

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

Docket No. IA-96-032

In the Matter of Arbitration Between

UNION COUNTY PROSECUTOR'S OFFICE

-Employer-

and

**UNION COUNTY PROSECUTOR'S
DETECTIVES AND INVESTIGATORS,
PBA LOCAL NO. 250, SUPERIOR
OFFICERS ASSOCIATION**

-Union-

OPINION

AND

AWARD

ARBITRATOR:

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

MEDIATION SESSIONS/
HEARINGS:

May 3, 1996 and June 5, 1996 (mediation sessions);
September 6, 1996 and November 25, 1996 (formal interest
arbitration hearings). Both counsel thereafter filed post-hearing
briefs.

APPEARANCES:

For the County
Frederick T. Danser III, Esq., Apruzzese McDermott, et al (at the
mediation sessions and hearings)
Kathryn V. Hatfield, Esq. and Brian N. Flynn, Esq., DeMaria
Ellis, Esqs. (on the brief only)
Michael LaPolla, Esq., 1st Assistant Prosecutor

For the Association
Richard D. Loccke, Esq., Loccke & Correia

BACKGROUND

The parties' prior contract expired on December 31, 1994. The County and the Association tried unsuccessfully to arrive at a successor agreement, whereupon the undersigned was then appointed as duly-chosen Interest Arbitrator on November 3, 1995 under the auspices of the New Jersey Public Employment Relations Commission. On May 3, 1996 and June 5, 1996, mediation sessions were held in an effort to reach a voluntary settlement. After unsuccessful attempts to mediate a final settlement, formal interest arbitration hearings were held on September 6, 1996 and November 25, 1996. Voluminous exhibits were introduced, testimony was adduced, and thereafter both counsel filed post-hearing briefs. This matter is before me under the conventional authority prescribed in The Police and Fire Interest Arbitration Reform Act (A-3296, C425, L1995).

Revised Statutory Criteria

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. , c. (C.)(now pending before the Legislature as this bill); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

[(b) in comparable private employment.

(c) in public and private employment in general.]

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 P.L. 1976, c.68 (C.40A:4-45.1 et seq.).
6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or 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 of 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 monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.
7. The cost of living.

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

FINAL POSITIONS OF THE PARTIES

County's Final Offer

1. Term - The new contract shall be for a period of three years, from January 1, 1995 to December 31, 1997.
2. Salary - The wage scale for the three-year term of the contract shall be as follows:

	<u>Effective</u>	<u>Effective</u>	<u>Effective</u>
<u>Sergeants</u>	01/01/95	01/01/96	01/01/97
Step 1	\$65,150	\$67,150	\$69,150
Step 2	\$66,270	\$68,270	\$70,270
Step 3	\$67,380	\$69,380	\$71,380
Step 4	\$68,500	\$70,500	\$72,500
1st Class	\$72,120	\$74,120	\$76,120
<u>Lieutenants</u>			
Step 1	\$74,120	\$76,120	\$78,120
Step 2	\$75,210	\$77,210	\$79,210
Step 3	\$76,860	\$78,860	\$80,860
Step 4	\$78,500	\$80,500	\$82,500
<u>Captains</u>			
Step 1	\$82,500	\$83,500	\$84,000
Step 2	\$83,600	\$84,600	\$85,100
Step 3	\$84,700	\$85,700	\$86,700
Step 4	\$86,300	\$87,300	\$87,800
<u>Deputy Chief</u>	\$88,500	\$89,500	\$89,900

Note: There shall also be an automatic bi-annual step movement.

3. Clothing Allowance - Language to be modified in accordance with the following:

On or about the first day of December of each year an annual sum shall be payable to each employee for the repair, replacement, supplementing or cleaning of clothing worn while on duty, all of which is in recognition of the wear and tear upon clothing incurred by the employee during the course of the work year. Each employee seeking payment shall supply to the employer a voucher and a receipt supporting the claimed amount, whether for repair, replacement, supplementing or cleaning or clothing worn while on duty. upon presenting such a voucher and receipt, the voucher shall be honored by making payment directly to the employee claiming the same. If an employee works less than a full year he shall only receive a proportionate share of the annual clothing allowance at a monthly pro-rated rate for the number of months the employee worked. The annual clothing allowance shall be Five Hundred (\$500.00) Dollars.

4. Insurance -

- (a) Effective upon contract settlement in 1995 the insurance coverage shall be modified to the "Blue Select Program."
- (b) Effective upon contract settlement in 1995 insurance coverage shall include Pre Admission Review (PAR) and Mandatory Second Surgical Opinion (MSSOP) with 50% cutback.
- (c) Effective upon contract settlement in 1995 the co-payment for brand name prescriptions shall be increased to \$10.00 and a pharmacy network shall be implemented. In addition, the flow through of prescription co-pay to major medical shall be terminated.
- (d) Family Dental Plan - Family Dental Plan (80%/20% co-pay to maximum of \$1,000 per year) and similar upgrade for single coverage to be implemented upon contract settlement in 1995 with additional cost to be paid for by employee.

