STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

HUDSON COUNTY DEPARTMENT OF CORRECTIONS

-and- Docket No. IA-2012-043

PBA LOCAL NO.109A (Corrections Superiors)

Before: Susan W. Osborn, Interest Arbitrator

Appearances:
For the County:
Scarinci Hollenbeck, Attorneys
(Sean D. Dias, of counsel)

For PBA 109A:
Klatsky, Sciarrabone & DeFillippo, Attorneys
(David DeFillippo, of counsel)

Witnesses:
Joseph Petrucelli, CPA for Local 109A
Omar Ortiz, Local 109A President
Patrick Sheil, County Director of Labor Relations
Cheryl Fuller, County Director of Finance
Joseph Avila, County Correctional Facility Director

INTEREST ARBITRATION AWARD

BACKGROUND

On April 20, 2012 the Hudson County Corrections PBA Local 109A filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over successor collective negotiations agreements with Hudson County. The previous agreements expired on December 31, 2009.

On April 26, 2012, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 45 days of my appointment with no provision for a mutually agreed upon extension of any length. By letter of May 17, I scheduled an interest arbitration hearing for June 13, 2012 and directed each party to submit a final offer no later than May 29 in accordance with N.J.S.A. 34:13A-16(f)(1).

At the June 13 Interest Arbitration hearing, the parties were given an opportunity to offer testimony and documentary evidence as well as argue orally. The County and PBA Local 109A each submitted substantial documentary evidence. Both parties submitted Final Offers and calculations of the financial impact of their respective economic proposals. The PBA submitted a certification of Accountant and Financial Analyst Joseph Petrucelli. The County submitted a certification of County Finance Director Cheryl Fuller. Post-hearing summations were filed by June 20, 2012.

FINAL OFFERS OF THE PBA

The PBA submitted the following final offer:

Duration of Agreement:

-5-year contract: 1/1/10 - 12/31/14.

Salaries and Overtime:

-2.5% salary increase in each year of the contract.

-Retroactive payments for officers who separated from service since 12/31/09.

-Overtime payments in cash or compensatory time at the officer's option. Cap comp time bank at 480 hours.

Shift Bidding:

-Seniority based shift bidding annually in October for following calendar year.

-Reciprocal Days/"Swapping shifts":

-Incorporate the parties' July 30, 2007 side-bar agreement permitting officers to "swap shifts" into contract.

FINAL OFFERS OF THE COUNTY

The County submitted the following final offer:

Contract Duration:

-3 year agreement - 1/1/2010 - 12/31/12

Salaries:

-1/1/10: 0%

-1/1/11: 1.5%

-1/1/12: 2.0%

-No retroactivity

-Add contract language committing parties to abide by any new legislation.

Overtime:

-Exclude sick leave from calculation of overtime.

Holidays:

-Eliminate Holiday Pay

-Amend Article to provide: "Notwithstanding the foregoing, the County reserves the right, at its discretion, to adjust the holiday schedule herein to conform to that promulgated by the Governor of the State of New Jersey."

-Add:

Absence Before and After Holiday: "An employee who is absent from work due to illness the day before and/or the day following a legal holiday shall not be paid the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as 'absent no pay' or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday of observed while he/she is employed in either status."

Insurance:

Add new section:

Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over such changes. However, as participating SDHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and//or benefit level in this agreement will be changed accordingly including the cost of co-payments of prescriptions to employees. The County will not be liable for any such change or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, an individual employee or the County from filing an appropriate challenge against SHBP for any such change. This paragraph applies to any programs under the SHBP, for example, the prescription drug program.

Add New Section:
Employee health care insurance contributions shall be in accordance with Chapter 78, P.L. 2011.

Amend Section 15.4:
The County shall provide the N.J. State Prescription Drug Program.

Training (New Article):

-Superior Officers to reimburse County for trainings costs if they leave County's employee within three years of training completion. Reimbursement may be deducted from payment for unused leave and holiday time balances.

Mandatory Direct Deposit:

Sick Leave:

-Delete Sick Leave Incentive (Section 18.7.)

Stipulations of the Parties

The parties stipulated the following facts:

1. Base salary consists of the employee's contractual

salary plus uniform allowance.

2. Longevity payments are not part of base pay.
3. Educational incentive payments are not part of base pay.
4. Holiday pay is paid in two separate installments and is not part of base pay.
5. Unit employees are currently in Tier 1 of Chapter 78 health care contributions, and will advance to Tier 2 effective July 1, 2012.

FINDINGS OF FACT

Demographics

The County of Hudson, in the State of New Jersey, is a peninsula bounded by Newark Bay, the Passaic and Hackensack Rivers on the west, the Hudson River and New York City on the east, the Kill Van Kull on the south (separating the City of Bayonne and Staten Island, New York) and Bergen County on the north (C-118). The County is 46.69 square miles and the smallest of New Jersey's 21 counties (C-107,118).

The county consists of twelve municipalities (C-118). They are as follows: Jersey City, Bayonne, North Bergen, Union City, West New York, Kearny, Harrison, Secaucus, Guttenberg, Weehawken, East Newark, and Hoboken (C-118).

The County is an ideal location for industry, as well as commerce, since it is located between the City of Newark and New

York City (C-118). It is estimated than one million persons pass through the County each day (C-118). Major transportation arteries that service the County are: the New Jersey Turnpike and other regional and interstate highways; the Lincoln and Holland Tunnels and various inter-county motor and rail links, including the Port Authority Trans-Hudson Railway (PATH) connecting Manhattan with New Jersey (C-118). The County is also within a short travel distance of Newark Liberty International Airport in New Jersey and Kennedy International Airport and LaGuardia Airports in New York (C-118). Within its borders are trunk-line railroads, motor freight transport facilities, deep water shipping ports and dockside warehouses that play an important role in exporting goods into world markets and importing raw material and finished products for distribution throughout the United States (C-118).

The 2010 population of Hudson County was 634,266, while ranking forth in the State (C-124,132). Records from 2000 indicate there were 9,999.9 persons per square mile in the County (C-107). The County's median household income in 2009 was $55,767, ranking fifteenth out of 21 counties State counties (C-132). The County's per capita income from 2005-2009, in 2009 dollars, was $30,573, ranking fifteenth in the State (C-132). The County's persons below the poverty level in 2009 were 14.6% and third highest in the State (C-132). In 2000, 70.5% of persons, age 25+, were high school graduates; and 25.3% of the persons, age 25+, had a bachelor's degree or higher (C-107).

The New Jersey Tax Record reflects Hudson County's 2011 estimated average deed amount for a residential property class as $323,965.58; and for the year 2000, as $173,214.30 (U2-5). The estimated total property assessment for the residential class in 2011 was $123,854.00; and for 2000 was $114,460.00 (U2-5).

Since 2005, there have been nearly 10,000 foreclosure filings in Hudson County (C-115). The number of filings increased each year since 2005, from fewer than 1,000 filings in 2005 to 3,627 filings in 2009 (C-115). Additionally, County foreclosure filings for the first quarter of 2010 totaled 913 (C-115).

Budgeting

County's Perspective:

The Hudson County's Director of Finance and Administration, County Treasurer and Chief Financial Officer, Cheryl Fuller, states that the Hudson County's tax ratables and property taxes are a primary concern due to the financial impact it has on County residents (C-103). In addition, she contends that any award in excess of the County's last best offer will result in severe stress on the already constrained budget (C-103).

For the years 2008 through 2012, Fuller testified that the County's equalized value of property reflects a decrease of $8.9 billion (C-103). In 2011, the County's equalized value of property decreased by $4.7 billion dollars and the assessed value of property increased by $307 million (C-103). For the year 2012, the County's equalized value of property significantly decreased by $4.1 billion and the assessed value of property decreased by $191.8 million (C-103). Fuller states that this is indicative of the down turn in the economy (C-103).

Fuller testified that the County annually confronts a structural deficit whereas its recurring expenditures exceed its recurring revenues (C-103). She further testified that for 2012, the deficit continues to be around $13 million. In addition, Fuller states that the County has addressed the structural deficit each year by the deferral of pension payments, no salary increases for non-union employees for three years (2009, 2010 & 2011), County tax levy increases and employee contributions for employee benefits (C-103).

Fuller contends that despite the County's efforts in seeking new or enhanced revenue sources, such as the housing of U.S. Marshal and ICE detainees in their Correctional Center, the loss of other budget revenues has been significant and has greatly contributed to the County's deficit and the requirement to raise taxes (C-130). In the years 2006 through 2011, the

Constitutional Officers revenues have decreased by $7.5 million (C-103). Fuller testified that federal dollars decreased by approximately $500,000 from 2011 due to a decrease in prison population. In addition, she testified that the State has advised the County that its anticipated amount of $250,000 must be reduced. Fuller further testified that even though the inmate population at the Correctional Center has decreased, the County has retained the same staffing levels.

Interest on investments is down by $5.0 million and added and omitted taxes are down by $2.2 million (C-103). Fuller stated that other revenue losses include the Prosecutor PILOT Initiative of $802,000 and the 2011 complete elimination of the leasing of the County Correctional Center for $1.15 million (C-103).

The Employer states that despite the County's efforts to reduce costs in the budget, County taxes have continued to escalate (C-103). It asserts that the unfortunate trend of increasing taxes has placed a tremendous burden on its taxpayers (C-103). It illustrates the trend in increasing taxes as follows: for 2006, the County tax levy increased by $10.6 million; in 2007, the tax levy increased by $10.1 million; in years 2008 and 2009, the tax levy increased by $11.8 million for each year; in 2010, the tax levy increased by $12.0 million; and in 2011, the tax levy increased by $10.3 million (C-103, 108).

The total tax levy increases for Hudson County from 2006 through 2011 was $55.9 million (C-103).

The Employer contends that it anticipates an increase in budget expenditures (C-103). It has received notice that health and prescription insurance will increase by 10.3% or an estimated $2.7 million (C-103). Fuller states that given the condition of the State Pension System, the County anticipates a sizable increase in this cost (C-103). She contends that the State of New Jersey has continued to reduce the reimbursement formula for County-operated psychiatric hospitals, whereas the reimbursement rate stood at 90% of cost, and now, two years later, the rate is 85% of cost (C-103). It estimates that the 5% reduction is equivalent to $897,000 in lost revenue (C-103).

Fuller testified that the County has been notified that health and prescription benefits will rise by approximately $10.3% for 2012. The County has sent out the estimates for PERS and PFRS for 2013 (C-103, 130). PERS will increase from $10,559,196.88 to $10,931,948 for an increase of $372,751.12 (C-103, 130). The PFRS will increase from $11,503,858.68 to $12,648,769 for an increase of $1,144,910.32 (C-103, 130). These amounts result in a combined increase in 2013 State pension costs of $1,517,661.44 (C-103, 130).

Beginning in 2004, the County operated an Open Space, Recreation and Historic Preservation Trust Fund (C-103). The authorized annual levy was up to one cent per $100 of equalized valuations (C-103). For 2010, this levy would have amounted to $6,665,258 million (C-103). Fuller testified that the Open Space tax levy was not fully collected because of stress on the taxpayer. Therefore, it was decided to suspend the program (C-103). It was further decided to levy the debt service requirement in the amount of $695,215 (C-103; U2-3). For 2011, the County levied the debt service requirement for only one-half of a penny for the same reason (C-103).

The Employer contends that the County is dealing with a down turn in the economy which has resulted in major decreases in its resource stream (C-103). To this point, it avers that it has been able to maintain its fund balance, however, it sees this as a problem as the County moves forward (C-103). In fact, the County has had to rely on its fund balances as a significant resource to support its budget (C-103). For 2012, the County reluctantly released some of its current fund reserves to plan for fund balance regeneration for subsequent years and anticipated emergencies in the cost of litigations due to the disposition of funding in its insurance reserves [1](C-103).

In addition, even with the use of virtually all of the fund balance, it was necessary for the County to significantly

[1] Fuller testified that the County does not expect to regenerate fund balances this year because of declining revenues.

increase the County tax levy (C-103). The County asserts that it must gradually decrease the amount of fund balance used to support its budget in light of the declining revenue source (C-103). Fuller testified that the reserve amount is not "revenue".

