSION

A review of the statutory criteria and the proofs adduced thereunder by each party leads to the following analysis:

Stipulations of the Parties

As noted above, the parties agreed that the term of the agreement shall be five years, effective January 1, 1999, and ending December 31, 2003. There were no other relevant stipulations.

Cost of Living

The County alleges that the cost of living favors its offer, stating that the CPI was 2.1% or below during the period of 1997-1999. The PBA did not directly address the issue.

On balance, the County's more limited wage offer over the five years of the proposed contract must be said to be more reasonable when considering the CPI. Therefore, this criterion supports the County's position. However, the full impact of the parties final offers will be discussed in greater detail later herein.

Continuity and Stability of Employment

The record demonstrates that there has been a substantial amount of turnover in the corrections department. Both parties argue that an award granting their proposed new work schedule would have positive consequences for employees by reducing mandatory overtime and permitting a better quality of life for employees. The

question of which proposed schedule would lead to more stability in the department appears to largely be dependent upon speculation and not supported by hard evidence.

The PBA also submitted evidence showing that the low wages and lack of a step system have resulted in officers leaving the department. That conclusion appears reasonable given the high turnover in the department and thus this criterion would appear to favor the PBA's position.

Overall Compensation Received by Corrections Officers

The Hudson County corrections officers appear to receive benefits such as vacations, holidays and insurance which are comparable to other corrections officers. However, they lag behind officers in other counties in wages. One of the crucial issues in dispute concerns the PBA's effort to establish a step system. County Corrections Departments in other jurisdictions have established step systems and there was one in place in this Department several years ago.

It is clear that the Corrections employees work long hours, day and night, and face threats to their safety. Because of the unique nature of a corrections officer's duties, it is extremely difficult to make a meaningful comparison between how they are compensated versus other public or private sector employees. The legislature has recognized the unique status of public safety officers in the statute which grants authority to an impartial arbitrator to resolve disputes and to award wage increases. Accordingly, the evidence cited by the County comparing corrections officers with other non-public safety employees of the County must be considered in the context of the unique nature of the officers' duties.

The Lawful Authority of the Employer

The record contains limited evidence concerning the CAP. The County claims that it cannot afford the PBA's demands without unacceptable cuts in services or increases in taxes. The PBA cites the significant economic development which has occurred in the County recently and the claimed substantial savings which its proposed work schedule would bring to argue that its final offer can be paid by the County without creating any financial or CAP problems.

My conclusion on this issue is that the County has enjoyed some economic progress recently. However, it is also undisputed that for the past decade the County has faced significant economic problems arising from a shrinking tax base and general lack of economic development. Accordingly, this factor has been given careful consideration in rendering the award.

Comparability

Private Sector

I have taken note of the PBA's position that corrections officers have unique duties and face demands which do not exist in most, if any, private sector jobs. It is clear to this trier of fact that there are significant differences between the job of a corrections officer and that of the typical private sector employee. Nevertheless, the statute requires a comparison with employees in private employment in general.

In connection with the passage of the amended Interest Arbitration statute, the Department of Labor prepares for PERC reports concerning private sector wage changes for jobs covered by unemployment insurance. The most recent comparison reveals that the average annual private sector wage in New Jersey in 1997 was \$37,032 and increased by 5.7% to \$39,138 in 1998. With respect to the issue of comparability with the private sector, it is fair to conclude that a Hudson County

corrections officer has neither an inexplicable monetary advantage or disadvantage over a New Jersey private sector employee.

Public Employment in General and within Hudson County

The County argues that it has several contracts with other public employee units in Hudson County which do not contain a step system. It claims that an award entered in this case will be used as a standard in the negotiations involving the other units.

Regarding public employment in general, a Department of Labor report issued by PERC to Interest Arbitrators indicates that between 1997 and 1998 the average federal government salary increased by 3.1% from \$44,330 to \$45,692. During this same period, the average state government salary increased by 3.4% from \$41,904 to \$43,308. Finally, the average local government salary increased by 3.5% from \$39,083 to \$40,440.

