

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
CN 429
TRENTON, NJ 08625-0429

Docket No. IA-96-100

In the Matter of Arbitration Between

BERGEN COUNTY PROSECUTOR

-Employer-

and

PBA LOCAL 221

-Union-

OPINION

AND

AWARD

ARBITRATOR:

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

MEDIATION SESSION/
HEARING:

Mediation session August 22, 1996 and formal interest arbitration February 4, 1997 in Hackensack, New Jersey. Both counsel thereafter filed post-hearing briefs.

APPEARANCES:

For the Employer

Assistant Prosecutor/Office Manager Richard S. Muti
First Assistant Prosecutor Frank Puccio

For the Union

Richard D. Loccke, Esq., LOCCKE & CORREIA
Carlos A. Rodriguez, President
Alexander A. Saavedra, Delegate

BACKGROUND

The petition to initiate compulsory interest arbitration was filed by the Association on January 22, 1996. Contained therein were three economic issues, namely, wage increase, overtime compensation, and PBA business. In addition, there were three non-economic issues, namely, rights of employees, PBA business and departmental investigations. A response was filed by Richard S. Muti, Esq., Assistant Prosecutor/Office Manager on behalf of the Bergen County Prosecutor dated January 30, 1996. Further, on February 1, 1996, the Office of the Bergen County Prosecutor petitioned for a scope of negotiations determination. The Prosecutor sought a determination that four successor contract proposals submitted by PBA Local 221 are not mandatorily negotiable. Those proposals concerned a just cause standard for removing investigators, accumulated compensatory time off, and PBA business leave and office space. In a decision rendered June 20, 1996, the request of the Office of the Bergen County Prosecutor for a restraint of interest arbitration was granted with respect to the proposals of PBA Local 221 concerning just cause for removal and accumulated compensatory time off. The request was otherwise denied.

A formal interest arbitration hearing was held on February 4, 1997 after attempts to help the parties achieve a voluntary resolution through mediation was not successful. The parties agreed that this arbitration proceeding was to be decided by the Interest Arbitrator under the conventional arbitration procedure as set forth in the controlling statute (transcript, pages 6-7). During the course of the arbitration hearing, PBA Local 221 withdrew all issues it

had enumerated in its petition except for wages. Counsel for Local 221 Loccke stated the PBA's final offer as follows: "The PBA is presenting a single economic issue for your consideration; that is, a 6% annual increase in each of three calendar years...." (Transcript, page 8). All other issues, save for the wage issue, was withdrawn by the Association. As the matter proceeded during the hearing, the Prosecutor attempted to introduce testimony on subjects such as departmental investigations, as well as issues which had been withdrawn by the Association. A sidebar conference was held and, during the course of that sidebar conference, the arbitrator ruled that the only issue before him was wage increases for the years in question. That is to say, all of the non-economic issues brought forward by the Association had been either withdrawn by the Association or removed via a scope of negotiations determination by the New Jersey Public Employment Relations Commission. These proposals were identified by PBA counsel in the Petition as rights of employees, PBA business and departmental investigations. Of course, the Prosecutor was free to present issues or make counterproposals, as he desired.

The Prosecutor takes the position in this proceeding that a party may not unilaterally remove an issue from compulsory interest arbitration once that issue has been accepted or fairly joined by the opposing party. The Prosecutor maintains that, to permit a party to remove a joined issue at any time -- even during the course of a hearing -- would violate the spirit of the **New Jersey Employer-Employee Relations Act**. (Prosecutor brief, page 9). It asks that the arbitrator reconsider his decision permitting PBA Local 221 to withdraw all

non-wage issues and prohibiting the Prosecutor from pursuing testimonial and documentary evidence on those issues. If that occurs, then the Prosecutor maintains that the arbitrator should consider those issues and all evidence presented on those issues in his decision in this matter. Finally, counsel suggests that the Association should be precluded from presenting further evidence on the other issues because it voluntarily withdrew its position on those issue and elected not to present evidence at the time of the scheduled hearing. (Prosecutor brief, page 11).

The Interest Arbitrator has considered the position of the Prosecutor on this issue which, in all candor, is an interesting and novel one. It is and has always been my understanding that, pursuant to NJSA 34:13A-1 et. seq. one of the fundamental premises of the interest arbitration law was that the parties should endeavor to narrow the issues to be submitted to the Interest Arbitrator and that, in so doing, it was in the best interests of not only the parties, but the public as well. After all, it seems apparent to me that parties, to the extent possible, should endeavor to resolve all issues voluntarily and that, absent such voluntary resolution, the remaining issues are to be submitted to an outsider (the Interest Arbitrator) who, of course, is not beholden to either party nor to the taxpayers. Put another way, it would be my opinion that it would be in the best interests of public policy and to the best interests of the taxpaying public that those responsible individuals, namely, the governing body and its employee representative should, to the extent possible, endeavor to resolve most of the issues in dispute and that only the few remaining issues be submitted to binding arbitration.

Having said that, the position taken by the Bergen County Prosecutor, namely, that a party may not remove an unresolved issue from compulsory interest arbitration without consent of the other side, once that unresolved issue has been agreed to or fairly joined by the opposing party, would be inconsistent with the above concept. As I understand the position of the Bergen County Prosecutor, it is his argument that the moving party in this case (the Association) is incapable of abandoning an unresolved issue or is incapable of withdrawing an issue from bargaining. As an example, if the Association had one hundred demands "on the table" prior to the initiation of formal interest arbitration, that employee organization could not withdraw any of those items once a response to that demand is made which response may consist of merely a "no", as I understand the Prosecutor's argument to be. The Prosecutor believes that "...to permit a party to remove a joined issue at any time -- even during the course of a hearing -- would violate the spirit of the New Jersey Employer-Employee Relations Act..." (Prosecutor brief, page 9). I respectfully disagree with that conclusion.

While this Interest Arbitrator is fully cognizant of the fact that the public is a silent party to this proceeding, he simply fails to see what function will be served by cluttering the record with many, many issues that have been either dropped by one party or resolved directly between them. Simply put, to not permit Local 221 to withdraw all non-wage issues in this proceeding would be, in my view, somewhat inane. As anyone conversant with collective bargaining should realize, the petitioning party (usually the Association or the Union) often

presents many, many demands during the course of negotiations. Clearly, that organization realizes that many (if not most) of those demands will not be achieved. Therefore, during the give and take of the collective bargaining process, positions are changed, altered, modified; demands are added, withdrawn, and the like. Moreover, prior to the initiation of the formal arbitration process itself, as noted above, this arbitrator served in the capacity of a mediator in order to narrow the issues in dispute between these parties and, indeed, issues were either eliminated and/or resolved. That is precisely the function of the mediation effort prior to the initiation of the formal interest arbitration proceeding itself, namely, the resolution or elimination of issues in order to narrow the gap between the parties and help them reach a voluntary resolution of their dispute.

Moreover, this is not a situation where the Prosecutor is seeking to offer a counterproposal to the Association's demand but, on the contrary, one where the Prosecutor only sought to respond to a demand of the Association. This was confirmed by the representative of the Prosecutor in a sidebar conference held between Mr. Muti, Mr. Loccke and myself during the course of the testimony of Lieutenant Trahey. (see page 69 of transcript). Quite clearly, the arbitrator has always permitted either party to a formal interest arbitration proceeding to offer counterproposals during the course of the proceeding. In this case, however, as noted herein, the Prosecutor's representative simply wished to respond to proposals that had been withdrawn. The Interest Arbitrator would not permit that to be **done**.

