

In the Matter of Interest Arbitration Between:

SOMERSET COUNTY SHERIFF'S OFFICE

"Public Employer,"

- and -

FOP LODGE 39

"Union."

Docket No. IA-2005-083

**INTEREST ARBITRATION
DECISION AND
AWARD**

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the County:

Lisa M. Fittipaldi, Esq.
DiFrancesco, Bateman, Coley, Yospin,
Kunzman, Davis & Lehrer, PC

For the FOP:

Richard D. Loccke, Esq.
Loccke & Correia, PA

I was appointed interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425 in an impasse involving the County of Somerset/Somerset County Sheriff (the County) and Somerset County Sheriff's FOP Lodge No. 39 (the Union). Two pre-interest arbitration mediation sessions were held. Despite good faith efforts by the parties, the impasse was not resolved and a formal interest arbitration hearing was held on December 12, 2005 at which time the parties examined and cross-examined Sheriff Officer Dominic Albanese, FOP President and submitted documentary evidence into the record. The terminal procedure was convention arbitration since the parties did not mutually agree to an alternate procedure. This process grants the arbitrator broad authority to fashion the terms of an award based upon the evidence submitted without being constrained to select any aspect of a formal offer submitted by the parties. Post-hearing briefs were submitted by both parties on or about February 18, 2006.

The statute requires the party to submit a last and final offer and I have set forth below the last and final offers of each party.

Sheriff's FOP

1. Wage Increase – The employee organization proposes a Three (3)-year contract commencing January 1, 2005, with an increase of six percent (6%) across-the-board

effective January 1, 2005, five percent (5%) across-the-board effective January 1, 2006 and five percent (5%) across-the-board effective January 1, 2007.

2. Longevity – The employee organization proposes a modification of the longevity benefit (Contract Article III, page 2) by modifying the last two (2) steps now occurring at twenty-five (25) years and twenty-six (26) years to occur at twenty-four (24) years. Therefore, the longevity benefit, upon completion of twenty-four (24) years of service, would be 3.75%. There would be no steps showing an increase following that point.

County of Somerset

1. Wage Increase – January 1, 2005, 1% adjustment in addition to the step increases, Steps 1 – 11. January 1, 2006, 1% adjustment in addition to the step increases for Steps 1 – 11, January 1, 2007, 1% adjustment in addition to the step increases for Steps 1 -11. In addition Sheriff Officers at Step 11 as of December 31, 2004, will receive an additional 2.3% increase totaling 3.3% on January 1, 2005 and on each January 1 thereafter through January 1, 2007. If the officer is at Step 11 as of December 31, 2005, then they will be eligible to receive a total 3.3% increase as described above as of January 1, 2006. If the officer is at Step 11 as of December 31, 2006, then the officer will be eligible to receive a total 3.3% increase as stated above as of January 1, 2007.

2. Health Benefits

Amended Paragraph 13.1 to add (D); The parties agree that the County shall have the right to change health insurance carriers provided that the level of benefits remain equal to or better than and that the provider network remain substantially equal to the existing network. In the event of a change in carrier reference to the prior carrier shall be deemed to be the new carrier as appropriate.

In addition, the parties have agreed to the following modifications to the contract that I will receive as stipulations to be incorporation into the award:

1. Article 5 Overtime - the parties agree to amend this Article to state that the mandatory list should be computed from January 1 to December 31 of each year. Therefore, it will not run continuously from year to year. And that the hold over of 1 plus hours is to be termed mandatory.
2. Paragraph 5.5 should be amended to state that time and one half payment shall be made for all hours worked above 40 (eliminate overtime). And that there should be travel time credit for designated schools and training programs.
3. Article XXVII – Personnel Files shall be amended to read as follows: Pick up 2 pg. of Dec. 2 letter.
4. Article XXX - FOP Rights shall be amended in accordance with State Statute N.J.S.A. 40A:14-1-77 Convention Leave Provisions.

BACKGROUND

The County of Somerset is located in the central portion of the State and is predominantly suburban in nature. It consists of 21 municipalities.

2000 census data indicates that the County's population was 297,490. Average household income was \$76,930 compared to the state-wide average of \$55,146. Approximately 3.8% of the residents live below the poverty level compared favorably to the statewide average of 8.5%.

46.5% of Somerset residents are college graduates as compared to a statewide average of 29.8%. The County's tax rate decreased from 0.3335 in 2004 to 0.3119 in 2005 while its valuations increased from \$45,182,846 to \$50,624,756.

The existing collective bargaining agreement expired on December 31, 2004. The bargaining unit consists of 50 County Sheriff Officers. The Agreement contains an eleven (11) step guide similar to the schedule in the County Corrections agreement. The maximum step in 2004 was \$65,846, a rank of ninth (9th) in the state but somewhat above the average (\$61,498) and median (\$65,423).

Against this general background the parties offer their respective positions on the disputed issues as well as arguments applying the statutory criteria in support of their proposals.

