

PUBLIC EMPLOYMENT RELATIONS COMMISSION

XX

In the Matter of the Arbitration Between)
)
COUNTY OF ATLANTIC,)
)
EMPLOYER)
)
AND)
)
FOP LOCAL 34,)
)
UNION)
XX)

**SUPPLEMENTAL
INTEREST ARBITRATION
OPINION AND
AWARD**

DOCKET NO. IA-2007-057

**BEFORE
GERARD G. RESTAINO
INTEREST ARBITRATOR**

APPEARANCES:

FOR THE COUNTY OF ATLANTIC
ERIC BERNSTEIN, ESQ.
JAMES FERGUSON

COUNTY LABOR COUNSEL
COUNTY COUNSEL

FOR THE UNION
MYRON PLOTKIN
GEORGE HEBERT
KEITH WALDMAN

LABOR CONSULTANT
UNION PRESIDENT
UNION COUNSEL

PROCEDURAL BACKGROUND

I submitted an Interest Arbitration Award (Docket No. IA-2007-057) between the County of Atlantic and FOP Lodge 34. The Award was dated April 2, 2010. The County filed an appeal with PERC. PERC remanded the Award back to me on August 12, 2010, and asked me to clarify specific issues. On September 1, 2010, I submitted the information requested by PERC. On February 3, 2011, the County remanded and vacated the Award back to me for reconsideration and issuance of a new Award. PERC also indicated that the Award had to be issued within thirty days of the decision. I requested an extension of time to submit the Award and the extension was granted by both parties.

To make it easier to follow my Supplemental Award, I have added as Appendix A and B the Table of Contents for Exhibit books one and two introduced by the County. The County introduced four Exhibit books; two of them were for contractual provisions and two were their financial materials. The FOP introduced two exhibit books; one was for comparables and one was in support of its economic offers.

The parties had agreed to use comparables within the ten southern counties in the State of New Jersey. The County challenged some northern counties that the FOP utilized because the cost of living is higher in those areas than in South Jersey. However, it must be noted that in Appendix B the County utilizes Middlesex, Union and Somerset Counties, as well as Bergen and Warren Counties at page 32 of its post-hearing brief dated April 23, 2009. The County also utilized the Interest Arbitration Award of Arbitrator James Mastriani State of New Jersey (Corrections) and PBA 105 Docket IA-2008-014. I did not set aside any of the documents submitted by either party.

While both of them argued about the relevance of documents outside of the ten southern counties, it is for the Arbitrator to determine the weight of those exhibits and the relevance of those exhibits in the matter before me.

HEALTH BENEFITS UPON RETIREMENT:

Currently, an employee who retires shall be eligible for County paid health benefits for himself/herself and eligible dependents for three years after retirement, commencing with the employee's retirement date. Currently under N.J.S.A. 40A:10-23, retirement is defined as having 25 years or more of service credit in the State Pension Plan or upon reaching the age of 62 years or older and having at least 15 years of service with Atlantic County. The County proposed that in addition to being enrolled in State Pension Fund for 25 years, the employee must also have a period of full time service of 25 years in Atlantic County. The County also proposed that their proposal is to be effective January 1, 2007.

Of the seven law enforcement groups employed by the County: (1) Prosecutor's Office, PBA 77, rank and file; (2) PBA 77 SOA; (3) FOP 112, Lieutenant/Captain; (4) Sheriff's Officers 243 rank and file; (5) PBA 243 SOA; (6) FOP 112 Sergeants; (7) FOP 34, five or 72% have language that the County is proposing while two or 28% do not.

In addition, CWA Locals 1040, 1034 (2 units) AFSCME Locals 3408, 2302, IBT Local 331 (3 units) and JNESO all have the language the County proposed.

The County's proposal is predicated upon a resolution approved by the Atlantic County Board of Chosen Freeholders a few years ago. It was expressed to me during the formal and informal sessions that the County wants to be consistent with this language in all collective bargaining agreements for County employees.

