

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**MORRIS COUNTY PROSECUTOR'S OFFICE**

-and-

Docket No. IA-2012-032

**PATROLMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 327**

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Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Prosecutor's Office:

Knapp, Trimboli and Prusinowski, Attorneys  
(Frederic Knapp, of Counsel)  
(Stephen Trimboli, of Counsel - on the brief)

For PBA Local 327:

(Loccke, Correia, Limsky & Bukowski, Attorneys  
(Richard Loccke, of Counsel)

Witnesses:

Barry Bittenmaster, Local 327 Vice-President  
Christopher Vanadia, Local 327 President  
Robert Bianchi, Prosecutor  
Thomas Giordano, RHM Benefits Coordinator  
Allison Stapleton, County Labor Relations Director

**INTEREST ARBITRATION AWARD**

**BACKGROUND**

On April 3, 2012 Patrolmen's Benevolent Association Local No. 327 (PBA) filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over a successor collective negotiations agreement with the Morris County Prosecutor's Office (Employer or Prosecutor's Office).

The previous agreement expired on December 31, 2011.

On April 9, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 45 days of my appointment with no provision for a mutually agreed upon extension of any length. By letter of April 10, I scheduled an interest arbitration hearing for April 26 and directed each party to submit a final offer no later than April 18 in accordance with N.J.S.A. 34:13A-16(f)(1). On April 26, I met with the parties to attempt to achieve a voluntary settlement on the issues. Those mediatory efforts were not successful, and on May 10, 2012, a hearing was convened.

At the hearing, the Prosecutor's Office and the PBA each submitted substantial documentary evidence and examined witnesses. Investigators Barry Bittenmaster and Chris Vanadea testified for the PBA. RHM Benefits Consultant and Labor Relations Director Allison Stapleton testified for the Employer. Prosecutor Robert Bianchi testified for both the PBA and the Employer. Both parties submitted Final Offers by the hearing. Post-hearing summations were filed by May 17, 2012.

**FINAL OFFERS OF THE PBA**

The PBA submitted the following final offer:

**ECONOMIC PROPOSALS:**

Duration:

- 3-year contract: 1/1/12 through 12/31/14

Wages:

- 2.5% across-the-board increases effective January 1 each year of the contract.

Longevity (Article XV):

- Longevity program for all unit employees as follows:

<u>Length of Service</u>	<u>Percentage</u>
10 years	1% of base pay
15 years	2% of base pay
20 years	3% of base pay

"Service" defined under NJSPFRS purposes.

Application of Benefits (Article XXV):

Provide full retroactivity for employees who retired or separated from service after expiration of prior contract but before award.

Overtime (Article XIII):

- Compensation for work performed beyond 37.5 hours per week at overtime rate.
- Employee option to choose overtime payments by compensatory time or compensation.
- Increase weekend on-call rate from \$40 to \$75 per day and increase weekday on-call at 25% rate in compensatory time off (e.g., 15 minutes of Comp time for each hour on call).

**NON-ECONOMIC PROPOSALS:**

Grievance Procedure (Article V):

- Make minor discipline subject to the contract grievance arbitration procedures.

General Provision, Article XIX:

- delete section of this article as in conflict with N.J.S.A. 34:13A-5.3.

Work Week Codification (Article XIII):

- Codify current practice that workweek consists of five days on followed by 2 days off.

Vehicles (new Article):

- Continue the current procedure for assignment of County vehicles. If vehicle is removed from officer, it shall be replaced with appropriate compensation.
- Delete any fuel reimbursement provision.

**FINAL OFFERS OF THE EMPLOYER**

**ECONOMIC PROPOSALS:**

Duration:

- January 1, 2012 through December 31, 2014

Medical Plan:

- All employees currently enrolled in the Medallion Plan shall have the option to transfer to the PPO Plan.
- All employees enrolled in the Wraparound Plan shall transfer to the PPO Plan. The Wraparound Plan will no longer be available for enrollment.

Payroll Contributions - Current Employees:

- Employees enrolled in the HMO Option plan shall contribute in accordance with Chapter 78.
- Employees enrolled in the Medallion Plan shall contribute the greater of 60% of the difference between the cost of the Medallion Plan and the PPO Plan, plus 1.5% of base salary, plus 3% of the premium or in accordance with Chapter 78.
- Employees enrolled in the PPO Plan shall contribute the greater of 1.5% of base salary or in accordance with Chapter 78.

Prescription Co-Pays:

- Applicable to All Active Employees and Employees Who Retire After the Date the Award is Issued.
  - Generic                      \$ 1.00
  - Brand Name                 \$20.00
  - Non Preferred             \$35.00

Retiree Health Insurance:

- Employees hired after the date the Award is issued, who retire and meet the criteria for County-paid health insurance, will receive a plan for the employee only.
- Employees hired after the date the Award and who meet the requirements for County-paid health insurance will have the option to add their eligible dependents to the plan at the retiree's expense.

Wage Proposal:

- No step movement for the term of the Agreement
- Flat dollar wage increase for each bargaining unit member for each year of the Agreement, based on the following formula: (Employer's total cost for base salary for 2011 x

.06) divided by 3, then divided by the number of bargaining unit employees.)

- Hiring rate to be increased during the term of the Agreement by the same flat dollar amount described in the preceding paragraph.

**NON-ECONOMIC PROPOSALS:**

None

**SUBMISSIONS OF THE PARTIES**

I will focus mainly upon a general summary of their submissions on the points that touch upon their main contentions although all of the record has been reviewed in its entirety even if not specifically mentioned in the summary.

**FINDINGS OF FACT**

**Demographics**

Morris County is located in the northern part of New Jersey and consists of 469 square miles (P-20). The County is located in the Newark-Union, NJ-PA Metropolitan Division (P-20).

According to the New Jersey Department of Labor and Workforce Development, in 2010, Morris County had a population of 492,276 of which 76.1% was persons over 18 years old (P-20). There were 189,842 housing units in 2010 (P-20). The per capita income for 2008 was \$71,812 (P-20). The median household money income, based on the 2009 American community Survey, was \$96,787 (P-20). Persons below poverty, based on the 2009 American Community Survey, were 3.3% (P-20). Private sector employment by

workplace in 2009 was 240,813 and the labor force 2009 annual average was 274,500 (P-20). The employed residents' 2009 annual average was 254,700 while unemployed residents' annual average was 19,800 (P-20). The 2009 annual average unemployment rate was 7.2% (P-20). Morris County retail sales for 2007 were \$8,756,311 (P-20). Retail sales per capita were \$16,729 (P-20).

### **Mission Statement**

The Morris County Prosecutor's Office (MCPO) commits its resources, in partnership with the law enforcement community and citizens of Morris County, to promote a safe and secure environment, free from the fear of crime (U-2). The members of this office serve to minimize the impact of the criminal justice system upon the lives of victims, witnesses and their families by helping them to overcome the effects of crime, to help them as they participate in the criminal justice system and to help them support successful prosecutions (U-2). The MCPO, as the chief law enforcement agency in Morris County, provides leadership and supervision over the chiefs of police and municipal prosecutors with a view to ensure the effective, efficient and uniform enforcement and prosecution, of the criminal laws and the administration of criminal justice throughout Morris County (U-2).

### **Organizational Structure**

The MCPO is organized into components as follows: (U-10).

- Administrative Division
  - Administrative & Policy Development Unit

- Support Services Unit
- Community Affairs Unit
- Forfeiture Unit
- Finance Unit
- Training Unit
- Firearms Unit
- Specialized Services Unit
- Special Operations Division
  - Intelligence Crime Task Force (ICTF) Unit
  - Narcotics Unit
  - Technical Assistance Response Unit (TARU)
  - Homeland Security Unit
  - Arson/Environment Crimes Unit
- Tactical Division
  - Major Crimes Unit <sup>1</sup>
  - Sex Crimes/Child Endangerment Unit (SCCEU)
  - Fugitive Unit
- Specialized Crimes Division
  - Professional Standards Unit (PSU)
  - Fraud Unit
  - Insurance Fraud Unit
  - Computer Crimes Unit
- Trial Division
  - General Investigations Unit
  - Victim/Witness Unit
  - Appellate Unit
- Family Division
  - Domestic Violence Unit
  - Juvenile Unit
  - Missing Persons Unit
  - Megan's Law Unit

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<sup>1</sup> All law enforcement agencies within Morris County are directed to immediately notify the MCPO, Major Crime Unit, when specific incidents, as listed in the MCPO Directive dated January 1, 2006, occur within their jurisdiction and/or affect Morris County. (U-3). The MCPO Major Crime Unit investigators are on call 24/7 to take charge of crime scenes. (U-3).



### **Organizational Background**

Robert A. Bianchi became the Morris County Prosecutor on June 22, 2007 (U-7) and is the head of the MCPO and appointed by the Governor of New Jersey for a five year term (U-5).

The County Prosecutor is the Chief Law Enforcement Officer (LEO) of the County and as such he provides leadership and supervision of the chiefs of police and municipal prosecutors with a view to ensure the effective, efficient and uniform enforcement and prosecution of the criminal laws and the administration of criminal justice throughout Morris County (U-2). The Prosecutor is often at crime scenes and in the court rooms and not just serving as a "de facto" prosecutor.

It is the policy of the MCPO to meet or exceed all applicable accreditation standards promulgated by the New Jersey State Association of Chiefs of Police (NJSACOP) and/or the Commission on the Accreditation of Law Enforcement Agencies (CALEA) and to maintain accredited status at all times (U-9).

The PBA's exhibit U-5<sup>2</sup>, which is an article from the Daily Record, states that the MCPO has handled 117 fewer cases than its predecessor's administration but has put criminals behind bars for 661 more years. It further goes on to state that the office focused on cutting wasteful spending, hiring experienced trial lawyers, honing their skills and making sure investigations were as thorough as possible (U-5).

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<sup>2</sup>The Daily Record article did not reflect a published date.

Executive Assistant Prosecutor, Maggie Calderwood, said the office has taken a more qualitative approach to cracking down on the most serious offenders like killers, rapists, gun dealers and gangs (U-5). In her presentation, Calderwood stated that under the current administration 13,351 cases were opened through the end of 2011 compared with 13,468 during the previous County Prosecutor's term (U-5). Violent crime has decreased 23.16% during the current Prosecutor's term (U-7). When combined with non-violent crime, a decrease of 12.82% was noted (U-7). The Morris County Prosecutor's detectives conduct complex and highly specialized criminal investigations, often independently and under intense time constraints and adverse conditions, which at times includes personal risk to the detective's individual safety, well-being and the safety of his/her family (U-4).

A prosecutor's detective is often responsible for overseeing all aspects of a criminal investigation above and beyond that of all local police officers/detectives or ranking officers; is assigned to investigate highly sensitive and traumatic cases of murder, sexual assault, sexual abuse, child abuse, domestic violence and aggravated assault; is assigned to the Major Crimes Unit to conduct extremely comprehensive investigations into the cause and manner of death in suspected cases of homicide or suspicious death cases; and is assigned to highly specialized assignments such as Polygraph Examiner, Arson

Investigator, Police Sketch Artist, Computer Crimes/Forensic Examiner, Crime Intelligence Analyst, Homeland Security Investigator, Fraud Examiner, Insurance Fraud Specialist and Environmental Crimes Investigator (U-4).

MCPO Prosecutor's Detectives develop, coordinate and conduct training seminars, in-service workshops and in-service training to police recruits at the Morris County Police Training Academy as well as other police academies throughout the State. (U-4) In summary, the Prosecutor's detective is the position most called upon when the most unusual, difficult and complex criminal case or situation is discovered by the Municipal Police Officer (U-4).<sup>3</sup>

Barry Bittenmaster, MCPO Detective assigned to the Specialized Crime Division, testified that MCPO coordinates intelligence information for information and sharing. He stated that there were some unique specialties in the County Prosecutor's Office such as cybercrime, not organized in local police departments. He testified that only one of the 37 towns in Morris County did not have a police department. Bittenmaster said that the MCPO also works with the New Jersey State Police, local, State, and federal levels and other county prosecutors' offices.

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<sup>3</sup> Detectives are assigned to Divisions within the MCPO organizational structure.

