

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

XX

In the Matter of the Arbitration Between )  
COUNTY OF MONMOUTH, )  
**EMPLOYER** )  
AND )  
PBA LOCAL 240 )  
**UNION** )  
XX)

**INTEREST ARBITRATION  
OPINION AND  
AWARD**

DOCKET NO. IA-2010-026

**BEFORE  
GERARD G. RESTAINO  
INTEREST ARBITRATOR**

APPEARANCES:

FOR THE COUNTY OF MONMOUTH  
STEPHEN KLEINMAN, ESQ.

SPECIAL LABOR COUNSEL FOR COUNTY

FOR THE PBA  
ROBERT FAGELLA, ESQ.

COUNSEL FOR PBA

## **PROCEDURAL BACKGROUND**

The parties to this dispute, the County of Monmouth and PBA Local 240, are signatories to a collective negotiations agreement that expired on December 31, 2008. The parties notified the New Jersey Public Employment Relations Commission (PERC) that they have selected the undersigned to be Interest Arbitrator in the instant dispute.

On October 9, 2009, I received formal notification from PERC that I was appointed to be the Interest Arbitrator.

I held informal mediation sessions with the parties on March 15 and April 22, 2010, in the hopes of reaching a voluntary successor agreement. It became apparent that a voluntary successor agreement could not be reached, and formal interest arbitration hearings were scheduled for September 10 and October 1, 2010. The parties submitted post-hearing briefs dated February 24, 2011.

At the hearings, each party had a full and complete opportunity to present evidence and testimony on their behalf, to examine and cross-examine witnesses under oath and to argue their respective positions. Subsequent to the submission of post-hearing briefs, the parties submitted some additional information to the Arbitrator. Therefore, in April of 2011, I notified the parties that I needed further information concerning the number of employees in the bargaining unit and the total base for those employees. The requested information for unit members plus those taking college courses was submitted to the arbitrator. The parties submitted over 180 separate documents and charts.

The parties did not agree upon an alternative terminal procedure. Accordingly, conventional arbitration will be the procedure utilized in the instant matter. Conventional arbitration is a much more flexible process that allows the Arbitrator to review all of the facts

and documents submitted, as well as to review the testimony in the record and make a determination away from the requirement of selecting any component of a final offer by either party.

I am required by N.J.S.A. 34:13(a)-16(g) to separately determine whether the total net annual economic changes for each year of the Agreement are reasonable under the non-statutory criteria set forth in subsection (g) of this section. These factors, which are commonly referred to as the statutory criteria, are set forth below:

- (g) The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence of each relevant factor:
  - (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.40aA:4-45.1, et. sec .).
  - (2) Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
    - (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:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or 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; 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 which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in public service and in private employment.
- (9) Statutory restrictions imposed on 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 section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

**FINAL OFFERS OF THE PARTIES**

**FINAL OFFER OF PBA 240 – Dated September 8, 2010:**

1. **Term of Agreement:** Four year term; (1/1/2009 — 12/31/2012)
2. **Salary**  
1/1/2009 - 4.25%  
1/1/2010 - 4.25%  
1/1/2011 - 4.5%  
1/1/2012 - 4.5%
3. **Additional Holiday** - Add Day after Thanksgiving as an additional 14<sup>th</sup> holiday;
4. **Disciplinary Actions/ Sick Time** - Clarify existing contract language to confirm that disciplinary action for sick time usage may only be brought on the 16<sup>th</sup> day of sick time usage and thereafter;
5. **Vacation Call-Ins** - Amend existing contract language to increase the number of permissible call-ins for holidays or vacation time from two days to three days;
6. **Personal Days:** Amend contract language to increase personal days from three days to four days;
7. **PBA Leave Time** - Amend contract language to increase PBA days from 100 days to 200 days;
8. **Privatization** - Add provision that in the event of layoffs caused by privatization of the functions of corrections officers, any officer laid off as a result shall receive as severance one month pay for each year of service.

**FINAL OFFER OF COUNTY OF MONMOUTH - Dated October 29, 2010**

**ARTICLE 9 (page 15)**  
**SALARY**

**PBA 240 WAGE INCREASES**

- 2009 2% cost of living increase after reaching top step (all steps frozen)
- 2010 2% cost of living increase after reaching top step (all steps frozen)
- 2011 2% cost of living increase after reaching top step (all steps frozen)

NOT E: Retroactive pay, if applicable, shall only be paid to employees who are employed as Corrections Officers on the date the successor Agreement is executed.

