

**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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In the Matter of Interest Arbitration Between :  
 :  
**COUNTY OF ESSEX & SHERIFF OF** :  
**ESSEX COUNTY** :  
 "the County or Sheriff" :  
 :  
 and :  
 :  
**ESSEX COUNTY SHERIFF'S OFFICERS** :  
**N.J. STATE POLICE BENEVOLENT** :  
**ASSOCIATION, LOCAL 183** :  
 "the PBA or Union" :

**INTEREST ARBITRATION  
DECISION  
AND  
AWARD**

Docket No: IA-2003-037

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Before: Robert M. Glasson, Arbitrator

**APPEARANCES**

**FOR THE EMPLOYER:**

Angelo J. Genova, Esq., Of Counsel  
Lynn S. Degen, Esq., On the Brief  
Genova, Burns & Vernoia

**FOR THE PBA:**

Richard D. Loccke, Esq.  
Of Counsel & On the Brief  
Loccke & Correia P.A.

### **Background & Procedural History**

The County of Essex and the Sheriff of Essex County (the "County" or "Sheriff") and Essex County Sheriff's Officers, PBA Local 183 (the "PBA" or "Union") are parties to a collective bargaining agreement (the "CBA") which expired on December 31, 2001. (J-1). Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA filed a petition with the New Jersey Public Employment Relations Commission ("PERC") on January 17, 2003, requesting the initiation of compulsory interest arbitration. (J-2). The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on February 13, 2003 from its Special Panel of Interest Arbitrators.

I met with the parties in voluntary mediation sessions on April 14 and May 29, 2003. The mediation sessions did not resolve the issues included in the impasse. Formal interest arbitration proceedings were invoked and hearings were conducted on September 17, 22 and October 27, 2003 when the parties presented documentary evidence and testimony in support of their positions. Upon the close of the PBA's case, the County moved for dismissal of the PBA's case which I denied on the record on September 22, 2003. Both parties filed post-hearing briefs. The hearing was declared closed on January 30, 2004 upon receipt of the briefs. The parties agreed to extend the time for the issuance of the award.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section.”

### Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each factor.

(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 condition of employment of other employees performing the same or similar services 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.
- ©) In public employment in the same or similar 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:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 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 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.

### **PBA LOCAL 183's FINAL OFFER**

1. **Term of Contract:** January 1, 2002 to December 31, 2005.
2. **Wage Increase:** The PBA proposes a 5% annual increase on the salary guide, across-the-board, effective each January 1. The PBA also proposes a 20-year senior officer differential step effective January 1, 2004.
3. **Senior Officer Differential:**

Effective 1/1/2004, permanently appointed employees who have completed 20 or more years of service with the County of Essex in the title of Sheriff

Officer/Investigator shall be entitled to Senior Officer Differential (SOD) which is defined as an adjustment equal to ½ the difference between the current base rate for the eligible employee and the next higher rate of pay. For example, Senior Officer Differential for employees in this unit would normally be ½ the difference between Sheriff Officer/Investigator top pay and the base rate of pay for Sergeant. The Senior Officer Differential will be paid with base pay in the regular paycheck starting on the anniversary date of eligibility. Any future adjustment to base pay will be calculated without SOD, and after such wage adjustment is made the SOD will be recalculated and paid as set forth above. Up to 4 years credit will be given for prior service covered by PERS, PFRS, CPFPPF, and ERS.

4. **Vacations:**

Effective 1/1/2003, Sections 1 and 2 of the Vacation Article will be modified to provide as follows:

Section 1 - Employees shall be granted vacation leave with pay subject to the approval of the Sheriff as follows:

- (a) During the first twelve (12) months of employment, one (1) working day's vacation for each month completed.
- (b) During the second (2<sup>nd</sup>) through the tenth (10<sup>th</sup>) years of employment, fifteen (15) working days.
- (c) During the eleventh (11<sup>th</sup>) through the fifteenth (15<sup>th</sup>) year of employment, twenty (20) working days.
- (d) During the sixteenth (16<sup>th</sup>) year and thereafter, twenty-five (25) working days.

Section 2 - Upon celebrating the tenth (10<sup>th</sup>) and fifteenth (15<sup>th</sup>) years of service, an employee shall be granted the additional vacation during the calendar year in which the employee celebrates that anniversary.

5. **Critical Event Excusal Time:**

The Essex County Sheriff's Department will produce a policy and furnish a copy to the Union whereby an officer will be excused from duty, up to two work days, immediately following his/her involvement in a critical incident if requested by the officer and deemed necessary by the officer's supervisor. This time off shall not be deducted from any compensated time i.e. vacation, sick, personal, etc. The Sheriff or the Chief shall approve this time off. A critical event is defined as:

- a. Hostage/barricaded persons negotiations (prolonged)
- b. Involvement in use of deadly force at or by the officer

- c. Certain life savings events (fire, disaster, multiple deaths)
- d. Actual bomb disposal operations

The appropriate medical doctor, to be supplied by the County, shall evaluate any request for more than two days excusal.

During any critical event excusal the officer shall be fully accessible by the department. Failure to do so will revoke this privilege and subject the officer to charged time off and disciplinary action. Acts of war or the participation in recovery efforts are excluded.

6. **Holidays:**

The PBA proposes that Article VIII of the contract be modified so that all holiday benefits shall be compensated and paid on a folded in basis and utilized for all computation purposes.

7. **Local 183 Activities:**

The PBA proposes that Article XVIII of the contract be modified to provide that the majority representative, PBA Local 183, shall have two association members placed on full release time with full compensation for the purpose of attending to union business.

8. **Grievance Procedure:**

The PBA proposes Article XI be modified to include a new grievance definition:

For purposes of this Agreement, the term "grievance" means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement.

Minor disciplinary matters (less than six (6) days of fine or suspension or equivalent thereto) shall be included in the Grievance Procedure.

## COUNTY'S FINAL OFFER

1. **Term of Contract:** January 1, 2002 through December 31, 2005.

2. **Wages:**

Effective July 1, 2002, 3% total lump sum bonus payment to all PBA Local 183 members for half a year. To be eligible for the bonus payment an employee must have been employed by the County on or prior to July 1, 2002 and must still be employed by the County when the contract is ratified by the Board of Chosen Freeholders. The payment amount will be equal among all members. All eligible employees will receive the same dollar amount payment regardless of current salary.

Effective January 1, 2003: Zero percent (0%) increase, however, the July 1, 2002 lump sum bonus of three percent (3%) total will be distributed as follows: each individual employee's base will be increased three percent (3%) of those PBA Local 183 members who were on the payroll on January 1, 2003 and were on the payroll on the date of ratification by the Board of Chosen Freeholders.

Effective January 1, 2004: Zero percent (0%) increase.

Effective January 1, 2005: Two percent (2%) increase on base pay to eligible employees who are on the payroll as of January 1, 2005.

Effective July 1, 2005: Two percent (2%) increase on base pay to eligible employees who are on the payroll as of July 1, 2005.

3. **Prescription Co-pay Modification:**

(a) One month after full ratification by the Union membership and the Board of Chosen Freeholders, the Prescription drug plan co-payment will be increased from \$1.00 to \$5.00 for generic drugs and from \$5.00 to \$10.00 for brand name non-generic drugs. The County will continue a mail order prescription plan.

(b) Effective January 1, 2005, the prescription drug plan co-payment will be increased from \$5.00 to \$10.00 for generic drugs and from \$10.00 to \$15.00 for brand name non-generic drugs. The County will continue a mail order prescription program.

4. **Overtime Modification:**

Article VI – Overtime shall be modified as follows:

(a) Section 2 Add the following:

At the request of the Sheriff the contract may be reopened to negotiate changes in the existing work schedule as required by operational need. Such negotiations may include weekend work as part of regularly scheduled work days and work schedules covering a fourteen day cycle with straight time and overtime as authorized by law. This provision shall not infringe or change the Sheriff's managerial prerogative regarding manpower, work schedules, staffing or manning.

(a) Add new Section 5 – Compensatory Overtime Option.

Overtime shall be paid in cash or compensatory time at the rate of time and one-half in accordance with the following procedure:

Except as set forth in Section 3 above, the employee shall have the option as to whether overtime shall be paid in cash or compensatory time and shall notify his/her commanding officer in writing of the decision at the completion of such overtime and shall indicate same on the overtime report upon submission.

However, an employee may accumulate no more than eighty (80) hours to be banked as compensatory time.

For all hours in excess of eighty (80) hours of overtime pay, the employee shall receive only paid overtime compensation.

Any compensatory time not utilized by the employee during the calendar year in which it is earned shall be paid to him pursuant to the paid overtime compensation provision of this agreement. January 1, 2002 to December 31, 2004.

(J-4).



## THE PBA'S POSITION AND ARGUMENTS

The following are the PBA's positions and arguments in relation to the statutory criteria on the outstanding economic and noneconomic issues.

### *Interests and Welfare of the Public*

The PBA asserts that the Essex County Sheriff's Department is an integral part of the law enforcement community within both the County of Essex and State of New Jersey. The PBA submits that the Essex County Sheriff's Office provides the citizens and residents of Essex County, and beyond, exceptional services and technology coupled with the ability to amass large numbers of support personnel and at all times the highest level of professionalism.

The PBA cites the testimony of its first witness, Essex County Sheriff Armando Fontoura, to establish the Sheriff's Office position within the law enforcement hierarchy.

Q. In Essex County how does the Sheriff's office fit into the hierarchy of law enforcement? What is its place in the law enforcement community within the County?

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

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

We have task force approach with the FBI and fugitive apprehension. We do DEA and we have a task force, also customs interdiction, with terrorism, this which is important to the rest of the people in the county. So we are a

full fledged law enforcement agency that participates with the rest of the law enforcement community with providing safety to the people in Essex County and New Jersey.

Q. Does the Sheriff's office participate with the day to day functions with other law enforcement agencies in providing security police protection to the citizens?

A. Yes.

Q. As an example, can you describe the interaction with the Sheriff's office and New Jersey Transit following the tragedy 9/11?

A. Well when the 9/11, right after had occurred the Office of Emergency Management was going by us for the County. We had a put a plan into effect to make sure, our response was to make sure that our people were safe as they could possibly be. All of the folks that live in the County were allowed to come home and if they were contaminated from the dust and, of course, to assist our brother officers whether it be in Manhattan, New York. We sent people over there. We sent some to New Jersey Transit because they were not capable of handling the influx of people coming from the trains. Our officers were called upon to assist. We provided as much assistance as we possibly can.

Q. During these unique times did you have officers assigned in New York?

A. Yes we did.

Q. On a regular basis do officers work with the various towns in the County?

A. Yes we do.

Q. How many towns are there in Essex?

A. 21.

Q. And I would assume they vary tremendously from residential to inner city?

A. Certainly do.

Q. And Sheriff's Officers participate with those law enforcement agencies on a regular basis?

A. Yes.

Q. Are there Sheriff's officers on a regular basis in uniform on marked units on streets in and around the County?

A. Yes.

Q. Are there services - are there officers from this department teaching at the academy?

A. Yes.

Q. Is that a regular or once in a while occurrence?

A. Well its regular because we have our people being trained on a regular basis so, we along with the regular departments. Any department will participate also in resources there such as teaching as much as we can.

Q. What is the current force, total sworn force of the Essex County Sheriff's Department?

A. It changes day to day.

Q. If you can approximate?

A. Sworn personnel all totaled 340, something like that 345, 350.  
(Tr. I, 8-13).

The PBA submits that the Essex County Sheriff's office offers a unique combination of size of force, professionalism and highly unique technology which makes it an integral part of the law enforcement hierarchy. On a regular basis the Essex County Sheriff's Office works with other agencies such as the State Police, Essex County Prosecutor's Office and, as stated above, the municipalities throughout the county. There is also a regular inter-relation with Federal Law Enforcement Agencies. The PBA asserts that these regular recurring day-to-day operations and interactions were established through the testimony of Sheriff Fontoura. The Sheriff, among other titles, is also the head of the Office of Emergency Management as a coordinator for the County of Essex. Such title further carries with it responsibility for both the Sheriff personally and the force generally to provide said services. The PBA cites the continued testimony of Sheriff Fontoura in this regard:

Q. You referred earlier to the OEM or Office of Emergency Management duty. And you are the coordinator for Essex County, are you not?

A. Yes.

Q. Who do you report to or coordinate with on a state level?

A. State Police Superintendent Col. Rick Feuentes. He is the State Coordinator of the Office of Emergency Management. Each one as a state has one appointed by the Freeholder Board. Of course, has to be also approved by the State. And at this particular time I am the Coordinator for Essex County.

Q. Are there local Coordinators for OEM in the Municipalities?

A. Everyone has one yes.

Q. Is the local through your office at the State Police?

A. Yes.

Q. With respect to forensics are there services provided by this department in the area of forensics through local agencies?

A. Yes.

Q. What type of forensic ability or capability is there?

A. Our ballistics lab - we are able to secure some funding and some equipment from the ATF. We were chosen not because we had our best looking Sheriff in America but probably we have more volume than anyone else. So it was put in our office. All the other departments contribute. Any fragment of a shell casing or fragment of a slug that is removed from someone's body or a wall or found at a scene has been turned over to us. We enter it into our data base. All ballistics labs for northern, most of New Jersey are conducted by our office. I also fingerprint.

Q. And these types of equipment you have already indicated are rarely found or only found in a few places in the State of New Jersey?

A. We're the only one that has it. We are one of the first 9 in the country. Now there's a few others but we were the reasonable one for New Jersey at the particular time. (Tr. I, at 13-14).

The PBA asserts that the Essex County Sheriff's Department has been designated on a national basis to be one of the first in the United States to be supplied with the ballistics forensic equipment and data base capability described by the Sheriff. As he stated with

respect to ballistics analysis that “most of New Jersey are conducted by our office.” This agency’s technology is the focal point and repository for the data base so necessary in the evaluation of evidence and solving of crimes. The day-to-day law enforcement activity of the Sheriff’s personnel and their credentials was also the subject of testimony by Sheriff Fontoura. The PBA contends that the Essex County Sheriff’s Department is not in any way limited to just the Constitutional duties and authorities in the Office of the Sheriff.

Q. Is the day-to-day operation of this department as it exists a law enforcement agency?

A. Yes.

Q. And are the sworn officers in this Essex County Sheriff’s Office today on a regular day to day basis engaged in a full time apprehension and arrest of persons violating the law?

A. Yes.

Q. Do they work on a regular basis with the Essex County Prosecutor’s Office?

A. Yes.

Q. When expert testimony is required in the Prosecutor’s office is it used on a regular basis from Sheriff’s personnel?

A. Yes.

Q. Are Sheriff’s Officers trained in the same Police Academy as local Police Officers?

A. Yes, sir. The training is exactly the same.

Q. Is the statutory authority to enforce the law, apprehend, arrest, carry a weapon the same as local Police Officers?

A. Exactly, sir.

Q. Are they working shoulder to shoulder on a daily basis in the specialty services as you’ve identified earlier and in special operations around the county as a regular duty?

A. Yes, we are.

Q. Are there also services such as supplementing the local departments on an as needed basis from the Essex County Sheriff's Department?

A. When called upon, yes.

Q. Are there Sheriff's officers now working in Irvington?

A. Yes.

Q. Are they working with the State Police in Irvington?

A. Yes, we are. (Tr. I, at 16-17).

The PBA asserts that the Sheriff could not have been more precise in either the general or specific relationships that are regularly maintained by the Sheriff's Department within the law enforcement community. The wide range of specialty services as well as the day-to-day operations involve constant and regular coordinated interaction with national, state and law enforcement agencies. When special circumstances occur where there are unique needs, such as the Irvington initiative, it is the Essex County Sheriff's Officers who are assigned to work in that city along with New Jersey State Police. When the Prosecutor's Office needs specialty services, technical advice, and expert testimony, they turn to the Essex County Sheriff's Office. Clearly the Essex County Sheriff's Office is part of the day to day law enforcement community serving the people of Essex and beyond.

The PBA notes that the exceptional pride in performance and professionalism and support for the staff at the Sheriff's Office was evidenced by the Sheriff's responses to his assessment of his own work force and their performance.

Q. Now, I would like if you could give us your comment, your observation with respect to the morale, professionalism and productivity of these Sheriff's Officers specifically in the PBA, of course, about the operation generally and their prime performance and morale.

A. Well, I obviously believe that we have one of the finest law enforcement agencies in the State of New Jersey, if not the country. And I'm generally proud of the work that all of our people do on a regular basis and they're very

professional and our command structure works extremely well. The men respond well to what we do. We have extreme pride in what we do. We are looked upon in a great deal of respect. One is not called upon by the DEA or State Police or the FBI and other agencies if, they will not knock on your door if they don't think you are qualified to work with them.

We are very proud of what we do. We take it very seriously and on behalf of the citizens of this county and holding of the top and the bottom and those who fail to do that we take steps to get rid of them as much time we are at odds with our Union leaders, that's the way it is. We are very proud of what we do and the people that work with us.

Q. These are career law enforcement officers in the Sheriff's department, are they not?

A. Yes.

Q. You are also a career law enforcement officer, are you not?

A. 37 years. (Tr. I at 17-18).

The PBA cites the testimony and "Power Point" presentation made by PBA President Chris Tyminski detailing the actual mission and function of the Essex County Sheriff's Office. The County of Essex was shown to be a large jurisdictional area, 127 square miles, with a diverse population ranging from inner city to suburbia. The Park system of 17 parks and 5 reservations cover more than 5,980 acres. The Sheriff testified that all of this system is within the jurisdiction of the Sheriff's Office. Major highway accessibility to the county includes the Garden State Parkway, New Jersey State Turnpike, Interstates 78, 80 and 280, Routes 1, 9, 21, 22, 23 and 24. Once again the state road system provides easy access in and out of the County and provides for the regular interaction with the State Police. There are eight major colleges and universities within the county. There are also three of the nation's major transportation centers within the county, Newark Liberty International Airport, Port Newark and Penn Station. Numerous places of interest and tourist attractions were listed.

The Essex County Departmental Organizational Chart illustrates the diverse services and sub-units within the agency. The various agencies and offices within the Essex County Sheriff's Department identified on the Departmental Organizational Chart include the following:

- Office of Emergency Management
- Internal Affairs
- K-9 Bomb Squad
- County Police
- Bureau of Narcotics
- Bureau of Criminal Investigation
- Detective Division
- Transportation
- Courts Division
- Deputy Division
- Civil process
- Records
- ID Unit
- Command Post
- Fugitive
- Juvenile
- DR/DV Squad
- Ballistics
- New Court's building
- Wilentz Justice Complex
- Security Patrol

The court system was described as the largest and most active court system in the State of New Jersey. Approximately 35% of the State's criminal cases are adjudicated by the Superior Court in Essex County. A graph showing the relative activity within the Superior Court in Essex County as compared to all other counties within the State appeared as part of the power point booklet and shows the exceptional activity within Essex as compared to all others. Other statistics offered with respect to the court's division include the substantial increase in Juvenile and adult custodies transported from 1998 (7,412) to



2002 (20,718 transports). In 2002, 2,742,083 persons visited the Courthouse Complex. All of this is just a part of a regular day to day activity of the Sheriff's Department.

The PBA disputes the County's depiction of the Sheriff's Department as largely court-oriented. While the courts are certainly a significant Constitutional obligation, even the Court's Division is diverse in its services. In the power point chart captioned "Court's Division Operations and Functions" the actual services within the Division are broken down to illustrate that Court officers are used on a frequent basis for motor patrol, roving patrol, west side park detail, probation assignment and judicial security. It would appear that even within the Court's Division the day-to-day activities are diverse and cover many assignments that go well beyond court room security.

The Bureau of Criminal Identification was described in detail through P-1 as a 24-hour a day operation, 365 days per year, overseeing Telecommunications Control, Surveillance, State and National Law Enforcement Telecommunications System, maintenance of 16 radio channels, State Police Emergency Networks (SPEN) and the National Warning System (NAWAS). It also serves as the focus of the Office of Emergency Management during non-business hours. The PBA submits that this is not just a Sheriff's Officer operation. It oversees communications and networking throughout the County and as part of the State Network. The BCI also contains the fingerprint section, the Identification Unit, serves as an evidence repository, contains a records/archiving unit, Information Technology Unit, and support services. The Essex County Sheriff's Office's Bureau of Criminal Identification has a data base of more than 150,000 photographs available for identification in court presentation and is utilized by all county, local and State and National agencies. The "BCI" statistics chart analyzes and compares over this same 5-year period (1998 through 2002) activities by designation and compares the increases. In every level

of BCI Statistics noted there is a significant increase from 1998 to the last completed year of statistics at time of hearing, 2002. The PBA notes that the chart shows that everything from defendants processed, adults fingerprinted, fingerprints examined, deceptive identities found, photo lab, and warrant processing have increased over this 5-year period.

The Transportation Division, another activity handled by the Sheriff's personnel is shown to have greatly increased in activity. From 1998 to 2002 the number of trips has increased significantly. The volume of prisoners on prison floor charts also shows increases. Due to the volume of activity, Transportation Officers are now assigned to duty during weekends and holidays. The opening of the Wilentz Justice Complex, approximately a quarter mile away from the Courthouse Complex, has increased the need for trips and is a factor in security. The Transportation service has also significantly increased by almost double the miles traveled from 1998 to 2002. Requisite staffing level has also increased.

The Process Divisions statistics were part of P-1. This Division includes several units and includes 25 Detectives. This is a reduction in force of two detectives since 1998. Included within the Process Division duties are the service of summonses and complaints and service of Writs of Execution. The Process Division is a revenue source for the Sheriff's Office from fees and commissions. In the P-1 chart captioned "Process Division Monies Collected" there is shown an increase over those years. In 1998, the Process Division is shown to have collected in fees \$1,346,000. Throughout 2002 said Division is shown to have collected in fees \$1,523,753. This represents an increase of \$177,753. This may also be seen as an increase of 13.2%.

The Detective Bureau includes six squads and, in addition to other duties provides assistance to outside agencies such as probation, parole, human services and adult intensive supervision programs. Essex County Sheriff's Office personnel are regularly assigned to

the New Jersey State Police, Essex County Police, United States Martial Service, Irvington Police, Federal Bureau of Investigation, Essex County Prosecutor's Office, Drug Enforcement Administration, Essex-Union Auto Theft Task Force and the United States Secret Service. This is truly a diverse assignment and may be seen to recognize the unique qualities and expertise of Sheriff's Officers and personnel. In addition to the special services there is also a Detective Bureau in the Juvenile/Missing Persons category, Domestic Violence, fugitive warrants, Night Detective Bureau, and various special operations. The "Detective Bureau" chart within P-5 shows the dramatic increase in warrants received and extraditions completed. There is also reference to the special "sting" operations conducted by the Detective's Office and the current assignment of personnel to focus on gang activity as well as narcotics trafficking, car theft and other violent crimes. This task force is made up of personnel from the New Jersey State Police, Essex County Sheriff's Office, DEA and FBI. There is also a continuous collaboration with the Newark Police Department on their quality of life initiatives.