Bittenmaster testified that the MCPO has a high *esprit de corps* and is extremely productive. He stated that convictions and moving cases have significantly increased.

The Community Affairs Unit (CAU) reaches out to residents, schools and churches and in return has received valuable intelligence about crimes in communities and encouraged people to safely come forward with information (U-5). The CAU is comprised of assistant prosecutors, support staff, detectives and agents (U-29).

The CAU has a number of ongoing partnerships and community-based educational programs (U-7). In 2011, the volunteer hours of office staff were equal to \$250,000 of their own time and taxpayers' dollars (U-7). In 2011, it presented 120 educational programs to schools in Morris County with a combined attendance of 15,885 students (U-7). It also hosts law enforcement and career development workshops in partnership with the 12 area colleges and universities (U-7). The program is designed to prepare students for a career in law enforcement (U-7). The workshop has graduated more than 400 students and many of these students have become interns for the office working for free, while saving additional costs (U-7).

The office also has significant partnerships with the Morris County Department of Law and Public Safety and the Crime Stopper Program (U-7).

The Intelligence Crime Task Force (ICTF) works collaboratively with the municipal police departments (U-7). The ICTF and SEU maintain intelligence on suspects, defendants and gang members suspected of criminal activity in the County (U-29). It conducts and targets investigations that focus on repeat offenders and those contributing to overall crime (U-7). It has a solid screening process and tracking system that follows an Intelligence-Led Policing Model (U-7).

The Burglary Task Force has partnered with Morris County jewelry stores and second hand dealers (U-29). Intelligence analysis is performed on those individuals selling a large amount of jewelry and used goods, which lead certain individuals to become self-selecting targets (U-29). The ICTF also communicates scams and security threats with county jewelry stores (U-29).

The MCPO spends a lot of time working to prevent gangs from taking a stronghold in the county (U-7). Drugs are the predominant crime category for this group (U-7). Through the Intelligence Led Policing Model, the mission of the ICTF and SEU is the investigation of crimes involving gangs, guns, drugs, and burglaries with an overall focus on violent crime and offenses which impact the quality of life in county (U-29).

A total of 5,644 Crime Index Offenses were reported to police in Morris County during 2010, a 5.62% decrease when compared to 2009 ((U-29). This figure was the highest year-

over-year decrease among all counties in the State of New Jersey (U-29).

Many of the above successes of the office are depicted in the below chart which provides the total crime index from 2007 to 2010 (U-29):

<b>PERCENTAGE CHANGE FROM 2007 TO 2010</b>					
<b>Year</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>% Change</b>
<b>Total Crime Index</b>	<b>6474</b>	<b>6220</b>	<b>5980</b>	<b>5644</b>	<b>-12.82%</b>
<b>Violent Crime Total</b>	<b>462</b>	<b>430</b>	<b>387</b>	<b>355</b>	<b>-23.16%</b>
Murder	1	3	2	2	<b>100.00%</b>
Rape	37	33	37	26	<b>-29.73%</b>
Robbery	149	116	100	91	<b>-38.93%</b>
Aggravated Assault	275	278	248	236	<b>-14.18%</b>
<b>Non-Violent Crime Total</b>	<b>6012</b>	<b>5790</b>	<b>5593</b>	<b>5289</b>	<b>-12.03%</b>
Burglary	1037	1071	1056	1119	<b>7.91%</b>
Larceny-Theft	4719	4430	4329	4023	<b>-14.75%</b>
Motor Vehicle Theft	256	289	208	147	<b>-42.58%</b>

First Assistant Prosecutor Thomas Zelante, whose main tasks include financial management and civil litigation related to the office, highlighted the hundreds of thousands of dollars the administration saved (U-5). For example, the telephone service fees were reduced and he negotiated lower fees paid to state-hired experts (U-5).

Zelante stated that Bianchi instituted a comprehensive review of the office's vehicle fleet and as a result, there has been an increase of "office pool vehicles" rather than "take home vehicles" (U-7). He further testified that the office now has Dodge Avenger sedans in its vehicle fleets, not the

expensive Durangos and sport-utility vehicles from the past (U-5). It also reduced overall fuel consumption office-wide saving an estimated 119,742 gallons of gasoline over the 3.5 years saving approximately \$366,240 (U-7).

The average monthly fuel consumption and savings from 2007 to 2011 is as follows:

- 2007 = 5,700 gallons
- 2011 = 2,841 gallons
- \$8,720 savings per month equaling \$366,240 total savings over a 3.5 year period

Bianchi testified that his office has kept expenses as low as possible by such efforts as by leaving vacant 14 high-level, professional positions (U-6).

## **Budgeting**

### **Employer's Perspective**

The County of Morris uses sound and conservative budgetary practices (P-24). The County has historically adopted its budget in a timely manner and has been conservative in its revenue and expenditure projections (P-24). The budget has been developed by anticipating risk elements that lie outside of the administration's control, such as the uncertainty of economic conditions and its potential effects on major revenues or costs associated with unexpected events such as the storms it had in 2011 (P-24). The County contends that the budget should be flexible enough to provide the administration with the ability

to react to revenue and expense changes in order to meet its overall budgetary targets (P-24).

The rating agencies consider conservative budgetary practices to be a credit strength (P-24). Morris County currently ranks as a top issuer of municipal securities, with the highest 'Triple AAA' credit rating possible for a local government (P-24). The AAA bond rating is extremely important because the higher the rating, the more money the taxpayers and the County save in interest payments on bond and note sales (P-24). The County is also able to pass these savings on to local municipalities and school boards through the Morris County Improvement Authority, which guarantees financing using the county's AAA rating, resulting in a lower interest cost than could be obtained independently (P-24).

#### PBA Perspective

The PBA provided exhibit U-23 which is an article from NorthJersey.com. The article states that the Morris County Freeholders have introduced a 2011 County operating budget that reduces the gross county tax levy for the third consecutive year (U-23). The proposed budget also comes in below the State-mandated 2% cap on spending increases (U-23). The freeholders accomplished that goal without excluding items such as pension and health insurance costs and debt service payments, for which exclusions are permitted under the cap law (U-23).



Under the proposed 2011 budget, the gross county tax levy is down 1.8 million from 2010, inclusive of a half-percent reduction in the Open Space Tax, with a spending increase of just 1.59% (U-23). The budget also reflects a salary freeze agreed to by 1,722 County employees in 18 of the 21 bargaining units (U-23).

2011 budget priorities included the continuation and expansion, wherever possible, of shared service agreements with towns and nearby counties (U-23). For example, the County in 2011 would be providing full emergency dispatch services from its Communication Center to 21 towns and 9-1-1 emergency services to one community (U-23). As a result of this partnership, twenty-six (26) positions were added to the Communication Center and would be fully funded by the municipalities whose emergency services are being dispatched by the County (U-23). These agreements were expected to generate \$2.8 million dollars in revenue to the County that year, while at the same time saving the participating towns money in the form of personnel and technology upgrades (U-23).

The County also established shared service agreements with several counties for the use of Morris County's Juvenile Detention Center and the Morris County Youth Shelter (U-23). These agreements would reduce costs and result in more than \$1 million in revenue that year (U-23).

The freeholders also entered into shared services contracts with Warren and Sussex Counties under which the Morris County

Medical Examiner's Office assumes jurisdiction of the medical examiner cases for those two counties (U-23). These contracts would result with more than \$453,000 in anticipated revenue coming to Morris, while the County would be saving \$150,000 in operating costs (U-23). This agreement resulted in the addition of seven positions to the Medical Examiner's Office, with those positions also fully funded by the counties being served (U-23).

The County also had an overall staff reduction of 31 positions for 2011 (U-23). Since 2005, 384<sup>4</sup> County government positions have been eliminated, representing a 16.4% reduction in staff (U-23).

Also included in the proposed 2011 County's budget is the county's contribution of \$15.3 million to state pension systems (U-23).

Zelante stated before the Board of Chosen Freeholders Meeting on February 8, 2012, that between 2007 and 2011, \$557,337 of appropriated operating expense funding remained unspent and was returned to the County (U-7). Over that same period, \$3,242,659 of appropriated salary and wage remained unspent and was returned to the County as well (U-7, 29).

The fund balance position is a measure of a government's financial flexibility to meet essential services during periods of limited liquidity (P-24). Fund Balance must be viewed with a

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<sup>4</sup>Re: P-24, the Employer maintains that it has eliminated over 400 positions since 2005, close to 20% reduction in employee headcount and an approximate savings of \$20 million in salary and benefits.

long-term vision and not as the ability to pay within a one year timeframe (P-24).

The following table illustrates the County of Morris Fund Balance Earned and Used from 2007 through 2011 (P-24):

<b>FUND BALANCE EARNED &amp; USED</b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Realized Revenues</b>	\$321.0	\$328.7	\$343.0	\$348.5	\$357.5
<b>Expenditures</b>	\$297.0	\$309.4	\$323.5	\$328.0	\$335.3
<b>Excess of Revenue over Expenditure</b>	\$24.0	\$19.3	\$19.5	\$20.5	\$22.2
<b>Excess as % of Realized Revenues</b>	7.5%	5.9%	5.7%	5.9%	6.2%
<b>Prior Year (P/Y) Balance Utilized</b>	\$24.1	\$20.0	\$20.0	\$20.8	\$21.2

State Aid:

State Aid realized in cash was \$33,081,235 in 2011 (P-27). Anticipated State Aid is \$28,986,951 for 2012 (P-27).

Ratables:

The County's equalized ratables for 2008 were slightly over \$102,000,000 (P-24). The ratables rose slightly in 2009 but have since declined for three consecutive straight years (P-24). In 2012, the equalized ratables are valued at around \$95,000,000 (P-24).

Tax Rates:

The County Tax Base reflects tax rates (per \$1,000) as follows (U-26):

- 2006 = 2.01
- 2007 = 1.91
- 2008 = 1.90
- 2009 = 1.95
- 2010 = 2.06

The chart below reflects the 2010 average total property tax levy by New Jersey counties (P-23):

<b>AVERAGE TOTAL PROPERTY TAX LEVY BY COUNTY (2010)</b>	
<u>County</u>	<u>Amount</u>
Bergen	\$10,057
<b>Morris</b>	<b>\$9,398</b>
Essex	\$9,290
Union	\$9,061
Somerset	\$8,471
Passaic	\$8,459
Hunterdon	\$8,282
Monmouth	\$7,792
Hudson	\$7,073
Middlesex	\$6,838
Sussex	\$6,345
Mercer	\$6,249
Burlington	\$5,680
Gloucester	\$5,633
Warren	\$5,494
Camden	\$5,110
Atlantic	\$4,965
Ocean	\$4,816
Cape May	\$4,454
Salem	\$3,759
Cumberland	\$3,456
Source: New Jersey Department of Community Affairs, Division of Local Government Services	

Morris County's average property tax levy, at \$9398, is the second highest in the state (P-23).

% of Tax Collections:

The Comparative Statement of Current Fund Operations and Change in Current Surplus reflects Current Taxes collected for years 2010 and 2011 as 100% equally (P-27). The amount raised for taxation for 2010 was \$209,993,183 and for 2011 it was \$213,967,397 (P-29, 35).

Tax Appeals:<sup>5</sup>

The Schedule of Trust Fund Deposits and Reserves (P-31) reflects a December 31, 2010 Tax Appeal Fees balance of \$666,843 plus receipts of 204,600 and disbursements of \$25,324 (P-31). The December 31, 2011 Tax Appeal Fees balance was \$846,119 (P-31).

Surplus:

The County's surplus balance as of December 31, 2011 was \$41,654,391 (P-27; U-25). Total current anticipated surplus for 2012 is \$21,200,000 (P-27; U-25). The surplus balance remaining is \$20,454,391 (P-27; U-25).

County Debt Service:

Appropriated Debt Service for 2012 is \$37,633,690 (P-27). Appropriated Debt Service for 2011 was \$36,221,758 and paid was \$36,201,757 (P-27). Debt Service (Net), for the 2012 "1977 Levy Cap Calculation" was \$34,613,756 (P-35).

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<sup>5</sup>The number of tax appeals experienced by the County was not found in any of the exhibits.