Comparability with other Corrections Officers

Both parties submitted evidence concerning the economic position of Hudson County corrections officers in comparison to other corrections officers in New Jersey. The County presented evidence concerning settlements in Monmouth and Bergen Counties which it argued showed that those counties provided wage increases to its officers which were similar to the County's Final Offer in this case. The PBA has asserted that the County's comparisons are meaningless because officers in all of the other counties are compensated in accordance with a step system, unlike Hudson County. It is the PBA's position that only through the establishment of a step system can the Hudson County officers begin to receive salaries which are competitive with those offered in other counties.

Interest and Welfare of the Public

This criterion is essentially a quality of life index. The issue before me is to determine which Final Offer or combination of the offers best serves the interests and welfare of Hudson County. Although financial concerns are included in this criterion, they are more fully addressed under the financial impact criterion. The role that they play in this issue is basically whether the cost of a settlement, while in the public's interest and welfare, would prove prohibitive. The answer here, as in most cases, is that it would not be.

Hudson County has the significant problems of many large urban areas. These include relatively high unemployment and poverty rates, and a low per capita income. The County points out that Jersey City, Union City, and West New York are all in Hudson County and have been ranked by the New Jersey Office of Management and Budget as among the top 10 most distressed communities in New Jersey. The residents of Hudson County also labor under a heavy tax burden, resulting from major increases in tax rates and reductions in tax ratables during the 1990s. On the other hand, the County has begun to show some signs of economic progress in the last couple of years. It recently experienced its best tax performance in a decade with a \$900 million increase in ratables and has enjoyed budget surpluses in the last 2 years.

It is obvious that it is in the best interests and welfare of the community to provide reasonable compensation for an essential service such as the corrections department, which is vital to the residents of the County. Regarding the economic condition of the County, it is clear that there has been some recent positive economic progress. However, this is tempered by the continuing difficulties facing the County as a result of the problems described above. Consequently, I conclude that this factor does not clearly favor the Final Offers of either party.

Financial Impact on the Governing Unit, Its Residents and Taxpayers

This criterion is best addressed as part of the rationale offered on an item-by-item basis. As set forth above, Hudson County has enjoyed some recent progress resulting from economic development. However, its residents carry a heavy tax burden and the County is predominantly an urban area which is faced with the same demands for services which are common in these municipalities. Although the County states that it is able to finance its Final Offer, it claims that an award in favor of the PBA would force a reduction in spending or an increase in taxes in order to avoid CAP problems. The PBA claims that, because of its proposed new schedule, its Final Offer is essentially self-funded.

From this record, it appears that although the County has enjoyed some economic progress recently, its financial resources are limited. This factor has been given due consideration in the determination of each proposal at issue in the arbitration.

THE FINAL OFFERS

The Final Offers made by each side have been fairly evaluated and examined in reaching the final wage and benefit package. It is important to realize that inclusion or exclusion is decided to a great degree on the reasonableness and necessity of each demand, in light of the statutory criteria.

SALARY INCREASES

The PBA seeks 5% raises for each of the five years of the new contract and the establishment of a step system, with employees moving forward on the step system each of the last three years of the contract.

The County offers salary increases of 3% over the five year agreement. It opposes the establishment of a step system.

Both offers, for the purpose of reaching the most reasonable resolution, are not acceptable. I have reviewed all of the economic data presented, the testimony offered, the CPI figures, recent settlements and awards among other corrections' officers units, the increases negotiated by other County bargaining units, the general public and private sector increases within the state, and the economic condition of the County. I have also considered the several hundred documents and pages of transcripts submitted by the parties. As should be apparent, the rendering of a proper Award was not an easy task for an Interest Arbitrator to perform.

Clearly, the step system is a significant point of contention. It is illustrative to review the past contracts between the parties.

The January 1, 1989 to December 31, 1991, contract contained a seven-step salary guide. As of January 1, 1991, the steps were:

<u>01/01/89</u>	<u>01/01/90</u>	<u>01/01/91</u>
*	\$18,000	\$19,500
*	\$19,000	\$20,500
*	\$21,125	\$21,500
*	\$23,125	\$24,000
*	\$25,325	\$28,000
*	\$27,125	\$30,000
*	\$32,900	\$36,200

The contract further provided in Article XXV

B. This salary guide will remain in effect but there shall be no automatic movement to the next step on January 1, 1992 subject to negotiations for a successor agreement.