Statistics with respect to the "Integrated Ballistics Identification System" (IBIS) are contained within P-1. The numerous federal and state agencies seeking access to the expertise and equipment are listed.

The Bureau of Narcotics information and statistics are provided. This single unit processes more than 25% of all narcotics search warrants for the entire County of Essex. The number of firearms seized and the multimillion dollar value of narcotics seized are included within P-1.

Special services such as the K-9 and Bomb Unit are described in P-1. In the chart captioned "K-9 and Bomb Unit" there is statistical evidence showing an increase in activity from 1998 through 2002 including bomb threats, suspicious packages and security searches.

At the bottom of the chart there is a statement indicating that “on average, 90% of all calls for assistance are received from Federal, State and local agencies. In 2002, eight agencies received training from the Essex County Sheriff’s K-9 and Bomb Unit, including: New Jersey Transit Police, Mahwah Police, Newark Police, Bloomfield Police, Wanaque Police, US Parks Police, Amtrak Police, NJ Department of Corrections.” Between 1998 and 2002 statistics were analyzed on a separate K-9 and Bomb Unit chart. The chart indicates that in 1998 there were 342 grams of marijuana confiscated. In 2002, this increased to 3,302 pounds. Cocaine confiscations in 1998 were 130 grams which increased to 747 grams in 2002. Heroin increased from 290 grams in 1998 to 536 grams in 2002. Notably, the United States Currency seized in said operations rose from a 1998 figure of \$90,686 to a 2002 figure of \$1,573,987. These are significant confiscations.

Exhibit P-1 also contains specifics on the Emergency Management Operation. This was described during the testimony of Sheriff Fontoura and the County Executive’s emphasis on preparedness and promise of cooperation with the Sheriff is part of the presentation. Also included within the Office of Emergency Management section of P-1 is a letter dated April 1, 2003 from New Jersey Governor James E. McGreevey to Sheriff Fontoura which states in part,

*Thank you for your continued support and professionalism to ensure the safety and security of our citizens at this critical time in our nation’s history. Because of your efforts New Jersey is measurably safer than it was a year ago.*

Other specialty services are also referenced in P-1 such as the Mobile Command Post and Communication Center, and the Underwater Search and Recovery Team. There is also a hostage negotiation service, composite sketch artist and Motorcycle Patrol Division. It would certainly appear that these types of highly specialized services, requiring special equipment and training, are not readily available nor practical to local agencies.

The Essex County Police Academy is staffed on a regular basis with Essex County Sheriff's personnel. As described in P-1, the Sheriff's office has a detective assigned full time to the Police Academy for basic police recruit classes. The Sheriff's Office utilizes up to 20 officers annually to train police recruits at the academy. These instructors are qualified by the State of New Jersey Police Training Commission. This instruction is not just for the Sheriff's recruits but covers recruits generally. Local officers and officers from outside of the County of Essex who train at the Essex County Police Academy are trained by Essex County Sheriff's Office personnel. This is a recognized State Academy which is certified by the Police Training Commission.

Even what appears to be a somewhat "routine" type of assignment can easily develop into a very different need. As Sheriff Fontoura described during his testimony even a person assigned to the Court Division may find himself or herself in a very different type of circumstance.

Q. Have there been special orders cut from time to time from people in the Court Division such as the Latin Kings and the Bloods and the Crypts cases that are heard in Essex County are there not?

A. Yes.

Q. Is the Court unit also used as a pool to draw from, for example 9/11 and other occasions where it's a reserve pool?

A. Yes.

Q. Recently during the black out in the northeast were Court Officers pulled to do traffic duty on the streets of Newark?

A. That's correct.

Q. Are Court unit personnel also used in mobile patrol, marked units, the areas of the court in marked cars?

A. Yes.

Q. Are court personnel used for perimeter security at the jail including Caldwell?

A. When called upon to assist, yes.

Q. When one is in the Court House, Court Division security building also includes protection of the entrances to the building. Correct?

A. Correct and outside perimeter.

Q. And have there been weapons and narcotics used in this effort?

A. Almost on a weekly basis. Unfortunately, people still think they can come in with them.

Q. We have had one tragedy where we lost a Police Officer shot to death?

A. A Sheriff's officer was shot and wounded.

Q. Are these people, if there's a threat to a judge or the system they work with the State Police in protecting judges of the Superior Court?

A. Yes we do. (Tr. I, at 24).

This reserve pool of expertise and general mobile capabilities of the Essex County Sheriff's office have been called upon to serve beyond the jurisdiction of Essex and in fact beyond the State of New Jersey's boundaries. The PBA submits that with respect to the 9/11 terrorist attack on the World Trade Center, the Essex County Sheriff's Office played such a role as described during the testimony of Essex County Sheriff's Office PBA President Chris Tyminski.

Q. What role did this agency play with respect to the days and weeks and even months following that tragedy?

A. Several areas. I think immediately after we did have quite a bit of our personnel assigned to New York. We had personnel assigned to different train stations, whether it was Hoboken, Penn Station and Newark doing decontamination for people coming off the trains. We had personnel working for months after the tragedies of 9/11 with New Jersey Transit, Broad Street Station, Penn Station, different ones throughout the state. (Tr. I, at 52-53).

P-3 is a package of material including orders from the office of Sheriff Fontoura to all commands regarding "FBI Command Post Security" and other special operations notices following the anniversary of September 11, Executive and Dignitary protection protocol, and various other initiatives and services provided by the Sheriff's office. There are "preparations for pending Iraq war" dated March 18, 2003, protocol for the "Election Day operations center - Tuesday, May 14, 2002", "Transportation Assistance to Irvington Police," composite sketch artist, "Delivery of HAZMAT Evidence" which is a response to the anthrax threat dated October 17, 2001, special orders for the "Inauguration of Governor Christine Todd Whitman, Tuesday, January 20, 1998" and a news release from the Sheriff's office "Fontoura reports to President on Local Drug Problems" dated August 19, 2003. Special needs are evidenced in said document including "Sheriff Officers Arson Prevention Program to religious institutions" dated August 19, 2003 and a news release from the Essex County Sheriff's Office dated August 19, 2003 "Essex County Sheriff's Office Awarded High-Tech Ballistics Computer by Federal Government." The PBA submits that this is a truly remarkable Sheriff's office and clearly a full service law enforcement agency.

The PBA notes that the numerous awards, citations and special acknowledgments listed illustrates the outside recognition given to this most unique law enforcement agency. The PBA submits that the Essex County Sheriff's Office is and has been on the cutting edge of law enforcement innovation and creativity under the leadership of Sheriff Fontoura. Even the "COPS" television program has filmed numerous episodes focusing on the activities and raids emanating from the Essex County Sheriff's Office. P-4 is an article from *Popular Mechanics* magazine, October 2001, illustrating the unique "firearms fingerprints" technology available at the Essex Sheriff's office. The officers photographed in the article

are sworn personnel of the Essex County Sheriff's Department. Recognition is not just on a county basis. Recognition is both statewide and national in this office's expertise and professionalism.

The PBA cites the testimony of Sheriff Fontoura following an analysis of the activities of this agencies and its services to the public:

*I believe that we have one of the finest law enforcement agencies in the State of New Jersey, if not, in the country. (Tr.I, at 17-18).*

**Comparison of Wages, Salaries, Hours and Conditions of Employment**

The PBA contends that the base wage rate for Essex County Sheriff's Officers is not only below average among all law enforcement peers, but it is actually the lowest pay rate of any law enforcement agency in evidence in this proceeding. The PBA submits that there are no offsetting benefits to justify this low rate of compensation. The overall compensation program is also the lowest of all compared.

Chart 1 below compares the base wage rates in each year at issue in this proceeding for all law enforcement personnel covered by contracts placed in evidence by the PBA. The chart includes only Essex County law enforcement agencies and other county Sheriff's departments.

**CHART NO.1  
BASE WAGE COMPARISONS**

	2002	2003	2004	2005
Bergen Sheriff	\$77,585	\$80,689	\$83,916	\$87,273
Newark		\$66,592	\$69,255	
Caldwell	\$63,055			
Cedar Grove	\$67,144	\$69,830	\$72,623	\$75,528
Fairfield	\$65,242	\$68,500	\$72,000	\$75,500



Mercer Sheriff	\$60,951	\$63,724	\$66,786	
Middlesex Sheriff	\$60,755	\$63,641	\$66,664	
West Caldwell	\$66,852	\$69,693	\$76,105	
North Caldwell	\$63,038	\$65,561	\$68,182	\$70,910
South Orange	\$62,963	\$65,482		
Passaic Sheriffs	\$66,260	\$72,171	\$75,779	\$79,568
Bloomfield	\$61,332	\$63,663	\$66,146	\$68,660
Glen Ridge	\$70,926	\$73,763	\$76,714	\$79,782
Nutley	\$68,342	\$71,247		
Morris Sheriff	\$62,079	\$64,879	\$67,679	\$70,479
Milburn	\$63,474	\$65,854		
Maplewood	\$61,446			
Irvington	\$67,608			
Averages	\$61,620	\$68,353	\$71,569	\$74,929
Essex Sheriff's Office	\$59,240			
Essex Sheriff's Office compared to average	(\$2,380) ( 4%)			

The PBA submits that Chart 1 clearly establishes that the Essex County Sheriff's Officer top pay rate is at the bottom and 4% below the average salary of \$61,620. The PBA submits that the average pay rate is only one element of the compensation program.

The PBA asserts that a common benefit provided to essentially every law enforcement agency is a longevity program. The Essex County Sheriff's Officer is the exception. There is no longevity program available to these Sheriff's Officers as it was removed from the CBA in 1974 before the implementation of the Interest Arbitration Act in 1977. The PBA contends that the value of longevity, enjoyed by the peers of these officers may be quantified and compared as part of total compensation. Chart 2 below illustrates and quantifies the maximum longevity benefit in these other agencies in evidence.

**CHART 2**  
**Longevity Benefit Programs**

	Max Longevity Value @	Longevity Benefit Calculation
Newark	\$9,232	6 steps, max 14% @ 30 yrs.
Bergen Sheriff	\$1,750	5 steps, max @ 20 yrs.
Caldwell	\$6,305	5 steps, 10% max @ 25 yrs.
Cedar Grove	\$6,983	5 steps, 10% max @ 25 yrs.
Fairfield	\$7,200	5 steps, 10% max @ 24 yrs.
Mercer Sheriffs	\$2,400	5 steps, flat dollar max @ 24 yrs.
Middlesex Sheriff	\$4,455	3 steps, max 7% @ 21 yrs.
West Caldwell	\$6,969	5 steps, max 10% @ 24 yrs.
North Caldwell	\$7,867	5 steps, 12% max @ 24 yrs.
South Orange	\$6,548	5 steps, max 10% @ 24 yrs.
Passaic Sheriffs	\$7,217	5 steps, max 10% @ 25 yrs.
Bloomfield	\$6,366	5 steps, max 10% @ 24 yrs.
Glen Ridge	\$7,376	5 steps, max 10% @ 24 yrs.
Nutley	\$7,124	5 steps, 10% max
Morris Sheriffs	\$5,839	5 steps, max 9% @ 16 yrs
Millburn	\$6,585	4 steps, max @ 20 yrs.
Maplewood	\$4,000	5 steps, max @ 25 yrs.
Irvington	\$6,760	5 steps, 10% max @ 24 yrs.
<b>AVERAGE</b>	<b>\$6,170</b>	
Essex Co. Sheriff Officer	NONE	

The average longevity value of \$6,170 is the maximum rate alone. Throughout these officers' careers in the other agencies they move up through the steps and enjoy varying increasing levels of longevity benefits. These longevity benefits provide additional income in every single year once the initial step for qualification is reached. It affects hourly rates,

overtime rates, compounds year-to-year and ultimately impacts on the pension. For example, if a Police Officer, in the New Jersey State Police and Fire Pension System, retires after 25 years of service then the average value of \$6,170 equates to \$4,010 per year in retirement. If the officer lived for 20 years, this benefit provides an additional \$80,210 in payments. This calculation does not include annual COLA adjustments.

Base wages have earlier been compared. Now if one compares the longevity value the shortfall is even more acute. The value of \$6,170, average longevity, compared to the Essex Sheriff's Officer salary is just more than 10.4%. Therefore to reach average for 2002 alone the Essex Sheriff's Officer would have to receive an increase of just more than 14.1% which is more than the PBA has requested in this proceeding. The PBA asserts that these comparisons validate its last offer on wages. The PBA notes that is not seeking to get to average it is only trying to reduce the continued short fall from average.

The PBA contends that there are no offsetting benefits which justify the below average salaries. Chart 3 compares annual clothing allowance, another benefit normally paid to law enforcement officers.

**CHART NO. 3**  
**Annual Clothing Allowance Comparisons**

Bergen Sheriff	\$1,000
Newark	\$ 950
Camden Sheriff	\$ 725
Caldwell	\$1,035
Cedar Grove	\$ 850
Fairfield	\$ 875
Middlesex Sheriffs	\$1,000
STFA	\$ 900
North Caldwell	\$ 700

Ocean Sheriffs	\$ 550
South Orange	\$1,050
Bloomfield	\$ 650
Glen Ridge	\$ 800
Nutley	\$1,150
Morris Sheriff	\$1,200
Millburn	\$1,200
Maplewood	\$1,075
Average annual allowance	\$ 924
Essex Sheriff Allowance	\$ 550
Essex Sheriff Allowance compared to Average	(\$375) (68.2%)

Once again the Essex Sheriff's Officer receives the lowest annual allowance paid to anyone and is significantly below average. It would take more than a 68% increase in the Essex Sheriff's Officer's annual clothing allowance just to catch average.

In this proceeding the public employer seeks to create further reductions and short falls in benefit programs available to Essex Sheriff's Officers. Specifically the employer is seeking to increase co-pays in insurance coverage. The PBA contends that these co-pays are not justified and there is no credible evidence in the record to validate or support such a proposal. Further, the PBA asserts that Chart 4 shows that the empirical data in the record supports the maintenance of the status quo.

**CHART NO. 4**  
**Medical Employee Contributions - Comparison**

Med. Insurance Co-payment

Bergen Sheriff	None
Newark	None
Camden Sheriff	+2, on Rx co-pay

Caldwell	None,\$5.00 Rx co-pay
Cedar Grove	None
Fairfield	None
Mercer Sheriff	<b>no change in current settlement</b>
STFA	None
North Caldwell	None
South Orange	None
Passaic Sheriff	None
Bloomfield	Rx co-pay only
Glen Ridge	None
Nutley	None

The PBA contends that the status quo is the norm in this area of insurance co-payments. The PBA notes that the County did not support its proposal with any specific information.

The PBA submitted other examples of economic benefits found in other CBAs:

- Newark Police receive a senior officer differential of 25% upon completion of 10 years of service.
- Bergen Sheriffs receive a \$3,000 automatic shift differential paid to all ( P-5, Tab A, p. 30).
- Camden Sheriffs receive a 7% senior officer differential at 22 years of service (P-5, Tab B, P. 51).
- Middlesex Co. Sheriffs receive a senior officer differential of 4% at 20 years of service (P-6, Tab K, P. 7a).
- Detective differentials are frequently found in law enforcement agencies while they do not appear in the Essex Sheriffs' compensation program.

The PBA notes that the Essex County Sheriff's officer works 40 hours as the standard work week while many other agencies have varying work charts that generate lesser hours.

The base wage rates of the law enforcement agencies in evidence are changing year-to-year. The PBA emphasized that in addition to short falls, in order to reach average, consideration must be given to the average increases which are being negotiated, and in some cases, arbitrated, in and around Essex County. Chart 5 below is based on Essex County municipalities and other county Sheriff's Officers.

**CHART NO. 5**  
**Base Rate Changes - PBA Exhibits**

	2002	2003	2004	2005
Newark			4	
Bergen Sheriffs	4	4	4	4
Camden Sheriffs	4			
Caldwell	4.125 (2/2.125)			
Cedar Grove		4	4	4
Fairfield		5	5.1	4.9
Mercer Sheriff	4 (2/2)	4.5 (2/2.5)	4.75 (2/2.75)	
Middlesex Sheriff	4.75	4.75	4.75	
STFA	4	4		
West Caldwell	4.25	4.25	4	
North Caldwell		4.	4.	4.
South Orange	4	4		
Passaic Sheriff		8.9	5.	5.
Bloomfield	3.9	3.8	3.9	3.8
Glen Ridge		4.	4.	4.
Nutley	4.	4.25		
Morris Sheriff		4.5	4.3	4.1
Millburn	3.75			
Maplewood	4.			

Irvington	3.25			
Averages	4.02%	4.568%	4.32%	4.225%

The PBA submits that in order to reach average salary, it would require the application of the above average salary increases coupled with the 4% shortfall previously noted in Chart 1. The PBA notes that this is far more than the PBA has even asked for in this case. The PBA emphasized that it is only seeking to maintain relative positioning. The PBA submits that it does not expect to make much headway and is seeking only to move closer to average.

The PBA asserts that all of the comparable law enforcement evidence supports its last offer. The PBA submits that there is no comparability evidence that the County could place in the record to refute its position. The PBA submits that the County has not submitted such data because its final offer cannot be supported. The PBA submits that if the only criteria under the Act were comparisons (g2) and overall compensation (g3) the County's position would be statutorily unawardable. The PBA asserts that even if all eight statutory criteria are taken into consideration the County's position is equally unawardable.

The PBA contends that there is no law enforcement agency that has settled or been awarded salary increases as proposed by the County. The PBA maintains that the County's final salary offer is unsupportable and unawardable. There is no empirical data or testimony to support its position with respect to law enforcement.

The PBA disputes the County's emphasis on voluntary settlements with other County bargaining units. The PBA contends that these are not appropriate comparables and also questions the County's assertions made with respect to these agreements.

The PBA asserts that a threshold consideration is that the personnel in this bargaining unit do not work for the County of Essex. The public employer is the Constitutional officer, the Essex County Sheriff. The PBA disputes the County's reliance on the settlement with the IBEW noting that the IBEW bargaining unit includes 824 employees whereas there are approximately 4000 County employees. Other settled units include a 33-member group who work for the Commission of Registration and Superintendent of Elections and a few other very small units. These units represent a small minority of workers who actually work for the County. The PBA notes that the County does not have a majority of its employees settled.

The PBA maintains that one of the distinguishing points and a key element which undercuts the County's reliance on the IBEW contract, is that there are substantial direct payments to the IBEW which are made by the County as an employer and which funds are not controlled to any degree once they are passed to the Union. The details of these direct and uncontrolled payments to the IBEW were established on the cross examination of Essex County Labor Relations Director Dolores Capetola.

Q. Is there a provision for a fund of some nature that page?

A. Yes.

Q. And what is it called in this contract?

A. It's called a Special Employee Fund.

Q. And is there a provision by specific year as to the fund amounts?

A. Yes.

Q. And is the fund amount paid directly to the Union IBEW?

A. Yes.

Q. And how much was agreed to be paid directly to the Union in 1995?



- A. \$485,000.
- Q. And in 1996 how much was agreed to be paid to the Union?
- A. That's not in here.
- Q. If it's the same is it an annual fund?
- A. This went up through 1995 was the last.
- Q. Go to Exhibit P-25. Please refer to P-25 which appears to be the Memorandum of Agreement on IBEW Local 1158 that would be 1996 through 2000?
- A. Yes.
- Q. Please turn to paragraph 3 of that Memorandum of Agreement.
- A. Um - hum.
- Q. Is there any change in the amount in 1996 or 1997?
- A. No.
- Q. Go to 1998 please. What is the change in 1998?
- A. Increased by \$200,000.
- Q. That takes us up to \$685,000 annual payment, right?
- A. Well are you adding it?
- Q. Yes.
- A. Yes.
- Q. And in 1999 there's no change provided there, right?
- A. Correct.
- Q. However in 2000 there is another increase, isn't there?
- A. Yes.
- Q. And that is \$50,000?
- A. Correct.
- Q. So the annual is up to for 2000 up to \$735,000 paid directly to the union?

- A. Correct.
- Q. Now this is marked P-26. Can you identify P-26?
- A. It's the Memorandum of Agreement between the County and the IBEW for the year 2001.
- Q. And referring to this document 2001 is there any change provided for the year 01 in the amount?
- A. No.
- Q. Now as we have seen before, well so it is \$735,000 again for 2001?
- A. Um-hum.
- Q. I have a question. Why is it that after a one year contract there appears to be changes post contract agreed upon governing the years 01 contract that don't kick in until 02 and 03?
- A. Again that was to save money.
- Q. Is it correct the settlement which you have in your hand, P-26, which has a term of calendar year 2001, in fact provides for payments by the County to the Union in 2002 and 2003?
- A. It does.
- Q. Does the base, that is the ordinary annual increase, ordinary annual payment to the union change in 2002?
- A. Yes.
- Q. I said ordinary not the bonus.
- A. No in 2002, no.
- Q. Okay.
- A. The contract goes through 2001. There is no wage increase for 2002.
- Q. Please stay with me I have a very specific line of questioning here. The Memo that you identified provides under a special employee fund.
- A. Correct.
- Q. That the fund that we are talking about is money paid by the County directly to the IBEW?

- A. Uh-huh.
- Q. That contribution will be increased by \$500,000 to the union for the year 02 only; correct?
- A. Correct.
- Q. So they - the union gets the ordinary regular payment of \$735,000 plus an additional \$500,000 for 02, correct?
- A. Correct.
- Q. Now that is a one shot half million dollars?
- A. Correct.
- Q. In 2003 the base which has been paid regularly goes up by an additional how much?
- A. Well we delete the \$500,000.
- Q. Yes . . .
- A. And increase it by \$250,000.
- Q. So the regular payment, if you will, that is the amount ordinarily paid by the County to the Union, is \$735,000 in 01. Base payment is \$735,000 in 02 and an additional \$250,000 brings the annual payment to \$985,000 in 03.
- A. Correct.
- Q. And then in addition, as a bonus, there is another half million dollars paid to the Union by the County attributable to 03 only; right?
- A. Well, if I could explain that. It was to defer the money out of 2001, unless it would have been \$250,000 in each of those years. That's why it's a higher sum.
- Q. Well but this is a bonus payment. Is it a one shot bonus?
- A. It is a one shot bonus but reflects a deferral from the prior year. So rather than \$250,000 for 2001 and \$250,000 for 2002 and \$250,000 for 2003 we deferred the first year making it \$500,000 for one year and then go back to the normal level of \$250,000 out of contract. (Tr. II, at 217-224).

The PBA asserts Capetola's testimony shows that these are monies directly paid to the IBEW that are no longer under the control of the County.