Positions of the Parties

The FOP asserts that the Sheriff Officers operate in effect, as a countywide police force. That is, they provide not only the traditional functions of a county sheriff's office, but also provide assistance to local police departments as well as to the State of New Jersey. At the hearing, the Union introduced the following duties and obligations of sheriff officers into evidence:

- Criminal Identification
- Investigation and Apprehension of Violators of the Law and Investigation of Suspected Criminal Activity
- Participation in Raids, Service of Warrants and Investigations Of Missing Persons
- "Participates in Specialized County Law Enforcement Services, Such as K-9, Drunk Driving Task Force, Child Fingerprinting, Emergency Management or any other functions deemed appropriate by the Sheriff."
- Preservation of Criminal Evidence
- Works with County Task Force or other law enforcement agencies on assignments

The FOP also introduced into evidence a report of motor vehicle summonses issued by Sheriff Officers within each town of the County as evidence of their general police work. This showed that the total MV summonses issued were:

2003 - 241
 2004 - 493
 2005 - 275

The FOP also asserts that additional evidence showing that the Somerset Sheriff Officers act as supplemental law enforcement for local police departments is reflected in requests for services they receive from the various county municipalities:

2002 - 15
 2003 - 8
 2004 - 6

The Union contends that the Somerset Sheriff Office is a "multi-faceted and full service law enforcement agency." In support of its argument, the Union submitted into evidence a list of the types of investigations conducted by Sheriff Officers [P. Ex. #5]. These included assaults, drugs, criminal mischief, property damage, theft, gang intelligence, robbery and terrorist threats. The FOP also submitted evidence that within one single 12-month period, 988 warrants were received resulting in 722 arrests being made by the Sheriff's Office. The FOP also presented evidence concerning the K-9 unit's availability to perform narcotics, bomb and tracking capabilities. The Somerset Sheriff Officers and the K-9 Units responded to Louisiana post- Hurricane Katrina.

At the hearing, Sheriff Officer Albanese, among other things, testified about the Sheriff's Office's role regarding homeland security issues including providing security at a State of New Jersey Motor Vehicle office located within the County.

The FOP also presented testimony and exhibits concerning the important role that training plays within the Sheriff's Department. Officers are encouraged to participate in Advance Training Programs to become proficient in specialty areas such as:

- Introduction to Terrorism – FBA
- Breathalyzer
- Tactical Handgun
- Night Tactical Handgun
- Field Sobriety Testing
- Gang Awareness
- Explosive Recognition and Response
- Top Gun for Narcotics Investigators
- Environmental Offenses Court
- Drug Recognition Expert
- Bomb Search
- Court Evacuation
- Domestic Violence Training
- Use of Force
- Vehicle Pursuit Policy
- Level One First Responder and Awareness
- Unarmed Self Defense
- American School Violence
- Drug Interdiction Courses
- Interview and Interrogation

Sheriff Officer Albanese testified that Sheriff Officers also serve as training officers from time to time at the Somerset County Police Academy.

The FOP contends that Somerset County Sheriff Officers perform at a very productive and highly professional level and have been recognized by many institutions and people throughout the County for the

aide and assistance they provide. The Union introduced various letters of commendation that the officers have received in connection with their law enforcement activities.

The FOP contends that despite their prominent role Somerset Sheriff Officers are among the lowest paid law enforcement officers in the geographic area. The FOP submitted the following chart as part of its brief reflecting comparables it has chosen. The chart shows that Somerset Sheriff Officers are \$6,701 below the average maximum salary for 2004 among the comparables chosen. The FOP argues that "it would take more than a 10 percent increase above the 2004 pay rate just to catch average before any sums by way of adjustment are added."

CHART NO. 1
BASE WAGE COMPARISON

2004 Base @ Maximum	
Franklin	\$82,347
Manville	78,281
Branchburg	73,256
Bernards Township	79,872
Bernardsville	76,759
Florham Park	75,734
Hillsborough	73,703
Mercer Sheriff	66,786
Somerset Correction	67,087
Essex Sheriff	65,998
North Plainfield	73,556
Ocean Sheriffs	71,398
Raritan	68,411

Somerville	71,120
Warren	69,715
Watchung	72,828
Peapack-Gladstone	69,839
Green Brook	72,000
South Bound Brook	72,700
Montgomery	74,169
Middlesex Sheriffs	69,241
Bedminster	74,566
AVERAGE	\$72,547
SOMERSET SHERIFF 2004 MAXIMUM BASE	\$65,846
SOMERSET SHERIFF	(\$6,701)
COMPARISON TO AVERAGE	(10.18%)

The FOP also argues that it takes Somerset Sheriff Officers longer to reach maximum compared with other law enforcement officers. As part of its brief, it submitted the following chart that indicates among the comparables it has chosen, that the average number of steps is 6.52 while a Somerset Officer takes 11 steps in order to reach maximum. Emphasizing this point, the FOP submits that it takes some 40% of a 25-year career for a Somerset Sheriff Officer to reach the salary maximum.