6. Agency Shop - The Employer agrees to add Agency Shop language to contract but requests appropriate "demand and return" language be added to this section.
7. Work Hours - Effective July 1, 1995, the standard work week will be 40 hours.

Association's Final Offer (County brief, pages 4-5)

1. Term - The new contract shall be for a period of three years, from January 1, 1995 to December 31, 1997.
2. Salary - The wage scale for the term of the contract shall be as follows:

	<u>Effective</u>	<u>Effective</u>	<u>Effective</u>
	<u>01/01/95</u>	<u>01/01/96</u>	<u>01/01/97</u>
<u>Sergeant</u>			
Step 1	\$66,690	\$68,445	\$70,785
Step 2	\$67,830	\$69,615	\$71,995
Step 3	\$68,970	\$70,785	\$73,205
Step 4	\$70,110	\$71,955	\$74,415
<u>Lieutenant</u>			
Step 1	\$76,950	\$78,925	\$81,675
Step 2	\$78,090	\$80,145	\$82,885
Step 3	\$79,800	\$81,900	\$84,700
Step 4	\$81,500	\$83,655	\$86,515
<u>Captain</u>			
Step 1	\$87,200	\$89,505	\$92,565
Step 2	\$88,350	\$90,675	\$93,775
Step 3	\$89,490	\$91,845	\$94,985
Step 4	\$91,200	\$93,600	\$96,800
<u>Deputy Chief</u>	\$93,480	\$95,940	\$99,220

3. Senior Officer Differential - There shall be a new pay provision designated as "Senior Officer Differential." Employees having completed twenty (20) years of service would be entitled to said benefit. The benefit would be an increase in the base pay rate by an amount equal to one-half (1/2) the difference between the employee's then current base rate and the next higher rate of pay. For example, a Sergeant having completed twenty (20) years of service would receive a Sergeants pay expanded by one-half (1/2) the difference between the Sergeants base rate and the Lieutenant's base rate of pay.
4. Automatic annual step movement - There shall be a modification of Article XXI so as to provide that step movement shall be annual and automatic.
5. Clothing Allowance - There shall be an increase of \$100 in the annual clothing allowance.
6. Vacations - Each plateau of the vacation entitlement shall be increase by two (2) days.
7. Sick Leave - The Association proposes the following modifications:
 - a. It is proposed that the 25 year requirement "solely with the employer" be deleted.
 - b. It is proposed that the 55 year age requirement be deleted.
 - c. It is proposed that the \$7,000 cap be removed.
 - d. It is proposed that each retiring employee shall have the sole option to receive the entitlement under this benefit in up to three payments over a period of up to 18 months. Such money would be held by the employer subject to the payment of the liquidated amount with interest.
8. Insurance - It is proposed that a program for retiree medical be provided at the employer's sole cost and expense. It is proposed that there be an improvement in the current dental program so as to cover the employee and the employee's family.
9. Agency Shop - The Association proposes that Article III be modified so as to add language from the PBA contract. (See Exhibit U-3)
10. Overtime - There shall be a modification of this Article so as to match the PBA existing language. (See Exhibit U-3)

(SOA brief, pages 1-2)

The employee organization has presented four economic issues for the arbitrator's consideration. The issues are as follows:

1. Wage Increase. The SOA has proposed a maintenance of the long-standing rank differential which has existed under both court order and repeated negotiated contracts over many years. The PBA contract has been settled and signed on a voluntary basis between this same employer and the rank and file unit (contained in U-3) as part of this wage proposal the SOA seeks a specific direction that step movement per these numerous contracts continue with an employee moving one step not less than every two years. The SOA proposal is set forth with respect to wages on the initial proposal sheet (U-1) as Item 1.
2. Senior Officer Differential. The SOA proposes a \$3,000 per year Senior Officer Differential be added to the contract. This proposal is essentially the same as that which has previously been agreed upon between this same employer and the rank and file unit, PBA Local 250. The methodology and entitlement generally is proposed to be the same as is set forth in the Union County Prosecutor PBA contract (included in U-3) at Article XXI, Section 3, page 37. This proposal appeared on the initial proposal sheet (U-1) as Item 1b.
3. Overtime. The SOA proposes the same overtime formula be implemented for supervisory personnel as is available to the rank and file personnel. The specific terms of the overtime proposal are identical to the PBA contract, Article XVIII, page 34. This issue appeared on the initial proposals (U-1) as Item #7.
4. Clothing Allowance. The SOA proposes an increase in the clothing allowance of \$200. This proposal appeared as Item 2a on the initial proposal sheets (U-1).