% of Budget Funded by Taxpayers:

Total 2011 appropriations for Morris County were \$313,038,180 (P-27). Total amount to be raised by taxation was \$213,967,397 (P-27). Percentage of 2011 Budget that was funded by Taxpayers is 68.35%. Total 2012 appropriations for Morris County are \$317,334,110 (P-27). Total amount to be raised by taxation is \$217,917,846 (P-27). Percentage of 2012 Budget that is funded by Taxpayers is 68.67%. There is a very insignificant change in the percentage of taxpayers' funding of the budget from 2011-2012.

% of Budget for Prosecutor's Office:

Total 2011 modified appropriated salaries and wages for the MCPO were \$13,020,620, of which \$11,375,710 was paid and \$1,644,910 were reserved (P-27). Total 2011 appropriated other expenses for the MCPO were \$490,000, of which \$453,779 were paid and \$36,221 were reserved (P-27). In 2011, the total paid salaries and wages and other was \$11,829,489 (P-27). For 2011, the Prosecutor's salary and wages and other costs equate to 5.53% of the total County Budget's salary and wages and other costs and 4.9% of total County taxes (P-27).

The 2012 Current Fund - Appropriations (A) Operations for the Prosecutor's Office for salary and wages is \$13,259,490 and \$490,000 for other for a total of \$13,749,490 (P-27). The total Morris County 2012 Current Fund - Appropriations, (A) Operations balance for salaries and wages and other is \$242,909,931 (P-27).

For 2012, the Prosecutor's salary and wages and other costs equate to 5.7% of the total County Budget's salary and wages and other costs and 6.3% of total County taxes (P-27).

The following chart reflects 2011 and 2012 total appropriations, total taxes, total paid and appropriated MCPO salaries and wages and other expenses in relationship to total County taxes (P-27, 29):

<b>2011 Total Appropriations</b>	<b>Total Taxes</b>	<b>Percentage</b>
\$313,038,180	\$213,967,397	68.35%
<b>2011 Total Salary &amp; Wages &amp; Other - Appropriations</b>	<b>2011 MCPO Paid Salaries &amp; Oth Exp</b>	<b>Percentage</b>
\$240,380,135	\$11,829,489	4.9%
<b>2011 MCPO Salary &amp; Wages</b>	<b>Total Taxes</b>	<b>Percentage</b>
\$11,829,489	\$213,967,397	5.53%
<b>2012 Total Appropriations</b>	<b>Total Taxes</b>	<b>Percentage</b>
\$317,334,110	\$217,917,846	68.67%
<b>2012 Total Salary &amp; Wages &amp; Other - Appropriations</b>	<b>2012 MCPO Salaries &amp; Oth Exp</b>	<b>Percentage</b>
\$242,909,931	\$13,749,490	5.7%
<b>2012 MCPO Salary &amp; Wages</b>	<b>Total Taxes</b>	<b>Percentage</b>
\$13,749,490	\$217,917,846	6.31%

#### Grant Fund

The MCPO has pursued a number of grants as well as aggressive forfeiture action to make purchases that would otherwise be purchased within the operating budget (U-7). Per exhibit P-31, the 2011 Grant Fund balance was \$3,382,642.

### Forfeiture Funds

The MCPO had entered into the Federal Equitable Sharing Agreement for year-end 2011 (U-8). This agreement sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds and any interest income thereon, which are equitably shared with participating law enforcement agencies (U-8). The County Prosecutor's Office agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury (U-8). Funds from state and local forfeitures and other sources *must not* be commingled with federal equitable sharing funds (U-8). The Prosecutor's Office shall establish a separate revenue account or accounting code for state, local, Department of Justice and Department of the Treasury forfeiture funds (U-8). Interest income generated must be accounted for in the appropriate federal forfeiture fund account (U-8).

### Financial Concerns & Comparables

The current benefit rate for employees of this bargaining unit is 63%, meaning the County pays 63 cents in benefits for each dollar of payroll (P-24). Interest rates on investments, which in 2007 were around 5%, are now around .35% (P-24). Revenues from the County Clerk are down significantly (13.9 million versus 7.7 million) compared to 2007 (P-24). Morris View Healthcare Center has seen its Medicaid rate go from \$241



per bed day to an estimated \$214 per bed day in two years, a 2.1 million dollar revenue drop (P-24).

Nursing Home Revenues:

Current trends at the State and Federal Government indicate that Medicaid funding is under pressure to be reduced (P-24). Evidence of this is the rate renewal as of July 1, 2011 which was reduced by \$10 to \$231.35 per day (P-24). If the county assumed there was the same number of Medicaid days in 2012 as in 2011, the revenue reduction would be approximately \$800,000 per year (P-24). The county also expects that rate to further drop to \$214 per day on July 1, 2012 resulting in an additional reduction in county revenues of 1.3 million dollars (P-24). This reduction in Medicaid will place pressure on the need to raise taxes in order to continue the facility operation (P-24). The need to raise taxes will compete with other important needs of the County (P-24). The County has been reducing costs in response to this trend, however; government regulations and union contracts can often delay this process (P-24).

Other Post-Employment Benefits (OPEB):

The County was required in 2007 to account for the cost of "other post-employment benefits" (P-24). The County provides health care insurance coverage to retired employees and through 2010 used a "pay as you go" accounting for the cost (P-24).

The County's retiree health benefits will be an increasing expense in the County budget and in 2012 the County of Morris

will spend approximately \$13,000,000 on health and prescription benefits for retirees (P-24). This amount represents over one third of the county's total health insurance budget (P-24). The estimated accrued liability included in the County's financial statements was \$531,957,400 as of January 1, 2007 and has grown to \$751,599,500 as of January 1, 2011 (P-24).

In 2007, the County budget for health insurance totaled \$24,800,000 and in 2012 the amount is \$32,250,000 (P-24). See the following chart (P-24)<sup>6</sup>:

<b>GROUP HEALTH INSURANCE % OF TAX EFFORT 2007-2012</b>			
<b><u>Budget Year</u></b>	<b><u>Group Health Insurance</u></b>	<b><u>Tax Effort</u></b>	<b><u>% of Tax Effort</u></b>
<b>2007</b>	<b>\$24,800,000.00</b>	\$186,075,741.56	13.33%
<b>2008</b>	\$26,675,000.00	\$193,480,381.85	13.79%
<b>2009</b>	\$29,175,000.00	\$201,365,439.61	14.49%
<b>2010</b>	\$33,100,000.00	\$209,993,182.63	15.76%
<b>2011</b>	\$34,450,000.00	\$213,967,397.34	16.10%
<b>2012</b>	<b>\$35,250,000.00</b>	\$217,917,846.42	16.18%

Pension Increases:

Costs to the County of Morris for its share of the pension cost continue to be significant (P-24). The employer share for PFRS pension obligations has grown from approximately 17% of every payroll dollar in 2007 to a little over 24% in 2012, a 41% increase in five years (P-24). The \$0.24 cents of pension costs for each dollar of payroll contributes significantly to a

<sup>6</sup> Employees withholding of \$1,350,000 is not included in the chart. Total 2012 budget for health insurance for County employees is \$36,600,000 (P-27).

greater than 60% benefit rate paid on all law enforcement salaries that are part of PFRS (P-24, 27). See chart below (P-24):

<b>POLICE &amp; FIRE PENSION % OF TAX EFFORT <sup>7</sup></b>				
<b>2007-2012</b>				
<b>Budget Year</b>	<b>Pension (PFRS Only)</b>	<b>Tax Effort</b>	<b>% of Tax Effort</b>	<b>Employer Rate</b>
<b>2007</b>	\$3,391,000.00	\$186,075,741.56	1.82%	16.98%
<b>2008</b>	\$5,397,688.00	\$193,480,381.85	2.79%	24.73%
<b>2009</b>	\$5,684,031.00	\$201,365,439.61	2.82%	25.39%
<b>2010</b>	\$5,616,112.00	\$209,993,182.63	2.67%	25.88%
<b>2011</b>	\$6,326,961.00	\$213,967,397.34	2.96%	29.36%
<b>2012</b>	\$6,074,825.00	\$217,917,846.42	2.79%	24.06%

In summary, 2012 group health insurance and *all* pension benefits comprise 23.13% of the \$217,917,846.42 (P-27) total county tax effort or \$50,415,058.56 (P-24).

Revenue Declines:

Since 2007 the county of Morris has seen significant declines in several of its larger revenue areas (P-24). County Clerk revenues were \$13,935,611 in 2007 and dropped to \$7,695,428 (P-24). Interest Income was \$5,723,905 in 2007 and dropped to \$622,795 in 2011 (P-24). The total loss of revenue in these two areas alone is over \$11,000,000 (P-24).

The total revenue declines along with the increased expense areas discussed above have created upward pressure on taxes, resulting in the need to control all expense increases that are

<sup>7</sup> PBA exhibit U-27 reflects a change in County PFRS contributions as result of Ch. 78, resulting in a savings to the County of \$256,910.

subject to the control of the Freeholders (P-24). See the following chart (P-24):

<b>REVENUE DECLINES (2007-2011)</b>						
<b>Department</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Overall Loss of Revenue (2007-2011)</b>
<b>County Clerk</b>	<b>\$13,935,611</b>	\$9,586,439	\$7,834,352	\$8,416,453	<b>\$7,695,428</b>	<b>\$6,240,183</b>
<b>Added &amp; Omitted Taxes</b>	\$1,243,947	\$1,104,418	\$794,884	\$681,927	\$418,240	<b>\$825,707</b>
<b>Interest Income</b>	\$5,723,905	\$3,056,654	\$1,414,413	\$899,460	\$622,795	<b>\$5,101,110</b>
<b>MRNA</b>	\$9,704,437	\$8,523,830	\$5,746,368	\$5,819,073	\$5,104,058	<b>\$3,885,364</b>
<b>Total All Local Revenues</b>	\$22,159,603	\$21,785,579	\$18,238,327	\$17,344,581	\$17,834,205	<b>\$4,815,022</b>
<b>Total Revenues</b>	\$52,767,503	\$44,056,920	\$34,028,344	\$33,161,494	\$31,674,726	<b>\$20,867,386</b>

Housing Market:

The County Clerk's Office derives a significant portion of its revenues from housing and mortgage transactions (P-24). As a result of the decline of the housing market, both in sales numbers and median price, the County's revenues were reduced (P-24). Morris County revenues declined from \$13.935 million in 2007 to \$7.695 million in 2011, a \$6.24 million dollar reduction (P-24).

2% Tax Levy Cap:

N.J.S.A. 40A:4-45.4 places limits on county tax levies and expenditures (P-24). This law is commonly known as the "Cap Law" (the "Cap Law") (P-24). An annual Cost-of-Living

Adjustment (COLA) is authorized under the 1977 budget cap law and currently reflected as N.J.S.A. 40A:4-45.1a (P-34).

Under the 1977 law, the Director of the Division of Local Government Services must promulgate the Cost of Living Adjustment (COLA, formerly called Index Rate) (P-34). The COLA is based on the Implicit Price Deflator for State and Local Governments, calculated by the U.S. Department of Commerce, Bureau of Economic Analysis (P-34).

The Cap Law provides that the local unit shall limit any increase in its budget to 2.5% or the COLA, whichever is less, of the previous year's local unit tax levy, subject to certain exceptions (P-24).

The provisions of P.L. 2010, C.44 effective June 13, 2010 (the "Amendment"), reduces the cap to 2% and limits exclusions only to capital expenditures, including debt service, certain increases in pension contributions and accrued liability for pension contributions in excess of 2%, certain healthcare cost increases in excess of 2% and extraordinary costs directly related to a declared emergency (P-24). The Division of Local Government Services has advised that counties must comply with both the original "Cap" and the Amendment tax levy limitation, selecting the more restrictive of the two (P-24). These tighter restrictions make it more important to control expenses in areas that are within the Cap (P-24).

The County of Morris's Maximum Allowable Amount to be Raised by Taxation - County Purpose Tax for the 2012 Cap Calculations is \$220,838,404 (P-27, 35). The Amount to be Raised is \$217,917,846 (P-35). Therefore, the County of Morris is within the 2% Levy Cap.