**ARTICLE 11 (pg 18)**  
**COLLEGE INCENTIVE**

**Amend Section 1 as follows (additions by underline):**

Section 1. Since both the Sheriff and the County of Monmouth recognize the value of trained Correction Officers, they hereby agree to pay any officer covered by this Agreement additional compensation in the amount of \$50.00 per year of college credit that is obtained by an officer after January, 1984 and while employed by the Sheriff or the county. The credit must be from an accredited college and in a course that will be of value to the person in the performance of work for the Employer, which the Warden in charge shall approve. No Officer shall receive in excess of \$1,800 of additional annual compensation pursuant to this Article. Beginning on January 1, 2011, payment is contingent on the successful completion of the course with the Officer receiving a grade of "B" or higher. Training paid for by the County shall not qualify for this college incentive payment. This final sentence shall not be retroactively applied to employees already receiving such college incentive payments.

**ARTICLE 13 (page 21)**  
**OVERTIME, CALL-IN AND COURT TIME**

**Amend Section 5 as follows (deletions by strikethrough, additions by underline):**

Section 5. A preferred list of volunteers for overtime shall be ~~developed between~~ maintained the Administration of the jail ~~and the PBA~~ specifying the following:

- a. Officers who wish to work beyond their shift; and,
- b. Officers who wish to work on their day off;
- c. ~~The preferred list of volunteers and the forced overtime list shall be administered by the PBA and distributed by the PBA to the scheduling supervisor. On a semi-annual basis, the PBA will administer post bids and day off bids on a seniority basis.~~

In the event volunteers for overtime cannot be secured, then the Warden shall require officers on the shift to be held over until the shift can be filled with qualified personnel. Officers shall be held over in the inverse order of seniority with the officer with the least seniority being first until the shift is rotated through.

**Add new Section 6 as follows:**

Effective January 1, 2011, an overtime cap of 650 hours per officer per year shall be implemented and enforced. No officer shall work overtime in excess of this amount during a calendar year except in the event of emergency as determined by the Administration of the jail.

**ARTICLE 14 (page 22)**  
**INSURANCE**

**Amend Section 1 as follows (deletions by strikethrough, additions by underline):**

Section 1. It is agreed that the County will provide a medical point of service plan. ~~Whereas it is the County's intention to encourage employee participation in such POS program, employee participation in said plan shall be at no premium cost to the employee with all premiums being borne by the Company.~~ Consistent with New Jersey law, employees shall pay 1.5% of their annual base salary as a contribution towards the cost of health benefits. The parties agree that should an employee voluntarily waive all coverage under the County's health plan, and provide proof of coverage from a source other than the County, the County will waive that 1.5% contribution for the employee.

**Amend Section 2 as follows (deletions by strikethrough, additions by underline):**

Section 2. The County shall continue to maintain a traditional indemnity medical insurance program, as is currently provided on a self-insured basis. However, any employee opting to participate in such program shall be responsible for a portion of the premium costs and made through automatic payroll deductions. Consistent with New Jersey law, the premium costs for which the employee shall be responsible shall be no less than 1.5% of the employee's annual base salary.

**Amend Section 4 as follows (deletions by strikethrough, additions by underline):**

Section 4. Bargaining unit members, and those employees receiving benefits under the County temporary disability program, shall be provided with the prescription insurance plan established by the County. ~~With a \$3.00 co-pay for prescription drugs and \$1.00 co-pay for those who use generic drugs. It is understood that the co-pay mentioned herein may be changed no sooner than January 1, 2003, but it is agreed that the change shall not exceed \$15 for prescription drugs and \$10 for generic drugs, and that it may be implemented following negotiations with Interest Arbitrator Robert Glasson retaining jurisdiction on this issue.~~ There shall be the following prescription drug co-pays:

Non-Mail Order

**Retail (Brand)                      \$25.00**

**Generics                                \$10.00**

90 days Mail Order

**Retail (brand)**                      **\$15.00**

**Generics**                                      **\$5.00**

**Replace entire existing Section 5 with the following language:**

Employees shall be provided with the full amount of statutory compensation established by N.J.S.A. 34:15-12(a) and/or applicable law. The terms and conditions of an Employee's entitlement to worker's compensation benefits shall be identical to those set by existing County policy or any future amendments thereto.