Q. Is there any control over those funds once they are transferred to the IBEW, if you know, by the County?

A. Again, as with all the unions there is no control once the money is disbursed. (Tr. II, at 226).

The PBA submits that the County made the following payments to the IBEW in recent years:

1999 - \$685,000

2000 - \$735,000

2001 - \$735,000

2002 - \$1,235,000

2003 - \$985,000

The PBA, noting that there are 824 IBEW bargaining unit members, submits that the 2002 payout of \$1,235,000 is equivalent to \$1,500 per member. The PBA further notes that this is equivalent to a 5% payment to an employee with a \$30,000 base salary. The PBA submits that the 2003 payout of \$985,000 is equivalent to \$1,135 per member representing a 3.8% payment to an employee with a \$30,000 base salary.

The PBA contends that payments were made to the IBEW on behalf of its members during years 2002 and 2003. \$1,235,000 was paid to the IBEW in 2002 and \$985,000 was paid to the IBEW in 2003. There is no settlement for 2004. The PBA contends that these substantial sums (\$2,220,000) were paid to the employee organization with the anticipation, knowledge, belief and assurance, that such funds would be used as compensation/benefit enhancement for the employees in the IBEW.

The PBA reviewed the settlement agreement with the lawyers at the County Prosecutor's Office. The current agreement, which purports to have no wage increase was introduced as Exhibit P-23, the 2002-2003 CBA with the Prosecutors. The PBA reviewed

P-23 and P-22, the 2000-2001 CBA with the prosecutors to determine the salary history. P-22 provides for a salary increase of 5% effective March 1, 2000 in paragraph 3(A). In addition, paragraph 3©) provides:

*No employee represented by the Association shall receive any salary increase, which would bring the employee's base salary over the \$93,000 salary cap. No employee shall have his/her salary decreased as result of this salary cap.*

Obviously these wages are in a significantly higher range than are in effect for the Sheriff's officers. The fact, however, that there was a salary cap in the prior contract which clearly would have, but for the language above quoted, actually reduced some salaries is significant. In the subsequent contract covering the years 2002 and 2003 (P-23) the following statement is made at paragraph #3.

*Effective July 1, 2002 a 3% increase in base pay for all employees, including those at maximum salary, on the payroll at the time the contract is ratified by the parties. Hereinafter all contractual language relating to "maximum" salary is deleted. This increase will also be applied to the 6 Association employees who retired between July 1, 2002 and March 13, 2003. (Emphasis supplied)*

The PBA notes that there was a 3% increase effective in 2002 and further that there was some beneficial impact to the employees by removing the previously negotiated "salary cap" of \$93,000. The PBA describes this as a "double wage increase." The PBA notes that there is insufficient evidence in the record to analyze this provision however it contends that it is certainly more than the 3% represented. In addition, "trial attorney status" was provided and added to additional employees in paragraph five of the 2002-2003 CBA providing that the "fourteen employees . . . will receive compensation of up to \$4,000, including retroactive adjustment to the date of assignment to trial attorney status." The PBA submits that this is not a wage freeze. The PBA notes that in the 2000-2001 CBA, paragraph four provides for a yearly bonus to the homicide squad of \$6,000 per annum. This carries forward into the

current years. In addition, there are additional sums paid to a "Employee Development Fund" which is provided at paragraph four of the 2002-2003 CBA. The PBA asserts that the CBA with the lawyers in the Prosecutor's office is not a wage freeze and does not support the County's contentions.

The PBA notes that Capetola acknowledged that the proposal made by the PBA for an adjustment in the levels of vacation access was identical to that which exists for PBA Local 325, Prosecutors Investigators. (Tr. II, at 229).

The PBA maintains that the best comparisons are those made with other law enforcement groups. Even the legislative provisions for Interest Arbitration distinguish law enforcement agencies from all others providing only certain law enforcement and fire fighting agencies with access to Interest Arbitration as is at issue herein. This subject was discussed with Labor Relations Director Capetola.

Q. Of the Associations that do have access to Interest Arbitration, and I will ask you if you can identify them, this is clearly one, but what other employee organizations have access in County government or constitutional officers at county level to Interest Arbitration?

A. In the Sheriff's office, there is PBA 183 and the SOA. In the Prosecutor's Office there is Detectives and Investigators and the SOA. Also in the Sheriff's office there is PBA 54, County Police. in the County Jail, there is FOP 71 and the SOA. In the Jail Annex there is PBA 157 and the FOP representing the SOA.

Q. That would appear to be 9.

A. That would be 9 groups.

Q. And none of these 9 groups have settled?

A. Correct. (Tr. II, at 226).

The PBA notes that none of the employee organizations who are covered by the Interest Arbitration Act have reached a settlement with the County. The PBA submits that the County is left with some contracts reflecting a minority of County employees who have

settled in a somewhat confusing way which clearly provides for increases in compensation in 2002 and 2003. The PBA submits that none of the internal settlements cited by the County can be considered as “wage freezes.”

### **Private Sector Comparisons**

The PBA asserts that due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparisons to private sector employees must result in a strong justification for significantly higher compensation to be paid to police officers. The PBA cites the following excerpt from a decision of Interest Arbitrator Carl Kurtzman who considered this subject of private sector comparisons:

As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight. (**Borough of River Edge and PBA Local 201, PERC IA-97-20, pg. 30**)

The PBA asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Once again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of pension in the law enforcement community after age 35. Police officers

may not take their skills and market them in other states as one may market one's own personal skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of police officers to their employers. Specifically distinguished is the private sector employee from said employee's employer.

1. The Federal Fair Labor Standards Act, 29 USCA sect.201, et seq. applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7-day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, et seq does not apply to the employment relationship between a police officer and the officer's public employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, **Perry v. Borough of Swedesboro, 214 NJ Super. 488 (1986).**
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. **NJSA 40A:14-118.** There is no such statute covering private employment in New Jersey.
4. **NJS 40A:14-122** provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, **NJS 40A:14-122.** No such provision exists as to private employment.



6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under **40A:14-122.2**. There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be resident of the State of New Jersey, **NJS 40A:14-122.8**. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute **40A:14-123.1a**. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, **40A:14-127.1**. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, **NJS 40A:14-127.3**. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage **NJS 40A:14-131**. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency." **NJS 40A:14-133**. The Fair Labor Standards Act gives superior protection to private sector employees.
11. **NJS 40A:14-134** permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65-year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, **NJS 40A:14-147** to **40A:14-151**.

No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

Perhaps the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. Police officers are statutorily conferred with specific authority and “. . . have full power of arrest for any crime committed in said officer’s presence and committed anywhere within the territorial limits of the State of New Jersey.” NJS 40A:14-152.1. A police officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector.

Police officers are trained in the basic police academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training schedule is a matter of New Jersey Statutory law and is controlled by the Police Training Commission, a statutorily created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of police officer certification and the police officer’s job. This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial employer might move that plant to another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The employees must work locally

and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

The PBA asserts that local comparisons are more relevant with police wages citing an excerpt from a decision issued by well known arbitrator William Weinberg in the Village of Ridgewood case.

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points," but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards. ) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g, (2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons.

The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such a contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are nonexistent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, at 29 - 31).

The PBA maintains that any time there is a comparison made between a police officer and a private employee generally, a police officer's position must gain weight and be given greater support by such comparisons. The police officer lives and works within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny, accountability and authority are unparalleled in employment generally. The police officer carries deadly force and is licensed to use said force within a great discretionary area. A police officer is charged with access to the most personal and private information of individuals and citizens generally. This highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. To be sure in such a wide array of titles as the nearly infinite number covered in the general category of "private employment" there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A police officer is a career committed 25-year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The police officer should be considered on a higher wage plane than private employment generally.

#### **Stipulations of the Parties**

The only agreement between the parties is that both parties have proposed four-year contracts.

**The Lawful Authority of the Employer  
and the Impact on Taxpayers and Residents**

The PBA combined criteria g5 and g6 in its discussion of the fiscal evidence in the record. The PBA reiterates its position that the employees in this bargaining unit are not County employees since the public employer is the Sheriff as a Constitutional Officer. In view of this consideration, the PBA contends that the criteria considerations under g5 of the act, the “Cap Law”, are not applicable to the Sheriff’s Office. Despite this consideration, the PBA submitted arguments concerning the cap issue.

The PBA points out that in the last three budget years in evidence, FY 2001, FY 2002 and FY 2003, Essex County has only used the “cap rate option” once. The cap limitation under New Jersey law is 5% annually. This is set forth by statute, NJS 40A:4-45.1 et seq. The process actually begins with an index rate set by the New Jersey State Department of Community Affairs which is based on annual calculation. Each entity, county or municipal, starts with the index rate. The index rate is a base line from which one cannot go below. The public entity may, by vote of governing body, go as high as 5%, the actual cap limit in structuring and adopting a budget. The actual cap index rate and “rate used” statistics in Essex County are set forth in E-31 and show the following:

<u>Year</u>	<u>Index Rate</u>	<u>Rate Used</u>
2001	4%	4%
2002	2.5%	5%
2003	1%	2%

The PBA contends that the history of “rate used” versus “index rate” is significant. In 2001, the County used the lowest possible number, 4%. In 2002, only the cap limit was used. In 2003, only 1% of the additional flexibility was utilized, a total of 2%. This history does not reflect a history of cap pressure. In two of the most recent three years, significant cap flexibility was waived.

The cap calculation is set forth in the front of each of the budgets under the state data form format. The fiscal year 2003 cap bank calculation shows, notwithstanding the employer's utilization of only a 2% rate, and the resultant waiving of the additional 3% of flexibility that the adopted budget did not use all of the lower number calculation, the 2%. Notwithstanding the use of the 2% rate used category in 2003 the "allowable county purpose tax after all exceptions was \$310,835,464. The "county purpose tax levy per budget" was \$304,443,294. The differential of \$6,392,170 was "available for banking." In other words, not only did the County not utilize its full cap option and stayed with the 2%, even at the lower rate all of the flexibility wasn't used and that amount, \$6,392,170 is available for cap banking and carried forward into the next budget. The statutory basis for his cap bank carrying forward is NJS 40A:4-45.16 .

In considering the cap calculation on a county budget, one should note that the cap on county budgets is not applied to the expenditure side of the budget but is applied to the tax levy. This provides less of a problem than it does at the municipal level where the reverse is true. In Essex County, historically this has not posed a problem to the County in as much there have always been liberal exceptions allowed within the County cap.

The PBA disputes the County's attempt to portray itself as in dire straights. The PBA is not suggesting that Essex County is a wealthy county. Rather, the PBA contends that Essex is in a strong, growing, and improving fiscal condition as evidenced by the exhibits and testimony in the record.

The PBA notes that the County ratable base and resultant tax levy has increased in every year in evidence from 1998 to date and the County tax rate has dropped in every year during this same period.

County Treasure Paul Hopkins acknowledged on cross examination that the County tax rate has dropped in every year during the referenced period.

Q. There was reference made earlier to or questions put to you about tax rate and what has been the history of tax rates as they go back 5 years or even say 6 years, back to 1998? What have we seen with those tax rates?

A. Are you talking tax rates or tax increases?

Q. County tax rate?

A. The tax rate probably has -

Q. Let me show you I have in my hand the Report of Audit which we had requested, page 44. In 1998 what was the County Tax rate?

A. .7523

Q. In 1999 did that go up or down?

A. It went down.

Q. And comparing 1999 to 2000 did the 2000 rate go up or down?

A. It went down again. It's gone down every year.

Q. Every year since 1998 the tax rate has gone down?

A. Every year on this chart. (Tr. III, at 386-387).

The County tax rate has dropped every year for the last six years. However, the County tax levy has increased every year during the same period. The PBA cites Hopkins' testimony on cross examination.

Q. In referencing the combination of those factors, the tax rate and valuation upon which taxes are a portion, one has the total levy which is calculated separately and cash collections which are calculated separately, correct?

A. Correct.

Q. And what has happened to the tax levy every year from 1998 to 2002 the most recent data available?

A. From 1998 to 1999 it went from -

Q. You don't - did it go up every single year? You don't have to go through all the numbers.

A. You can see just from the increases from 98 to 99, 5 million dollars, 99 to 2000 another roughly 2.8 million dollars, 3 million dollars, another couple of million dollars. And then what's not here is on the 2003 which has it jumping from 291 to 304, a 14 million dollar increase.

Q. And there's also a cash collection column there as well. And I'm not asking, you may of course, but I'm not only asking, did it go up every single year?

A. It matched the levy. (Tr. III, 389-390).

The PBA contends that there is a trend toward fiscal stability and fiscal improvement.

For example, one area where there was a one shot cost item is the "FF & E" obligation for furnishing, fixtures and equipment in the jail. The PBA notes that the prior administration failed to provide funding for necessary equipment to get the correctional facility operational.

This obligation for fixtures, furniture and equipment, was a one shot obligation and a non-recurring one to the County. Hopkins acknowledged this amount as non-recurring.

Q. These questions put to you about the correction facility that's new involved your statement of FF & E which was Furniture and equipment and so forth?

A. Furniture, fixtures and equipment.

Q. And those were required to make the jail operational?

A. Yes.

Q. You had a number, maybe my note is incorrect, did you say 94 million?

A. 94 million was the total issued.

Q. For all the desks and whatever?

A. In 2000. It involved completion money as well as FF & E.

Q. And that's not a recurring expense. You don't buy new desks each year?

A. No. (Tr. III, 391-392).



A major focus of the County's argument on fiscal stability was the assertion that some 18 to 20 million dollars of debt was carried forward from last year's budget into the current year's budget. This debt was the subject of extensive direct examination and testimony by Hopkins. The PBA submits that Hopkins disclosed on cross examination that while the debt existed at the end of the prior fiscal year, and therefore appeared as debt at the beginning of the current fiscal year, it has been since satisfied and fully paid. Simply stated, it no longer exists.

Q. You had identified earlier a 20 million-dollar amount anticipated yet not realized, and do you recall that testimony on the subject?

A. Yes.

Q. And you had broken it down into 4 categories, three of which you identified as a 14 million-dollar sum regarding debt restructuring at the Utilities Authority?

A. That's correct.

Q. Another sum that you did not put a number on, Hilltop Property. And what would that sum be, is it about 4 million dollars?

A. For Hilltop yes. And the third area that I didn't recall before was a retroactive Medicaid increase. (Tr. III, at 365).

The PBA contends that this was part of "creative financing" in which debt was carried on the books over a period of years reflecting a series of complex land transactions and easements. The PBA cites Hopkins' candid testimony:

Q. What was the underlying transaction?

A. Of the Hilltop transaction?

Q. Yes.

A. The entire Hilltop transaction was a financing done back in the mid 90's to generate money to close a budget gap. (Tr. III, at 366).

The PBA submits that this type of debt shifting appears throughout the ensuing years and was a subject of the County's lament about outstanding debt earlier in the proceeding. The PBA asserts that the debt was paid off early in this current year and in fact no debt currently exists citing Hopkins' testimony on cross examination:

Q. But you're saying this current issue of 4 million dollars that you described in your testimony is an issue concerning the money paid by the State of New Jersey to the County of Essex?

A. The 4 million dollars that I've described as a revenue item was a payment from the State of New Jersey to the County of Essex.

Q. And this was a 4 million-dollar amount that was anticipated?

A. In the 2002 budget. The land easement did not close during 2002, it closed in early 2003.

Q. So it was carried as an obligation that was not paid in 02 but in fact it was paid in 03?

A. That's correct. (Tr. III, at 369-370).

The second piece of the asserted "debt obligation" of the County was identified as the Utilities Authority transaction. Hopkins in his testimony ultimately acknowledged that this was no longer a debt and this was paid also.

Q. How about the Utilities Authority transaction?

A. That's a complicated transaction also. Originally in 2002 the State was going to address some of the standing debt of various counties that had followed the State's instruction and had gone into the business of building incinerators to deal with the solid waste issue. Essex was one of the counties that did and as an operational facility had debt associated with it.

Q. Is that over by the Skyway?

A. Yes. This State was going to refinance all of the County's debt that specifically counties have been having problems with stranded debt and pick up to 50% of the responsibility of outstanding debt. This affected a small group of counties.

When the other counties got wind of the State doing something for certain counties, everyone tried to jump on board and get some benefit. The State

decided not to do the refinancing of the solid waste debt leaving us in a little bit of a lurch since we had anticipated the 14 million dollars from this. We attempted during the end of 2002, the mechanism that would've gotten us this money, the debt service reserve fund for 14 million dollars would've been liquidated in the refinancing of the debts making that available to the county if the refinancing didn't take place in 2002. We tried to get a letter of credit or some other mechanism to set up to liquidate the debt service reserve fund in 02. It didn't happen, it finally happened in 03.

Q. And what happened in early 03?

A. A letter of credit was issued and the debt service fund was liquidated and the payments were made to the county.

Q. So the 14 million dollars that was referenced in the 2002 budget and had this delay as you described it through 2002, the obligation was ultimately satisfied in 2003?

A. Yes. A little bit different transaction than we originally envisioned. (Tr. III, at 370-372).

The PBA submits that debt which was asserted to exist has been paid. The debt does not exist. Even the "Hatfield Meadow" property debt has been resolved. (See Tr. at 372-373). In sum, the PBA submits that the asserted debt does not exist. While it may have been carried into the new fiscal year, it was only by virtue of delayed transactions that were anticipated but did not take place in the preceding fiscal year.

The PBA notes that there is a statutorily controlled debt ceiling which limits borrowing using an equalized valuation basis formula. The current debt of Essex County is well inside the 3.5% debt ceiling. As is illustrated in the most recent Annual Debt Statement, the net debt is .80%. This fact of being well within the debt ceiling and statutory limits was acknowledged by Hopkins' testimony:

Q. New Jersey has a statutory debt ceiling, does it not, identifying borrowing power of a public entity?

A. Yes it does.

Q. There's a statute 48:26, but there's a statute on it there is a formula?

A. Yes. I think I spoke about that during direct.

Q. And the current debt is, the debt is well under the statutory maximum borrowing power, is it not?

A. That's correct. (Tr. III, at 373).

The PBA maintains that there is no debt problem within the County of Essex. The County is well within its statutory debt ceiling and the debt asserted by the employer to exist has in fact been resolved. While the PBA is not suggesting that borrowing take place to pay for the officer increases, the fiscal picture is certainly very different from what has been asserted by the County.

The PBA notes that the cost of base salaries for this bargaining unit is \$19.8 million per annum. This is a figure based upon the calculation of Essex County Finance Officer Paul Hopkins.

Q. With respect to the cost of this bargaining unit, you've identified the cost of the base salaries at issue in one your documents as about 19.8 million dollars, is that correct?

A. That's correct.

Q. Based upon that calculation various other calculations are made. Now with respect to earlier questions by counsel where you were asked to identify the cost of the bargaining unit in other ways, you gave some percentage and some impacts on households. The total revenue for this county is about \$571 million, is it not for this year?

A. Roughly, yes.

Q. And 19.8 is about 3.4% of that if my calculations are correct. Does that seem about right?

A. I don't know the calculation off hand. I trust your calculation. (Tr. III, at 375-76).

The PBA contends that this is the core number which is relevant to these proceedings as it represents the actual base as calculated by the person in charge of such calculations for the County. The PBA, in its brief, offered the following calculation to put this in perspective:

If a hypothetical homeowner in Essex paid an annual \$8,000 property tax bill of which 15% represented Essex County taxes then the actual amount being spent on county taxes by said homeowner would be \$1200 per year. Of that \$1200 per year, 3.4% represents the portion attributable to this bargaining unit's base wage per Mr. Hopkins' testimony. 3.4% equals \$40.80 per annum.

The hypothetical taxpayer is therefore receiving the services outlined and described by Sheriff Fontoura, the power point, and the testimony of PBA witnesses for the total sum of \$40.80 per year. This breaks down to \$3.40 per month which is truly *de minimis*. One percentage point of increase to said hypothetical taxpayer is just over 3¢ per month. That is 3¢ per month as compared to a \$10,000 annual tax bill. When one considers the value received from these bargaining unit employees and the Sheriff's operation generally, this is truly an incredible bargain to the taxpayer. It would be hard to rationally suggest any sort of taxpayer protest over these types of impacts.

The PBA concedes that Essex County is not a wealthy county, however, the PBA submits that the County is improving fiscally and each year shows an increasing ratable base, increasing revenues, increasing cash collections and reduction of outstanding debt. All of these factors were established through evidence and testimony of the County's own Chief Financial Officer at hearing. The PBA asserts that this is not the austere environment which in any way could suggest any sort of support for the County's last offer.

#### *The Continuity and Stability of Employment*

The PBA submits that an analysis of this criterion indicates reliance on the private sector concepts of "prevailing rate" and "area standards". The PBA submits that both of these concepts strongly support an award of its last offer making the County's last offer unsustainable. The PBA asserts that it has been clearly established that Essex County Sheriff's Officers are the lowest compensated of the dozens of examples of other law enforcement agencies in evidence. The PBA comparables are all in two categories, those law enforcement agencies with whom these law enforcement officers work on a daily basis within the County of Essex, such as municipalities, and other Sheriff's offices around the State. The PBA maintains that in all such comparisons, the Sheriff's Officers are last.

## Summary

The PBA submits that to achieve real pay equity, longevity would have to be re-instituted. The PBA submits that the County's last offer would further reduce the Sheriff's Officers' standing in these comparisons. The PBA maintains that the County's unparalleled offer without empirical support and without any justification is not awardable under the Interest Arbitration Act. The PBA notes that this is the only law enforcement officer employee organization that works for the County Sheriff.

The PBA disputes the County's assertions with respect to the value of the settlements reached with non-police employees. The PBA reemphasizes its assertion that millions of dollars have been paid to the IBEW ostensibly on behalf of its employee benefit programs. The PBA maintains that this is compensation which it valued as high as 5% per annum.

The PBA asserts that the employees in this bargaining unit are distinct and unique among all others. This is an active day-to-day uniformed, patrolling law enforcement agency. This is an agency that is in the field working with other law enforcement agencies in and around the County and beyond. This is an agency that is an integral part of the law enforcement matrix that brings forth successful investigations and prosecutions of criminals. Specialized equipment, specialized training, specialized personnel were all the subject of extensive testimony and evidentiary showing. The PBA maintains that the proper "universe of comparison" is to other uniformed law enforcement officers with whom these Sheriff's Officers work with on a daily basis — the municipalities in Essex County and other county Sheriff's Officers around the State.

The PBA asks that its last offer be awarded.

## **THE COUNTY'S POSITION AND ARGUMENTS**

The following are the County's positions and arguments in relation to the statutory criteria on the outstanding economic and noneconomic issues.

### **Introduction**

The County asserts that its last offer must be awarded. The County notes that it is operating in one of the most fiscally distressed areas of the State and that its finances are in desperate straits. Its bond rating is the lowest in the State. The County's budget includes an ever increasing structural deficit. The County's fund balance continues to decline. Revenues have not materialized, but certain expenses have increased, resulting in a tax increase which in turn led to a taxpayer revolt. The County maintains that it has tried to cut spending and has eliminated approximately 500 jobs since 1999. Combined with this distressing financial picture are the demographics of the residents of Essex County. Essex County residents have lower per capita incomes, a higher incidence of poverty and an urban constituency that urgently requires more social services and programs than does a suburban or rural county. The County contends that this case demands deference to the employer's financial situation.