In sum, it is my judgment that the Act in question deals with issues in dispute. Once issues are no longer in dispute (resolved or withdrawn), they need not be dealt with since there is a resolution of those items. Put another way, once proposals are withdrawn or resolved they are no longer deemed to be issues in dispute. That being so, the requests of the Prosecutor as set forth in his brief with regard to not permitting Local 221 to withdraw all non-wage issues and prohibiting the Prosecutor from pursuing testimonial and documentary evidence **on** those issues is **denied**.

FINAL OFFERS OF THE PARTIES

Prosecutor's Final Offer

I. Economic Issues

A. Wage Increase

1. Base Salary Table for 1996, 1997, 1998 and 1999

<u>Step</u>	<u>1/1/96*</u>	<u>1/1/97</u>	<u>1/1/98</u>	<u>1/1/99</u>
A		\$28,800	\$29,700	\$31,000
B		31,400	32,400	33,800
I	33,998*	35,000	36,000	37,500
II	40,435*	38,500	39,600	41,100
III	46,800*	43,100	44,400	46,000
IV	53,238*	48,300	49,800	51,400
V	59,641*	54,200	55,800	57,500
VI	66,639*	61,700	63,600	65,500
VII		70,500	72,750	75,000
Sr. Inv.	67,263*	71,000	73,300	75,600
Sergeant	71,576*	74,000	76,300	78,600

a. Notes regarding base salary table:

- (1) 1966 figures designated by an asterisk (*) are the same as in 1995, the final year of the previous contract. In other words, the Prosecutor proposes a wage freeze in 1996. All other economic benefits in 1996 would be exactly as they were in 1995. (During 1996, the pay schedule for 1995 was honored by the Prosecutor, including all scheduled step increases; therefore, no payroll action will be required if this wage freeze for 1996 is accepted.

- (2) 1997 and 1998 proposed figures are exactly the same as those in PBA Local #289's latest contract. (See Exhibit C-25, Appendix A - Salary Table.)
- (3) Because of the transition from a six-step salary schedule in 1996 to a nine-step salary schedule in 1997, situations may arise in which an investigator in the step system would be faced with a reduction in pay as of January 1, 1997, until his/her step increase is triggered on the hiring anniversary date. Step increases normally occur on the anniversary date of an investigator's hiring; e.g., an investigator hired on 6/17/92 at step I goes to step II on 6/17/93, and so forth. On 12/31/96, this investigator in our example would be in salary step V at a base salary rate of \$59,641. On 1/1/97, the salary rate for step V changes to \$54,200. Since the investigator in the example doesn't move to step VI and to an increased pay level of \$61,700 until 6/17/97, he/she would suffer a pay decrease unless some special arrangements were made to prevent this in 1997, the first year of the transition to the nine-step schedule. Therefore, as part of the Bergen County Prosecutor's proposal, any investigator in the step system whose salary would be reduced on 1/1/97 in the transition to a nine-step system will not suffer such reduction; rather, he/she will remain at the salary level appropriate to his/her step in 1996 until such time as he/she becomes eligible (on the hiring anniversary date) to move into the next higher step. At that time, he/she will move into the next higher step and will receive the salary for that step set forth in the 1997 schedule.
- (4) Of the thirty-two investigators in the bargaining unit who were in the step system as of 12/31/96, twenty-five were in step VI, two were in step V, three were in step IV, none were in step III, one was in step II and none were in step I. (See Exhibit C-32.) Those seven investigators in steps below step VI and those investigators in step VI for less than twelve months would be treated in the transition year of 1997 in the manner set forth in sub-paragraph (2) above. Investigators in the previous top step VI in 1996 who have been in that step for more than twelve months would be moved to the new top step VII effective January 1, 1997.
- (5) Upon the finalization of this arbitration matter, the economic effects of the salary table as set forth above and in these notes will be retroactive to 1/1/97.
- (6) In the implementation of this new salary table, it is the intention of the Prosecutor that no subject employee be required to "pay back" funds which that employee may already have received because he/she advanced to the next step (using old step pay levels) between the period January 1, 1997, and the date this arbitration matter is finalized and the new salary table is implemented. No one in that position will be charged back any salary already received. However, such affected

employee may find himself/herself in a position where his/her pay level at the new step achieved in 1997 is lower after this arbitration is finalized. For example, an investigator in step V who was transitioned to step VI on February 3, 1997, before the new nine-step salary table has been accepted, will go from a salary of \$66,639 under step VI in the previous contract to a salary of \$61,700 under the new step VI. That employee will not be required to "pay back" the sums he/she received under the old step system pay level prior to the adoption of the new step system table, but he/she will experience a pay reduction. It is difficult to say how many employees this anomaly might affect because it is not known when this arbitration will be finalized, but the most that could be affected are the seven investigators below the old step VI level. The twenty-five people presently in step VI would not be affected since under paragraph (2) above, they would have been kept at their old step VI salaries anyway until they were eligible for transition to new step VII. (Note: Certain PBA Local #289 members were in the same position when that Union settled its contract with the Bergen County Prosecutor and transitioned from a six-step system in 1995 to a nine-step system in 1996.)

2. Elimination of extra pay in 1997, 1998 and 1999 for "on-call" status. On-call status will continue to be required, as it is for PBA Local #289 members (who receive no on-call pay).
3. Longevity pay will remain a part of compensation, according to the same schedule as is currently in use.
4. Education pay will remain a part of compensation for 1996, 1997 and 1998 at the levels in the previous contract. It is eliminated as a part of compensation in 1999.
5. Senior employee (or senior officer) pay is eliminated as a part of compensation for investigators; however, it is retained as an added part of compensation for senior investigators who qualify with twenty years of law enforcement experience, but is fixed in an amount of \$2,156 in 1996, 1997, 1998 and 1999. (PBA Local #289 members do not get senior officer pay.) Senior officer pay remains as an added part of compensation for sergeants with twenty years of law enforcement experience, but is fixed in an amount of \$3,633 in 1996, 1997, 1998 and 1999.
6. Sick pay incentive will remain a part of compensation for eligible employees.
7. Clothing allowance will remain a part of compensation for 1996, 1997 and 1998 at the existing level of \$450 per annum, pro-rated for less than a full year of employment. It will be eliminated in 1999.