Cap Bank:

A county may by resolution, increase the COLA percentage up to 3.5% [N.J.S.A. 40A:4-45.14(b)] or bank (for up to two years) the difference between its final appropriation subject to the cap and 3.5% (P-34). Cap Banking is not automatic (P-34). A single ordinance or resolution can be used to accomplish both activities: increasing appropriations and banking any unappropriated balance (P-34). Cap bank balances from 2010 and 2011 are available for use in 2012 (P-34).

A Cap Bank was not established for the County of Morris as per review of provided exhibits. The "2010 and 2011 Cap Bank Utilized" in the 1977 Levy Cap Calculations was zero dollars (P-35).

Cost of Living Increase (CPI):

As of March 2012, the CPI for All Urban Customers (CPI-U) increased by 2.7% before seasonal adjustment over the last 12 months (P-36). The unadjusted data are of primary interest to consumers concerned about the prices they actually pay (P-36). Unadjusted data also are used extensively for escalation purposes (P-36).

The CPI-U for the U.S. Northeast city average urban area is reflected by population size and percent change in the following chart (P-36):

Region & Area Size	% Change to Mar 2012 from:			% Change to Feb 2012 from:		
	Mar-11	Jan-12	Feb-12	Feb-11	Dec-11	Jan-12
Northeast Urban	2.5%	0.9%	0.5%	2.8%	0.8%	0.4%
Size A - More than 1,500,000	2.4%	0.9%	0.5%	2.7%	0.8%	0.4%
Size B/C- 50,000 to 1,500,000	2.8%	1.0%	0.5%	3.3%	0.8%	0.5%

#### Bureau of Labor Statistics Data

The first of the following charts provide Total Compensation for State and local government workers for the years 2001 to 2011<sup>8</sup> (P-39). The second chart provides the MCPO and PBA Local 327 Economic Cost Index (ECI) vs. Annual Wage Increase (State Local) for the years 2007-2010 (P-39).

<b>Employment Cost Index (Total Compensation)</b>				
<u>Year</u>	<u>Qtr 1</u>	<u>Qtr 2</u>	<u>Qtr 3</u>	<u>Qtr 4</u>
2001	3.3	3.7	4.4	4.1
2002	3.7	3.4	3.7	4.1
2003	4.3	4.3	3.7	3.5
2004	3.4	3.5	3.4	3.6
2005	3.6	3.5	3.9	4.1
2006	3.7	3.8	4.1	4.1
2007	4.6	4.8	4.3	4.1
2008	3.6	3.5	3.4	3.0

<sup>8</sup> Total compensation includes wages, salaries and employer costs for employee benefits.

2009	3.1	3.1	2.3	2.3
2010	2.0	1.7	1.8	1.8
2011	1.8	1.7	1.5	1.3

<b>MCPO &amp; PBA Local 327</b>						
<b>Year</b>	<b>Index</b>	<b>\$ Resulting Wage</b>	<b>% Increase</b>	<b>\$ Resulting Wage</b>	<b>% More Wage Incr</b>	<b>\$ More Wage Incr</b>
2007	4.10%	\$80,573.40	4.00%	\$80,496.00	-0.10%	-\$77.40
2008	3.00%	\$82,990.60	4.00%	\$83,716.00	1.00%	\$725.40
2009	2.30%	\$84,899.39	4.00%	\$87,064.00	1.70%	\$2,164.61
2010	1.80%	\$86,427.57	4.00%	\$90,547.00	2.20%	\$4,119.43
2011	1.30%	\$87,551.13	0.00%	\$90,547.00	-1.30%	\$2,995.87

### Working Conditions

The salary guide below from the 2007-2010 collective negotiations agreement (J-1) shows the employees' current base salary at each rank and step:

<b>Step</b>	<b>2011 Base</b>
Entry	\$54,616
Step 1	\$55,861
Step 2	\$57,611
Step 3	\$60,743
Step 4	\$65,690
Step 5	\$69,428
Step 6	\$71,953
Step 7	\$75,883
Step 8	\$81,212
Step 9	\$90,547

Employees hired on or after January 1, 2001 shall advance (on the guide) to the next schedule step (vertically) on their respective anniversary dates of hire.

On October 20, 2010, the parties agreed to extend the 2007-2010 contract for an additional year, with a slight modification. This contract provided for no step movement on



the salary guide or across-the-board increase during 2011.

Accordingly, the employees continue to be on their 2010 salary steps (J-1A).

Comparables - Internal

**Morris County Employees**

	Max Pay	% Incr.	Max Pay	% Incr.	Max Pay	% Incr.
Council 6- Mosquito				1.75		1.75
Council 6- Housing		0%		1.75		1.75
Council 6- Supervisors				1.75		1.75
Council 6- BC/WC				1.75		1.75
Park Police			\$86,000	2.27	87,952.	
Sheriffs Civilians				1.75 W/ no step movement		1.75 W/ no step movement

(P-43-48)

In addition, two law enforcement groups-correction officers and correction superiors are presently in interest arbitration for successor contracts to those which expired in 2010. Twelve other contracts for County employees, including several law enforcement units, have not yet been settled (P-42). One of these is the Prosecutor's office detectives superior officers, which contract expired in 2010 (J-2). No data was provided concerning the current salaries of any other law enforcement unit of County employees.

Comparables - External

The PBA offers the following comparisons to maximum salaries in other Morris County jurisdictions:

<u>Town</u>	<u>2,009</u>	<u>2,010</u>	<u>2,011</u>	<u>2,012</u>	<u>2,013</u>
Town of Boonton	79,775	84,168	87,324	90,598	
Boonton Township	87,050	90,315	93,702		
East Hanover	96,700	100,568	104,591		
Florham Park			99,757	103,318	107,006
Lincoln Park*incl. longevity pay	104,461	108,639	112,985	117,504	
Morris Township		93,571	95,442	97,810	99,766
Parsippany-Troy Hills		91,455	93,741	96,084	98,487
Rockaway Township		92,319	95,781	99,373	103,199
<b><u>AVERAGE</u></b>			<b><u>2011</u></b>	<b><u>2012</u></b>	
AVERAGE MAXIMUM SALARY			97,915	100,781	
- Does not include superior officers.					

The following chart reflects the minimum/maximum step salary for investigators for years 2009 through 2014 for other prosecutor's offices.

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Bergen County	116,780	120,575	124,192	128,228	132,076	
Passaic County	107,983	110,952	113,171	115,435	117,743	120,098
Somerset	89,406	98,704	102,159			
Gloucester	85,502	93,872	95,749		99,618	101,610
Ocean	91,240	93,065	94,926	96,825		
Essex County	89,743.	91,987	93,826	96,825	97,617	
Mercer County	90,804	90,804	92,620	94,935	97,309	
Morris County	87064	90,547	90,547		93,744	
Burlington County	86,000	88,500	88,942	90,054	91,855	
Warren County	82,830	86,143	88,728	91,389		
Cape May County	81,209	84,457	87,835	91,348		
Hudson County	82,871	84,943	86,642	88,375		
Hunterdon County	80,356	82,365	84,424			
Salem County	76,951	79,721	82,591			

Sussex County	76,517	79,386	82,363			
Atlantic County	88,404	94,020				
Cumberland County	78,661	81,611				
Monmouth County	117,328					
Camden County	98,099					
Middlesex County	?					
Union County	93,204					
<b>Averages</b>	<b>90,048</b>	<b>91,274</b>	<b>93,914</b>	<b>98,372</b>	<b>104,280</b>	<b>110,854</b>

### Stipulations of the Parties

The parties stipulated that unit employees were not paid increments in 2011 or in 2012.

Increments are paid on the employee's anniversary of their inclusion in the bargaining unit.

Longevity Payments are paid on the employee's anniversary date and the date used for calculating longevity is the employees' date of County service.

Total base salary includes base pay and longevity payments. It does not include an annual \$3000 stipend paid to supervisory investigators.

### **DISCUSSION**

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the

aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

The statute also provides a definition as to what subjects are included in "base salary" at 16.7(a):

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

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

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

- (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
  - (4) Stipulations of the parties.
  - (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
  - (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which

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

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

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

In arriving at the terms of this award, I conclude that

all of the statutory factors are relevant, but not all are entitled to equal weight. In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among those factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)], the Employer's statutory budgetary limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)] and, most importantly, the 2% limitation on the total increase of base pay on an arbitration award [N.J.S.A. 34:13A-16.7(b)].

### **APPLICATION OF THE STATUTORY CRITERIA**

#### Employer's Statutory Limitations

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

However, because of the 2% cap on an arbitrator's award of total base pay, it is a mathematical axiom that the cost of the

base pay portion of the award simply cannot exceed the 2% levy cap or appropriations cap. While it is possible that other components of an award could cause the employer to be over the caps, that is not the case here. In fact, I have added no additional costs to the employer as a result of the award, except the 2% annual increase in base pay. Further, the County will benefit from a net decrease in the cost of providing health care to its employees over the life of this contract as a result of two factors: premium contributions from the employees, and the elimination of one of its traditional plans.

Stipulations of the Parties:

The parties stipulated the following:

1. The successor contract shall have a three-year term, running from January 1, 2012, through December 31, 2014.
2. The unit members are currently on the first tier of Chapter 78 health insurance premium contributions, and will move to the second tier in January, 2013.
3. The Prosecutor's Office has, as a matter of practice, hired experienced investigators from other law enforcement agencies and has placed them at an advanced step on the salary guide immediately upon hire.
4. Unit employees have not been paid increment payments in 2011 or 2012.
5. Advancement on the salary guide occurs on the employees' anniversary date of appointment into a bargaining unit position.



Terms and Conditions of Employment/Comparables

The Employer points out that this bargaining unit is the highest paid non-supervisory group, law enforcement or civilian, among County employees. However, when compared to investigators in other Prosecutor's Offices throughout the State, they are at the median range. In addition, unlike many law enforcement employees in New Jersey, most of the unit employees do not have a longevity package. The limitations imposed by the 2% arbitration cap give me little flexibility to craft a salary package that improves that situation. I have also considered external comparables with regard to health benefit plans, contributions and co-payments.

The Commission has directed that arbitrators must consider evidence of settlements between the employer and other negotiations units, as well as claims that those settlements constitute a pattern. See Union County, P.E.R.C. No. 2003-33, 28 NJPER 459, (¶33169 2002) and Union County, P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003). Further, arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern. Id. The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. Id. This indirectly benefits the public interest.

Here, for the reasons set forth above, I have given significant weight to the factor of internal comparability and the evolving settlement pattern among Morris County employees, particularly in the area of health benefit plans, prescription co-pays and retiree benefits.

Cost of Living Increase:

As of March 2012, the CPI for All Urban Customers (CPI-U) increased by 2.7% before seasonal adjustment over the last 12 months (P-36). I give this factor very little weight, primarily because the statutory cap on an arbitration award prevents me from exceeding 2% of total base pay and also prohibits me from adding any new economic benefits to the contract.

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

Continuity in this bargaining unit has not been problematic. Investigator Bittenmaster testified that employee turnover has not been heavy. In fact, the record shows that this Employer, as a matter of practice, has attracted experienced investigators from other law enforcement agencies. Nothing in this award will impact negatively upon the employees' continuity of employment. As to seniority rights, I have considered the employees' seniority and have decided to reject the Employer's proposal to suspend the limited longevity program for the three remaining employees who still receive that

benefit.

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

In my view, the interest and welfare of the public is not only a favor to be considered, it is the factor to which the most weight must be given. The public interest, of course includes the amount of property taxes which homeowners and businesses will be required to pay. It is for this reason that Section g(1) specifically references the tax levy cap. In the bigger picture, it is in the interest of the public that it receives the highest quality of law enforcement services for the most reasonable price. No doubt the legislature had this very point in mind when it enacted the 2011 amendments to the interest arbitration law. There can be no quarrel that the amendments - specifically the 2% limit on the total increase in base pay that an arbitrator can award - places a severe restriction on salary increases, primarily because it includes the built-in costs of salary guide movements, as well as any longevity increases. It is this factor then that overshadows all others under considerations.

"Base Salary" is defined in Section 16.7(a) as,

The salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service.