In addition to the economic items set forth above, the SOA has also presented four non-economic issues for the arbitrator's consideration. The non-economic issues are as follows:

1. Agency Shop. The SOA proposes the same language as now appears in the PBA contract at Article III, page 6. This issue appeared as Item #6 on the initial proposals (U-1).
2. Departmental Investigations. This is new language in the SOA contract, however, it is meant to duplicate the language set forth in the PBA contract on page 44. This proposal appears as item 8a on U-1.
3. Personnel Files. The SOA seeks the same language as is set forth on the voluntarily agreed upon contract with the same employer in the PBA. The specific language appears on the PBA contract at page 46. This issue appeared as Item 8b on U-1.
4. Printing of Agreement. The language sought is that which is identical to PBA language set forth at page 47 of the PBA contract. This issue appears as Item 8c on U-1.

POSITION OF THE COUNTY

Post-hearing briefs were filed by both parties. On behalf of the County, the following arguments were addressed:

1. The one lesson to be learned from Hillsdale PBA Local 207 vs. Borough of Hillsdale, 137 NJ 71 (1994) is that an arbitrator's award must adequately address the relevant statutory criteria and not overly rely on the criteria of comparability. Accordingly, the County urges that close attention be paid to its overall economic condition which mandates the focus of its offer to control costs and minimize increased taxes.

2. The Association's final offer is premised on a 20% step differential between ranks which is a historical remnant surviving from the 1984 negotiations. At that time, a "deal was struck" waiving overtime payments in exchange for these percentile monetary differentials. The then prosecutor took the matter to court after the County freeholders had rejected the contract. Counsel recounts in detail the numerous statistics which motivated the prosecutor to support the wage differential. Briefly, these figures showed superior officers in the Union County Prosecutor's Office at or very near the bottom in a comparison with six to seventeen other County Prosecutors' offices. Assignment Judge Edward W. Beglin Jr. directed the County to appropriate the funds for the voluntary settlement that the parties had reached. The record is clear that the Association's willingness to waive overtime was a substantial factor in the approval by the Court of the percentile differentials agreed to by the parties. The

County argues that the SOA's persistence in seeking to continue this differential in its final offer fails to consider the relevant statutory criteria.

3. In respect to the eight statutory criteria, counsel makes the following arguments:

Interest and Welfare of the Public

The justification that may have existed in 1984 for a 20% wage differential between each of the superior ranks exists no longer. The cost of maintaining this differential is excessive and prohibitive. Were it required to do so, it would be forced to curb promotions and fail to maintain the present number of superior officers. In light of this reality, the SOA's offer obviously fails to consider the interest and welfare of the public. Conversely, the County's final offer recognizes the public's interest and welfare when it seeks to curb increases so as to prevent ballooning labor costs.

The Association has failed to prove to the Interest Arbitrator either that the 20% differential is necessary to eradicate pay inequities such as existed in 1984, or that its demands consider the interests and welfare of the public in the mid-1990s.

Clearly, in light of these proofs, the County's offer must prevail in any evaluation of the interest and welfare of the public.

Comparability

County Employees. Counsel charted virtually every "highly placed Union County employee" to demonstrate that those represented by the SOA, in comparison, earn a "disproportionately high base salary". Noted as examples of alleged disparity is the fact that more highly educated employees such as assistant county counsels earn less than a sergeant, even under the County's final offer. Assistant prosecutors are similarly cited along with the statistic that more than half of the assistant prosecutors earn less than a sergeant and more than 80% earn less than a captain in this bargaining unit. Even greater disparity is claimed between the SOA superior ranks and those of three comparable county law enforcement divisions, viz the Corrections, Sheriff and Police Departments. Counsel claims no justification exists for these disparities, and the argument SOA counsel advances as to the revenue-generating work of asset forfeiture the Prosecutor's officers participate in is meaningless. Most of the significant work in asset forfeiture is performed by the attorneys in the Prosecutor's Office, not the superior officers.

Public Employees in Comparable Jurisdictions

Counsel claims the comparison of SOA members with Union County municipalities and with comparable prosecutors' offices statewide shows that, even under the County's proposed increase, they remain at the top of the rankings. Using Westfield, a Union County community, as a basis demonstrates that its Police Chief, responsible for an entire

department, earns less than a lieutenant in the Prosecutor's Office. Counsel also asserts, with examples offered, that the fringe benefits received by the SOA demonstrates that they are extremely well compensated on an overall basis.

Public and Private Employment Comparability

Reference is made in counsel's brief to the ream of documentary evidence entered into the record of public and private sector contract settlements, ranging from the often cited 1995 settlement between the State of New Jersey and its largest unions (IFPTE, AFSCME and CWA) noted for its health benefit concessions and two-year no general wage increases, to an all industries 3% nationwide average increase covering the first half of 1996. Under the County proposal, cumulative three-year wage increases of \$6,935.00 for sergeants, \$6,274.00 for lieutenants and \$2,513.00 for captains, counsel argues, "are far greater than the salary increases enjoyed by most workers in the private sector". While not wishing to overemphasize comparability, counsel notes, nevertheless, that its proposal is well within the general parameters of comparable public and private settlements.