CHART NO. 2
COMPARISON OF LENGTH OF STEP GUIDE

	Number of Pay Steps
Manville	6
Essex Sheriff	5
Bernards Township	6
Somerset Correction	11
Bernardsville	5

Branchburg	9
Florham Park	8
Hillsborough	7
Mercer Sheriff	8
North Plainfield	5
Ocean Sheriffs	8
Raritan	6
Somerville	6
Warren	7
Watchung	6
Peapack-Gladstone	7
Green Brook	7
South Bound Brook	3
Montgomery	6
Franklin	8
Middlesex Sheriffs	5
Bedminster	7
AVERAGE NUMBER OF STEPS	6.52 Steps
SOMERSET SHERIFF	11 Steps
SOMERSET SHERIFF COMPARISON TO AVERAGE	4.48 Additional Steps 59.3% More Steps

The FOP contends that the County's proposal is inadequate when viewed along with the comparable jurisdictions it has chosen. These settlements are calculated to have averaged:

2005	4.31%
2006	4.5%
2007	4.1%

The FOP also submitted into evidence wage settlements for other law enforcement officers employed in other law enforcement units by Somerset County:

Sheriff Superior Officers

2005	5.5%
2006	4%
2007	3.1%

County Corrections Supervisors

2004	4%
2005	4%
2006	4%

Prosecutor's Office

2003	4%
2004	4%
2005	4%
2006	4.25%

The FOP argues that sheriff officers and law enforcement officers in general cannot be compared to jobs in the private sector. Therefore, any private wage settlements submitted into evidence by the County are not comparable. In support of this argument, the FOP points to a number of distinguishing factors which make police officers unique. Among these are the responsibility to carry a weapon at all times, the responsibility for using deadly force, statutorily conferred powers of arrest, responding to crimes committed in their presence whether they are on or off duty, and the requirement for specialized basic training and continued training.

The FOP contends that there are “neither legal impediments nor any perceivable impact on taxpayers or residents by the awarding of the FOP’s position.” To further this position, the FOP points out that the 2005 Somerset County Budget is approximately \$5.5 million under the County’s budget cap. In addition, the line item for the Sheriff’s Office was increased by 10.7%, or approximately \$468,000, the highest single increase in the County’s budget allocation. This is said to show that sufficient funds are available to fund the FOP’s wage proposals and that the County has the lawful authority to make these expenditures.

The FOP describes Somerset County as “a very wealthy County. It has one of the strongest ratable bases of all area Counties and a tax rate that is extremely low.” The FOP points out that in 2005 the County’s ratable base increased by 9.6% for a total of \$42.1 billion in ratables. In addition, over the last 10 years, the County’s tax rate has decreased each year. The County has maintained an AAA bond rating and had sufficient revenues to make an advance payment on debt in 2005. In fact, in the 2005 budget, the pay down was increased 300%. The FOP also points out that the County did not make “an ability to pay” argument: this, it claims, is further evidence that “clearly there is no fiscal impediment to awarding the last offer position of the FOP”.

In sum, the FOP contends that Somerset Sheriff Officers are not well paid in comparison to other law enforcement officers in the area while at the same time the employer, the County of Somerset, is in strong financial shape. Thus, the FOP submits that its proposals should be awarded in their entirety.

The County contends that the FOP's wage proposal is excessive, unreasonable and should be summarily rejected. The County asserts that in interest arbitration, the arbitrator must consider the total new dollar cost; that is, to consider only the cost of an across-the-board increase to the salary schedule does not take into consideration the cost of step movement within the salary schedule for each officer. According to the County, these costs should be included in the amount of increases awarded.

The County performed calculations based upon its proposal of a 1% across-the-board increase per year in comparison to the FOP's demand of 6% per year plus the cost of steps¹. (The County notes that the FOP did adjust its final proposal to 6%, 5%, and 5% over the three years of the proposed contract. This change would slightly reduce the costs that the County used in performing its comparisons.) County Exhibit 9 reflects the County's calculations.

According to the County's analysis, taking into consideration the cost of the steps and the impact on longevity, the FOP is demanding an average of 10.44% per year while the County's proposal costs out at 6.02% per year. These increases are calculated by the County as follows:

	<u>County Proposal</u>	<u>Union Proposal</u>
2005	2,593,336	2,721,719
2006	2,725,573	3,002,111
2007	2,847,426	3,291,592

The County further contends that there are additional costs that must also be considered by the arbitrator. For example, awarding a salary increase would also effect the costs of overtime and longevity. According to their calculations, in 2005 the cost of overtime under the County's proposal would increase by \$4,484 while under the FOP proposal it would increase by \$27,157.

The County also contends that the Sheriff Officers also have an "extraordinary benefits package," particularly for paid time off such as personal days, vacation days, bereavement leave, sick days and holidays. An increase in Sheriff Officers' pay will also result in increased values for each of these days. Under its proposal, the County has estimated those

¹ The County also offers an additional 2.3% for officers who are at Step 11 on January 1, 2005, for January 1, 2005, January 1, 2006 and January 1, 2007, a similar increase is

costs would increase by \$4,916 in 2005, while under the FOP proposal they would increase by \$18,989.

The County contends that the increases that it has proposed compare favorably with private sector increases and CPI adjustments over the past several years. It submitted into evidence a New Jersey Department of Labor report which indicates that private sector wages in Somerset County increased by only 0.9% in 2004. Also in 2004, the state-wide private sector average wage increase was 3.6% and the local government average was 3.2%. The County also submitted data compiled by the Bureau of National Affairs for 2005 which indicates that the average contract settlement was 3.3% for state and local governments and 3.1% for all settlements. The County also offered as comparables various corrections, prosecutors, detectives and sheriff officer contracts throughout New Jersey. For many counties in New Jersey, these are said to show that the comparisons for what the Sheriff Officers now receive in salary and benefits compare favorably.

The County also submitted a chart listing the maximum salaries for 18 of the 21 counties. According to the County, Somerset County officers are \$4,348 above average:

offered for those who reach step 11 before January 1, 2006 and January 1, 2007.

