

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

**THE COUNTY OF ESSEX,
ESSEX COUNTY SHERIFF'S OFFICE**

"Public Employer,"

- and -

**ESSEX COUNTY SHERIFF'S OFFICERS,
PBA LOCAL 183**

"Employee Organization."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2006-052

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the County:

Brian W. Kronick, Esq.
Carolyn Buccerone, Esq. on the Brief
Genova, Burns & Vernoia

For the PBA:

Richard D. Loccke, Esq.
Loccke, Correia, Schlager,
Limsky & Bukosky

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, pursuant to a petition filed by the Essex County Sheriff's PBA Local 183 [the "PBA"] and the County of Essex and Essex County Sheriff's Office [the "County"]. The County and the PBA are parties to a collective negotiations agreement [the "Agreement"] covering 347 Sheriff's Officers, Court Attendants, Identification Officers, and Sheriff's Investigators covering the period January 1, 2002 through December 31, 2005. An impasse developed between the County and the PBA resulting in the submission of the dispute to interest arbitration pursuant to the rules of the New Jersey Public Relations Employment Commission. Thereafter, I was designated to serve as arbitrator.

I conducted pre-arbitration mediation sessions on June 6 and September 19, 2006. During these sessions, the parties narrowed the issues in dispute but were unable to reach a voluntary agreement. Formal interest arbitration hearings were held on January 3, 4, 23 and 24, 2007, at which time the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from Chris Tyminski, PBA President, Officer Donald R. Brown, Director of Administrative Services and Personnel, John D. Dough, Chief of the Sheriff's Department, Delores Capetola, Assistant County Counsel, Alan Abramowitz, Director of Human Resources for the County, Paul J. Hopkins, II, County Treasurer, and Vincent J. Foti, Financial Consultant. Post

hearing briefs were submitted by both parties and transmitted by the arbitrator to each party on or about May 2, 2007.

The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

FINAL OFFERS OF THE PARTIES

The PBA

1. **Wage Increase**

The PBA proposes a four (4) year contract with a five percent (5%) across-the-board increase on each successive January 1st, commencing January 1, 2006 through January 1, 2009.

2. **Article XX – Education Benefits**

The PBA proposes an increase in the Educational Benefit Program as follows:

A. 60 credits \$5,427
 30 credits \$2,714

B. Any employee entitled to the above Education Allowance will continue to receive the above amount.

- C. Effective 2005, employees possessing a BA degree will receive an Education Allowance of \$6,050.
- D. The Education Allowance is frozen at the 6 step rate of 60 credits = \$4,920; 30 Credits = \$2,460 and BA Degree = \$6,050.

3. Article XXI - Longevity

The PBA proposes the addition of a longevity benefit in the amount of one percent (1%) for each five (5) years of completed law enforcement service. Law enforcement service shall be defined consistent with pensionable service as recognized by the New Jersey Police and Fire Pension statute and regulations.

4. Article XXV – Development Fund

The PBA proposes to improve the development fund from two hundred fifty dollars (\$250.00) to four hundred fifty dollars (\$450.00) per annum, effective January 1, 2008.

5. Job Related Disability

The PBA proposes the addition of a new provision to be added to the contract which would provide for full retiree medical coverage for employees who are caused to retire due to a job-related disability. The standard for job-related disability shall be consistent with the New Jersey Police and Fire Pension statute definitions and regulations. This would require a modification of page 18 at Section 3(d)5.

The County

1. Term of Agreement

Two years, commencing January 1, 2006 through December 31, 2007.

2. Wages

Effective January 1, 2006: two percent (2.0%) increase on base pay to eligible employees who are on the payroll as of January 1, 2006. Effective January 1, 2007: two and one-

half percent (2.5%) increase on base pay to eligible employees who are on the payroll as of January 1, 2007. Effective December 31, 2007: one-quarter percent (0.25%) increase on base pay to eligible employees who are on the payroll as of December 31, 2007.

3. Prescription Drugs

Effective January 1, 2007, the prescription drug plan co-payment for generic drugs will remain at \$10.00 and the co-payment for brand-name drugs will increase from \$15.00 to \$25.00 for brand-name and non-generic drugs. The County will continue a mail order prescription program.

4. Work Schedule

Effective upon award, implementation of a 24/7 work schedule.

5. Section 125 Cafeteria Plan

Effective January 1, 2007, employees would be eligible to participate in the County's Section 125 Cafeteria Plan.

6. Dependent Care Coverage

Effective December 31, 2007, there will be an increase in co-pay for dependent care coverage from 20% to 25% for employees hired after 1995. Effective December 31, 2007, unfreeze the rate cap.

7. Unfair Practice Charge

Withdraw Unfair Practice Charge regarding change in co-pays.

8. Holidays

Delete Section 6.

BACKGROUND

The County of Essex is the second most densely populated county in New Jersey. There are approximately 800,000 residents occupying 130 square miles yielding 6,285 persons per square mile compared with 1,134 per square mile for New Jersey as a whole. The County is diverse as evidenced by its poorest municipality, the City of Newark, that has a median household income of \$26,913 and a per capita income of \$13,009 in contrast to Essex Fells, its wealthiest municipality, that has a median household income of \$148,173 and a per capita income of \$77,434. The average per capita income for all residents in the County is \$24,943 and its median household income is \$42,705. There are twenty-two (22) municipalities overall that contribute tax revenue to the County and receive services including the prosecution of criminals, court security, correctional facilities and various social services.

In 2005 the real property valuation in the county was \$34,929,744,031 divided into \$23,569,209 residential and \$10,735,746,400 non-residential. The total tax levy for all municipalities in the county was \$1,621,658,734 of which \$325,192,215 was raised for the County. Essex County ranks sixth out of twenty-one counties in state equalized value.

The County's finances have undergone positive change during the last several years. In general, the County, over the past five years, has administered

its finances in a manner that has moved it towards financial stability. It has reduced its structural deficit, improved its bond ratings and stabilized tax increases. The heart of its position in this proceeding is that its law enforcement contracts should not contain terms that it believes would derail its financial plan and that the terms of those contracts should mirror terms the County has negotiated with fourteen (14) non-law enforcement bargaining units comprising of fifty-one (51%) percent of its employees..

The PBA, on the other hand, sees its bargaining unit employees as being grossly underpaid for performing greatly expanded functions that require specialized skills and training especially when their terms and conditions of employment are compared with its proposed field of comparable units in other counties and municipal law enforcement units. It also views the County's recent gains in its finances as allowing for the funding of the PBA proposals without harm to the taxpayers or the County's budget.

N.J.S.A. 2A:154-3 empowers Sheriff Officers to act as officers in the detection, apprehension, arrest and conviction of offenders against the law and they have the full power of arrest for any crime committed in their presence within the territorial limits of the State of New Jersey. The Office of the Sheriff performs functions in areas that include (but are not limited to) maintaining order and security in the courtroom, serving court processes, criminal identification, ballistics and investigation and apprehending violators of the law.

There are approximately 350 employees in the bargaining unit. Some 225 work in court security/transportation or criminal identification (BCI), 12 in the canine unit and bomb squad, and 40 to 45 in the Bureau of Narcotics. Other Sheriff's Officers are assigned to task forces that integrate with the State Police and other law enforcement agencies. The average seniority in the unit is eleven (11) years. A majority grouping of one hundred and ten (110) Officers have ten (10) to fourteen (14) years of seniority. Seventy-seven (77%) percent of the unit is at maximum or top step pay of \$68,677 as of 2005.

The Office of the Sheriff has recently expanded pursuant to an internal Committee Report in 1990 that recommended reorganizing the Office. The Board of Chosen Freeholders adopted an ordinance in 1997 transferring the Division of Essex County Police, Essex Department of Public Safety to the jurisdiction and authority of the Essex County Sheriff. This established the County Police as part of the organizational structure of the Sheriff. In June 2006, the Sheriff ordered the consolidation of the County Police with the Sheriff's Office. A patrol division within the Sheriff's Office was established to perform duties similar to what the County Police performed. The Sheriff reorganized his office due to these expanded duties. This reorganization and its impact on work was set forth in an April 12, 2007 decision of the Merit System Board:

The Sheriff issued an amended general order reorganizing the Essex County Sheriff's office due to the acquisition of additional responsibilities of the County Police Division, the Office of

Emergency Management, Homeland Security, and the County Security Bureau. In order to achieve the most efficient use of personnel, facilities and equipment, the County Police Division was designated as a component of the Field Operations Operational Division. This resulted in certain duties formerly performed by the County Police being performed by Sheriff's Officers. Likewise, duties traditionally performed by Sheriff's Officers were being performed by County Police Officers. In June 2006, for the purpose of economy and efficiency, the Sheriff directed the formal and complete merger of the County Police with the Sheriff's Office. This was to effect administrative, equipment, and personnel advantages. Additionally, since October 2, 2006, all former County Police Officers have been sworn in as Sheriff's Officers and have worn Sheriff's Officers' uniforms, and all former County Police vehicles have been modified to mirror Sheriff's Officers vehicles.