**ARTICLE 16 (page 26)**  
**PERSONAL, SICK AND MATERNITY LEAVE**

**Add new Section 6 as follows:**

Employees shall be eligible for family/medical leave pursuant to the federal "Family and Medical Leave Act" (FMLA) and/or the "New Jersey Family Leave Act" (FLA), and shall also be eligible for benefits available pursuant to the "New Jersey Paid Family Leave Law," P.L. 2008, c. 17. Employees agree to be bound by the existing County family/medical leave policy or any future amendments thereto, including any requirement to utilize paid leave as part of the employee's family/medical leave allotment.

**ARTICLE 17 (page 28)**  
**HOLIDAYS**

**Delete the entire provision that is designated "Effective January 1, 2005 — December 31, 2005."**

**Delete Section 2 of the provision that is designated "Effective January 1, 2006" (deletions by strikethrough):**

~~Section 2. Any other holidays granted generally to County Employees by resolution of the Board of Chosen Freeholders, the Governor of the State of New Jersey, or the President of the United States shall also be granted to all persons covered by this Agreement.~~

**Replace Section 2 with the following language:**

Employees shall also receive any other holidays granted to all other County employees by the Board of Chosen Freeholders, the Governor of the State of New Jersey, or the President of the United States. It is recognized that the County currently observes thirteen (13) official holidays, which does not include the Day after Thanksgiving. So long as the County continues the practice of requiring other County employees to swap one of these official holidays (e.g. Lincoln's Birthday) in order to have the Day after Thanksgiving off, bargaining



unit employees shall not be entitled to claim the Day after Thanksgiving as an additional alternate holiday.

**ARTICLE 20 (page 32)**  
**WEAPONS QUALIFICATION AND TRAINING**

**Amend Section 1 (deletions by strike through, additions by underline)**

Section 1. The Employer shall continue to provide a ~~the twice yearly mandatory~~ firearms range qualification program for Correction Officers as mandated by State law, regulation, policy, or guideline.

**ARTICLE 29 (page 42)**  
**TERM AND EXTENT OF AGREEMENT**

**Replace with the following language:**

This agreement shall be effective January 1, 2009, and shall continue in full force until December 31, 2011 or until a new Agreement is executed.

**DISCUSSION AND OPINION**

On June 13, 2011, Arbitrator Thomas Hartigan submitted his award in the Matter of the County of Monmouth and PBA Local 314, Docket IA-2009-073. Local 314 represents Monmouth County Sheriff's Officers. At that time, I was in the process of completing the financial analysis of the exhibits presented to me for the 240 bargaining unit. Arbitrator Hartigan addressed all aspects on the County's financial circumstances as they relate to the nine (9) statutory criteria that form the basis for an Interest Arbitration award. His award addressed the interest and welfare of the public, the County's ability to pay, legal authority of the County, the cost of living, the award's impact on the County, its budget and the citizenry. The fact that neither party appealed his award clearly means they accepted his analysis and conclusions including duration of agreement and % increases of the base each year and the overall % increase for 2009-2013.

The parties in this matter met on July 13, 2011, to review the Hartigan award and if possible reach a Memorandum of Agreement. Unfortunately, that did not materialize. The parties' representatives and the arbitrator exchanged emails and phone calls from July 25, 2011, into the third week of September. An agreement remained elusive necessitating me to submit an award.

PBA 240 is also part of the Sheriff's Office and the Hartigan analysis and conclusions are germane in this matter. It makes no sense for me to submit another 70-80 page award in September of 2011 concerning the same financial determinations reached by Arbitrator Hartigan four months prior. In that four month period the County's financial circumstances could not have changed so drastically to render the Hartigan analysis and conclusions null and void.

Accordingly, I have incorporated Arbitrator Hartigan's findings into the 240 award and made them part of my award. The difference between the Hartigan award and the 240 award is that 240 was willing to make concessions in the area of overtime and firearm training. Those concessions made it helpful for me to fashion an award that covers a five year period, gives savings to the County and puts an additional amount of money on the top step of the salary guide for years 2011, 2012, and 2013 without creating an insurmountable financial burden for the County. I also added one step in the guide and new steps in the beginning of the guide.

The Arbitrator, by statute, is required to separately determine whether the total net economic changes for each year of the Agreement are reasonable under the nine (9) statutory criteria set forth on pages 2-4 of this Award.