C. Except as provided for above, each member of the Association shall move to the next higher step on January 1, 1990 and January 1, 1991. However, no

member is eligible to move from Step 1 to Step 2 until he or she has been employed for one full year. Any member of Step 1 who has been employed for less than one full year as of January 1, 1990, or 1991 shall move to Step 1 on January 1, 1990 or 1991 as applicable. On the member's anniversary date of hire the member shall move to Step 2 and shall thereafter move to the next step on January 1.

The January 1, 1992, to December 31, 1993, contract provided 3% increases.

Specifically, the Salary and Wages provision, Article XXV, stated as follows:

1. A. Wages shall be paid as follows:

<u>1/1/91</u> (prior salary)	<u>1/1/92</u> (3%)	<u>7/1/92</u> (3%)	<u>1/1/93</u> (3%)	<u>7/1/93</u> (3%)
19,500	20,085	20,687	21,308	21,947
20,500	21,115	21,748	22,400	23,072
21,500	22,145	22,809	23,493	24,198
24,000	24,720	25,461	26,225	27,012
28,000	28,840	29,705	30,596	31,514
30,000	30,900	31,827	32,782	33,765
36,200	37,286	38,404	39,556	40,743

B. A two-week salary lag shall be implemented by means of a salary holdback equal to ten working days' pay. The salary lag shall be implemented as follows: the County shall withhold one-half of one day's pay from each employee each pay period, for twenty consecutive pay periods. Once this withholding has been completed, all employees shall receive their full bi-weekly paychecks on a two-week lagging basis. New employees shall receive their paychecks on a two-week lagging basis immediately upon hire.

The current agreement negotiated for the period of January 1, 1994 through December 31, 1998, granted across the board increases. Specifically, it provided in relevant part as follows:

Section 1. Annual base salaries, with the exception of the starting salary, shall increase as follows:

5% effective January 1, 1994

5% effective January 1, 1995

5% effective January 1, 1996

5% effective January 1, 1997

5% effective January 1, 1998

The above salary increases shall be implemented in accordance with the annual salary schedules attached to this Collective Negotiations Agreement as Appendix B, and shall take the form of advancement to the next higher salary level, which advancement shall occur on January 1 of each year of the Agreement. Officers employed by the County as of November 9, 1995, will be placed upon the appropriate salary level based upon the salary they earned as of December 31, 1993, except that such officers first employed in 1994 will be placed on salary level 1 for 1994 and shall advance to salary level 2 effective on January 1, 1995, and that such officers first employed in 1995 prior to November 9, 1995, shall be placed on salary level 1 and shall advance to salary level 2 on January 1, 1996. Corrections officers in the employ of the County as of November 9, 1995, who are receiving "off step" salaries shall receive salary increases of 5% effective January 1 of each year of this Agreement.

Section 2. The starting salary for corrections officers shall remain frozen at \$21,947 for the life of this Agreement. All corrections officers hired after November 9, 1995, shall receive an annual salary of \$21,947, and shall remain at the salary of \$21,947 for their first twelve months of employment. After the completion of twelve months of employment, the officer will advance to the next higher salary level on the salary schedule for that year. Thereafter, the officer will advance one salary level on January 1 of each year of this Collective Negotiations Agreement.

Section 3. There will be no automatic step movement, salary level movement or automatic salary increases beyond the expiration date of this Collective Negotiations Agreement, i.e. December 31, 1998. All step and salary movement shall terminate effective upon the expiration of this Collective Negotiations Agreement, i.e. December 31, 1998.

APPENDIX B

	1993 Salary Schedule	1994 Salary schedule	1995 Salary schedule	1996 Salary schedule	1997 Salary schedule	1998 Salary schedule
1	21947	21947	21947	21947	21947	21947
2	23072	23044	23625	24150	24675	25200
3	24198	24226	24197	24806	25358	25909
4	27012	25408	25437	25406	26006	26626

5	31514	28363	26678	26709	26676	27348
6	33765	33090	29781	28012	28044	28012
7	40743	35453	34740	31270	29413	29446
8		42780	37226	36481	32833	30883
9			44919	39087	38305	34475
10				47165	41042	40221
11					49523	43094
12						52000

I find it significant that Hudson County and PBA Local 232 were the parties to an interest arbitration award issued on April 26, 2000, which covered the investigators employed by the Prosecutor's office. Significantly, in that case, the PBA also sought 5% increases per year, along with the establishment of automatic step increments. Arbitrator Frank Mason issued an award covering the period of January 1, 1999, through December 31, 2003. It provided for a 12-step system and 3% across the board increases for each year, except for a 3.5% increase for the final year of 2003. I am also aware of a May 31, 2000, settlement between Hudson County Prosecutor and PBA Local 232 Superior Court Officers. The settlement provided for a 2% increase on 1/1/98, and 3% increase for each year thereafter through January 1, 2003. This agreement did not include an automatic step system.