According to the County, an extremely poor financial situation and a resident population in need of County services and programs, has created a desperate situation. The County has sought assistance to address this problem from every sector. Taxpayers have assisted by paying increased taxes. Both non-bargaining unit and bargaining unit employees have assisted by negotiating austere wage and benefit packages. These employees have also endured demotions and staff reductions that resulted in job consolidations and less headcount. Vendors to the County have also been affected by the County's financial problems. All of these groups have recognized that they must each be part of the solution

to Essex County's financial problems. The County submits that it is asking no less of the Sheriff's Officers than the nine other bargaining units: a package of appropriate wage increases and greater cost-sharing regarding prescription benefits.

The County contends that the absence of proof by the PBA mandates an award of its last offer. The County submits that the PBA did not show that the proposed changes set forth in its last offer are in keeping with the interests and welfare of the public, are justified considering the overall compensation already received by the unit members and do not have an adverse impact on the governing unit, the residents and taxpayers. The County asserts that the PBA did not meet its burden under the Act requiring an award of the County's last offer.

#### **Statutory Criteria**

The County submits that an arbitrator's award must address all eight statutory criteria, emphasizing the public interest, by specifically identifying those criteria found relevant, analyzing the competent evidence presented to him pertaining to the relevant criteria, and explaining why the remaining criteria were deemed irrelevant. "A reasoned explanation along those lines should satisfy the requirement for a decision based on 'those factors' that are 'judged relevant.'" The Arbitrator must reject an economic offer that clearly would be unreasonable in light of the statutory criteria. Hillsdale, 137 N.J. at 84. (E-8).

According to the County, this arbitration is not simply an exercise in which the "going rate" is applied to this unit. Rather, the intent and spirit of the Act is to insure that all factors are analyzed and weighed, with particular attention paid to the "public interest" factor. The County contends that the evidence overwhelmingly proves that the public interest of the residents of Essex County are served only by the County's last offer. The public interest is not served by the PBA's offer, nor is the public interest served by the typical conventional arbitration award "somewhere between the two parties' final offers." The



County emphasizes that a true analysis of the eight statutory factors leads to the conclusion that the County's Final Offer is the only position that is appropriate, given the public interest, the general economic climate, the demographics of the Essex County population, the increasing taxpayer revolt in Essex County and the County's dire financial straits.

### **Cost Out of Parties' Proposals**

The County contends that the PBA's proposals are prohibitively exorbitant. Paul J. Hopkins, II, County Treasurer, prepared cost outs of both the County's and the PBA's Final Offer. (E-28 and E-29). The total cost of the PBA's proposals over the life of the contract is \$12.6 million. (E-29; Tr. III, at 360). The impact of the PBA's Final Offer on the 2003 budget alone is \$3,110,684. These costs do not include the costs of the holiday fold-in proposal or the critical event excusal proposal.

From a budgetary standpoint, the PBA's final offer is already far beyond what the County has budgeted. As Hopkins put it, "There's little ability to pay for this today, how is there going to be ability to pay for this with a limited ability to raise taxes, no other source of revenue, where is it going to come from?" (Tr. III, at 361).

On the other hand, the County contends that its last offer falls reasonably within the County's budget constraints. However, Hopkins noted that the negotiated agreement of the IBEW, the largest group (824 employees) which settled on the pattern proposed here cost the County slightly over \$1 million. (Tr. III, at 362). The PBA's Final Offer costs twelve times more than the cost of the much larger IBEW group. Similarly, the total budgetary impact combined of the five units that had already settled at the time of the hearing is less than the cost of the PBA's Final Offer. (E-11). Those five units represent 30% of the County's workforce, compared to the Sheriff's Officers, which represent a fraction of that figure.

The County submits that its last offer results in an almost \$3 million impact on the budget. (E-28; E29). The County asserts that given its financial position, the demographics of Essex county residents, and the austere wage increases accepted by other units, the \$3 million impact on the budget resulting from an award of the County's last offer is appropriate.

**Pattern of Settlement**

The County asserts that its last offer is fair and reasonable because it follows the established pattern of settlement within the County. The Director of Labor Relations, Dolores Capetola, testified without dispute as to the existence of such pattern. Capetola is well-qualified to discuss the County's labor relations pattern: she has served as the County's Director of Labor Relations since 1981 and negotiates the collective bargaining agreements for 29 units covering the County's 4000 employees. (Tr. II, at 196).

Capetola testified without contradiction that the County's Final Offer was based on the County's negotiations pattern with other units. Specifically, Capetola described the County's pattern of wage settlement:

July 1, 2002	3% bonus (not applied to base salary)
January 1, 2003	3% salary increase applied to base salary
January 1, 2004	0.0% increase applied to base salary
January 1, 2005	2% salary increase applied to base salary
July 1, 2005	2% salary increase applied to base salary

Currently, nine units have settled on the pattern. Capetola testified regarding the five groups representing approximately one-third of the workforce who had at that time voluntarily settled on that pattern.<sup>1</sup> Moreover, the IBEW group which voluntarily settled on the wage pattern represent certain employees who perform guard duty at posts in the Court

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<sup>1</sup> Since her testimony, four other groups have settled. (E-197; E-198; Degen correspondence, dated January 22, 2004.)

system. PBA President Tyminski agreed that some IBEW and CWA employees provide court security services at the courthouse entrances working alongside the Sheriff's Officers.

Hopkins confirmed that the budget anticipated the pattern of settlement of 0% for 2002 and 3% for 2003 for this bargaining unit. (Tr. III, at 359). Capetola also testified as to the second element of the pattern: prescription health benefits. The same groups that accepted the wage pattern also accepted the prescription pattern: co-pays rise from \$1 generic to \$5 and from \$5 non-generic to \$10 effective thirty days after the signing of the agreement. The co-pays rise effective January 1, 2005 to \$10 generic and \$15 non-generic. This proposal makes no change in the level of prescription benefits; it is a cost-sharing mechanism only.

The County contends that the PBA has not shown a compelling reason to break the pattern. Those bargaining units that voluntarily accepted the pattern and whose agreements were the International Brotherhood of Teamsters (IBEW) representing 824 employees; the Commission of Registration and Superintendent of Elections representing 33 employees; the Communications Workers of America (CWA) representing 276 rank-and-file Hospital employees; the Unit Managers and Supervisors representing 43 employees; and the Assistant Prosecutors representing 130 employees.

The County disputes the anticipated PBA argument that the Assistant Prosecutors' base pay increase in July 2002 breaks pattern. The A/P's did not receive a salary increase in 2001, received 3% in July 2002, but did not have the July 2002 lump sum payment rolled into base on January 1, 2003. Thus, the pattern remains: a 3% increase in July 2002 and 0.0% in 2003.

Since the hearing, four more units have settled on that pattern: the Craft Foremen representing 6 employees; Local 32 OPEIU representing 11 employees; IBEW - Training and Employment representing 24 employees; and IBEW Prosecutors Clericals representing

98 employees. (E-196, E-197). Thus, nine units have accepted the pattern. Within these units are included Assistant Prosecutors and individuals in the IBEW who work in the court system. Moreover, the employees who have settled on this wage and prescription pattern represent approximately 33% of the County's unionized employees. (Tr. II, p. 201; p. 363).

According to the County, all settlements for 2002 – 2005 have followed the established wage and prescription pattern. No settlements have exceeded the pattern. (Tr. II, at 227; E-76 - E-82). Despite the PBA's discussion of contributions to various employee development funds, the County contends that it has overwhelmingly established a wage pattern. The unrefuted testimony is that the deferrals were negotiated in order to save money. (Tr. II, at 223-224; 240; 242). The County contends that negotiations of terms during prior contract terms do not detract from the firm and consistent wage pattern confirmed by the County's unrefuted evidence. The County asserts that contributions to development funds are not an element of a salary wage pattern.<sup>2</sup> Moreover, the increase to the employee development fund for the IBEW was part of their increase; it is not additional money above the wage pattern. As Capetola explained:

. . . the employees decided that part of their raises should go to the development fund; but, again, as part of that package, because it is coming out of the base package offered. So if we are offering 3 percent for example, in 2002, the next year the employees again who voted on the agreement decided to take part of that money and send half of it to the Union for their development fund, and in the fourth year of the contract they decided to take 1 per cent. So it is consistent in the sense that money that's coming from the County is the same. Where it is being directed might be different. But it is all the same.  
(Tr. II, at 238).

The County submits that the aggregate value of the County's last offer to the PBA is the same as the aggregate value of each of the nine units that have voluntarily settled.

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<sup>2</sup> The County submits that the testimony was unrefuted that the employee development funds provided supplemental benefits to its members which are unique to each bargaining unit such as dental, vision or reimbursement of bar fees. The IBEW plan provides a dental plan, disability plan, legal defense plan and vision plan for over 1000 employees for \$935,000. (Transcript, Vol. II, p. 234, 246.)

Thus, the evidence presented by the County shows a clear pattern of settlement within the County for contracts covering calendar years 2002 through 2005.

According to the County, it is well-established that "[p]attern bargaining is a factor which is traditionally applied in many collective negotiations settings . . ." City of Asbury Park and Asbury Park Sheriff's Officers Association, PBA Local No. 6, Docket No. IA-88-92 (1989, J. Weisblatt), p. 16. In the Asbury Park matter, Arbitrator Weisblatt noted:

The concept that a pattern of bargaining is a major consideration under the statutory criteria is well accepted as part of the interest arbitration process. This concept has regularly been given considerable (even controlling) weight by arbitrators and its validity has been noted by the courts. [Thus a] proven pattern of bargaining must be given great weight in an interest arbitration proceeding. Id. At 16.

Arbitrator Weisblatt further noted that an advantage to pattern bargaining is that consistency among all employees is more likely to promote stability of employment. Id. At 16. In the Matter of the Interest Arbitration between County of Essex and Essex County Corrections Officers, PBA Local 157, IA-84-93, (July 3, 1985, Joel M. Weisblatt) the Arbitrator upheld the validity of an employer's pattern, even where there were slight "variations" in the pattern. Arbitrator Weisblatt noted the "significant presumption" accorded such a pattern, writing:

The existence of a pattern of agreements creates a significant presumption supporting the County's offer which fits within that pattern. Absent a showing of equally significant countervailing factors, such a presumption could properly stand as the controlling element under the statutory criteria.

In the Essex County case, Arbitrator Weisblatt noted that although the settlements had slight variations, "the across-the-board salary increases are identical in the three units. The County's offer herein is also identical to that pattern." So, too is the instant matter: the County has identical across-the-board wage increases and health benefits proposal which

clearly constitutes a pattern. Thus, the presumption is that the County's pattern be awarded. The County contends that PBA has failed to show significant, countervailing factors for an award outside the pattern

Arbitrator Weisblatt reiterated the importance of pattern in another arbitration award, stating "consistency in negotiations is a concept that is generally in the public interest. It provides for greater morale among public employees and provides a predictability factor in the bargaining and budgetary processes." In the Matter of City of Passaic and Passaic PBA Local 14, IA-99-76, April 25, 2000. Furthermore, Arbitrator Tener in the In the Matter of County of Camden Sheriffs Office and PBA Local 277, IA-99-40 (December 3, 2001) and Township of Union and PBA Local 69, IA-91-103 (1991) noted that "the burden shifts to the PBA to prove that a different settlement should be awarded when a bargaining pattern such as the one which exists in [the] County has been established. This same reasoning has been adopted and applied by other arbitrators in cases cited by the County."

The County notes that this bargaining unit has been subject to an interest arbitration award based on the pattern of non-law enforcement contracts. (Tr. II, at 236). In that award, County of Essex and Essex County Sheriff's Officers PBA Local 183, Docket No. IA-95-139 (Weisblatt), the Arbitrator awarded a salary increase of 0.0% in one year. Part of the Arbitrator's rationale for the zero percent was the County pattern of settlement of non-law enforcement units.

The County contends that an award that runs against the wave of settlements in Essex County will not only destroy the well-established pattern, but will invite acrimony in County labor relations. An award against the pattern will foster an environment that rejects traditional labor relations and fuel litigation by encouraging more units to go to interest arbitration, adding costs and delay to the process.

The County submits that it is well-established that labor relations law promotes voluntary settlements. The County and nine of its bargaining units voluntarily settled contractual terms. The County asserts that its last offer which is identical to the terms agreed to by nine other bargaining units is reasonable and satisfies the legislative goals of the Act.

**Comparison of Wages, Salaries, Hours and  
Conditions of Employment**

This factor requires the Arbitrator to make a comparison of the wages, salaries and conditions of employment of the Essex County Sheriff's Officers with other employees of Essex County, other public sector employees and private sector employees in general. The County asserts that the evidence shows that Essex County Sheriff's Officers are well positioned when compared to each of these groups of employees since they receive far better compensation than other employees in both comparable public sector jurisdictions, and the private sector as a whole.

**The Position of Essex County Sheriff's Officer**

The County notes that Sheriff Fontoura described the mission of the Essex County Sheriff's Department as court security, transportation of inmates serving warrants and the apprehension of fugitives. Furthermore, Sheriff Fontoura testified that seventy percent of the workforce devotes itself to court security. This is in accord with the testimony and documentary evidence supplied by the PBA, namely, the mission statement of the Sheriff's Department. The mission statement reads:

“The Essex County Sheriff's Office is dedicated to fulfilling its constitutional mandates to the courts and providing law enforcement services to the citizens of our community. Furthermore, “our constitutional mandate dictates that our courts function in a safe and secure environment, that prisoners are expeditiously transported to and from court proceedings, that criminal records are maintained to ensure the positive identification of defendants, that fugitives from justice are apprehended and brought before the court and that civil warrants and civil summonses, writs and complaints are executed in a timely manner.” (P-2).

The County cites the testimony of Donald Brown, Director of Administrative Services and Personnel Officer for the Essex County Sheriff's Office. Brown divides the Sheriff's Officers into 2 groups: uniformed and non-uniformed. The sections that comprise the uniformed groups are Court security, transportation and the Bureau of Criminal Investigation ("BCI"). The non-uniformed sections are Detective Bureau, Bureau of Narcotics and Special Units. Brown explained that court security is securing courtrooms, care and custody of prisoners in the courtroom and transporting prisoners from the prison floor to the courtroom. Transportation is moving prisoners.

Brown contrasted the duties of the Sheriff's Officer providing court security or transportation to that of a Sheriff's Officer working in the Detective Bureau or Bureau of Narcotics, who does investigative work, undercover work, field work and executes warrants. Brown confirmed that court security personnel do not do investigative, undercover, detective, or domestic violence work. Court security Sheriff's Officers are not placed on special assignment with the FBI or customs. Brown testified that fully two-thirds of the unit members work in court security, BCI or transportation. This corresponds to the Sheriff's estimate of seventy percent thus, given a unit numbering approximately 358 people, approximately 239 Sheriff's Officers are in the court security/transportation sections.

Brown further explained that approximately 15 - 20 officers are in the canine unit and bomb squad and 40 - 45 are in the Bureau of Narcotics. Brown also testified that 17 - 18 officers are assigned to the task forces.

The County submits that the evidence shows that the Sheriff's Officers primarily work court security and transportation. They do not with any regularity perform the special functions. The County cites the testimony of PBA President Tyminski who acknowledged that "we don't provide a primary function in a lot of these areas" (Tr. I, at 31). This is further supported by P-1 which indicates that only 11% of Sheriff's Officers work the B.C.I.



Moreover, the relatively few memoranda supplied in P-3 indicate how infrequently these special assignments occur.

Tyminski acknowledged that there was no community policing function on the department's organizational chart and that Sheriff's Officers do not work the County College, the County Park System, Turtle Back Zoo, Short Hills Mall, Livingston Mall, Newark Museum, Montclair Museum, Newark and Montclair Stadiums, Port Newark, Penn Station and do not patrol the Garden State Parkway, New Jersey Turnpike, Rt. 80, Rt. 280, Routes 1-9, Routes 21, 22, 23, and 24. Thus, unlike municipal police officers which patrol the entire municipality, the Essex County Sheriff's Officers are mainly concentrated in a limited area of the County.

The Sheriff acknowledges that the special additional functions, such as FBI task forces, were added to the department because of decisions he (and prior Sheriffs) made to expand the scope of the department. The Sheriff explained that funding for the ancillary or special functions often comes from outside the County. The funding may come from the federal ATF (Bureau of Alcohol, Tobacco and Firearms), the OEM (Office of Emergency Management) and FEMA (Federal Emergency Management Agency).

The County disputes the PBA's description of the Essex County court system as fraught with dangerous criminals citing Tyminski's testimony that only one-third of the court assignments are in the criminal courts division.

The County acknowledges that Sheriff's Officers are law enforcement personnel. However, it submits that there are different types of law enforcement work, differing in terms of complexity, exposure to danger, and variety of law enforcement activities. This is demonstrated by the very different job descriptions published by the Department of Personnel. The main job duty for a Sheriff's Officer according to the DOP job description is "maintaining order and security in the courtroom [and] serving court processes." (E-192).

In stark contrast, the main job duty for a municipal police officer is “during an assigned tour of duty, on foot or in an automobile, patrols a designated area to provide assistance and protection for persons, to safeguard property ... and to apprehend lawbreakers.” (E-193). The rational result is that different types of law enforcement work pay differently. Just as different types of lawyers, physicians, authors, computer personnel and just about every type of profession are paid differently, different law enforcement jobs pay differently. For example, a brain surgeon is paid far more than an anesthesiologist, yet both are physicians. The County asserts that there is no evidence to support the PBA’s argument that they are akin to municipal police officers.

The County submits that the mission statement, the testimony of the Sheriff, Brown and Tyminski, the Department of Personnel job descriptions and the evidence presented show that the overwhelming majority of employees in this bargaining unit (70%) perform the constitutional mandate of providing court security, transportation and warrants. Without question, the Sheriff’s Officers do perform their jobs well; however, the job is what the job is.

The County maintains that because these Sheriff’s Officers are doing what by law is defined as Sheriff’s Department work, the appropriate comparison is with other county Sheriff’s Officers. The County urges that comparables supplied by the PBA on municipal police officers should be disregarded.

**Public Employment in the Same or  
Similar Comparable Jurisdictions**

**Comparison to Essex County Law Enforcement Employees**

The first area of comparison is to other Essex County law enforcement employees. If the County’s wage proposal is applied, the top step Sheriff’s Officers will be the second-highest paid rank-and-file law enforcement unit in Essex County. (E-69). The Sheriff’s

Officers will earn more than the Correction Officers in the Jail, the County Police, and the Correction Officers in the Annex. The Sheriff's Officers will lag slightly behind the Prosecutor's Investigators. The County notes that the Sheriff's Officers currently have the second highest salary of the Essex County rank-and-file law enforcement units. (E-75).

Furthermore, the Sheriff's Officers have the best uniform and safety allowance of the County law enforcement units, as well as an above average education allowance. (E-72). The Sheriff's Officers have the same amount of personal and bereavement days and a comparable vacation schedule as do other Essex County law enforcement units. (E-71). However, the Sheriff's Officers earn more than the Jail Corrections Officers, County Police and Annex Corrections Officers. The Sheriff's Officers also have one of the best work schedules of Essex County law enforcement. (E-73).

At no time has the Sheriff's department had problems filling the Sheriff's Officers' vacancies nor has the department had a turnover problem at all. Officers remain employed until they retire; the tasks performed for the pay received are an excellent balance, one that the individuals in this unit cannot find elsewhere.

#### **Comparison to Essex County Civilian Employees**

The County contends that its salary proposal permits the Sheriff's Officers to maintain a base salary far higher than any civilian unit employee. In comparison to other Essex County non-law enforcement employees, the PBA members' total compensation is, and will remain, far better. When reviewing all Essex County employees' average salaries, the Sheriff's Officers are above average. (E-74). The County's proposals will maintain the Sheriff's total compensation, whereas the PBA's proposals will widen that gap to a gross disparity between uniformed and civilian employees.

### **Public Employment in General and Comparable Jurisdictions**

The County asserts that its last offer is reasonable when compared with other public sector awards and settlements. The County cited several interest arbitration awards and settlements that resulted in wage freezes or lower wage figures than those proposed by the County. For example, In the Matter of Interest Arbitration Between State of New Jersey, Division of State Police and State Troopers Fraternal Association, IA-97-7 (December 16, 1998, J. Mastriani), the arbitrator's award included a wage freeze in the first year of the agreement, and an overall increase averaging 3.125% over four years. Similarly, In the Matter of Interest Arbitration Between City of East Orange and East Orange FMBA Local 23, IA-2000-56 (June 12, 2002, B. Zausner) the arbitrator awarded 1% in 1991, 1% in 2000, \$4,033 in 2001 and 3.75% in 2001. In the Matter of the Interest Arbitration between Borough of Fairview and Fairview PBA Local 45, IA-2000-74 (March 14, 2002, J. Mastriani), the arbitrator awarded 3.75% in 2000, 2% in 2001, 2% in January 2002 and 2% in July 2002.

Similarly, there have been several recent settlements in which some police bargaining units voluntarily accepted wage proposals lower than those proposed by the County. For example, the City of Hawthorne PBA accepted a 2-year wage freeze. (E-88). The City of Lakewood PBA accepted a two-year wage freeze in 1999 and 2000 with a 3.5 % increase in the third year. (E-88). Similarly, the City of Totowa PBA accepted a two-year wage freeze, with a 3.75% increase in the third year. (E-88). Finally, the City of Mahwah PBA accepted a wage freeze in the first year, 3.6% in the second year and 4% in the third year. (E-91). The County asserts that its wage proposals are reasonable and that the PBA's wage proposals far exceed comparable settlements.

The County contends that Essex Sheriff's Officers are better compensated than other public employees in general. The County submits that the PBA has presented no evidence as

to why its members should receive a wage increase far in excess of that provided to other public sector employees. Accordingly, the County asserts that its last offer is more reasonable when the public sector comparability criterion is applied.

The County notes that the comparability factor has undergone immense changes over the history of interest arbitration. The County submits that the “going rate” and “parity” arguments that police and fire unions traditionally relied upon with great success in interest arbitration are no longer accepted. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super 163 (App. Div. 1993), aff’d in part, rev’d in part, 137 N.J. 71 (1994). Specifically, arbitrators may no longer simply assume that uniformed employees are entitled to the “going rate” of other municipalities’ uniformed units. Similarly, arbitrators may no longer assume that uniformed employees are entitled to higher percentage increases than non-uniformed employees and that Essex County Sheriff’s Officers are not automatically entitled to the benefits received by other units at interest arbitration, nor are they entitled to higher percentage increases than other Essex County bargaining units.

“Comparability with the police salary increases in other municipalities is not the dispositive factor.” Id. “Over-reliance on comparability inevitably leads (if it has not already) to what is known as ‘whip-sawing’ or a domino effect of ‘keeping up with the Jones’s.’” Id. at 191-192. The recent amendments to the Act, known as the Reform Act, specifically sought to curtail the skyrocketing police and fire salaries with no relationship to other employees’ salaries. Id. Thus, it is important to consider the Appellate Division’s holdings when making the determination in the instant matter. The County maintains that to render an award based merely on the “going rate” would contravene the express intent of the Reform Act: to curtail the skyrocketing police and fire salaries.