The former County Police Officers who are now under the jurisdiction of the Sheriff have maintained their pre-existing terms and conditions of employment under their prior collective bargaining agreement. They have been merged into the Sheriff's Officers bargaining unit. There is a legal requirement for the County to maintain the status quo otherwise pending negotiations for a new agreement. For this reason, some unit employees enjoy somewhat different terms and conditions of employment than do others. The most notable example of this is the existence of longevity which the former County Police Officers have carried with them although they are now part of the bargaining unit with the Sheriff's Officers who no longer enjoy longevity since its elimination in 1974. Longevity is one of the unresolved issues in this proceeding.

Based upon this general backdrop, the County and the PBA submit the following positions in support of their last offers.

POSITIONS OF THE PARTIES

Position of the PBA

The PBA contends that an award supporting its last offer will further the interests and welfare of the public. Its main assertion is that its last offer is consistent with providing compensation and other terms and conditions of employment to unit employees concomitant to the fulfillment of their duties of a comprehensive law enforcement agency rather than the more narrowly drawn duties limited to providing courtroom security in the Courts Division.

A substantial portion of the PBA's presentation was devoted to the broad mission of the Essex County Sheriff's Office. This presentation included testimony of PBA President Christopher Tyminski and documentary evidence. Tyminski's testimony included a breakdown of the deployment of Sheriff's Officers into its various divisions. They include:

- Internal Affairs
- Process Division
- Detective Bureau
- K-9/Bomb Squad
- Bureau of Narcotics
- Bureau of Criminal Investigation
- Courts Division
- Transportation
- Administrative Services

In support of the work of these various divisions, the PBA summarizes the work of these divisions and trends that are said to reflect a broadening of duties:

- Courts Division – The Courts Division is the largest and most active Court Division in the State of New Jersey. Approximately thirty-five (25%) percent of the State’s criminal cases are adjudicated by Essex County Superior Court (35% of all work out of the New Jersey 21 Counties)
- The Courts Division annual number of visitors exceeds 2.6 million. The arbitrator is respectfully requested to consider this number as this is much more of a workload than to be a Police Officer in a town of 2.6 million residents. In a town of 2.6 million residents at least part of the day the residents are sleeping. Part of the day many residents may leave town to go to their workplace. This is not so at the Essex County Court System. Every person who appears among the 2,604,470 is awake and a potential security issue which must be dealt with.
- Due to the activity in the Courts Division there are five percent (5%) more judges in 2005 than there were in 2003.
- The Bureau of Criminal Identification (“BCI”) comprise an extensive communication center/surveillance alarm center/State and National Law Enforcement Telecommunication System/Sixteen (16) radio channels/State Police Emergency Network /National Warning System (NAWS)/ as well as general patrol within the Court System.
- The BCI Fingerprint Section fingerprints all indictable offenders and maintains records and processes all Federal/State offenders arraigned in Essex County as well as Domestic Violence matters. Job applicants requiring fingerprint identification are also processed through BCI.
- Photo lab services are shared among all municipalities within Essex County.
- In the year 2000 alone over twenty-four thousand (24,000) Defendants were processed through the BCI. Transportation staffing levels are actually reduced notwithstanding the aforementioned increase in transportation as ordered by the Superior Court. The Transportation Division transported over eighty-five thousand (85,000) prisoners in the year 2005 alone.
- The Process Division is another example in reduction of workforce. From 2003 to 2005 the number of Detectives dropped from twenty-five (25) to twenty (20). The activity level within the Process Unit was documented and it should be noted

that this is a revenue source for the County. There are fees for these various services.

- The Ballistics Unit is cutting edge technology. It is relied upon by many agencies outside of the Essex County Sheriff's Office and beyond all of the municipalities within the County. The integrated ballistics identification system is technology provided to the State Police, FBI, ATF and DEA.
- The Bomb Unit and K-9 Units are among the few available to municipalities throughout the County. Whether it be a lost child in the woods or bomb detection, it is the Essex County Sheriff's Office that fills the need and the role.
- The depictions in the Power Point include Mobile Command Posts, Emergency Management, Emergency Medical Technician training and services.
- The Patrol Division, while new during the term of the last contract, has become an integral part of Sheriff's operations. This is purely a County Police operation run by the Sheriff's Department. All personnel performing those patrol duties are Sheriff's Officers.

The PBA points out that its summarization of activities and the importance of the Sheriff's Officers work is also shared by Essex County Sheriff Armando Fontoura. The PBA cites Sheriff Fontoura's testimony at a prior interest arbitration hearing reflecting his view of the extensive law enforcement work performed by Sheriff's Officers:

Well we participate with all other law enforcement agencies in providing safety for the citizens of the County not just around the court complex but around the County. We have responsibility for our park system, which is the largest park system in the State of New Jersey. We require the Division of County Police to also work within our County Sheriff's Office, part of the Sheriff's office and we utilize Deputy Sheriff's Division to provide, keep people as safe as we can.

Our bomb squad, for example, which is mandated by the Court Security Plan approved by the court system is also provided on a reasonable basis throughout the rest of the County since it wouldn't be cost effective for every township to maintain a bomb squad. It takes up to 5 years to get someone trained by the FBI and certified as a bomb technician Sheriff's Officer we provide those services when they are – working within the court complex itself to the rest of the law enforcement community, along with our K-9 Unit, our Bureau of Narcotics also works with the rest of the townships.

We have task force approach with the FBI and fugitive apprehension. We do DEA and we do have a task force, also customs interdiction, with terrorism, this which is important to the rest of the people in the County. Sheriff's Officer we are a full fledged law enforcement agency that participates with the rest of the law enforcement community with providing safety to the people in Essex County and New Jersey.

The PBA also cites approvingly Sheriff Fontoura's testimony in that proceeding that offered his opinion on the effectiveness of the Sheriff's Office:

... I obviously believe that we have one of the finest law enforcement agencies in the State of New Jersey, if not the country. And I'm generally proud of the work that all of our people do not on a regular basis and they're very professional and our command structure works extremely well. The men respond well to what they do. We have extreme pride in what we do. We are looked upon in a great of respect.

The PBA further notes that the Sheriff's Office has been expanded due to a June 2006 consolidation of the Division of County Police into the organizational structure of the Sheriff's Department. A Patrol Division was established within the Sheriff's Department to perform similar duties as those performed by County Police Officers. The PBA contends that the County has not provided a competitive compensation program and that unit members are among the poorest paid of all departments who perform comparable work and have

comparable characteristics. The PBA submits that “the most appropriate universe of comparison includes Sheriff’s Officers in northeastern New Jersey as well as other urbanized Counties as well as law enforcement agencies in Essex County and the nearby region.” Using this field of asserted comparables, the PBA submits a chart comparing its base pay in 2005 to the 2006 maximum base pay in the various law enforcement units:

**Essex Sheriff’s Officer Maximum Base Pay (2005)
Compared to Established 2006 Base Average
Based on PBA Exhibits in Evidence**

	2006 Base Maximum
Bergen County Sheriff’s Officer	\$90,677
Cedar Grove	\$85,572
Florham Park	\$81,914
Caldwell	\$77,454
Fairfield	\$78,520
Mercer County Sheriff’s Officer	\$73,081
Ocean County Sheriff’s Officer	\$78,538
Passaic County Sheriff’s Officer	\$79,568
South Orange	\$73,864
Verona	\$77,310
Wayne	\$99,806
West Caldwell	\$82,315
Millburn	\$73,863
Montclair	\$74,872
Livingston	\$78,112
Monmouth County Sheriff’s Officer	\$79,367
North Caldwell	\$77,065
Maplewood	\$74,327
Nutley	\$72,699
Glen Ridge	\$73,485
Average Base Salary	\$75,518
Essex Sheriff’s Officer Max (2005)	\$68,637
Difference with 2006 Average	(\$6,881) (10.3%)

The PBA further contends that the base wage changes in its asserted comparables far exceed the offer of the County of 2.0% on January 1, 2006, 0.5% on January 1, 2007 and 0.25% on December 31, 2007 as reflected in its summation of those base wage changes in the various jurisdictions:

**Chart No. 3
Base Wage Changes Based on PBA Exhibits in Evidence**

	2006	2007	2008	2009
Bergen County Sheriff	4	4	4	4.15
Caldwell	4			
Cedar Grove	4.5	4.5	3.75	
Fairfield	4	4	4	
Florham Park	4	5.2		
Mercer County Sheriff	4.25	4.25	4.25	
Ocean County Sheriff	4	4	4	4
Passaic County Sheriff	5			
Passaic County Sheriff/SOA	5			
Somerset County Sheriff	4	4		
South Orange	4.125	4.125		
South Orange SOA	4.125	4.125		
STFA	4	4		
Verona	4	4		
Wayne	4.47	4.46	4.45	4.2
West Caldwell	4	4		
Millburn	4	4		
Montclair	4.9	4	4.5	
Livingston	6	6		
North Caldwell		3.8	3.8	
Maplewood	4.5			
Nutley	4	4		
Glen Ridge	4	4	4	4
Averages	4.132%	4.223%	4.075%	4.07%