The County has met its burden within Standard 2, subsections (b) and (c). The full text reads:

- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

Under the County's proposal a CO who retired in 2007 would have coverage until December 31, 2010. The average lay person reading the County's proposal may not see the significance to the proposal. However, the impact of the proposal may have serious consequences to any County employee who does meet the clear language of the County's proposal. While my Award did not agree to the County's position, and I modified it in the original remand, nevertheless, the comparables found in County Book 1 establish that the position advanced by the County is correct.

Accordingly, I agree to the position advanced by the County and the language in the Agreement will read as follows:

Effective January 1, 2007, "An employee who retires shall be eligible for County paid health benefits for himself/herself and eligible dependents for three years after retirement, commencing with the employee's retirement date. Retirement is currently defined in accordance with N.J.S.A. 40A:10-23 as having twenty-five (25) years or more of service credit in the State Pension Fund and a period of full-time service of twenty-five (25) years in Atlantic County at the time of retirement or upon reaching the age of 62 or

older and having at least fifteen (15) years of service with Atlantic County.”

SHIFT DIFFERENTIAL:

At page 6 of the County's May 20, 2010, appeal of my Award, the following statement appears: *“A review of the Opinion and Award reveals that the Arbitrator blindly accepted the comparables that were presented by FOP Lodge 34 and failed to address those comparables presented by the County.”* And in that same document at page 14 the County states, *“In fact, as expressly stated in the County's Interest Arbitration Brief, no other employees of the County, law enforcement or otherwise, receive shift differentials.”* At page 27 of the County's April 23, 2009, brief, the County references shift differentials in Middlesex County for PBA 152 and Union County for PBA 199A.

The County submitted 16 documents and of those 16 the FOP submitted 10. I determined after reviewing all of the documents in evidence that I would award shift differential at the amount of \$.50 per hour for shift 0730 to 1530 and \$.55 per hour for shift 1530 to 2330. Part of my analysis was the references by the County at page 27 it's April 23, 2009.

While the County is correct that no law enforcement groups employed by Atlantic County receive shift differential, their own exhibits belie their bold position that no County employees receive shift differential. Book 1, tab 3 is the Agreement between the County and JNESO. That Agreement is for a period of January 1, 2005, through December 31, 2007. Article 27 is a shift differential *where “employees working the evening shift will be paid a differential of ten percent (10%) and the night shift will be*

paid a differential of fifteen percent (15%).” Book 1, tab 19 for IBT Local 331

(White/Blue Collar/Public Safety) for the period of January 1, 2008 through December

31, 2010, Article 12, Section D states,

“Effective January 1, 1999, Communication Operators working the second and third shifts will receive a shift differential of twenty-five cents (\$.25) per hour.”

Tab 10 in Book 1 for AFSCME Local 3408 for the period of January 1, 2007,

through December 31, 2010, Article 24, Section A states,

“Effective January 1, 1988, eligible employees will receive a shift differential which will be paid bi-weekly. Eligible categories are as follows: Senior LPN and LPN, second shift \$1.00 per hour, third shift \$1.00 per hour; Institutional Attendant and Senior Institutional Attendant, second shift \$.90 per hour, third shift \$1.00 per hour; Building Service Worker, Building Maintenance Worker, Senior Building Service/Maintenance Worker, Dietary Aid and Food Services Worker, second shift \$.50 per hour, third shift \$.75 per hour.”

Moreover, part of Tab 3 in Book 1 for the JNESO contract, there is a Memorandum of Agreement for a new term of January 1, 2008, through December 31, 2010. Mediator Lorraine Tesauro assisted the parties in reaching this agreement. Of significance are sections 3 and 4 of the MOA.

Section 3

“The Union and the County agree that the terms of the predecessor contract shall be incorporated into the successor contract except as modified by the items contained in Section 2 listed above.”

Section 4

“This Memorandum of Agreement contains all of the terms and conditions on which agreement has been reached between the Union and the County. Any proposals not contained herein are deemed to have been withdrawn or waived.”

Those two provisions establish without reservation that the County’s own documents confirm that the successor agreement with JNESO did not remove Article 27 shift differential. Accordingly, it remains in effect.

If there have been any changes in shift differential paid to the three enumerated Unions above, they were not done so with the exhibits presented to me. If it has occurred since my Award has been submitted, they are not binding upon me because the only documentation I can utilize were the documents submitted to me by the parties at the time of the hearings.