In summary, counsel argues that an analysis of the comparability criteria weighs heavily in the County's favor.

Overall Compensation

The present benefit package including health, dental and prescription benefits, social security, pension contributions, unemployment insurance, workers compensation and uniform allowances will be enhanced under the County's offer. Counsel claims that approximately 80%, on average, of the annual cost per member ranging from the sergeants' \$83,483.00 to the Deputy Chiefs' \$109,439.00 is in the form of direct compensation. These figures, which do not even include the fringes of vacations, holidays, sick and personal days, will be further enhanced by the County's offer of a \$100.00 uniform allowance increase.

Financial Impact

Counsel claims that the acceptance of the SOA's offer would result in an uncontrollable escalation in the superior officers' base salary which would have a devastating impact on the County's ability to provide adequate levels of services to the residents. Since the SOA position fails to consider this impact, the County's offer must be deemed to prevail under this criteria.

Cost of Living

Counsel charts the actual wage increases provided to captains, lieutenants and sergeants over the 1984-1994 period and which, when contrasted with the CPI for the comparable years, shows that the cumulative salary increases for that period of time

percentage-wise amounted to 129% (captains), 122% (lieutenants) and 102% for sergeants, whereas the CPI increase was only 42%. He attributes these increases to the percentage wage differential which the Association seeks to maintain and incorporate into this successor Agreement. The acceptance of the County offer would begin the necessary stabilization of costs, whereas the acceptance of the Association's offer would only exacerbate these excessive percentage increases.

Continuity and Stability of Employment

Counsel asserts the stability and continuity of employment is excellent in the County and will remain so under the implementation of the County's offer. Under that offer, well-deserved salary increases and bi-annual automatic step movement will be provided, whereas the SOA's offer can only have the opposite effect. Were the SOA offer to be implemented, counsel claims the County could no longer afford supporting a staff with those salaries. Accordingly, it is urged that the SOA offer must be rejected because it would produce a detrimental effect on the continuity and stability of employment in this unit.

In summary, counsel notes that none of the three problems (high cost of overtime, comparatively low rate of pay compared to other prosecutors' departments, and the compression gap between salaries paid to investigators and detectives compared to this unit's salaries) exist today. The result of the 1984 contract agreement has been that salaries have soared so that a compression gap now exists between these wages and those paid to

high level County employees. The discrepancy between this unit's superior officers' salaries and others within comparable Union County law enforcement units are not justified and must be remedied. The existing 23% - 43% - 60% wage differential has not been supported by any evidence introduced by the SOA. The detrimental effect on County residents must be stopped and the adoption of the County offer will begin that process. When all of the factors are considered, the Arbitrator can only conclude that the County offer is the more reasonable and must be awarded.

POSITION OF THE SOA

In his post-hearing brief, Association counsel spends a substantial portion of the brief recounting the history of the superiors' unit from its inception as it is presently constituted circa 1984. That history, albeit condensed, deserves being repeated on the record, not only to document the unique nature of a prosecutor's bargaining unit, in general, but also to explain the creation of the rank differential in particular in this unit.

Prior to the 1984 contract, a superiors unit existed which only included sergeants and lieutenants. In that year, captains were included in the unit. Chief Maloney recommended to Prosecutor John Stamler that a contract should be negotiated which would provide for a given percentile wage difference between ranks in this unit and above that of senior investigator, the top salary in the rank and file law enforcement unit in the Prosecutor's

Office. The theory was that this arrangement would avoid step comprehension between the units while virtually eliminating future salary renegotiations with the superiors. In connection with the percentages agreed upon for these step differentials, the SOA waived overtime entitlement. Eventually a deal was struck, including these proposals, which the Board of Freeholders rejected.

Prosecutor John Stamler then began an action in Superior Court under the authority announced by the Supreme Court in In re Bigley 55 NJ 53(1969). In a most thorough decision delivered from the bench, Union County Assignment Judge Edward Beglin upheld the negotiated contract and directed the Union County Freeholders to appropriate the necessary funds to implement the contract that the parties had voluntarily negotiated.

Association counsel emphasizes two points by way of background in this interest arbitration. First the Employer, the Union County Prosecutor, is created by the constitution itself and the Assignment Judge, not the Board of Freeholders, is the sole authority at the County level to review budget appropriations of the Prosecutor's Office.

Secondly, subsequent to the approval of that 1984-1987 contract settlement, the parties have negotiated and voluntarily entered into subsequent contracts based on the indexed rank differentials implemented in the initial '84-'87 superior officers' contract.

Counsel reviews the testimony of his various witnesses to demonstrate the uniqueness of the Prosecutor's Office. He argues that the interest and welfare of the public is well served by the office, and the many tasks it performs from its Forensic Service Unit

through its Welfare Fraud Unit to its Hostage Negotiating Team. In all, the office has twenty-one primary units covering all aspects of criminal justice.