In addition to the above comparisons, the PBA submits a chart reflecting percentage increases occurring in various County sheriff offices that it points out are well above what the County has offered in this proceeding:

**Chart No. 5
Comparison of Employer Sheriff Exhibits –
Showing Percent of Base Increases**

Employer Exhibit #		2006	2007	2008	2009
160	Atlantic Sheriff		4	4	4
161	Bergen Sheriff	4	4	4	4.15
163	Camden Sheriff	4	4		
164	Cape May Sheriff	6.1	4.1	4.16	
165	Cumberland Sheriff	7.45			
166	Gloucester Sheriff	5 (2.5/2.5)	4.5	5.25(3/2.25)	4
169	Mercer Sheriff	4.25	4.25	4.25	
174	Passaic Sheriff	5			
175	Salem Sheriff		8.3	8	
177	Sussex Sheriff	5 (4/1)			
179	Warren Sheriff	3.75	3.75	3.75	
Averages		4.95%	4.61%	4.77%	4.05%

In addition to the above base wage comparisons, the PBA contends that Sheriff's Officers are disadvantaged by their current longevity program compared to other law enforcement personnel. The PBA offers a chart reflecting an average payment of \$6,796 in 2006 for seventeen (17) selected jurisdictions at maximum longevity step compared to its longevity program in Article XXI that discontinued longevity for all employees hired after December 1, 1974. In effect, the PBA argues that it no longer has longevity due to the passage of time since it was eliminated. The PBA further notes that the former County Police Officers who merged into the Sheriff's Office do have longevity and were "red circled" and now work along side Sheriff's Officers who do not have longevity.

The PBA disagrees with one of the County's main contentions that the County's final offer follows an established pattern of settlement within the County.

That pattern was asserted in County testimony and documentation to require 3% increases to base wages in each year of a two year term for 2006 and 2007. Initially, the PBA notes that the pattern of settlement does not include any of the several law enforcement agencies within the County and solely involves employees engaged in non-law enforcement service and maintenance titles. Even within these latter groups, the PBA contends that there has not been consistency of treatment thereby defeating the County's pattern argument. It submits examples of settlements supporting this point that include the following:

- A. Agreement between County of Essex and International Union of Operating Engineers (Employer Exhibit No. 62) which provides, in addition to three percent (3%) across-the-board increases, performance evaluations of up to one thousand dollars (\$1,000.00) per year (page 11) and a modified merit program. There are further significant changes to various titles within the Memorandum of Agreement. At page 9, paragraph 9 there is an increase for the title stationary engineer from \$58,785 to \$63,100. This single change is worth over 7.3% to that title. There is also an improvement in out-of-title compensation (page 8) and the establish of an increment plan in this Memorandum of Agreement (page 6).
- B. Agreement between the County of Essex and Public Employee Supervisors Union Administrators (Employer Exhibit No. 66) – This contract, in addition to across-the-board three percent (3%) increases for both 2006 and 2007 provide for an increased pay step of an additional one-half (½) guide range. While the specific numbers are not provided, the additional half step pay, on top of the three percent (3%) for 2006 and 2007 is set forth on page 19. We were not provided with the salary range which would permit calculation of the value of this change. There is no doubt that this represents a significant increase over and above the three percent (3%) across-the-board in 2006 and again in 2007.

- C. Contract between County of Essex and Public Employees Supervisors Union Supervisors (Employer Exhibit No. 67) – As with the prior contract this Settlement, in addition to the three percent (3%) for 2006 and 2007 increases and additional one-half (½) step on the respective salary ranges. Further, for certain titles listed at the bottom of page 21 and over to the top of page 22, there is an additional Five Thousand Dollars (\$5,000.00) on top of the previously calculated increases. There is therefore, for both 2006 and 2007, a three percent (3%) increase expanded by an additional half step on the pay range and on top of that for certain titles an additional five thousand dollars (\$5,000.00). Unquestionably, this is worth far more than the asserted three percent (3%).
- D. Memorandum of Agreement between the International Brotherhood of Electrical Workers and the County of Essex (Employer Exhibit No. 68) – In addition to the three percent (3%) for 2006 and 2007, this contract provides for an additional eight hundred dollars (\$800.00) in 2007 (see page 3, paragraph 7). There is also a provision for various uniform items which has some value. Once again, this is clearly more than was claimed to be a three percent (3%) settlement.

The PBA contends that the continuity and stability of employment criterion also supports the adoption of its last offer. The PBA notes that despite the broadened duties of the Sheriff's Officers, the number of officers in the unit now are as they were five years ago. Citing Tyminski's testimony, nineteen (19) officers have resigned during the last few years with seventeen (17) of them going to work in another police department. These actual resignations were distinguished from a theoretical number of officers who the PBA believes would have left the department by the lateral transfer route but for the denial of lateral transfers by the informal policy of the department that disallows such requests. The PBA likens these employees to "indentured servants." The PBA further

contends that higher salary levels are needed because Sheriff's Officers are unable to advance their careers through promotional opportunities or other upward mobility. The PBA points to the testimony of Chief John D. Dough that there has only been one promotion out of 350 Sheriff's Officers to a supervisory position since 2005. In the absence of a career path, the PBA argues that higher pay is necessary to reward the rank and file Sheriff's Officers who continue their employment with the County.

The PBA rejects the applicability of private sector terms and conditions of employment when evaluating the salaries and benefits it proposes for unit employees. Among the factors that the PBA alleges distinguish the two sets of employees include work schedules, special qualifications for employment, state residency requirements, hiring criteria, age minimums and maximums for initial hire and retirement, the requirement to act as a law enforcement officer at all times of the day including during off duty status, full powers of arrest, the ability to carry a weapon off duty, and being fire arm qualified.

The PBA offers a financial analysis of the County. It concludes that the County's ability to fund its last offer is present without causing adverse financial impact or creating difficulties with the County's ability to meet its statutory spending limitation. The PBA relies upon the testimony of its expert witness, Vincent J. Foti. Foti commended the County and County Treasurer Paul Hopkins "for doing an outstanding job and rebuilding the County's finances." The PBA

points to an Employer exhibit wherein Essex County Executive Joseph N. DiVincenzo, Jr. in 2006 commented positively on the County's rebuilding process:

We overcame and inherited a \$64 million dollar budget deficit and now have a \$30 million dollar cash surplus that will help us address future challenges. We have eliminated this County's reliance on one-shot revenues to balance our budgets and, for the third consecutive year, we are not going to need short-term borrowing to meet our cash flow needs.

In support of its contentions, the PBA cites official budget documents and submits argument regarding the improved nature of the County's financial condition. It asserts that one financial barometer is the Results of Operations that reflects the County's ability to regenerate surplus. Referring to annual financial statements, it submits the following chart depicting a dramatic change over the last several years:

Year	Amount
2006	\$21,720,693
2005	\$19,169,266
2004	\$29,181,338
2003	\$9,649,409
2002	(\$20,636,794)
2001	\$4,860,687
2000	\$12,388,189

It also points to budget revenues reflecting that more revenues have been realized compared to what the County has anticipated:

Year	Anticipated	Realized	Excess/(Deficit)
2006	\$632,126,584	\$639,036,019	\$6,909,435
2005	\$636,373,540	\$646,093,596	\$8,720,055
2004	\$603,578,180	\$14,165,517	\$10,587,337
2003	N/A		
2002	\$581,579,670	\$554,829,607	(\$26,750,063)
2001	\$562,226,854	\$558,235,95	(\$3,991,759)
2000	\$530,871,737	\$529,012,095	(\$1,859,642)
1999	\$535,304,065	\$53,199,399	\$2,895,334
1998	\$494,088,382	\$484,040,414	(\$10,047,966)

The PBA also points out that the County's tax rate has dropped in each year since 1998:

Year	Rate
2006	N/A
2005	0.4802
2004	0.5138
2003	0.5764
2002	0.6168
2001	0.6558
2000	0.7150
1999	0.7478
1998	0.7523
1997	0.7336

In addition to the above, the PBA points out that property values in Essex County have grown significantly between 1997 and 2005:

Year	Amount
2005	\$68,489,205,500
2004	\$50,868,076,671
2003	\$53,166,027,553
2002	\$47,620,955,529
2001	\$43,007,675,575
2000	\$39,674,974,389
1999	\$37,632,331,174
1998	\$36,865,559,879
1997	\$36,827,024,490

Because property values have continued to grow significantly, the PBA cites the additional revenue that the County has realized from its tax levy:

Year	Amount
2005	\$319,343,294
2004	\$311,643,294
2003	\$304,443,294
2002	\$291,532,586
2001	\$282,478,415
2000	\$281,522,230
1999	\$279,584,425
1998	\$264,042,465

Additional points raised by the PBA in support of its financial view of the County include an increase in the County's bond ratings and the existence of \$1,014,477.00 in unspent salaries in 2005 as reflected in the reserve balance for the Sheriff's Office. The PBA claims that this amount would enable the County to fund a portion of the salary increase the PBA has proposed.