B. OVERTIME COMPENSATION

1. No change in 1996 from previous contract. In 1997, 1998 and 1999 overtime compensation for sergeants will conform in all respects to the overtime compensation for PBA Local #221 - Superior Officers Association as set forth in the latest contract of that bargaining unit (see Exhibit C-27) in Article VII, a copy of which is attached hereto. In 1997 and 1998, overtime compensation for investigators and senior investigators will remain the same as in the previous contract with PBA Local #221. In 1999, overtime compensation for investigators and senior investigators will conform in all respects to the overtime compensation for PBA Local #221 - Superior Officers Association as set forth in the latest contract of that bargaining unit (see Exhibit C-27) in Article VII, except that ~~the~~ maximum amount of compensatory time off (CTO) that can be banked is set at eighty (80) hours. (Note: When overtime is compared to that for superior officers, what is meant is that the overtime procedures and methods of calculation are the same; it is not intended to indicate that the rate of payment is the same as it is for lieutenants and captains.)
2. In 1999, for all ranks of employees in this bargaining unit, the minimum number of hours of overtime compensation guaranteed for a "callback" is reduced from four hours to two hours.
3. In 1997, 1998 and 1999, for all ranks in this bargaining unit, overtime that is required to be worked on one of the ~~fourteen designated holidays will be compensated~~ in the same manner as it is under the aforesaid superior officers' contract; that is, overtime on a holiday will be compensated at the time and one-half rate, with no additional CTO being granted to the employee. (No charge backs will be made against overtime pay or CTO credited to employees prior to the effective date of this provision.)

C. PBA BUSINESS

1. Contingent upon the approval of the Prosecutor, which shall not be unreasonably withheld, the Association shall receive time off, without loss of pay, for up to three (3) members to attend, as delegates, any state or county convention of the N.J.P.B.A. Also, the State Delegate/President will be granted time off without pay loss to attend the monthly State and County PBA meeting. During contract negotiations, the Association shall have the right to up to three (3) representatives present who are on duty and an additional two (2) representatives who are off duty. The State Delegate/President shall be granted reasonable time off to attend to necessary PBA business, provided that permission is requested in advance from the Employer, which permission shall not be

unreasonably withheld. PBA business may involve grievance related meetings, meetings with the PBA attorney and meetings with the Prosecutor or his designee regarding personnel or labor relations matters affecting unit personnel. (Note: This language is identical to that appearing in the latest PBA Local #289 contract on this issue.)

II. NON-ECONOMIC ISSUES

A. RIGHTS OF EMPLOYEES

This issue, which means right of tenure according to the description of the issue presented in PBA Local #221's petition for interest arbitration, was removed from the interest arbitration pursuant to PERC's ruling on the Prosecutor's petition for scope of negotiations determination. (See Exhibit C-16.)

B. PBA BUSINESS

The Employer will provide an office large enough for a desk, two chairs and filing cabinet, to be used as a PBA Business office, if and only if sufficient space can be found in the office spaces presently assigned to the Prosecutor. At present, the Prosecutor is not aware of any unused space that would be suitable for this purpose, but is willing to work with the PBA in an effort to find such space.

C. DEPARTMENTAL INVESTIGATIONS

The Bergen County Prosecutor proposes that the BCPO Employee Manual, Section 2.4 - Standards of Conduct (see Exhibit C-8) and Appendix V - Internal Affairs Policies and Procedures (see Exhibit C-9), be established as a policy and procedures of the BCPO regarding disciplinary matters and investigations.

Association's Final Offer

The employee organization position is presented as a single issue, wage increase. The prior contract had a term through December 31, 1995. The employee organization position is based upon that prior contract. The PBA's last offer position was set forth on the record.

Mr. Loccke: The PBA is presenting a single economic issue for your consideration, that is a 6% annual increase in each of three (3) calendar years. The increase would be effective January 1 and will be payable across the board to all ranks, steps and positions covered by the collective bargaining agreement.

Arbitrator: Excuse me, would you indicate what the years are, sir?

Mr. Loccke: Yes, the last agreement expired at the end of 1995 calendar year. This would take effect January 1, 1996, covering 96, 97 and 98. Other than the wage increase, our position is that the prior agreement should continue in full force and effect.

Arbitrator: No other economic -

Mr. Loccke: Correct, no other economic, nor non-economic change.

Arbitrator: Excuse me, did I hear correctly? No other economic or non-economic change?

Mr. Loccke: Correct. With the appropriate date exchanges, things of that nature. But that's housekeeping. No substantive change to the agreement other than the wage increase.

Arbitrator: Thank you.

(Tr. P. 8, L. 5, to P. 9, L. 8)

POSITION OF THE ASSOCIATION

In counsel's post-hearing brief, the following arguments are offered in support of the awarding of the Association's final offer:

1. Counsel recites the judicial history of In Re Bigley 55 NJ 53 (1969) in which the New Jersey Supreme Court established prosecutorial autonomy as to his office's final authority on expenditures subject not to the County's Freeholders, but only to the review of the Assignment Judge within that county. Counsel emphasizes the point that the Prosecutor controls his own budget.

2. With respect to the statutory criteria that must serve as the basis of any Interest Arbitration Award, counsel makes the following arguments:

Interest and Welfare of the Public. Counsel points to the testimony of his sole witness, Alex Soavedra, who detailed the broad scope of the law enforcement duties carried out by the Bergen County Prosecutor's Office in overseeing and supporting the 73 separate law enforcement agencies within the County. In seeking to counter the Prosecutor's attempt to advance the Narcotic Task Force (represented by PBA Local 289) to parity with the Prosecutor's unit, counsel argues that the Prosecutor's unit's members possessed special skills and prior experience which led to their being recruited into the Prosecutor's Office. Over the term of the recent contract the level of supervision over this unit has been reduced, placing increased obligations on these members while, at the same time, reducing their promotional opportunities. In summary, counsel asserts that the Prosecutor's Investigator's

unit is a highly productive organization delivering a high level of service to the residents of Bergen County.

Comparability. With respect to comparisons of other law enforcement employees, counsel argues that, while their base pay is competitive, when combined with the benefits provided they cannot be considered highly paid among those similarly situated. Viewing what it perceives as a lack of benefits, the PBA argues it should receive above average wage increases to balance the overall compensation received. Specifically, counsel argues that the longevity program comprised of fixed dollar amount payments is very poor, with the ongoing result that less money is received by the members during their careers as well as afterward in reduced retirement benefits. The annual retirement benefit is calculated at approximately \$3,100 less per year than the average of comparable Bergen County law enforcement personnel. Counsel also makes detailed comparisons for vacation benefits, educational incentives, injury leave, clothing allowances, detective stipends, and the salary step system in Bergen County municipal police departments and argues that these all serve to lower this unit's comparative standing.

As to comparability with fellow employees of the County and with employees performing similar services, counsel first notes that the Prosecutor voluntarily entered into a contract for 1996 with PBA Local 289 representing the Narcotics Task Force (NTF) and voluntarily provided wage increases to numerous other County employees which exceeds the percentage increase PBA Local 221 is seeking. Counsel inserts a chart purporting to show

nearly 60 County employees with a range of salary increases averaging 9.332%. Counsel emphasizes that these very increases were voluntarily provided by the County and far exceeded the final offer of the PBA.

At this point counsel defends the wage differential apparent between Local 221 (P.D) and Local 289 (NTF). He notes among other comparative differences that the NTF is heavily supervised whereas Local 221 is not; NTF has always been viewed as a stepping stone to the Prosecutor's staff; primarily, NTF is a one-function unit compared with the multidisciplinary Prosecutor's unit; and until recently there was little if any interchangeability between units as to investigative assignments.