PBA's Perspective:

The Union contends that since 2005, the Corrections Department's salaries and wages and other expenses have resulted in reserves (U2-1). It provides the following chart which depicts the reserves from 2007 through 2011 (U2-1):

Corrections Salaries & Wages & Other Expenses					
Salaries & Wages	**Budgeted**	**Modified by Transfers**	**Amount Paid**	**Cancelled**	**Reserved**
2012	$46,265,937				
2011	$42,173,938	$42,173,938	$41,553,937		$620,000
2010	$41,295,704	$41,295,704	$40,943,770		$351,933
2009	$38,334,133	$38,334,133	$38,026,244	$25,000	$282,888
2008	$36,410,980	$36,160,980	$35,881,000		$279,979
2007	$36,354,885.00	$35,219,885	$33,098,989	$1,900,000	$220,895.73
Other Expenses					
2012	$9,850,584				
2011	$9,946,679	$8,346,679	$7,786,246		$560,432
2010	$10,305,631	$10,305,631	$9,520,398	$250,000	$535,232
2009	$10,708,436	$10,708,436	$9,881,214	$250,000	$577,221
2008	$11,920,295	$11,450,295	$9,706,336	$1,000,000	$743,958
2007	$10,139,553	$10,489,553	$10,091,780		$397,772

The Union states that in 2011, the County spent $1,180,433.08 ($620,000.43 + $560,432.64) less than budgeted for the Corrections Department salaries and wages and other expenses (U2-1). In addition it states that in 2010, the County spent $887,166.40 ($351,933.52 + $535,232.88) less than budgeted, for the Corrections Department (U2-1). Further, it adds that in 2010, $250,000 of the Corrections Department's other expenses was cancelled (U2-1). It asserts that the $250,000 reserve was used to increase the County's fund balance in the 2010 period (U2-1). The Union states that the County used the cancelled appropriation reserves from 2007 through 2009, totaling $3,425,000, as direct increases to the fund balance for those periods (U2-1).

The difference between the 2012 budgeted salaries and wages for the Corrections Department, to the amount budgeted in 2011, is $4,091,999 or a 9.703% increase over the 2011 budgeted/modified amount (U2-1).

The Union asserts that the County has continually generated surplus each year and has an ending 2011 fund balance of $28,051,598.40 after utilizing $24,500,000 in the 2011 budget (U2-2). Petrucelli testified that the County has done a good job in running its budget.

The following chart depicts the County's fund balance from 2007 through 2012 (U2-2):

Use of Surplus						
	Budgeted 2012	Actual 2011	Actual 2010	Actual 2009	Actual 2008	Actual 2007
Fund Bal as of January 1	$28,051,598	$25,060,546	$24,528,532	$24,285,914	$22,505,108	$22,050,183
Surplus Utilized in Budget	$23,500,000	$24,500,000	$24,000,000	$23,800,000	$22,000,000	$21,800,000
Remaining Fund Balance	$4,551,598	$560,546	$528,532	$485,914	$505,108	$250,183
Excess from Operations/ Revenue	-	$27,491,052	$24,532,014	$24,042,618	$23,780,806	$22,254,925
Fund Balance as of December 31		$28,051,598	$25,060,546	$24,528,532	$24,285,914	$22,505,108
Percentage of Surplus Used	-84%	-98%	-98%	-98%	-98%	-99%

The Union avers that the above chart illustrates the County has continually been able to generate fund balances since 2007 (U2-2). In 2011, the County regenerated $27,491,052 of fund balance and ended the year with a fund balance of $28,051,598 on December 31, 2011 (U2-2). It contends that the 2011 ending fund balance is the largest ending fund balance since 2006 (U2-2). This enabled the County to stabilize the tax levy while complying with Chapter 62 laws of 2007's tax levy cap (U2-2).

In 2012, the fund balance in the beginning of the year was $28,051,598.40, of which the County has budgeted $23,500,000 as surplus revenue to be used in the 2012 budget (U2-2). Petrucelli testified that the fund balance increased from 2010 to 2011. The 2012 remaining balance of $4,551,598.40 fund balance is over 8 times greater than the 2010 remaining fund balance (U2-2). The Union states that the County has $39,602,245.97 ($24,094,337.80 + $15,507,908.17)[2] in appropriation and encumbrance reserves (U2-7). Petrucelli testified that the appropriation reserves are available to lapse into surplus in the second year and the encumbrance portion of the reserves, if cancelled, would go into the fund balance, and could include funds available to fund the PBA Local 109A's requested proposal (U2-7). Petrucelli testified that the County has continually regenerated surplus.

The Union contends that the 2011 annual general tax rate increase, allocated to the cost of the Corrections Department's salaries and wages and other expenses, was $7.20 (U2-4). The following chart shows 2010 - 2011 County general tax rates, average residential assessed valuation and annual residential property tax county rate increase allocated to the cost of the Corrections Department (U2):

		2010		**2011**		**Increase (Decrease)**
County General Tax Rate		1.228		1.268		0.040%
Avg. Residential Assessed Valuation		$123,867.45		$123,839.25		$(28.20)
County General Tax Rate	x	1.228	x	1.268		-
		$152,111.70		$157,033.34		$4,921.65
Per $100 of Assessed Value	/	100	/	100	/	100

[2] The $15,507,908.17 represents Accounts Payable and not Appropriation Reserves and Commitments.

Amt. to be Raised by Taxation for County General Purposes	$1,521.12	$1,570.33	**$49.22**
Percentage of Corrections Department Raised by County Taxation			14.62%
Avg. Annual Residential Property Tax County Rate Increase Allocated to the Cost of Corrections			**$7.20**

The Union states that the County has significant remaining borrowing ability due to its low outstanding net debt (U2). The following chart reflects the County's 2009 through 2011 equalized value, net debt outstanding and remaining borrowing power:

Equalized Property Values & Debt Analysis					
Year	**CY**	**Equalized Value**	**Net Debt Outstanding**	**Nebt Debt %**	**Remaining Borrowing Power**
2011	12/31/2011	$57,358,268,809	$480,093,536	0.78%	$747,419,144.68
2010	12/31/2010	$61,277,951,527			
2009	12/31/2009	$65,490,681,766			
		$184,126,902,102			
		3-year Avg. Equalized Value			$61,375,634,034.00
		2% of the 2011 Avg. Equalized Value			2.00%
		Statutory Debt Limit		100.00%	$1,227,512,680.68
		Amt. of Statutory Debt Limit Utilized		39.11%	$480,093,536.00
		Amt. of Statutory Debt Limit Available		60.89%	$747,419,144.68

The Union asserts that the County's low net debt percentage is below the statutory debt limit and therefore the county has significant statutory borrowing power available in the amount of

$747,419,144.68 (U2, U2-11). It states that the County is not financially extended (U2).

Total Appropriations/Revenue:

Total appropriations for 2011 were $472,436,177, while total appropriations for 2012 are $484,201,991, resulting in a difference of $11,765,814 (C-130). The following chart reflects 2011-2012 County appropriations, revenues and the amount to be raised by taxation (C-130):

Appropriations				
	2011	2012	Difference	%
Total Salaries & Wages	$157,706,971	$166,659,249	$8,952,278	5.7%
Other Expenses	$228,131,477	$226,149,594	$1,981,883	-0.9%
Statutory Expenses	$37,494,072	$38,090,494	$596,422	1.6%
Capital Improvements	$29,030,177	$30,213,515	$1,183,338	4.1%
Debt Service	$19,726,438	$22,474,330	$2,747,892	13.9%
Deferred Charges	$346,942	$616,708	$269,766	77.8%
Judgments	$100	$100	$0	0.0%
Total County Appropriations Increase	$472,436,177	$484,201,991	$11,767,814	2.5%
Revenues				
Surplus Anticipated	$24,500,000	$23,500,000	$1,000,000	-4.1%
Constitutional Offices	$8,812,200	$9,653,000	$840,800	9.5%
Law Enforcement	$29,402,500	$27,896,500	$1,506,000	-5.1%
Miscellaneous Revenues	$28,169,318	$31,568,752	$3,399,434	12.1%
County Welfare Agency	$35,189,410	$36,102,106	$912,696	2.6%
State Assumption of Costs of County Social & Welfare Services & Psychiatric Facilities	$48,637,215	$45,837,117	$2,800,098	-5.8%
State Aid - County College Bonds	$3,209,386	$3,126,185	$83,201	-2.6%
Special Items of General Revenue (Grants)	$14,862,809	$13,838,237	$1,024,572	-6.9%
Total General Revenues	$192,782,838	$191,521,897	$1,260,941	-0.7%
Summary				
Amount to be Raised by Taxation	$279,653,339	$292,680,093	$13,026,754	4.7%

Federal and State Grants:

The Union contends that the County has demonstrated its ability to obtain grant revenues to reduce taxation, as evidenced by the $36,999,788.05 of grants realized in cash in the 2010 budget year (U2, U-17)[3]. In addition to grants that are anticipated when the budget is adopted, the County has the ability to fully fund appropriations that can later be reimbursed as Chapter 159 Grants are received during the budget year (U2). It asserts that the County has not provided information with regards to positions that are fully funded and will be reimbursed upon receipt of grants through Chapter 159 that would generate additional surplus (U2). The Union states that the County's argument that they are limited to funding PBA Local No. 109A only with the 2% allowed to be raised by taxation is incorrect (U2).

Debt Service:

The Employer states that in 2012, the County's debt service payments will increase by approximately $2.7 million due to the issuance of bonds and notes to fund critical infrastructure improvements and capital needs (C-103;130).

---

[3] In 2010, the Grant & other miscellaneous revenues realized were $36.9 million; however, in 2011, Anticipated General Revenues (to include Grants) were $14,862,809.07 (U-17).

Tax Rates:

The County tax rate for 2011 increased to $4.61 per $1,000 from $4.10 in 2010 or an increase of $.51 cents per $1,000 (C-103).

% of Budget - Funded by Taxpayers:

The County's amount to be raised by taxation for 2012 is $292,680,093 (C-121,130,131). The County's appropriated budget for 2012 is $484,201,991 (C-130). The amount of the 2012 budget funded by taxpayers is 60.45% (U2). The amounts raised by taxation to total collected or budgeted revenues are as follows: 2005 - 54.1%; 2006 - 52.7%; 2007 - 53.2%; 2008 - 53.3%; 2009 - 53.8%; 2010 - 55.2%; and 2011 - 60.5% (U2).

Corrections Department % of Budget:

The Corrections Department's salaries and wages for 2011 was $42,173,938 (U2-6). For 2011, the Corrections Department's appropriated salaries and wages contributed to 26.74% of the County's total budget for salaries and wages ($42,173,938/$157,706,971) (U2-6). For 2012, the Corrections Department's salaries and wages contributed to 27.76% of the County's total appropriated salaries and wages ($46,265,937/$166,659,249) (U2-1)[4].

% of Tax Collections:

[4] "Total" County 2012 appropriated salaries and wages was not provided in the exhibits.

The County's tax collections for the years 2005 through 2011 have been 100% (U2). The County receives its full-budgeted revenue to be raised by taxation each year (U2-3). The County, by statute, receives 6% interest per annum from the municipalities for nonpayment of taxes on or before the due date (U2-3). The County's budgeted revenue to be raised by taxation has increased $79,624,101 or 37.37% since 2005 through 2012 (U2-3).

Tax Appeals:

The Employer states that for the year 2010, 7,754 tax appeals were filed and in 2011 there were 7,673 filings (C-103). It contends that not since 1996/97, has this number of tax appeals been filed (C-103). In addition, these numbers do not reflect tax appeals directly filed with the New Jersey Superior Tax Court (C-103).

2% Tax Levy Cap:

N.J.S.A. 40A:4-45.4 places limits on county tax levies and expenditures. This law is commonly known as the "Cap Law" (the "Cap Law").

The 1977 Cap Law provides that the local unit shall limit any increase in its budget to 2.5% or the COLA, whichever is less, of the previous year's local unit tax levy, subject to certain exceptions.

The provisions of P.L.2010, c.44 effective June 13, 2010 (the "Amendment"), reduces the cap to 2% and limits exclusions only to capital expenditures, including debt service, certain increases in pension contributions and accrued liability for pension contributions in excess of 2%, certain healthcare cost increases in excess of 2% and extraordinary costs directly related to a declared emergency. The Division of Local Government Services has advised that counties must comply with both the original "Cap" and the Amendment tax levy limitation, selecting the more restrictive of the two.

A county may, by resolution, increase the COLA percentage up to 3.5% [N.J.S.A. 40A:4-45.14(b)] or bank (for up to two years) the difference between its final appropriation subject to the cap and 3.5%. Cap Banking is not automatic. A single resolution can be used to accomplish both activities: increasing appropriations and banking any unappropriated balance. Cap bank balances from 2010 and 2011 are available for use in 2012.

The Hudson County Cap Calculation reflects the "1977 Cap" Maximum County Purpose Tax After All Exceptions to be $292,680,093.00 (C-125). The "2010 Cap" Maximum Allowable Amount to be Raised by Taxation After All Exceptions is $292,686,341.67 (C-125). Since the County is legally obligated to use the more restrictive of the two caps, the amount to be raised by taxation in 2012 is the lesser amount of $292,680,093 (C-125). Hudson County utilized $673,758.28 from the 2010 Cap Bank; and $2,344,956.72 from the 2011 Cap Bank (C-125). The amount available for Banking (CY 2013 - CY 2015) is $6,248.67 (C-125).

The Employer states that the CAP Law will severely restrict the County's ability to operate the County government (C-103).

The Union states that had the County utilized the full 3.5% COLA rate resolution for 2011, an additional $2,639,396.23 ($175,959,748.43 x 1.5%)[5] of spending cap would have been available, resulting in a maximum spending cap limit of $282,292,735.23 ($279,653,339.00 + $2,639,396.23) (U2,U2-13). It contends that the additional spending cap could have been available for banking in future year budgets (U2, U2-13).

