

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

Docket No. IA-96-002

In the Matter of Arbitration Between

ESSEX COUNTY PROSECUTOR'S OFFICE

-Employer-

and

**ESSEX COUNTY PROSECUTORS,
DETECTIVES, AND INVESTIGATIONS
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.

MEETINGS/HEARINGS: November 14, 1995; April 8, 1996; September 9, 1996; March 10, 1997; June 5, 1997; September 16, 1997.

APPEARANCES: For the Employer
Juan C. Fernandez, Esq., LUM, DANZIS, et al (days 4-6)
Dominick C. Carmagnola, Esq., LUM, DANZIS, et al (days 4-6)
Mark S. Ruderman, Esq., RUDERMAN & GLICKMAN (days 1-3)
Dolores Capetola, Esq.

For the Association
Richard D. Loccke, Esq., LOCCKE & CORREIA
John F. Wojtal, President

BACKGROUND

This interest arbitration involves the Essex County Prosecutor as Employer and PBA Local 325 representing a bargaining unit of prosecutors, investigators and detectives. Somewhat unique to this interest arbitration is the fact that the Prosecutor is a constitutional officer who enjoys quite a different status than a county or a municipality, as PBA counsel has stressed. Secondly, this arbitration is to be decided under the last best offer criteria rather than under the recent statutory modification since there was no mutual agreement of conventional arbitration, and this case predates the statutory changes. There is one non-economic issue which I have authority to decide on an issue-by-issue basis.

The parties met on April 8 and September 9 in 1996 and June 5 and September 16 in 1997. Extensive testimony was taken, and numerous exhibits were placed in the record. Briefs were filed in December 1997, and additional exhibits which I gave leave to submit after the briefs were filed, were received some time thereafter.

Controlling Statute

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, compensation, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, salaries, compensation, 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 comparative 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 moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
- 7. The cost of living.

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

FINAL OFFERS

Essex County Prosecutor

"The term will be January 1, 1995 to December 31, 1998. The wages will be for the -- effective January 1, 1995, zero percent, then effective July 1, 1996, a two percent across-the-board increase payable January 1, 1997. Effective July 1, 1997, a five percent across-the-board increase. Effective July 1, 1998, a five percent across-the-board increase. On the issuance of the Award, we request a salary guide. The salary guide for new hires shall be increased in length by one step, and the steps will be calculated to remain equidistant, and that will be for hires after the date of the Award." (Transcript - 9/16/97, p. 47)

PBA Local 325

"We are going to pursue a single issue of wages. The term is four years, same as the employer has just stated, that being January 1st of '95 through December 31 of '98. We're proposing the following wage changes on the following dates. Effective January 1, 1995 -- strike that please. Let me restate it please. Effective October 1, 1995, two percent across

the board. Effective July 1, 1996, three percent across the board. Effective January 1, 1997, two percent across the board. Effective July 1, 1997, three percent across the board.

ARBITRATOR LIGHT: I think you said July 1, 1997 twice. Do you mean January? What's two percent?

MR. LOCCKE: Two percent is January 1, 1997. Three percent is July 1, 1997. January 1, 1998, two percent across the board. July 1, 1998, three percent across the board. For the first year, the only wage change is two percent effective October 1st. The second year the wage change is three percent at mid year. The third year, two and three, January, July. Then the last year, January, July, two percent and three percent again. Each of those to be cumulative across the board and based upon the proceeding rate. There is no other wage change proposed." (Transcript - 9/16/97, p. 49)

POSITION OF THE PBA

As noted earlier, much of counsel's emphasis rests on the status of the Prosecutor as the Employer. Throughout his analysis and argument under the criteria, this point is emphasized. Before reviewing PBA counsel's arguments in favor of its final economic offer, an understanding of his comparative arguments would be aided by a graphic display of that very economic offer:

Effective October 1, 1995	2% across the board
Effective July 1, 1996	3% across the board
Effective January 1, 1997	2% across the board
Effective July 1, 1997	3% across the board
Effective January 1, 1998	2% across the board
Effective July 1, 1998	3% across the board

In arguing for the adoption of this final offer on a comparative basis against that of the Prosecutor, counsel makes the following points:

1995 - Tracing the parties' final offers year by year discloses that for 1995 a mere one-half of one percent separates the increase the Association seeks from what the County is offering. While the County seeks a freeze, the PBA seeks a three-month increase on an annualized two percent ($2\% \cdot .25 [3/12] = .5\%$) which produces but a half percent increase for 1995.