What is somewhat frustrating here is that PERC asked me to review the factual dispute when I said a shift differential occurs, and the County said shift differential does not occur. The County accused me of blindly accepting comparables submitted by the FOP when in fact I accepted the comparables submitted by both parties and most importantly the County's comparables established that a shift differential existed in Atlantic County for employees who work a 24/7 operation.

I incorporated into the comparability standard those County run facilities which operate on a 24/7 basis. I can't address why the FOP Sergeants, Lieutenants and Captains do not have a shift differential. I just have to look at the facts that are presented to me, and the facts presented to me clearly show that there is justification for a shift differential for FOP Lodge 34.

One of the major issues that apparently the County and the reviewers of my Award are missing is that I looked at standard 2 comparability as a major issue for me with respect to making determinations in my Award. While other law enforcement County employees in Atlantic County do not receive a shift differential, when the County makes the statement that no one else does, it is not only an error; it is just false based upon their own documents. Accordingly, there is no reason to modify the shift differential award that I rendered on April 2, 2010, because my determination was

based upon credible comparables submitted by both parties, and in particular the County's own exhibits which show that a shift differential does in fact exist within three separate bargaining units. Those bargaining units represent employees who work in a 24/7 facility, just as FOP 34 bargaining unit members do.

HOLIDAY PAY AND OVERTIME REFUSAL:

The current language states that there shall be 13 paid holidays per year, of which ten (10) shall be paid in a lump sum at the rate of time and one-half the straight time hourly rate by the 15th of November of each year. The remaining three holidays shall be celebrated on Thanksgiving Day, Christmas Day and New Year's Day

The first problem I have with this issue is that the holidays are not named. Therefore, I reviewed County Exhibit Book 1 to find out what language appears in other law enforcement contracts and other contracts within the County. The following is an analysis of what I found:

A. Prosecutor's Office, Rank and File (Tab 4, Book 1).

This particular contract references the following thirteen (13) holidays:

1. New Year's Day
2. Martin Luther King Birthday
3. Lincoln's Birthday
4. Washington's Birthday
5. Good Friday
6. Memorial Day
7. Fourth of July
8. Labor Day
9. Columbus Day
10. General Election Day
11. Veterans' Day
12. Thanksgiving Day
13. Christmas Day

B. Superiors in the Prosecutor's Office (Tab 5, Book 1):

“There should be thirteen (13) paid holidays as published by the County. The employees shall receive one holiday’s pay for each holiday.”

C. Sheriff’s Office, PBA 243 Rank and File (Tab 12, Book 1).

This particular contract references the following thirteen (13) holidays:

1. New Year’s Day
2. Martin Luther King Birthday
3. Lincoln’s Birthday
4. Washington’s Birthday
5. Good Friday
6. Memorial Day
7. Fourth of July
8. Labor Day
9. Columbus Day
10. General Election Day
11. Veterans’ Day
12. Thanksgiving Day
13. Christmas Day

D. Sheriff’s Office, SOA (Tab 6, Book 1):

“There shall be thirteen (13) paid holidays as published by the County. Employees shall receive one day’s holiday pay for each holiday.”

E. FOP Lodge 112, Correction Sergeants (Tab 14, Book 1):

“There shall be thirteen (13) paid holidays, of ten (10) shall be paid in a lump sum at the rate of time and one half on the fifteenth (15th) of November each year. The remaining three (3) holidays shall be celebrated on Thanksgiving Day, Christmas Day and New Year’s Day.”

F. FOP Lodge 112, Lieutenant and Captains (Tab 13, Book 1):

“There shall be thirteen (13) paid holidays, of ten (10) shall be paid in a lump sum at the rate of time and one half on the fifteenth (15th) of November each year. The remaining three (3) holidays shall be celebrated on Thanksgiving Day, Christmas Day and New Year’s Day.”