The Union also contends that had the County utilized the full 3.5% COLA rate resolution for 2012, an additional $1,951,217.40 of spending cap could have been available (U2-14).

The Union states that if the County had utilized the full amount of the available tax levy cap they would have had additional available tax levies in the 2011 and 2012 budgets (U2, U2-13, 14). The 2011 available tax levy was $7,650,919.00

---

[5] The $175,959,748.43 is the amount on which the 2.0% CAP is applied per the "1977" CAP Calculation. It represents the difference between the Revised County Purpose Tax and the Total Exceptions (U2-13).

and the 2012 available tax levy was $6,249.00 (U2, U2-13, U2-14).

Petrucelli testified that the additional tax levy and resulting spending could have been available to reduce the surplus utilized in the budget, as well as to fund operations and the requested salaries and wages of PBA Local No. 109A (U2). It further states that this would indicate that the County budget was not restricted by the spending or tax levy caps (U2).

Consumer Price Index (CPI):

The Consumer Price Index ("CPI"), measured by the United States Bureau of Labor Statistics, tracks price changes for particular commodities and services at the retail level various geographic areas. I am required to consider the CPI in arriving at this award. N.J.S.A. 34:13A-16(g)(7).

The Bureau of Labor Statistics CPI Index Report issued in February, 2010 shows that over the preceding 12 months, the index increased 2.1% before seasonal adjustment (C-11). For the Northeastern region of the United States, the "all items" CPI percentage change from June 2009 to June 2010 was 1.7% (C-12).

The Bureau of Labor Statistics issued a Consumer Price Index report in February 2011" (C-13), which report shows that over the preceding 12 months, the all items index CPI-U increased 2.1% before seasonal adjustment. (C-13) The Bureau of Labor Statistics issued a "Consumer Price Index issued in May 2011 showing that over the preceding 12 months, the all items index (CPI-U) increased 3.6% percent before seasonal adjustment (C-14). For the Northeastern region of the United States, the all items CPI percentage change from May 2010 to May 2011 was 3.2% (C-14). The Bureau of Labor Statistics issued a "Consumer Price Index- April, 2012" report (C-15) showing a 12-month change in the index for all items was 2.3% percent.

The Social Security COLA for 2010 and 2011 was 0%, and for 2012, the COLA was 3.6%. The New Jersey State LOSAP municipal CY 2011 COLA was 3.0% (U-2, tab 21).

Risks and Dangers of the Job

Pursuant to the New Jersey Civil Service Job description, Corrections Sergeants supervise and directs a squad of officers, reviews their work performance, and assists them with more difficult assignments or inmates, prepares reports and keeps related records (U-2-N). A corrections lieutenant supervises at least 2 squads of officers and their sergeants, reviews their work performance, assists with the very difficult assignments or inmates, prepares reports and maintains files. (U-2-N)

There is no doubt but that working in a correctional facility can be stressful and dangerous. Correctional officers have a higher rate of on the job injuries, largely owing to conflicts with inmates. Correctional personnel are frequently required to work extra shifts, resulting in fatigue, low morale, and family related problems. In addition, correctional personnel face the added risk of being targeted outside of their work facilities by gang members out on the street. Further, according to research done by Wayne State University in 1997, "suicide rates among correctional officers is 39% higher than the rest of the working age population" (U-2-N-16).

Crime Rates

According to the New Jersey Uniform Crime Report issued by the New Jersey Office of the Attorney General, crime rates declined in Hudson County between 2003 and 2008. For 2010, violent crimes in Hudson County decreased 2% and non-violent crimes decreased by 4% when compared to 2009 (p.90 UCR for 2010). Additionally, the 2010 total crime index of offenses for Hudson County decreased by 4% when compared to 2009. On a State-wide basis, the violent crime rate remained virtually unchanged between 2009 and 2010 (U-H, p. 20).

Over the ten-year period from 1999 to 2008, the total crime rate in New Jersey's "Major Urban areas (Jersey City, Camden, Elizabeth, Newark, Trenton and Paterson)" decreased 26% from 93,341 in 1999 to 63,683 in 2008 (C-38, p. 105). Violent crime also decreased 23% from 13,521 in 1999 to 10,452 in 2008 (C-38, p.105).

Existing Working Conditions

Local 190A's superior officer bargaining unit consists of 40 corrections sergeants and 14 corrections lieutenants. Sergeants currently have a base salary of $94,648, while the lieutenants' base salary is $99,380. On March 24 and again on May 1, 2012, the County made nine promotions: six corrections officers were promoted to sergeant, and three sergeants were promoted to lieutenant. Those promoted received no pay increase commensurate with the promotion. The issue is being challenged at the Commission through an unfair practice charge (CO-2012-291). An application for interim relief is pending before the Commission.

In addition to base pay, superiors are paid cash for 14 holidays annually. They are also provided with the following vacation allotment:

Years of Service	Vacation Days
0-1 yr	1 day per month
1-5 yrs	15 days
6-15 yrs	20 days
16-24 yrs	25 days
25 or more yrs	1 day/yr serv up to 30 days

Officers have the longevity benefit pursuant to the following chart (C-3):

Longevity

Years of Service	Amount
Completion of 5 years	$300
Completion of 10 years	$500
Completion of 15 years	$700
Completion of 20 years	$900
Completion of 25 + years	$1,100

Further, officers receive 3 personal days a year and 15 sick days. Officers also have an educational incentive program which provides an additional annual stipend of $10 per credit towards a degree with maximums of $750 for an associate degree, $1500 for a bachelor's degree, and $2,000 for an advanced degree. In negotiations for the most recent contract, the parties agreed to eliminate the clothing allowance as a separate benefit and roll the allowance into base salary (C-3).

Officers also have the ability to cash out unused sick leave upon retirement at a 1 to 2 rate up to a maximum of $10,000, and a death benefit equal to two years' salary.

Officers have health and prescription insurance for the employee and dependents provided through the New Jersey State Health Benefits Plan. Pursuant to Chapter 78, employees are currently in Tier 1 of required premium contributions, and will advance to Tier 2 on July 1, 2012. At that time, they will pay either 1.5% of salary or a percentage of the premium costs, whichever is greater. The Tier 2 contribution rates for employee only coverage is:

Salary	Tier 1	Tier 2	Tier 3	Tier 4
	(Current)	7/1/12	7/1/13	7/1/14
80,000-94,999	8.5%	17.0%	25.5%	34.0%
95,000 up	8.75%	17.5%	26.25%	35.0%

For family coverage, the contribution rates are the following percentage of premiums:

Salary	Tier 1	Tier 2	Tier 3	Tier 4
	(Current)	7/1/12	7/1/13	7/1/14
90,000-94,999	7.0%	14.0%	21.0%	28.0%
95,000-99,999	7.25%	14.5%	21.75%	29.0%
100,000-109,999	8.0%	16.0%	24.0%	32.0%
110,000up	8.75%	17.5%	26.75%	35.0%

Thus, even a modest salary increase will put sergeants in 17.5% rate for single coverage and 14.5% for family coverage in July, 2012; a modest salary increase would put Lieutenants opting for single coverage at 17.5% and 16% for family coverage.

Internal Comparables:

Shiel testified that approximately 700 County non-union employees - about 22 percent of the County workforce -- received no salary increase for 2009, 2010, or 2011. Potential raises for unrepresented employees in 2012 have not yet been determined. The County has proposed a wage freeze in the first year of each of its contracts currently in negotiations.

It appears that the County has seven law enforcement bargaining units, 3 of which have settled contracts or awards extending through 2012. Of the remaining four, two are in interest arbitration before me. In addition, the County has settled contracts with three of its civilian groups: The following chart shows salary increases to date:

Unit		2010	2011	2012	CBA	Notes *
Sherriff's Officers PBA 334	On-Guide/ Top of Guide	3% 6%	3% 6%	3% 6%	2008-2012	Award Issued 7/11
Sheriff's Superiors FOP 127	$ Increase - Sergeants - Lieutenants -		$1,995 = 2.3% = 2.1%	$2,398 = 2.7% = 2.5%	2011-2012	Award Issued 7/11
Prosecutor's Investigators Local 232		2.25%	2.0%	2% (7/1)	2009-2012	Supplement Award Issued 3/12
Prosecutor's Superiors Local 232A	In negotiations				Expired 2008	
Corrections Superiors PBA Local 109A	In negotiations				Expired 2009	
Corrections Rank & File PBA Local 109	In negotiations				Expired 2009	
1199 Blue & White Collar	In negotiations	3.6% (Eff 7/1)			7/1/06 – 6/30/11	Negotiated in 2007
Corrections Internal Affairs PBA Local 196	In negotiations					
Corrections Internal Affairs Superiors PBA Local 196A	In negotiations					

1199 Professional Unit	In negotiations	3.6% (Eff 7/1)			7/1/06 - 6/30/11	Negotiated in 2009
UNO/1199 Nursing Supervisors	In negotiations	3.6% (Eff 7/1)			7/1/06 - 6/30/11	Negotiated in 2009

* Exhibits C-58, C-59, C-87, C-89, C-90, C-91, & C-92

A wage comparison among County law enforcement groups is as follows:

	2010	2011	2012
Sheriff's Officers		$79,797	$84,584
Sheriff's Superiors Sgts.	$84,419	$86,415	$88,813
Sheriff's Superiors Lts.	$91,975	$93,970	$96,368
Senior Investigators		$86,642	$88,375
Corrections Officers	$81,861		
Corrections Sgts.	$94,468		
Corrections Lts.	$99,380		

It must be remembered however, that unlike the Sheriff's officers and superiors, corrections superiors no longer receive a separate clothing allowance. In addition, Sheriff's Officers and Superiors have a slightly better longevity program by $200 across-the-board than Corrections.

External Comparables

PBA Local 109A provided a 2009 comparison of corrections sergeants pay in Hudson to that of 17 other New Jersey counties (PBA-O). That data reveals that Hudson CO sergeants rank seventh in top step base pay.

C/O Sergeants After 10 Years Service

Base Pay as of 2009		
Rank	**County**	**2009 Salary**
1	Monmouth	$119,152
2	Bergen	$111,340
3	Morris	$101,482
4	Essex	$98,065
5	Ocean	$96,585
6	Union	$95,172
7	Hudson	$94,648
8	Somerset	$94,432
9	Sussex	$84,717
10	Camden	$76,129
11	Warren	$75,712
12	Cape May	$74,768
13	Gloucester	$72,544
14	Atlantic	$72,522
15	Cumberland	$72,202
16	Burlington	$69,799
17	Salem	$69,409
18	Hunterdon	$60,380
	AVERAGE	**$85,503**

The average base pay for Corrections Sergeants is $85,503. By 2010, only 4 counties had higher Corrections Sergeants pay.[6] However, the average longevity pay in 2009 was 1.79% of salary after 10 years' service, 2.67% after 15 years, and 3.42% after 20 years' service. When longevity is factored in, the compensation package of Hudson's corrections sergeants in 2009 is still ranking them in seventh or eighth place among the 18 counties surveyed (PBA-P,Q,R,S).

[6] Local 109A reported only data where there was a settled contract for that year.

Comparison data was similarly provided for corrections lieutenatants top base pay in 2009:

C/O Lieutenants After 10 Years' Service		
Base Pay as of 2009		
Rank	**County**	**2009 Salary**
1	Monmouth	$123,787
2	Bergen	$121,360
3	Morris	$108,458
4	Union	$106,506
5	Ocean	$106,080
6	Essex	$104,928
7	Somerset	$103,875
8	Hudson	$99,380
9	Sussex	$90,039
10	Warren	$88,737
11	Atlantic	$79,894
12	Cape May	$79,768
13	Hunterdon	$79,151
14	Salem	$78,748
15	Gloucester	$78,724
16	Burlington	$78,099
17	Cumberland	$75,900
	AVERAGE	**$94,320**

A comparison of base pay among 13 counties surveys shows that the Hudson co lieutenants are outranked by only 4 counties: Bergen, Monmouth, Morris and Essex (PBA-T). The statewide average for corrections lieutenants' base pay in 2010 is $94,768. When longevity is factored in, a total pay comparison to corrections lieutenants in other counties shows that Hudson lieutenants consistently rank eighth after 10, 15, 20 and 25 years' service (PBA-U,V,W,X).

In terms of other economic benefits, 15 other counties have cash clothing allowances for either purchasing replacement items and/or clothing maintenance. The average appears to be about $1000 annually. The sick leave allotment is 15 days state-wide; the average number of personal days state-wide is 3. As to vacation allotment, Hudson's corrections superiors rank mid-range with 25 days, the average being 23.7 days (PBA-Y).

Further, a review of settlement and interest arbitration award trends reported by the New Jersey Public Employment Relations Commission shows that the average salary increase granted in interest arbitration awards and those units that voluntarily settled is as follows:

Year	Number of Awards	Average Salary Increase of Awards	Voluntary Settlements	Average Salary of Increase of Settlements
1/1/12-4/30/12	9	1.82%	10	1.83%
1/1/2011-12/31/20	34	2.05%	38	1.87%
1/1/2010-12/31/2010	16	2.88%	45	2.65%

Private Sector:

According to the Public Employment Relations Commission's Biennial Report issued in August, 2011, average private sector wages, average total government wages, and average total wages all increased between 2009 and 2010 by 2.2% in New Jersey. However, the same report shows that between 2009 and 2010, private sector wages in Hudson County rose by 5.7% (U-1-I8-9).