With respect to this last point, counsel emphasizes that the Prosecutor began his moves to create the evidence of interchangeability paraded before this arbitrator barely after the ink was dry on the Task Force contract executed on May 7, 1996. Testimony is pointed to that, with the possible exception of only one person, all other examples of "interchangeability" have been newly created. In summary, counsel charges that the Prosecutor's attempt to create equal compensation between these units constitutes an improper attempt at parity. In support of this final conclusion, counsel points to the testimony of Frank Celento who confirmed that the Prosecutor's negotiator offered a gentlemen's agreement to entertain a reopener in the event that PBA Local 221 succeeded in getting more in interest arbitration than Local 289 had settled for with the Prosecutor.

Counsel charges that when the last year of the prior Local 289 contract is examined with the present contract's salary levels (at top step), the increase voluntarily provided represents increases of 9%, 2.91% and 3.2% increases from contract years 1995 to 1996; 1996 to 1997 and 1997-1998 respectively. Viewed cumulatively, it equates with a 15.74% increase over the contract. Added to these real dollar increases were the addition of four-hour call back minimum; short shift notice change; clothing increase allowance; senior employee differential status and senior investigator pay which, when costed out, brings the total pay increase to 18.94% over the contract's three-year term. We are reminded that Local 221 only seeks 18% over this same period, thus making its final wage offer less costly than the settlement the Prosecutor agreed to with Local 289.

Moving to comparability in the private sector, PBA counsel, quoting two interest arbitrators supporting sentiments in other cases, argues that there is no viable comparison with the private sector.

Lawful Authority and Financial Impact are alleged by counsel not to be relevant or applicable since the unique nature of the Prosecutor as a constitutional officer sets this in a separate category. In brief, he argues that there is no cap limit directly placed on his office. On a practical level, note is made that the Prosecutor voluntarily authorized non-bargaining unit personnel raises and negotiated NTF unit increases in excess of those sought by PBA Local 221.

Counsel strenuously argues against the Prosecutor's offer which would increase the salary steps from six to nine. Cited is the fact that this Prosecutor recently hired an investigator and placed him at a pay rate corresponding to Level IV. Given that fact, his argument for additional steps lacks validity when he could have well hired that officer at Level I.

Continuity and Stability of Employment. It is claimed that the Prosecutor's attempt at parity has, in reality, inverted seniority rights and compensation programs of long standing. Granting the PBA offer as requested will reestablish the decades-long relationship between these units. The concepts of "area standards" and "prevailing rates" (in light of what the Prosecutor gave to non-bargaining unit employees and Local 289) argues that Local 221's final offer be awarded for that very reason in addition to the fact that it is certainly closer to the cost of living than is the Prosecutor's position.

In conclusion, counsel asserts that, based on the evidence introduced at the hearing and the testimony taken, the arbitrator should rule in favor of an award of the last position of the PBA.

POSITION OF THE PROSECUTOR

In counsel's post-hearing brief, the following points were emphasized:

1. The factual background of this interest arbitration disclosed that the Prosecutor's Office has contracts with PBA Local 221 representing the Prosecutor's investigators and PBA Local 289 representing the Narcotics Task Force. Historically the latter group performed drug enforcement work almost exclusively until recently. They traditionally lagged far behind Local 221 in wages and benefits. The Prosecutor contends these units are comparable as evidenced by the testimony provided by members of Local 229 and of Local 221 themselves in the arbitration hearing. This comparability supports the Prosecutor's more toward equalization of the two groups' compensation programs.

2. Counsel next reviews the hearing testimony in detail in an attempt to prove the comparability of the two groups. He notes that Sergeant Chiodo (PBA Local 221 member - third in command in the NTF) confirms that presently 25% of the NTF group are serving in billets traditionally belonging to the investigator's group (Local 221) while another 25% are on loan to various federal law enforcement agencies. Many of the positions vacated by NTF personnel's reassignments has led to transfers of Local 221 investigators into those vacancies.

Further testimony by experienced Local 221 investigators confirms the commendable performance rendered by Local 289 personnel in these billets traditionally filled by Local 221 investigators. In summary, counsel points out that the Local 289 personnel have the same

training and periodic firearms qualifications as Local 221; are exposed to the same, if not greater, personal risk; competently perform the same tasks and "By every fair measure...are interchangeable, it seems, with their counterparts in PBA Local 221 - RAF." (Prosecutor's brief, page 19).

To enforce its argument for comparability, counsel recites excerpts from three prior Interest Arbitration Awards involving Local 289 and the Prosecutor wherein three separate arbitrators all,unanimously acknowledged the existing disparity in compensation between the two groups (PBA Local 221 versus PBA Local 289, viz. Prosecutor's investigators versus Narcotic Task Force members) and recommended reductions in this "glaring gap" and a move toward equalization.

Counsel sums up its argument by positing the principle that the "compensation programs for these two almost identical units should be the same." (Prosecutor's brief, page 21).

3. In his extensive brief, Prosecutor's counsel next addresses the statutory criteria which serve as the mandatory guideposts for evaluation of the parties' respective final offers.

Overall Compensation. Counsel recites at length seven benefits contained in the expired contract together with notations as to which employees within the BCPO (Bergen County Prosecutor's Office) enjoy the identical benefit, a variation of the benefit or do not receive it at all. Counsel then details how many of the 69 Local 221 members receive each of the benefits. To express it graphically, counsel notes that in 1996 these 69 employees

receive a total of 386 forms of additional monetary compensation which brought the average compensation for each rank without overtime to \$72,671 (\$65,455 base) for investigators; \$79,917 (\$71,160 base) for senior investigators and \$85,818 (\$77,972 base) for sergeants.

It is argued that these monetary benefits, compiled on top of excellent health and dental insurance and liberal time off provisions, provide an excellent compensation package for this unit.

Comparability. Counsel presents detailed charts and calculations to compare the salaries of this unit with other employees in the BCPO, along with other Prosecutors' offices in the state and argues that Local 221's members are extremely well compensated when compared both with the private sector, other BCPO employees, other Prosecutors' offices and employees in the Division of Criminal Justice. Emphasis is placed on the "vertical" or automatic, year-by-year step increases these employees enjoy in addition to the "horizontal" percentage wage increases also received. Using the 1991-1995 period, counsel demonstrates how the average annual (horizontal) salary increase for a Local 221 member averaged 6.25% per year contrasted with 3.21% for private sector employees. When combined with the vertical increases that those who were entitled received, the increases were extraordinary. Taking a new employee hired in 1990, counsel calculates he would have received increases of \$41,494 or 65% of his starting salary after five years of employment. Not factored into this equation were "hidden" pay raises involving on-call provisions and terminal leave provisions.

Note is made by counsel that the dangerous nature of law enforcement work has traditionally been used to justify salaries and increases that exceed those of the private sector. Statistically, counsel seeks to portray Bergen County as one of the least dangerous for a law enforcement officer to work particularly when compared with adjoining counties.

Leaving no stone unturned, counsel provides a financial analysis of the Police and Firemen's Retirement System as compared with the Public Employees' Retirement System to demonstrate that Local 221's members will continue to be compensated at higher levels even into retirement years under the PFRS pension than other BCPO and County employees who come under the PERS plan.