I have carefully considered the evidence which was presented, as well as the arguments of the parties. I have considered the evidence and arguments in light of the statutory criteria set forth above. The documentation submitted supports my Award in the instant matter. There was no evidence presented that will require the County to exceed its lawful authority and impose any financial constraints upon the residents of Monmouth County. The County has a solid financial base for funding my Award, and I do not see any financial impact/impediment to funding this Award. The data submitted shows that the County has a very sound, well thought out financial management program and has created and maintains appropriate reserves. This is attributed to the conservative and responsible financial management in the County.

Based on the evidence in the record, I conclude that the Award's financial impact will not adversely affect the governing unit, its residents and its taxpayers.

My Award will be using conventional arbitration, which will grant me broad authority to fashion the terms of an Award which will be based upon the evidence presented without being held to the final offers of the parties.

The parties, by necessity, base their arguments upon the correlated evidence they presented in support of their final offer and in response to the final offer of the opposing party. I am empowered with the authority and responsibility to develop the terms of this Award in this conventional arbitration proceeding.

It is axiomatic in interest arbitration and/or collective negotiations that in consideration of wages/hours and conditions of employment, the party seeking a change in an existing term and condition of employment bears the burden of showing a need for such a change. That guiding principle has been followed throughout this Award.

The County proposed a three year agreement with a term of January 1, 2009, through December 31, 2011, and the PBA proposed a four year agreement with a term of January 1, 2009, through December 31, 2012. The County was willing to agree to extend the Hartigan award to PBA 240 with 3% on the top step in 2011 through 2013, provided an overtime cap was implemented. The PBA was not willing to agree to an overtime cap without something in return. Candidly, that is the essence of collective negotiations.

The County was not willing to add more money on the top step in those cited years unless there was a concomitant savings on the guide for that extra dollar amount.

The PBA proposed to remove one training day from the agreement and accept an overtime cap for the extra dollar amount on the top step. The County was still insistent that they needed to have savings that would directly affect those currently on the salary guide.

My award created a hybrid of the above positions which creates a higher dollar amount for the top step in 2011, 2012, 2013, and establishes an overtime cap. Following the Hartigan pattern, added a new step 8 in 2011 to the current guide. Moreover, I added three new steps at the beginning of the guide in 2012.

The significance of my hybrid salary guide is not subtle; it is major. I met a need of the County to address the current guide; therefore, all those not on the top step in 2010 have an additional year to reach top step 8. All those hired as of January 1, 2012, will have to wait twelve years to reach the top step, where currently it is entry + 7 steps. As the Hartigan award states *"The addition of the step in 2011 reduces the cumulative earnings cost of the salary guide."* I went further than the Hartigan award by adding three new steps at the beginning of the guide in 2012. Those three new steps plus the new 8<sup>th</sup> step in 2011 creates a payout savings for the County.

## OVERTIME

It is important to note that with a 24/7 facility overtime will occur. There are many reasons why this occurs but consider the environment correction officers work in. Sometimes that environment is hostile. Society wants criminals in jail but has no idea what the everyday work life of a correction officer is. All society cares about it that those who break the law are arrested and taken off the streets. At that point it is someone else's problem to deal with. That is part of what correction officers do. They take society's problems and deal with those problems in a closed, walled environment.

The County's overtime presentation included the overtime list for 2010 and for January 1, 2011, to July 30, 2011. Those documents were presented at the July 13, 2011, meeting to supplement County Exh. 61, the overtime list for 2009 and partial for 2010. For 2010 they show a range of 0.25 hours to 2,410.25 hours of overtime and for partial 2011 they show a range of 0.75 hours to 1,086.75 hours of overtime. Additionally, the 2010 list shows the top ten officers receiving overtime with a range of 1,087.50 to 2,410.25 hours of overtime. The partial 2011 list shows the top ten with a range of 478.25 to 1,086.75 hours of overtime. Of the ten on the 2010 list, nine appear on the partial 2011 list.

The County also presented material that showed in 2009 that two correction officers were paid \$186,000, which is \$9,000.00 more than Governor Christie receives as an annual salary. Furthermore, the Asbury Park Press article titled "Overtime Goldmine" did not bode well for the County.

Incorporated into overtime assignments is the fact that due to the very nature of correctional work, there will be a need to involuntary assign overtime. This is the infamous

“stick list” whereby a senior officer can refuse overtime and a junior officer must take the assignment.