The June 30, 2010 report issued by the Bureau of Labor Statistics shows that Hudson County's unemployment rate was then at approximately 11%. (C-16), and is among the top five counties in New Jersey for unemployment (C-17). On a State-wide basis, unemployment in April, 2010 as at 10.9%, slightly more than double that of April 2007. The Bureau of Labor Statistics reported that the national unemployment rate in July 2010 was 9.4% (C-22). By its April, 2012 report, the BLS reported a slight improvement, noting that the unemployment rate in New Jersey is 9.1% (C-31).

Work Schedules/Shift Bidding

All unit employees currently work a 5 day on/2 days off fixed work schedule. Article 17.1 and 17.2 of the contract, provides,

> 17.1: In the event a vacancy is created or occurs, employees shall be entitled to bid for choice of shift assignment, in order of seniority based upon rank-for-rank and seniority within rank.
>
> 17.2: Shift changes must be stable for a period of three (3) months before being eligible to bid for a new assignment.

This contract language concerning shift selection procedures has been in the contract since at least 2001. Until 2002, the corrections department, including rank and file and superiors, had been on a combination of 4/3 schedules and 5/2 schedules. The County sought one unified work schedule. After lengthy proceeding before Arbitrator Joseph Licata, a Litigation Alternative Procedure "LAP" Decision was awarded with put all employees on the current 5/2 schedule. That decision specifically modified Article 17 as follows:

> The only exception to the current shift bidding system is as follows:
>
> Shift bids will be completed live or via telephone with on Union representative and one management representative present at all times. All corrections officers shall be given a date and time to report to make their selection. No officer shall

> receive additional compensations for appearing to make a shift selection. Of a collections [sic] officer fails to appear at the designated time and fails to call in to make a selection, despite having received prior notice to appear for selection, the Union to which the officer belongs shall make the selection (C-4).

Thus, the Opinion and Award modified the agreement's shift bidding procedure to include a one-time procedure for officers to make an initial selection for shifts as a result of the modification to the work schedule to implement the 5/2 schedule. Arbitrator Licata stated "The current contractual shift bidding system and existing PERC precedent concerning the subject are more than adequate to facilitate shift bidding on the newly implemented 5/2 work schedule" (C-4, p.30).

Corrections Director Oscar Avila testified that, subsequent to the Licata Decision, the County instituted a Unit Management System as an internal organization model in the corrections facility. Prior to this, the Corrections Department lacked an internal organization structure and employees were unaware of their assignments on a daily basis. Further, there was no continuity in the organization of supervisors to rank-and-file. The Unit Management model divided the Department of Corrections into five (5) units, as follows: Unit 1 consists of the front perimeter security, hospital detail, medical, visiting and scheduling; Unit 2 consist of the classification, record room and intake; Unit 3 consist of Delta and Alpha housing pods"; Unit 4 consists of Bravo and Charlie pods; and Unit 5 consists of Echo dorm-style housing and the kitchen. Each Unit is commanded by a Lieutenant who has responsibility for his specific unit. The Lieutenant and sergeants supervise the corrections officers on each of the three shifts. The Director of Corrections determines the assignments of these superiors by matching the skills and performance of each officer to the position to be filled in order to best serve the needs of the facility.

The purpose of the Unit Manager System was to create continuity of supervision within the Corrections Department. The supervisors create relationships with their subordinates, which enforces work-place stability. Corrections Superiors are assigned to the same unit, with the same supervisor, and same inmates, which forms continuity within the facility. This is not only beneficial to the officers, but allows correction officers become familiar with the inmates' patterns and behaviors so as to be prepared to react in any situation.

Currently, shifts only go up for bid when there is a vacancy. The assignment of officers to a particular post or position is done by Corrections management.

Local 109A provided evidence in a summary form that indicates eight of the 21 county corrections departments have a contractual provision for shift bidding. Most bid annually, one bi-annually, and one semi-annually (PBA-Y).

DISCUSSION

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

> (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
>
> > (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
> >
> > (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

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

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or

(c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(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).

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. It is widely acknowledged that in most interest arbitration proceedings, no single factor can be determinative when fashioning the terms of an award. This observation is present here as judgments are required as to which criteria are more significant and as to how the relevant evidence is to be weighed.

In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required to determine the total net economic cost of the terms required by the Award.

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria.

Among the other factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of the award [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]; the cap restrictions on the employer [N.J.S.A. 34:13A-16g(6)]; the comparison of wages, other compensation and benefits of Hudson County's corrections superior officers to other law enforcement groups within the County and other similar jurisdictions; the cost of living; and the settlements within the County's workforce.

The Employer's Lawful Authority and Statutory Restrictions, and Financial Impact on Taxpayers: g(5), g(6) and g(9).

Chapter 62, N.J.S.A. 40A:4-45 et seq, provides that a municipality or county shall limit any increase in its annual budget to 2.5% over the previous year's final appropriations unless authorized by ordinance or resolution to increase it to 3.5%, with certain exceptions. This is commonly referred to as the "Appropriations Cap." Chapter 68, N.J.S.A. 40A:4-45.45 prevents a municipality or county from increasing the tax levy by more than 2% absent a public referendum. This is commonly called the "tax levy cap."

The County argues, citing Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), that the Appellate Division has directed that this criterion "focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer's budget and plans." Hillsdale at 188. In other words, the County avers, an interest arbitrator is required to balance the expense borne by the taxpaying public with the need to ensure that the necessary services are provided.

The County notes that as a result of result of its prudent fiscal management it has been able to avoid layoffs and furloughs of County employees, even under challenging economic conditions. The County seeks to continue to contain costs and maintain its fund balance. It asserts that the PBA's Final Offer disregards the County's financial goals and the financial challenges faced by the County.

The County notes that Hudson ranks fourth in population in New Jersey with 634,266 residents; however, the percentage of County residents below the poverty level is 14.6%, third in the State. The median household income for residents in Hudson County ranks fifteenth at $55,767.

The County emphasizes that it is experiencing a decrease in revenues and tax ratable base, while simultaneously experiencing escalating costs. For the years 2008 through 2012, the County's Equalized Value of Property shows a decrease of $8.9 billion dollars, with $4.1 billion of the decrease occurring in 2012. The 2008 through 2012 Assessed Value of Property increased by $264.6 million.

The County also asserts that its tax rate for 2011 increased to $4.60 per $1,000 from $4.10 in 2010 or an increase of $.50 cents per $1,000. This increase is a result of declining Equalized Values and Tax Levy Increase.

The County acknowledges that it has been able to maintain its fund balance, but this will become a problem as the County moves forward, with tighter budgets and decreasing resources, the County contends that it will not have the ability to regenerate fund balance. The County has had to rely on its fund balances as a significant item of resource to support its budget and for 2012, the County released some of its current fund reserves to plan for fund balance regeneration for subsequent years and anticipated emergencies in the cost of litigations due to the dissolution of funding in our insurance reserves. In years past and again in 2012, the County has anticipated virtually all of its fund balance in the following year as an item of revenue. The County asserts that even with the use of virtually all of the fund balance, it was necessary to significantly increase the County tax levy.

At the hearing, Ms. Fuller presented testimony on the 2011 ending fund balance. The fund balance increased above the County's average amount, because the County released a $3.8 million reserve. The County maintains that the release of this reserve will not be regenerated, as it is a one-time event. Fuller also testified that for 2012, it is anticipated that the County does not expect to regenerate fund balance because revenues have decreased substantially over the last few years.

The County argues that the use of fund balance as a result of declining revenue was recognized in Arbitrator Weisblatt's interest arbitration award in the Mercer County Prosecutor and Mercer County Prosecutor's Detectives/Investigators, PBA Local No. 339; and Prosecutor's Superior Officers Assn., Docket Nos. IA-2010-069 and IA-2010-070 (9/6/11). In awarding a wage freeze in the first year of the contract, the arbitrator recognized that "... the downturn in revenues causing the budget to anticipate less revenue and to rely on fund balance as a revenue source to moderate the financial impact on taxpayers." (C-63, p. 35)

The County further maintains that it annually confronts a "structural deficit", meaning that the County's recurring expenditures exceed its recurring revenues. For 2012, this structural deficit continues to be about $13 million. The County says it has addressed the structural deficit each year by the deferral of pension payments, wage freezes for non-union employees for three years (2009, 2010 & 2011), County tax levy increases and employee contributions for employee benefits.

The County emphasizes that the loss of other budget revenues has been significant and has greatly contributed to the structural deficit and the need to increase County taxes. For the years 2006 through 2011, the Constitutional Officers revenues have decreased by $7.5 million. Interest on Investments is down $5.0 million and Added and Omitted Taxes down $2.2 million. Other revenue losses include Prosecutor PILOT Initiative of $802 thousand and Leasing of County

Correctional Center $1.150 million. Housing of U.S. Marshall and ICE detainees in the correctional center has decreased and thus, so has the associated revenue. Revenue for State prisoners also declined by approximately $500,000 from 2011.

The County asks that I take note that its decline in revenues from 2010 to 2011 totals -$1,351,656, and there was an additional decline of -$1,260,940 from 2011 to 2012. Notably, for 2010, 2009 and 2008, the County utilized 98% of its fund balance.

The County anticipates an increase in budget expenditures. In 2012, the County's debt service payments will increase by approximately $2.7 million due to the issuance of bonds and notes to fund critical infrastructure improvements and capital needs. Debt service increased from $19,726,438 in 2011 to $22,472,330 in 2012. The County has received notice that health and prescription insurance costs will increase by 10.3% or an estimated $2.7 million. Additionally, the State has advised that contributions for PFRS will increase by $1,144,910.32. This will amount to a combined increase in State pension cost in 2013 of $1,517,661.44. (Cert., Fuller, paragraph 12)

The County states that the number of foreclosure filings dramatically increased from 1,000 in 2005 to 3,627 in 2009.

Additionally, for the first quarter of 2010, foreclosure filings totaled 913 in the County.

The PBA argues that its proposals will not present any spending CAP nor tax levy CAP problem for Hudson County. Further, the PBA asserts that the County possesses the financial wherewithal to easily fund the fair and appropriate wage increases contained in its Final Offer.

The PBA avers that the County's low net debt percentage and extremely favorable bond ratings demonstrates that the County is in good financial shape. It notes that the County not only continues to regenerate millions of dollars in surplus each year but has also spent less in Correction's salaries and wages than budgeted (creating reserves); spent less in Correction's other expenses than budgeted; routinely garners miscellaneous revenues not anticipated; enjoys rapidly rising tax revenue and maintains steady cash balances.

Moreover, the PBA claims that the Corrections Department has the unique feature of actually representing a significant revenue source.

The PBA highlights the following from the Petrucelli report to demonstrate the County's "excellent financial status":

- In 2011 alone, the County spent $1.1 million less than budgeted for the Correction's Department "salary and wages" ($620,000) and "other expenses" ($560,432) line items.

- The County regenerated surplus between January 1, 2011 and December 31, 2011 by $27.4 million and another $24.5 million between January 1, 2010 and December 31, 2010.

- The County received its full budgeted revenue to be raised by taxation each year. Thus, there is no need for a reserve account for uncollected taxes. The County's budgeted revenue to be raised by taxation increased by $66.5 million (or 31.26%) since 2005.

- The average equalized home value in Hudson County increased by 80.68% between 2000 and 2011.

- The County's "miscellaneous revenues not anticipated" tripled between 2005 ($2.3 million) and 2011 ($6.6 million).

- The County's excess results from operations ($27.4 million) represents the highest level achieved since, at least, 2005.

- The County's operations were funded through taxation at a rate of just 60.5% in 2011. Thus, the remaining 40% of the County's expenses are funded through non-tax revenue sources.

- The County budget represents only 22% of the overall average tax bill for the residents in the County. Moreover, the PBA's wages and other expenses account for only 3.2% of the total tax bill — or roughly $19.13 a month (or $0.63 per day).

Based on the above data, Local 109A asserts that it has demonstrated that the County has more than sufficient financial resources and that neither the spending CAP nor the tax levy CAP is an impediment to awarding the PBA's proposal.

* * * *

I find that my award will not cause the County to exceed its caps. From 2010 through the 2012, the County has experienced the retirement or separation from service of nine superior officers, all but one of which left in 2010. Promotions to fill those vacant positions did not occur until 2012, when the County promoted nine corrections officers to sergeant. Moreover, when the County promoted, it apparently decided to delay giving the new sergeants their promotional increases. These factors resulted in a net savings as follows:

Total Savings of Salaries of those who left	=	$2,263,976.
Total cost of the new promotes	=	680,617.
Total Net Savings	=	$1,583,359.