1996 - Acknowledging that the Association's 1995 sought after half a percent increase produces a carry forward value of 1.5% rolled over into '96, this percent, when combined with its requested July 1, 1996 effective 3% increase ($3\% / 1/2 = 1.5\%$) produces an actual increase of 3% for the year (1.5% and 1.5%). Since the Prosecutor offers 2% effective the same July 1, 1996, it translates to a 1% increase for the year, leaving a 2% differential in offers for 1996.

1997 - Again, based on a rollover from the mid-1996 3% increase which is then combined with the PBA's requested full-year 2% increase (January 1, 1997) and 3%

mid-year increase (July 1, 1997), constitutes a total value of 5%. The Prosecutor's 1997 offer has a value of 3.5%, which leaves the PBA offer only 1.5% above the County offer for 1997.

1998 - Counsel argues that, although structured differently, both parties' 1998 offer has an identical 5% value. The key difference is that the Prosecutor's offer "carries out" 2.5% into the 1999 year, a full point over the PBA's 1.5% rollover. PBA counsel asserts the extent of the County's rollover will produce a negative effect in the next round of negotiations. Counsel seeks to tie this perceived future difficulty to the criteria relating to the stability and continuity of employment by arguing that deferring labor problems and obligations is counterproductive of that statutory aim.

Interest and Welfare of the Public

Counsel's arguments under this criteria are well taken. No one even need look at the ample statistical evidence and hear the relevant testimony to be convinced of counsel's point that this Prosecutor's Office is unique in the state. The common perception of anyone who lives north of Atlantic County, both from one's own observations and common knowledge, must conclude by the very nature of the population density in these urban areas that the Prosecutor's Office is busy. Although counsel is "preaching to the converted," he must nevertheless over argue the facts as he does to be assured that his point of the professionalism of the office and its staff is brought home. Counsel takes this reputation and degree of professionalism and ties it with the stability of employment criteria by arguing that

the interest and welfare of the public would indeed not be well served by a mass exodus of these professionals to the other investigative agencies who court their services.

Comparability of Wages, Salaries and Conditions of Employment

Again, as a starting point, PBA counsel urges the Arbitrator to limit his comparisons between prosecutors' offices and prosecutors' offices. He highlights the fact that no prosecutor's office in the state has endured frozen wages. To the contrary, they are averaging slightly in excess of 4%. Counsel emphasizes that no evidence of comparability comes from the Prosecutor because of the dearth of evidence that would support his one-year pay freeze. Reviewing the final offers year by year, counsel argues that the standard from these other county prosecutors' offices clearly supports the Association's final offer over that of the Prosecutor. Even on a comparison of actual dollar salaries, it is noted that Essex trails its neighboring Union and Bergen County counterparts by very significant amounts. Even on a percentage increase basis, the Mercer and Ocean County Prosecutors' comparable units received 1996 increases (3.5% and 5.2% respectively), exceeding even what the Essex unit is seeking in its final offer. Counsel again reiterates that the Prosecutor has been unable to produce any comparable prosecutors' data to support its offer simply because statewide, through twenty other counties, none exist.

Reverting to comparisons on the municipal level in Essex, counsel cites recent settlements and awards in North and West Caldwell and Essex Fells and a Bergen County

town (Bogota) to demonstrate multi-year contracts with healthy mid-4% average increases far exceeding the 3.375% four-year average the PBA seeks in this interest arbitration.

Counsel discounts the Prosecutor's reliance on increases paid to Essex County employees noting again the County is not the employer, and the units cited simply are not comparable with the job duties performed in the Prosecutor's Office. The units relied upon -- corrections officers, process servers, sheriffs officer -- are not in "the proper universe" of comparability with prosecutors' officers.

Counsel further argues that any attempt at private sector comparability is just as irrelevant. The statute itself places such private sector comparability in second place to public unit comparisons. Moreover, counsel asserts that, if anything, the private sector increases support the PBA offers over the first three years of the four-year final offer.

Stipulations of the Parties

Counsel notes that the four-year contract term and the utilization of the "last best offer" system of resolution of this interest arbitration are the only significant stipulations entered into by the parties that are worthy of note.