NJ Sheriff's Officers Salaries – Highest Step	2004
Bergen County	83,916
Camden County	72,373
Ocean County	71,398
Union County	70,814
Monmouth County	70,000
Middlesex County	69,331
Morris County	67,679
Essex County	65,997
Somerset County	65,846
Mercer County	64,999
Sussex County	55,082
Atlantic County	52,868
Hunterdon County	52,550
Warren County	52,254
Gloucester County	51,561
Burlington County	50,747
Salem County	47,000
Cumberland County	42,540
Average	61,498
Median	65,423

The County points out that only its law enforcement officers, including the Sheriff Officers, receive an annual step increase in addition to an across-the-board increase. All other County employees are not entitled to automatic step increases. In Exhibit 15 the County graphically compared its salary proposal to those received by other County employees in 2005. It argues that aside from the public works employees (roads, bridges and transportation) who received a "5% job upgrade

increase,” the County’s proposal would provide Sheriff Officers with an increase significantly above most other County employees and slightly above all other law enforcement officers in the County. Its calculations reflect:

Unit	Method	2001	2002	2003	2004	2005
Sheriff's Officers	Average with Step movement	6.8% ¹	8.2% ¹	7.6% ¹	7.6% ¹	6% ^{1,2}
Sheriff Superiors	Guide	4.8% ¹	3.8% ¹	3.5%	5.5%	4%
Corrections Officers and Superiors	Average with Step movement	6.6% ¹	5.6% ¹	5.6% ¹	5.3% ¹	5.6% ¹
Prosecutor's Office – Detectives	Average with Step movement	7.5% ¹	6.8% ¹	2.7% ¹	5.3% ¹	5.9% ¹
Prosecutor's Office – Superiors	Guide (no steps)	3.8%	4.5% ¹	5.1%	4%	4%
Roads & Bridges	Hay in 2005	4% ¹	3.9% ¹	3.8%	3%	8.5% ⁴
Transportation	Hay in 2005	4%	4%	4%	3%	8.5% ⁴
Facilities & Services	Hay	2.75%- 4.5% ³	9.7% ⁴	4%	4%	3.5%
Recycling	Hay	3%	3%	11% ⁴	4%	4.3% ¹
911 Center	Hay	2.75%- 4.5% ³	4%	4%	4%	3.5%
Vehicle Maintenance	Hay	2.75%- 4.5% ³	4%	4%	4%	3.5%
Mental Health Center	Hay	2.75%- 4.5% ³	4%	4%	4%	3.5%
Other County Employees	Hay	2.75%- 4.5% ³	4%	4%	4%	3.5%

¹ Averaged

² Proposed

³ Dependent on Performance

⁴ Includes Job Upgrades

The County, while recognizing the importance of the work a sheriff officer performs, asserts that the FOP's attempt to portray a sheriff officer as a County Police Officer is not supported by the facts in the case. The County submitted into evidence job descriptions for a sheriff officer and for a local police officer. Both are law enforcement officers with responsibility to carry a weapon, make an arrest, and require very highly specialized

training. However, the County argues that a sheriff officer's primary function is to maintain order and security at a court house, serve court processes, perform criminal identification, investigations and apprehension of violators of criminal motor vehicle laws. Local police officers, on the other hand, prevent crime, have a patrol post, enforce motor vehicle laws, and perform all types of criminal investigations not so limited to violations under the Sheriff's statutory powers. The County argues that when all of the statutory authority is considered, the Sheriff's Department is not comparable to a municipal police department, the state police, or county police officers.

In response to the FOP's submission, the County contends that a review of the Sheriff's "Use of Force Summary Form" indicates a low level of this type of activity by Sheriff Officers. The incidents recorded were as follows:

2002 - 3
2003 - 8
2004 - 3
2005 - 1

The County also pointed to the County Prosecutor's Plan for the delivery of law enforcement services in 2006 that lists the core functions of the Sheriff's Office as follows:

1. Courthouse, Courtroom and County property security with the Sheriff's special response team providing additional security with rapid response to assist in emergencies occurring within the jail or County complex.
2. Enforcement of civil process orders.
3. County jail system operations (corrections).
4. Arrest, fingerprinting and processing.
5. Gang and terrorism intelligence unit. This unit is tasked with identifying gang and other security threat groups processed through the County jail.
6. Prisoner transport from the County jail to Municipal Courts.
7. Video teleconferencing of preliminary hearings from Municipal Court.

The County also submitted into the evidence uniform crime reports for the State of New Jersey that indicates that Somerset County ranks at the low end and that the crime rate has actually declined.

The County contends that a number of the duties cited by the FOP are not mandatory duties for a sheriff officer, but in fact are considered outside employment for officers who wish to perform those functions on a voluntary basis and for which they receive additional compensation including 4-H Fair, Far Hills, the fireworks, VNA, the ballpark and park commission.

The County also argues that the advance training courses cited by the FOP as mandatory are misleading. It submitted the "Table of Contents for the Police Training Manual" that shows all courses that are required as part of basic training at the police academy. It further contends that other courses which the FOP implies are mandatory are in fact voluntary. While officers are encouraged to take additional advanced training, they are not required to do so.

The County also points out that a number of contracts submitted by the FOP were not signed and some that were submitted differ from those on file with the League of Municipalities. The County contends that since these contracts cannot be verified, they should not be relied upon.