The PBA urges rejection of the County's proposed change to its work schedule. Currently, any employee who works a weekend assignment receives one day off in the following week plus one-half day's pay for each day worked, or time and one-half in pay for each day worked, at the discretion of the Sheriff. The County proposes to move to a 24/7 work schedule what would eliminate weekend distinctions. The PBA contends that the County has not met its burden of proof on this issue in the absence of statistics, reports or proposed work charts that support the change. Its sees the County's proposal as an opportunity to

exercise unreasonable and unnecessary control over work schedules. The PBA contends that there would be an adverse effect on morale and stability if Sheriff's Officers were to work irregular hours and not have a stable work schedule.

Position of the County

The County contends that its last offer is more consistent with the interests and welfare of the public because it fits within the County's budget priorities and fiscal responsibilities while the PBA's does not. The County points to its obligations to comply with statutory spending limitations and the newly enacted ninth (9th) criteria that imposes a 4 percent (4%) tax levy cap. It fears that the PBA's proposals would cause funds to be taken from elsewhere in the budget causing reductions and/or elimination of services and jobs, a result that would be inimical to the public interest. It fears that other programs that have equally important interests including, but not limited to, roads, parkland and social services would suffer.

The County does not dispute that its financial underpinnings have improved and stabilized in recent years. This is reflected in improved bond ratings. But the County believes that its ability to continue to increase its bond ratings in the future depend upon maintaining a stabilized fund balance rather than seeing its fund balances depleted. In short, it states that it does not wish to return to prior years when revenue surpluses were spent without maintaining consistent revenues and reducing debt service. On this point, it refers to a 2003

Certification from Treasurer Hopkins that described the County's financial state at that time as "dire."

The County, as well as the PBA, seeks significant weight to be given to comparability but sharply differs with the PBA on the set of comparables to be utilized. The County relies heavily upon a "pattern of settlement" argument. The County submits that the PBA's position falls well outside the scope of settlements it has reached with as many as fourteen (14) different bargaining units within the County. These bargaining units include the following:

International Union of Operating Engineers, Local 68, 68A, 68B (Craft Titles, Department of Parks and Recreation and Cultural Affairs); International Union of Operating Engineers, Local 68, 68A, 68B (Engineers); International Union of Operating Engineers, Local 68, 68A, 68B (craft titles – Department of Public Works); CWA Local 1081 – Clerical Unit; CWA Local 1081 – Professionals; PESU Administrators; PESU – Supervisors; IBEW Local 1158-WIA Employees; IBEW Local 1158 – Craft Foremen; IBEW Local 1158 – Division of Training and Employment; IBEW Local No. 1158 (main unit); IBEW Local No. 1158 – Unit Managers & Supervisors; IBEW Local No. 1158 – Commissioner and Registration (C-61-C-73); and IBEW Prosecutor Clerical Unit

The County rejects the PBA's argument that there should be comparability between Essex County and municipal law enforcement units inside or outside the county. It points out that this argument was rejected in a prior interest arbitration proceeding. It also rejects PBA comparisons with counties such as Bergen due to claimed disparities in revenue sources and demographics that are unique to Essex County.

The County contends that a two-year contract duration with a 3% increase in each year would be consistent with a pattern of settlement it has negotiated with the above units. The pattern is said to include not only salary but also a \$10 increase in brand name/non-generic prescription drug co-payments and the adoption of a Section 125 Cafeteria Plan. Pointing to the other agreements, the County asserts that some involve security employees who work in the court complex along with the Sheriff's Officers, clerical employees in the Prosecutor's Office and that, overall, 51% of the County's unionized employees have been subject to the pattern of settlement. The County cites several interest arbitration awards in various municipalities and counties where arbitrators have cited pattern of settlement approvingly. The County's arguments in support of pattern of settlement include the following contentions:

An award that runs against the wave of settlements in Essex County will not only destroy the well-established pattern, but will invite acrimony to the County's labor relations. Issuing an award against the pattern will foster an environment that rejects traditional labor relations. In addition, issuing an award against the pattern would encourage units not subject to this interest arbitration to reject the pattern, and wait until law enforcement units have fully exhausted the interest arbitration process. Further, issuing an award against the pattern will fuel litigation by encouraging more units to go to interest arbitration, adding costs and delaying the process, contrary to the clear purpose of the Act: to settle labor disputes in an expeditious and efficient manner.

The County also notes that the Sheriff's Officers existing rates of pay are higher than other Essex County law enforcement employees other than the Prosecutor's Investigators. Comparing Sheriff's Officers with the Corrections Officers unit, the County points out that they receive higher pay and cannot justify

increases at the five (5%) percent level the PBA seeks along with other expensive benefit increases the PBA has proposed. The County further states that there is other compensation received by Sheriff's Officers other than base pay including the education allowance providing \$3,331 for an Associate's degree.

	Starting Salary	Top Salary
Corrections Officers PBA Local 382	Officer: \$32,532.207	\$66,736,328
Sheriffs Officers PBA Local 183	Hired Prior to 2/1/97 = \$40,672 Hired After 2/1/97 = \$38,447	\$68,637

The County disputes the PBA's reliance upon municipal contracts. It contends that the most meaningful comparison is among other county Sheriff's Officers and not between municipal police officers. It notes that municipalities are not sufficiently similar in size or geography to the County and that municipal police officers do not perform substantially the same services. The County further contends that the evidence produced by the PBA did not include commonly accepted yardsticks for comparability such as tax revenue, ratables, and total expenditures on police protection. The County submits contracts for other County Sheriff's Officers and submits that Essex County compares favorably in that the top step of \$68,637 is above the average statewide top step of \$65,852 in 2005:

**County Comparison
Top Pay**

County	2004 Top Salary	2005 Top Salary
Atlantic	\$52,868	\$55,000
Bergen	\$83,916	\$87,273
Burlington	\$50,747	\$52,777
Camden	\$64,992	\$67,592
Cape May	\$49,882	\$54,607
Cumberland	\$42,540	\$44,670
Essex	\$65,997	\$68,637
Gloucester	\$51,561	\$55,381
Hudson	\$57,425	\$59,580
Hunterdon	\$52,550	\$54,361
Mercer	\$66,786	\$70,102
Middlesex	\$66,664	Neg
Monmouth	\$70,000	Neg
Morris	\$67,679	\$70,479
Ocean	\$71,398	\$74,075
Passaic	\$72,171	\$75,779
Salem	\$47,000	\$52,500
Somerset	\$65,846	\$68,480
Sussex	\$54,282	\$57,505
Union	\$70,814	\$73,647
Warren	\$52,254	\$56,177
Average	\$60,827	\$65,852

In addition to the above, the County introduces various private sector settlements for comparability purposes asserting that these settlements are either in line with the County pattern of 3% increases or were actually lower than the 3%. These include:

Jersey Central Power & Light, 2 year contract, year 1 – 3%, year 2 – 3% (C-91); New Jersey Symphony Orchestra, 2 year contract, year 1 – 2.64% and year 2 – wage reopener (C-92); Robert Wood Johnson University Hospital, 3 year contract, year 1 – 3%, year 2 – 3%, and year 3 – 3% (C-93); Kimball Medical Center, 2 year contract, 3% deferred increase (C-94); St. Barnabas Behavioral Health Center, 2 year contract – 3% deferred increase (C-94); Trane Co, 3 year contract – year 2 – 3.1% deferred increase and year 3 – 2.6% deferred increase (C-95); Horizon Blue Cross Blue

Shield of New Jersey, 5 year contract, year 1 – 3% deferred increase, year 2 – 3%, year 3 – 3.5%, year 4 – 3.5% (C-96); Public Service Enterprise Group – 6 year contract, year 2 – 3.25% deferred increase, year 3 – 3.25%, year 4 – 3.25%, year 5 – 3.25%, year 6 – 3.25% (C-96); L'Oreal USA, 3 year contract, year 1 – 3%, year 2 – 3% and year 3 – 3% (C-97).

Notwithstanding the County's comparability arguments, it contends that the PBA's final offer of 5% wage increases in each of three years would cause adverse financial impact on the County to meet its statutory spending limitation requirements. The County notes that the Sheriff's Officer unit is the first law enforcement unit in the County to complete an interest arbitration and because this unit has previously set a pattern for the other law enforcement units, the likely financial impact of this award will have a dramatic impact on the County's budget as a whole. It cites legal precedent as requiring consideration of this argument.