The Lawful Authority of the Employer

Counsel discusses at length the rather unique position of the Prosecutor's Office in New Jersey under which he is not beholden to budget approval of the Board of Chosen

Freeholders in his county of jurisdiction but, rather, is subject solely to review by the Assignment Judge in his vicinage. This Arbitrator is well familiar with this key distinction having recently issued Interest Awards in the prosecutors' offices in Bergen and Union Counties, and this particular "twist" in this interest arbitration scenario will be addressed appropriately in the Opinion section of this Award.

Financial Impact on the Governing Unit, Its Residents and Taxpayers

Counsel, while acknowledging that, in reality, Essex County citizens do foot the bill, nevertheless, argues that the very need for autonomy recognized in the Supreme Court decision on this very subject [see: In re Bigley, 55 N.J. 53 (1959)] properly should lead to the conclusion that this statutory criteria should not have a significant impact on the outcome in this case.

That argument aside, counsel takes the Prosecutor's total salary cost of \$6.678 million against 1997's appropriations and argues that the cost of a single percentage point in salary for this unit constitutes but .000145% of the County budget which counsel argues produces a de minimis impact.

Counsel also acknowledges the past financial deficit the County experienced in 1994, while also noting that modest but ever-increasing surpluses followed in 1995 and 1996. Finally, counsel referred to a substantial list of unit members who, through attrition for various

reasons, created "significant breakage savings inuring to the Employer," which, he argues, only further supports the reasonableness of the Association's offer.

Cost of Living

Over the first two years of this contract, counsel argues that the PBA's position is best supported by the CPI because, while its average is slightly under the CPI, the Prosecutor's offer lags well behind the CPI (0% versus 3% in 1995; 1% versus 3% in 1996).

Counsel argues that a different approach should be taken by the Arbitrator in interpreting criteria g(7) of the statute. He claims that traditionally the CPI figures are considered in the negative and as numbers which depress the rates sought by unions. He argues that if the criteria such as g(7) are best intended to serve the interests of both parties, then should it not support the party whose offer most closely reflects those consumer price trends? Counsel argues that, under such thinking, the PBA offer must be considered to be strongly supported by the CPI.

Continuity and Stability of Employment

Counsel argues that private sector concepts such as "area standards" and "prevailing wage" be reviewed under this criteria. Counsel argues that the Association has gone forward and proven its comparability arguments and the prevailing wage rates in its comparability universe, whereas the Employer has failed to in light of the fact that it only supplied County

salaries without statewide peer and counterpart comparisons. Again, the PBA reiterates its perception that its unit members must only be properly compared with fellow prosecutor units and municipal police within Essex County. Once having done so, the conclusion is inescapable, it is argued, that this unit is not paid area standards and prevailing rates.

In conclusion, counsel argues that the testimony and evidence it presented merit a ruling in favor of its final offer.

POSITION OF THE PROSECUTOR

In the Procedural History section of his brief, counsel for the County (read Prosecutor) argues that the Association's final offer must be viewed in context with the 1994 base, the 1995 increase and subsequent increases which, while totaling a 15% increase over those four years, in reality, results in a 15.96% increase through compounding.

Moreover, this unit has the unique privilege of having its wage percentage increases calculated on the percentage of each title's maximum salary and then added into each member's annual salary figure.

Salary increments are also involved which, over this four-year term, will further cost the County \$717,174. Factoring in all of these ancillary costs (salary increase, compounding, rollover and increments), the cost of the PBA's economic offer totals 28.36% over four years or an average of 7.09% per year for the term of the contract.

In contrast to the PBA's final offer, the County's results in a 23.85% or 5.9% per year increase. The true dollar effect would be that an investigator/detective would receive \$58,536 in the final year of this contract under the County's offer, while he would receive \$60,365 under the PBA's final offer.

The County argues that, in addition to the total cost difference of the final offers, the effect between the parties comes as a result of where each has scheduled wage increases. As an example, in the very first year, the adoption of the PBA's final offer would require a 2% October 1st increase which, together with the 6% wage increase carryover, will cost the County \$33,313 in additional funds. Counsel traces the payoffs required over the term of the contract. There, calculations show that in 1996 the 3% increase will cost \$106,719 topped off by an additional \$166,566 rollover cost from 1995. Counsel continues on a year-by-year comparative analysis between the staging of the respective offers to arrive at an assertion that the PBA final offer will impact the County at a total cost of \$889,189 more than the Prosecutor's offer.