N.J.A.C. 19:16-5.14(d) provides comparability guidelines for similar comparable jurisdictions. (E-7). These guidelines include geographic data, socioeconomic considerations,

and financial considerations. The County contends that the PBA presented no evidence that any of the entities which it claims are comparable, are similar or comparable jurisdictions, and in fact, they are not.

When comparing municipalities based upon their geography, there should be evidence that the two jurisdictions neighbor or overlap, are nearby, similar in size, are of the same nature and have similar populations. N.J.A.C. 19:16-5.14(d)1. Finally, when comparing the financial aspects of two or more jurisdictions, the regulation lists a large number of factors, including tax revenue, ratables, tax rate, tax collection, delinquent taxes, budget cap considerations, total expenditures on police protection, and police protection as a percentage of the total municipal functions. N.J.A.C. 19:16-5.14(d)3. The County contends that the PBA did not present any evidence concerning any of these factors and the jurisdictions for which contracts were presented. Thus, these municipal jurisdictions are not similar comparable jurisdictions appropriate for comparison.

The County maintains that a comparison to the truly similar and comparable jurisdictions show that Essex Sheriff's Officers are compensated at a level equivalent to and often, well ahead of their peers. The County submits that the PBA has failed to offer any evidence as to why Essex, given its desperate financial circumstances and demographics, should pay its Sheriff's Officers the same as Bergen or Passaic counties which represent the extremes in terms of salary and have far better financial situations. Similarly, the County contends that the PBA failed to present any evidence as to why its members should receive wages and benefits far in excess of most civilian or uniformed Essex employees.

The County contends that the appropriate comparison is to other County Sheriff's Officers. The top step for Essex County Sheriff's Officers is \$59,238 which is well above the average statewide top step of \$54,431. The top rate of an Essex County Sheriff has exceeded the state average for at least the past four years. (E-62). Moreover, Essex Sheriff's Officers

reach top step in less years than does the average Sheriff's Officer in the State. Essex Officers reach top step after seven years; while some Sheriff's Officers in other counties must work 13 years to reach top step. (E-63).

The County notes that it is one of eight counties that do not have longevity. Essex has the highest education allowance for associate's degrees; twelve counties have no such allowance. (E-61). Essex is the only county that offers an allowance for partial completion of an associate's degree. (E-65). Essex offers a comparable uniform/safety allowance and vacation allowance and a slightly better than average holiday benefit and personal days benefit. (E-64; E-66; E-67; E-68; E-157). The Essex County total compensation figure of \$68,240 is far greater than the state average of \$57,846. Essex has the third highest total compensation in the state. (E-61). The County submits that there is no basis for the Sheriff's Officers to be paid even higher given Essex County's dire financial circumstances.

#### **Private Employees**

In 2003, New Jersey private sector manufacturing annual wages averaged \$32,969. (E-53). The average Essex County Sheriff's Officer's wage as of 2001, a full two years earlier was \$55,282, which is 68% greater. The average wage in all industries in the Essex-Morris-Sussex-Union-Warren County area as of January 2003 was \$40,955. (E-86.) This is 35% less than the Sheriff's Officers 2001 wage of \$55,282. Specifically, the Police and Sheriff's patrol officers, which includes municipal police officers have an average 2003 salary of \$55,800, which is almost precisely the Sheriff's Officers 2001 average of \$55,282. Thus, before any increase is applied, the average Sheriff's Officers' salary of two years earlier is in the middle of the pay scale for officers in this 5-county area.

The County contends that the PBA's wage data, set forth in P-8, Tab X should be disregarded because of the staleness of the data which is for 1999 and 2000. Moreover, those data figures are not for the contract term being arbitrated in this matter.

The County contends that recent private sector settlements are lower than the offer made by the County to the Sheriff's Officers. The County cited certain settlements that covered the time frame covered by this arbitration providing for increases of 0.0% or less. These include: United Tool and Stamping Electrical Workers, 3 year contract, year 1 – 0%, year 2 – 0% and year 4 – 3% (E-99); Englewood Hospital 3-year contract, deferred increase, variable increase between 2 and 3% year 2 and year 3 (based on experience and seniority) (E-100); Avdel Cherry Textron 3 year contract, deferred increase then 3% in third year. (E-101); University of Medicine and Dentistry, 4 year contract, 0%, wage reopener in 4<sup>th</sup> year; specialty care increase of \$1600 (up from \$750) (E-102); Horizon Blue Cross/Blue Shield 5 year agreement, deferred increase, 3% in years 3, 4 and 5. (E-103); Cooper Hospital, 3 year contract, deferred increase, 0% third year. (E-104); Griffin Pipe Products, 3 year contract, deferred increase, \$.40 per hour in 3<sup>rd</sup> year. (E-105); Marcal Paper Mills, 3 year contract, deferred increase, 4% in 3<sup>rd</sup> year (E-106); Southern New Jersey Dealers' Association, Steelworkers, 5 year contract, deferred increase, \$35 per week average in years 3, 4 and 5 (E-107); 21<sup>st</sup> Century Rail Transport Workers, deferred increase, 2.5% on 12/1/02 (E-108); Newark Boxboard, 5 year contract, deferred increase, 3% in years 3, 4 and 5 (E-109); M Chasen and Son Electrical Workers, 5 years contract, deferred increase, \$.45 per hour in year 4 and 5 (E-110) and Jersey Journal, 5 year contract, no increase. (E-111).

The County contends that the PBA wage proposals alone, of 5% annually, are excessive in light of the increases provided to private sector employees over the last several years. Given the low increases provided to many private sector employees, the County's offer is comparable to the increases enjoyed by private sector employees. The County asserts that it last offer, coupled with the PBA's already much higher salary and Sheriff's benefits package, will give the PBA increases that will allow the PBA to remain very well compensated. Therefore, the County asserts that the evidence on the comparability factors supports an award of its last offer.



**The Financial Impact on the Governing  
Unit, its Residents and Taxpayers**

The financial impact criterion requires an arbitrator to “consider the financial impact (of his award) on the (county), its residents and its taxpayers, whether wealthy or poor.” Hillsdale, 263 N.J. Super. at 194. The financial impact criterion does “not equate with the [county’s] ability to pay.” Hillsdale, 137 N.J. at 194. (E-8). The correct application of this criterion does not require an employer to prove that it would suffer a “substantially detrimental result,” or that financial difficulties would be created or worsened. Hillsdale, 263 N.J. Super. at 194. Rather, arbitrators must consider the effect their awards will have on other employees, and on the employer’s overall budget. Hillsdale, 137 N.J. at 86. (E-8). Arbitrators must consider factors such as the percentage of citizens on fixed incomes, and the impact of tax increases and other costs on each income category of residents. Hillsdale, 263 N.J. Super. at 194.

With regard to the financial impact criterion, (N.J.S.A. 34:13A-16(g)(6)), the Appellate Division in Hillsdale specifically rejected the argument that the employer must prove that it lacks the “ability to pay” the union’s proposal. “[T]he Legislature surely intended that there be more to consideration of the public’s interest and welfare than mere financial impact vis-à-vis ability to pay.” Hillsdale, 263N.J. Super. at 188-9. The arbitrator must consider the overall impact of the award on governmental programs, on other employees, and on the taxpaying public. “A [county] should not have to demonstrate [that] it would be financially crippled before its arguments [concerning financial impact] could be found to be sufficient.” Id. at 194.

The Supreme Court agreed with the Appellate Division that the “financial impact” factor “do[es] not equate with the [county’s] ability to pay.” Hillsdale, 137 N.J. at 85. (E-9). It is not enough simply to assert that taxes should be raised. Id. At 86. Nor must the employer be forced to prove its inability to pay the award, or that substantial detriment will result. Id. The arbitrator instead must consider the effect the award will have on other employees and on

the overall budget. *Id.* at 86. In Fox v. Morris County Policemen's Ass'n., 266 N.J. Super 501, 516 (App. Div. 1993) (E-10), the Court specifically faulted the arbitrator for failing to explain why salary increases are entitled to priority in the budget over other items, and for suggesting that any economies realized by cutting other budget costs could and should be applied to salary increases. (E-10). Findings regarding financial impact must be based upon record evidence, not upon the mere assumption that the employer somehow could find a way to fund the award. *Id.* At 517.

The County maintains that it is in desperate financial straits and straining to provide basic services to the public. The County cites the testimony of County Treasurer, Paul J. Hopkins, II, which established the County's precarious financial situation and the need for strict financial planning in order to meet the County's basic fiscal responsibilities. Hopkins is a Certified County Finance Officer and a Certified Municipal Finance Officer and has served the County in various financial management positions for 29 years.

The following is an analysis of Hopkins' testimony regarding the County's financial situation and need for strict financial planning.

#### **The County's Bond Ratings and Planned Initiatives.**

The County's financial picture is "dire." (Tr. II, at 249). The County's bond rating, as established by independent rating agencies such as Moody's and Fitch, is the lowest in the State. (Tr. II, at 249; E191). Although the rating had improved at the end of 2002, the agencies remained concerned that the rating was not low enough and expressed concern over the "extensive use of one-shot revenues [and] lack of recurring revenues." Hopkins explained the importance of a bond rating: it affects an entity's ability to borrow money in the markets. Moreover, a poor bond rating will limit the pool of potential investors since certain investors may not hold investments of a certain low rating. Furthermore, the lower the bond rating, the more it costs an entity to borrow due to the perceived risk and lower pool of investors.

(Tr. II, at 250). Therefore, a lower bond rating drives the cost of borrowing in two ways: "the cost of bond insurance will be higher and the cost of interest will also be higher." (Tr. II, at 251). Put another way, if an entity's bond rating is poor, the entity has to buy bond insurance to attract investors and is also paying higher interest costs. As Hopkins stated, issuing debt with a poor bond rating is "a vicious circle." (Tr. III, at 358).

Hopkins described the bond ratings and explained that the County's rating of BAA2 is only two levels higher than pure junk bonds. (E-32; Id., at 252). He further explained that in June 2002, the County was rated at BAA1 and the outlook changed to negative. At the end of 2002, the agencies were concerned with the County's financial picture and dropped its rating to BAA2. In fact, Mr. Hopkins referenced certain portions of the Moody's public documents which noted the County's "extremely narrow financial position" and that "continued vigilance on the expenditure side" by the County "is critical to the rating outlook." (E-14, E-15). Hopkins testified that a change in the outlook is the first indicator that something might happen to the actual rating. Moody's also expressed its "expectations that newly elected County Officials will continue to make necessary decisions to augment recurring revenues and property taxes to offset a budgetary gap...and promote ongoing structural balance." (E-14). Thus, the County suffered a series of bond rating downgrades during which Moody's established an expected fiscal agenda. (Tr. II, at 257). The reason that the credit rating was held at the lowered level of BAA2 was because the County was able to present a series of initiatives and solid plans for addressing the identified problems. (E-11). Had the County not provided specific plans to restore fiscal health, it is axiomatic that the bond rating would have decreased further. Moody's recognized the financial difficulties faced by the County and emphasized that the County faced challenges to augment fiscal margins because of a large structural imbalance and an extremely modest reserve position. (E-15). Moody's also made clear during the spring that the BAA2 outlook was in jeopardy. (Tr. II, at 259; E-14).

Hopkins explained that the County officials made a presentation of planned initiatives to Moody's in order to stave off a change in the outlook or bond rating. That presentation included a plan to deal with the County's structural deficit by restructuring pension bonds, restructuring debt, attempting to have the State take over some of the State-mandated costs, exploring future recurring revenue sources and increasing taxes. (Tr. II, at 261-262; E-42).

Hopkins explained, and was corroborated by Moody's credit reports (E-14, E-15, E-58; E-42), that Moody's expected to see increases in fund balance, less reliance on one-shot revenue sources and continued vigilance in controlling all areas of expenses. (Tr. II, at 263; E-14; E-42). Similarly, Fitch's wanted to see no reliance on one-shot revenues and more recurring revenues, an increased fund balance and minimized expenses or reduced government to control the structural deficit. (Tr. II, at 276; E-42).

Hopkins described revenue sources that did not materialize, such as the State takeover of the Prosecutor's Office or the County's share of the hotel tax. The County is also pursuing other revenue sources such as "Abbott" funding for the County's vocational schools and realty transfer taxes. (Tr. II, at 268).

Because those revenues did not materialize in 2002, the County incurred a cash deficit in 2003 of slightly over \$20 million. (Tr. III, at 331). The County had not had a cash deficit in 2002 or 2001.

Moreover, because those anticipated revenues did not materialize, the County had to issue tax anticipation notes in December 2002 to borrow against future tax revenue in order to have enough cash to start the new year, 2003. Hopkins explained that this financing mechanism is not prudent; it is deficit financing.

Hopkins testified that the only initiatives the County could establish in the 2003 budget were a tax increase and the debt restructuring. There were no large recurring revenue

sources in the 2003 budget. In fact, there were some one-shot revenue sources, such as the utilities authority debt restructuring, and the Hilltop land easement which are no longer revenue sources for the County. Because the County could not rely on these one-shot revenue sources, the 2003 budget included approximately 6% less general revenues. Clearly, reliance on one-shot revenues is not prudent; the one-shots were used to fill the ever-increasing gap between permanent funding and increased expenses. The County provided evidence that over the last three years, the County has relied on an increasing amount of one-shot revenues. In 2001 the County utilized \$26 million in one shot revenues. In 2002, the County utilized \$37.7 million in one-shots. In 2003, the County utilized \$38.6 million in one-shot revenues. (E-30).

The County submits that it has little control over revenue sources except for the tax levy. Thus, in accordance with the ratings agencies' expectation that the County develop permanent funding mechanisms, the County implemented an initiative of a \$14.2 million tax increase in 2003. (Tr. II, at 269). This was the second largest tax increase in the history of the County. (E-11). (See also, E-30, indicating that tax revenue increased from \$290 million in 2002 to \$304 million in 2003.)

The County also sought to generate recurring revenue by raising its parks and recreation fees. (E-38). These fees were anticipated to generate \$500,000 annually. However, not only did that revenue not materialize, the revenues collected as of the end of August 2003 lagged by over \$400,000 behind the August 2002 revenues. (Tr. III, at 339, E-190). Thus, despite the rating agencies' expectation that the County establish new recurring sources of revenue, the County had no new revenue in 2003. (E-30).

Moreover, any State aid is tied directly to a particular program, such as DYFS and maintaining developmentally disabled patients and is thus not a source of increased revenue. (Tr. III, at 337). Similarly, grant money is tied to a program; if the grant does not

materialize, the program is usually eliminated. Clearly, grant money may not be used for general County operations or to fund these increases. (Tr. III, at 338). The various law enforcement trust funds may not be used to fund wages and operations. (Tr. III, at 382-383).

Not only have revenues not materialized as expected, expenses have been increasing as well. For example, because the County pays on a cash basis, it will have 27 payrolls in 2004 rather than the customary 26 payrolls. The County will have an additional \$9 million expense in 2004 because it will have to pay an additional payroll. (Tr. III, at 351).

Hopkins described another pressure on the budget from the employee pension systems. Hopkins explained that for PERS and PFRS, the employer's liability for the last several years was waived since the pension systems were overvalued. Since investment income began a recent steep decline, public employers will now have to fund their pension contributions. For Essex County, the contribution will be approximately \$1.8 million in 2004. (Tr. III, at 351). Beginning in 2004, the County will have to contribute 20%, with contributions increasing eventually to 100% after 5 years. Put another way, the County will need to pay a multimillion dollar pension expense that it has not had to pay in recent years.

Another potential budget difficulty is the Medicare and Medicaid reimbursements to the psychiatric hospitals. The recent agency review of the facility yielded certain deficiencies, that if unchecked result in the facility's loss of accreditation which would cause a \$6 - \$7 million dollar loss in Medicare/Medicaid reimbursement. (E-36; Tr. III, at 341).

According to the County, another potentially crippling area of expense is the proposal to shift the City of Newark's welfare program to the County. (E-37). The County has "no choice" in the matter and Newark is the only large city that has not shifted its welfare program to its respective County.

## Cost-Cutting Measures and Layoffs

According to the County, if certain initiatives do not materialize, an alternative plan is to have all the executive agencies suffer a 10% reduction. The Sheriff would be subject to that 10% reduction.

The County also implemented a hiring freeze in June 2003. However, the Sheriff's Department has increased the headcount by 50-60 people since the 1990's. Moreover, the Executive departments, parks, public works, administration and finance have all suffered layoffs. Areas that did not expect layoffs suffered layoffs. (E-33; E-34). Specifically, the layoffs have included a layoff in 1999 in which 226 people were laid off with an expected savings of \$8.2 million. (E-24). No Sheriff's Officers were included in that layoff. In September 2002, the County laid off 53 people and demoted 2 others resulting in an annual savings of \$1.6 million. (E-25). Parks and Public Works suffered the brunt of these layoffs. (E-25, E-26). No Sheriff's Officers were impacted in that layoff. On January 31, 2003, a layoff and demotion affecting 111 people occurred, resulting in a savings of \$4 million. (E-26). No Sheriff's Officers were affected by that layoff. In September 2003 the County laid off or demoted 81 people for an expected savings of \$3.5 million. (E-27). No Sheriff's Officers were affected by that layoff. The County urges the Arbitrator to take arbitral notice of the County's plan to layoff 150 corrections officers on March 16, 2004. (See, Newark Star-Ledger, January 8, 2004). The only areas that have not seen a severe headcount reduction are public safety and citizen services, due to mandatory welfare staffing. The County notes that some of these welfare salaries are partially grant-funded. (Tr. III, at 346-347). The Public Works department budget decreased from the low \$20 million area to around \$14 million. (Tr. III, at 345). Also, the Parks Department budget is approximately \$1 million less than it was in the early 90s. Thus, the rationale for the 10% planned reduction is that all other areas of the County have suffered reductions, yet the constitutional officers have not.

However, even with the cuts sustained by the other departments, the parks remain open, no roads have been closed and the college runs. As Hopkins makes clear, "We are continuing to provide the same services that we did in the past with fewer employees." (Tr. II, at 273). Parks and Public Works "have the same number of parks to maintain and same miles of road and the same services to be delivered." (Tr. III, at 345). However, that must be contrasted with the Sheriff's Department which has been consistently increasing, in raw figures and as a percentage of budget, from 4% in 1994 to 6% in 2003. Also, the budgets themselves in public safety, including the Sheriff's Office, have increased 80 to 100%. Specifically, the Sheriff's Office budget increased over 100% from 1990 to 2002. From 1994 to the present, the Sheriff's budget has increased 65%.

#### **Fund Balance**

The County notes that both Moody's and Fitch's expressed concern about the fund balance. A fund balance is the "cash that is left over at the end of the year, after all your revenues are received and all your liabilities are accounted for." (Tr. II, at 275). The County's current fund balance is approximately \$5.4 million. (Tr. II, at 295). The fund balance is declining. (Tr. II at 296; E-31). Moreover, the fund balance is less than 1 per cent of the budget. An appropriate fund balance would be 5% or \$20 million. (Tr. II, at 297; E-11). This figure is based on Hopkins' comprehensive knowledge of municipal finance as well as rating agency standards. Instead, the County's fund balance has decreased in three years from roughly \$12.6 million to \$5 million. (E-31). A low fund balance is related to the County's low bond rating. Bergen County, an AAA-rated county had a 2002 fund balance of \$19.3 million and Monmouth County's was \$68.2 million. (E-191). Moreover, the median fund balance in the state is \$19.1 million. (E-191). As Hopkins reiterated, "the [very, very low] fund balance and structural deficit are the two items [the rating agencies] continue to harp on." (Tr. II, at 300).



The County cites Hopkins' testimony that using the County's fund balance to fund the PBA salary proposals "would be kind of suicidal". (Tr. II, at 300). Hopkins testified that use of the minuscule fund balance would result in the rating agencies doubting that the County had any real intention of correcting the fund balance. Also, by exhausting its fund balance, the County is limited in its ability to borrow money at all, let alone at a reasonable rate. (E-11). Furthermore, some fund balance is needed for unanticipated events and acts as a cushion to enable continued function. (E-11).

Hopkins explained that a structural deficit is the gap between an entity's fixed recurring revenues and fixed expenses. (Tr. II, at 278). The rating agencies have made clear that the County's existing structural deficit is a great concern to them. The structural deficit has been widening to an intolerable amount. The structural deficit increased due to the County's over-reliance on one-shot revenues. Moreover, unless the structural deficit is addressed, the County's rating will decline even further. (E-11).

The County asserts that any increase in Sheriff's Officer salaries has a substantial and devastating impact upon the budget. Hopkins testified, "If you look at a pattern of eight or more years of one-shot revenues, each time you go back to put together another budget you have fewer and fewer options. I think we're at the point in time where ... there were no more options. Reductions have been made in the budget. All necessary revenues you could come up with have been included in the budget. You run out of property to sell, you run out of quick fixes, and that's where we are right now. You're pretty much backed into a corner." (Tr. III, at 336- 337).

### **Demographics of the County's Residents**

Adding to the dire financial circumstances of the County are the demographics of Essex County residents. (E-49 – E-57). The U.S. Census reported that 15.6% of persons below the poverty level resided in Essex County. (E-49). Furthermore, Essex County is seeing its

population growth slowing dramatically relative to the rest of the State. From 1990 to 2000, the population of Essex County grew only 2.0%, while the rest of New Jersey had a population increase of 8.6%. (E-49; E-50; E-51). Also, between 2000 and 2005, New Jersey is expected to see a 3.8% population increase, whereas Essex County will only see a 2.2% increase. (E-56)

The per capita income in Essex County is \$ 24,943. (E-49; E50; E51; E-55). This is roughly 10% less than the State average and less than half the average Essex County Sheriff's Officers salary. Only about a quarter of Essex County residents hold a bachelor's degree or better. (E-50). The demographics make clear that Essex residents can ill-afford another increase in taxes.

Exacerbating the problems illustrated by the demographics of Essex County, the County's ratable base has remained relatively flat over the past five years. However, expenditures have been increasing, leading to increased taxes. Essex's tax rate is the sixth highest in the State. (E-54) The County submits that the slight decline in the tax rate was a direct result of increased property values. (Tr. III, at 393.)

### **The Tax Levy**

In 2003, the County increased its tax levy. The County's taxes increased \$9.7 million from 2001 to 2002 and \$14.2 million from 2002 to 2003. (Tr. II, at. 269, at. 281, E-17; E-39). Thus, in the past two years, the County taxes increased almost \$24 million. The \$14.2 million increase was the second largest in Hopkins' memory. (Tr. II, at 282). The \$14.2 million represented an almost 5% increase in the tax levy. Roughly 54% of the total budget is based on tax revenue. (E-11). Thus, any increase in expenditures will almost certainly increase taxes.