This savings alone is sufficient to pay for the increases I award herein. Nevertheless, I recognize that the County is in a precarious financial position at this time. It has been forced to take significant portions of its fund balances every year just to maintain its budget. It has notified by the State that health benefits costs will increase by approximately 10.3% in 2012 and that PERS/PFRS contributions will increase significantly for 2012. It continues to experience a structural deficit in the budget with revenues declining, thanks in part to a declining tax ratable base, and expenditures increasing. The structural deficit will mean that it will not be able to continue to count on regenerated surpluses going forward. On the other hand, the portion of the budget attributed to salaries and other expenses for the Corrections Department is just 3.2% of the tax bill. Moreover, the Corrections Department does generate some revenue, although declining, which in turn, contributes to the revenue stream. Further, equalized residential deed value significantly increased between 2010 and 2011, indicating that Hudson County maybe on its way back. My award gives recognition to the County's financial difficulties and at the same time, addresses the need to provide the Corrections superiors with an equitable salary increase commensurate with other County employees.

Terms and Conditions of Employment/Comparables

External Comparability:

This factor focuses on the wages and benefits of employees in similar jurisdictions. I accord this factor considerable weight in this matter.

The PBA maintains that comparability is "extremely important" to the determination of salary increases for this unit. It claims that its proposal is much more reasonable and in line with the trends among corrections supervisors in New Jersey. It notes that with a 2009 base salary of $94,648, Hudson's corrections sergeants rank eighth highest in the State. In Moreover, the PBA notes that the State-wide salary increases for corrections sergeants in New Jersey averaged:

	Average Raise
2010	3.73%
2011	4.82%
2012	2.75%
2013	2.0%
2014	2.0%

With regard to corrections lieutenants, the PBA asserts that with a base salary of $99,380, they are eighth highest of 17 counties surveyed in 2009. Further, it contends that average increases to base salary for lieutenants have been as follows:

	Avg.% Raise
2011	5.55%
2012	2.86%

2013	2.00%
2014	2.00%

The PBA also asks me to take note that longevity pay for this bargaining unit is only about 1/3 what other corrections units around the State receive. It argues that its salary proposal of 2.5% is reasonable in light of this evidence.

The County urges that I recognize what it refers to as a trend among interest arbitration awards to include wage freezes and to award contracts with shorter duration periods. It cites the following:

In State of New Jersey and PBA Local 105 Docket No. IA-2008-014 (5/5/09)(C-47), Arbitrator Mastriani awarded no step movement for one year of the contract but awarded a 3.5% base wage increase over an 18 month period (C-14).

In State of New Jersey and New Jersey Law Enforcement Supervisors Association, Docket No. IA-2008-017, (12/28/09), Arbitrator Weisblatt noted that a recent settlement with the State-wide civilian units provided for a 3.5% across the board increase be delayed by 18 months. He awarded a one-year salary guide freeze and a 2% increase in the second and third years (C-52)

In County of Essex, Essex County Sheriffs' Office and Essex County Sheriffs Officers PBA Local 183, Docket

No. IA-2008-098, (7/29/10), Arbitrator Weisblatt awarded an eight-month wage freeze to assist the County with its cash flow problems but then awarded a 2.75% increase effective August 1, 2009 and 2.5% increase in 2010 (C-55).

In Asbury Park and PBA Local 6, Docket No. IA-2008-069, (5/16/10), Arbitrator Mastriani awarded salary increases in a three year contract of 2.5%, 2.5% and 2.5% but delayed implementation in the first year until October (C-53).

In Borough of Rutherford and Rutherford PBA Local 300, Docket No. IA-2008-035, (5/19/10), Arbitrator Mastriani delayed a 2.25% increase until October of the first year, but then awarded a 2.75% in the second and third years, and a 1.5% increase in the final year (C-54, p. 40).

In Borough of Spotswood and PBA Local 225, Docket No. IA-2011-48, (5/23/11), Arbitrator Mason awarded a wage freeze for 2011, 2% for 2012, and 2% for 2013 (C-56).

In Borough of North Arlington and PBA Local 95, Docket No. IA-2011-050, (6/13/11), Arbitrator Mason awarded a wage freeze for 2011, 2.5% for 2012 and 2.5% for 2013 (C-57).

In Mercer County Prosecutor and Mercer County Prosecutor's Detectives/Investigators PBA Local No. 339; and Prosecutor's Superior Officers Assn., Docket No. IA-2010-069 and IA-2010-070 (6/6/11), Arbitrator Weisblatt awarded a wage freeze in the first year(C-63).

In County of Union and Sheriffs Superior Officers, FOP Lodge 103, Docket No. IA-2010-118, (1/17/12), Arbitrator Hundley awarded a 0% increase in year one of the contract and 2.25% and 2.5% for year two and three respectively, recognizing that the rank and file unit had already agreed to the 0% salary increase in 2010 (C-60).

Moreover, the County contends that the benefits provided to County Corrections Superior Officers are comparable to those Superior Officers in the same or similar comparable jurisdictions.

I intend to consider the wages and benefits of Hudson County's superior corrections superiors in relationship to other corrections superiors in other counties and in the State correctional system. I also intend to weigh this evidence in conjunction with current settlement trends in both voluntary settlements and recent interest arbitration awards. However, the PBA's comparative data for settlements among other corrections superiors is an unreliable indicator because it does not take into account when such settlement or award percentage increases were achieved. It is widely acknowledged that the more recent the settlement/award, the lower the increases. One need only look to the Commission's data on settlements over the past few years to see that salary increases have been trending downward. Moreover, the fact that some interest arbitration awards over the past two years have included a wage freeze is more attributable to the unique circumstances of that particular bargaining relationship, internal comparability to other bargaining units within that employer, and that employer's financial difficulties, than attributable to some State-wide trend. I myself have awarded wage freezes when the circumstances, including these factors above, have so dictated such a result. See Borough of Roselle Park, Docket No. IA-2012-24 and 26, (5/3/12); Union County Sheriff's Office, Docket No. IA-2012-37, (6/11/12). As discussed more fully below, I give greater weight to comparability among other employees of Hudson County, especially the law enforcement units than any trend among arbitrators to award a wage freeze.

Internal Comparability and Settlement Patterns:

The factor of internal comparability, based upon existing agency and court precedent, is a factor that is not only specifically addressed in the statutory criteria [N.J.S.A. 34:13A-16g(2)(c)], but also has been found to fall within the criteria of the "interests and welfare of the public" and the "continuity and stability of employment." The Public Employment Relations Commission has recognized the importance of considering internal comparability in its controlling case law on interest arbitration. "Pattern is an important labor relations concept that is relied upon by both labor and management ... deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units." County of Union, P.E.R.C. No. 2003-33, 28 NJPER 459,461 (¶33169, 2002). An interest arbitration award that does not give due weight to an internal pattern is subject to reversal and remand. County of Union, P.E.R.C. No. 2003-87, 29 NJPER 250,253 (¶75, 2003).

The PBA argues that its 2.5% increases are reasonable and appropriate in light of the raises provided to the County's other bargaining units. It cites the 3.6% increase for the UNO/1199 Unit in 2010 and the 3.6% increase for the white-collar unit and the professional unit in 2010. It further points to the Award issued in July 2011 wherein Arbitrator Mastriani awarded sheriff's officers superiors a 2.3% increase in 2011 and 2.7% increase in 2012. With regard to Sheriff's lieutenants, Mastriani awarded 2.1% in 2011 and 2.5% in 2012. Sheriff's Captains received 2.0% and 2.4% respectively for 2010 and 2011. It further notes that Prosecutor's detectives received 2.5% in 2009, 2.5% in 2010, 2.0% in 2011, and 2.0% (effective 7/1/12) in 2012. It argues that the salary increases it seeks are in line with what other County employees received for the same period.

The County asserts that the PBA's percentage wage proposal cannot be sustained by the comparability to other County employees. It notes that all exempt County employees - about 22% of its workforce - has been under a salary freeze since 2009. Also, it maintains that, as Human Resources Director Shiel testified, the County's negotiations position with regard to all of its units is a wage freeze in the first year of the contract. Further, the County contends that Local 109A's proposal of 2.5% per year exceeds the percentages awarded in both interest arbitration decisions issued by Arbitrator Mastriani involving the County.

Additionally, the County argues that a comparison of the salary of sergeants and lieutenants in the corrections group to those in the Sheriff's office is a valid "apples to apples" comparison. It observes that the base salary for a Sheriff's sergeant in 2010 was $84,419, whereas a corrections sergeant has a current base pay of $94,648 -- $10,229 or 12% greater. Further, the base salary for a sheriff's lieutenant in 2010 was $91,975, whereas a corrections lieutenant is currently at $99,380 -- $7,405 or 8% greater than a lieutenant in the County's Sheriff Office. Therefore, it argues, awarding a wage freeze for 2010 would not cause the corrections superiors to lose any salary difference between them and the Sheriff's Superiors in 2010.

In intend to give substantial weight to a comparison of the County's other law enforcement units, in terms of salary and in terms of percentage increases. I also give significant weight to the internal settlement pattern concerning contract duration.

<u>Comparison to the Private Sector</u>:

I give minimal weight to the component of comparability with the private sector other than to observe that the unemployment rate in Hudson County is about 11% (2010 date) but currently improving slightly. Additionally, I specifically note that according to the Private Sector wage survey most recently published by the Commission in August 2011, both private and public section wages in New Jersey rose 2.2% between 2009 and 2010.

As to a direct comparison between private sector civilian jobs and the corrections superiors of Hudson County, there is no particular private sector occupation that is an equitable comparison to corrections officers. They are unique in a variety of ways, including the stress and dangers of the job, and the lack of portability of their skills beyond a certain age and beyond a geographic region. They are frequently required to work evenings, nights and holidays.

Cost of Living

I am required to consider the cost of living as a factor in rendering this award. N.J.S.A. 34:13A-16 (g) (7); Borough of Hillsdale. The County argues that the PBA's wage proposal is unjustified in the economic environment that has significantly worsened over the last several years.

I agree with the County's generic statement that the economy has declined over the "last several years." However, addressing the specific factor of cost of living, it can no longer be said that inflation is non-existent. By the County's own submission, the national cost of living increased more than 6% since the 2009 contact expired. The PBA's proposals -- 7.5% salary increases over 3 years -- are not supported by the cost-of living data. On the other hand, the offer by the County -- 3.5% over three years - would not allow the corrections superiors to keep pace with inflation. While this not an over-riding factor in my analysis, I have given it some weight.

Stipulations of the Parties

At the arbitration hearing, the parties stipulated to certain facts. These stipulations have been incorporated into the factual findings above.

Continuity and Stability of Employment Including Seniority Rights and Such Other Factors Traditionally Considered in Determining Wages and Employment Conditions: g(8):

Nothing in this award will negatively impact upon the employee's continuity of employment or the officers' seniority rights.

The Interest and Welfare of the Public: g(1):

In my view, the interest and welfare of the public is not only a favor to be considered, it is the factor to which the most weight must be given. The public interest, of course includes the amount of property taxes which homeowners and businesses will be required to pay. It is for this reason that Section g(1) specifically references the tax levy cap.

This award as a total package will allow the County to comply with the statutory cap mandates and will have a minimal effect on the County's budget or the tax rate. This is of course in the public interest.

Moreover, it is also in the public interest that the County Corrections Department continues to work towards improving morale and the professionalism of its supervisory staff. I have specifically considered this, both in terms of the wage and benefit package being awarded, as well as the bidding proposal.

In the bigger picture, it is in the interest of the public that it receives the highest quality of correctional security for the most reasonable price. This award allows Hudson County to continue striving to meet this goal. I will discuss the individual disputed contract terms below.

* * *

Contract Duration:

The PBA proposes a five-year agreement covering the period January 1, 2010 through December 31, 2014. The County offers a three-year agreement that will expire at the end of 2012.

The PBA made no particular argument in its brief concerning the contract duration. Local 109A President Ortiz testified at the arbitration hearing that if the contract ends in 2012, the parties will quickly have to return to the bargaining table for a successor agreement. Ortiz opined that such an outcome would negatively affect morale and make it difficult for employees to plan for anticipated retirements.

The County asserts that its three-year contract is the more reasonable option in light of the uncertain economic environment. It also seeks to have contracts with all of its law enforcement groups expire simultaneously at the end of 2012. Shiel explained that the intent of this position is to promote consistency with respect to negotiating with the uniformed units. It hopes to avoid being in continuous negotiations with all of its units at the same time. Common expiration periods would enable the County to assess its financial picture and provide a fair and reasonable offer to all uniformed services within the same time frame.

The County also speculates that the PBA's real goal is to avoid the statutorily mandated 2% base pay cap in interest arbitration awards for contracts expiring after 2011 and before April, 2014. N.J.S.A. 34:13A-16.7. The County cites a recent award by Arbitrator Frank Mason in Borough of Spotswood and PBA Local 225, Docket No. IA-2011-48, (5/23/11), wherein Mason rejected the PBA's proposal for a contract running through 2014 (C-56). Mason held, in part,

> …the PBA asks that there be an Agreement imposed for a four year period specifically to avoid the need to be involved in negotiations during a period when the State law, an expression of the legislature to control costs of police and fire contracts would be no longer in effect. Clearly a matter of self-interest without any regard for the interests and welfare of the residents of Spotswood.
>
> Based on the discussion above and inclusive of the lack of capacity to reliably forecast the future, I find the appropriate duration of the contract to be properly limited to three years, January 1, 2011 through December 31, 2013.