The County argues that the FOP proposal for an increase in the longevity schedule is without merit. It points out that the FOP and the PBA are the only employees in the County that receive longevity pay, and therefore, an increase in the schedule that now has parity should not be considered.

DISCUSSION

The Union and the County have offered testimony and considerable documentary evidence in support of their last offers. Each submission was expert and comprehensive. The entire record of the proceeding must

be considered in light of the statutory criteria. I am required to make a reasonable determination of the issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16G (1-8) which I find relevant to the resolution of these negotiations. These factors commonly called the statutory criteria are as follows:

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

I first start with the stipulations of the parties. Pursuant to N.J.S.A.

34:13A-16g(4), I incorporate them into the terms of the Award:

1. Article 5 Overtime - the parties agree to amend this Article to state that the mandatory list should be computed from January 1 to December 31 of each year. Therefore, it will not run continuously from year to year. And that the hold over of 1 plus hours is to be termed mandatory.
2. Paragraph 5.5 should be amended to state that time and one half payment shall be made for all hours worked above 40 (eliminate overtime). And that there should be travel time credit for designated schools and training programs.
3. Article XXVII – Personnel Files shall be amended to read as follows: Pick up 2 pg. of Dec. 2 letter.
4. Article XXX - FOP Rights shall be amended in accordance with State Statute N.J.S.A. 40A:14-1-77 Convention Leave Provisions.

Health Insurance

The County has proposed to add language to the agreement concerning Health/Life Benefits. This provision is set forth in Article XIII. The language proposed would allow the County to change health carriers as long as the level of benefits are equal to or better than what presently exists, and further that the provider network remains substantially equal to the existing network. The proposed language is consistent with language the County has negotiated into other union contracts, including the corrections officer agreement. The other units' acceptance of this language is persuasive. The language is also consistent with rulings by NJ PERC that the choice of an insurance carrier is considered to be a managerial prerogative under the standards that appear to have been met

in the County's proposal. No objections were registered by the FOP concerning this proposed modification. The County's proposal is therefore awarded. Article XIII, Paragraph 13.1 shall read:

13.1 **Health.** The County shall make available a health benefits program to all officers and eligible dependents. The effective date shall be the first of the month after the completion of two months service. Coverage remains in effect during approved leave of absences, vacation and sick leave. The health benefit plans are as follows:

(A) **The traditional Somerset County health benefits program administered through the Oxford Health Ltd.** In this plan, basic hospital benefits, basic medical-surgical benefits, and extended hospital and medical-surgical benefits are provided by the County and administered through the Oxford Health Ltd.

(B) **Basic Health Maintenance Organizations (HMO) and Supplemental Benefits Program.** In this plan, hospital, surgical, and medical care is provided only by physicians and other staff of the HIP of New Jersey and affiliated hospitals, physicians' offices, and extended care facilities to employees residing in the HIP of New Jersey service area, as outlined in the "HIP of New Jersey Benefits Program" booklet. The average charge is \$1 per visit. This program also provides a Supplemental Benefits program, similar to Major Medical, which gives added financial assistance for medical expenses not covered under the basic HMO program.

(C) **CoMed**

Under this plan the officer chooses a CoMed participating private physician. There is no Health Care Facility. There is a nominal fee for each visit.

- (D) The parties agree that the County shall have the right to change health insurance carriers provided that the level of benefits remain equal to or better than and that the provider network remain substantially equal to the existing network. In the event of a change in carrier reference to the prior carrier shall be deemed to be the new carrier as appropriate.

Longevity

The FOP has proposed a modification to the longevity schedule.

Currently that schedule reads as follows:

A	5 – 9 years of service	1.50%
B	10 – 15 years of service	1.75%
C	16 – 20 years of service	2.75%
D	21 – 25 years of service	3.00%
E	26 years of service and over	3.75%

The FOP proposal would implement the 3.75% at 24 years of service instead of at Section E for those with 26 years of service and over. Section D would be modified to have those with 21-23 years of service receive 3%. Section E would be for those with 24 years of service and up. The FOP relies primarily on comparisons with law enforcement longevity schedules in municipal police departments.

The County has argued that providing additional longevity pay would be unfair to other County employees since only the Sheriff FOP and the Corrections PBA currently receive longevity pay. The County further points out that the current Sheriff Officers' longevity schedule and the Corrections Officer longevity schedule are now the same. Thus, an award of the FOP's proposal would destroy that parity. The FOP responds that its comparison group shows that the existing benefit is inadequate and that the cost of its proposal is small.

It is a consideration that the economic impact of awarding this additional longevity payment for a relatively small group of Sheriff Officers would be small; based upon the information provided by the County, only one officer would be eligible in 2006 for the higher longevity payment. However, the longevity schedule between the law enforcement groups are identical and there is no justification to change the existing levels for this particular unit. This proposal is not awarded.

Salary

I next turn to the issue of salaries. The Union seeks an across-the-board increase of 6% in the first year of the proposed contract and 5% in both the second and third years. The County proposes an increase of 1% in each year at steps 1-11 plus an additional increase of 2.3% to those officers who are currently at step 11 as of January 1, 2005. Those who

reach step 11 after January 1, 2005 would only receive 1%, but if they have reached step 11 by December 31, 2005 they would receive the additional 2.3% on January 1, 2006 and January 1, 2007. For those who reach step 11 by December 31, 2006, they would receive the additional 2.3% on January 1, 2007.