Counsel now turns from a purely dollars and cents analysis to address the statutory criteria. In that context, he argues the following:

Interest and Welfare of the Public

Counsel argues that a governmental entity must balance the competing economic demands of its employees with its obligation to maintain services within its budget. The

legislature has specifically required interest arbitrators "to examine the interest and welfare of the public" in his or her deliberations.

Counsel claims that the County must balance the economic demands of its employees with the maintenance of government services. In order for the Arbitrator to properly adjudge which of two competing offers is the more reasonable, the effect of the awards on the taxpayers must be ascertained.

Comparability

Private Sector:

Counsel acknowledges the various criteria set down in the Act as to the comparability that must be reviewed. He argues that exhibits the County introduced establishes that the final offer of 3% it made to this unit met or exceeded the national wage increase in the private sector.

Public Sector:

Counsel points to the 1997 ECI (Blue Chip Economic Indicator relating to consumer prices - Company Exhibit No. 31) which was up 2.8%. (Actually 2.7% = 1997; 2.5% = 1998) Counsel then recites notable interest awards and settlements all at or notably below the final offer presented to the Prosecutor's staff. Cited is New York City and its Teachers Union five-year contract (0 - 0 - 13% over the final 3 years); and Turnpike Authority toll collectors (0

- 0 - 3.5 - 3.5) among others. Counsel's point is that the Prosecutor/County's offer of an average 3% is more reasonable than the 3.75% sought by the Union.

The Same or Comparable Jurisdictions:

Counsel briefly summarizes the indicia of financial troubles the County has and continues to experience. Key, however, is counsel's recitation of the pattern established in the County's current round of negotiations by Arbitrator Weisblatt's 1997 Award in the Local 183 County of Essex interest arbitration which was followed by similar wage packages in all subsequent settlements. That very same 0% in 1995; 2% on July 1, 1996 payable January 1, 1997; 5% on July 1, 1997 and 5% on July 1, 1998 is the present final offer in the instant matter. Recounting all such subsequent settlements, it is noted that, with the exception of two supervisory units which settled for 2% less in the four-year packages, all accepted identical wage percentage increases over four years.

Counsel disputes the PBA's argument of comparability based on municipalities "because of their financial structure." Rejected also are the municipalities offered because they represent "the wealthier, if not wealthiest, municipalities in Essex County." Counsel also notes that the Prosecutor's bargaining unit alone benefits both from the fact that the percentage increases, while calculated on the maximum step, has the resulting dollar value paid on all steps. Moreover, this unit alone, among all County employees, enjoys a 35-hour work week. In summary, counsel asserts that any deviation from the existing pattern would

be inappropriate and is not warranted. It would also have the unfortunate effect of impeding the settlement of outstanding units currently in mediation and in interest arbitration.

Overall Compensation

Recited at length by counsel are the other elements of compensation these public employees enjoy at the County's expense from education stipends to special shift duty compensation; from generous vacation benefits to personal leave availability and from automobile stipend to contributions to the Essex Prosecutor's Detectives and Investigators Employee Development Fund.

Lawful Authority of the Employer

Counsel reviews the provisions of the Cap Law as representing the limitation of the County's lawful authority. He argues that the Reform Act expressly requires the arbitrator to consider the impact of the Cap Law (NJSA 40A:4 - 45.1 et. seq.) in rendering his Award. Counsel then offers an analysis of the effect that should be recognized in this unit. Recounted at length is the testimony of Paul Hopkins, Budget Director, the County/Prosecutor's witness as to the recent dire financial history of Essex County and the fact that Essex was compelled to obtain an Attorney General's opinion letter to allow it to partially provide a remedy by reducing the amount to which the cap formula could be applied, thus allowing increased taxes and increased revenues.

Financial Impact

Counsel faults the testimony of the Association arguing that, although it dealt with the unit's workload, it failed to address the financial impact on the County of the final offer the unit was making. Absent such evidence, counsel argues the unrebutted evidence of impact the County presented must prevail. Specifically, reliance is placed on the testimony of Thomas Banker and Paul Hopkins, Executive Director of the Essex County Improvement Authority and Budget Director respectively. Detailed testimony was offered through these witnesses on the steps the County was forced to take to reduce expenses and increase revenues. Privatization, restructuring debt, selling properties, bonding, and reducing salaries all played a role in the attempt to cure the County's financial ills. Mr. Banker's explanation of many of the elements that led to the financial ills provides an understanding of the root causes of the crisis. Declining population, particularly among revenue-generating citizens and the increase of an aid-dependent populace, created this imbalance. After reciting the elements which necessarily resulted in this budget strain, counsel argues that this unrefuted and unchallenging testimony supports the County's final offer.