The County submits a cost out of the respective final offers. Its calculation is based upon the PBA's proposed 5% wage increases and a theoretical 3% wage increase of its own that is above its last offer. The calculations only concern 2006 and 2007 but, due to the County's two-year last offer, they also include the rollover costs into 2008 while assuming no wage increase for 2008. The cost out reflects the following:

**Cost-Out of the PBA's Final Offer
for a two-year term with 5% wage increases**

Current Base Pay \$23,671,792	2006 Increments \$397,607	12/31/05 Base \$23,274,185	Employees 369		
Base Pay \$23,274,185	% Increase		Cost	Rollover	Total Impact
1/1/2006	5.00%	1,163,709	1,163,709.25	0.00	1,163,709.25
1/1/2007	5.00%	1,241,775	1,241,775.06	1,163,709.25	2,405,484.31
1/1/2008	0%		0.00	2,405,484.31	2,405,484.31
					5,974,677.88

**Cost-Out of the County's Final Offer
for a two-year term with 3% wage increases**

Current Base Pay \$23,671,792	2006 Increments \$397,607	12/31/05 Base \$23,274,185	Employees 369		
Base Pay \$23,274,185	% Increase		Cost	Rollover	Total Impact
1/1/2006	3.00%	698,226	698,225.55	0.00	698,225.55
1/1/2007	3.00%	731,101	731,100.53	698,225.55	1,429,326.08
1/1/2008	0%		0.00	1,429,326.08	1,429,326.08
					3,556,877.70

Based upon the above, the County submits that the PBA's offer would cost \$2,417,800 more than the County's even without added costs associated with the PBA's other economic proposals or a third year wage increase.

The County relies on the testimony of Treasurer Hopkins in respect to the impact of the budget cap and the future cap that will exist on increases in its tax levy as a result of new legislation. Hopkins testified that the County is subject to a 2.5% cap but that the County can pass a resolution increasing the cap to 3.5% and bank anything not used for use over the next two years. Hopkins noted that

although the County has increased its tax levy by only 2.9%, over the last three years total taxes have increased by 6.1% and by 37.3% over the last six years. In addition, Hopkins testified that pension costs have been increasing as the costs are phased in towards 100%. He also testified to premium increases in health and liability insurance. Hopkins testified that the County has made significant efforts to control its debt service. He believes that the debt restructuring plan requires the County to be prudent in its spending in order to bring the debt service down. The plan has done so and this has been recognized by the bond rating agencies who have rewarded the County's efforts. Hopkins acknowledged that the County has far greater stability than it did in its recent past but that a continuation of its fiscally responsible plan is necessary in order to maintain that trend.

The County has proposed a two year contract term. It contends that it needs the two year term to continue to allow for the reassessment of its finances towards the goals of stabilizing its finances and decreasing its debt service. The County also points out that fourteen (14) units have already accepted two year contracts thus setting a pattern with respect to duration.

The County also proposes a change in the work schedule. It wishes to move to a 24/7 work schedule. The existing schedule provides a forty (40) hour week and eight (8) hour days. According to the County, the change would permit the department to create normal workweeks that include weekend days without

having to offer premium pay or compensatory time off for those days. The County points to the testimony of Chief Dough who offered several reasons for the proposed change including having the need to provide better service at all hours and days and to further specializations by having officers work on a full-time rather than a part-time basis on the weekend. According to Chief Dough, the current system has resulted in the County owing more than two hundred (200) compensatory days for the performance of weekend work. Chief Dough testified that in order to fill these days he may have to substitute officers to fulfill the vacancies through reassignments or through overtime. He believes that a more efficient and effective agency would result by having the ability to transport arrests from other law enforcement agencies who all operate on a 24/7 work schedule. He testified to having suspend investigations on occasions during weekends because there were no officers assigned to perform those duties.

The County has proposed to implement a Section 125 Cafeteria Plan. The Plan is voluntary and would result in a flexible spending account that an employee would fund on a pre-tax basis. The purpose of the funds would be to offset any insurance costs and dependent care coverage that an employee might incur. The County points to fourteen (14) other units whose settlements include the Plan as well as the fact that the plan has been implemented for management employees.

An additional County proposal is to increase the amount that an employee would pay for Dependant Care Coverage. Specifically, the County seeks an increase in the co-pay from 20% to 25% for employees hired after 1995. The proposal would be effective on the last day of its proposed contract, December 31, 2007. The County seeks support for this proposal because of increases in health insurance costs and the dwindling number of employers in the private sector who pay 100% for family coverage. The County recognizes that this proposal is not part of the recent settlement pattern but that the proposal is not unreasonable in light of the skyrocketing costs for health care and that non-law enforcement units are subject to this co-pay in prior agreements. The County cites recent settlements between Unions and the State of New Jersey that require employees to contribute 1½% of their salary towards health care costs. The County emphasizes that its proposal is far more modest and only seeks to increase the contribution for dependent care in the nominal amount of an additional 5% and to lift the 1993 cap on rates upon which to calculate that percentage.

An additional proposal of the County is to remove Section 6 from the Holiday Article although the intent of its proposal is more limited. Under the current provision, a Sheriff's Officer receives an extra day's pay if a holiday is declared by the Board of Chosen Freeholders, the County, the President, Congress or the Governor. The County's proposal would limit any additional paid holidays to those declared by the Freeholders, the County or the Governor.

Citing the testimony of Delores Capetola, Assistant County Counsel, the County argues that the amendment it has proposed to the provision would simply bring this contract into conformity with other units. Otherwise, the Sheriff's Officers would unfairly have an extra paid holiday while other similarly situated units would not leading to internal friction.

The County also proposes a modification to the Drug Prescription Plan. Currently employees have co-pays of \$10.00 for generic drugs and \$15.00 for name brand drugs. The Employer seeks to increase the co-pays for brand name drugs from \$15.00 to \$25.00. The County projects that prescription renewals would decrease by more than \$300,000. Given the increases in the health care costs, the County contends that the increase is reasonable and that it is no more than the other bargaining units have already agreed to.

DISCUSSION

The parties did not agree upon an alternative terminal procedure. Accordingly, pursuant to statute, the arbitration was conducted under the procedure of conventional arbitration. That procedure authorizes the arbitrator to fashion an award without being required to adopt the final offers of the parties.

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 (8)

which 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 (A1 CC).

It is traditional in interest arbitration proceedings for the party that proposes changes to bear the burden of proof for the modifications to the agreement that it has proposed. I apply that principle as part of my analysis to each issue in this dispute. While I must consider the merits of the various proposals individually, I refer to criterion N.J.S.A. 34:13a - 16g(a). This criterion allows for factors which are ordinarily considered in making determinations on wages and benefits to be given consideration when rendering an award. One

such factor requires that consideration be given to the totality of the changes to be made to the existing agreement. Thus, any decision to award or deny any individual issue will include consideration as to the reasonableness of that individual decision in relation to the reasonableness of the total terms of the entire award. I proceed next to decide the individual issues in dispute.

SALARY AND CONTRACT DURATION

The most significant issue in dispute is salary, an issue that also directly implicates contract duration. During negotiations for the last agreement, January 1, 2002 through December 31, 2005, the salary issue was the subject of extensive proceedings prior to finalization. The Agreement that expired on December 31, 2001 and was modified by an agreement resulting from an interest arbitration award on August 20, 2004. That award was appealed and affirmed by PERC on January 27, 2005. A Memorandum of Agreement was executed by the parties implementing final contract terms during July 2005. Given this history, and the virtual immediate return to negotiations and interest arbitration proceedings for resolution of the next contract, the Union understandably seeks a contract of greater duration than two years. However, this position must be viewed in a broader context.

The County proposes a two (2) year agreement commencing January 1, 2006 through December 31, 2007 while the PBA proposes a four (4) year contract effective January 1, 2006 through December 31, 2009. The County

objects to more than a two year agreement due to the existence of two year agreements it has entered into with fourteen (14) non-law enforcement units and its desire not to commit to budgetary decisions of consequence that extend beyond December 31, 2007 due to continued implementation of its budget plans that have put the County towards improved financial health.

In the abstract, a two year agreement would not represent the most desirable term for duration. This is so because an agreement beyond two years would allow for the administration of an agreement without having to simultaneously engage in negotiations or interest arbitration. However, given the County's express need for shorter term budget review in connection with its plan to continue to stabilize its finances, a shorter agreement is more appropriate and would allow for the development of contract proposals for the future in light of circumstances present that go into the 2008 budget year. The County's finances have sufficiently stabilized to the point where a 2006 and 2007 contract can be finalized without the compensation sacrifices the rank and file endured by having salary deferrals for three of the four years of the prior agreement and wage increases that were below the goals of the PBA. This is not to suggest that external comparables should be controlling, but the prior award was issued in a context of financial transition. At this particular point, an award can be predicated on firm financial evidence for 2006 and 2007 and afford a greater opportunity for improvement in contract terms based upon this evidence without engaging in speculation over future budgets. I also give substantial weight to the two (2) year

term in the agreements for the fourteen (14) agreements that have been satisfactorily concluded, although I do not find the substantive aspects of those contracts to be dispositive. For these reasons, I award a contract duration of two (2) years.