The County has stressed that the real cost impacts of both proposals concerning across-the-board increases are considerably higher than what appears due to annual step movements (otherwise defined as an increment) that will take place on the salary guide for each officer who is not at maximum salary and advances to his or her next step over the course of the contract. The County has argued that the arbitrator must consider these increments as "additional new monies" as part of the overall cost of any award. Using the calculations performed by the County, the County contends that its proposed increases average 6.02% per year while under the FOP's proposal the average is 10.44%.

At the outset of this analysis over what a reasonable determination is of the wage issue, I note that this proceeding is one of conventional arbitration. I am not confined to a selection of either party's final offer and indeed can fashion an award independent of those positions after giving due regard for the statutory criteria deemed relevant for resolving the issue.

A review of the final offers shows that, despite the thorough and expert submissions that have been made by each party, neither proposal has been justified. The FOP's, 17% to each step of the salary schedule over three years is unreasonable and is not supported by an application of the statutory criteria. The FOP reaches for salary parity with a chosen group of comparables that simply cannot serve as a basis for comparison. The FOP has chosen selective county sheriff officer agreements such as Ocean and Middlesex that have higher salaries than does Somerset, but the FOP omits many that are lower. The FOP also relies on municipal police departments in Somerset County, many of whom have higher salary maximums. While these municipal departments have some relevance as a backdrop to overall compensation for law enforcement employees within the County, controlling weight cannot be attached to this comparability evidence for many reasons. Although the record shows some operational integration between municipal police departments and the county sheriff, the jurisdiction of the employing entities are within the individual municipalities. The funding sources that decide the amount of funds to be raised by taxation to support their respective law enforcement departments differ. Moreover, the vast majority of the work performed in the individual municipal departments flow from markedly different statutory authorities than those that cover the County Sheriff.

The County's wage proposal is also unreasonable when viewed in its totality. Despite its arguments to the contrary, the County gives virtually no weight to internal comparisons with other law enforcement agencies administered by Somerset County: corrections, corrections superiors, sheriff officer superiors and the prosecutor's office. The County also deems wage comparisons with municipal police departments to be irrelevant. The County relies mainly upon the cost impact of step increases that sheriff officers receive towards achieving maximum salary, the cost of living, internal comparisons with its non-law enforcement units and private sector wage settlements.

In rendering a conventional award on the issue of salary, I first note that PERC has observed that it is not a precise mathematical process and that the setting of a wage figure involves judgment, discretion and labor relations expertise. Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998), City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103, 1999).

All of the statutory criteria have some relevance, directly or indirectly, when setting salary modifications. The more significant question is the weight to be given to the criteria. Virtually all of the statutory criteria implicate the interests and welfare of the public. By way of example, statutory financial limitations and the financial impact of the

terms of an award on the public employer, while separate criteria, are among the items that must be considered under the public interest criterion. Continuity and stability of employment of unit employees is also a separate criterion but one that has been found to be interrelated with the public interest. Another factor that interrelates with the interests and welfare of the public is comparability, especially among several units of a single employer who have strong common interests such as in law enforcement. In this instance, the record shows that the work performed in the various units is coordinated and integrated. Internal comparability within these units has already been considered in my determination to award the health insurance proposal advanced by the County and my determination to deny the longevity proposal advanced by the FOP. Where evidence of pattern or consistency between and among law enforcement units is alleged to exist, any such claim must be examined under criteria that concerns the public interest, internal comparability, continuity and stability of employment and factors ordinarily or traditionally considered in determining wages, hours and employment conditions. All these criteria have been found to be implicated by pattern of settlement.

In this instance, both the County and the FOP point to internal comparability. But they sharply differ on the outcome derived from any analysis that applies this factor. The duration of this Agreement will be 2005, 2006 and 2007. In the County's other law enforcement units,

agreements have been reached with the Sheriff's Superior Officers (FOP Lodge 89) for 2005, 2006 and 2007, the Correction Officers and Corrections Superior Officers for 2004, 2005 and 2006 and the Prosecutor's Detectives and Investigators for 2003, 2004, 2005 and 2006.

The settlements reflect the following across-the-board terms:

Corrections

<u>2004</u>	<u>2005</u>	<u>2006</u>
3.5% - Steps 1-10	3.5% - Steps 1-10	3.5% - Steps 1-10
1% adjustment to Step 11	--	--
4% - Step 11	4% - Step 11	4% - Step 11

Corrections Superiors

<u>2004</u>	<u>2005</u>	<u>2006</u>
1% adjustment	--	--
4%	4%	4%

Sheriff's Superior Officers

<u>2005</u>	<u>2006</u>	<u>2007</u>
5.5%	4.0%	3.1%

Prosecutor's

<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
4%	4%	4%	4.25%

It is crystal clear that both of the respective proposals of the County and the FOP for the sheriff officers vary sharply from the terms of the above settlements. The County and the FOP each view the relevance and the weight to be given to these law enforcement settlements very differently. The County asserts that its proposed salary increase for 2005 would cause the FOP to receive a 6% increase, a larger increase than the

others, notwithstanding the significantly less across-the-board increases it has proposed. The County concludes that its proposal to the Sheriff Officers would cause the highest wage increase of all County employees in 2005. The FOP disagrees citing the far higher across-the-board increases contained in the other law enforcement agreements when compared to the County's offer to the FOP.