G. United Workers Union (Tab 9, Book 1):

This particular contract references the thirteen (13) holidays as specified in C above (Sheriff’s Office PBA 243 Rank and File)

H. IBT Local 331, White/Blue Collar/Public Safety (Tab 19, Book 1):

This particular contract references the thirteen (13) holidays as specified in C above (Sheriff's Office PBA 243 Rank and File)

I. IBT Local 331, Superintendent of Elections/Board of Elections (Tab 20, Book 1):

This particular contract references the thirteen (13) holidays as specified in C above (Sheriff's Office PBA 243 Rank and File)

The County proposed to reduce the holiday pay from time and one-half to straight time. Additionally, the County did not want the right of overtime refusal to occur on the thirteen (13) recognized holidays and Superbowl Sunday. The three FOP bargaining units in the correctional facility all receive time and one-half for holiday pay. It appears to me that due to a 24/7 operation, a decision was made to pay for the thirteen (13) recognized holidays so as not to interfere with scheduling. A pattern currently exists for paying time and one-half for holidays at the Correctional Facility.

I denied the County's proposal to reduce the payment from time and one-half to straight time. However, I did indicate that you could not call out on ten of the recognized holidays. It is more appropriate from a contractual standpoint to have the holidays listed in the Agreement rather than just say thirteen (13) recognized holidays. **Therefore, my Award will reflect that the named holidays that have appeared in all of the other contracts that I have reviewed shall appear in this contract.**

When a Correction Officer calls off, it does create an overtime problem for the County. That was evident throughout the formal and informal discussions I had with the parties. The County was insistent that they needed to have some control over the overtime. The County also was in agreement that a Correction Officer can refuse overtime twice a year.

The County suggested in page 8 of its April 2009 brief, *“Prohibiting the privilege of overtime refusal from being exercised on holidays and/or Superbowl Sunday is necessary to ensure sufficient staffing on those days when everybody wants to be off.”* I agreed to the concept that the County is pursuing; however, I do not agree to the inclusion of all the holidays.

While the County argues that virtually no other employees are paid time and one-half for holiday pay, the practical imperative of that position is to ignore the pattern that currently exists within the correctional facility. Utilizing Standard 2 comparison of the wages, salaries, hours and conditions of employment and in particular subsection (c) clearly shows that a pattern of bargaining exists within the three (3) FOP units at the Correctional Facility, and I am not prepared to upset, overturn or set aside that clear, lucid pattern. However, I have reviewed my Award and First Supplemental Award and believe the following is necessary to modify the existing Article 4 – Overtime. The new language is as follows:

“An Officer shall have the option to refuse mandatory overtime two (2) times per calendar year. Overtime refusal shall apply to Thanksgiving Day, Christmas Day and New Year’s Day. Overtime refusal shall not apply to the ten (10) remaining recognized holidays or Superbowl Sunday. On Superbowl Sunday, Correction Officers assigned to work Superbowl Sunday cannot call out and utilize that day not to appear at work now. This means the stick list is not being utilized or minimally utilized because of long-term absences on that particular day and all assigned employees will be present. If an Officer does call out sick at least one day prior to Superbowl Sunday, and at least one day after Superbowl Sunday, that Officer must present a physician statement. Personal days, vacation days, compensatory days and administrative days cannot be utilized on Superbowl Sunday without the prior approval of the Officer’s immediate supervisor. Any verified violation of the above will result in disciplinary action against that Officer(s). This provision shall not apply in emergent situations and whether a situation is deemed emergent shall be determined by the Shift Commander.”

By not being able to call off from work on the ten (10) recognized holidays, plus the day before Superbowl Sunday, Superbowl Sunday and the day after Superbowl Sunday, the County saves on overtime. If a Superior Officer does grant somebody the right to be off on one of the above days, they are flying in the face of my language and are also flying in the face of the County's goal to reduce overtime costs.

The language in the Lieutenants/Captains and Sergeants Agreements with FOP Lodge 112, specifically states that if those employees,

"Are required to work on one of these three holidays they shall receive, in addition to their holiday pay, time and one-half of the regular straight time hourly rate of pay for all hours actually worked on the holiday."

Article VIII, Section B of the current FOP 34 Agreement states,

"In the event an employee is required to work on the above three holidays, they shall be compensated for such work at time and one-half the straight time hourly rate."

The three holidays referenced in all of the above Agreements are Thanksgiving Day, Christmas Day and New Year's Day.