I believe that it is appropriate in this case to grant the PBA's request for an automatic step system. As noted above, Corrections Departments in the other counties do have automatic step systems. The Corrections Department in Hudson

County has been plagued by substantial turnover, which no doubt is partially caused by the relatively low wage rate for the bargaining unit employees. It was pointed out persuasively by counsel for the PBA that the limitation of wage increases to across the board increases were negotiated by the parties during difficult economic times for the County. It can be said that those economic conditions have improved for the County.

As noted by Arbitrator Mason, the establishment of step systems in the public sector was intended to ensure that salaries were at a sufficient level to attract competent employees and to provide for salary adjustments as employees became more competent in their work. I am certainly mindful that, although economic conditions have improved for the County, it still faces substantial limitations on its budget. I am confident that the award I will issue will not place CAP problems on the County. Although I have granted the PBA's proposal for a step system, I have not accepted its proposal for additional across the board 5% increases.

I have determined that the most reasonable wage increase is as follows:

- Effective and retroactive to January 1, 1999 – 3.0%
- Effective and retroactive to January 1, 2000 – 3.0%
- Effective and retroactive to January 1, 2001 – 3.0%
- Effective January 1, 2002 – 3.5%
- Effective January 1, 2003 – 3.5%

The wage increases provided for above effective and retroactive to January 1, 1999, and January 1, 2000, shall be based on the position that employees have on the 1998 Salary Schedule.

A salary step system providing automatic increment increases will be established effective and retroactive to January 1, 2001. There shall be 12 steps based on the 1998 Salary Schedule contained in Appendix B of the January 1, 1994-December 21, 1998, collective bargaining agreement between the parties. Beginning on January 1, 2001, employees shall be entitled to an automatic annual step increment each year, once they have served one year of service at the prior increment. The maximum pay rate shall be step 12.

WORK SCHEDULE

Article XXIII of the current agreement establishes the work schedule. It provides as follows:

Section 1. Subject to the conditions and limitations contained in this Article, corrections officers may be assigned to one of the following work schedules:

- a. Four days on duty and two days off duty within recurring periods of six calendar days, hereinafter referred to as the "4/2 schedule"; or
- b. Five days on duty and two days off duty within recurring periods of seven calendar days, hereinafter referred to as the "5/2 schedule."

Section 2.

- a. Subject to paragraphs b and c, below, the County retains the sole right to implement 5/2 and 4/2 schedules at any time and to determine the starting and ending days and time of each officer's 5/2 and

4/2 schedule. Unless the officer volunteers to the contrary and the County agrees, each 5/2 schedule officer shall be scheduled for two consecutive days off each 5/2 cycle. However, the County retains the full managerial discretion to schedule the two consecutive days off that the officer shall receive; that is, the County is not required to grant officers on the 5/2 work schedule weekends off.

b. Notwithstanding paragraphs a., above, the County agrees that any 5/2 schedule officer who as of November 9, 1995, was assigned to a duty post that has weekends off shall retain weekends off as long as the duty post remains in existence. The officer may be assigned by the County to any 5/2 schedule if said duty post is eliminated.

c. Notwithstanding paragraph a., above, whenever the County chooses to create a 5/2 work schedule for a duty post that involves weekends off, assignment to the duty post shall be based upon seniority, provided that the County determines that the employees' skills, abilities, experience, and other qualifications are otherwise equal.