While the PBA does in fact administer the overtime assignments, nothing was presented to suggest or infer that the overtime assignments were being doled out to friends of PBA officers at the detriment of other correction officers. However, and most importantly, the County did not argue that there was some type of subterfuge in overtime assignments. The testimonial record does not support a finding that the PBA cannot administer the overtime assignments. This particular issue was part of the subject matter of a PERC petition, Monmouth County and Monmouth County Corrections 240, (CO-2010-508, I.R. 2011-09) in which PERC granted PBA 240’s interim relief, preventing the County from implementing an overtime cap. In that decision, the PERC hearing examiner stated:

*“the County has not provided specific instances demonstrating that the current system of distributing overtime is adversely affecting the efficient operations of the jail. In fact, the Warden has certified that there have been no incidents at the jail which are directly attributable to the fatigue or overwork of corrections.”*

Accordingly, the County’s proposal to remove the PBA from the administration of overtime is rejected. While it is difficult to determine any savings to the County with an overtime cap nevertheless, I agreed to the County’s demand for an overtime cap except I increased their final offer of 650 hours each year for each officer.

### **DURATION**

It should be noted that in the Hartigan award, both parties proposed a five year agreement. The duration of the 240 agreement by comparability standards must follow the Hartigan award. More importantly, if I were to award a four year agreement it would expire on December 31, 2012. The practical imperative of that date requires the parties to negotiate a successor agreement sometime in 2012. There are three months left in calendar year

2011, and to start negotiations three or six months into 2012 is a major impact upon the resources of both parties. Therefore, the agreement shall commence on January 1, 2009, and expire on December 31, 2013.

### **WEAPONS QUALIFICATION AND TRAINING**

The Agreement at Article 20 requires twice yearly mandatory firearms qualification for Correction Officers. It is my understanding that out of the current 300 officers; only 240 are actually authorized to carry weapons. I further understand that there are 6-7 "Firearms Training Officers" (FTO) who work 8-10 days in sections to train the officers in 8 hour days.<sup>1</sup>

Eliminating 1 training day produces the following:

Average salary (2008) \$68,840 ÷ 2080 annual hours = \$33.10 per hour

240 officers plus 60 (6 FTO x 10 days) 300 officers

\$33.10 x 8 hours = \$264.77 x 300 = \$79,430.

The above does not include overtime costs for the FTO's or the cost of ammunition. Nor does it include higher average salaries beyond the 2008 base year. Conservatively, I believe the total estimated savings (2012, 2013) to be at least \$100,000 per year, which is a reasonable conclusion based upon the facts in evidence.

That savings which is effective January 1, 2012, shall be a consistent savings into future years.

### **2008 SALARY BASE (GUIDE IS ENTRY LEVEL + SEVEN STEPS)<sup>2</sup>**

\$22,786,346, 331 in bargaining unit, 220 on top step

1% = \$227,863 .05% = \$113,931

<sup>1</sup> Arbitrator's notes from March 15/April 22, 2010 informal sessions

<sup>2</sup> see emails from Steven Kleinman dated 6/10, 6/16, 2011

Average Salary \$68,840 top salary of \$85,001 x 220 = \$18,700,220

Entry level to step 6 = \$4,086,146

**2009 THROUGH 2013 SALARY GUIDE (ATTACHED AS APPENDIX A)**

| STEP  | 2008  | 2009  | 2010  | 2011  | 2012  | 2013  |
|-------|-------|-------|-------|-------|-------|-------|
| ENTRY |       |       |       |       | 34006 | 34006 |
| 1     |       |       |       |       | 43117 | 43117 |
| 1A    |       |       |       |       | 44881 | 44881 |
| 1B    |       |       |       |       | 46645 | 46645 |
| 1C    |       |       |       |       | 48409 | 48409 |
|       |       |       |       |       |       |       |
| ENTRY | 33503 | 34006 | 34006 | 34006 |       |       |
| 1     | 42480 | 43117 | 43117 | 43117 |       |       |
| 2     | 49432 | 50173 | 50173 | 50173 | 50173 | 50173 |
| 3     | 56384 | 57229 | 57229 | 57229 | 57229 | 57229 |
| 4     | 63336 | 64286 | 64286 | 64286 | 64286 | 64286 |
| 5     | 70228 | 71281 | 71281 | 71281 | 71281 | 71281 |
| 6     | 77240 | 78399 | 78399 | 78399 | 78399 | 78399 |
| 7     | 85001 | 86276 | 88864 | 86276 | 86276 | 86276 |
| 8     |       |       |       | 91752 | 94734 | 97813 |