The main arguments presented by the County and the PBA in support of their salary proposals are both linked to comparability. However, the comparability evidence each party claims to be relevant and the respective field of claimed comparables sharply differ. The PBA focuses on levels of compensation contained in salary schedules and recent changes made to those schedules in a select group of municipal law enforcement agreements as well as in other County Sheriff's Officer departments including Bergen, Passaic and Ocean. It contends that Essex does not compare favorably in salary and compensation related issues. The County, on the other hand, emphasizes changes that were recently made in fourteen (14) of its non-law enforcement units that it claims forms an internal pattern of settlement that compels the adoption of those terms in this proceeding. The County does not dismiss the relevance of labor agreements in other county agreements but points to those departments where Essex compares more favorably such as in Sussex, Somerset and Hudson. The County's argument is based on record evidence that Essex demographics and socio-economic characteristics that differ from those offered by the PBA. The County also submits comparability data from various labor agreements in unionized private sector companies that it says provides

additional justification in support of its last offer. The PBA seeks rejection of these private sector settlements on grounds that the employment conditions unique to law enforcement do not exist in the private sector. The County also submits comparability data for public employment in general including recently negotiated contracts between the State of New Jersey and non-law enforcement units providing for settlements averaging slightly above 3%.

Under N.J.S.A. 34:13A-1b(g)(2)(a)(b) and (c), all of this evidence is relevant and must be considered despite each party's reliance on its own field of comparables. Given the parties' own emphasis on this criterion and its subsections, the comparability evidence is entitled to substantial weight.

Additional criteria that are entitled to substantial weight are the lawful authority of the employer and financial impact [see N.J.S.A. 34:13A(g)(5)(6) and (9)] and the interests and welfare of the public, N.J.S.A. 34:13A(g)(1). The latter criterion interrelates directly with the other referenced criteria dealing with the County's finances and the public's ability to fund the labor agreement. However, it also includes consideration of broader and less direct impacts such as the morale of the workforce, the protection of the public, courtroom security and the effective integration the County's law enforcement function with state and local police systems and duties.

Also relevant, but be given less significant weight on this record, are criteria referencing the cost of living (subsection (g)(3), the overall compensation of unit employees (subsection (g)(3), the cost of living (subsection (g)(7) and the continuity and stability of employment (subsection 8).

Without inferring significance due to order of analysis, I next address the evidence in support of the criteria. I note that because the evidence has been submitted in such comprehensive fashion, it does not allow for all of the exhibits to be specifically addressed.

The cost of living data tends to support the County's position over the PBA's. The County submits CPI data for Urban Consumers between 2001 and 2006 reflecting that salary increases have outpaced the CPI increased by 6.9% over these years even if the County's 2.0% proposed increase were to be adopted in 2006. This data is from the U.S. city averages but it is consistent with urban data from New York-Northern New Jersey – Long Island. While the data does not support the 5% proposed wage increases sought by the PBA, the data is not controlling to the extent that an award should be set by increases in the CPI. The data must be viewed in the context of overall evidence reflecting that virtually all salary adjustments in law enforcement agreements have exceeded the cost of living data including for those contract years that parallel those in this proceeding. The more recent wage data for County Sheriff's Officers generally

and for municipal law enforcement employees in Essex County reflect enhancements in salary beyond the low CPI figures.

The continuity and stability of employment factor is relevant but does not suggest an award at either the level proposed by the County or the PBA. Exhibits and testimony at hearing addressed this criterion at length. The County sees this evidence as supporting its position that terms for the new agreement need only be increased at the level it proposes in order to continue to satisfy its goals of hiring and maintaining unit employees. The PBA sees the evidence as requiring substantially more than an average increase because, as PBA President Tyminski stated, "we are losing people in droves."

The data has been examined. It reflects that between 1999 and September 2003 there were sixty-nine (69) employees who terminated employment with the County for all reasons. In 1999 there were thirteen (13) separations. Four (4) of the separations were non-retirement in nature while nine (9) were by way of retirement. The total in 1999 represents a 4.3% turnover rate. In 2000 there were twenty-two (22) separations, eleven (11) were non-retirement and eleven (11) were due to retirement for a seven (7%) percent turnover rate. In 2001 there were fourteen (14) separations, seven (7) were non-retirement and seven (7) were due to retirement for a 4.4% turnover rate. In 2002, fourteen (14) employees separated, eight (8) by way of retirement, a 4.6% turnover rate. In 2003 nine (9) employees separated with four (4) were due to retirement, a 2.80%

turnover rate. PBA evidence reflects that since January 1, 2003 that nineteen (19) employees resigned to accept positions elsewhere with seventeen (17) going to other law enforcement agencies. The PBA submits this total would have been larger if there were not an informal policy in the department of refusing to certify and approve lateral transfers under NJDOP policy. An additional concern raised by the PBA is the dearth of promotions. There has only been one (1) promotion out of three hundred and fifty (350) employees since 2005.

The data reflects that the loss of employees is not as dramatic as asserted by the PBA nor as insignificant as asserted by the County when the separations are viewed in the context of overall employment levels. The County has maintained a healthy list of eligibles for employment (150) and the ratio of lost employees is not as harsh as depicted by the PBA. However, there is merit to the PBA's linkage of the lower numbers to the "informal policy" of denial of interdepartmental or intergovernmental transfer, a fact that could minimize the turnover rate because employees would be forced to resign rather than transfer at guaranteed salary levels. In sum, this criterion suggests an award beyond the County's proposal because it would diminish the relative value of the PBA salary schedule in relation to other county sheriff's officer agreements and also to those in municipal law enforcement units potentially leading to a higher number of resignations. At the same time, an award at the level sought by the PBA is not justified by the evidence on employee turnover nor its almost exclusive reliance upon external labor agreements.

The overall levels of compensation and benefits [subsection (g)(3)] also requires consideration when reviewing the merits of the parties' proposals. Those levels, on balance, show reasonable levels of equivalence when other county sheriff's officer units are compared and contrasted. Depending on county comparables in terms of finance, socio-economic and demographics, the existing levels of compensation and benefits reflect more or less favorably. Essex County ranks eighth of twenty-one in salary comparisons, is higher in educational allowances, lower in longevity and in relative balance with many others such as vacation and sick leave. There is no compelling reason for this criteria to be applied in a manner that would support the adoption of terms of proposed by either party.

As noted above, the County and the Union have had salary disagreements in recent past. Similar evidence and arguments were presented by these same parties in those proceedings in support of positions taken on similar issues that were in dispute. In summary fashion, and at the risk over oversimplification, it was found in prior proceedings that the job of a sheriffs' officer was not comparable to that of a municipal police officer for maximum salary purposes. But also, the internal settlements, then claimed as a pattern, were not given controlling weight. Instead, after giving "due weight" to all relevant factors, wage increases were awarded on the basis of many considerations and not by the application of any specific formula.

The more significant criteria on this record are comparability, statutory limitations and financial impact. The interests and welfare of the public criterion is an overriding factor because it is a factor that is superimposed upon all of the above criteria. That is, the interests and welfare of the public will be served by salary terms that are in reasonable balance with internal and external comparability, within the legislative financial limits imposed upon the County and consistent with the governing body's and the public's ability to fund levels without adverse consequences.

After applying all of the credible evidence offered in this proceeding, I conclude that a reasonable determination of the salary issue is an award of 4.0% effective January 1, 2006 and 4% effective January 1, 2007. These terms, during these contract years, have taken into consideration the compensation deferrals undertaken by this unit during preceding years in the prior contract.

I find, as was the case in the prior proceeding, that the internal settlements are not dispositive but that they do influence the general framework for consideration of the salary issue. Otherwise, a simple formula of parity with a grouping of external law enforcement units would dictate a result independent of what occurs within the County. Yet, to restrict the award to the internal settlements would be inconsistent with the terms of the prior contract and render the law enforcement comparability evidence meaningless. The internal

settlements do have 3% base wage increases but the overall terms of each agreement contain individualized economic adjustments that are unique to each unit that cause overall economic impact to be beyond the percentage base wage increases. These agreements have previously been set forth and need not be restated here but the overall impact of these terms reach above the 3% base wage increases. The external comparability data must also be considered. The average of those increases in municipal and county agreements in the field of comparables submitted into the record exceed 4%. The field, if expanded to statewide average is less. This data, when balanced with the terms of the internal settlements, support base wage increases at the levels that I have awarded.