The County submits that its decision to increase taxes was a difficult one. (E-40). First, there are CAP law considerations. Second, the County is facing a taxpayer revolt. (Tr. II, at 284). Four municipalities in Essex County, Montclair, Millburn, Roseland and Glen Ridge have expressed interest in secession from the County. (E-43; E-45). The voters in Millburn

voted 3872 to 538 in favor of secession from the County. (E-48). Montclair has placed a non-binding referendum on the November ballot. (E-43). Glen Ridge voters attempted to have a question placed on the ballot, but their request was deemed untimely. (E-45). Clearly, local taxpayers are so disgruntled with their County tax bills that in this era of apathy, local constituents are making concerted efforts to at the least, make a statement of their disapproval. Moreover, as the overwhelming vote in Millburn indicates, the sentiment in favor of secession is strong.

With the recent increase, Millburn saw a \$3.1 million increase and Montclair saw a \$3.6 increase. (Tr. II, E-17). As taxes increase, the taxpayer dissatisfaction also increases. Moreover, should a municipality such as Montclair succeed in seceding, the County would have to reapportion \$34 million among the remaining municipalities. (Tr. II, at 294). If Montclair, Glen Ridge and Millburn all seceded, a staggering \$64 million would have to be reapportioned among the remaining nineteen municipalities. (E-46).

Another increasing pressure on the budget are fixed costs. Currently, the fixed costs, over which the County has little control, represent 55% of the budget. (Tr. III, at 341). These areas include debt service, pension costs and utilities. Further, County expenses per capita have been rising. According to Hopkins, "Our costs of corrections, sheriff, prosecutor, and over the last several years those costs have increased dramatically." (Tr. III, at 342). The increases are mostly salary-driven. The Sheriff's Office represents approximately 35% of the total public safety cost. (Tr. III, at 342; E-16). Specifically, the per capita cost of public safety is \$855.26 which includes Sheriff's Officers. (E-16).

### **Debt**

In addition to poor demographics, increased use of surplus, increased taxes, budgetary pressures and a flat ratables base, the County is issuing more debt. Hopkins explained that the County was trying to control its debt. (Tr. III, at 356). However, the County has had to

curtail normal improvements because of increased debt with the new jail, the new hospital and completing the old courthouse. (Tr. III, at 356; E-21). Shockingly, the County had to issue completion bonds for the new jail for \$94 million because the FFE (furniture, fixtures and equipment) was either not included in the original cost projections or devoured by cost overruns. (Tr. III, at 359; E-41). The County will have to pay debt service on that annually for 20 years. (Tr. III, at 392). Although the County is not at the maximum 2% of average property values, the true debt picture is not demonstrated since the County remains responsible for the payments of debt issued through the County Improvement Authority. (Tr. III, at 357). Moreover, you cannot fund current operations through debt. (Tr. III, at 394). Thus, increasing debt to the statutory maximum is not a solution to the County's inability to fund the PBA's last offer.

According to the County, both Moody's and Fitch's recognize the financial pressures it is facing. These agencies recognize the problem areas identified by the County's witnesses in this proceeding: decrease in surplus, poor demographics, increased expenditures, flat tax base and growth and increased debt. Thus, the County's last offer to the Sheriff's Officers is in keeping with a comprehensive and uniform policy, which was implemented due to the severe fiscal constraints currently facing Essex County. Only with strict fiscal planning will Essex be able to adequately meet all of its financial burdens. A part of that financial planning necessarily includes limiting the increases provided to the County's employees. While Essex recognizes that its employees deserve a fair increase in wages, it must also meet its other fiscal obligations.

The PBA's final offer results in annual wage increases alone of 5% annually, excluding rollover. The County contends that the PBA presented no credible evidence as to why those increases should be awarded at the expense of other budget line items and fiscal responsibility. The PBA did not present any evidence concerning the fiscal strength of Essex. The PBA's

proposals will increase costs significantly, requiring the County to maintain its already dire fiscal position, either by decreasing expenditures, by cutting services to the public, or by increasing revenues by raising taxes.

The County submits that the PBA failed to present any evidence concerning the fiscal strength of Essex, or where it proposes Essex will obtain the increased revenue necessary to fund the PBA's last offer. The County submits that it presented ample evidence to demonstrate that the County's last offer is fair to the Sheriff's Officers and fits within the bounds of the County's budgetary constraints. The County's last offer will allow the Sheriff's Officers to receive increases which match those awarded to other Essex bargaining units, and to continue to receive compensation far greater than that of the average employee or resident of Essex.

The County contends that the "solution" of simply raising taxes is not practical. It is also in conflict with the "public interest" criterion. The taxpayers have entrusted their elected officials with the responsibility of budgeting in a prudent manner to avoid the need for increased taxation. Taxpayers in Essex County are increasingly expressing their displeasure over increased taxes. The taxpayers and the County elected officials both realize that the best way to hold the line on tax increases is to prepare a budget which fairly allocates, but does not spend above and beyond the funds that are reasonably available to the County. Any award other than the County's last offer runs contrary to these legitimate governmental objectives. The County asserts that its last offer is clearly the more reasonable under the financial impact factor.

**Interests and Welfare of the Public**

The Arbitrator must consider the "interests and welfare of the public" in determining his award. N.J.S.A. 34:13A-16(g)(1); Hillsdale PBA, 137 N.J. at 83. (E-9). In the Appellate Division's decision in the Hillsdale matter, the Court found that the public interest factor "focuses in part on the priority to be given to the wages and monetary benefits of public

employees within a [county's] budget and plans.” “It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow.” Hillsdale, 263 N.J. Super at 188.

The County submits that its last offer supports the public's interests and welfare. Moreover, the interests and welfare of the public make clear that it is in the residents' best interests that the County's scarce resources be focused on the residents' desperate need for the social services provided by the County. The County contends that allocating scarce resources to Sheriff's Officers, who are performing well and efficiently and are comparably well-paid, is not in the public's best interest. The County asserts that its last offer falls within the tight parameters budgeted by the County for Sheriff's Officer salaries and additional benefits. The County submits that an award in excess of the County's proposal directly contravenes the interests and welfare of the Essex County public. The PBA's proposal is well in excess of that amount, and will require the County to either move items from elsewhere in the budget to fund the PBA's proposal, with the accompanying necessary reduction in funds to other programs, or to further increase the tax burden upon the residents of Essex.

The County contends that it has only two options: curtail spending or increase revenues. At this juncture, the only mechanism by which the County can increase revenues is to once again raise the tax rate. This is not a practical solution: the taxpayers are increasingly revolting against the current tax rate and began revolting before the recent \$14.2 million increase. The remaining solution is to curtail spending. The County has attempted to meet this goal through the utilization of a tight budget. As part of this budget, the County calculated what would be a fair, but affordable increase for its uniformed employees. The County budgeted accordingly. If the PBA's proposal is awarded, the extra money will need to be taken from elsewhere in the budget. It is important to recall that the PBA's proposal

provides wage increases far in excess of the amount provided to the Essex employees who have already settled with the County. In other words, other services provided by the County will be reduced or eliminated, while overcompensating the Sheriff's Officers. Any reduction in other programs and services is against the public's best interest, as each program helps support an equally important public interest, be it improvement of the infrastructure through better roads, improvement of park land to provide a safe and clean environment for the children of the County to play or the numerous social services provided to the County's urban population.

The County maintains that the best interests and welfare of the public clearly lie with the more financially sound last offer of the County. The County maintains that the public's interest is in strengthening the County's precarious fiscal health and not in further increasing taxes, nor cutting programs, which would be required by the PBA's salary proposals.

The County contends that the PBA provided no evidence that its salary proposals will improve the level of services provided by the Sheriff's Officers in the Essex County Sheriff's Department, nor that these services are currently deficient in any way. To the contrary, the County contends that the evidence was unanimous that the Sheriff's Department is efficient and productive and has good morale. The County asserts that its last offer clearly takes the best interests and welfare of the public into account, while the PBA's last offer ignores this factor, forging ahead with a simple "business as usual" attitude. The County asserts that this factor weighs heavily in favor its last offer.

#### *Cost of Living*

The County notes that the CPI for the 12 months ending December 2002 increased by 2.6%. (E-136). For urban consumers, the CPI percentage change was 1.6% for the same time period. (E-137; E-138). The County contends that Increases in the CPI have remained consistent over the past several years. The PBA presented no evidence to suggest there will

be any drastic changes in the CPI during the life of this contract. Over the past 10 years, when comparing the Sheriff's Officers' wage increases to the CPI increase, the wage increases have exceeded the CPI by 13.15%. (E-139). The County submits that its last offer permits reasonable wage increases, while maintaining the historical pattern of Sheriff's Officers' wages being over and above the cost of living.

**Lawful Authority of the Employer**

The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion (N.J.S.A. 34:13A-16(g)(5), to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super at 193. The Supreme Court agreed: "[G]iven the existence of financial constraints and budget caps . . . an award to police or fire departments necessarily affects other [county] employees and the entire [county] budget." Hillsdale, 137 N.J. at 86. (F). In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J. Super at 194. In applying the lawful authority of the employer criterion, the Arbitrator must address the County's budget CAP situation, as well as the statutory requirement that the County prepare a balanced budget each year.

The County maintains that the financial picture of the County has changed, for worse. Bond ratings have decreased to near junk bond levels and are the lowest in the state. The CAP law restricts the growth in the tax levy from year-to-year. (Tr. II, at 286).

The County submits that it provided an adequate explanation as to why it is not at a full 5% CAP. The County contends that it cannot raise taxes to the maximum CAP because of the taxpayer revolt as evidenced by the secession movement. "We are already taxing certain areas of the County at an inordinate, intolerable rate." (Tr. II, at 287). Moreover, raising taxes to fund a specific contract does nothing for the County's structural deficit, nor does it meet the initiatives outlined to the rating agencies. (E-11). Furthermore, most of the 2003 CAP bank was used up by the time of the hearing. (Tr. III, at 396).



The County asserts that its efforts in maintaining costs and controlling rising taxes should be lauded as good governmental policy. Furthermore, the Arbitrator must consider the public interest and welfare, which is well served by maintaining fiscal health and avoiding passing on tax increases in a time of economic downturn and difficult, at best financial circumstances in the County. Furthermore, the County asserts that its policy decision is wholly in accord with the legislative policy of the Cap law: "the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads." N.J.S.A. 40A:4-45.1, Exhibit E-18.

The County submits that it presented evidence in support of its position that its last offer is the more reasonable in light of the lawful authority of the employer. It is clear that the 2003 budgets are complete; it is now impossible to go back in time and increase that budget beyond the amount already allocated. Moreover, by the time this award is issued, at least a quarter of the budgetary year will be completed. Therefore, any award in excess of the funds budgeted by the County will need to come mostly from the 2004 budget, leaving the County a very limited area in which to make the budgetary reductions necessary to fund such an award. The PBA's salary proposal of 5% annually far exceeds the County's offer, and the reasonable amount budgeted by the County for this unit. The County submits that it will be forced to cut other expenditures (other public services) or increase taxes to fund the increases while remaining within the parameters of the tightly balanced budget if the PBA's last offer is awarded.

The County contends that the PBA's proposals will serve only to throw Essex's budget into disarray by ignoring all financial constraints placed upon the County, as well as the strong fiscal planning of Essex's elected officials. The County asserts that its last offer is more reasonable under this factor.

### Overall Compensation

The Arbitrator must consider the overall compensation received by the Essex Sheriff's Officers. N.J.S.A. 34:13A-16(g)(3). The average base salary in 2001 is \$55,282. The County points out that along with base salary, Sheriff's Officers receive a wide array of economic benefits including: 17 personal days and holidays, medical insurance benefits (including a dental plan), a \$700 uniform allowance, and 12 - 25 paid vacation days. The Sheriff's Officers are one of the few units that receive three bereavement days. Sheriff's Officers are also enrolled in the Police and Firefighters Retirement System, a pension system which permits an officer to retire after twenty years of service and receive a pension benefit equal to 50% of final compensation, or after twenty-five years of service up to 65% of final compensation.

The per capita income for Essex County residents is \$24,943.00. (E-49). The average Essex Sheriff's Officer's base salary in 2001 alone is more than twice the amount of the income of the average taxpayer who funds the police officer's salary. Thus, by virtue of their base salary alone, Sheriff's Officers are provided a substantially higher income than the average resident of Essex County. When the additional compensation provided to Sheriff's Officers is considered, it is clear that Sheriff's Officers earn substantially more than the average resident of Essex.

The PBA's proposal would permit the unit to increase its substantial differential over the average Essex resident, and would require the Essex taxpayer to fund the increase through increased taxes. Thus, this wage differential would increase as the Essex residents would have less disposable income due to the tax increase likely required to pay the higher PBA salaries. The County asserts that its last offer is more reasonable under this factor.

### Continuity and Stability of Employment

The "stability and continuity of employment" criterion, N.J.S.A. 34:13A-16(g)(8), concern issues such as the likelihood of layoffs, "give-backs" and salary freezes. Hillsdale,

263 Super at 195. The Appellate Division interpreted this criterion to require arbitrators to consider factors such as the employer's overall salary structure, the rate of unemployment generally, employee turnover, and the "virtual absence of unemployment among police." Fox v. Morris County Policemen's Association, PBA 151, 266 N.J. Super. at 519. (E-10).

The average seniority for Essex Sheriff's Officers is almost 10 years. (E-3). Don Brown, Director of Administrative Services and Personnel Officer for the Sheriff's Department, testified regarding turnover in the Sheriff's Department. Brown explained that the Department tracks turnover on a monthly basis. Currently, the turnover rate is 2.5%. (Tr. II, at 152). The County contends that Brown's testimony and the County's documentary exhibits confirm that turnover in the Sheriff's Department is low: between 2.5% and 6% during the last 5 years. The 2003 rate is the lowest it has been in the last 5 years. Brown confirmed that the primary reason officers leave is due to retirement. During the past 5 years, 52.18% of turnover was due to retirements. Essex Sheriff's Officers enjoy secure and stable employment, without the threat of a job loss which is the norm in many private corporations and other government positions.

The County submits that the Sheriff's Officers' ability to remain employed is in complete contrast to the current climate, both in New Jersey, and across the nation. (E-112 to E-135). The country has been besieged by mass layoffs. Moreover, many laid off employees are unable to find work, since employers are managing with fewer employees. (E-85). Additionally, many private sector employees are also losing their retirement savings, a worry the Sheriff's Officers don't have since they have a hefty pension awaiting them at retirement. (E-122). The County Sheriff's Officers have stable, well-paying jobs and never have the threat of a job loss and attendant stress when so many New Jerseyans are facing unemployment. (E-129 -134).

The County points out that the Sheriff's Officers have not been affected by the numerous layoffs during the past five years. These layoffs affected almost 500 employees. (E-24, E-25, E-26, E-27).

The New Jersey Appellate Division noted that there is a "virtual absence of unemployment among police." Fox, 266 N.J. Super. at 519. This is not so for non-police employees in New Jersey, in which the unemployment rate continues to rise. For example, the unemployment rate in July 2003 rose to 6.1%, up from 5.8% a month earlier. (E-129; E-135). This translates to 9.1 million people being unemployed. (E-135). The Newark area unemployment rate rose 1.4% (E-130; E-134). The nationwide jobless rate is 5.8% - 6.1%. (E-121; E-132; E-133). The August 2003 rate of 6.1 % was a nine year high. (E-133). Moreover, the rash of mass layoffs and downsizing that is the trend in both the private and public sector does not affect, nor even concern Essex Sheriff's Officers. They are virtually assured of a position, which pays more than double the per capita income of Essex residents, for as long as they wish to remain employed. The County submits that the PBA presented no evidence on the continuity and stability of employment.

According to the County, there is a ready pool of applicants eager to join the Sheriff's Department. Brown testified that officers trained and employed by municipal police departments "are anxious to come over to the Sheriff's Office." (Tr. II, at 155). The County notes that the current Civil Service eligibility list, dated April 2003, includes 150 names of individuals interested in employment in the Sheriff's Department. (Tr. II, at 157, E-84).

Brown testified that morale in the department is good - "it is a good working relationship with management and between employees." (Tr. II, at 156). Furthermore, there are very few grievances in the Department. Brown only recalls one grievance going to arbitration since 1984. (Tr. II, at 158). Brown recalls no unfair practice charge being filed by the bargaining unit.

The County contends that the PBA's last offer may jeopardize continuity and stability of employment of Sheriff's Officers. The County submits that the evidence on this factor supports the County's last offer which is more reasonable.

### Health Insurance

The County proposed an increase in its prescription health benefits plan consistent with the pattern accepted by nine other bargaining units: co-pays will rise from \$1.00 for generic drugs to \$5.00 and from \$5.00 to \$10.00 for brand name non-generic drugs to be effective thirty days after the signing of the agreement. The co-pays rise effective January 1, 2005 to \$10.00 for generic drugs and \$15.00 for non-generic drugs. (Tr. II, at 198). There has not been an increase in the prescription co-pay for this unit since 1993. (Tr. II, at 198; E-76). The County estimated that if all employees were subject to these prescription co-pay increases, the savings would be \$1 million each year. (Tr. III, at 354; E-142).

Hopkins explained the County's rationale for the proposal. Primarily, the costs of providing prescription benefits have risen dramatically over the last few years. The insurance provider told the County that the only real way to manage the costs was to change the co-payment. (Tr. III, at 353).

The County provided evidence as to the actual increased costs. E-20 shows that for the period January through July, from 2002 to 2003 the costs for prescription benefits alone increased from \$4.6 million to \$5.5 million. (E-11). Thus, for the first 6 months of 2003, prescription costs increased 19%. The County points out that health care costs continue to increase in all areas. In 2002, health care costs were \$1 million over budget, which resulted in an emergency appropriation. (Tr. III, at 355).

The County emphasizes that nine other bargaining units have already agreed to the proposed prescription co-pay changes. Having numerous prescription plans is administratively cumbersome, with different classes of employees having different co-pays. (Tr. III, at 352).

The County notes that it realizes economies of scale and better buying power with one prescription plan since the administrative costs also decrease. (E-11).

According to the County, not only is the prescription co-pay proposal the same as has already been agreed to by nine other bargaining units, it is also in line with prescription co-pays already being paid by other comparable county Sheriff's Officers. (E-141).

The County provided undisputed evidence from external sources regarding the current health care landscape and the seriously problematic rising costs. Recently, the Kaiser Family Foundation conducted a survey of health benefits. That survey found that health benefits premium costs are continuing to rise and that in 2003, almost half the employers were planning to increase prescription costs. (E-143). Moreover, employers are consistently seeing double digit increases and employees are paying more for less benefits. (E-148). Premiums rose on average 13.9 %, which is the highest increase since 1990. Employee benefits costs are highest in the Northeast. The average drug prescription generic co-pay is \$9 and the brand-name co-pay averages \$19. These 2003 numbers are higher than the figures the County is proposing: \$5 and \$10 in 2003 and 2004, rising to \$10 and \$15 in 2005. Thus, two years down the road, should the County's prescription proposal be awarded, Essex Sheriff's Officers will be paying less than the 2003 average co-pays. (E-156).

Similarly, UCLA conducted a survey of 460 companies, which overwhelmingly found that employers are seeing premiums rise by at least 10% over the past year. Furthermore, 25% of those surveyed saw premiums rise by more than 25%. (E-144). The employer companies reacted to those staggering premium increases in many ways. The most common method was to raise co-payments or deductibles, followed by raising employee contributions to premiums. Over 60% of employers raised employee contributions and over 70% of surveyed employers raised co-payments or deductibles. (E-145). Almost uniformly, employees are required to pay

more for health benefits. (E-154). Without question, employers are passing on the increased costs to employees.

Similarly, Watson Wyatt Group did a survey on employee benefits in 2002. (E-146). That study found that medical benefits companies have had three consecutive years of double digit increases. Like in the UCLA study, the responding employers plan to require increased employee contributions and deductibles in 2003. Similarly, noting the marked increase in prescription drugs, employers are seeking increased co-pays.

Numerous newspaper articles have also discussed the disastrous state of health care costs. The Wall Street Journal reported that some companies have prescription co-pays as high as \$40. Moreover, premiums are increasing on average 12 - 15%, with an average increase of 14.7%. (E-150). Closer to home, the New Jersey Business and Industry Association forecasts a 13.5% average increase in 2003. (E-151). Retiree health benefits costs also add to the problem. (E-152).

Supporting the findings of the Kaiser Foundation, UCLA and Watson Wyatt Group is the Mercer/Foster Higgins Survey. (E-147). This study also identified that the Northeast region has the highest benefits costs of any other region in the Country. That study reaffirmed the accelerating health costs (11.2% on average) and the intention of many employers to raise employee contributions in 2002. The double-digit cost increase trend is expected to continue. (E-147). This study shows that 34.3% of employers are increasing prescription co-payments. (E-146). Moreover, a greater share of the increased costs are being passed on to employees. (E-146). This study also demonstrated that in 2001, the average generic prescription co-pay was \$9 and the average non-generic prescription co-pay was \$19. (E-147).

The County asserts that its proposal, in which co-pays eventually increase to \$10 and \$15 in 2005 is far more generous than the average co-pays in 2001. The County points out that other arbitrators have granted employers relief on health benefit proposals. For example, In

the Matter of the Interest Arbitration Between the County of Union and Union County Police Sheriff's Officer's Association, PBA Local 73, IA-2001-80, (Arbitrator Frank A. Mason, April 2, 2002), Arbitrator Mason awarded the County's health benefit proposal which included an increased prescription co-pay, increased contributions for doctors' visits, increased premium contributions and increased deductibles. (E-149). Specifically, the arbitrator awarded a prescription co-pay schedule which ranged from \$5 to \$15 co-payments. Arbitrator Mason was persuaded that other County units who voluntarily adopted the health benefits plan "have concluded they have a part to play in holding down the County share by accepting responsibility for a reasonable proportion of the costs." Arbitrator Mason was also persuaded by the goal of "avoidance of deviations from County-wide plans which would be administratively burdensome and costly."

The PBA also provided an interest arbitration award in which the arbitrator awarded an increase in the prescription co-pays. (P-5, Camden County Sheriff's Officers).

Nationwide, other employee groups are recognizing the need for cost-sharing. General Electric recently negotiated contracts with its two biggest unions which included increased health care premiums paid by employees. (E-153). Other evidence presented by the PBA supports the County's position. The Morris Sheriff's Officers contract (P-13, p. 44) shows annual health care contribution increases.

The County asserts that its prescription proposal follows the universal national trend toward greater cost-sharing with employees. The proposal is both reasonable and necessary to enable the County to better manage the staggering costs of prescriptions and health benefits. The County asserts that it presented ample evidence to support the reasons to award this proposal, established a legitimate rationale for the proposal and thus, has met its burden.