In further support of its final offer, counsel notes the following:

- In 1996, without a salary increase, 57 of Local 221's investigators are in the top paid 100 BCPO employees.
- Local 221 and 289's investigators taken together occupied 88 of the top 100 paid employees in 1995 in the BCPO, while only 9 of the top 100 were Prosecutors.
- In 1995, although the Local 221 unit accounted for only 30% of the total manpower in the BCPO, it accounted for 43.6% of the salary expenditures whereas the Prosecutor's staff, while occupying 21.9% of the manpower required only 21.8% of the salary budget in the office.

Such inequities, it is argued, affect employee morale. The BCPO has embarked on a goal to remedy these inequities and, to that end, provided Prosecutors with significant raises while negotiating a contract with Local 221 - SOA with significantly reduced raises. It seeks to continue this trend with the final offer it has made to Local 221 Rank & File. It argues the

offer is fair in light of the fact that the BCPO investigators (Local 221 members alone) ranked first in the state as to average mean and median salaries whereas the Assistant Prosecutors ranked 21st as to mean salary and 16th in median salary for 1994. Counsel continues these comparisons over 1995 and 1996 and further makes a detailed comparison with the Prosecutors' Offices in Burlington, Camden, Essex, Gloucester, Hudson, Middlesex, Morris, Passaic, Somerset and Union counties, all in an attempt to demonstrate the superior wage and compensation package received by the PBA units in the BCPO.

In ending the section on comparability, counsel stresses that, while it appears at first blush that the PBA Local 221 - SOA settlement is considerable (1995 base of \$78,866 versus 1996 base of \$87,500), the officers gave up education pay, on-call pay, senior officers' pay and clothing allowances which previously had brought the prior base salary of \$78,866 to \$86,273. Accordingly, counsel asserts the settlement actually calculates to a maximum of a 2.58% increase in 1995 in actual compensation increase or a total of 9.35% for lieutenants over the term of the three-year contract and 8.76% for captains over that same contract term.

Counsel dismisses the Association's reliance on the numerous municipal contracts it introduced into evidence contending that the comparables the Prosecutor offered of other Prosecutors' Offices is significantly more relevant. ..

Continuity and Stability of Employment. Only two Local 221 members have left their employ in recent years whereas the Prosecutor has received 750 applications over the past three years for investigator's positions. It is clear that the compensation paid, among

other factors, lends to this stability and continuity. In light of such intense interest in these positions, it would be folly to feel the job opportunity must be further enhanced.

Cost of Living. Note is made that the 1996 CPI of 2.9% provided the public with a fourth consecutive sub-3% year - the lowest comparable period in 30 years, while this unit received horizontal wage increases averaging 6.25% over the comparable period.

Interest and Welfare of the Public; Lawful Authority of the Employer; and the Financial Impact. Counsel suggests that these three topics have been dealt with extensively through the brief's thorough discussion of the entire financial structure of the BCPO and the Prosecutor's attempt to end preferential salary treatment and restore employee morale by negotiating more comparable compensation for them.

Analyzing the reality of funding the BCPO, counsel suggests that the only viable alternative is for this group to receive a reduction in their rate of compensation growth. The proposed wage freeze for 1996 is not unreasonable in light of the budgetary increase the BCPO received and the Prosecutors need to help close the salary gap with other units. Counsel argues that were it necessary to fund the PBA's three-year, six percentage per year increase it would require an emergency appropriation which is unthinkable. In brief, the interests of sound public policy and fairness demand the awarding of the BCPO final offer. ..

Stipulations of the Parties. Counsel emphasizes that the Prosecutor recognizes the Local 221's members help comprise one of the best investigator staffs in the country and

seeks to assure the parties that the difference in this arbitration reduces itself merely to an honest disagreement as to what constitutes fair compensation for the unit.

Analysis of Final Offers. Following the Appellate Division's lead, counsel charts out the percentage increases and expresses them in actual dollar figures to bring home what the Prosecutor contends is the excessive demand made by the Association in this interest arbitration. To begin with, counsel calls attention to the fact that a fair assessment of the additional compensation each investigator receives from contractual benefits amounts to \$9,297 (e.g. longevity, senior officers' pay, overall pay, etc.) and for each senior investigator \$12,727. When these figures are added in to the PBA proposed 6% - 6% - 6%, the salary guide escalates and the total compensation a member would receive is clearly excessive. A further problem presents itself as a result of the wage revisions the Prosecutor and Local 221 negotiated in the SOA contract. As noted earlier, the County folded in many of these ancillary costs into the lieutenants base salary, thus increasing the actual base by \$8,643. As a result, under the present contract language for senior officer's pay, a sergeant would be entitled to \$5,814 for senior officer status. This figure represents the midpoint between the lieutenants' new base of \$87,500 and the new base the rank and file unit is proposing a sergeant receive of \$75,871 as base salary in 1996. This premium, when added to the ancillary payment, would total \$17,356 an officer would receive above his base salary. To graphically portray this outcome in his brief, counsel provides the calculations charted out as follows:

	<u>1996</u>	<u>1997</u>	<u>1998</u>
Investigator Step VI	79,934	84,173	88,665
Senior Investigator	84,026	88,304	92,838
Sergeant	93,227	97,779	102,604

Consequently the Prosecutor proposed the final offer it did in order to provide a reasonable wage structure which would move toward eliminating the still existing disparity in wages and compensation between units. Among its principle points are the following:

Economic

1. Wage freeze for 1996 with all other contractual compensation found in 1995 carried through 1996.
2. In 1997 and 1998 the base salary table from the Local 289 contract would be implemented for investigators and senior investigators.
3. In 1997 and 1998 Local 221's sergeant's wage scale would be increased on the basis of 3.4% and 3.1% increases over their 1995 salaries.
4. The present salary scale is amended to be based on a nine-step pay schedule.
5. The contract shall include coverage for 1999 (the fourth year of the contract) to be set by the arbitrator.
6. On-call pay will be eliminated for 1997, 1998, and 1999 as it was in the SOA contract and because Local 289 never received that benefit.
7. Clothing allowance and education pay to be eliminated in 1999.
8. Longevity, sick pay are to remain.

9. Senior officer stipend shall be set at \$2,156 and \$3,633 for senior investigator and sergeant and continued. None shall be provided to investigators.

10. In 1997, 1998 and 1999, sergeants shall be covered by the overtime policy found in the SOA contract (pages 5-7). In 1999 this procedure shall cover all Local 221 R & F members.

11. In 1999 minimum callback shall be reduced to two hours from four hours.

Non-Economic

12. BCPO seeks to have its proposal adopted on the issues of disciplinary procedures and departmental investigators.

DISCUSSION

The Interest Arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective representatives of the parties as set forth both at the hearing and in their briefs, the contract, the stipulated facts and the exhibits prior to reaching his decision. Interest Arbitrators are charged with reviewing eight criteria set forth in the Police and Fire Department Arbitration Reform Act (A-3296, C425 L1995) and then explaining the relevance and significance of these criteria in the evaluation of the parties' final offers which led to the issuance of his Award. That process is undertaken at this juncture.

Stipulation of the Parties. No stipulations exist in this interest arbitration which bear in any way on the outcome reached.