There are several competing concerns to be considered in deciding the contract term.[7] On the one hand, the parties have been in negotiations for this agreement for two and a half years. If I award the County's proposal for a three-year contract, the parties will be returning to the bargaining table almost immediately for a successor agreement. On the other hand, the economic future of the State and more particularly, the County's financial conditions, including its ability to fund future salary increases, is uncertain. Whether the County's budget woes will improve over the next few years or further deteriorate, is beyond speculation. But more importantly, I give greater weight to the County's goal of having all of its law enforcement units' contracts expire at the same time. One look at the current lack of pattern of settlement among the County's negotiations unit reveals that with all units on different time tracks the result is wide disparities between units as to settlements. For example, contracts that were negotiated in 2008 and 2009 have significant salary increases for 2010 and 2011, whereas contracts and awards that were implemented more recently have significantly lower increases. For 2010, some employees received as much as a 6% increase, while others received a 2.5% in 2010. The result is that there a tendency for whipsawing among the various units. Three of the

[7] I reject the County's argument that the PBA is motivated by a desire to avoid the 2% cap on arbitration awards altogether. The PBA expresses no such motive. The County's argument is speculative.

law enforcement units already have contracts with an expiration date at the end of 2012. This unit is one of the remaining four. I believe it is in the interest of the public to award a contract for this unit that will expire concurrently with other law enforcement units.

This will provide the Employer with an opportunity to assess its financial resources and negotiate with most if not all units within the same time. All units will have a level playing field and the same opportunity to compete. I believe that this furthers public policy to an even greater extent that the stability of a longer contract would provide. Accordingly, I award a three-year contract covering the period January 1, 2010 through December 31, 2012.

Wages:

The PBA seeks increases of 2.5% in each year of the contract. The PBA seeks full retroactivity, including for those employees who have separated from service during the contract period.

The County proposes a zero increase for 2010, a 1.5% increase for 2011, and a 2% increase for 2012. However, it proposes that there be no retroactive increases paid.

I intend to award salary increases of 2% effective July 1, 2010, 1.5% effective January 1, 2011 and 2% effective January 1, 2012. The following chart shows the application of my award on each unit employee and calculates the aggregate costs per each year of the contract.

Empl Name	Date of Hire	Rank	Current Base Pay	% ATB 2010	2010 ATB Incr	% ATB 2011	2011 ATB Incr	% ATB 2012	2012 Pro-rated Incr	New 2012 Base
Aviles *	1/14/12	Sgt	94,648					2%	1,826	96,474
DAndrea *	3/24/12	Sgt	94,648					2%	1,468	96,116
Felix *	5/1/12	Sgt	81,861					2%	1,099	82,960
Ford, H *	4/14/12	Sgt	94,648					2%	1,354	96,002
Gabriel *	3/24/12	Sgt	54,484					2%	850	55,334
Matos *	3/24/12	Sgt	81,861					2%	1,277	83,138
Morales *	3/24/12	Sgt	81,861					2%	1,277	83,138
Murrell *	3/24/12	Sgt	67,950					2%	1,060	69,010
Ripp *	3/24/12	Sgt	81,861					2%	1,277	83,138
Acuna	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Ahrens	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Albujar	1/20/07	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Bails	6/23/07	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Banks	1/20/07	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Cannady	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Caraccio	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Cruise	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Feldman	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Ford, K	6/23/07	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Gaines	4/2/05	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Gonzalez	1/20/07	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Kalb	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
King	7/20/96	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Levine	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Lopez	6/23/07	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Lounsbury	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Magliano	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Mahoney	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Mitchell	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Moore, K	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Moreno	4/19/03	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Nieves	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
O'Connor	11/9/99	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Orlik	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Ostroski	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Panageas	1/1/09	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Rhodes	4/19/03	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Rivera, J	4/2/05	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Turner	6/23/07	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949
Williams	7/1/99	Sgt	94,648	2%	1,893	1.5%	1,448	2%	1,960	99,949

Alvarez	**7/20/96**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Burke	**8/11/01**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Conrad	3/24/12	Lt	94,648	2%	1,893	1.5%	1,448	2%	1,529	99,949
Conyers	**1/1/99**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Dembows	**6/16/01**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Edwards	**1/1/06**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Geoghega	3/24/12	Lt	94,648	2%	1,893	1.5%	1,448	2%	1,529	99,949
McCleary	**1/1/09**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Monteleo	**1/1/09**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Ortiz	**1/1/09**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Oyola	**1/1/09**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Rivera, M	**1/1/09**	**Lt**	**99,380**	**2%**	**1,988**	**1.5%**	**1,521**	**2%**	**2,058**	**104,946**
Taylor	**7/20/96**	**Lt**	**99,830**	**2%**	**1,997**	**1.5%**	**1,527**	**2%**	**2,058**	**105,421**
Yurecko	3/24/12	Lt	94,648	2%	1,893	1.5%	1,448	2%	1,529	99,949
TOTALS					**6,233**		**65,968**		**99,473**	**5,298,451**
*** =promoted into the unit in 2012**										
Green = Promoted into the unit in 2012 and did not receive promotional pay.										

Although the County claims that it seeks a wage freeze for the first year in all bargaining units, it has not achieved that goal in any bargaining unit negotiations so far. As this contract will expire in 2012, contemporaneous with other contract expirations, there is no pattern to be followed among other County units that would support a wage freeze. Further, while the county is in difficult financial circumstances, there is no justification for a wage freeze, particularly in light of settlements and awards for the other County units. In recognition of the County's financial constraints, I have limited the retroactivity of the 2010 increase to July 1, thus reducing the Employer's cost of the increase for that year. For 2011 and 2012, I have awarded the increases the Employer has proposed, which I have assumed is within their financial abilities.

Hudson County Sheriff's superior officers received an increase of $1,995 (equal to 2.3% for Sheriff's sergeants and 2.1% for Sheriff's lieutenants) in 2010; and a $2,398 increase (equal to 2.7% for Sheriff's sergeants and 2.5% for lieutenants) for 2011. However, it must be noted that this award was issued a year ago and was based, in part, on the need to provide a greater rank differential between Sheriff's officers and superiors. Moreover, in comparing the base salaries of corrections lieutenants and corrections sergeants to that of other comparable law enforcement superiors in Hudson County, I cannot help but note that the salaries for corrections superiors is already significantly ahead of its counterparts in the Sheriff's Office. For this reason, I need not award a salary increase to corrections superiors that would match the increases awarded to Sheriff's superiors.

Moreover, a comparison of the base pay of Hudson's corrections superiors to those throughout the State, shows that this group, with or without longevity benefits, ranks seventh or eighth Statewide. This must be considered against the backdrop that Hudson ranks as one of the lowest counties, as measured by per capita income in New Jersey and has one of the highest poverty rates in the State. Therefore, I do not believe that salary increases greater than what I am awarding is justified.

On the other hand, cost of living increases must be taken into account. Since the last contract for this unit expired in 2009, the cost of living has increased by roughly 6%. This is a factor which must be given some weight in constructing an appropriate salary increase for this unit. Additionally, I cannot ignore the fact that all bargaining units with settlements or awards covering 2010 have included a salary increase. Therefore, my award of 2% in 2010, 1.5% in 2011 and 2% in 2012, will effectively increase base pay for corrections sergeants and lieutenants by 5.5% over the life of the contract.

Cost of the Award:

In Gloucester County Prosecutor, P.E.R.C. No. 2012-66, the Commission directed that all interest arbitration awards must now include the cost of salary increases in stand summary format. Accordingly, the cost of this award, which includes across-the-board increases only, is as follows:

Cost of the Award		
2010	2% (Eff 7/1)	$43,117
2011	1.5%	$65,968
2012	2.0%	$99,473
Total	4.5%	$208,558

To arrive at this cost, first it must be noted that a 2% increase effective July 1, 2010 results in a cost to the County equal to 1% of base pay, payable for 2010. This number is reflected above. Second, nine Correction Officers were promoted to Sergeant and three Sergeants were promoted to Lieutenant in 2012. Therefore, their salary increases were pro-rated to the effective date of their promotion and were based upon their salaries at the time of their promotion. This cost may be impacted by an application for interim relief pending before the Commission in the matter of Hudson County and PBA Local 109A, Docket No. CO-2012-291.

Retroactive Pay:

The PBA seeks to have retroactive salary increases paid to all unit employees who were on the payroll as of the expiration of the 2009 contract. This demand has not been supported by evidence of a past practice to do so, nor has the PBA demonstrated that such retroactive payments have been enjoyed by other bargaining units. Moreover, the PBA provided documents which depict the breakage amounts from employees who left the unit and were not replaced by new promotes until 2012. This proposal is denied.

Overtime:

The PBA proposes to make employee overtime payments by cash or compensatory time, at the officer's choice. Compensatory time banks would be capped at the maximum of 480 hours. At the arbitration hearing, the PBA clarified that it agrees to limit an officer's ability to take a comp day only if minimum staffing levels were met, and with the approval of management.

The current contract provides,

> Section 13.2: Work in excess of an employee's regular work day or regular work week shall be compensated at the time and one-half rate (150%) of the straight hourly rate.

The County argues that the PBA's proposal on compensatory time must be rejected. Sheil testified that there is an absenteeism problem in the unit. PBA President Omar Ortiz testified that the County's overtime costs are "extensive." However, he admitted that if an officer is out on a compensatory day, the County would have to bring in another officer, presumably on overtime if minimal staffing levels are not otherwise met. Obviously, that creates an additional economic cost to the County that could very well include more overtime pay for bringing in another superior officer.

Generally, the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, requires an employer to pay a non-exempt worker who exceeds specified maximum hours at an "overtime" rate one and one-half times the worker's regular rate. 29 U.S.C. § 207(a). Cash payment is the required default method for compensating an employee who works overtime when a collective negotiations agreement has not specifically specified for another method, i.e. compensatory time.

The County points out that there is another significant cost to compensatory time. Section 207 (4) also provides:

> (4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than--
> (A) the average regular rate received by such employee during the last 3 years of the employee's employment, or
> (B) the final regular rate received by such employee, whichever is higher[.]..

Therefore, the County would be required to pay out more money upon the employee's separation at a salary rate that is higher than when he/she initially earned overtime. The County argues that, in the current economic times, it is more reasonable to permit the County to pay the required overtime in cash, as it will permit the County to monitor its expenditures for overtime based upon current cash payments. Therefore, the proposal for compensatory time should be rejected.

The PBA argues that its proposal would permit the County to significantly reduce its overtime costs as well as benefit the officers. It highlights that, because officers would not be permitted to use comp time if minimum staffing levels were not met, the proposed language would insulate the employer from adverse consequence of an awarded proposal. In essence, the PBA argues, awarding the proposal would be a "win-win" for both parties.

First, it goes without saying that any comp time payment for overtime would be based upon 1.5 times the hours worked, just as the cash overtime rate is. Thus, an officer working an extra eight-hour tour would be credited with 12 hours comp time. The County's argument presupposes that each time an officer takes a comp day, that position would have to be filled with another officer called in or held over on overtime. Were this true, the County would be required to pay the second officer called in to back-fill for the officer on a comp day, who in turn would be compensated time and one half, cash or comp time, thus costing the County more than if it paid the first officer in cash for the extra tour worked. In this way, overtime would pyramid.

However, the PBA is not proposing that its members be permitted to take comp time anytime they want. Rather, it is proposing to limit taking comp days to those days when minimum staffing levels are otherwise met. If the County has discretion to approve or reject a requested comp day depending upon whether minimum staffing level is met, then the County is avoiding the overtime cash payment for that officer who is taking a comp day.

The County is also concerned about officers accruing a substantial bank of comp time which would have to be cashed out upon separation of service or retirement, at a much higher pay rate than what would have been paid when the time was earned. As noted above, the PBA has proposed permitting officers to accrue a bank of up to 240 hours. Under the PBA's proposal, this could in fact, occur.

I have carefully considered the respective arguments of both parties on this issue. I award the following:

> Officers will be compensated for all overtime worked at the overtime rate of 1.5. Such compensation may be in the form of cash payment or compensatory time, at the sole discretion of the officer. Officers may take compensatory time off upon approval by management's designee. The decision to grant a comp time request shall be based upon whether minimum staffing levels are met, but may not be unreasonably denied. Officers may accrue a maximum of 40 hours of renewable compensatory time per calendar year. Any compensatory time not used by December 31 of the year in which it is earned shall be paid to the employee at the December 31 rate of pay in January of the subsequent year.

This award will virtually guarantee that the County's overtime costs will be reduced. The employer will have control over when employees take their comp time so that minimum staffing levels can be met and back-filling comp days with overtime will be limited. The County's concerns about huge payouts later in the employee's career will be satisfied, as the most it would cost the County would be to pay out the comp bank at the end of the year, when the employee's pay is the same as when the overtime was earned. At the same time, it will provide officers with the ability to take time off on relatively short notice - days they may have otherwise been forced to use a sick day. This in turn should have the effect of reducing sick calls, further reducing the need for overtime liability and saving the County money.