If I accepted the County's argument that FOP 34 members would receive straight time pay for the thirteen (13) holidays, they would still receive payment at time and one-half of the straight time hourly rate if they worked Thanksgiving Day, Christmas Day and New Year's Day.

It may very well be that the compensation may be in the form of compensatory time instead of being added to a paycheck.

I am not convinced that the information presented to me is sufficient enough to have me change or set aside a well-established pattern of bargaining. The time and one-half payment has existed since at least 2005. (see Correction Sergeants, Tab 14, Book 1).

I believe the new language set forth above addresses the ability for the County to save money on overtime at the Correction Facility. Moreover, based upon the credible evidence presented at the hearings and supplemented by post hearing briefs.

I am not convinced that the time and one-half payment for holidays should be removed from the Agreement

\$1,200.00 EQUITY ADJUSTMENT:

When PERC remanded the instant matter back to me (see page 15 of the remand) they stated that there was an *“unexplained inconsistency in the Award and comparability analysis used by the Arbitrator.”* In order to fully address the \$1,200 equity adjustment we have to go back to how it was created for PBA 243. Previously, Sheriff Officer represented by PBA 243 would transport prisoners to and from hospitals. They were paid overtime for that. The Sheriff’s Officers represented by PBA 243 gave up that overtime and in exchange for that they received \$2,000 per person on each step. That was a one-time bonus given to them. Additionally, at the same time \$1200 was placed on the maximum step as an equity adjustment.

Consistently throughout its presentation, FOP Lodge 34 kept introducing exhibits referencing the top step of the PBA 243 salary guide and that for years the difference between PBA 243 and FOP 34 as it relates to the top step is between 5% and 6%. In fact, FOP 34 introduced Exhibit M with nine separate sub-exhibits just detailing what that was and how that difference was developed over a period of years.

I denied the \$2000 for FOP 34 because there was no “quid pro quo.” They did not give up anything as did PBA 243. What appears to be confusing is the fact that I said that pattern bargaining does not exist which prompted questions being asked by

both the County and PERC concerning pattern bargaining. Essentially, both were saying if a pattern does not exist, how could the \$1200 equity adjustment be awarded to FOP 34?

The reason for it is based upon my analysis of everything that was presented to me. I specifically stated at page 85 of my Award, *"Pattern bargaining means that the components that make up the pattern have to be consistent. There is no consistency here the moment PBA 243 received the one-time payment of \$2000 because they eliminated the work of hospital/custodial duty."* FOP 34 could not receive the \$2000 because they did not give up anything. I have previously indicated that. The equity adjustment is separate and apart from the \$2000. The equity adjustment is for the top step of the salary guide to keep the workforce stable.

While the County objects to me saying that there is not a stable workforce, I have no problem with reopening the hearing to review documentation concerning how many correction officers represented by FOP 34 have left in 2007, 2008, 2009 and 2010, and the reasons for them leaving, whether it was for retirement or other reasons. Additionally, when somebody leaves and is replaced, the difference in salary goes to the County. That is the so-called breakage money. I addressed breakage money on pages 55/56 of my Award. I also addressed on those pages the impact on average salaries with a high turnover. My experience as an Interest Arbitrator has shown me that typically correction officers do not transfer from a municipality, County Sheriff's Office, Prosecutor's Office or even the NJ State Police. They are usually hired "off the street" after being interviewed and assessed by the County. After working a specified number of years as a correctional officer, there is a turnover when some move on to a higher

paying law enforcement position. Some transfer into a supervisory law enforcement position in the same facility. In the entire pyramid of salaries paid to law enforcement facilities, Correction Officers toward the bottom. Correction Officers leave the correctional facility to work for a municipality, a Sheriff's Department, potentially the Prosecutor's Office, and potentially for the State Police. It is my understanding that no one becomes a Correction Officer who has already served as a Municipal Police Officer or Sheriff's Officer. Therefore, to maintain a stable workforce and to keep the workforce in place I put the \$1200 equity adjustment on the top step of the Salary Guide. There is no inconsistency in my Award. In fact, if you look at PBA 243 and PBA 77 Rank and File and Superior Officers, that same concept was applied there. I saw the \$1200 equity adjustment applied by Arbitrator Glasson to PBA 243 and I did the same thing with PBA 77 Rank and File and Superiors. I did the same thing with FOP 34. I fail to understand why a \$1200 equity adjustment is okay for PBA 243 and PBA 77 but it is not okay or acceptable for FOP 34.