Lawful Authority of the Employer. The only control or restriction placed on the Prosecutor is the reality of obtaining the ultimate approval of his wage and benefit budget from the Assignment Judge of that particular vicinage. Initially he must present his budget to and obtain the approval of the County's Board of Freeholders. As a practical matter, that approval is key in avoiding presenting the budget to the Assignment Judge. The County is obligated under the Cap Law (P.L. 1976 c.68 [C.YOA:4-41.5 et. seq.]), but its effect is different than its applicability on municipalities. In the event the Board of Freeholders should reject the Prosecutor's budget, the Prosecutor must then present the budget in a Bigley application to the Assignment Judge who can then order the budget funded by the Freeholders, if he determines the request is appropriate.

The lawful authority of the County is less relevant in this arbitration than it is in cases involving municipalities. What must be borne in mind on a practical level is that the citizens of the County nevertheless fund the budget indirectly through their municipal taxes, and this concern was weighed and considered in the overall evaluation of the parties' final offers and the imposition of the most reasonable offer set forth in this Award.

Cost of Living. The past year and a half this contract covers witnessed a remarkably low increase in the CPI. As Prosecutor's counsel noted, we have experienced a four-year period of sub-three percent inflation rates which represents the lowest four-year total over the

past 30 years. A continuation of these modest stable increases does not seem to be threatened for the balance of this year. Even if it were to increase substantially over the balance of the remaining years set for this contract, the statistics show that the rank and file unit of Local 221 has so far outpaced inflation over the past ten years and those past gains would easily compensate for even drastic inflationary increases that exceeded the increases awarded in this Decision over the balance of the contract term.

Frankly, the three six percent annual increases sought by the PBA is at least double the CPI rate for the comparable period. No legitimate justification has been offered for these increases. Furthermore, the Prosecutor cites recent studies indicating that the CPI overstates inflation. (Ex. C-58). These studies are gaining support and, even if the CPI were adjusted downward a mere .5% under this theory, the six-percentage increases sought by the PBA would far more than double the CPI increase for the comparable period.

The Cost of Living criteria is one of the two or three most significant criteria considered in this interest arbitration, and the Award set forth below obviously demonstrates the recognition that the Prosecutor's final offer clearly prevails under this criteria.

Continuity and Stability of Employment. In different times this criteria might enjoy more important status. A review of the statistics offered by the Prosecutor explaining that two bargaining unit members voluntarily left their employment over the past five years, while 775 individuals sent unsolicited applications over the past three years proves convincingly that the compensation and benefits enjoyed by this unit assures continuity and stability of

employment. In light of these statistics, this criteria has little relevance. Were the unit decimated and chronically experiencing a high turnover rate, the final offers might have relevance if it could be shown that the members' compensation was responsible for the exodus. The reverse appears true here. The Prosecutor has been able to recruit and keep top flight personnel with the present compensation package. The Prosecutor's final offer clearly prevails over the PBA's under this criteria.

Overall Compensation. The PBA has been unusually successful in past negotiations and interest arbitrations. While there is no doubt that these officers and the Prosecutor's Office itself renders exceptional service to virtually every law enforcement unit in the County, the only conclusion that can be reached after reviewing their wages and compensation is that they are paid handsomely for their work. Nothing brings this conclusion home any better than reflecting on the fact that they are the highest paid investigative staff in the state and, even without any wage increases calculated for 1996, their 1995 salaries earned fifty-seven of its members a place in the one hundred highest paid Bergen County Prosecutor's employees. The most significant statistic, however, is that this particular unit comprised only 30% of the employees in the Prosecutor's Office, while accounting for 43.6% of the compensation total for the office. ..

PBA counsel sought to argue that the benefits this unit receives, viz. longevity, vacation entitlement, educational benefits, injury leave, clothing allowance and detective stipends are well below those of other law enforcement agencies in the area. Counsel

argues that when this well below average level of benefits is combined with its level of compensation what is produced is an overall package that makes it clear they are not highly paid among their peers. Rather than seeking benefit increases in those specific areas claimed to be lagging behind other Bergen County municipal law enforcement units, counsel converts those increases and asks that it be added to the competitive wage rates. In other words, counsel asks for 6% in salary increases to cover not only cost of living increases, but also to compensate for this allegedly lower level of benefits the PBA receives. To begin with, the proofs counsel offers to show that the benefits lag well behind other County units seem selective as to comparisons and does not appear as great as counsel would suggest. The burden is on the PBA to have made those total compensation calculations and to have compared them with the Prosecutor's unit. The PBA failed to substantiate that claim. The undersigned's own review of the claimed benefit deficits, even accepting them for the sake of argument as stated, concludes that they do not warrant the 6% increase sought even if we further accept the premise that some rough form of total equality between agencies is necessary. A review of the highlight comparisons the Prosecutor makes with other Prosecutors' investigative staff confirms that the Bergen County investigators are well ahead of their peers in those agencies.

In conclusion, the Prosecutor's final offer as to a wage increase prevails as the more reasonable of the two under the criteria of Total Compensation. As will be noted at length below, the Prosecutor's final wage package offer is separated from the extensive benefit

changes he seeks to invoke as part of his package. The final Award will revise and fine tune the Prosecutor's final offer to achieve the most reasonable wage and benefit award.

Interest and Welfare of the Public. Many of the considerations dealt with in some of the other criteria are relevant to a consideration of this rather broadly worded, amorphous criteria. As noted, the Prosecutor's investigative staff serves the County and its citizens admirably well. It has been established in the record that part of its mission is to oversee and support 73 other law enforcement agencies within the County while offering numerous specialized services from arson to homicide to white collar crime. There is evidence in the record that, professionally speaking, a job as a Prosecutor's investigator is an end to be desired by law enforcement officers because of the professionalism involved, the prestige incumbent with the profession, and the chance for career growth. There is little doubt but that this unit contributes significantly to the interest and welfare of the Bergen County citizens. The wealth of the County, its density and proximity to New York City, among other factors, mandate the high trained professional law enforcement unit found in the Prosecutor's Office. In viewing the two final offers under this criteria, the determining factor is that a final offer cannot lead to any significant financial diminishment of this unit. For that to happen, the interest and general welfare of the public would not be well served. With that in mind, it has been determined that the adoption of the Prosecutor's final offer in its entirety would not well serve that public interest. While recognition is given to the need to bridge the gap between the NTF and the Prosecutor's Local 221 unit to a degree, the adoption of the entire proposal

would be counter productive. Conversely, the awarding of the three "sixes" sought by the PBA or even a minor variation of that proposal would likewise have a negative effect on the interest and welfare of the public. Perhaps guided by the evaluation of the final offers under this criteria almost equally with the financial impact and comparability criteria, the conclusion has been reached, as extensively detailed below, that the most reasonable final award to be implemented must be achieved by assuring that the interest and welfare of the public not be **compromised** or diminished by an award that would impact unfavorably on this unit. In conclusion, it can only be stated that a carefully crafted compromise of the final offers will produce an award that will protect the interest and welfare of the public.

Financial Impact. PBA counsel uses the term "minuscule and almost incalculably small" to describe the effect its request for 6% - 6% and 6% increases would have on the County budget. Considering that the total 1996 budget had more than \$456,000,000 in appropriations, the statement is technically correct but misses the point. When it is compared more appropriately to the Prosecutor's budget of \$12,452,889, the impact is certainly recognizable. The Prosecutor **argues on the other hand** that, since 1996's budget is closed out, a **retroactive** 6% for 1996 and 1997 to date would come of necessity from the 1997 budget. In reality, the 1997 budget would have to absorb a 12% pay raise for Local 221. Accordingly, Prosecutor's counsel urged the adoption of its 1996 wage freeze as part of its final **package**.