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, on an

annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement. . . .(emphasis added)

The above language effectively limits annual base pay increases to 2% of the total amount the employer spent "in the twelve months immediately preceding the expiration" of the contract; here, calendar year 2011. The term "increases in base pay" includes increases in pay because of increment payments as well as increases in longevity. However, nothing in this statutory provision permits the adding in of breakage amounts, reductions in pension contributions or offsets for employee healthcare contributions. Rather, my award is limited to a total of 2% of the aggregate spent in the base year for base salary items.

This award as a total package will allow the Employer to comply with the caps and will have a minimal effect on the tax rate. This is of course in the public interest.

Moreover, it is also in the public interest that employees of the Prosecutor's Office maintain a high degree of morale and professionalism while performing their duties. I have specifically considered this both in terms of the wage package being awarded, the health care contributions, the work hours' clause and the grievance procedure.

I will discuss the application of the above criteria to

each of the proposals below.

**Contract Duration:**

The parties have agreed on a three-year contract covering the period January 1, 2012 through December 31, 2014.

**Wages:**

The 2010 salary guide, Appendix A of the expired contract provides,

Entry	\$ 54,616
After 1	\$ 55,861
After 2	\$ 57,611
After 3	\$ 60,743
After 4	\$ 65,690
After 5	\$ 69,428
After 6	\$ 71,953
After 7	\$ 75,883
After 8	\$ 81,212
After 9	\$ 90,547

The PBA seeks an across-the-board annual increase of 2.5%, effective January 1 of each year. In addition, it also seeks the payment of annual step increases for eligible employees.

The Employer proposes a flat dollar increase for each bargaining unit member over a three-year contract in an aggregate amount of 6%. It also proposes no step movement on the guide for any employee during the term of the contract, and longevity payments be suspended for the three-year period. Finally, it proposes to increase the hiring rate by the same

flat dollar amount as awarded for other employees.

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement. . . .(emphasis added)

The above language effectively limits annual base pay increases to 2% of the total amount the employer spent "in the twelve months immediately preceding the expiration" of the contract; here, calendar year 2011. The term "increases in base pay" includes increases in pay.

"Base Salary" is defined in Section 16.7(a) of the statute as,

The salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service.

Here the parties agree that the total base salary includes the employees' actual base, increments and the longevity payments. However, the parties were unable to agree on the aggregate amount spent for base pay in 2011. The PBA submitted a list of 47 employees together with their contractual salary amounts (U-12). However, this list does not account for the pro-rating of employees who joined the bargaining unit nor those that left the bargaining unit due to separations from service or promotions in 2011. The PBA further submitted U-31, identifying

the employees who left the bargaining unit during 2011, but provided no separation from service dates. In its brief, the PBA provided separation from service dates but its proration percentages were not accurately calculated. The Employer, who bears the responsibility of providing accurate payroll information, as it is the holder of these records, initially provided exhibit C-5 which consisted of two documents: a list showing employees dates of hire and annual salaries of all 47 employees; and a list purportedly showing base earnings for all employees for 2011. This list aggregated the total costs for 2011 at \$3,780,518. However, neither of these lists included the employees who separated from service sometime in 2011. At the hearing, I directed the Employer to produce an accurate list of the each employee's actual 2011 base pay earnings. On May 14, the Employer produced a revised list (C-123) which included the seven employees who left the bargaining unit sometime in 2011. This list aggregated the total 2011 base pay at \$3,883,458.<sup>9</sup> However, this list appears to contain a number of inaccuracies in that several employees reflected salary payments significantly less than their contractual rate, while other employees listed salary payments in excess of the contractual rate. At my direction, the Employer produced a further revised list (C-124) on May 16, together with separation dates for those

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<sup>9</sup> This list included a column for "comp time paid". I am unable to determine whether the amounts in this column refer to amounts in regular pay checks which are earmarked as paid comp days, or whether these payments are for compensatory time cashed out at the end of the year. The first would be part of regular base pay (just as vacation days or sick days would be); the later would be compensation for work performed for some prior period, and would not be part of base pay.

who had left the service of the Prosecutor during 2011. The Employer aggregated the total 2011 base pay on this chart as \$3,898,649. While this list appears to accurately prorate the employees who worked on part of the 2011 year, it nevertheless continued to include base salary amounts that were either significantly below, or in some cases higher than the contractual rate. The Employer's explanation for this apparent anomaly is that some employees were given some sort of "back pay" sometime in 2011. I also exclude such back pay payments as part of base salary. In light of the parties' failure to produce one comprehensive, accurate list of salary payments for 2011, I have developed the following information based upon the employees' contractual salaries and pro-rated those employees who worked only part of 2011 or took unpaid leave time:

### 2011 Base Salaries

Empl Name	Date of Hire <sup>10</sup>	Long %	Long Amount	Base Pay Paid in 2011	Stipends	Total 2011 Compensation
Allegretta +	9/13/04		\$0	\$82,709		\$82,709
Arturo +	3/31/08		\$0	\$68,478		\$68,478
Atterbury	4/5/04		\$0	\$90,547		\$90,547
Bittenmaster	7/18/89	9%	8,149	\$98,696		\$98,696
Brylinski	2/28/05		\$0	\$90,547		\$90,547
Coleman	9/14/92		\$0	\$90,547		\$90,547
Costello	1/30/06		\$0	\$90,547		\$90,547
Dillard	9/13/04		\$0	\$90,547		\$90,547
Dorn	6/6/94		\$0	\$90,547	3,000	\$93,547
Drinkard	7/29/02		\$0	\$90,547		\$90,547
Ferrante Jr	9/30/91		\$0	\$90,547	3,000	\$93,547
Gabrys	6/27/11		\$0	\$90,547		\$90,547
Haber	2/3/03		\$0	\$90,547		\$90,547
Higgs	2/16/00		\$0	\$90,547		\$90,547
Johnson +	10/7/02		\$0	\$86,322		\$86,322
Jones	6/29/87	9%	\$8,149	\$98,696		\$98,696
Kimker	12/28/92		\$0	\$90,547		\$90,547

<sup>10</sup> Increments are paid on the employee's anniversary of inclusion in this bargaining unit, not on their original date of hire. The "date of hire" listed above actually refers to the employee's date of appointment into a bargaining unit position.



Lombardi	11/17/03		\$0	\$90,547	3,000	\$93,547
Mauceri	2/26/96		\$0	\$90,547		\$90,547
Mitreuter	2/28/05		\$0	\$90,547		\$90,547
Monrad	4/1/02		\$0	\$90,547		\$90,547
Murzenski	6/17/02		\$0	\$90,547		\$90,547
Occhiuzzo	5/16/05		\$0	\$90,547		\$90,547
Ortiz	8/16/04		\$0	\$90,547		\$90,547
Potter	12/2/91		\$0	\$90,547	3,000	\$93,547
Primo	5/3/04		\$0	\$90,547		\$90,547
Rossi	6/2/97		\$0	\$90,547	3,000	\$93,547
Tasoulas	10/25/99		\$0	\$90,547		\$90,547
Timmons	7/29/02		\$0	\$90,547		\$90,547
Torres Jr	6/17/02		\$0	\$90,547		\$90,547
Vanadia	9/7/93		\$0	\$90,547		\$90,547
Walsh	6/6/11		\$0	\$90,547		\$90,547
Castellano	9/16/02		\$0	\$90,547	3,000	\$93,547
Dangler	9/26/88	9%	\$8,149	\$98,696	3,000	\$101,696
Keane *	1/25/93		\$0	\$17,451	3,000	\$20,451
Stewart- Tyrell*	6/27/88		\$0	\$15,901		\$15,901
McNally *	12/15/03		\$0	\$17,451		\$17,451
Amato **			\$0	\$62,998		\$62,998
Frisk **	11/27/06		\$0	\$43,428		\$43,428
Henderson ***	8/26/02		\$0	\$32,352		\$32,352
Perez-Ortiz ***	12/06/04		\$0	\$90,547		\$90,547
Pellek ***	1/03/06		\$0	\$63,277		\$63,277
Ponnwitz ***	8/16/04		\$0	\$60,745		\$60,745
Lafera	9/19/08		\$0	\$71,953		\$71,953
Lopez	7/25/11		\$0	\$71,953		\$71,953
Truppo	11/28/05		\$0	\$69,428		\$69,428
Dent	4/19/08		\$0	\$57,611		\$57,611
Laird	9/19/09		\$0	\$57,611		\$57,611
Moreno	19/9/08		\$0	\$57,611		\$57,611
Patel	1/04/08		\$0	\$57,611		\$57,611
McKoy	6/27/11		\$0	\$57,611		\$57,611
Pearl	7/25/11		\$0	\$57,611		\$57,611
Bruno	12/07/10		\$0	\$54,616		\$54,616
Wang	1/25/2010		\$0	\$54,616		\$54,616
			\$24,448	\$4,141,296	\$24,000.00	\$4,165,296
+ Unpaid leave of absence for part of the year			2% =	\$82,826.00		
* Promoted						
** Retired						
*** Separated from service						

As shown above, the total aggregate payroll for 2011 base pay is \$4,141,296. Pursuant to the statute, I may increase base salaries, inclusive of increment payments by 2% of this amount in each year of the contract. This 2% equals \$82,826<sup>11</sup>

<sup>11</sup> The employer calculated the available 2% at \$77,973; the PBA calculated the available 2% at \$85,638.

and is a constant amount<sup>12</sup> to be used for such increases over the entire contract.

## **2012**

For 2012, the cost of the increment payments for employees currently in step guide is \$17,986.<sup>13</sup> When base salary is increased, the cost of the three employees receiving longevity also increases as it is based upon 9% of base pay. This increase will be accounted for below. This leaves \$64,840 available for employee increases. I propose to use part of this money to provide across-the-board increases for employees at the top of the guide. I realize that this will further the gap between step eight and nine of the guide, (increasing the increment amount from \$9,335 to \$11,145), nevertheless, I note that the Morris County Prosecutor's investigator's will fall further behind the average State-wide investigator's salary in 2012 if the top pay is not increased. Therefore, I have determined to award an increase of 2.0% for each of the 34 employees at top pay in 2012. The 2012 allotment of 2% was appropriated as follows:

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<sup>12</sup> The PBA argues that the 2% should be applied year-over-year. This approach is not consistent with the statutory language.

<sup>13</sup> Increments are paid on the employee's anniversary date of hire into the bargaining unit. Therefore, increments must be pro-rated for the amount actually paid during 2012.

\$82,826	- Total 2.0% available
<u>-\$17,986</u>	- 2012 increment payments
\$64,840	
<u>-\$61,540</u>	- \$1,810 x 34 employees (2.0% increase)
\$3,300	
<u>-\$489</u>	- longevity increase (\$163 x 3 employees)
\$2,811	- balance carried to 2013

### **2013**

For 2013, we have available \$82,826, which is the 2.0% of the base year. In addition, we have \$2,811 remaining unspent from 2012 for a total of \$85,637. Of this, I award an across-the-board increase to all unit employees of 1.5%, the cost of which is \$59,480. In addition, the cost of the increment payments for 2013 is \$24,670. The three employees receiving longevity results in a total of \$374 increase in longevity payments for the unit. This totals \$84,524 needed to fund the 2013 contract year. This leaves a balance of \$1,113 to carry into 2014.

### **2014**

For 2014, we have available \$83,939, which is 2.0% of the base year (\$82,826) plus \$1,113 left from 2013. For this year I find it necessary to freeze increments so that I can give all employees an across-the-board increase. This further increases top pay, but at the same time provides an increase for all employees in the unit. Rather than a percentage increase, I award all unit employees a flat dollar increase of \$1,775. This dollar increase is equivalent to a unit-wide increase of 2.045%. The cost of this award for 2014 is \$83,425 (\$1,775 x 47 employees) plus \$480 aggregate increase in longevity pay, for a

total of \$83,905, just under the maximum permitted by statute.

This provides an equitable distribution of the scarce funds available for salary increases without widening the disparity between the minimum and maximum salaries. It also raises top pay to \$95,517, which brings these employees to a closer alignment with maximum salaries for investigators Statewide.

**Medical Benefits:**

The expired contract provides,

ARTICLE IX- HEALTH BENEFITS

Section 1:

A. Eligible employees shall choose one of the below listed medical insurance plans. The employee's eligible dependents shall also be covered under the plan selected by the employee.