### **Overtime Compensation**

The County proposed that the Sheriff may reopen the contract to negotiate changes in the existing work schedule as required by operational needs. Such negotiations may include weekend work as part of regularly scheduled work days and work schedules covering a fourteen day cycle with straight time and overtime as authorized by law. Brown testified that the highly anticipated opening of the new jail prompted the County's overtime proposal. As has been widely reported in local newspapers, the new Corrections Facility will be state-of-the-art encompassing completely new work methods, including direct supervision and video arraignment. Brown emphasized that the Sheriff's Department did not know what its scheduling or manpower needs resulting from the new jail will be. (Tr. II, at 160). Brown stated that the County's proposal is necessary to accomplish its objectives toward the new jail since the staffing issue is unknown. Brown emphasized that the County may need to create new steady shifts, covering 24 hours, rather than the current five-day, Monday through Friday shift. (Tr. II, at 162). This would reduce overtime costs. Brown made clear that the County was seeking only the opportunity to negotiate new shifts. (Tr. II, at 166). The Union provided no testimony to contradict the County's position, nor did it make any objection to the rationale provided.

The County asserts that it has established a legitimate rationale for its overtime proposal and thus, has met its burden.

### **Compensatory Time**

The County proposed that employees may select the option as to whether overtime shall be paid in cash or compensatory time. The County proposes that an officer may accumulate no more than eighty (80) hours to be banked as compensatory time; for all hours in excess of eighty (80) hours of overtime pay, the employee shall receive only paid overtime compensation. Unused compensatory time will be paid out at the end of each year.

Brown testified that the rationale for the proposal was to codify current practice and to save money. Brown testified that the current practice is that up to 80 hours of compensatory time is paid at the 26<sup>th</sup> pay period each year and there is no longer any carryover. (Tr. II, at 165). The County asserts that this is the current practice and it merely seeks to clarify what is in fact occurring.

Brown testified that eight to nine years earlier, individuals could bank compensatory time and then have it all paid out on retirement, at the inflated, higher salary. This resulted in compensatory time earned at a lower salary being paid out at the officer's salary at retirement, which is significantly higher. Brown confirms that the Superior Officers have the same compensatory pay provision (and have had that provision for 8 - 10 years) that the County is seeking to have awarded in this proceeding.

The County notes that the PBA provided no testimony to contradict the County's position, nor did it make any objection to the rationale provided. The County asserts that it has established a legitimate rationale for the proposal and has met its burden.

#### **Vacation**

The PBA proposed an increase in vacation allotment. Second, third, fourth and fifth year employees would receive three extra days annually. Employees in the eleventh, twelfth, thirteenth, fourteenth, and fifteenth years would receive 5 extra vacation days annually. Those employees in their sixteenth year and more would receive 5 extra vacation days annually. Moreover, those employees celebrating their tenth or 15<sup>th</sup> anniversary would get an extra day in that year.

The County submits that the only evidence on this proposal was provided by Hopkins' cost-out, estimating the cost at \$663,173 over the term of the new CBA. (E-29). The County submits that the Sheriff's Officers have a vacation benefit that is comparable to other Essex County law enforcement units and to other county Sheriff's Officers.

The County notes that the PBA supplied no empirical evidence at all on vacation benefits of other Essex County law enforcement units or other Sheriff's Officers nor did the PBA provided reasons why additional vacation is needed. The County contends that the PBA did not meet its burden on its vacation proposal.

#### **Critical Event Excusal Time**

The PBA proposed a critical event time off paid benefit to provide up to two work days for employees involved in hostage/barricaded persons negotiations (prolonged), involvement in use of deadly force at or by the officer, certain life savings events (fire, disaster, multiple deaths), and/or actual bomb disposal operations, and that the time off not be deducted from an officer's bank of time. Brown testified, without contradiction, that a Sheriff's Officer who has been involved in a hostage incident, fire, lifesaving disaster, multiple death, bomb disposal operation, or deadly force incident has never been denied a day off. (Tr. II, at 168). Moreover, Sheriff's Officers have annual vacation time ranging from two to five weeks and sick time, as well as accrued sick and vacation time that can be used for such circumstances. (Id., p. 169.) Furthermore, Brown testified that the Sheriff's Officers have "significant" amounts of time accrued. (Id., p. 170.) Finally, Brown testified that often paid time off is not deducted from an officer's time bank and the determination whether or not time is deducted is discretionary. (Tr. II, at 193). The County notes that no other County Sheriff's Officers contract has a critical event excusal time provision (E-159) and no other Essex County law enforcement unit has a critical event excusal time provision. (E-160) The County notes that none of the contracts provided by the PWBA included a critical event excusal time provision.

The County contends that the PBA supplied no evidence on critical event excusal time benefits of other Essex County law enforcement units or other Sheriff's Officers nor did the PBA provide reasons why the critical event excusal time benefit is needed.

The County submits that the PBA provided no rationale and did not meet its burden of establishing why the critical event excusal time proposal should be awarded.

### **Senior Officer Differential**

The PBA proposed that certain officers receive a "senior officer" differential, meaning that when an officer completes 20 or more years of service, the officer gets an additional salary adjustment equal to half the difference between his base pay and the next higher level of pay. This differential is included in the base pay. The proposal does not require 20 or more years of service with Essex County; the proposal gives 4 years service credit to employees so they truly only need 16 years of service to Essex County to earn the senior officer differential.

Brown testified that the Department considers this proposal merely a form of longevity, which was negotiated out of the contract years ago. Brown emphasized that the Sheriff's Officers are a productive, efficient workforce with low turnover. (Tr. II at 171-72).

The County estimates that the cost of this proposal over the life of this contract is \$244,255. (E-29). This item will escalate in two ways: as Sheriff's Officers' salaries increase, so will the differential. Second, as more Sheriff's Officers reach the 22-year mark the County's cost of this proposal will increase.

None of the Essex County law enforcement units have a senior officer differential and only five other counties have a senior officer differential. (E-61; E-161; E-162). The County argues that there is no rationale to grant a benefit that is rare among Sheriff's Officers in the state. Furthermore, the Morris County Sheriff's Officers, Mercer County Sheriff's Officers, Ocean County Sheriff's Officers, Monmouth County Sheriff's Officers, Bloomfield, Nutley, Montclair, Millburn, Irvington, Newark, Caldwell, Cedar Grove, Fairfield, West Orange, State Troopers, West Caldwell, South Orange and Verona contracts submitted by the PBA do not contain a pure senior officer differential.

The County notes that the PBA supplied no evidence of senior officer differentials for other Essex County law enforcement units nor did the PBA provided any reasons why the senior officer differential benefit is needed. The PBA provided no rationale and did not meet its burden of establishing why the senior differential proposal should be awarded.

#### **Holiday Fold-In**

The PBA proposed that holiday pay be folded into base pay. The County notes that no other Essex County rank-and-file law enforcement bargaining units have holiday pay folded into base pay nor do the county Sheriff's Officers contracts provided by the PBA (Morris County, Mercer County, Middlesex County, Monmouth County, Ocean County, Bergen County) do not provide for holiday pay fold in. (E-163; P-13; P-5). Similarly, Montclair and Caldwell, Cedar Grove, Fairfield and State Troopers do not have holiday fold-in. P-14; P-6). The County submits that this is an extraordinarily costly provision that will exponentially increase the wages and benefits for this unit.

The County asserts that the PBA provided no reason why the holiday fold-in benefit is needed and did not meet its burden of establishing why the holiday pay element of their employment should be changed.

#### **Association Time**

The PBA proposes that two PBA members be on full release time with full compensation to attend to Union business. The County asserts that the unrefuted evidence is that labor relations are excellent in this unit, with no ULPs and virtually no grievances going to arbitration. The County estimates that the cost of the PBA's proposal is almost \$100,000 per year, which will increase as Sheriff's Officers' salaries increase. (E-29) No other county Sheriff's Officer contract has full release time. (E-164). No Essex County law enforcement unit has full release time for two representatives. (E-165). None of the contracts provided by the PBA, Morris County Sheriff's Officers, Mercer County Sheriff's Officers, Middlesex Sheriff's Officers, Monmouth Sheriff's Officers, Ocean Sheriff's

Officers, Middlesex Sheriff's Officers, Monmouth Sheriff's Officers, Ocean Sheriff's Officers, Bergen Sheriff's Officers, Bloomfield; Glen Ridge; Nutley, Montclair, Millburn, Irvington, Newark, Caldwell, Cedar Grove, Fairfield, North Caldwell, South Orange, West Orange and Verona provided full release time.

The County submits that the PBA supplied no empirical evidence at all on any other unit having full release time for any PBA representative, let alone for 2 representatives. The PBA provided no reason why this proposal is needed. To the contrary, the County contends that the evidence showed that the current policy of release time is appropriate. The County submits that the PBA provided no rationale and did not meet its burden of establishing why the Association release time element of their employment should be changed.

#### **Grievance Definition**

The PBA proposed that minor discipline be included in the grievance procedure. The County cites Browns's unrefuted testimony that including minor discipline in the grievance process would require additional manpower to process and investigate the grievances. (Tr. II, at 168). Moreover, there is no rationale for this proposal given the excellent labor relations history of one sole grievance going to arbitration and the unrefuted testimony that the PBA and Sheriff have an excellent working relationship. The unrefuted testimony showed that the appropriate disciplinary penalty is most often successfully negotiated between the parties. (Tr. II, at 187). Any employee is permitted an opportunity to plead their case before the Sheriff's Chief, John Dough. (Tr. II, at 193). Thus, Sheriff's Officers are provided an opportunity for a review of minor discipline before the Chief. The County points out that there have been cases in which the Chief has reduced the discipline. The County contends that the Sheriff's Officers have a fair procedure to address minor discipline, without the increased costs of resorting to arbitration. The County notes that only the Correction Officers at the Annex include minor discipline in the grievance process. (E-166).

The County submits that the PBA provided no rationale and did not meet its burden of establishing why minor discipline should be included in the grievance procedure.

**Conclusion**

The County asserts that its final offer is more reasonable, in line with a established pattern of settlement and should be awarded in its entirety. The County maintains that any other award runs counter to the Act.

The County asks that its last offer be awarded.

### **Discussion and Analysis**

I am required to decide a dispute based on a reasonable determination of the issues, giving due weight to the statutory criteria deemed relevant. Each criterion must be considered and those deemed relevant must be explained. I am required to analyze the evidence on each relevant factor and explain why any factor is deemed not to be relevant.

I have carefully examined, considered and weighed all of the testimony, the documentary evidence included in the 250 exhibits and the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been found relevant, although the weight given to different factors varies, as discussed below. I have discussed the weight I have given to each factor. I have also determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the statutory criteria.

I shall set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point rather than the parties' last offers which I have in most cases not awarded. The parties related the evidence and its arguments regarding the statutory criteria primarily to its offer and to that of the other party. I shall not do so because I have the authority and responsibility to fashion a conventional arbitration award unlike the prior statute that required an arbitrator to select the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a modification in an existing term or condition of employment bears the burden of establishing a need for such change. This principle shall also be applied to new proposals.



The parties agreed that the duration of the new four-year agreement shall be January 1, 2002 to December 31, 2005. I agree and it is so awarded.

I shall award the following across-the-board salary increases:

July 1, 2002	3.5%
July 1, 2003	3.5%
April 1, 2004	4.0%
January 1, 2005	4.0%

I have structured the award to provide deferred salary increases. This reduces the payout in 2002, 2003 and 2004 to defer the cost of reasonable base salary increases to later years. As discussed below, the "back-loaded" design of the award provides the County with short-term relief in order to get its "financial house" in order and at the same time provides Sheriff's Officers with reasonable base salary increases and an acceptable increase in real earnings over the term of the new CBA.

I award the County's proposal to increase the prescription copays. The prescription copays shall be increased to \$5 for generic drugs and \$10 for name brand drugs to be effective September 15, 2004. Effective January 1, 2005, the prescription copays shall be increased to \$10 for generic drugs and \$15 for name brand drugs. The mail order prescription plan shall be continued. I award the County's compensatory time proposal to codify the current practice. All other proposals of the County and the PBA are denied.

#### **Cost of Salary Proposals**

The current bargaining unit (at the close of the record) includes 358 Sheriff's Officers. The total base pay is \$19,785,428. The following is the placement of the 358 Sheriff's Officers on the Salary Schedule in September 2003:

<u>Step</u>	<u>Salary</u>	<u>Number of Officers</u>	<u>Cost</u>
Start	\$33,183	11	\$365,013
1	\$37,527	20	\$750,540
2	\$41,869	23	\$962,987
3	\$46,213	16	\$738,408
4	\$50,558	6	\$303,348
5	\$54,240	8	\$433,920
6	\$59,238	274	\$16,231,212

The calculations of the parties' last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their presentations. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making in some cases less than 50% of the maximum officer's salary.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. The predecessor CBA expired on December 31, 2001. The only bargaining unit salary increases have been increments. The vast majority of the bargaining unit is at the maximum step. Calculations for 2002, 2003, 2004 and 2005 do not include the cost of increments.

The parties' last offers on salary are extremely far apart — more than \$4 million over the four years of the new CBA. The PBA's salary proposal averages slightly more than 5% with the inclusion of the Senior Officer Differential costs. The PBA's salary proposal provides 5% pay-outs and 5% base increases in each year of the new CBA with a full 20% increase in the salary schedule. The County's salary proposal provides a 7% increase in base

salary over the term of the new CBA. This is an average base salary increase of 1.75% annually. The County's salary proposal pays out 9% over the term of the CBA with a 1% flow-through in 2006. This is an average of 2.25% when the 3% non-recurring bonus is included.

## 2002

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2002. The cost of the 5% increase in 2002 (excluding increments) is \$989,271. The total cost of the PBA's salary proposal in 2002 is \$20,774,699.

The County proposed a 3% total lump sum bonus payment to be paid on July 1, 2002. The payment amount will be equal among all members. This is a non-recurring payment that is not included in base salary. In other words, it is a "one shot" payment. All eligible employees will receive the same dollar amount payment regardless of current salary. The total cost of the County's lump sum bonus in 2002 is \$593,563. This is equal to \$1,658 each for 358 Sheriff's Officers. The total cost of County's proposal salary schedule in 2002 is \$20,378,991 however the base for calculation purposes in 2003 shall remain at \$19,785,428.

I have awarded a deferred 3.5% across-the-board salary increase effective July 1, 2002. The "back-loaded" design of the award provides the County with short-term relief by deferring the cost of the base salary increases. This deferral gives the County additional time to get its "financialhouse" in order and at the same time it provides salary increases over the term of the four-year duration that provide a reasonable increase in base salary and an acceptable increase in real earnings for Sheriff's Officers.

The 2002 salary base will increase to \$20,477,917 after the application of the deferred 3.5% across-the-board salary increase. The total cost of my award in 2002 is

\$20,131,673 because of the delayed July 1, 2002 effective date. This is \$346,245 more than the 2001 base of \$19,785,428. It is effectively a payout of 1.75% in 2002 since only 50% of the 3.5% salary increase is paid in 2002. This is less than the 3% “bonus” that the County proposed which is a non-recurring cost that is not added to base salary and paid out in subsequent years. I have structured the lesser payout in 2002 in order to defer the cost of my award to later years. While my award costs the County less in 2002, it increases the County’s cost in 2003 by \$692,490 because, unlike the County’s non-recurring “bonus”, the 3.5% base salary increase is recurring in subsequent years.

### 2003

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2003. The cost of the 5% increase in 2003 (excluding increments) is \$1,038,735. The total cost of the PBA’s salary proposal in 2003 is \$21,813,433.

The County proposed that each individual employee’s base be increased by 3% effective January 1, 2003. The cost of the 3% increase in 2003 (excluding increments) is \$593,563. The total cost of County’s proposal salary schedule in 2003 is \$20,378,991.

The 2003 salary base will increase to \$21,194,644 after the application of the deferred 3.5% across-the-board salary increase. The total cost of my award in 2003 is \$20,836,281 because of the delayed July 1, 2003 effective date. This is \$358,364 more than the 2002 base of \$20,477,917. It is effectively a payout of 1.75% in 2003. This is less than the 3% base salary increase proposed by County. The cost of the County’s 3% base salary increase in 2003 is \$593,563. This brings the total cost to the County in “new money”<sup>3</sup> to \$1,187,126 for 2002 and 2003.

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<sup>3</sup>New money is the cost in each year above the 2001 base of \$19,785,428.

The total cost of my award in 2002 and 2003 in "new money" is \$1,397,099. It appears that my award in 2002 and 2003 providing for 1.75% mid-term pay-outs should cost less than the County's 3% bonus in 2002 and 3% base increase in 2003. This is not so since the 3.5% increase awarded in 2002 is recurring (unlike the County's 3% bonus) and carries over to 2003.<sup>4</sup> Again, I have structured the lesser payout in 2003 in order to defer the cost of my award to later years. The deferred format increases the Sheriff's Officer base salary at a reduced cost to the County in 2002 and 2003. The deferred salary increases cost significantly less than the PBA's salary proposal in 2002 and 2003 and \$209,973 more than the cost of the County's proposal in 2002 and 2003.

#### 2004

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2004. In addition, the PBA proposed the establishment of a "Senior Officer Differential" to be effective January 1, 2004. The cost of the 5% increase in 2004 (excluding increments) is \$1,090,672. The County calculated the cost of the Senior Officer Differential as \$80,825 in 2004. The total cost of the PBA's salary proposal in 2004 is \$22,984,930.

The County proposed a 0.0% increase in 2004. The total cost of County's proposal salary schedule in 2004 is \$20,378,991.

The 2004 salary base will increase to \$22,042,429 after the application of the deferred 4% across-the-board salary increase effective April 1, 2004. The total cost of my award in 2004 is \$21,830,482 because of the delayed April 1st effective date. The cost of the deferred 4% increase is \$635,838 above the 2003 base salary exclusive of the flow-through from the deferred salary increase in 2003. The cost of the awarded salary increase in 2004 is \$1,154,448 less than the PBA's 2004 salary proposal and \$1,451,491 more than

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<sup>4</sup>All salary increases are recurring expenses to an employer except in those rare cases where a non-recurring bonus is negotiated.

the County's 2004 salary proposal. The difference in the County's proposal is the impact of two zero increases and a three-year salary proposal that increases the base salary by only 3%. This contrasts to the approximate 12% salary increases received by all other law enforcement officers and the average 10-12% salary increases received by all other public and private sector employees during the same three-year period.

### 2005

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2005. The cost of the 5% increase in 2005 (excluding increments) is \$1,149,247. The total cost of the PBA's salary proposal in 2005 is \$24,134,177.

The County proposed a "split" raise in 2005. The County proposed a 2% across-the-board salary increase to be effective January 1, 2005 and an additional 2% across-the-board salary increase effective July 1, 2005. The total base increase in 2005 is \$815,160.

The cost of the 2% increase on January 1, 2005 (excluding increments) is \$407,580. This brings the base salary to \$20,786,571. The County proposed an additional 2% across-the-board salary increase to be effective July 1, 2005. This mid-term 2% increase will increase the salary base by \$415,731 to bring the total base salary to \$21,202,302. However the net cost to the County in 2005 is \$207,866 bringing the actual cost of the County's proposal to \$20,994,437 in 2005 with a carry-over of \$207,866 in 2006.

The 2005 salary base will increase to \$22,924,126 after the application of the awarded 4% across-the-board salary increase effective January 1, 2005. The cost of the 4% increase is \$881,697 above the 2004 base salary exclusive of the flow-through from the deferred increase in 2004. The cost of the awarded base salary increase in 2005 is \$1,210,051 less than the PBA's 2005 base salary proposal and \$1,721,823<sup>5</sup> more than the

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<sup>5</sup>The impact of the County's 2005 salary proposal of a split 4% increase in base salary is nearly identical to my award which provides for a 4% increase in base salary. The difference between the awarded 4% increase and the County's split 4% increase can be primarily attributed to the accumulative impact of the 0.0% increase in 2004 as well as the impact of the 0.0% increase in 2002.

County's 2005 base salary proposal. Again, the difference in the County's proposal is the impact of two zero increases and a four-year salary proposal that increases base salary by only 7%. This contrasts to the approximate 16% salary increases received by all other law enforcement officers statewide and the approximate 14-16% salary increases received by all other public and private sector employees during the same four-year period.

### **Statutory Criteria**

I shall now discuss the documentary evidence, testimony and the parties' arguments in relation to the statutory criteria.

### **The Interests and Welfare of the Public**

*The interests and welfare of the public* require the arbitrator to balance a number of considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest.

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient.

I am convinced that if this were a final offer procedure requiring me to award either the County's final offer or the PBA's final offer, that such an award, no matter which offer

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I selected, would not be in the interests and welfare of the public. Both the County and PBA salary proposals are out of the mainstream and cannot be justified under this criterion. As I shall discuss in greater detail, the evidence shows that the County has serious financial issues that need to be addressed on both a long-term and short-term basis for the County to regain its financial health. Clearly, an award of the PBA's last offer (averaging more than 5% annually) will undermine the County's efforts to regain its financial health. Conversely, an award of the County's last offer (averaging 1.75% annually) would seriously reduce the salary base of Sheriff's Officers resulting in an erosion in real earnings in future years.

This matter demands a conventional salary award that provides the County with short-term relief in order to get its "financial house" in order and at the same time provides salary increases over the term of the four-year duration that provide a reasonable increase in base salary and an acceptable increase in real earnings for Sheriff's Officers. This factor requires a balancing of the interests of the taxpaying public calling for the delivery of an appropriate level of governmental services in the most cost effective way together with the need to provide fundamental fairness to the employees who deliver those services. Striking this balance will maintain the undisputed high morale and productivity that currently exists in the Sheriff's Department and continue to provide adequate compensation levels to attract and retain the most qualified employees.

I conclude that the terms of my award providing for delayed salary increases in 2002, 2003 and 2004 provide the County with reduced annual salary costs that, while somewhat higher than its proposed costs, are significantly less than the costs of comparable salary increases received by other Sheriff's Officers, other law enforcement officers and other public and private sector employees generally.

I have awarded deferred base salary increases to balance the need of the County for short-term relief in order to get its "financial house" in order and at the same time provide



salary increases over the term of the four-year duration that provide a reasonable increase in base salary and an acceptable increase in real earnings for Sheriff's Officers.

I believe that the terms of my award will maintain the high morale that currently exists in the Sheriff's Office. The new terms provide reasonable compensation for Sheriff's Officers who perform duties that directly and intimately affect the public's health, safety and welfare.

*The interests and welfare of the public* will be best served by the implementation of the 2002-2005 salary increases and increased prescription copays that I have awarded.

#### **Comparison of Wages, Hours and Terms of Employment**

This factor requires an analysis of the evidence comparing the wages, salaries, hours, and conditions of employment of Essex County Sheriff's Officers with the wages, hours and condition of employment of other employees performing the same or similar services with other employees generally. This analysis includes comparisons to private employment in general; in public employment in general; and in public employment in the same or similar jurisdictions in accordance with the guidelines promulgated by PERC.