The Local 221 unit is an extremely high paid group of investigators. The record discloses that there have been an ongoing battle over at least the past dozen years between the Local 289 NTF group seeking parity with the Local 221 group. Ironically, the positions have reversed over that period of time. Whereas once this same Prosecutor's Office fought narrowing the wage differences between the NTF (Local 289) and the Prosecutors Investigators contending they (NTF) were one-dimensional, relatively unskilled and untrained, it now argues the reverse. While frankly the sudden transfer of NTF members after Local 289's May 6, 1996 ratification of its contract is at least, in part, a rather transparent attempt in this arbitrator's eyes to justify the closing of the gap, it does not disqualify the Association's right to settle with that group just as was done with the Assistant Prosecutors at higher than expected increases to address morale issues and to, in the Prosecutor's estimation, properly compensate those individuals. While this arbitrator does not fault that approach to close the gap by increasing settlements paid to a lower compensated group, I do find fault, as will be noted more particularly below, in seeking to close the gap by removing en masse benefits the Local 221 group obtained in the past through settlement or award and attempting to dictate the Local 221 outcome by virtue of a settlement it reached with Local 289. ..

In concluding the Financial Impact section, the obvious only need be noted that, from a purely dollars and cents approach, the Prosecutor's final offer has the least financial impact whereas the PBA final offer has a detrimental impact on the Prosecutor's budget regardless

of how minuscule it may seem in terms of a finite percentage calculation. The key to the resolution of this arbitration is the issuance of an award that, when all things are considered, will have the most reasonable financial impact on the budgets while achieving fairness for all parties.

Comparability. In accord with PBA counsel, this arbitrator agrees -- particularly with this law enforcement unit -- that no significant comparability exists with the private sector.

With regard to a comparison of this group and the parties alternate final offers, common experience, backstopped by numerous exhibits presented into evidence in interest arbitration, confirms that the Prosecutor's final offer is more comparable to increases being experienced in public and private employment in general. Suffice it to say, the vast majority of recently reported increases (see generally C-60 to C-66) are far closer to the Prosecutor's proposal than to the PBA's requested three six percent increases.

The truly relevant discussion of comparability as one of the most significant criteria relied on in crafting the Award issued below relates to public employment in general and comparable public employment within the County as employer; within the County geographically and within the state comparably with other Prosecutors' offices.

With respect to a comparison of PBA Local 221's members with other law enforcement units within the County, that is, municipal departments, PBA counsel seeks only to make selective comparisons with from ten to seventeen community departments as to a partial list of various economic benefits. No true comparison is offered by the PBA on a total

compensation basis with Bergen County municipalities. It is clear from a cursory review of the fifteen municipal contracts entered by the PBA that the Local 221 investigators are paid above or near the comparable top ranks within those departments. PBA counsel has not pointed to any department or departments which exceed Local 221 with respect to salaries. Suffice it to say that PBA counsel has not made any arguments for the adoption of the PBA's final offer based on an unfavorable comparison with the salaries paid in any Bergen County municipalities. Furthermore, he has not offered any thorough comparison to substantiate his claim that with the present level of benefits, Local 221 falls behind these municipalities when salary is considered. Accordingly, his argument as to comparability of the PBA's benefit levels with selected Bergen municipalities fails to justify the awarding of 6% in lieu of matching benefit levels. Again, his comparisons are selective; they are not made on the basis of overall compensation and, furthermore, nothing mandates that this office lead the parade in Bergen as the most highly paid and compensated unit.

The comparison with other County Prosecutors' offices is similarly telling. In brief, this office leads in virtually every category. Of particular note are the more populous counties in the northern section of the state. Although most of those contracts used for the basis of comparison revert back to 1994 and 1995, nevertheless, when Bergen's comparable numbers for those years are viewed, it is obvious that they are significantly ahead of these counties (Hudson, Essex, Passaic, Morris, Middlesex and Somerset). While top salary for those offices ranged from \$51,000 in 1994 and 1995 to \$61,000 to \$63,000 in 1995 and 1996,

Bergen was paid \$66,639 in 1995. On average, Bergen appears to be \$4,000 - \$6,000 ahead of those offices when year is compared to year and rank to rank.

The most significant comparison arises from a survey of the Prosecutor's Office itself which shows that Local 221's members (both R & F and SOA) occupied seventy-three of the top one hundred highest paid employees in a Prosecutor's Office with a total census of 231 employees. Counsel sets forth- the figures numerous different ways to reinforce the Prosecutor's contention that they are extremely well paid to a point where the wage freeze proposed for 1996 and the modest increases set forth in the Prosecutor's final offer are indeed reasonable and should be awarded.

It is clear that from a comparability standard this unit prevails to a significant extent over its fellow workers within the Prosecutor's Office; over their peers in other comparable counties; as well as over law enforcement officers throughout Bergen County. When the opposing final wage offers are computed, the Prosecutor's offer is by far the more reasonable under the most relevant categories of Cost of Living, Comparability, and Financial Impact.

However, the overall proposal of the Prosecutor is far too harsh and the final Award issued below resulted from a modification of the wage proposals to arrive at the most reasonable final package in light of the evidence put before me as prescribed by statute. These issues will now be dealt with on a one-by-one basis.

Wage Proposal. Although the significant superiority of Local 221's salaries have been recognized, I reject the implementation of a wage freeze for 1996. Earlier in this Award,

discussion was had concerning the Prosecutor's recent conversion in attempting to narrow the gap between the NTF (Local 289) unit and this unit. If the County wishes now to recognize the wisdom of a position it fought in the three prior arbitration awards it entered into evidence, it can do so. To the extent that it legitimately argues that, either by prior arbitration award or its negotiated agreement with PBA Local 221, the PBA now enjoys salaries far in excess of what the position is worth in these times of historically low inflation, then such proposals will be evaluated and adopted or modified to achieve the most reasonable package. However, where it appears that a proposal is made for this unit merely to bridge the gap between it and Local 289 by taking "from Peter to pay Paul", then it shall not be awarded.

The proposal to freeze this unit for 1996 is just such an example. Accordingly, a reasonable increase to preserve Local 221's status quo is to award it an increase identical to the Cost of Living increase for 1996 which was 2.9%. It is therefore awarded.