With respect to the comparability criteria found in the statute, counsel notes that the Prosecutor voluntarily entered into a contract with PBA Local 250 representing the detectives and the investigators for the years 1995 through 1997 which the superiors unit has paralleled for the past twelve years. Simply put, the salary for the superiors has, for the past dozen years, been indexed at set percentages over that of the senior investigators' base pay. Counsel argues that the clear intent of the parties was to negotiate that all pay rates for supervisors be related to percentile calculations above investigator.

As noted, when this Agreement was first struck in 1984 by the Prosecutor and the SOA, the Prosecutor was forced to put the matter into suit by way of an Order to Show Cause. The issue was fully litigated, and the Agreement was upheld.

Counsel's argument on comparability rests on this point, and it is best expressed by quoting directly from his brief:

"With due respect to this arbitrator, here is presented a certification presented to the Assignment Judge...by the then sitting Prosecutor clearly and unequivocally establishing the intent of the Agreement and the specificity of the Agreement that bargaining unit employees in this SOA are to be paid in a percentage relationship to the PBA contract. No other interpretation is possible." (SOA brief, page 15)

Counsel's brief continues:

"Assignment Judge Beglin upheld the position of Prosecutor Stamler and specifically referenced and upheld the percentile creation for payment of wages to SOA members...."

Assignment Judge Beglin upheld the differential formula. He stated as follows:

"...Dean Wilson's test on Police Administration states that there must be pay differences between the ranks and notes that a 15% to 20% differential is equitable. The necessity to establish a certain differential between those in the investigatory/detective ranks and the supervisors, I think is obvious. Any such schedule must reflect what exists as a result of the Arbitrator's decision on the PBA 250 contract and then set a reasonable spread or gap between the ranks." (Court Transcript, page 16)....

....Employer....(asks) nothing more or less than requesting that this Interest Arbitrator over rule the clear court order of the Assignment Judge of Union County.

Counsel notes that the County and the SOA voluntarily agreed to contracts in the '88-'91 and '92-'94 terms where the rank differential was continued. In total, this represents a decade of contracts following the rank differential approved initially by the Assignment Judge in 1984. The SOA asks merely to maintain the percentage differential that existed in the last contract between the SOA titles and the top step investigator pay rate. In other words, the identical increases which the County negotiated for first class investigators in the PBA contract should be applied to the wage rates for the SOA unit's members by way of indexing.

Counsel next addresses the SOA's economic proposal for a senior officer status. Basically he argues that it should provide entitlement based on a comparable salary point system found in the PBA contract relating to the concept of "first class status" peculiar to that

unit. Counsel argues that that point system should be used to qualify unit members for the senior officer status which is simply a salary step premium for those qualifying. He argues that, were it not to be granted, such a result would be contrary to “the court ordered and mutually agreed upon differentials of the parallel treatment established for the base wage differential.”

The final economic item relates to an overtime provision. The SOA seeks the identical language found in the PBA contract. Counsel argues that this would only represent the actual codification of the practice that is presently in existence.

Non-Economic Issues

As to the four non-economic issues proposed, Association counsel comments that they were all apparently approved by the County for inclusion. He notes Employer counsel commented to that effect with the caveat that it was subject to further objection which was never forthcoming at any of the subsequent arbitration hearings.

Stipulations. Comment is made that normally stipulations of the parties are generally considered as not belong determinative of substantive issues. Here, however, counsel suggests that since the County stipulated to a three-year contract for a term identical to that of the PBA, such stipulation serves to further support the adoption of parallel treatment as to compensation based on the indexing system.

Lawful Authority. The argument is made that, since the “cap law is not part of the mix in this case”, this criteria is not a preeminent consideration for the arbitration. While the ultimate funding source is the County and the taxpayer, the freeholders are not to make the final decision -- the Assignment Judge is. Moreover, since the Prosecutor has already agreed to a financial offer with the PBA, his office is hard pressed to argue against parallel treatment for this unit.

Financial Impact. Following on the PBA contract argument, counsel argues that the impact here is “minuscule” when compared with the PBA unit increase which the County voluntarily entered into with the Union.

Cost of Living. Again, counsel asserts this criteria should not be a key consideration where the Prosecutor has negotiated a settlement with the PBA, a much larger unit, while the SOA merely asks to be awarded it under the identical terms by way of the indexing system.

Continuity and Stability of Employment. Note is made that, other than the detective rank, no employees have Civil Service protection and they are without tenure. This holds true in the PBA unit and is simply one more reason that the groups should be treated in tandem and the economic package the SOA seeks based on the indexing system should be awarded.

The continuity aspect further supports this plea since, were the base wage and salary point system not provided to the SOA, the Arbitrator would then effectively be destroying the continuity provided in the statutory criteria. Where, as here, there is a dozen-year history of

successive voluntary agreements, indexing of pay, and long-standing wage patterns, the denial of the SOA package would constitute the destroying of this continuity.