ALL SALARY INCREASES ARE RETROACTIVE TO 1/1/09

STEP 6, IN 2010, 78399 MOVES TO STEP 7, 2011, 86276 TO STEP 8, 2010, 94734

STEP 7, IN 2010, 88864 MOVES TO STEP 8, IN 2011, 91752, 94734 IN 2010 AND 97813 IN 2013

INCREASE ALL STEPS BY 1.5% IN 2009

INCREASE STEP 7 IN 2010 BY 3%

ADD NEW STEP 8 IN 2011 3.25% ABOVE 2010 STEP 7

INCREASE STEP 8 IN 2012 AND 2013 BY 3.25%

I maintained equal increments of \$1764 between steps 1 a, b, c, and step 2.

In May of 2009 due to a budgetary shortfall, the County laid off 37 Correction Officers.

By the end of 2009 the County began to re-hire those laid off and currently most have been re-hired.



**DIFFERENCE BETWEEN 3% AND 3.25% ON TOP STEP 2011-2013**

| <b>YEAR</b> | <b>3.25%</b> | <b>3.0%</b> | <b>AMOUNT &amp; #</b> | <b>YEARLY TOTAL</b> |
|-------------|--------------|-------------|-----------------------|---------------------|
| 2011        | \$91,752     | \$91,529    | \$223 X 237           | \$ 52,581           |
| 2012        | \$94,734     | \$94,726    | \$458 X 237           | \$108,546           |
| 2013        | \$97,813     | \$97,104    | \$709 X 237           | \$168,033           |
|             |              |             | <b>TOTAL</b>          | <b>\$329,430</b>    |

**COSTING OF AWARD**

| <b>YEAR</b> | <b>COUNTY<sup>3</sup></b> | <b>PBA<sup>4</sup></b> | <b>AWARD</b> |
|-------------|---------------------------|------------------------|--------------|
| 2009        | \$23,843,404              | \$23,754,766           | \$23,128,141 |
| 2010        | \$24,839,369              | \$24,764,344           | \$23,697,501 |
| 2011        | \$25,730,023              | \$25,878,739           | \$25,892,645 |
| 2012        |                           | \$27,043,282           | \$26,599,379 |
| 2013        |                           |                        | \$27,392,102 |

2008 ENTRY LEVEL TO STEP 6 = \$4,086,146

2009 ENTRY LEVEL TO STEP 6 = \$4,147,421 WHICH WAS USED FOR 2010-2013

With a layoff in 2009, and recall in different years, the parties can reconcile any discrepancies with my award and salary guide placement, and in particular the number on the top step each year as well as the number in the bargaining unit.

<sup>3</sup> See County Exhibit C-62 and page 34 of its post-hearing brief

<sup>4</sup> See page 38 of PBA's post-hearing brief

**BREAKAGE**

| YEAR  | # RETIRING      | TOP STEP | ENTRY LEVEL | SAVINGS  | TOTAL SAVINGS    |
|-------|-----------------|----------|-------------|----------|------------------|
| 2011  | 10 <sup>5</sup> | \$91,752 | \$34,006    | \$57,746 | \$577,460        |
| 2012  | 3               | \$94,734 | \$34,006    | \$60,728 | \$182,184        |
| 2013  | 3               | \$97,813 | \$34,006    | \$63,807 | \$191,421        |
| Total | 3 year          | Savings  |             |          | <b>\$951,065</b> |

County Exh. 64 is a listing of correction officer's years of service with a range from 1980 – 2008. That exhibit shows 64/298 correction officers with 20 or more years of service or 21.47% of the unit. The number 3 used for 2012 and 2013 retirees is an estimate based upon County Exh. 64 and my notes at the March 15/April 22, 2010 informal sessions. In fact, that exhibit shows that within 2 years, 20 correction officers will have 20 years of service with the County. With a workforce of 300 employees it is not uncommon to have at least 3 retirees per year.

It was stated by the PBA that no correction officers start above the entry level salary. Therefore, whenever any correction officer leaves employment their replacement is not paid their final employment salary. The difference between a correction officer's final salary and the salary of a newly hired correction officer is the breakage money. Retirement is not the only reason why correction officers leave employment in Monmouth County. Some of those reasons are varied such as better employment opportunity, higher paying position, disability retirement, promotional opportunity, medical or termination.