C.P.I.

The Consumer Price Index figures for 1993 to the present are argued to emphasize the reasonableness of the County's final offer. Specifically, the last five years of 3% or

below, documents the minimal inflation for this period which contrasts with the County's final offer which provides the Union with significant increases measured against this trend.

Continuity and Stability of Employment

Briefly argued, counsel asserts the Prosecutor/County's offer will allow it to better maintain the continuity and stability of employment within this unit or others, whereas the awarding of the PBA's final offer would threaten that ability and could force it to reduce personnel and/or services.

In conclusion, counsel argues that the Prosecutor/County's offer more reasonably meets the statutory criteria and must be awarded.

DISCUSSION

Two significant elements are at play in this interest arbitration. The first concerns the recognized independence of the Prosecutor's budgetary process. PBA counsel has thoroughly documented the statutory and case law history which clearly establishes the unique jurisdictional nature of the budget process of Prosecutor's offices. This Arbitrator has dealt with a similar argument by counsel in Union County Prosecutor's Office and Union County Prosecutor's, Detectives and Investigators, PBA Local 250, Superior Officers Association, PERC Docket No. IA-96-032 (1997). While I recognized therein, as did indeed

occur in what has come to be known as the Beglin Award, the Assignment Judge -- not the Freeholders -- is the final arbiter of the expenditures the Prosecutor makes in structuring his budget. However, as noted in the Beglin case, the Prosecutor voluntarily settled a contract under what must be recognized to be unique circumstances. However, the Freeholders in effect would ultimately be subject to a decision of the Assignment Judge. In a case like this, the fact remains that the Essex taxpayers "foot the bill". As strenuously as PBA counsel may seek to argue this jurisdictional distinction, it but cuts not one penny from the bill the County and, hence, the taxpayers must pay, and their concerns and the impact of any award on them cannot be dismissed from our consideration.

The second element involved in this case is that of pattern. Pattern has long been recognized in interest arbitration as a policy to be honored in appropriate circumstances. The reasons for such adherence are obvious. It provides consistency, prevents bargaining unit rivalries, and promotes harmonious labor relations. However, there may be legitimate circumstances where pattern need not be blindly followed. Union counsel here seeks to offer various reasons in arguing against following the County's established pattern. He seeks to distinguish the work these law enforcement officers perform in the instant unit from the more routine, less demanding law enforcement work performed by Sheriff's officers and correction officers. He again relies on the fact that, as employees of the Prosecutor, a constitutionally created law enforcement position, their very employment is different.

If ever pattern should not be followed, he argues, these officers, by the very nature of their jobs, have a built-in rationale for deviation from the pattern. As a matter of fact, it appears that this unit has been given such recognition, to some extent, based on its 35-hour work week and calculation of dollar pay increases based on the maximum step.

In order to reach the issue, in part, as to whether an award to this unit which breaks the pattern should be awarded, the Association must first prevail in an extensive comparison under the Act's eight statutory criteria. The conclusion is that it has not.

Stipulations of the Parties

Other than the parties' agreement to have this matter resolved by the Arbitrator under the last fair and final offer procedure and their consensus on a four-year contract, there are no significant stipulations.

The Continuity and Stability of Employment

Beyond the realm of speculation by both counsel, little, if any, meaningful evidence was adduced directly on this subject. While general discussion was had as to the potentiality of reducing personnel and/or services in the Prosecutor's Office or other departments on one hand and allusions to professionals being enticed to other law enforcement positions on the other hand, neither party presented evidence so as to be said to have prevailed under this criteria. In conclusion, no weight can be attributable to either final offer under this criteria.