The different perspectives on the weight to be given to the various law enforcement units flow mainly on whether, and to what extent, the costs of salary steps should impact on the across-the-board salary increases to be awarded to the steps on the salary schedule. I have fully considered the parties' positions on this point and conclude that, while these costs are relevant to the determination of the salary issue, the costs cannot be given the substantial weight sought by the County. I reach this conclusion for several reasons.

Language in the existing Agreement, Article 2 Paragraph 2.2, terms the steps "an automatic annual step increment system which provides each Sheriff Officer on the guide with an advancement of one step on the guide each year until the maximum is reached." In addition, Paragraph 38.1 Terms and Renewal specifies in part, "this agreement shall continue in full force and effect until a successor agreement is executed." Thus, it would appear that the language in the contract requires the step movement structure to continue unless this language is modified. These

costs are real and must be borne by the County but the costs are assumed under the operation of the salary schedule that the parties have negotiated that contemplates the setting of a salary maximum, a salary minimum and a number of years and steps required in order to reach the salary maximum.

There is no evidence in the record that reflects that the County and its various law enforcement units have ever fashioned a wage resolution by identifying the amount of increases they have negotiated based upon an overall cost or percentage that added the costs of step movement along with the cost of the adjustment to be made to the salary maximum. This is not to say that the costs associated with step movement were not considered during the negotiations process. In fact, the Corrections agreement contains differentiated increases between those correction officers eligible for step movement increases and those at maximum. The Corrections agreement differentiated the percentage to be given to the steps 1-10 (3.5%) compared to step 11, the salary maximum (4%). In addition, the steps between 1 and 10 did not receive the additional adjustment of 1%. This 1% adjustment was reserved for those who were at step 11, those who reach step 11 and the Sergeants, Lieutenants and Captains. The 4% increase, plus the 1% adjustment, was also agreed to for the superior officer ranks of Sergeant, Lieutenant and Captain. There is no evidence that the final terms reached were caused by identifying an

aggregate percentage increase inclusive of step movement. The Sheriffs Superiors are paid on one salary level per rank and do not receive step increases. They received increases of 5.5%, 4.0% and 3.1% for 2005, 2006 and 2007. The Prosecutor's Detectives received increases of 4.0% and 4.25% during 2005 and 2006, the last two years of a 4-year agreement and receive a higher salary maximum than do the sheriff officers. In contrast to the County, the FOP would give no weight whatsoever to step movement. Its proposal for increases of 6.0%, 5.0% and 5.0% for 2005, 2006 and 2007 far exceeds the across-the-board increases received by all of the other law enforcement units in the County, as well as the average increases received in municipal law enforcement units within the County.

A reasonable determination herein cannot be dictated by awarding a percentage increase based upon the aggregate cost of step movement and the cost of adjustments to the salary maximum. To do so would disturb what appears to be a sound structure for labor relations policy that has developed over time for the County's law enforcement units by diminishing the salary schedule in the FOP Agreement. The existing salary schedules now provide for reasonable relationships between and among the various units despite the fact that there are not identical settlements nor identical salary schedules. There are some differences and similarities in each salary structure. This record does not track the

genesis and evolution of those differences and similarities. However, a reasonable presumption is that the County and the employee organizations have factored into the salary schedules and structure the various responsibilities of the jobs and other considerations that traditionally are applied to wage determinations.

Each party's proposal would alter the relationships among the various units and undermine the need that there be reasonable consistency during the collective negotiations process absent a demonstrated need for deviation. The County's approach would devalue the relationships among salary maximums, the level that is normally considered to be the true gauge of an actual job rate. This would occur if the amount of adjustments to salary maximums among the units were to fluctuate based primarily upon the cost of step movement. Units with less experienced personnel would suffer from unfavorable salary schedule comparisons due to the cost of step movement. Reasonable consistency would also not be attainable among the various units if, as the FOP has proposed, the adjustments to the salary schedule were to be based upon external comparables with little regard for adjustments that have been made within the County's other law enforcement units.

I am persuaded that the relationship to be given the most weight in this proceeding is the one between the County's corrections and sheriffs

officer rank and file units. The following facts appear. In 2004, the Sheriff's unit was in the last year of its prior agreement while in the Corrections unit, 2004 was the first year of its new agreement. The salary maximum in the Sheriff unit in 2003 was \$63,314, while in the correction unit the salary maximum was \$60,868. Effective January 1, 2004, the County negotiated a three-year agreement in the Corrections unit containing increases of 4% per year at the step 11 maximum along with 3.5% increases to steps 1 through 10. The record reflects that a 1% adjustment at step 11 was also agreed upon in addition to the 4% increase to the salary maximum for the stated purpose of easing the disparity between the salary maximums in the two units that had reached \$2,446 in 2003. Similar across-the-board increases in the Sheriff unit for 2005, 2006 and 2007, without applying the 2004 1% salary adjustment, represents a reasonable determination of the salary issue for the FOP based upon consideration of the entire record of this proceeding. This would require the awarding of 3.5% increases on steps 1 through 10 and 4% increases to step 11 effective January 1, 2005, January 1, 2006 and January 1, 2007. The new salary schedule would read as follows:

	2005	2006	2007
Academy	32,602	33,744	34,925
Step 1	39,230	40,603	42,024
Step 2	41,233	42,677	44,170
Step 3	43,216	44,729	45,295
Step 4	45,295	46,880	48,251
Step 5	47,429	49,089	50,807

Step 6	51,851	53,666	55,545
Step 7	54,135	56,029	57,990
Step 8	56,468	58,444	60,489
Step 9	58,841	60,900	63,032
Step 10	63,715	65,945	68,253
Step 11	68,480	71,219	74,068

This result ensures reasonable consistency be maintained among the law enforcement units while honoring the need for the adjustment of differences in individual units that are justified in order to accommodate specific problems. The differentiated percentages over each of the three years for those who receive step increases will ease the costs of step movement. The terms of the award for 2005, 2006 and 2007 are not identical to the terms received by the Sheriff superiors, but the extension of the 4% increase into 2007 maintains reasonable consistency between the two units (12.0% vs. 12.6%), while providing for the same years of contract duration within the Sheriff's department.