Medallion Plan  
 Base Hospital  
 Wrap Around  
 Major Medical Plan (Employer's Medical Insurance Plan)  
 HMO Option

B. Through and including 12/31/2002, employees choosing the Medallion Plan as their medical insurance shall have deducted from each paycheck an amount equal to the annual equivalent of four hundred (\$400.00) dollars.

Prior to 2012, the County offered three health insurance plans: the Medallion Plan, which is traditional plan, the Wrap-Around Plan, which is also traditional coverage, and an HMO. Effective January 1, 2012, the County has begun to offer a preferred provider plan known as the Horizon PPO plan, and has implemented the Horizon PPO plan for its "retired employees"

group. All four plans are offered through Horizon Blue Cross/Blue Shield ("Horizon").

RHM Health Insurance Consultant Thomas Giordano testified that the Medallion and Wrap-Around were created in the 1970's and are now considered "archaic." Both plans no longer exist anywhere in New Jersey except Morris County. Horizon is the only provider who will provide the plans. Medallion has not been offered by Horizon to any employer except Morris County for twelve years. Horizon discontinued offering the Wrap-Around plan (except for Morris County) four years ago. Both Medallion and Wrap-Around have been closed to new members in Morris County since 1993.

Of the 47 unit employees, 24 are enrolled in the HMO plan, 8 have declined coverage. There are 8 investigators enrolled in the Wrap-Around Plan and 7 in Medallion.

Giordano testified that Horizon PPO offer a broad network of physicians that is identical to the physicians available to participants in the Medallion and Wrap-Around plans. Exhibit P-118 compares the Horizon PPO plan to Medallion and Wrap-Around. The Horizon PPO plan has no deductible. It features an out-of-pocket maximum of \$400/\$800 for in-network physicians, which is identical to the Medallion and Wrap-Around plans. The Medallion and Wrap-Around plans each have deductibles of \$200 for individuals and \$400 per family. Each traditional plan has an out of pocket maximum of \$1,000 per

individual and \$2,000 per family either in or out of network.

The Horizon PPO plan covers 80% of actual expenses out of network. The Wrap-Around plan covers 100% or 80% of the "usual and customary" rate out of network depending on the specific service. Under "usual and customary" rates, the member is responsible for paying the balance over and above the so-called "usual and customary" rate, a practice referred to as "balance billing." There is no "balance billing" under the Horizon PPO because the participating practitioners have agreed to accept the usual and customary rate. "Usual and customary" rates also apply to out of network expenses under Medallion. Horizon PPO covers routine vision care and hospice care at standard copayment levels. Neither Wrap-Around nor Medallion covers routine vision care or hospice care. With respect to surgery, Horizon PPO treats all anesthesiology services as "in network" and therefore as being subject to 100% coverage as inpatient care. Under Medallion, however, anesthesiology services are charged as "out of network," and are therefore covered based upon "usual and customary" rates.

The Employer argues that continuing the Wrap-Around and Medallion plans has a negative impact on the County's health insurance costs. Traditional plans are inherently more expensive because they contain no cost-sharing or cost-containment features, and do not take advantage of a panel of physicians who agree to limit their fees. The cost disadvantages with

Wrap-Around and Medallion are worsened by the fact that they are, in effect, specialty plans maintained in existence solely for the benefit of Morris County employees. Horizon's staff is unfamiliar with the plans and cannot administer them as efficiently as they can administer their more popular and current plans. As a result, members receive poor service; the vast majority of claims disputes among Morris County employees arise from the Medallion and Wrap-Around plans. Additionally, the lack of Horizon administrative staff competent to handle these two plans means that the cost of administering the Medallion and Wrap-Around plans is disproportionately high, which in turn leads to higher premiums.

The Employer argues,

Maintaining these archaic plans that only Horizon will offer has had a significant adverse impact on the County's ability to negotiate more favorable premium rates. The County cannot solicit proposals from competing providers because no other provider can or will provide Medallion or Wrap-Around coverage. As such, the County is "locked in" to Horizon as its provider, thus removing any incentive for Horizon to negotiate lower rates, and leaving the County powerless to look elsewhere for better deals. Maintaining the Medallion and Wrap-Around plans thus effectively places Horizon in a monopoly position with respect to Morris County.

The County's goal is to close down the Medallion and Wrap-Around plans and urge employees into the new Horizon PPO plan as a substitute for the two archaic plans. As such, the County proposes to close down the Wrap-Around plan and have those employees move immediately to Horizon PPO, and to impose additional premium contribution requirements for the Medallion as an incentive for those employees to move to Horizon PPO voluntarily. [brief, p.36-37] ]

The Employer argues that it has established a pattern among its bargaining units to implement the proposal it makes here. It notes that 6 bargaining units, including 1 law enforcement unit, have already agreed to the proposed increased premium contributions for Medallion. These bargaining units include Council No. 6, the County's largest bargaining unit, which includes civilian employees of the Prosecutor's Office (400-500 members); Council 6A Supervisors (75-100 members); the County Mosquito Commission bargaining unit (15 members); the County Housing Commission bargaining unit (25 members); the Park Police bargaining unit (30 members); and the Sheriff's civilian employees (P-43 through P-48). Five of these six units also agreed to move their members out of the Wrap-Around Plan into the Horizon PPO Plan.<sup>14</sup>

Investigator Bittenmaster acknowledged that members of this bargaining unit have historically received health benefits in line with the County health insurance programs.<sup>15</sup>

The Employer argues that substantial weight must be accorded to this settlement pattern with respect to extending the Wrap-Around and Medallion settlement pattern to this bargaining unit. Insurance coverage is an item of general application that, in Morris County, has historically been applied

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<sup>14</sup> Specifically, these six bargaining units agreed that employees receiving Horizon PPO coverage would contribute the mandatory statutory contributions *plus* 2% of the Horizon PPO premium.

<sup>15</sup> It is noted that Inv. Bittenmaster has been employed by the Morris County Prosecutor's Office since 1989 (Exhibit P-5).



equally to civilian and uniformed bargaining units.

The Employer's proposal is:

- All employees currently enrolled in the Medallion Plan shall have the option to transfer to the PPO Plan.
- All employees enrolled in the Wraparound Plan shall transfer to the PPO Plan. The Wraparound Plan will no longer be available for enrollment.
- Employees enrolled in the HMO Option plan shall contribute in accordance with Chapter 78.
- Employees enrolled in the Medallion Plan shall contribute the greater of 60% of the difference between the cost of the Medallion Plan and the PPO Plan, plus 1.5% of base salary, plus 3% of the premium or in accordance with Chapter 78.
- Employees enrolled in the PPO Plan shall contribute the greater of 1.5% of base salary or in accordance with Chapter 78.

A comparison of the per-employee premium costs of each of the four plans is shown in the following chart:

Coverage	Medallion	Wrap Around	PPO	HMO
Single	10,811	10,244	7,608	6,763.
Parent/Child	20,105	18,943	13,800	12,171
Family	28,549.	27,014.	19,837	18,453.

In addition, the Employer pays employees who decline health benefit coverage a "cash opt-out payment". In 2012, these Opt-Out payments total \$16,500 for the unit.

Ex. C-116 shows each employee's existing plan selection

and coverage option for all 47 current employees. There are 8 employees in the Wrap-Around Plan, 3 of which have family coverage and 5 opted for single coverage. Of the 7 employees in Medallion, 5 have family coverage, 1 has parent-child, and 1 has single coverage. The total cost of the existing plan premiums is \$647,484 (not including the opt-out payments). Of that, the employees collectively contribute \$54,217. Based upon 2012 premium rates, the current cost to the County<sup>16</sup> of providing health insurance, including prescription benefits, to this unit are (P-119):

	<b>No. of Employees</b>	<b>Cost</b>
<b>HMO</b>	24	\$279,336
<b>WRAP-AROUND</b>	8	\$153,306
<b>MEDALLION</b>	7	\$160,608
<b>TOTAL</b>	47	\$593,250

By moving the employees in the Wrap-Around to the PPO Plan, the Employer would save \$34,711 ( $\$21,531 \times 3$  family coverage members +  $\$13,180 \times 5$  single coverage members = \$34,711.)

As to the cost impact on the employee, one first would have to start with their statutorily required contributions.

Pursuant to Chapter 78, P.L. 2011, effective June 28, 2011 or as soon thereafter as could be locally implemented, public

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<sup>16</sup>The County's costs are the total premium costs less the employees' current contributions.

employees are required to contribute to the cost of their health insurance premiums at a rate of 1.5% of base salary, or a percentage of the premium, as set by statute - whichever is higher. This percentage of premium contribution rate is phased in over four years and reaches a maximum of 35% of the premiums by the fourth year. The following chart is an excerpt of the contribution rates as set forth in Ch. 78:

Single Coverage:

Salary Range	Tier 1 (2012)	Tier 2 (2013)	Tier 3 (2014)	Tier 4 (2015)
50,000-54,999	5.0%	10.0%	15.0%	20.0%
55,000-59,999	5.75%	11.5%	17.25	23.0%
60,000-64,999	6.75%	13.5%	20.25%	27.00%
65,000-69,999	7.25%	14.5%	21.75%	29.0%
70,000-74,999	8.0%	16.0%	24.0%	32.0%
75,000-79,999	8.25%	16.5%	24.75%	33.0%
80,000-94,999	8.5%	17.0%	25.5%	34.0%
95,000 up	8.75%	17.5%	26.25%	35.0%

Family Coverage:

Salary Range	Tier 1 (2012)	Tier 2 (2013)	Tier 3 (2014)	Tier 4 (2015)
50,000-54,999	3.0%	6.0%	9.0%	12.0%
55,000-59,999	3.5%	7.0%	10.5%	14.0%
60,000-64,999	4.25%	8.5%	12.75%	17.00%
65,000-69,999	4.75%	9.5%	14.25%	19.0%
70,000-74,999	5.5%	11.0%	16.5%	22.0%
75,000-79,999	5.75%	11.5%	17.25%	23.0%
80,000-84,999	6.0%	12.0%	18.0%	24.0%
85,000-89,999	6.5%	13.0%	19.5%	26.0%
90,000-94,499	7.0%	14.0%	21.0%	28.0%
95,000-99,999	7.25%	14.5%	21.75%	29.0%
100,000-109,999	8.0%	16.0%	24.0%	32.0%
110,000up	8.75%	17.5%	26.75%	35.0%

Several conclusions can be drawn. The parties stipulated that unit employees began making Chapter 78 contributions in January,

2012. However, most of the employees are paying 1.5% of salary this year, as that is a higher net than a percentage of contributions. In 2013, an employee at the top of the guide will pay 17.5% of the premium for single coverage and 14% of the premium for family coverage. In 2014, when the employees are in the third tier of Chapter 78 premium contributions, the contribution rates for an employee at top pay will be 25.5% for single coverage and 21% for family coverage. Even based upon the current premium rates now in effect, the employees' annual contributions for each of the existing plans going forward would be:

2013					
Plan	Contribution %	Medallion	W/A	PPO	HMO
Single	17.5%	\$1,838	\$1,742	\$1,293	\$1,150
Family	14.0%	\$3,997	\$3,782	\$2,777	\$2,583
2014					
Plan	Contribution %	Medallion	W/A	PPO	HMO
Single	25.5%	\$2,757	\$2,612	\$1,940	\$1,725
Family	21.0%	\$5,995	\$5,673	\$4,166	\$3,875

The Employer proposes to charge employees that stay in Medallion an "upcharge", which is a composite of 3 factors: (a) 60% of the difference between the Medallion Plan and the PPO; plus 3% of the premium, plus 1.5% of salary. Alternatively, if the Chapter 78 contribution is higher, then the employee would pay the Chapter 78 contribution. For 2012, the difference between the annual premiums in the two plans is \$8712 (\$28,548 Medallion less \$19,837 PPO = \$8711; 60% of that = \$5227). 1.5% of salary

for an employee at top pay is \$1358 ( $\$90,547 \times 1.5\% = \$1358$ ).

3% of the Medallion premium at family rate equals \$856. The result would be:

\$5,227 - 60% of difference in premium between Medallion and PPO.

1,358 - 1.5% of salary

+ 856 - 3% of Medallion Family Coverage Premiums

\$6,585 - Total annual cost to employee of Medallion family coverage under the Employer's proposal.