In conclusion, counsel asks that the SOA position be adopted in its entirety.

DISCUSSION

The arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel as set forth both at the hearings and in their briefs, the contract and the exhibits prior to reaching his decision. Although this interest arbitration is somewhat unique from two points of view, nevertheless, the statutory criteria must be reviewed despite Association counsel's argument that some of them are of diminished relevance because of the unique jurisdictional nature of this unit which has been discussed by both counsel in their briefs.

Stipulations. I find that no significant stipulations exist between the parties. To the extent that certain proposals were made by the SOA and were not opposed by the County, one might view them as stipulations. However, nothing beyond those items can be viewed as stipulations. I reject SOA counsel's argument that the mere agreement by the parties to the original indexing and subsequent voluntarily-negotiated agreements represents any form of a stipulation.

Cost of Living. The County offer clearly prevails over the Association's offer under this category. There is ample proof produced by the County that the CPI is and has been in the neighborhood of 3% in recent years paralleling the term of this contract. This can almost be deemed to be a matter of common knowledge and experience. Annually the increases offered by the County range from a low of approximately 1% to 4.4%, while the SOA's range goes from 2.6% to 6+%. Cumulatively, over the three-year life of the contract, the County's offer averages approximately 3% to nearly 11%, while the Association's offer is approximately 13.5% across the board for every rank over the three years. The offer awarded ranges from approximately 6% to 12% cummulatively over three years.

It is quite obvious that the County offer prevails under this statutory criteria as being the more reasonable offer vis a vis the CPI over the past two years and midway into the final contract year. This is further strengthened by the fact, as County counsel noted, that increases this unit received from 1984 through 1994 more than doubled the contemporaneous CPI increases for sergeants (102% versus 42%) and nearly tripled the CPI for lieutenants and captains (122% and 129% versus 42%) for the period.

Overall Compensation. The County has established that the superiors receive an excellent overall compensation package which will not diminish in the new contract under either offer. The Association never really challenges any of the County's argument as to the overall compensation paid to or on behalf of its members. This is, in reality, a non-issue and the County clearly prevails under this criteria.

Financial Impact. Association counsel stresses the fact that funding for the Prosecutor's Office goes through that office, and any challenge to the expenditures he requests goes not to the Freeholders but, under law, to the Assignment Judge. As he also candidly notes, "one may argue the ultimate funding source is the taxpayer...." He also seeks to quash this argument by noting that "...one must also consider that argument has been fully litigated before the courts, and the Freeholders are not to make the final decision." Counsel's resort to the prior litigation under this criteria, as well as under other criteria, is misplaced. The taxpayer is the ultimate source of the funds necessary to provide these wages. The Beglin decision dealt with the contract negotiated in 1984. It does not control these negotiations or this arbitration award. While it is foreseeable that this Award could ultimately be the subject of a similar challenge if the Freeholders declined to fund the Award, the Association's reliance on the Beglin Award herein appears misplaced. His Honor in that case was ruling on the Freeholder's refusal to fund a voluntarily-negotiated settlement. One must not lose sight of the fact that the Order to Show Cause was brought by the Prosecutor who fully supported the settlement in that matter. Here, the Prosecutor is supporting the wage offer presented to me by the County. Judge Beglin held for Prosecutor Stamler in that matter and in so doing noted:

"Just as too great a spread would not be reasonable, so it can be said that too small a gap or compression would likewise be unreasonable.

Chief Maloney's goal of ultimately establishing a set of differentials is not unreasonable. The menus utilized to attain that goal.....likewise is not unreasonable.

Indeed I am satisfied that such is both reasonable and necessary in these particular circumstances." emphasis supplied (TS, page 17, Beglin decision)

As I read the Beglin decision, it was approving the settlement the parties had reached which included, among other features, a prescribed indexing of salaries based on the top investigator's salary. I do not read it to hold that those percentages are cast in stone never to be disturbed. As under the Interest Arbitration Statute where the arbitrator is directed to award the more or most reasonable package, so too was Judge Beglin upholding the reasonableness of the indexing based on the proofs put before him. As will be noted in further discussion, this arbitrator is finding that the Association's proposed wage increases are unreasonable on several grounds, not the least of which being the financial impact it would have on the County. As roughly calculated, it amounts to \$333,670 over the three years in excess of what the County was offering. Under this and other criteria, I conclude that the County offer as to the precise wage proposal is by far the more reasonable. However, the most reasonable wage package is as awarded herein. The County offer to the Captains and Deputy Chiefs is unreasonable in that it is below the CPI.