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<sup>5</sup> County estimates 10 – 15 retirees in 2011. I used the low number

I am not suggesting that the total breakage must be fully applied to each year's salary guide. I am offering a way for the County to show savings by using some of that breakage money as they would normally apply surplus to a budget. That money has already been budgeted. By using breakage money the County does not have to use any of its surplus to fund the settlement. For example, if the total correction officer unit is 300 and that number remains constant during the term of an agreement, each time a correction officer leaves for whatever reason; the County has a savings when someone is hired as an entry level replacement.

The use of breakage money reduces the amount the County needs to raise in taxes for its budget. Also, using breakage money to help fund a settlement does not impact upon PL 2010 c. 44, which limits a tax levy to a 2% increase. That law became effective July 13, 2010.

**2011-2013 BREAKAGE**

| TOTAL BREAKAGE | 3.25% on TOP STEP | DIFFERENCE |
|----------------|-------------------|------------|
| \$951,065      | \$329,430         | \$621,635  |

Using 34.5 % of the \$951,065 for 3.25% at the top step in 2011-2013 generates a balance of \$621,635. That balance/savings is increased when the elimination of weapon training day is added to the \$621,635 and it is higher if there are fifteen retirees in 2011.

In addition, with a new step 8 in 2011 and three new entry level steps, the payout to the County is significantly less. Not only does that continue for the remainder of the agreement, but it also continues into the future. In an email dated August 20, 2011, the County was concerned about how they could find a guaranteed savings of about \$120,000

in 2012 and 2013 from the ten or so new hires they make each year.

The following table shows how that can be accomplished:

| YEAR | # RETIRING | TOP STEP | ENTRY LEVEL | SAVINGS  | TOTAL SAVINGS |
|------|------------|----------|-------------|----------|---------------|
| 2012 | 10         | \$94,734 | \$34,006    | \$60,728 | \$ 607,280    |
| 2013 | 10         | \$97,813 | \$34,006    | \$63,807 | \$ 638,070    |
|      | 2 YEAR     | TOTAL    |             |          | \$1,245,350   |

The prior table I completed used only three retirees in 2012 and 2013. With the County projecting at least ten retirees in 2012 and 2013, the projected savings due to breakage is enormous.

Mr. Marshall, Assistant Administrator, testified that the County *“maintains a coveted Triple A bond rating from all three major bond rating agencies. By maintaining the highest possible rating, the County saves millions of dollars in interest on its bond offerings....One of the key areas the bond rating agencies consider is the level of surplus. As of the end of 2009 the County maintained a surplus of approximately \$83.7 million. (see Ex. C-42) However, the County traditionally uses a substantial portion of its surplus to balance the budget, in 2010’s case, almost \$45 million. Mr. Marshall explained at length that it is critical to properly manage the surplus and keep it sustainable year-to-year, or it can diminish very quickly.”*

Mr. Marshall further testified that *“because the County would be collecting less revenue that it had anticipated, by the end of the year the surplus would be just over \$70 million. If that trend were to continue, within a couple of years your surplus is gone, your bond rating is gone and you have hole you can’t climb out of because of the cap laws.”*

By using a portion of the breakage and weapons training funding, the County does not have to use any surplus money because the guide money is already budgeted. A new guide effective January 1 of any year costs X. However, the payout of that guide is less than X

when retirees are factored in. My award does not trample upon the County's bond rating, and in fact, supports the position advanced by Mr. Marshall.

**MEDICAL INSURANCE**

PL 2010.c.2 requires that all public employees pay 1.5% of their base pay for health insurance. That law became effective May 21, 2010. Using the 2008 base, because no new base has been implemented, 1.5% = \$374,764 for 12 months.

$\$374,764 \div 12 = \$31,230$  per month x 6 months (June –December) = \$187,381.

That amount remains in effect until October 2011 when PL 2010, Ch 78 becomes effective.

The amount for 2011 is \$31,230 per month x 9 months (January –September) = \$281,070.

The 2010 and 2011 total paid by correction officers for health insurance is \$468,451.

During those 2010 and 2011 time periods, the County's cost of health insurance for PBA 240 is offset by employee contributions of \$468,451. This is another savings for the County.

PBA 314 members will not have to pay the new rates as set forth in PL 2010, Ch 78 because their agreement was consummated prior to this new statute, which signed into law in July of 2011. However, PBA 240 members will have to pay the new premium sharing percentages based upon their annual salary. While that statute is not part of the exhibits before me, nevertheless, the savings from Ch. 78 is to be used for property tax relief.