PBA 77 received a 4% increase in 2007, a 4% increase in 2008 and in 2009 a \$2800 equity adjustment was added to the top step and it was graduated downward to the first step. The top step was then increased by 4%. In 2010, \$2000 was added to the top step and it was graduated downward to the first step. After that the top step was again increased by 4%.

For FOP 34 I did not extend the \$1200 equity adjustment to each individual step. I simply put it on the top step. As people went through the Salary Guide they would receive salary increases because of the structure of the new guide that I created, and there would also be \$1200 at the top step.

The same concept that was used for shift differential using Standard 2(c) was utilized for the \$1200 equity adjustment. It is a similar jurisdiction, and all groups are doing law enforcement work. I wasn't addressing something that was out of the norm for law enforcement employees in Atlantic County.

The County argues that I didn't address the lawful authority of the Employer or the cost of living standard within my Award. PBA 77 for the same time frame 2007-2010 received 4% on the top step after the equity adjustment had been made. The 4% for four years is 16%. I awarded 15.75% over four years for FOP 34. I fail to see how the County can argue that my Award was excessive when I was the Interest Arbitrator with the same County Council and the same County Labor Counsel when we concluded PBA 77. If you want to talk about an inconsistency, it exists right there.

The \$1200 equity adjustment was created and developed with substantial credible evidence from other law enforcement employees employed by Atlantic County. Apparently, the County fails to address that. The County is simply arguing that the \$1200 is not necessary, and the Arbitrator did not address the \$1200 with respect to the lawful authority of the Employer. Unfortunately for the County I did, but they don't recognize it.

The lawful authority of the Employer was not breached or compromised by me in view of the fact that the County proposed 16.9% over four years. I would expect the Union to be proposing those types of numbers rather than the Employer, but the Employer front-ended their final offer with 4.8%. When the County made that final offer, they specifically said we meet the lawful authority of the Employer within the standards for interest arbitration, and we are not in violation of any CPI. The chart below shows

the County's final offer as it relates to the CPI, PERC Awards and my Award. It must be noted that the 2009 percentage was not available until 2010. The County's position said to me I don't have to go into any in depth analysis of the CPI or the lawful authority of the Employer based upon its County's final offer. In fact the statute specifically requires me to explain which of the standards are relevant and which are not. That is exactly what I did.

YEAR	COUNTY FINAL OFFER	PERC AWARDS	CPI	MY AWARD
2007	4.8%	3.77%	2.2%	4.0%
2008	4.0%	3.73%	3.4%	4.0%
2009	4.1%	3.86%	0.4%	3.75%
2010*	4.0%	2.43%	2.0%	4.0%

* January 1, 2010 through June 30, 2010. My Award is dated April 2, 2010.

Had the County's final offer been 2.75% or 3%, I would have addressed it differently. But when the County offers 16.9% without compounding over a four year period, it certainly tells me that there is no problem with the lawful authority of the Employer. However, there is further justification for what I did based upon the documentation submitted by County Treasurer Jane Lugo. It should be noted that FOP 34's financial consultant, Dr. Rafael Caprio testified at the hearing and submitted 30 separate exhibits concerning the County's financial capacity. The County did not submit exhibits of that type. The County relied upon the testimony of Ms. Lugo and the three (3) page document she submitted to the County's labor counsel which was ultimately incorporated into my Award.

Both Ms. Lugo and Dr. Caprio agreed that the County receives on average \$2.5 million of miscellaneous revenue. Ms. Lugo stated that the County's correct surplus for 2004 was \$17.3 million but was a reduction from the 2003 surplus of 2.1%. In 2003, the

County experienced a 9.5% reduction in surplus from 2002. Ms. Lugo also said that in 2008 the surplus was \$15.5 million, a 25.74% reduction in surplus balance.