Lawful Authority. Again, Association counsel seeks to argue that since the Assignment Judge has the ultimate power to compel a Board of Freeholders to fund the cost of a contract, the cap limit is irrelevant. The argument omits a consideration. Although the

Freeholder Board well may be legally required to fund such an approved settlement or award of wages, it is still left to deal with a cap rule which requires it to fund the operating requirements of the County with the money it generates. Because the ultimate judgment reached in this Award is that the Association's final offer is less reasonable than the County's, the ability of the Freeholders to pay it within its cap is one of the criteria which lead to that conclusion. Accordingly, it is concluded that under the Lawful Authority criteria, the County's final offer is by far the more reasonable.

Continuity and Stability of Employment. Association counsel argues that the continuity aspect of this criteria supports its position particularly in relation to awarding the base wage and "salary point" system it seeks. Furthermore, he argues, interrupting long-standing wage patterns would be a disruption of continuity and stability. In brief, counsel seeks to use this criteria to argue for the maintenance of the 17% differential established as of the end of the prior contract. While this application of the continuity and stability criteria appears to be novel, it is founded in a logical approach. Were more drastic changes sought by the County in the salary differential and in the wage rates and benefits, this argument might prevail in the Association's favor. However, the variations sought are not sufficient to carry the day for the SOA.

Counsel also argues that all of the unit members in the SOA serve without tenure or civil service protection as do the rank and file unit members with the exception of those

holding detective status. Again, counsel uses this to argue in favor of tandem treatment between the units. This argument is also insufficient for the purpose counsel seeks to use it..

With regard to the more traditional interpretation of continuity and stability of employment, suffice it to note that no suggestion has been made that any of these unit members are in jeopardy of losing their positions. The statistics SOA counsel himself introduced and other statistics judicially noted unfortunately confirm that, even with a declining crime rate, the measured statistics for this unit indicate a steady, slow growth of work for these employees, particularly in a proactive department. In brief, no decline in the size of this unit is anticipated and, accordingly, the evidence supports the County's offer under this statutory criteria also.

Comparability. Very few comparisons outside of other prosecutors' offices were made by the parties. Significantly the evidence presented confirmed that the bottom ranking this unit occupied in a comparison with other comparable County Prosecutors' Offices in the mid-1980s has reversed itself, and this unit fares well in any contemporaneous comparisons.

County counsel introduced almost all of the salaries of managerial and executive positions within the County including what appears to be virtually the entire Prosecutor's professional staff. The argument is well taken that many of the superior officers are paid as well or better than professionals in the County's employ who have greater job responsibilities and more advanced educational backgrounds. Of particular note is the vast superiority of this unit's salaries over those of comparable law enforcement units in the County. No

justification is offered for this discrepancy by the Association and this comparison alone argues favorably for the County's final offer.

Counsel also makes a detailed comparison of salaries from the Town of Westfield with those it is offering to the superiors. Clearly the comparison is valid. The conclusion is inevitable that this unit is well paid and the comparison made showing the Police Chief of Westfield earning less than lieutenants and captains in the superiors unit serves as emphasis for this point.

No specific comparisons with the private sector are made beyond a sampling of recent contract settlements which inevitably are well below those recently paid and those presently offered to this unit.

There is no question but that the comparability criteria favors the County's final offer.

Interest and Welfare of the Public. Association counsel, through his witnesses as well as by way of the introduction of the Prosecutor's own Year End Report, established the significant breath and depth of the activities carried out by the Prosecutor's Office. It is certainly in the interest and welfare of the public to maintain excellent morale for the members of this unit. I am convinced that the path the parties took back in 1984 succeeded in accomplishing that task.

Perhaps the key answer as to which parties' final offer is the more reasonable becomes apparent under the heading of the interest and welfare of the public. As discussed, this is clearly a skilled group of employees who administer an extremely wide range of

criminal justice programs for the citizens of Union County. And while the indexed salary wages conceived in the 1980s served their purpose in that initial contract and in subsequent agreements, the automatic indexing no longer seems reasonable, given the particular facts in this interest arbitration. Note is again made of the comment that Judge Beglin made in his findings from the bench on December 31, 1985 when, in ordering the Freeholders to fund the settlement, he noted that "Just as too great a spread (between ranks) would not be reasonable, so can it be said that too small a gap or compression would likewise be unreasonable." In the comparison of the final offers present here, the mere fact that the County is offering a fixed dollar increase automatically results in the percentage of indexing changing -- in this case to lessening. The problem inherent in the percentage salary increases and percentage indexing is that as time goes on the increases for the higher ranks grow exponentially. While a percentage increase might be appropriate and reasonable for a lower rank, it can be inappropriate and unreasonable at another rank. The conclusion in this matter is that the County offer is the more reasonable for this reason alone and consequently is best for the interests and welfare of the public.

The caveat must be made that this is not an outright endorsement of fixed dollar wage increases or a conclusion that forever more increases can only be reasonable if so calculated. The point may well come when the fixed dollar increases diminishes the percentage differentials between ranks to a point where the resulting compression would be unreasonable and contrary to the best interests and welfare of the public. Consequently, that

perennial battle between percentage and flat dollar increases will be heard and decided again in the future with this unit.