Cost of Living

The American public has indeed been enjoying a five or so year period of virtually no inflation. In light of this, absent any extenuating factors, the offer that closest approximates the rate of the CPI increases must be said to prevail in this category. Although PBA counsel does make several arguments to distinguish the Prosecutor's group in an attempt to take them outside the pattern, none prove sufficient to justify breaking pattern or awarding a four-year contract that would average an approximately 7% yearly increase as opposed to the Prosecutor's offer which average 5.9% per year. These figures are adopted from the Prosecutor's arguments and factor in the compounding rollover. Using the nominal final offer figures produces an equally valid conclusion that the Prosecutor/County's final offer, must prevail.

Overall Compensation

The recitation by County counsel and a review of the prior contract discloses a most healthy menu of benefits provided to this unit. No issue exists in this case dealing with benefits. However, as a barometer of overall compensation, extensive benefits support the choice of the County's final offer.

Lawful Authority of the Employer

As noted, the Cap Law has a different application to counties as it does to municipalities. The County has presented extensive testimony as to the necessity of the County dealing with it in the course of its financial distress. This statutory criteria, as best as has been interpreted, seeks to serve as a "gatekeeper" to determine whether the governmental entity can legally, under the Cap Law, fund a final offer. This Arbitrator knows of no instance where the answer was ever in the negative. The County here has the legal authority to pay the PBA's final offer. Whether it should is an entirely different question. However, the answer does not preclude further consideration of whether it should.

Comparability

Within the County's employ this issue -- at least as to wage percentage increases -- is predestined by the pattern of settlements the County has achieved in generating following the Weisblatt Award.

With regard to private employment - acknowledging the difficulty of finding truly comparable positions wherein the same or similar services are performed -- the trend had been below public employment. It is now at a time when it is definitely rebounding. However, it remains closer to the final compensation offered in the Prosecutor/County's final offer.

In public employment, the issue is truly what is the proper universe of positions to be considered. Significantly, County counsel, while discounting the municipal police settlements from Essex County the PBA sought to rely on, does acknowledge "...the selection of all New Jersey counties as comparables to Essex County reflects a more reliable data comparison than the Union's selection of municipalities..." PBA counsel's point is well taken that the most significant comparison is with other Prosecutor's staffs, particularly in large urban counties. Such a review clearly indicates that the Essex County's staff is significantly behind their peers in such counties as Bergen and Union as to base salary and behind other counties in the percentage wage increases covering this period of time. While it is not possible to dismiss comparables between such counties merely by pointing to the Essex County pattern as it applies to all County law enforcement units, the fact remains that it does serve to blunt that evidence to a degree. On balance, however, from a pure comparability with the counties of Bergen and Union -- neighboring and most comparable -- Essex suffers and, when considered alone, comparability favors awarding the PBA final offer.

This finding for the PBA offer under this category is tempered, however, by the existence of pattern, by the economic condition of the County, by the cost of living and the comparability of the remaining public and private sector increases considered. Consequently, the PBA prevails in the Arbitrator's mind under this criteria primarily as a result of comparisons with their peers in other counties. It should be noted that, absent the

other factors named above, this case would strongly merit a consideration to break pattern if comparability were the sole issue.

In conclusion, the PBA must be said to have made out a better case for the selection of its final offer under the criteria of comparability.

Financial Impact

PBA counsel asserts, with carefully drawn calculations, that the cost of a wage point on a hypothetical \$3,000 tax bill in a hypothetical Essex County community would equate to ten cents on that tax bill – a truly “de minimis” impact. Conversely, he argues what also should be considered is what the impact would be if this unit did not exist or was not at this level of proficiency. He also notes the progress toward financial stability the County claims for itself over recent years as well as the significant issue of breakage which has occurred, thus blunting any financial impact from its proposed final offer.

Despite these telling arguments, the issue of financial impact has been decided in favor of the County. The period covered involves times of economic pressure in the County. It has negotiated with its law enforcement units, achieving a pattern after prevailing in an interest arbitration award. These efforts and others the County undertook must be recognized. Although the cost difference the PBA's final offer imposes might be slight, that does not equate with an automatic right that it be awarded. And even though it would appear one would be hard pressed to find a home in Essex County paying but \$3,000 a year in taxes

-- even doubling that hypothetical -- still leaves a resultant tax increase at a minimal level. That is obviously true of all the increases afforded within the County. The problem is that it is cumulative and on balance a recognizable impact will be felt. Counsel's de minimis argument on behalf of its final offer puts one in mind of the late Senator Everett Dirksen's remark on congressional funding -- "A million here and a million there eventually adds up, and all of a sudden we're talking serious money."