Section 3. The County retains full managerial discretion to determine which employees shall work 5/2 and 4/2 schedules, and to assign employees on and off 5/2 and 4/2 schedules, regardless of work location or duties to be performed, subject to the following limitations:

a. Corrections Officers who are hired by the County subsequent to November 9, 1995, may be placed on 5/2 schedules or 4/2 schedules in the County's discretion and without limit.

b. Corrections Officers who volunteer for 5/2 schedules, regardless of their date of hire, may be placed on 5/2 schedules or 4/2 schedules in the County's discretion and without limit.

c. Corrections Officers who are assigned to 4/2 work schedules as of November 9, 1995, shall be grandfathered into 4/2 work schedules, and may not be placed on a 5/2 schedule unless they volunteer for placement on a 5/2 schedule.

d. Corrections Officers who volunteer for 5/2 scheduling may be returned to a 4/2 schedule only in the County's sole discretion.

Both parties have presented proposals to change the work schedule. The PBA proposes to replace the existing schedule with a schedule providing for four shifts. The shifts would be 8 a.m. to 4 p.m. (40 hours per week, Monday through Friday), 4

p.m. to 12 midnight (40 hours per week, Monday through Friday), and 12 midnight to 8 a.m. (37.5 hours per week based on a 4 days on, 2 days off schedule covering all 7 days). There would be a fourth shift of officers working only weekends. The weekend only employees would work 32 hours per week, based on 2 16-hour weekend shifts of 8 a.m. to midnight.

The County proposes that officers work seven 12.25-hour workdays within a 14-day work period. The shifts would begin at 10 a.m. and 10 p.m., with officers required to appear 15 minutes before the beginning of their shift for roll call. Under this proposal, officers would not receive overtime until they worked more than 86 hours in the 14-day work period.

In *Township of Teaneck*, PERC No. 2000-33, 25 NJPER 451 (30199, 1999), PERC set forth the standards which interest arbitrators should apply when considering proposals to change the work schedule. PERC stated that “before awarding a major work schedule change, an arbitrator should carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions.” The party which proposes the change in work schedule must present sufficient evidence supporting its proposal.

I have considered each party’s work schedule proposal based on these standards and find that neither proposal should be granted. The PBA’s proposal is opposed by the County for many reasons. It complains that the weekend only shift would result in 70 of the 380 officers working only 32 hours per week. The County claims that this would require it to assume significant overtime costs each week. The County also asserts that the PBA’s proposal would maintain the 5/2 and 4/2 schedules which have proven costly to the County because of overtime costs. The PBA claims that its proposal would save the County so much money that it would

largely finance its proposal for salary increases and a step system. The PBA relies on the testimony of Captain Krusznis who testified that, during a pilot project in which the PBA's proposed schedule was used for superior officers, the amount of overtime was drastically reduced. Captain Krusznis estimated that if the schedule was used for rank and file officers it would result in a 66% reduction in overtime, with the County saving \$2.3 million.

I cannot accept the PBA's proposed new schedule. Contrary to the PBA's claims, I do not believe that the record evidence establishes that the PBA's proposed schedule would result in the large savings claimed. This claim of savings is essentially based on the testimony of one witness speculating as to what savings might result from this schedule. Additionally, the speculation is based on the limited experience of a pilot program with the superior officers. The rank and file officers in this case have different responsibilities than the superior officers, such as being assigned to particular posts, which limits the ability of the Employer to work with less than a full staff on a shift. It is also of obvious significance that the County opposes the PBA's work schedule and has expressed concerns about the number of work hours which could be lost under that schedule. The County has the responsibility for operating the jail in a safe and efficient manner and its concerns should not be rejected lightly.

Accordingly, although it is certainly possible that the work schedule proposed by the PBA could work well at this facility, given the uncertain nature of its costs and the opposition of the County, I will not require that the schedule be adopted by awarding it in arbitration. It is of such magnitude that I believe that it is something that should be gained as a result of collective bargaining between the parties, and not imposed by an interest arbitrator.

The County's proposed new schedule is opposed by the PBA. The proposed schedule calls for placing employees on a 14-day work period and requiring workdays of 12.25 hours. The PBA complains that this proposed schedule contains significant givebacks which are unwarranted. It particularly points out that the County is seeking to eliminate the right of employees to be paid overtime for working more than 40 hours in a week pursuant to the Fair Labor Standards Act (FLSA). The County's proposal that officers work seven 12.25 hour work days within a 14 day work period provides that officers would not receive overtime until they worked more than 86 hours in the 14 day work period. Officers currently receive overtime if they work more than 8.25 hours according to Article XXIV of the contract or more than 40 hours a week in accordance with the FLSA. The County's proposal also contains language stating that officers have historically worked a work period of 14 days within the meaning of the FLSA. The PBA objects that the officers have not historically had their hours scheduled based on a 14 day work period.