Of course, the other half of the Employer's proposal is that the employees would pay Chapter 78 contribution rates once they exceed the contribution amount under the formula above. This will happen in 2015 when Chapter 78 contribution rates reach 35% of premiums for single coverage and 28% for family coverage. At that point, employees will pay, based upon today's premiums and today's salaries, \$7,993 annually to stay in Medallion's family coverage and \$3,784 to stay in Medallion's single coverage.

The PBA argues that the Employer seeks to take draconian measures to ensure that employees leave the traditional plans. It observes that health benefits consultant Giordana, admitted that the PPO Plan was not inferior to the Medallion Plan. The PBA notes that the PPO Plan, which is 31% cheaper than Medallion, must therefore provide lesser benefits. It notes that the significant premium costs to the employees under the Employer's plan, amounts to a virtual salary reduction of between 8% and 12.5%. It further observes that employees are

the lower end of the salary scale would be hit the hardest. Further the PBA argues that the employer's proposal cannot be lawfully considered because it is supported by insufficient data necessary to make a meaningful calculation as to its cost savings.

Several factors must be weighed and balanced in deciding this issue. As the Employer points out, the factor of internal comparability has long been held by arbitrators and the Public Employment Relations Commission to be a significant factor and one which is considered part of the public interest. Consistency of benefits among employees of the same employer contributes to stability of labor relations and the public good. Here, the County has succeeded in obtaining recent settlements with six of its bargaining units which encompass 545 to 670 employees. Whether the employees in the rest of the County's 22 bargaining units continue to be offered the Medallion and/or Wrap-Around Plans is not in the record.

The PBA argues that the Prosecutor is an independent public employer and therefore any comparison with employees of the County is not meaningful. However, I note that the County is the funding agent for the contract. In prior Commission decisions as well as previous arbitrator's decisions, the counties as the source of the funding has been considered a relevant factor in interest arbitration awards. Ocean County Prosecutor, PERC No. 2012-59 (5/3/12); Middlesex County

Prosecutor, I.A. Docket No. 2009-097 (5/14/12). I note that the County-wide, white-collar unit, represented by Council 6, includes civilian employees of the Prosecutor. That recent contract is one on which the Employer relies as part of its internal comparability test. Therefore, I believe that internal comparability among other County units must be given significant weight, particularly in deciding medical benefits.

Moreover, the Medallion Plan and Wrap-Around Plan are traditional health benefit plans are offered to public or private sector employees with increasing rarity. While it cannot be said that the PPO plan is equal to the existing traditional plan, it is comparable in many areas.

On the other hand, the factor of the employees' total compensation package must also be given some consideration. The Employer argues that the employees in this bargaining unit are the highest paid of any non-supervisory bargaining unit, law enforcement or civilian, in the County. While that may be, their salary and benefit package is not out of line with other prosecutor's investigators in the State; in fact, in salaries, they are in the median range. This three-year contract, which by necessity, must be lean in wage increases, will not likely change their comparative standing for the better.

I cannot help but observe however, that even if the Employer's proposal was awarded in its entirety, it would not, at least in the short run, enable it to leave Horizon and shop

the marketplace for better premium rates. As the Health Benefit Consultant Giordano pointed out, it is the coverage provided under both Medallion and the Wrap-Around Plan that prevents the County from seeking coverage from other carriers because no other carrier is willing to provide either of those plans.

In consideration of all of the above, I am inclined to give the County some relief in escaping the high costs of their traditional style health plans and moving in the direction of the PPO plans. The contract provision on medical benefits shall be modified to state that, effective July 1, 2012, the Wrap-Around Plan will no longer be available to employees in this unit. All unit employees currently in the Wrap-Around Plan will be given the opportunity to opt for coverage in either the PPO plan or the HMO plan.

However, the County has not asked to close out the Medallion Plan. Its contribution scheme for employees who opt to remain in this plan is complicated and places a severe and immediate burden on employees. For the employees who stay with the Medallion plan, they would immediately contribute 60% of the difference in premiums between Medallion and PPO plans, plus 1.5% of salary, plus 3% of the Medallion premium. As noted above, for an employee at the top of the salary guide (as most of these employees are), the cost of maintaining family coverage is currently 1.5% of salary (\$1,358) plus \$400 in annual premiums pursuant to the contract. Under the Employer's



proposal, the same employee would advance to a contribution rate of \$6,585. While I appreciate that Employer is attempting to set up a large disincentive for an employee to maintain the Medallion plan, to put it bluntly, this increase is just too steep and cannot be awarded. Rather, I award the following: effective July 1, 2012, employees who wish to maintain Medallion coverage will contribute 1.5% of salary plus 30% of the difference between the Medallion plan premium and the PPO plan premium, OR the Chapter 78 contribution, whichever is higher.<sup>17</sup> If the real goal is to provide a disincentive for employees to continue with Medallion coverage, this should be a sufficient monetary penalty to accomplish this goal.

**Prescription Co-Payments:**

Under the expired contract, employee co-payments for prescription drugs are:

Generic	\$5.00
Brand Name Drugs	\$10.00
Formulary Drugs	\$15.00

The Employer proposes a new schedule of co-payments:

Generic	\$ 1.00
Preferred Name Brand	\$20.00
Non Preferred	\$35.00

Mail order purchases for a three-month supply would continue to be subject to double co-pays.

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<sup>17</sup>The current disparity between the Medallion Plan and the PPO plan costs is \$8,711 for family coverage. 30% of that amount is \$2,613. By 2014, employees' Chapter 78 contribution rates will likely exceed this formula.

It asserts that the proposed co-pays for name brand and non-preferred name brand are in line with state averages and are consistent with prescription co-payment levels awarded in recent interest arbitrations. It cites Burlington County, I.A. Docket No. 2009-115, (Hundley), 8/15/11, where the Arbitrator awarded co-pays of \$0/\$30/\$45; Burlington County and FOP, I.A. Docket No. 2011-58 (Mason), 8/1/11 with co-pays of \$10/\$20/\$30; and Union County, I.A. Docket No. 2010-18 (Hundley) 1/17/12, with co-pays of \$6/\$15/\$20. (Ex. P-80, p. 12, 14, 28).

The Employer notes that this proposal has also been accepted by the six bargaining units with which it has settlements, as discussed above. Therefore, it is entitled to unique weight. It contends that the proposed co-payments are reasonable, consistent with market trends and the County settlement pattern, and consistent with the County's overall goal of reducing its health benefits costs. The PBA brief includes no argument concerning this provision.

I award this proposal. In doing so, I give significant weight to the internal settlement pattern in the County as well as a comparison to the prescription benefit offered to other public and private employees. The low co-pay on generic prescriptions will further encourage their use and will lower the cost to the employee as well as lower the premium cost to the County which of course, serves the taxpayers' interests.

The co-pays for name brand and preferred name brand are not out of line with co-payments in other jurisdictions, and reflect trends in both the public and private sector.

### **Retirees' Health Benefits**

The Employer proposes to modify the health care benefit for employees hired after this award is issued, who retire and are eligible for County-paid health insurance. Such retirees would receive paid health benefits for themselves only, but not for their dependents. Such retirees would be permitted to add their eligible dependents to the plan at the retiree's expense.

Again, the Employer notes that this provision has been accepted by the six bargaining unit with which it has settled contracts, and therefore, the principle of internal consistency of benefits should prevail. It notes that no current retiree or even current employee would be impacted by this provision. The PBA makes no specific argument concerning this proposal.

Applying the statutory criteria of the interest of the public and relying on the pattern of settlement, I award this proposal.

### **Longevity Payments**

Several contracts ago, the parties agreed to limit longevity pay to only those employees hired prior to July 26, 1990. Only three of the current employees still receive longevity. The longevity schedule in Article XV of the expired contract provides,

<u>Length of Service</u>	<u>Percentage</u>
3-8 years' service	1%
8-12 years' service	3%
12-15 years' service	5%
15-16 years' service	7%
After 16 years' service	9%

The PBA proposes a three-step longevity program for all employees in the unit, providing for 1% after 10 years' service, 2% after 15 years' service, and 3% after 20 years' service. It is not clear from the PBA's proposal whether the 3 employees in the grandfathered group would continue with their existing longevity plan or be moved to a reduced amount based upon the plan the PBA proposes. The PBA has not provided a cost analysis of this proposal.

The PBA asserts that its proposal is "not a new benefit but a modification of an existing benefit covering bargaining unit employees... The greatest importance of the longevity proposal made by the Morris County detectives is to establish what they do not have." It notes that the lack of a longevity plan (for most unit employees) "pushes well further back the total compensation of these officers in comparison to their peers in like jobs."

The Employer contends that this proposal is unawardable for three reasons. First, it argues that the PBA's proposal would create an additional base salary item for 44 additional members of the bargaining unit. It notes that N.J.S.A. 34:13A-16.7(b)

prohibits an arbitrator from including base salary items and non-salary economic issues which were not included in the prior contract. Section 16.7(a) of that statute defines base salary as inclusive of "any amount provided for longevity or length of service." It argues that a longevity benefit for employees hired after 1990 was not included in the prior contract and therefore cannot be awarded by the arbitrator as a matter of law.

Second, the Employer argues that the PBA's proposal must be rejected as unsupported by record evidence. It notes that the proposal would base longevity pay on "creditable service under the New Jersey PFRS definition", which includes service with other employers. The Employer observed that no evidence has been submitted which shows the total length of service of employees under PFRS. Therefore, the cost of this proposal cannot be calculated.

The PBA correctly notes that most Prosecutors' Office investigators enjoy some form of longevity benefit. I agree with the PBA that this benefit must be taken into consideration of comparing the total compensation package of the Morris Prosecutor's detectives with those of other county detectives. Further, I agree that one reason that such a comparison shows that the Morris unit is falling behind its counterparts is the lack of a longevity package for the overwhelming majority of the unit.

However, that said, the proposal cannot be awarded. First,

N.J.S.A. 34:13A-16.7(b) provides, "An award of an arbitrator shall not include base salary items which were not included in the prior collective negotiations agreement." Any longevity program for the 44 employees who do not currently have it is a "base salary item which was not included in the prior contract." Therefore, it is at least dubious whether I have the authority to award such a benefit.

However, even assuming without deciding that I did have the authority to extend even a modest longevity program to the rest of the bargaining unit, the real problem is that by statutory definition, longevity is considered part of base pay. N.J.S.A. 34:13A-16.7(a). Therefore, funds to support such a program would have to come out of the 2% cap on total base pay, and be applied to each year of the contract that would include the benefit. Further, there is insufficient evidence before me to make such a calculation as to the actual cost, since no length of PFRS service dates were provided for these unit employees. Moreover, even assuming a 1% longevity payment after 10 years of service, and even if the longevity was based upon employees' Morris County hiring dates, the proposal would either exceed the 2% arbitrator's cap, or it would gobble up a significant portion of the 2% pot I have to work with for base pay adjustments. I find it more important to make adjustments to base pay, which would benefit all unit employees. Therefore, this proposal must be denied.

Overtime:

The PBA proposes to change the overtime formula so that employees are paid the premium overtime rate (time and one half) for any overtime beyond their normal workweek of 37.5 hours. Currently, employees are paid straight time for hours after 37.5 and up to 40 hours, and are paid overtime at the premium rate after 40 hours.

County Labor Relations Director Stapleton testified that County employees in all other units have the same 37.5/40 scheme for overtime calculations. She testified that the overtime hours for all unit employees for 2011 were 2,075 (37.5 hours to 40 hours) for standard overtime and 4,442 for premium overtime. For 2012 year to date (1/1/12 to 5/10/12), overtime for employees in this unit is 1,978 hours for standard overtime and 2,832 hours for premium overtime. PBA Local 327 Vice-President Bittenmaster testified that the frequency of overtime depends on the employee's assignment and is driven by the needs of the operation. He noted that a supervisor must first authorize the overtime for it to be worked.

The PBA observes that the Employer retains the authority to authorize overtime and thus is in control of when, if any excess hours are worked by unit employees. It also argues there is no evidence that employees of any other Prosecutor's office in the State have such an overtime arrangement. It argues that the potential cost to the employer is not significant, and it is a

matter of equity.