Having reviewed both parties' briefs, I conclude that the Prosecutor prevails under this criteria.

Interests and Welfare of the Public

Much of what can be said here is a compilation of remarks made in the other sections. This criteria is best summarized by concluding that the interests and welfare of the public is best served by providing ever-improving, proactive law enforcement services, consistent with the funding available. Although PBA counsel asks that we consider the impact on and the best interests and welfare of the citizens against the possibility that the unit no longer existed or declined in productivity and proficiency, there was no suggestion that such a scenario is remotely possible. If it was, we would be dealing with a different set of factors. We are not. As defined by the proofs put before me, the issue is whether the interests and welfare of the public are best served by selecting the final offer of the Prosecutor or that of the PBA. Given the present circumstances, the pattern that has universally been followed, and the evidence

on the record before me, I conclude that the welfare and best interests of the public are best served by the County's final offer.

Non-Economic Issue

The PBA proposed the following:

Article XXXI, Disciplinary Action:

The County cannot discipline employees covered by this Collective Bargaining Agreement except for just cause shown. All minor disciplinary action, as defined by Civil Service rules and regulations, may be submitted to the grievance arbitration procedures provided by Article V of this Agreement. All major disciplinary actions, as defined by Civil Service rules and regulations must be submitted to the Department of Personnel and Office of Administrative Law for adjudication."

The County/Prosecutor apparently takes no position with regard to this proposal. In reviewing the proposed language, the Arbitrator has concluded that it is reasonable and therefore it shall be awarded.

CONCLUSION

The County's final offer prevailed when both offers were evaluated under the respective criteria. As first noted in this Award, two issues presented themselves -- first was the issue of the autonomy of the Prosecutor in preparing his budget, divorced from any reliance on the Board of Freeholders. The second issue involves pattern. The record should

reflect that both of these issues were ever present in the evaluation of the final offers under the criteria. The record also reflects that the opinion was offered that in certain circumstances the Arbitrator could see fit to break a pattern of awards and settlements if the proper factual circumstances presented themselves; that did not happen here. While counsel's point was also well taken concerning the autonomy of the Prosecutor from the Board of Freeholders, the fact is nevertheless recognized that the same audience is involved, that is, the citizens of Essex County. They must pay the bill regardless of whether wage increases are approved by the Freeholders or the Assignment Judge.

For all of the reasons cited herein, I have concluded that the County/Prosecutor's final offer was the most reasonable and it is hereby awarded.

COUNTY'S FINAL OFFER

The term will be January 1, 1995 to December 31, 1998. The wages will be as follows: effective January 1, 1995, zero percent, then effective July 1, 1996, a two percent across-the-board increase payable January 1, 1997. Effective July 1, 1997, a five percent across-the-board increase. Effective July 1, 1998, a five percent across-the-board increase. On the issuance of the Award, a salary guide shall be established. The salary guide for new hires shall be increased in length by one step, and the steps will be calculated to remain equidistant, and that will be for hires after the date of the Award.

Non-Economic

The PBA's proposed Disciplinary Action presents a reasonable request, and it is hereby awarded.

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

AWARD

County's Final Economic Offer is Awarded

The term will be January 1, 1995 to December 31, 1998. Wages will be as follows:

effective January 1, 1995	0%
effective July 1, 1996	2% across-the-board increase payable January 1, 1997
effective July 1, 1997	5% across-the-board increase
effective July 1, 1998	5% across-the-board increase

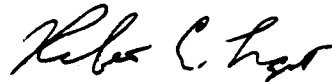
On the issuance of the Award, a salary guide shall be established. The salary guide for new hires shall be increased in length by one step, and the steps will be calculated to remain equidistant, and that will be for hires after the date of the Award.

PBA's Non-Economic Offer is Awarded

The PBA's proposed Disciplinary Action presents a reasonable request, and it is hereby awarded as follows:

Article XXXI, Disciplinary Action:

The County cannot discipline employees covered by this Collective Bargaining Agreement except for just cause shown. All minor disciplinary action, as defined by Civil Service rules and regulations, may be submitted to the grievance arbitration procedures provided by Article V of this Agreement. All major disciplinary actions, as defined by Civil Service rules and regulations must be submitted to the Department of Personnel and Office of Administrative Law for adjudication.



ROBERT E. LIGHT, Arbitrator

Dated: March 18, 1998