The County stresses that its proposed work schedule is very important because it will enable it to reduce the high costs of overtime and it will increase the number of man-hours at the jail so as to permit it to better operate the jail as a direct supervision facility. It also points out that its proposal will ensure that all officers receive some weekends off and it will better enable officers to plan their personal lives by greatly reducing the amount of mandatory overtime assigned to officers.

I have given careful consideration to the County's proposal. The County's claimed goal of producing more man-hours so that it can better operate as a direct supervision facility is certainly reasonable and laudable one. However, the County is attempting to reach this goal by increasing the number of hours that officers must work without receiving overtime pay. The County's proposal will extend the regular work period to 14 days and provide for overtime pay only after officers have worked

86 hours during this two week period. The County seeks to limit any rights the officers may have to receive overtime under the FLSA by including language stating that the parties agree that the officers have historically worked a 14 day work period within the meaning of Section 7(k) of the FLSA. As argued by the PBA, the parties have not historically worked a 14-day work period.

I do not believe that it would be appropriate for me as an interest arbitrator to direct the inclusion of language sought by the County which states that there was an agreement between the parties concerning the work period historically followed, when evidence regarding such agreement is lacking. Additionally, the expressed interest of the County in this language is to apparently increase the number of hours worked by officers which will not require overtime pay based on the contract or the FLSA. This sort of concession would be appropriate if it was the result of collective negotiation (as stated earlier respecting the PBA's proposal on this subject). However, the record does not support the necessity for the arbitrator to step in and direct that the PBA will lose rights regarding overtime, which it has gained in past agreements. I also believe that ordering such a change in the schedule without the consent of the employees' representative would negatively impact on employee morale and working conditions. These parties could certainly agree during collective negotiations to change the work schedule in the manner that is proposed by the County. However, I have not been convinced of the necessity of the proposal, given the PBA's objections and it is denied.

Therefore, I will not grant the work schedule proposals of either party. To the extent that the parties wish to change the schedule, they may wish to consider further negotiations on the subject.

DIRECT DEPOSIT

The County seeks to establish a system of direct deposit of employee paychecks. It also calls for the elimination of the current practice of providing early release of paychecks and the advancement of vacation checks. The PBA does not oppose the introduction of direct deposit. However, it seeks to continue the current practice of early release of paychecks and the advancement of vacation checks.

The introduction of direct deposit is not opposed and is obviously a sensible proposal which will be granted and included in the new contract. The current practice of early release of paychecks and advancement of vacation checks may be discontinued. The officers' funds will now be available immediately in their bank accounts. Accordingly, there will no longer be a need to travel to the facility to pick up a paycheck or to obtain that check early so as to avoid a trip to work on a day off. Therefore, the County's proposal regarding direct deposit is granted.

VENDING MACHINES

The County has presented a proposal concerning the operation of vending machines at the correctional facility. It seeks a warranty from the PBA regarding the condition of the machines, a requirement that the PBA obtain insurance, an indemnification provision, and restrictions regarding the use of proceeds from the machines. The PBA opposes this proposal.

The County's proposal would be appropriate in a commercial agreement. I do not find the terms appropriate for a collective negotiations agreement which traditionally addresses the wages, hours, and working conditions of bargaining unit employees. Therefore, the proposal is denied.

PAST PRACTICE

The County seeks a new provision in the contract which would provide that any past practice not identified in the contract is deemed waived and no longer binding. The PBA opposes this provision.

The proposal is certainly an appropriate provision to be considered during negotiations. Of course, if adopted it could have many ramifications which the parties have not fully addressed and may not have considered. The PBA opposes the provision. I will not direct its inclusion in the contract.

SICK LEAVE

The County seeks to eliminate the sick leave incentive provision contained in Article XII. It claims that the provision is burdensome to administer because it requires the County to recalculate an officers pay rate and overtime if a sick leave incentive is awarded. It is unclear what the PBA's position is on this proposal.