As of December 31, 2006 the roster upon which to base cost outs reflect that there were 372 employees in the PBA Local 183 unit. Total salary was \$23,923,643. The base wage average was \$64,311, the mean salary was \$53,543 and the salary range minimum was \$38,447 and top step was \$68,637. The salary schedule at the time of expiration, December 31, 2005 is as follows:

	01/01/02	07/01/02	07/01/03	04/01/04	01/01/05
Start	\$33,183	\$33,344	\$35,546	\$36,968	\$38,447
Step 1	\$37,527	\$38,840	\$40,200	\$41,808	\$43,480
Step 2	\$41,869	\$43,334	\$44,851	\$46,645	\$48,511
Step 3	\$46,213	\$47,830	\$49,505	%51,485	\$53,544
Step 4	\$50,558	\$52,328	\$54,159	\$56,325	\$58,578
Step 5	\$54,899	\$56,820	\$58,809	\$61,162	\$63,608
Step 6	\$59,240	\$61,313	\$63,459	\$65,998	\$68,637

The terms of the Award yield the following new wage schedule:

	4.0% January 1, 2006	4.0% January 1, 2007
Start	\$39,984	\$41,584
Step 1	\$45,219	\$47,027
Step 2	\$50,451	\$52,470
Step 3	\$55,685	\$57,913
Step 4	\$60,921	\$63,358
Step 5	\$66,152	\$68,798
Step 6	\$71,382	\$74,238

The cost of the Award, with calculations based upon County projections of cost outs is \$930,967 in 2006, \$968,206 in 2007. In chart form, the costs relative to the parties' last offers (with the County's calculated off a projected assumed 3% increase) are as follows:

	PBA	Award	County
2006	\$1,163,709	\$930,967	\$698,226
2007	\$1,221,894	\$968,206	\$719,172

The costs of the award, based upon the official budget documents on the record, can be met without interfering with the County's statutory obligations and without adverse financial impact on the governing body, its residents and taxpayers. The budget data, when read as a whole or within the Sheriff Office line item contain sufficient funds to meet the additional costs of the award even upon projections of a 3% wage increase not proposed by the County but assumed. I have considered not only the costs for this unit but the potential impact of extending these or similar terms to the remaining law enforcement units.

The County's financial position has become far more positive in 2006 going forward than it was between 2000 and 2005. Its bond rating has improved and its debt service has been reduced. It has now shown an ability to regenerate surplus and avoid using surplus and debt to make current expenditures. This does not suggest that it could, or should, devote additional monies to fund the PBA's proposal without adverse financial impact. However, the County's improved posture allows, as here, for increases at these levels, after consideration of present budgetary data and in light of the terms of the prior agreement.

HOLIDAYS

The County proposes to modify Article VIII - Holidays. The provision states:

Section 6. In the event an employee covered by this agreement is required to work on a legal holiday or a day declared to be a holiday by the Board of Chosen Freeholders of the County of Essex, the President, Congress or the Governor, the employee shall be paid an extra day's pay for each holiday worked. Payments shall be made within thirty (30) days of the holiday worked.

Although the County has proposed to delete Section 6, the stated purpose of its proposal is to eliminate the granting of a holiday if such holiday is declared by the President or Congress. The PBA opposes the modification sought by the County.

The reasoning in support of the proposal is that the County believes that it should not be held to have to grant an extra holiday to unit employees based upon a federal decision that is independent from any decision made by the State of New Jersey or the County. The proposal seeks to conform the PBA Agreement to other units in the County to provide consistency as to when an additional paid holiday is granted. It is reasonable for the County to seek consistency among all its employees as to when an additional holiday is granted to avoid a situation whereby similarly situated units would be required to work a normal work schedule while Sheriff's Officers receive an extra days pay.

Accordingly, effective upon the date of this Award, Article 8, Section 6 shall be modified to delete references to the President and the Congress. The new Section 6 shall read as follows:

Section 6. In the event an employee covered by this agreement is required to work on a legal holiday or a day declared to be a holiday by the Board of Chosen Freeholders of the County of Essex or the Governor, the employee shall be paid an extra day's pay for each holiday worked. Payments shall be made within thirty (30) days of the holiday worked.

**HOSPITALIZATION, MEDICAL, SURGICAL
AND MAJOR MEDICAL INSURANCE**

The County proposes two changes to Article X. The PBA opposes any change to this provision. The first proposal of the County is to modify Section (1) (c) (2). Currently, employees hired after June 16, 1993 pay a twenty (20%)

percent co-pay for dependent coverage at the applicable 1993 rate. The County proposes to increase the co-pay for employees hired after 1995 to twenty-five (25%) percent and to unfreeze or lift the rate cap effective December 31, 2007. In addition, the County proposes an increase in the prescription drug plan co-pay. The current plan is set forth in Section (2) as follows:

Section 2. A prepaid drug prescription plan paid for by the County shall be continued in effect. The County reserves the right to select the insurance carrier who shall provide such benefits. The County of Essex shall have the right to maintain the following:

- (a) One (\$1.00) dollar co-pay for generic drugs;
- (b) Five (\$5.00) dollars co-pay for non-generic drugs;
- (c) The prescription co-pays shall be increased to ten (\$10.00) dollars for generic drugs and fifteen (\$15.00) dollars for name brand drugs to be effective March 16, 2005. The mail order prescription plan shall be continued.

The County proposes to maintain the current co-pay for generic drugs and increase the co-pay for brand name and non-generic drugs from \$15.00 to \$25.00. The County would continue the mail order prescription program.

The County's proposal concerning prescription drug plan co-pay is consistent with changes that were made to its prescription program with fourteen (14) other negotiating units. The interests and welfare of the public would be served by the County maintaining a prescription plan that is consistent on a county-wide basis. The modification sought will not modify the actual prescription plan itself. It would maintain the current level of benefits for generic drugs and the mail order prescription plan but provide a greater separation in the

co-pays between generic and non-generic drugs. A reasonable inference can be drawn that the modification would provide a greater incentive for employees to select generic drugs or utilize the mail order prescription program. In either case, the County would realize cost savings that would help maintain the broad level of medical benefits it now provides to its employees. Accordingly, effective as soon as is administratively feasible, the County shall modify its prescription co-pay for brand name and non-generic drugs from \$15 to \$25.

I next turn to the County's proposal to increase the co-pays for the dependent care coverage from 20% to 25% for employees hired after 1995 and to unfreeze the rate cap effective December 31, 2007. The PBA seeks rejection of this proposal. The County submits that its proposal is not unreasonable given the increases in health insurance costs and the trend towards greater cost sharing for dependent health coverage. The PBA contends that the proposal should not even be considered because it alleges that it was entered into arbitration in an untimely fashion by representing a revision to the County's last offer that would make the last offer less reasonable. While this represents an accurate depiction of the procedures that were agreed to at hearing, the County later revised its last offer consistent with that procedure by increasing its wage proposal by 0.25% effective December 31, 2007 in conjunction with the re-proposing of the co-pay issue thereby. In my judgment, this revised proposal is within the procedural understanding reached at hearing and therefore, I exercise my discretion to allow this proposal for review.

I have examined and considered this issue in the context of the overall terms and conditions of employment that have been awarded herein. The determination on this issue is to deny the proposal. Given the two year duration, this proposal falls beyond the reasonableness of the total package that has been awarded. The County is free to resubmit this proposal in the context of an agreement that extends into future years. After due consideration, I do not award this proposal and will continue the status quo on the existing co-pay for dependent care coverage during this contract term.

EDUCATION BENEFITS

The PBA proposes an increase in the Education Benefits payments set forth in Article XX. This provision now states:

Employees covered by this Agreement shall be eligible for the same benefits for additional education credits received in accordance with the program established for Correction Officers. Such benefits shall be frozen at the current level of Three Thousand Three Hundred Thirty-One (\$3,331.00) dollars per year for a full increment (for sixty (60) completed credits) and one thousand six hundred sixty-five (\$1,665.00) dollars per year for a half (½) increment (for thirty (30) completed credits). The current practice regarding payment procedure shall continue.

The PBA's proposal would increase and extend the benefit as follows:

- A. 60 credits \$5,427
30 credits \$2,714
- B. Any employee entitled to the above Education Allowance will continue to receive the above amount.

- C. Effective 2005, employees possessing a BA degree will receive an Education Allowance of \$6,050.
- D. The Education Allowance is frozen at the 6 step rate of 60 credits = \$4,920; 30 Credits = \$2,460 and BA Degree = \$6,050.

The existing benefit now caps at the 60 degree level which is consistent with achieving credits at the level of an Associate's degree. Given the undisputed record testimony as to the additional skills and knowledge required to perform the expanded duties of the job, an extension of the benefit to a Bachelor's degree has merit as well as modest increases to the 30 and 60 credit levels that have been frozen. Accordingly, I award a payment of \$5,250 for an employee who holds a Bachelor's degree at an accredited institution effective January 1, 2007 and adjustments to \$1,750 and \$3,500 respectively for the 30 and 60 credit levels. The revised article shall read:

Employees covered by this Agreement shall be eligible for the same benefits for additional education credits received in accordance with the program established for Correction Officers. Such benefits shall be frozen at the current level of Three Thousand Five Hundred (\$3,500.00) dollars per year for a full increment (for sixty (60) completed credits) and One Thousand Seven Hundred Fifty (\$1,750.00) dollars per year for a half ($\frac{1}{2}$) increment (for thirty (30) completed credits). An employee who holds or achieves a Bachelor's degree at an accredited institution shall receive Five Thousand Two Hundred Fifty (\$5,250.00) dollars. The current practice regarding payment procedure shall continue. These payments are effective January 1, 2007.

DEVELOPMENT FUND

Article XXV provides for the creation of a benefit pursuant to the following terms:

The Development Fund established by July 1, 1993 shall be maintained. The County shall contribute two hundred fifty (\$250.00) dollars per year to the fund for each employee in the bargaining unit.