Contract Length. The Prosecutor's proposal for a four-year contract is unreasonable in light of the expiration of the Local 289 contract at the end of 1998. To justify its four-year proposal as being reasonable, counsel argues the possibility of appeals of this Award and litigation. Hopefully that presents a worst case scenario which will not occur. The termination of this contract in 1998 may well discourage such a scenario, whereas an expiration into 1999 may well encourage appeals. In any event, under the known fact that the

Local 289 contract expires in 1998 and covers the identical period of time, a three-year contract is the more reasonable proposal. It is therefore awarded

Steps. Consistent with an ever increasing number of law enforcement agencies, as the Prosecutor argued, the expansion of steps is a reasonable request. Accordingly, the addition of the two entry level steps designated as A and B are awarded at the salary levels proposed for 1997 and 1998 by the Prosecutor. I reject the addition of the new VII step. Counsel argues for its nine step program as well as the salary levels it proposes and many changes in the benefits simply because it is what Local 289 has. What has to be kept in mind is that, even from the brief excerpted summaries the Prosecutor included from prior arbitration awards involving the Local 289 bargaining unit, it strenuously opposed even closing the significant gap that existed at that time. Apparently the PBA presented convincing arguments in its attempt to have that gap closed judging from the comments of arbitrators that the Prosecutor now seeks to use to convince this arbitrator to adopt its proposal for this unit. In the arbitration hearing itself in this matter, although Prosecutor's counsel obtained what I would term polite acknowledgments from Local 221 supervisors or peers that certain Local 289 members were "competent" or "good - very good" in performing in billets frankly described by the Prosecutor as traditionally staffed by Local 221's members, it is apparent that this "interchangeability" that the Prosecutor now argues developed full blown after the May 1996 settlement with Local 289. The fact has to be stated and clearly understood that the Prosecutor did not prove in this interest arbitration that these units were

identical, equal, or clones of one another -- and therefore, under his logic, the only reasonable outcome would be to adopt and accept its final proposals for Local 221 because they were what was agreed to by Local 289 and are in place. It should be recognized on every proposal offered by the Prosecutor, acceptance of any such proposal as being the more reasonable by this arbitrator will never rest solely on the justification that because Local 289 has it, it must be accepted for Local 221. If the Prosecutor had proven a parity of skills, background, experience, assignments and true interchangeability, such logic might flow. However, its proofs fell far short of that mark and frankly PBA counsel, in the limited testimony presented, proved to a greater degree the historical well-established differences between the units than the Prosecutor did to prove present similarities. Returning to the rejection of the new Step VII the Prosecutor proposed, the fact remains that he simply failed to prove the reasonableness of that request.

Salary Guide. For the reasons just stated, I reject the adoption of the Local 289 Salary Guide proposed by the Prosecutor. As noted earlier, for 1996 a wage increase of 2.91% which equates with the CPI for that year is awarded and shall be calculated upon the 1995 salary guide for steps I through VI and for senior investigator and sergeant.

1997. Midway through 1997, the present CPI for this year to date is still reported at less than 3%. A wage increase of 3.25% is awarded for 1997. This seems most reasonable since it will provide the bargaining unit with a level increase which arguable will preserve the status quo. As noted, this unit has achieved significant increases over the past years via

negotiations and arbitration decisions. As a result thereof, there is simply no rational justification for taking them back. To adopt a wage freeze for 1996 and the adoption of the Local 289 wage package for 1997 and 1998 would produce that kind of result. Were that done, the majority of this unit would be receiving a total three-year increase of 6.11% which is barely over 2% and almost certainly below the cost of living for those same years.

1998. The parties have no guidance for the rate of inflation for 1998. At best, it can only be **estimated** on the recent past. An additional award of 3.25% would seem as best as can be determined at this point for that year. The parties must understand that I fully recognize that this unit is handsomely paid. It certainly has failed to offer any meaningful justification for the 6% increases it sought. The extent of the rationale offered by the Prosecutor for its final proposal cited this unit's excessive salaries vis a vis assistant prosecutors, Local 289's members, as well as its peers in other counties. It is felt that the rates awarded will keep this unit in equipose with its present status and will not take actual salary away or place them on a new grid simply because another unit has it.

Proposed Eliminations in 1999. The Prosecutor proposed changes in several items which would not take effect until 1999 -- his proposed fourth and final year of the contract. Since the contract term has been set to expire at the end of the third year in 1998, these changes are moot as proposed, and this arbitrator will not move them up into 1998, the third and actual final year of the contract. For the record, these eliminations or changes were in

education pay, clothing allowance and call back. No convincing arguments were made by the Prosecutor for their elimination in this contract term.

“On-Call” Status Pay. Counsel proposed the elimination of this extra pay provision beginning in 1997. Having reviewed the language of the provision and counsel’s arguments, it is deemed most reasonable that this provision be eliminated in 1998 with the understanding that on-call status will be continued.

Senior Employee Pay. I reject the Prosecutor’s attempt to remove this benefit for investigators. In light of the fact that as it is presently instituted, it is based on a percentage of the difference between ranks, the most reasonable accommodation of the conflicting positions is to adopt fixed amounts as follows:

Investigators:	\$2,175
Senior Investigators:	\$2,175
Sergeants:	\$3,650

This provision will take effect in 1998.

Overtime. The justification argued by the Prosecutor that sergeants perform supervisory and management duties akin to those performed by the members of Local 221 SOA is convincing and leads to the adoption of a provision for sergeants that is exactly the same as found in the PBA Local 221 SOA contract. This provision shall take effect in 1998.

I reject the extension of this proposal to the ranks below sergeant in this bargaining unit. To begin with, counsel proposed its implementation in 1999 under the hope that its

four-year contract proposal would be adopted. It was not, and I decline to move the provision to 1998 even were I to be inclined to award it which I am not based on the record before me. Quite simply, the Prosecutor failed to provide convincing arguments as to why it should be extended to the lower ranks.

Holiday Overtime. Effective in 1998 for all ranks in the bargaining unit, this proposal advanced by the Prosecutor shall be implemented. It is consistent with the SOA and the Local 289 contract, and for this reason it seems to be a reasonable accommodation requested by the Prosecutor and justified by the cost savings potential, however modest. It is hereby awarded.

Therefore the undersigned, having duly heard all of the proofs and allegations of the parties of this proceeding, makes the following:

AWARD

ECONOMICS

Term: The term of this contract shall be from January 1, 1996 through December 31, 1998.

Wage Increases: The following wage increases are awarded as of January 1st of each contract year, and the increases shall be paid retroactively:

1996	2.91% increase across the board
1997	3.25% increase across the board
1998	3.25% increase across the board

Salary Guide: The Prosecutor's proposal for the addition of Steps A & B are hereby awarded as proposed including the salary rates specified. The proposal for Step VII is denied.

On-Call Status shall be eliminated in 1998 as proposed by the Prosecutor.

Senior Employee Pay is awarded in a fixed amount as noted:

Investigators and Senior Investigators = \$2,175.00

Sergeants = \$3,650.00

The Prosecutor's demand to eliminate senior pay for Investigators is denied.

Education Pay: The request to eliminate this benefit is denied.

Clothing Allowance: The request to eliminate this benefit is denied.

Overtime: The provision to apply current overtime language from the SOA contract to Sergeants is granted effective 1998. All other overtime modifications are denied.

Holiday Overtime: As proposed by the Prosecutor, this provision is awarded effective in 1998.

Any and all other proposals are denied.

Robert E. Light

ROBERT E. LIGHT, Arbitrator

Dated: July 21, 1997

STATE OF NEW JERSEY:

:SS

COUNTY OF MIDDLESEX:

On this 21st day of July, 1997 before me personally came and appeared ROBERT E. LIGHT to be known to me to be the individual described here and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Ellen Orlandini

ELLEN ORLANDINI
Notary Public of NJ