Furthermore she stated that in 2008 *“the County needed to replenish their surplus by over \$10.5 million, but was only able to add \$5.2 million to the fund balance. For this to continue, the 2009 surplus would be less than \$13 million.”* As indicated previously, the surplus through 2009 has remained relatively static as has the amount utilized to support the budget. Ms. Lugo is referencing the fact that the County had sufficient surplus to fund the settlement. The purpose of surplus is not to just keep it lying in some vault or to play King Midas. The purpose of surplus is to use that money to offset against tax increases for the next year’s budget. Ms. Lugo also stated that she agrees with Dr. Caprio’s statement that the County does in fact replenish surplus annually.

Ms.Lugo also stated:” *Mr. Caprio maintains that the County has a pattern of over-budgeting. It is my contention that any appropriations that lapse into surplus are evidence of management controls that are implemented when delaying projects, keeping vacancies open, and general fiscal responsibility....Mr. Caprio fails to address balances that are needed to satisfy future negotiations with the Assistant Prosecutor’s, Investigators and Agents in the Prosecutor’s Office (Constitutional Officers), this negotiation (Public Safety) and Intergenerational Services (Human Services). Excluding those balances, Mr. Caprio’s reserve amount is reduced to less than \$1.2 million.”*

“Ms. Lugo’s further response to Dr. Caprio indicated: *“The added information for 2008 tends to support Mr. Caprio’s statement that the County cancels prior fiscal year appropriations of approximately \$ 2 million; however, it is because of the enforcement of internal fiscal policies that these funds are available. The County continually monitors revenues and expenditures to determine fiscal impact and makes decisions on filling vacancies and moving forward with budgeted projects so that the County can replenish the surplus.”*

These are just bits and pieces taken from the three page letter from Ms. Lugo to County Labor Counsel. PERC asked me to determine what aspects of her comments I utilized in reaching my determination. Ms. Lugo confirms that the County has the money to fund its final offer which was 16.9%. My award was 15.75%.

Moreover, Ms. Lugo's three page response to Dr. Caprio establishes that my Award did not trample upon the Lawful Authority of the County and/or the CPI.

The equity adjustment is part of the 15.75%. Additionally, I added a new step to the Salary Guide in 2007 and added a new step in 2010. It is less money for an employer to payout a Salary Guide over nine steps than it is over seven steps. Granted, you are paying out the same dollar amount, but you are paying it out over a longer period of time which is a savings to the County

The County will be saving money with the modification I have made concerning retiree health benefits. They will be saving money with the way I have restructured the overtime refusal for ten recognized holidays and Superbowl Sunday. To argue that they are not saving money does not make any sense to me.

PERC's remand asks me to review the language of my Award and the economics of my Award. When I used terms such as draconian, severe, huge deficit, downward spiral at page 91 of my Award, they were in reference to the FOP's outrageous proposals of:

- longevity increases
- Correction Officers move two steps on the guide when an 8th step is added
- \$2000.00 added to each step

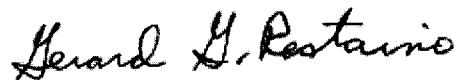
I addressed all of the above in my Award and consistently pointed out why some of the FOP's final offer could not be awarded. The FOP's two step movement on the salary guide was so outrageous I did not cost it out. (see page 56 of Award)

I have addressed all of the issues I was asked to review by PERC. The lawful authority of the Employer and the cost of living were not the major standards I was utilizing. The heaviest emphasis was placed upon comparability with Atlantic County

employees including law enforcement. I reviewed all of the documents the County submitted to me concerning shift differential, but the County's statement that no one receives a shift differential in the County is just not accurate. I rendered a decision based upon all of the facts and the credible evidence presented to me. Each party presented their documents the way they felt most comfortable. There is no standard way of presenting documents and analyzing those documents. I believe I have met the requirements set forth by PERC when they remanded and vacated my April 2, 2010, award.

Accordingly, my Award is modified (see bold print) as set forth above.

Dated: March 18, 2011

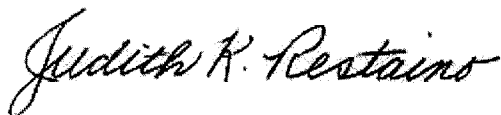


Gerard G. Restaino, Arbitrator

State of Pennsylvania)

County of Wayne) ss:

On this 18th day of March, 2011, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.