It is understood that the administration of this fund shall be the entire responsibility of the Union. The Union shall indemnify and hold the County and the Sheriff harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not taken by the County and/or the Sheriff for the purpose of complying with the provisions of this Article.

The PBA proposes to improve the funding from two hundred fifty (\$250) dollars to four hundred and fifty (\$450) per annum, effective January 1, 2008. The County seeks rejection of this proposal.

The County's main objection to the proposal is based upon cost. It asserts that the impact of the proposal rises to \$74,000 annually and that the PBA has not presented any evidence to support such level of increase. This opposition must be balanced against the fact that the existing level of contribution has remained static for many years. The existence of the fund by mutual agreement is sufficient to reflect justification for the maintenance of the fund. An increase in the contribution is warranted but not to the extent sought by the PBA.

The annual contribution to the fund shall be increased by \$100 to a \$350 contribution at a cost of approximately \$37,000 effective January 1, 2007.

JOB RELATED DISABILITY

The PBA proposes a new provision to Article X concerning job related disability. It states:

The PBA proposes the addition of a new provision to be added to the contract which would provide for full retiree medical coverage for employees who are caused to retire due to a job-related disability. The standard for job-related disability shall be consistent with the New Jersey Police and Fire Pension statute definitions and regulations. This would require a modification of page 18 at Section 3(d)5.

The County seeks rejection of this proposal.

Currently, employees with less than twenty-five (25) years of service do not qualify for service retirement under the terms of the Agreement. Instead, they are eligible to purchase health benefits through the entire group of the County of Essex or purchase benefits through COBRA. The benefit sought is currently not provided in any of the law enforcement agreements within the County. The adoption of this proposal for this unit and the potential cost for its extension into other law enforcement units of the County has not been estimated by the PBA. The County asserts that the proposal, if adopted, would create a significant financial burden, although it does not submit its own financial analysis. In the absence of a financial impact analysis, the remaining pros and cons for the

adoption or rejection of this proposal cannot be properly undertaken. Accordingly, I do not award this proposal.

SECTION 125 CAFETERIA PLAN

The County proposes to allow unit employees to participate in its Section 125 Cafeteria Plan. The PBA does not agree to this proposal but offers no specific opposition to the inclusion of unit employees in the Plan.

The County's rationale for implementing the Plan is persuasive. It is a voluntary plan at no cost to unit employees and the Sheriff's Officers can decline to participate if they so wish. In the event that they would choose to participate, it would allow them to set some of their income into the Plan where it would accumulate on a pre-tax basis. The funds that are set aside could serve to offset any insurance costs and dependant care coverage that an employee might incur. Moreover, it simply makes sense to provide the same opportunity to unit employees that exists for non-union management employees and fourteen (14) other bargaining units who have the opportunity to participate in the Plan. For these reasons, the County shall have the authority to implement a new provision that would allow unit employees to participate in its Section 125 Cafeteria Plan as soon as it is administratively feasible.

LONGEVITY

Article XXI provides for a longevity program but discontinued eligibility for employees hired after December 31, 1974. The PBA offers the following proposal:

The PBA proposes the addition of a longevity benefit in the amount of one percent (1%) for each five (5) years of completed law enforcement service. Law enforcement service shall be defined consistent with pensionable service as recognized by the New Jersey Police and Fire Pension statute and regulations.

The County urges denial of this proposal.

The PBA supports its proposal by the submission of many law enforcement agreements that contain a longevity program. According to the PBA, the labor agreements in its field of comparables reflect longevity payments at maximum value averaging \$6,796 by not receiving this benefit. The PBA asserts that its overall compensation for Sheriff's Officers is diminished in relative terms. The County's opposition is based upon the fact that this benefit was eliminated over thirty years ago, the estimated \$1.5 million impact of the proposal and, if awarded, its likely extension the hundreds of additional employees in its other law enforcement units. The County also points out that the PBA receives benefits such as an education allowance not uniformly received in County Sheriff's Officer agreements.

The longevity program in Essex County has been phased out in all of its labor agreements. Where such benefits continued to exist in other units, such benefits were terminated during the last negotiations for new employees. To recreate this benefit at this time would run counter to the existing county-wide program. Accordingly, this proposal is denied. The denial of the PBA proposal is not meant to terminate the longevity benefit that County Police Officers continue to receive due to having been grandfathered at the time of its merger into the Office of the Sheriff. That benefit will continue except for new County Police Officers who were hired after December 31, 2005 pursuant to the parties' agreement.

WORK SCHEDULE

The County proposes the implementation of a 24/7 work schedule effective upon the date of the Award. The PBA seeks rejection of the proposal.

Article VI, Section 2 provides for a normal work week of eight hours a day inclusive of a one hour lunch period in a normal work week of forty (40) hours. The Agreement is silent on the work schedule with respect to scheduling weekend hours except for Section 3 that provides compensation for employees who work a weekend assignment. Section 3 states:

Section 3. Any Employee who works a weekend assignment shall receive one day off in the following week plus one-half day's pay for each day worked, or time and one-half in pay for each day worked, at the discretion of the Sheriff.

Extensive testimony was received at hearing in support of the County's proposal and in support of rejection of that proposal. Chief Dough testified that the proposed change would not impact personnel in the courts, administrative and internal affairs divisions. Thus, the change would impact upon a minority of employees in the unit. The rationale for being able to deploy Sheriff's Officers on a 24/7 schedule is not, in the abstract, unreasonable, especially given the evidence and arguments advanced by the PBA contending that the Sheriff's Office is a full service law enforcement agency. However, the proposal has only been offered in general terms. This has caused speculation, not fully responded to by County witnesses, as to how this authority would actually be implemented and administered and whether such plan would have merit. It is apparent that there has been little direct communication between the parties over the merits of this proposal. The authority granted to management through the utilization of a 24/7 work schedule represents a significant change. There is merit to the PBA's opposition to granting such general authority in the absence of specifics as to how this authority would be implemented and administered. For these reasons, I deny the County's proposal and award the formation of a joint scheduling committee. I recognize that the results of any such committee could vary. From the most positive point of view, understandings could be reached concerning revisions to the existing schedule or any compensation-related issues that may arise from any change.

Accordingly, and based upon all of the above, I respectfully enter the terms of the Award.

AWARD

1. All proposals by the City and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this award or otherwise agreed to by the parties.

2. **Duration**

The effective date of this Agreement shall be January 1, 2006 through December 31, 2007.

3. **Article VIII – Holidays**

Section 6 of this Article shall be changed to read as follows:

In the event an employee covered by this agreement is required to work on a legal holiday or a day declared to be a holiday by the Board of Chosen Freeholders of the County of Essex or the Governor, the employee shall be paid an extra day's pay for each holiday worked. Payments shall be made within thirty (30) days of the holiday worked.

4. **Hospitalization, Medical, Surgical And Major Medical Insurance**

Effective as soon as is administratively feasible, Article 10, Section 2 shall be modified as follows:

Prescription co-pay shall be increased to \$10 for generic drugs and \$25 for name brand and non-generic drugs. The mail order program shall remain in effect.

5. **New Provision - Section 125 Cafeteria Plan**

The County shall have the authority to implement a new provision that would allow unit employees to participate in its Section 125 Cafeteria Plan.

6. **Article XXV – Development Fund**

The annual contribution to the fund shall be increased by \$100 effective January 1, 2007. The new contribution shall be \$350.

7. **Work Schedule**

I award the formation of a joint scheduling committee to meet and discuss the feasibility of any proposed change to the existing work schedule including its implementation and administration and any compensation related issues.

8. **Education Benefits**

Effective January 1, 2007, the Education Benefits provision shall be modified by increasing the 30 credit level by \$85.00, the 60 credit level by \$169.00 and by creating a Bachelor's degree level at \$5,250.00

Employees covered by this Agreement shall be eligible for the same benefits for additional education credits received in accordance with the program established for Correction Officers. Such benefits shall be frozen at the current level of Three Thousand Five Hundred (\$3,500.00) dollars per year for a full increment (for sixty (60) completed credits) and One Thousand Seven Hundred Fifty (\$1,750.00) dollars per year for a half (½) increment (for thirty (30) completed credits). An employee who holds or achieves a Bachelor's degree at an accredited institution shall receive Five Thousand Two Hundred Fifty (\$5,250.00) dollars. The current practice regarding payment procedure shall continue. These payments are effective January 1, 2007.

9. **Salary**

The following salary schedule shall be implemented retroactive to the effective dates and applicable to unit employees on payroll at the time of

the effective dates, to those who have retired and to those who may have retired on ordinary or disability pension to the date of retirement.

	4.0% January 1, 2006	4.0% January 1, 2007
Start	\$39,984	\$41,584
Step 1	\$45,219	\$47,027
Step 2	\$50,451	\$52,470
Step 3	\$55,685	\$57,913
Step 4	\$60,921	\$63,358
Step 5	\$66,152	\$68,798
Step 6	\$71,382	\$74,238

Dated: November 20, 2007
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 20th day of November, 2007, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/13/2008