Overtime:

The County proposes to change the overtime calculation formula to exclude sick leave from the calculation.

The contract currently provides,

> 13.3 The workday shall consist of eight (8) and one-quarter (1/4) (includes lineup) consecutive hours in a twenty-four (24) hour period, except as mutually agreed to by the parties, or, in the cases of emergency, as determined by the Warden or his designee.
>
> 13.4 Employees who work more than the regular workday, as defined above, shall be entitled to a minimum of one (1) hour of pay at the overtime rate, subject to being retained for work for one (1) hour at the County's discretion.
>
> 13.5 An employee who is held over beyond his or her normal workday and who is relieved during the first thirty (30) minutes may elect to leave when relieved and receive thirty (30) minutes of pay at the overtime rate. If a superior officer directs an employee to leave at any time after the end of their

> regular workday, the employee shall receive one (1) hour of pay at the overtime rate.
>
> 13.6 Employees shall be called in for overtime based upon a rotating seniority roster in the order of rank-for-file and seniority within rank.
>
> 13.7 Any employee who is requested and returns to work during periods other than his regularly scheduled shift shall be paid time and one-half for such work and receive not less than four (4) hours pay at the time and one-half rate for each such occurrence.
>
> 13.8 Salaries for current employees and newly-hired employees shall be paid bi-weekly on a two-week lagging basis, with the employee's paycheck to be issued two weeks after the closing date of the pay period. Subject to adjustment due to unpaid absences, bi-weekly pay shall be computed by dividing the employee's regular annual salary by the number of pay periods in the then-current calendar year.
>
> 13.9 Overtime shall be paid to bargaining unit employees two pay periods after it is earned.

The parties signed an MOA for the period January 1, 2004 through December 31, 2009 which modified the above language to provide:

> A rotating list shall be used for the distribution of voluntary overtime.
>
> For purposes of calculating overtime only the first five (5) days of sick time shall be used in the calculation annually.

Shiel testified that there is a significant absenteeism issue at the jail. The County argues that reducing the amount of sick days in the calculation is a cost containment tool in addressing the County's efforts to control costs and can affect the absenteeism issue.

The County has not supported this proposal with sufficient evidence to justify changing the present contract language. No information has been provided which demonstrates the absentee rate or the mandatory overtime frequency. This proposal is denied.

Shifts:

The PBA asks that officers be annually permitted to bid for shifts in October for the following calendar year. It proposes the following modified language:

> Sections 17.1 and 17.2: All shift assignments, except for those requiring special skills, training or qualifications, shall be determined annually pursuant to a seniority-based shift bidding process, rank-for-rank and seniority within rank. Pursuant to this annual shift-bidding process, all officers shall submit their top three preferences no later than October 15th of the preceding year. The new shift assignments shall take effect on January 1st of each calendar year.

The contract currently provides,

> 17.1 In the event a vacancy is created or occurs, employees shall be entitled to bid for choice of shift assignment, in order of seniority based upon rank-for-rank and seniority within rank.
>
> 17.2 Shift changes must be stable for a period of three (3) months before being eligible to bid for a new assignment.

At the arbitration hearing, the PBA clarified its proposal that by "shift assignments" it means shift hours as well as assigned posts. The County argues that the PBA's modification to its proposal - to permit bidding on shifts and on posts - must be rejected as contrary to statute because the modification came at the arbitration hearing. The statute provides that final offers are submitted at a time prescribed by the Commission. N.J.S.A. 34:13A-16(f)(1). The Commission's Interest Arbitration Rules, which have not yet been amended, provides that final offers may be modified at the hearing but before testimony is taken. N.J.A.C. 19:16-5.7(f). I find that the PBA's clarification of its original proposal was timely.

On the merits of the shift bidding proposal, the County asserts that the PBA's attempt to change a bidding system that has been in place for years should not be granted. It argues that the proposal would severely impact the County's managerial prerogative to determine the staffing needs of the facility and might jeopardize the overall security of the faculty.[8] Corrections Director Oscar Avila testified

---

[8] On June 21, the County filed a Scope of Negotiations Petition with the Public Employment Relations Commission contending the PBA's proposal is not mandatorily negotiable as it impinges on the County's managerial prerogatives. In Gloucester County Prosecutor, P.E.R.C. No. 2012-66, issued June 25, the Commission pointed out that its proposed IA Rules would require the interest arbitrator to rule on the legal arbitrability of proposals whenever a scope of Negotiations Petition was filed. However, these Rules have not yet been adopted. Here, the County's petition is being processed before the Commission, but will not be completed before this Award

regarding the possible impact of the PBA proposal on the operations of the Correctional Center. In his opinion, Local 109A's proposal would upset the stability and continuity of the current management model and would negatively impact the stability of the units as supervisors and managers would fluctuate in and out of the units.

The County argues that currently, it posts an opening in a shift only when there is in fact a need to fill said opening. The County asserts that Local 109A's language would require the County to fill shifts on an annual basis on January 1 and not based on the needs of the facility.

Furthermore, the County contends that the proposal would significantly impact less senior supervisors and would cause great strife and negatively impact the morale within the facility as more senior supervisors would have the capability to displace less senior supervisors from more desirable shifts. Also, the proposal would create the potential of having more senior supervisors on the more desirable shifts, thus, creating shifts with less experienced corrections supervisors/managers. This, the County argues, causes a tremendous safety concern as shifts would be unevenly balanced with less experienced supervisors overseeing

---

is due. In fact, the PBA has not yet filed reply briefs.

corrections officers. Avila testified that less senior supervisors rely on the guidance and experience of more senior supervisors in management issues and emergency situations. This is paramount to the safety of all correction officers and inmates as managers enforce the rules and regulations of the Department and to protect the County from any potential legal liability. Therefore, the County argues, the PBA's proposal would not only impinge of the County's managerial prerogative of scheduling shifts in the Corrections Department, it would also jeopardize the safety of the facility.

The PBA argues that, under the current arrangement, officers typically spend years on a shift or assigned to a post which either they do not enjoy or which conflicts with family and personal obligations. This, the PBA maintains, affects morale and results in high absenteeism. It asserts that its proposal would give officers a voice in where they work and when they work, thus boosting morale and attendance.

The PBA points out that, under its proposal, the Employer would be free to designate any assignment of one requiring special skills, knowledge or training, and exempt it from bidding. The PBA also stresses that, under its proposal, the County would be permitted to deviate from the bidded shifts/posts to address a "tangible managerial need or achieve a legitimate operation objective" consistent with Commission caselaw.

The PBA acknowledges the employer's concern that annual bids could undermine continuity of supervision. It offers that the possibility that officers would continue to bid the same shift/post year after year, thus enhancing continuity of supervision.

* * *

Both parties have some legitimate concerns about this issue. First, the County's apparent concern that the proposal would require it to fill vacant or newly created shifts/posts is unfounded. That is not what the PBA is seeking by its proposal. In fact, the bidding proposal is specifically predicated upon a determination by the Employer that a vacancy needs to be filled in the first instance. Second, the PBA makes legitimate arguments that morale of senior superiors suffers when there is no recognition for their seniority in selecting their work hours. Beyond a training period, superiors with the least seniority should not have a morale problem with being assigned to the least favored shift. They will be able to take comfort in the fact that, with years of service, they too will have an opportunity to bid on a better shift. I believe the PBA is correct that providing a periodic bidding opportunity to select a shift would significantly improve morale and reduce absenteeism, which would, in turn, lower overtime costs to the County. Both lower overtime costs and improved employee morale further the public interest. Moreover, as to the factor of comparability, the PBA has demonstrated that many corrections departments throughout the state have contractual shift bidding provisions.

However, I would not be inclined to permit unit members to bid on their work assignments (posts). The County has demonstrated that it needs flexibility to assign the employee to a post based upon skills, past performance, temperament, and its own assessment of which officer is best suited to a particular post. The actual post assignment has far less impact on the officer's working conditions than the hours he/she works. Thus, only the number of shifts that do not have specialized skills or some specific operational need as designated by the Employer, would be put up for bid.

However, I share the Employer's concerns that newer superiors, those with the least seniority in rank, could all be outbidded by more senior officers for the preferential shifts[9], leaving the least preferred shift staffed with rookie supervisors. Other than to assert the possibility that some superiors might chose to bid their existing shifts, the PBA has not offered a solution to this obvious possible outcome. I am particularly concerned because earlier in 2012, nine officers were promoted to sergeant and three were promoted to lieutenant. Thus, 22% of the unit members are new to their positions this year. The record does not present me with the number of superiors on each shift, but apparently there is a greater concentration on the day shift because of assignments to specialized posts. However, even assuming that the full complement of 54 superior officers were evenly divided among all three shifts, that would leave 18 superiors on the night shift; if all nine of them were the newly minted sergeants, their lack of experience could jeopardize their own safety and that of the corrections officers they supervise. Without a proffered solution to this concern, I cannot award the PBA's proposal. The parties should explore this proposal in the next round of negotiations.

[9] The record does not specifically state which shift is the most or least desirable; however, in most round-the-clock operations it is the overnight shift which is least desired because it so upsets sleep rhythms and personal lives. This is particularly true where there is no shift differential to provide any incentive to bid midnights.

Shift Swapping

The PBA also seeks to incorporate into the contract a July 30, 2007 side-bar agreement between the County and PBA Local 109 (the rank-and-file unit) permitting officers to "swap shifts." That side-bar agreement provided, in part, that,

> 2. Reciprocal Days/"Swapping Shifts":
>
> The County agrees to allow correction officers assigned to the County Correctional Facility and its satellite units "including but not limited to any and all details such as hospital details and administration details" to utilize a system of "swapping days" by mutual agreement with each other subject to the following procedures:
>
> a. Corrections officers wishing to switch/swap working days with each other must complete the County Approved "Application for Reciprocal Form".
>
> b. Requests for use of reciprocal days/"swapping shift" shall be submitted seventy-two (72) hours in advance without exception. All requests submitted in a timely manner shall be approved by the County.
>
> c. Corrections officers shall only be permitted to use reciprocal days/switch working days within the same pay period.
>
> d. The County and the PBA agree that there shall be no Dual Track Disciplinary Policy.
>
> e. It shall be a violation of this system for a corrections officer who has been approved for are reciprocal day/shift swap to fail to report to duty except for the reasons set forth in subsection (f) herein. A correction officer who has been approved for a reciprocal day/shift swap and who fails to report to duty shall be marked as DNR ("Did Not

Report") and shall be subject to disciplinary action. Any correction officer found guilty of violating this system shall also be subject to the following: For foist offense a correction officer shall be prohibited form utilizing this system and swapping days for a ninety day period; for a second offense, a correction office shall be prohibited for a six month period.

f. Any correction officer who has been approved for a reciprocal day/shift swap and who utilizes a sick day instead of reporting to duty, shall not be marked DNR and shall not be subject to disciplinary action, provided that said officer is not in violation of the sick leave policy.

g. In the event that "mandatory overtime" is utilized the officer who is working must fulfill for mandatory obligation, and will be held accountable as it pertains to the mandatory overtime policy.

With regard to this proposal, the County asserts that, the MoA is clear that the County received a concession in exchange for its agreement to permitting reciprocal days. The County argues that the proposal should be awarded because PBA Local 109A "is not providing any concession to the County in exchange for this benefit."

The unrefuted testimony of Ortiz, Local 109A's President, is that this ability to swap shifts is already in place for members of the superiors bargaining unit. Whether this benefit was implemented for superiors after the rank-and-file negotiated the side-bar or at some other time is not known from the record. No matter, the unrefuted evidence shows that it is an existing benefit.

The inclusion into the contract language of the specific terms of a benefit is a positive for both parties. Contract language clearly spelling out the particulars of the program can be known and relied upon by the employees as well as the employer. Ambiguity is removed, reducing the likelihood of disputes over what is or is not the parties' past practice. Thus, I find this proposal to be in the public interest. The proposal is awarded.

New Legislation:

The County seeks to add contract language requiring the parties to abide by any new legislation. This language as a contract provision is unnecessary. It is beyond doubt that the parties are required to abide by existing and any new statutes. This proposal is denied.

Holiday Pay:

The County has several proposals concerning holiday pay. The contract currently provides,

> 3.1 The holiday schedule in effect at the time of the signing of this Agreement shall remain in effect for the duration of this Agreement unless it is increased by the County.
>
> 3.2 All bargaining unit employees shall receive fourteen (14) paid holidays, which shall be as follows:
>
> New Year's Day Lincoln's Birthday

Martin Luther King Day	Washington's Birthday
Good Friday	Memorial Day
Independence Day	Labor Day
Veteran's Day	Columbus Day
Election Day	Thanksgiving Day
Christmas Day	Undesignated Day

3.3 The Employer agrees to pay cash for fourteen (14) holidays. Payment for seven (7) holidays will be made not later than July 15; payment for remaining seven (7) holidays which fall in the second half of the year will be made on or before the last payday of the calendar year.