The provision reflects an economic incentive for employees achieved through prior negotiations. Although it apparently presents some administrative problems for the County in processing the incentive awards, I do not find that it has been shown by the evidence that any such problems demonstrate the necessity to eliminate this economic benefit. Therefore, the proposal will not be granted.

AMERICAN MADE CLOTHING

The County has proposed that employees be required to purchase American made clothing if available when purchasing uniforms or other clothing items with a County voucher or allowance. The PBA opposes this proposal, claiming that if its members made more money they would consider the proposal.

The record was unclear as to whether the County pays the full cost of such uniforms or other clothing items. Therefore I will grant the proposal in part. To the extent that the County will pay the full cost of purchasing uniforms or other clothing items required to be worn by officers, the proposal will be granted. If the County does not wish to pay the full costs of uniforms or other clothing items required to be worn by officers, the proposal will be denied.

ARTICLE XXVII – SHIFTS, ASSIGNMENTS AND REPORTING TIME

The County proposes a new Section 6 to the article which will provide that “when more than one (1) officer is assigned to a post, the most senior corrections officer shall be in charge.” The County asserts that this provision is necessary to reduce confusion and make clear to all officers which officer will be the responsible officer. It appears that this proposal is not opposed by the PBA.

The proposal is granted.

CONCLUSION

The Arbitrator has listened to days of testimony, reviewed hundreds of exhibits and absorbed hours of counsels’ arguments in oral argument and written briefs. The County has enjoyed some recent economic progress. It also faces the substantial problems common in large, older, urban centers. This award seeks to stabilize wage increases over the five-year term of the agreement. The parties separate proposals for

the establishment of a new work schedule were not awarded because neither party proved the necessity and reasonableness of their proposals. Having well considered all of the proposals under each of the statutory criteria, I award the following:

AWARD

TERM OF AGREEMENT

Effective January 1, 1999, through December 31, 2003.

SALARY INCREASES

Effective and retroactive to January 1, 1999 – 3.0%

Effective and retroactive to January 1, 2000 – 3.0%

Effective and retroactive to January 1, 2001 – 3.0%

Effective January 1, 2002 – 3.5%

Effective January 1, 2003 – 3.5%

The 3% wage increases provided for above effective and retroactive to January 1, 1999, and January 1, 2000, shall be based on the position that employees had on the 1998 Salary Schedule.

A salary step system providing automatic increment increases will be established effective and retroactive to January 1, 2001. There shall be 12 steps based on the 1998 Salary Schedule contained in Appendix B of the January 1, 1994-December 21, 1998, collective bargaining agreement between the parties. Beginning on January 1, 2002, employees shall be entitled to an automatic annual step increment each year, once they have served one year of service at the prior step. The maximum

pay rate shall be step 12. Each step in the Salary schedule shall receive the percentage increases set forth above for the five-year contract.

NEW PROVISION – ARTICLE XXVII, SECTION 6

Article XXVII shall be amended to provide for a Section 6 which shall state: “when more than one (1) officer is assigned to a post, the most senior corrections officer shall be in charge.”

NEW PROVISION – UNIFORMS

To the extent that the County will pay the full cost of purchasing uniforms or other clothing items required to be worn by officers, officers who are provided vouchers or allowances to purchase such clothing and have been informed by the County as to where they can purchase such clothing, shall purchase uniforms or clothing made in the United States, unless United States manufactured is not available. If the County does not pay the full costs of uniforms or other clothing items required to be worn by officers, the officers will be under no obligation to purchase uniforms or clothing made in the United States.

NEW PROVISION – DIRECT DEPOSIT

The County may establish a system of direct deposit of employee paychecks. If the system provides that deposits of payroll checks will be made into officers’ bank accounts on the established pay date, the County may eliminate the practice of providing early release of paychecks and the advancement of vacation checks.

ALL OTHER PROPOSALS ARE DENIED

Robert E. Light

ROBERT E. LIGHT, Interest Arbitrator

STATE OF NEW JERSEY :
:SS
COUNTY OF MIDDLESEX:

On this ^{23rd} day of March, 2001, before me personally came and appeared ROBERT E. LIGHT, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

Ellen Orlandini

ELLEN ORLANDINI
Notary Public of NJ