The cost of the Award will be \$36,873 for the fourteen (14) employees who were at or who reached maximum in 2005, \$49,320 for the eighteen (18) employees who were at or who reached maximum in 2006, and \$59,808 for the twenty-one (21) employees who will be at or who will reach maximum in 2007². For those employees not at maximum,

² Precise calculations must give way to reasonable projections because of changes in staffing levels due to turnover, promotions and/or retirements. All increases are retroactive to their effective dates. Those eligible for retroactivity are those presently

the 3.5% increase to steps 1 through 10 will be approximately \$66,000 in 2005, \$68,000 in 2006 and \$70,000 in 2007. In addition, the step movement towards maximum will represent additional costs (forty (40) employees are eligible in 2005, thirty-six (36) in 2006, and thirty-two (32) in 2007), The costs of step movement is approximately \$85,000 in 2004, \$77,000 in 2006 and \$69,000 in 2007. For the reasons already stated, these costs are assumed under the structure of the negotiated salary schedule and, because of the similarity in the structure of the salary schedules, they are generally consistent with the costs borne by the County under the Corrections agreement.

I have considered and applied the statutory criteria. The award is consistent with the public interest by giving substantial weight to internal settlements and settlement patterns within the County's law enforcement units. The deviation from internal comparability sought by the County without reasonable justification has the potential to affect the continuity and stability of employment in the Sheriff unit. The deviation sought by the FOP would undermine the stability and predictability that is desirable in the negotiations process by attempting to tie a result primarily to external evidence while paying little attention to internal negotiations results.

employed and those who have retired including those who may have retired on ordinary or disability pension.

The financial terms of the award exceed what the County has proposed and are less than what the FOP has proposed. The costs can be borne without conflicting with the County's statutory spending limitations and without adverse financial impact on the governing body, its residents and taxpayers. The record clearly reflects that the County is on sound financial footing and its ability to fund an award of this level is evident from an examination of its official budget documents. Ratables have grown for many years while the tax rate itself has declined over the last 10 years. In addition, the County's budget was adopted significantly below the limitations proposed by the State Budget CAP. The cost of living and private sector data has been considered, but cannot be found to be controlling given the fact that the award is consistent with internal law enforcement settlements, all of which are at levels above the cost of living.

Accordingly, and based upon all of the above, I respectfully enter the terms of the Award.

AWARD

1. All proposals by the County and the FOP not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this award.

2. **Duration**

The effective date of this Agreement shall be January 1, 2005 through December 31, 2007.

3. **Stipulations**

1. **Article 5 Overtime** - the parties agree to amend this Article to state that the mandatory list should be computed from January 1 to December 31 of each year. Therefore, it will not run continuously from year to year. And that the hold over of 1 plus hours is to be termed mandatory.
2. Paragraph 5.5 should be amended to state that time and one half payment shall be made for all hours worked above 40 (eliminate overtime). And that there should be travel time credit for designated schools and training programs.
3. Article XXVII – Personnel Files shall be amended to read as follows: Pick up 2 pg. of Dec. 2 letter.
4. Article XXX - FOP Rights shall be amended in accordance with State Statute N.J.S.A. 40A:14-1-77 Convention Leave Provisions.

4. **Health Insurance**

Subsection (D) shall be added to Article XIII, Paragraph 13.1:

- (D) The parties agree that the County shall have the right to change health insurance carriers provided that the level of benefits remain equal to or better than and that the provider network remain substantially equal to the existing network. In the event of a change in carrier reference to the prior carrier shall be deemed to be the new carrier as appropriate.

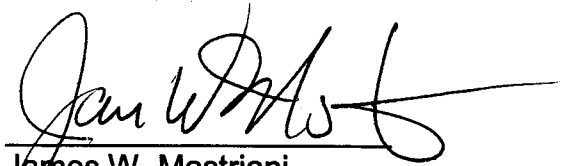
5. **Salaries**

Effective and/or retroactive to January 1, 2005, January 1, 2006 and January 1, 2007, Steps 1 through 10 shall be increased by 3.5% and Step 11 shall be increased by 4.0%. The salary schedule shall be:

	2005	2006	2007
Academy	32,602	33,744	34,925
Step 1	39,230	40,603	42,024
Step 2	41,233	42,677	44,170

Step 3	43,216	44,729	45,295
Step 4	45,295	46,880	48,251
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Step 8	56,468	58,444	60,489
Step 9	58,841	60,900	63,032
Step 10	63,715	65,945	68,253
Step 11	68,480	71,219	74,068


Dated: August 31, 2006
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 31st day of August, 2006, before me personally came and appeared James W. Mastriani 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.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008