3.4 Recognizing that Jail and Penitentiary employees work every day of the year regardless of holidays, the Employer shall agree to distribute the two (2) major holidays, namely Christmas Day and New Year's Day, as days off on a fair and equitable basis, consulting with the Employees as to their preference.

3.5 Superior Officers shall receive compensatory time off for all extra holidays granted at the discretion of the County Executive.

3.6 For each and every day Hudson County Administration personnel are granted a day off, (e.g., day before or after a holiday, Friday after Thanksgiving, shopping day), an equal number of days will be granted to the members of the Association.

First, the County proposes to eliminate holiday pay. It also seeks to amend the article to add contract language that,

> "An employee who is absent from work due to illness the day before and/or the day following a legal holiday shall not be paid the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as 'absent no pay' or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday of observed while he/she is employed in either status."

In addition, the County seeks to reserve the right to adjust the holiday schedule to conform to that promulgated by the Governor.

In its brief, the County makes no specific argument for the elimination of holiday pay. Nor has it provided any details of the cost savings if such compensation were eliminated. It has not proposed off-setting roll-in of holiday pay into base pay. Nor has it pointed to any settlement pattern among County employees where holiday pay has been eliminated. This proposal has not been adequately supported, and therefore must be denied.

As to the County's proposal to limit holiday pay to only those officers who are in "pay status" on the day before and day after the holiday, the County points to other bargaining units which have recently been awarded the same proposal. Awarding this proposal is fair, reasonable and in the public interest. The whole rationale for "holiday pay" is that corrections personnel work 365 days a year. For them, time off to attend family holiday events is never guaranteed and rarely enjoyed. Holiday pay is reasonable compensation for that personal loss. Giving the same holiday pay benefit to employees who are not in pay status as to those that are forced to be working is destructive to employee morale. Following the County pattern, I award the County's proposal.

As to the County's proposal to peg designated holidays to those declared by the Governor, this proposal is unclear, lacks predictability, and is unsupported. The proposal is denied.

Insurance:

With regard to Insurance, the County asks to change the contract wording to state at Section 15:4 that the County shall provide prescription coverage through New Jersey State Health Benefits program. It also demands a new section wherein the parties contractually acknowledge that, as a participant in New Jersey State Health Benefits, the parties are subject to any changes in benefits or co-payments mandated by NJSHB. It asks that the contract exempt any such changes mandated by SHBP from the grievance procedure.

Further, the County seeks to add contract language requiring employee health care insurance contributions in accordance with Chapter 78, P.L. 2011.

The contract currently provides,

> 15.1 The insurance and health-benefit levels in effect at the time of the execution of this Agreement shall remain in effect except as modified herein.

15.2 The County shall pay the cost of State Health Benefits traditional plan medical insurance coverage for retirees and their dependents, if the employee retires in a state or locally-administered retirement system with twenty-five (25) or more years of service credited in that retirement system excepting employees who elect deferred retirement, but including employees who retired on a disability pension based on fewer years of service.

The cost of HMO or NJ Plus coverage which is in excess of the cost of traditional plan coverage shall be borne by the retiree. The retiree is also responsible for the payment of all required deductibles and coo-payments.

15.3 The County shall continue to provide a retirement program providing for one day's pay for each three (3) days unused accumulated sick leave, not to exceed five thousand dollars ($5,000.00). If an Officer reaches minimum retirement age and dies while still working, the County shall pay the retirement leave pay to the Officer's estate.

15.4 Effective August 1, 1993, the prescription drug program shall have a $5.00 co-pay for brand name drugs and $1.00 co-pay for generic drugs.

15.5 The County will implement an employee-funded dental insurance upgrade option. Such upgrade will be at no expense to the County. The County will exert its best efforts to assure that employee payments for the dental upgrade are treated as pre-tax income.

15.6 The County shall provide life insurance program's benefit level of five thousand dollars ($5,000.00).

15.7 For all insurance plans, the County retains the right to select a carrier or to self-insure, in its sole discretion, provided benefits are not reduced.

15.8 The County shall establish a Committee composed of one representative of each bargaining unit in the County, including the Association, to review and upgrade its insurance program.

The County points out that insurance language identical to its proposal was awarded by Arbitrator Mastriani in the PBA 232 matter.

The PBA did not specifically address this issue in its brief. Following the County pattern furthers the public interest and provides uniformity among employees of the same employer. Further, the County's language merely recites the existing conditions of employment as to benefits and conforms the contract language to the statutes. I award the proposal to incorporate the language into the contract.

Training (New Article):

Superior Officers to reimburse County for trainings costs if they leave County's employee within three years of training completion. Reimbursement may be deducted from payment for unused leave and holiday time balances.

Sheil testified that training may be on or off site and that the County pays for training, as well as the cost for food, lodging, and transportation.

No specific evidence was provided concerning how many superior officers, if any have had extensive training at the County's expense and then left the department. No information was submitted concerning the cost of such training.

The County asserts that, once it makes such an investment in the officer, it is reasonable to ask the officer to reimburse the employer if the employee leaves before the employer obtains the full benefit from the officer's enhanced skills and knowledge. The County notes that a "similar provision" was agreed to in the Sheriff's officers settlement, with respect to tuition reimbursement and further, that Arbitrator Mastriani awarded "tuition reimbursement" language in his award with FOP Lodge 127 (C-58).

The PBA counters that Arbitrator Mastriani's 2011 award for the FOP Lodge 127 unit awarded a reimbursement obligation, but it applied to educational tuition, not to training. (C-58). The PBA also notes that the Mastriani award for the Local 232 unit awarded no reimbursement obligation. I find that this proposal has not been sufficiently supported and is denied.

Mandatory Direct Deposit:

The County asks that the contract state that all unit employees will be paid by direct deposit. Sheil testified that there are sometimes problems with paper paychecks being issued to employees. He testified that there have been instances where employees do not cash their paychecks before the checks expire. The County notes that other County bargaining units have already agreed to this proposal. Additionally, Arbitrator Mastriani awarded direct deposit in both the FOP 127 and PBA 232 awards (C-58 and C-59). In the FOP matter, the arbitrator specifically awarded, "The County shall have the authority to establish a program in which all bargaining unit officer's compensation will be directly deposited into a financial institution and immediately available to officers on payday, at no cost to officers."

I find that awarding this proposal will provide administrative efficiencies to the County and no undue hardship to the employees, provided that there is no delay to the employee in having his/her funds available on payday. We live in an electronic age. Most payroll operations are done electronically, and indeed, most public employees are paid by direct deposit. The employee's ability to access the funds is widely available by ATM's. The County's proposal is neither unusual nor unrealistic. The proposal is awarded.

Sick Leave Incentive:

The County proposes to delete the Sick Leave

Incentive provisions found in Section 18.7.

The contract currently provides,

18.7 Sick Leave Incentive

(a) Any employee not using sick leave for a full calendar year may, at his or her option, receive compensation in the first payroll of the next year in an amount equal to five (5) days' pay. Such employee shall have five (5) days deducted from his or her sick leave for that year.

(b) Any employee utilizing the equivalent in hours of one or less of his or her sick days for a full calendar year may, at his or her option, receive compensation in the first payroll of the next year in an amount equal to four (4) days' pay. Such employee shall have four (4) days deducted from his or her sick leave for the year.

Sheil testified that this incentive does not provide much incentive, as a significant absenteeism problem still exits at the Correctional Center. The County avers that the purpose of this demand is for cost containment. The PBA objects to the proposal but makes no specific argument.

The County has provided no information about its annual current costs for the annual sick leave incentive; therefore I am unable to determine just how much "cost containment" could be realized if this clause is eliminated. With Shiel's testimony that the provision is ineffective at curbing absenteeism, combined with the County's lack of any cost analysis, and the PBA's lack of strenuous objection, I can only speculate that the sick leave incentive currently in place is neither providing much incentive to employees to minimize sick leave usage, nor is it costing the County very much in payouts.

There is common knowledge that in the corrections field, sick leave usage is a very real problem. The impact of sick leave usage is often that the officer who report off must be replaced with another employee, at overtime rates. The real problem with the existing language is that it provides a monetary benefit only to those who are never sick or very rarely sick (and have no family illness). This is an almost unattainable goal. Once an employee uses just a second sick day in a calendar year, he become ineligible for the incentive pay, and there is then no incentive for the rest of that year for him to conserve his sick days. Further, the sick leave payout upon retirement, capped at $10,000 (C-3), also offers only a limited inducement to officers to save their sick time. Unfortunately, neither party has offered a more effective solution. I award the County's proposal to delete this language from the contract. However, I award the following language as its replacement:

> Employees shall be entitled to sell back one day in each calendar year quarter during which time they do not use any sick days. Employees who use more than 4

sick days in any calendar quarter will not be eligible for a sick leave bonus in the next succeeding quarter unless the illness is covered by FMLA.

This awarded provision should give employees a more short-term target and provide a more meaningful incentive to conserve sick leave. The economic impact on the County would be a cost savings: Employees are provided with 15 sick days annually - about 3.75 days per calendar quarter. If all of the days are used, the County would likely have to backfill the vacant post with overtime, costing 1.5 times the employee's pay. An employee who uses all 3.75 days in a quarter costs the county a little more than five days pay in overtime costs, plus the day's pay for the officer who called in sick. By contrast, an officer who does not call in sick at all in a calendar quarter would cost the County one additional day's pay. The cost savings is both obvious and in the interest of the County, the public, and the employees. Therefore, the language above is awarded.

AWARD

Duration of Agreement:

January 1, 2010 through December 31, 2012.

Salaries:

Effective July 1, 2010: 2.0% across-the-board increase to all unit employees.

Effective January 1, 2011: 1.5% across-the-board increase to all unit employees.

Effective January 1, 2012: 2.0% across-the-board increase to all unit employees.

The new Salary Guide is attached. Salary increases are retroactive to the above effective dates. Employees who were promoted into the unit since January 1, 2010 shall have their salary increases pro-rated to their date of promotion.

Holidays:

Add new section:

An employee who is absent from work the day before or after a legal holiday, shall not be paid the holiday unless he/she has accrued sick leave or has requested vacation time in advance, or produces a doctor's certificate. If an employee is carried on the payroll as "absent no pay" or on a leave of absence without pay, this employee does not receive holiday pay, if a holiday is observed while he or she is employed in either status.

Sick Leave Incentive Pay:

Delete the existing contract provision concerning sick leave incentive pay and replace it with this language:

Employees shall be entitled to sell back one day in each calendar year quarter during which time they do not use any sick days. Employees who use more than 4 sick days in any calendar quarter will not be eligible for a sick leave bonus in the next succeeding quarter unless the illness is covered by FMLA.

Overtime:

Add this provision:

Compensatory time:

Officers will be compensated for all overtime worked at the overtime rate of 1.5. Such compensation may be in the form of cash payment or compensatory time, at the sole discretion of the officer. Officers may take compensatory time off upon approval by management's designee. The decision to grant a comp time request shall be based upon whether minimum staffing levels are met, but may not be unreasonably denied. Officers may accrue a maximum of 40 hours of renewable compensatory time per calendar. Any compensatory time not used by December 31 of the year in which it is earned shall be paid to the employee at the December 31 rate of pay in January of the subsequent year.

Insurance:

Add new section: "Periodically, the State Health Benefits Program may change benefits and/or benefit levels. The County has no input into or control over such changes. However, as participating SDHBP employer, the County is governed by any such changes. Accordingly, when SHBP changes a benefit/benefit level, the benefit and//or benefit level in this agreement will be changed accordingly including the cost of co-payments of prescriptions to employees. The County will not be liable for any such change or the impact of any such change. In addition no grievance or complaint against the County challenging any such change can be processed under the grievance procedures of this agreement or in any court of law or administrative agency. This provision does not preclude the Union, an individual employee or the County from filing an appropriate challenge against SHBP for any such change. This paragraph applies to any programs under the SHBP, for example, the prescription drug program."
New Section: employee health care insurance contributions in accordance with Chapter 78, P.L. 2011.
Section 15.4: Amend to: The County shall provide the N.J. State Prescription Drug Program.

Direct Deposit:

The County shall have the authority to establish a program in which all bargaining unit officer's compensation will be directly deposited into a financial institution and immediately available to officers on payday, at no cost to officers.

Shift Swaps:

Incorporate 2007 side-bar agreement with PBA Local 109, and as currently the practice of this unit, into the contract, except as modified to reflect that it applies to the ability of superior officers to switch shifts within their rank.

* * *

All proposals not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. My Award also explains how the statutory criteria factored into my final determination.

Salary Guide - SOA

Rank	7/1/10	1/1/11	1/1/12
Sgt	96,541	97,989	99,949
Lt	101,368	102,888	104,946

Susan W Osborn

Susan Wood Osborn
Interest Arbitrator

DATED: July 2, 2012
Trenton, New Jersey

State of New Jersey }
County of Mercer }

On this 2nd day of July, 2012, before me personally came and appeared Susan Wood Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

[illegible]

An Attorney at Law of NJ
Authorized to take Oaths