The Employer argues that there is a long-standing practice which has been in effect for all County employees that applies the same overtime formula. The Employer maintains that there is no basis to deviate from this universal, historic pattern. It also contends the cost of this additional benefit is prohibitive.

The cost of any overtime provision is always speculative, but particularly so in a setting such as this where the overtime is partly driven by the existence of a major or high profile criminal event. Using 2012 overtime use to date, the Employer projects that straight-time overtime hours would total 4,748 this year. At an hourly rate of \$46.256, an extra one-half pay rate of \$23.128 x 4,748 hours would cost \$109,821 a year.<sup>18</sup> Even if the 2011 overtime hours were used as a benchmark, the cost of increasing the compensation from straight time to time and one half for hours between 37.5 and 40 is \$47,990 a year (2,075 hours x \$23.128 per hour = \$47,990). This would average just over \$1,000 per unit employee, and would add more than 1% to the cost of the unit payroll.

In light of the cost of the proposal, and in light of the deviation from the historic and universally applied pattern of overtime calculations for other County employees, including the other employees of the Prosecutor's office, I am not persuaded

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<sup>18</sup> It is really the PBA's burden to provide an analysis of the cost of its own proposal. As it did not provide such an analysis, I accept the Employer's calculations.



that the PBA has justified the change in the basis for overtime calculations. This proposal is not awarded.

Retroactive Pay:

The PBA seeks retroactive pay of all salary increases awarded in this arbitration retroactive for all employees to the beginning of the contract period (January 1, 2012), including those that resigned from the Prosecutor's office since that date. The expired contract provided for retroactive pay only for those employees who retired or died before the execution of the contract. The PBA offered testimony that this proposal would only affect one employee, who resigned in 2012. While the Employer's exhibit P-124 shows that two employees - Perez-Ortiz and Ponnwitz - have resigned in 2012, only Perez-Ortiz would have retro activity pay coming as only employees at the top of the salary guide are being awarded the 2% increase.

Stapleton testified that all of the County contracts have the same language providing retro pay only for those who retired or die before the contract was signed.

The Employer correctly notes that the cost of this proposal would have to be subtracted from the total 2% unit-wide increase in total base pay. The Employer also maintains that there is no basis to deviate from the County-wide historic practice concerning retroactivity pay.

I have considered both the internal pattern among County employees and unit employee continuity as a factor in addressing

this issue. I am not inclined to break with the County-wide pattern on this issue. It is the array of compensation components and benefits that helps to retain the talents of the investigators in Morris County. To put it bluntly, I am inclined use every dollar available within the 2% hard cap to provide the greatest amount of pay increases to the unit employees who are still working for the Prosecutor's office rather than pay employees who have moved on to employment elsewhere. This proposal is denied.

#### Vehicle and Gas Usage

The PBA proposes that a new article be added to the contract that (a) the assigned vehicle procedure shall continue; (b) in the event that a vehicle is taken from a member then appropriate compensation shall be made to replace the transportation so affected; and (c) delete the fuel reimbursement requirement.

The first part of this proposal has to do with County vehicles that are regularly assigned to some of the investigators and which they are permitted to take home. Prosecutor Bianchi testified that the assignment of the cars is directly linked to the investigator's work assignment. There are also "pool" cars available for use on a case-by-case basis. The PBA's proposal would in essence guarantee the continuation of the present assignment of cars or replace the commuter use with offsetting compensation. The third component of the

proposal would remove the 60-gallon-a-month cap on each car's fuel allotment, after which an investigator might be asked to reimburse the County for the fuel.

N.J.S.A. 34:13A16.7 provides, "An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement." This proposal involves potential offsetting compensation and the elimination of a requirement to reimburse the County for fuel. As such, both components are economic issues. Both were not included in the prior agreement. Therefore, this proposal cannot be considered on its merits. The proposal is denied.

Work Hours:

The PBA proposes to codify the current practice that the work week shall consist of five days on followed by two days off. That is, there would be no single days off. The PBA points out that it is not seeking to mandate a Monday to Friday work schedule. It agrees that the Prosecutor should retain flexibility with regard to all other aspects of scheduling, including the ability to change an employee's work schedule to meet unanticipated situational demands. The PBA notes that, while the practice of work schedules has worked well under Prosecutor Bianchi, he may soon out of office and the PBA wants to insure that the practice will continue under the direction of a new prosecutor.

The Employer quotes Arbitrator Westerkamp's recent decision in Borough of Ramsey, Docket No. IA-2012-015, wherein the union's proposal to incorporate a practice was rejected. Westerkamp found, "[T]he record does not disclose the complete nature of the past practice... I have no basis to grant this proposal absent more complete information about the practice's full 'mets and bounds' "Ramsey, at p.53 (C-112). The Employer argues that the PBA has not produced proof of the details of the practice. It notes that Prosecutor Bianchi testified about the need for flexibility in assigning work schedules, especially when major crimes occur. Bianchi noted that, while he attempts to schedule two consecutive days off, a contractual mandate to do so would impede the operations of his office and potentially cause a prohibitive level of overtime expense if the schedule could not be adjusted when circumstances so require.

On the one hand, Bittenmaster testified that a change in work schedules that results in split days off rarely occurs. Bianchi testified that he tries to maintain work schedules with two consecutive days off as much as possible. This is no doubt due to the good working relationship between Bianchi and his staff. I suspect the reason neither party provided me with data about how often employees are required to deviate from the normal five days on/two days off schedule is that such situations are rare, if they occur at all.

I am inclined to award this proposal. Any claim that

continuing the present practice would result in any unusual overtime costs is in itself speculative. The Prosecutor would continue to have flexibility to adjust work schedules to meet operational needs and special circumstances. I believe it furthers employee morale for employees to be confident that their existing work schedule would not be unduly modified by the whims of a new boss. The contract will include a provision that "the employer will continue the existing regular work schedule of five days on/two consecutive days off. Within these parameters, the Prosecutor retains the right to revise employees' schedules to meet operational needs."

Grievance Procedure:

The PBA seeks a change in the terminal step of the grievance procedure so as to permit grievances concerning minor discipline to be subject to binding arbitration. The Employer opposes this suggestion.

Prosecutor Bianchi testified for the Employer that he believed such a proposal is unnecessary and would negatively impact the disciplinary process. Bianchi pointed out the arbitration process has a lower threshold of proofs and evidentiary standards, which he contended, makes it less difficult for the employer to prove that discipline is for just cause than it would be in a court of law. He stated, "I just don't know why we would fix it if it isn't broken."

Bianchi noted that pursuant to the policy and procedures

implemented as required for CALEA certification, his office has initiated a procedure to document employees' missteps on a "Performance Deficiency" form. It is used to record infractions of minor rules and is considered non-disciplinary. These forms do not go into the employee's personnel file, although they may be used for evaluations and progressive discipline. Since implementation, there have only been five to seven performance deficiencies issued to this unit. Grievances over disciplinary matters are virtually non-existent since Bianchi became Prosecutor. He stated that there have been only one or two instances of any suspensions in the last five years, and the discipline was voluntarily accepted.

The PBA argues that its proposal to permit contractual disputes and minor discipline to be reviewed through the grievance arbitration procedure is consistent with the majority of investigator units of prosecutor's offices across the state. It points out that its proposal does not seek to review terminations through arbitration. Such issues of possible criminal law infraction are exempt from such a procedure. Further, it agrees with the Prosecutor that the evaluation of employees for "performance deficiencies" are not disciplinary, they are instructive. The PBA notes, "The alternative to the PBA proposal herein is to have a Court proceeding. One wonders how a Court proceeding with all of its attendant delays and costs betters the process."

The Employer argues PERC case law requires interest arbitrators to apply the traditional principle that a party seeking a contract change must demonstrate a need for the change. County of Union, P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169, 2002) (Exhibit P-I-06). The Employer cites a recent interest arbitration award, Borough of Ramsey, Docket No. IA-2012-015 (Westerkamp, 2012), page 53-4 (Exhibit P-112), in which that arbitrator in denying a proposal to change existing contract language, found that, in the absence of actual "evidence of mischief or abuse...a 'parade of horrors' that might occur" is insufficient absent "any proof that bad outcomes are likely." The Employer asserts that the PBA has produced no "evidence of mischief or abuse" or "proof that bad outcomes are likely." Therefore, the Employer argues, the PBA's proposal must be rejected.

First, I note that Arbitrator Westerkamp's Ramsey award has been appealed and is pending Commission review. Second, with all due respect to Arbitrator Westerkamp, I do not believe that his finding is applicable to this proposal. The parties acknowledge that discipline has not been an issue in this bargaining unit. That is likely attributable to the professionalism of the current staff members as well as the good working relationship Prosecutor Bianchi has developed with the staff. However, the Prosecutor's term is limited. It is indeed speculative that a new incoming prosecutor might have an

entirely different management style, or the composition of the bargaining unit might change over the life of the next contract; nevertheless, the Union should not have to demonstrate that there is an existing problem with disciplinary grievances before it can protect its members from that possibility.

Grievance arbitration provides an avenue for employees to seek review of disciplinary measures taken where just cause is not present. While the Prosecutor correctly noted that the standards of proof are not as high as would be found in a courtroom, the attendant costs and processing time are also not as high. The ability to grieve minor discipline is consistent with the provisions of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, which provides,

Public employers shall negotiate written policies setting forth grievance and **disciplinary review procedures** by means of which their employee or representatives of employee may appeal the interpretation, application or violation of policies, agreements and administrative decisions, **including disciplinary determinations**, affecting them, provided that such grievance and **disciplinary review procedures shall be included in any agreement** entered into between the public employer and the representative organization...(emphasis added).

The potential cost of arbitration is minimal compared to the costs of court proceedings. I award the PBA's proposal to modify the grievance procedure to permit binding arbitration of minor discipline. Excluded from this provision are the issuance of "performance deficiency" notices, major discipline, and matters involving criminal charges.



**AWARD****Article XXVI - Duration of Agreement:**

The parties have agreed on a three-year contract covering the period January 1, 2012 through December 31, 2014.

**Article V - Salary**

Effective January 1, 2012: Advance employees to the next step on the salary guide effective on their anniversary date. 2.0% salary increase for each employee at the top of the salary guide.

Effective January 1, 2013: Across-the-board increase to all unit employees of 1.5%. Pay increments in accordance with the salary guide.

Effective January 1, 2014: Freeze increment payments for 2014. Across-the-board salary increase of \$1,775 for all unit employees.

**Medical Benefits and Contributions:**

Discontinue the Wrap-Around plan effective July 1, 2012. Employees currently in this plan will be permitted to enroll in either the PPO plan or the HMO plan.

Offer PPO plan to all unit employees.

Effective July 1, 2012, employees who wish to maintain Medallion coverage will contribute 1.5% of salary plus 30% of the difference between the Medallion plan premium and the PPO plan premium, OR the Chapter 78 contribution, whichever is higher.

**Prescription Co-Payments**

Effective July 1, 2012, increase prescription insurance co-payments to:

Generic	\$ 1.00
Preferred Name Brand	\$20.00
Non Preferred	\$35.00

Mail order purchases for a three-month supply would continue to be subject to double co-pays.

**Retirees' Health Benefits:**

Employees hired after this award is issued, who retire and are eligible for County-paid health insurance. Such retirees would receive paid health benefits for themselves only, but not for their dependents. Such retirees would be permitted to add their eligible dependents to the plan at the retiree's expense.

**Work Hours:**

Add a contract provision that "the employer will continue the existing regular work schedule of five days on/two consecutive days off. Within these parameters, the Prosecutor retains the right to revise employees' schedules to meet operational needs."

**Grievance Procedure:**

Modify the grievance procedure to permit binding arbitration of minor discipline. Excluded from this provision are the issuance of "performance deficiency" notices, major discipline, and matters involving criminal charges.

\* \* \*

All proposals not awarded herein are denied and dismissed.

All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

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

*Susan W Osborn*

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Susan Wood Osborn  
Interest Arbitrator

DATED: May 24, 2012  
Trenton, New Jersey

State of New Jersey }  
County of Mercer }

On this 24th day of May, 2012, before me personally came and appeared Susan Wood Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

*Bharat P. Patel*