**SUMMARY**

I have carefully considered the evidence and arguments of the parties in relation to the statutory criteria. The Award does not interfere with the lawful authority of the Employer, and furthermore, the Award is consistent with the interest of the public and will not have any deleterious impact on the governing unit or its residents and taxpayers. The County will not

have a CAP problem. PL 2007, c. 62 allowed a budget to be increased by 4%, but that was reduced to a 2% levy cap with the passage of PL 2010, c. 44. Moreover, PL 2010, c. 105, which will be controlling in the successor agreement, mandates that the salary base cannot exceed 2% including longevity and increments.

My award protects the continuity and stability of employment and offers a competitive salary. I respectfully enter the terms of the following award as a reasonable determination of the issues in dispute based upon the facts in evidence:

While the Award is higher than the County had proposed, it is less than what the PBA has proposed and strikes a balance between those two positions, as well as the law enforcement settlements in Monmouth County.

Accordingly, I hereby issue the following Award:

**AWARD**

1. DURATION

January 1, 2009 through December 31, 2013

2. OVERTIME CAP

Effective January 1, 2012, an overtime cap of 1000 hours per officer per year shall be implemented and enforced. No officer shall work overtime in excess of this amount during a calendar year except in the event of emergency as determined by the Warden and the supervisory staff of the jail.

The current practice of the PBA's involvement with administering overtime shall remain in effect.

3. WEAPONS QUALIFICATION AND TRAINING (ARTICLE 20)

Reduce number of required days to one per year.

4. SALARY ALL SALARY INCREASES ARE RETROACTIVE TO JANUARY 1, 2009

2009 JANUARY 1, 2009, INCREASE EACH STEP BY 1.5%

2010 JANUARY 1, 2010, INCREASE TOP STEP BY 3%..ALL OTHERS STEPS FROZEN AT 2009 AMOUNT

2011 JANUARY 1, 2011, INCREASE TOP STEP BY 3.25%..ALL OTHERS STEPS FROZEN AT 2009 AMOUNT  
ADD NEW STEP 8 IN 2011, 3.25% ABOVE 2010 STEP 7  
ADD THREE NEW STEPS BETWEEN STEPS 1 AND 2

2012 JANUARY 1, 2012, INCREASE TOP STEP BY 3.25%.. ALL OTHERS STEPS FROZEN AT 2009 AMOUNT

2013 JANUARY 1, 2013, INCREASE TOP STEP BY 3.25% ON TOP STEP.. ALL OTHERS STEPS FROZEN AT 2009 AMOUNT

5. All other proposals of the parties not addressed herein are rejected.


It should be noted that freezing step amounts does not mean officers are not allowed to progress through the steps of the guide.

**APPENDIX A**

**2009 THROUGH 2013 SALARY GUIDE**

| STEP  | 2008  | 2009  | 2010  | 2011  | 2012  | 2013  |
|-------|-------|-------|-------|-------|-------|-------|
| ENTRY |       |       |       |       | 34006 | 34006 |
| 1     |       |       |       |       | 43117 | 43117 |
| 1A    |       |       |       |       | 44881 | 44881 |
| 1B    |       |       |       |       | 46645 | 46645 |
| 1C    |       |       |       |       | 48409 | 48409 |
|       |       |       |       |       |       |       |
| ENTRY | 33503 | 34006 | 34006 | 34006 |       |       |
| 1     | 42480 | 43117 | 43117 | 43117 |       |       |
| 2     | 49432 | 50173 | 50173 | 50173 | 50173 | 50173 |
| 3     | 56384 | 57229 | 57229 | 57229 | 57229 | 57229 |
| 4     | 63336 | 64286 | 64286 | 64286 | 64286 | 64286 |
| 5     | 70228 | 71281 | 71281 | 71281 | 71281 | 71281 |
| 6     | 77240 | 78399 | 78399 | 78399 | 78399 | 78399 |
| 7     | 85001 | 86276 | 88864 | 86276 | 86276 | 86276 |
| 8     |       |       |       | 91752 | 94734 | 97813 |

Dated: September 27, 2011

  
Gerard G. Restaino, Arbitrator

State of Pennsylvania )

County of Wayne ) ss:

On this 27<sup>th</sup> day of September, 2011, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.