County of Atlantic	CWA 1040 (MOA)	1/1/04 – 12/21/07	1
County of Atlantic	CWA Local 1040	1/1/08 – 12/31/11	2
County of Atlantic	JNESO (MOA)	1/1/05 – 12/31/07	3
County of Atlantic	Atlantic County Prosecutors Office	1/1/03 – 1/31/06	4
County of Atlantic	Superior Officers, PBA Local 77	1/1/03 – 12/31/05	5
County of Atlantic	The Atlantic County Sheriff's Office Superior Officers Association	1/1/04 – 12/31/07	6
County of Atlantic	Fraternal Order of Police Atlantic Lodge 34	1/1/03 – 12/31/06	7
County of Atlantic	CWA Local 1040	1/1/04 – 12/31/07	8
County of Atlantic	United Workers Union	7/1/06 – 6/30/09	9
County of Atlantic	American Federation of State, County and Municipal Employees District Council 71 Local 3408	2007-2010	10
County of Atlantic	Proposed Amendment, Labor Agreement PBA Local 243	2006-2009	11
County of Atlantic	PBA Local 243	1/1/06 – 12/31/09	12
County of Atlantic	FOP Local 112 The Independent Superior Officers of Atlantic County	2007-2010	13
County of Atlantic	The Fraternal Order of Police Lodge 112 Correction Sgts.	2005-2008	14
County of Atlantic	AFSCME Local 2302	1/1/07 – 12/31/10	15
County of Atlantic	Communications Workers of America Local 1034 Dept of Family and Community Development	1/1/05 – 12/31/08	16
County of Atlantic	Atlantic County Health Department and CWA Local 1034	1/1/07 – 12/31/07	17
County of Atlantic	International Brotherhood of Teamsters, AFL-CIO Local 331 (Supt. Of Elections/Bd. of Elections)	2008-2010	18
County of Atlantic	International Brotherhood of Teamsters, AFL-CIO Local 331 (White/Blue Collar/Public Safety)	2008-2010	19
County of Atlantic	International Brotherhood of Teamsters, AFL-CIO Local 331 (Superintendent of Elections/Board of Elections)	2008-2010	20
County of Atlantic	CWA 1040 (Facilities Management and Supported Work)	1/1/04 – 12/31/07	21
County of Atlantic	American Federation of State, County and Municipal Employees District Council 71 Local 3408	2007-2010	22
County of Atlantic	AFSCME Local 2302	1/1/07- 12/31/10	23
County of Atlantic	International Brotherhood of Teamsters, AFL-CIO Local 331 (White/Blue Collar/Public Safety)	2008-2010	24

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County of Burlington	Policemen's Benevolent Association Local 249 Correction Officers	A	2005-2008
Various Counties	Sick Leave (packet)	B	N/A
County of Atlantic	Fraternal Order of Police Atlantic Lodge 34	C	1/0/03-12/31/06
Monmouth County	Monmouth County Corrections Officers Assoc. PBA Local 240	D	1/1/05-12/31/08
Cape May County	Cape May County Fraternal Order of Police Lodge 7	E	1/1/08-12/31/08
Bergen County	The Policemen's Benevolent Association PBA Local 134	F	1/1/06-12/31/10
Cumberland County	Cumberland County PBA Local 231	G	1/1/04-12/31/07
County of Middlesex	Middlesex County Corrections Officers PBA Local 152	H	1/1/05-12/31/09
County of Union	PBA Union County Superior Officers Local 199A	I	1/1/01-12/31/04
County of Warren	FOP Local 107 Superior Officers	J	N/A
County of Union	PBA Union County Correction Officers Local 199	K	1/1/05-12/31/09
Somerset County	Somerset County Correction Officers PPBA Local 177	L	1/1/07-12/31/09
Ocean County	PBA Local 258	M	N/A
Ocean County	PBA Local 258 Correction's Superior Officers	N	4/1/06-3/31/10
Mercer County	PBA Local 167 Corrections Officers	O	1/1/05-12/31/08
County of Warren	FOP Lodge 171 Correction Officers	P	1/1/07-12/31/10

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