Final Salary Increase Award

The wage increases set down in the final award resulted from a thorough review of all arguments, statistics and comparisons put before me. Clearly the higher ranks of captain and deputy chief could no longer increase to the level proposed by the SOA in its final offer. However, the salary increases awarded herein are the most reasonable any could be, given those salary levels. On balance, the flat dollar increases proposed by the County over the three-year contract term were deemed to be too low and therefore somewhat unreasonable. As a result, a conventional award issues below which, while it seeks to slow the onslaught of ever-growing salary levels and increases dictated by fixed differentials, does so on more expansive terms than those offered by the County.

Senior Officer Differential

The County has included in its Final Offer a first class step as a fifth or final step in the sergeants wage rate scale which is similar to the equivalent first class category in the investigators' bargaining unit. As proposed by the County, this provision is included in this Final Award. Inasmuch as the Association makes a similar proposal under the caption of a Senior Officer Differential which it appears the Association would have apply to "all qualifying

SOA members”, again apparently regardless of rank, such a proposal is rejected. Again the First Class Step as proposed by the County is awarded.

Overtime and Clothing Allowance

I award both of the proposals as submitted by the SOA. They are deemed to be reasonable and shall be awarded.

Insurance

In the County's Final Offer, a proposal is included for modification of coverage to the “Blue Select Program”. No evidence was introduced by the County on this proposal. No testimony was offered in its support. No argument is found in its brief on this topic. In conclusion, nothing has been offered to the arbitrator upon which a reasoned determination could be made to award the proposal. Accordingly, the proposal is rejected.

Work Hours

For essentially the same reasons that the County's proposal on health coverage was not awarded, its proposal on Work Hours is similarly not awarded. In brief, no arguments were advanced to justify the inclusion of the proposal in any Final Award.

Non-Economic Proposals

As Association counsel noted, the County made no formal objection to these proposals. In fact, County counsel included the Agency Shop in its proposal. The proposals shall be awarded.

No opposition was stated to the Departmental Investigations, Personnel Files and Printing of the Agreement as proposed by the SOA. These are all benefits provided in the PBA contract, and are deemed to be reasonable and therefore are awarded

For the reasons expressed above, and after thorough review of both offers under the statutory criteria, the following Interest Arbitration Award is issued:

FINAL AWARD

I.

<u>Rank</u>	<u>Step</u>	<u>Effective 1/01/95</u>	<u>Effective 1/01/96</u>	<u>Effective 1/01/97</u>
Sergeant	1	\$ 64,866	\$ 67,366	\$ 69,866
	2	65,933	68,433	70,933
	3	66,999	69,499	71,999
	4	68,065	70,565	73,065
	1st Class	72,120	74,120	76,120
Lieutenant	1	74,561	77,161	79,761
	2	75,627	78,227	80,827
	3	77,226	79,826	82,426
	4	78,826	81,426	84,026
Captain	1	83,356	85,156	86,956
	2	84,422	86,222	88,022
	3	85,488	87,288	89,088
	4	87,087	88,887	90,687
Deputy Chief		89,219	91,019	92,819

1 (a) There shall also be automatic bi-annual step movement.


1 (b) The First Class Step, as proposed by the County, is hereby awarded. Entitlement to the First Class Step, based on "30 salary points" as is set forth in the Union County Prosecutor/PBA contract and as proposed by the SOA in the instant proceeding, is hereby awarded.

2. **Overtime.** The SOA proposes the same overtime formula be implemented for supervisory personnel. It is awarded as proposed.
3. **Clothing Allowance.** The clothing allowance shall be increased by \$200.00 effective in contract year 1995.

Non-Economic

1. **Agency Shop.** The SOA proposes the same language as now appears in the PBA contract at Article III, page 6. This issue appeared as Item #6 on the initial proposals (U-1). It is awarded as proposed.

2. Departmental Investigations. This is new language in the SOA contract, however, it is meant to duplicate the language set forth in the PBA contract on page 44. This proposal appears as Item #8a on U-1. It is awarded as proposed.
3. Personnel Files. The SOA seeks the same language as is set forth on the voluntarily agreed upon contract with the same employer in the PBA. The specific language appears on the PBA contract at page 46. This issue appeared as Item #8b on U-1. It is awarded as proposed.
4. Printing of Agreement. The language sought is that which is identical to PBA language set forth at page 47 of the PBA contract. This issue appears as Item #8c on U-1. It is awarded as proposed.
5. Except as expressly awarded herein, all other proposals by either party are denied.



ROBERT E. LIGHT, Interest Arbitrator

Dated: June 13, 1997

STATE OF NEW JERSEY:

:SS

COUNTY OF MIDDLESEX:

On this 13th day of June, 1997 before me personally came and appeared ROBERT E. LIGHT to be known to me to be the individual described here and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ELLEN ORLANDINI
Notary Public of NJ