#### **Private Employment Comparisons**

The first comparison is to private sector employees performing the same or similar services as Sheriff's Officers. It is undisputed that no private sector employees provide the same services as Sheriff's Officers. Neither party submitted salary data on this sub-factor since none exists. A Sheriff's Officer position is a uniquely public sector position that does not lend itself to private sector counterpart. I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (See excerpt on pages 43-44 of this Award). There is no data in the record to evaluate the comparison to *other employees performing the same or similar services in private employment*. I have given this sub-factor no weight.

Comparisons can be made to private employment in general. The parties submitted some limited private sector wage data. Neither party provided sufficient salary data for a comparison to private employment in general. The salary data offered by the County compared the average annual wages for private sector manufacturing (\$32,969) to the Essex County Sheriff's Officer average annual salary of \$55,282, noting that it is 68% greater. The County also noted that the average wage in all industries in the Essex-Morris-Sussex-Union-Warren County area as of January 2003 was \$40,955. The County offered salary data on certain individual settlements that showed contracts with no salary increases in some or all of the contract years. This salary data is anecdotal at best and provides no comparison to average salary increases such as the salary data provide by the Bureau of National Affairs ("BNA") or other reliable sources of such data.

Neither party provided data to compare their last offers to average salary increases in private employment in general. I take arbitral notice that the Labor Relations Reporter reported that private sector settlements in the first seven and one-half months of 2003 provided an average first-year increase of 3.2% and that the median increases over the same period decreased from 3.6% to 3.0% over the same period in 2002. On June 24, 2002, the Bureau of National Affairs reported that the Wage Trend Indicator dipped to a 3.5% annual wage increase and on November 18, 2004, BNA reported that the current pattern of private sector wage increases "will stick close to 3% into the second half" of 2004.

The current data on average salary increases in private sector employment in general is supportive of annual salary increases significantly above the average 1.75% annual increases proposed by the County and significantly below the more than 5% annual increases proposed by the PBA. The terms of my award are higher on base and lower in payout than average salary increases in private employment in general.

### Public Employment Comparisons

First, I shall address public employment in general. The County cited several recent interest arbitration awards and settlements that have resulted in wage freezes or lower wage figures than it has proposed. For example, In the Matter of Interest Arbitration Between State of New Jersey, Division of State Police and State Troopers Fraternal Association, IA-97-7 (December 16, 1998, J. Mastriani), the arbitrator's award included a wage freeze in the first year of the agreement, and an overall increase averaging 3.125% over four years. Similarly, In the Matter of Interest Arbitration Between City of East Orange and East Orange FMBA Local 23, IA-2000-56 (June 12, 2002, B. Zausner) the arbitrator awarded 1% in 1991, 1% in 2000, \$4,033 in 2001 and 3.75% in 2001. In the Matter of the Interest Arbitration between Borough of Fairview and Fairview PBA Local 45, IA-2000-74 (March 14, 2002, J. Mastriani), the arbitrator awarded 3.75% in 2000, 2% in 2001, 2% in January 2002 and 2% in July 2002.

While it is obvious that most of this salary data is for contract years prior to 2002, it is clear that the average increases in all of these selective settlements are much higher than the County's proposed 1.75% average annual increases. These settlements may be supportive of a finding that some public employers have negotiated either 0.0% increases or 1% and 2% annual increases in some of the years of a multi-year contract but they show that the average annual salary increases of these multi-year contracts are significantly higher than the 1.75% annual increases proposed by the County.

All of the salary data in the record shows that the average annual salary increases in public employment in general are above the salary increases proposed by the County and below the salary increases proposed by the PBA. The data on average salary increases in public employment in general is supportive of the awarded salary increases.

The next sub-factor — comparisons in public employment in the same or similar jurisdictions — is the sub-factor that both the PBA and the County emphasized in its documentary exhibits, testimony and arguments in their respective briefs.

The first part calls for comparisons of the wages, hours and conditions of employment of employees performing the same or similar services in the same or similar comparable jurisdictions. These comparisons are normally made to Sheriff's Officers in other counties; to other law enforcement officers employed by Essex County; and to other law enforcement officers in other jurisdictions within the State. This requires an examination of internal comparability (other law enforcement employees of Essex County) as well as external comparability (other Sheriff's Officers and other law enforcement employees in Essex County and throughout the State).

The second part calls for comparisons of the wages, hours and conditions of employment within the same jurisdiction of non-uniformed employees in negotiations units. It is these comparisons that the County relied on in fashioning its last offer. The County argues that a pattern of settlement has been achieved by virtue of its voluntary settlements with other non-uniform negotiations units.

#### **Comparison to other Law Enforcement Officers**

It is undisputed that the County has not reached agreement with any of its eight other law enforcement bargaining units since the expiration of the CBAs in December 2001. Therefore, neither party was able to submit any salary data regarding other law enforcement officers employed by Essex County.

#### **Comparison to Municipal Police Officers**

#### **PBA Contentions**

The PBA submitted salary data making comparisons to municipal police officers in Essex County. The PBA made an extensive presentation in support of its contention that the

diverse nature of the job of a Sheriff's Officer make the comparisons to municipal police officers appropriate. The PBA, in its brief, cites the extensive testimony of Sheriff Fontoura concerning the position of Sheriff's Officer in the law enforcement hierarchy. It is undisputed that Sheriff's Fontoura's testimony confirmed that Essex County Sheriff's Officers perform a vast range of duties outside of court security.

The PBA points out that this wide range of specialty services as well as the day-to-day operations involve constant and regular coordinated interaction with national, state and law enforcement agencies. The PBA noted that when special circumstances occur where there are unique needs, such as the Irvington initiative, it is the Essex County Sheriff's Officers who are assigned to work in that city along with New Jersey State Police. When the Prosecutor's Office needs specialty services, technical advice, and expert testimony, they turn to the Essex County Sheriff's Office. Essex County Sheriff's Office personnel are regularly assigned to the New Jersey State Police, Essex County Police, United States Martial Service, Irvington Police, Federal Bureau of Investigation, Essex County Prosecutor's Office, Drug Enforcement Administration, Essex-Union Auto Theft Task Force and the United States Secret Service.

The PBA submits that the Essex County Sheriff's office offers a unique combination of size of force, professionalism and highly unique technology which makes it an integral part of the law enforcement hierarchy and that it regularly interacts with other agencies such as the State Police, Essex County Prosecutor's Office and the municipalities throughout the county. There is also a regular inter-relation with Federal Law Enforcement Agencies.

The PBA notes the diversity of the Department by reviewing the Organizational Chart. The Organizational Chart identified the sub-units within the Department: Office of

Emergency Management, Internal Affairs, K-9 Bomb Squad, County Police, Bureau of Narcotics, Bureau of Criminal Investigation, Detective Division, Transportation, Courts Division, Deputy Division, Civil process, Records, ID Unit, Command Post, Fugitive, Juvenile, DR/DV Squad, Ballistics, New Court's building, Wilentz Justice Complex, and Security Patrol.

The PBA disputes the County's characterization of Sheriff's Officers as largely court-oriented. The PBA acknowledged that while the courts are a significant Constitutional obligation, even the Court's Division is diverse in its services. The PBA contends the actual services within the Court's Division show that Court officers are used on a frequent basis for motor patrol, roving patrol, west side park detail, probation assignment and judicial security.

The PBA notes that the Bureau of Criminal Identification ("BCI") is a 24/7 operation overseeing Telecommunications Control, Surveillance, State and National Law Enforcement Telecommunications System, maintenance of 16 radio channels, State Police Emergency Networks (SPEN) and the National Warning System (NAWAS). The PBA points out that the BCI also contains the fingerprint section, the Identification Unit, serves as an evidence repository, contains a records/archiving unit, Information Technology Unit, and support services.

The PBA submitted data showing that activity levels in these sub-units have greatly increased their activity in recent years.

The PBA points out that the Detective Bureau includes six squads and, in addition to other duties, provides assistance to outside agencies such as probation, parole, human services and adult intensive supervision programs.

## County Contentions

The County contends that comparison of municipal police officers and Sheriff's Officers is inappropriate and urges that comparables supplied by the PBA on municipal police officers should be disregarded. The County notes that Sheriff Fontoura described the mission of the Essex County Sheriff's Department as Court security, transportation of inmates serving warrants and the apprehension of fugitives and that seventy percent of the workforce devotes itself to court security.

The County notes that the mission of the Sheriff's Office statement reads:

"The Essex County Sheriff's Office is dedicated to fulfilling its constitutional mandates to the courts and providing law enforcement services to the citizens of our community. Furthermore, "our constitutional mandate dictates that our courts function in a safe and secure environment, that prisoners are expeditiously transported to and from court proceedings, that criminal records are maintained to ensure the positive identification of defendants, that fugitives from justice are apprehended and brought before the court and that civil warrants and civil summonses, writs and complaints are executed in a timely manner." (P-2).

The County cites the testimony of Donald Brown that the Sheriff's Office is divided into two groups: uniformed and non-uniformed. The sections that comprise the uniformed groups are Court security, transportation and the Bureau of Criminal Investigation. The non-uniformed sections are Detective Bureau, Bureau of Narcotics and Special Units. Brown explained that court security is securing courtrooms, care and custody of prisoners in the courtroom and transporting prisoners from the prison floor to the courtroom.

Brown testified that court security personnel do not do investigative, undercover, detective, or domestic violence work. Court security Sheriff's Officers are not placed on special assignment with the FBI or customs. Brown testified that two-thirds of the bargaining unit members work in court security, BCI or transportation. Brown stated that 15-20 officers are in the canine unit and bomb squad, 40-45 are in the Bureau of Narcotics and 17-18 officers are assigned to the task forces.

The County submits that Sheriff's Officers primarily work court security and transportation and do not with any regularity perform the special functions. The County noted that Sheriff's Officers do not work the County College, the County Park System, Turtle Back Zoo, Short Hills Mall, Livingston Mall, Newark Museum, Montclair Museum, Newark and Montclair Stadiums, Port Newark, Penn Station and do not patrol the Garden State Parkway, New Jersey Turnpike, Rt. 80, Rt. 280, Routes 1-9, Routes 21, 22, 23, and 24. Thus, unlike municipal police officers which patrol the entire municipality, the Essex County Sheriff's Officers are mainly concentrated in a limited area of the County. The County points out that the funding for some of the services outside of court security, transportation and the Bureau of Criminal Investigation comes from outside the County the federal ATF (Bureau of Alcohol, Tobacco and Firearms), the OEM (Office of Emergency Management) and FEMA (Federal Emergency Management Agency).

The County points out that only one-third of the court assignments are in the criminal courts division disputing the PBA's contention that Sheriff's Officers assigned to court security are usually dealing with dangerous criminals. . The County acknowledges that Sheriff's Officers are law enforcement personnel but that their duties are distinct from those of a municipal police officer. The County submits that this distinction is shown by the very different job descriptions published by the Department of Personnel. The main job duty for a Sheriff's Officer according to the DOP job description is "maintaining order and security in the courtroom [and] serving court processes" whereas the main job duty for a municipal police officer is "during an assigned tour of duty, on foot or in an automobile, patrols a designated area to provide assistance and protection for persons, to safeguard property ... and to apprehend lawbreakers."



The County submits that the mission statement, the testimony of the Sheriff, Brown, Tyminski, the Department of Personnel job descriptions and the evidence presented demonstrate that the overwhelming majority of employees in this bargaining unit (70%) perform the constitutional mandate of providing court security, transportation and warrants. The County agrees that the Sheriff's Officers perform their jobs well, however, the County contends that comparison to municipal police officers is inappropriate and that the appropriate comparison is with other county Sheriff's Officers.

### Discussion

I conclude that the job of a Sheriff's Officer is not comparable to that of a municipal police officer for purposes of maximum salary comparisons. This is for several reasons.

First, it is important to note that it is undisputed that the Essex County Sheriff's Office is a highly productive department that enjoys high morale. Sheriff Fontoura's testimony confirms that members of the department perform a variety of functions to promote and enhance law enforcement in the County and that they perform their functions at a very high level.

Second, the *Mission Statement* clearly shows that the primary responsibility of the Sheriff's Office is to provide and ensure the effective security of the courts. This is confirmed by the evidence and testimony in the record showing that approximately 70% of the bargaining unit members are assigned to court security functions. It cannot be disputed that the primary responsibility of the Sheriff's Office is to provide security in the court system.

Third, E-192 is the N.J. Department of Personnel ("DOP") "Job Specification" for a municipal Police Officer. E-4 provides the following definition and certain distinguishing characteristics of a Police Officer:

## POLICE OFFICER

### DEFINITION

During an assigned tour of duty, on foot, or in an automobile, patrols a designated area to provide assistance and protection for persons, to safeguard property, to assure observation of the law, and to apprehend lawbreakers; does other related work as required.

### DISTINGUISHING CHARACTERISTICS

Police officers provide services to the public and enforce laws by issuing summonses, apprehending, warning, or taking into custody any lawbreakers.

Police officers patrol designated areas in a patrol car, on a bicycle, or on foot to protect life and property, maintain order, assure the observation of statutes and local ordinances, and apprehend lawbreakers.

Police officers receive dispatches via radio concerning complaints or disturbances which require immediate attention. They investigate complaints of misconduct, suspicious behavior, illegal activities, improper conditions, and other matters. They check the condition of occupied buildings and report anything which appears significant or suspicious. They investigate if signs of tampering are discovered and notify interested persons or headquarters. They also check out cars parked in restricted areas.

E-193 is the DOP "Job Specification" for a Sheriff's Officer. E-193 provides the following definition and certain distinguishing characteristics of a Sheriff's Officer:

## SHERIFF'S OFFICER

### DEFINITION

Under direction, performs one or more functions in the following areas: maintaining order and security in the courtroom, serving court processes, criminal investigation, ballistics and investigations, and apprehension of violators of the law; does other related duties as required.

### DISTINGUISHING CHARACTERISTICS

Makes arrangements for the sequestering of juries such as arranging for their lodging, food and general welfare during trials.

Executes bench warrants when issued by the court in the failure of a witness who has been subpoenaed to appear in court and who has failed to obey such subpoena.

Guards prisoners in a courtroom and subdues, restrains, and physically removes unruly individuals from a courtroom.

In accord with state statutes, may apprehend or arrest suspected offenders.

Performs the office and field work necessary to serve and execute writs and other legal papers and documents such as court orders, summonses subpoenas, writs of attachment, writs of replevin, writs of arrest and indictment, and such other matters as directed by the Sheriff.

Executes writs requiring the detention of chattels or goods as directed by the Court.

Executes complaints directed by the Superior Court, County Court and Chancery Division of the Superior Court.

Collects monies to satisfy legal debts as ordered by the court.

Post notices on public sales, records daily writs, papers and documents processed, served and executed.

The DOP job descriptions confirm that the primary responsibility of a Sheriff's Officers is court related and that the normal duties of most of the Sheriff's Officers in the bargaining unit do not rise to the same level of law enforcement as a Police Officer. The definition and distinguishing characteristics of the DOP job description for a Police Officer, when compared with that of a Sheriff's Officer, show that the day-to-day responsibilities of a Sheriff's Officer are unlike those of a Police Officer. While some Sheriff's Officers perform duties that are the same as municipal police officers, the vast majority of Sheriff's Officers perform duties that are similar but not the same as municipal police officers.

Fourth, a comparison between a Sheriff's Officer and a Police Officer requires a full analysis of all of the terms and conditions of employment of a municipal police officer in relation to those of a Sheriff's Officer. It is undisputed that the vast majority of all Essex County Sheriff's Officers work an eight-hour day shift; do not work on holidays or

weekends; do not work a second or third shift and therefore are not subject to rotating shifts. On the other hand, police work is a 24/7 operation with police officers working on weekends and holidays and being subject to rotating shifts. These differences in terms and conditions of employment are quality of life issues which make the job of a Sheriff's Officer unlike that of a Police Officer.

Fifth, testimony and evidence in the record shows that turnover in the Sheriff's Department is relatively low with more than 50% of turnover due to retirements. There is no evidence that the County is losing its Sheriff's Officer to municipal police departments. Such evidence would have required consideration to the PBA's argument that the maximum salary of Essex County Sheriff's Officers was substantially below that of Essex County municipal police departments.

Accordingly, I conclude that the PBA's reliance on comparability with maximum salaries of municipal police officers is not persuasive. This finding means that the PBA's contention that the maximum pay rate of Sheriff's Officers is significantly below their peers is not credited. Chart 1 in the PBA brief identified certain municipal police departments to show that the maximum salaries of Sheriff's Officers in Essex County were \$2,380 below the average salary of their "peers." Had the PBA prevailed on this comparison to police officers, a detailed analysis of its proposed 20% plus salary increase would be required.

Let me be clear on this. I have found that the maximum salaries of municipal police officers cannot be relied on by the PBA to establish a basis for comparable maximum salaries for Sheriff's Officers. However, the average annual percentage salary increases for municipal police officers are relevant in determining comparisons of average increases within Essex County and throughout the State.

Therefore, it is again apparent that the current data on average salary increases of municipal police officers is supportive of annual salary increases that are well above the average 1.75% annual increase proposed by the County and well below the more than 5% annual increase proposed by the PBA. The PERC data on average salary increases in voluntary settlements and awards for 2002 and 2003 show average salary increases of reported voluntary settlements as 4.05% in 2002 and 4.01% in 2003 and average salary increases of all awards as 3.83% in 2002 and 3.82% in 2003. The PERC data for 2004 and 2005<sup>6</sup> indicates that the average salary increases for both voluntary settlements and awards are somewhat higher than the average increases in 2002 and 2003.

I conclude that the maximum salary data is not supportive of significantly higher maximum salary increases to “catch up” to the maximum salaries of municipal police officers as proposed by the PBA. I concluded that the average annual percentage salary increases for municipal police officers are relevant in determining comparisons of average increases within Essex County and throughout the State.

The terms of my award, consistent with the above salary data, provide salary increases that are slightly less than the average annual base salary increases for municipal police officers, and significantly less in payout in 2002 and 2003.

#### **Comparison to other Sheriff's Officers**

This sub-factor calls for a comparison of wages, hours and conditions of employment of employees performing the same services in similar comparable jurisdictions — to Sheriff's Officers in other counties. The PBA and County submitted data sheets and CBAs showing salary increases at the maximum step in the following county Sheriff departments:<sup>7</sup>

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<sup>6</sup>This data was gleaned from PERC summaries of voluntary settlements and awards for the period January 1, 2004 to August 1, 2004.

<sup>7</sup>I have also included salary data included in interest arbitration awards involving Sheriff's Officers in other counties.

<u>County</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Atlantic	4%	4%	4%	4%
Bergen	4%	4%	4%	4%
Burlington <sup>8</sup>		7.8%	14%	3.85%
Camden	4%			
Cape May	4%	4%	4%	
Hudson	4%	3.5%	3.5%	3.75%
Mercer	4% (2/2 split)	4.5% (2/2.5 split)	4.75% (2/2.75 split)	
Middlesex	4.75%	4.75%	4.75%	
Monmouth <sup>9</sup>	7.15%	4.16%	12%	
Morris		4.5%	4.5%	4.5%
Ocean	4.5%	3.75%	3.75%	3.75%
Passaic	3%	5.75%	9% <sup>10</sup> 5%	5% 5%
Salem	3%	3%		
Somerset	4%	4%	4%	
Sussex	3.75%	3.75%		
Union	4%	4%	4%	

The above salary data shows that the average increases negotiated or awarded to Sheriff's Officers in other counties in 2002, 2003, 2004 and 2005 is supportive of annual salary increases that are well above the average 1.75% annual increase proposed by the County and well below the more than 5% annual increase proposed by the PBA.

<sup>8</sup>The significantly above average salary increases in this unit were part of a pattern to improve salaries of Correction Officers and Sheriff's Officers in order to reduce high turnover.

<sup>9</sup>The significantly above average salary increases in this unit were part of a pattern to improve salaries of Correction Officers and Sheriff's Officers in order to reduce high turnover.

<sup>10</sup>The 9% increase in 2004 raised Courthouse Officers to the higher salary of Patrol Officers and Correction Officers.

The terms of my award, consistent with the above salary data, provide salary increases that are slightly less than the average annual base salary increases for municipal police officers, and significantly less in payout in 2002 and 2003.

### **Pattern Bargaining**

The County's major argument in support of its last offer on salaries and increases in co-pays is that the following pattern has been established with nine other bargaining units:

July 1, 2002	3% bonus (not applied to base salary)
January 1, 2003	3% salary increase applied to base salary
January 1, 2004	0.0% increase applied to base salary
January 1, 2005	2% salary increase applied to base salary
July 1, 2005	2% salary increase applied to base salary

The County asserts that nine bargaining units have settled on the above salary pattern and have also accepted the prescription pattern: co-pays rise from \$1 generic to \$5 and from \$5 non-generic to \$10 effective thirty days after the signing of the agreement. The co-pays rise effective January 1, 2005 to \$10 generic and \$15 non-generic.

The County notes that the collective bargaining units include the International Brotherhood of Electrical Workers (IBEW) representing 824 employees; the Commission of Registration and Superintendent of Elections representing 33 employees; the Communications Workers of America (CWA) representing 276 rank-and-file Hospital employees; the Unit Managers and Supervisors representing 43 employees; and the Assistant Prosecutors representing 130 employees; the Craft Foremen representing 6 employees; Local 32 OPEIU representing 11 employees; IBEW - Training and Employment representing 24 employees; and IBEW Prosecutors Clericals representing 98 employees. The County notes that the nine bargaining units represent approximately 33% of the County's unionized employees.

According to the County, all settlements for 2002–2005 have followed the established wage and prescription pattern. No settlements have exceeded the pattern. The County asserts that contributions to development funds are not an element of a salary wage pattern. The County submits that the testimony was unrefuted that the employee development funds provided supplemental benefits to its members which are unique to each bargaining unit such as dental, vision or reimbursement of bar fees. The IBEW plan provides a dental plan, disability plan, legal defense plan and vision plan for over 1000 employees for \$935,000.

The County submits that the aggregate value of the County's Final Offer to the PBA is the same as the aggregate value of each of the nine units that have voluntarily settled demonstrating a clear pattern of settlement within the County for contracts covering calendar years 2002 through 2005. The County provided excerpts from other interest arbitration decisions emphasizing the importance of settlement patterns. (See pp. 61-63):

I agree with my colleagues' analysis of the importance of maintaining an established pattern of settlement. An established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and provides consistency in bargaining. I have issued awards in which established patterns of settlement were given great weight.<sup>11</sup> However, while I find that the County's settlements with other non-law enforcement bargaining units must be considered along with other external and internal comparisons, this sub-factor cannot be controlling. This is for several reasons.

First, the County's settlements with non-law enforcement bargaining units are not in line with all other comparable salary data in the record. The salary data shows that the

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<sup>11</sup>See Ocean County Sheriff's Office and PBA Local 309, PERC Docket No. IA-2003-026, issued 2/16/04; Somerset County Sheriff's Office and FOP Lodge 39, PERC Docket No. IA-2002-046, issued 3-15-03; and State of New Jersey and NJ PBA Law Enforcement Supervisors Association, PERC Docket No. IA-2001-035, issued 11-1-02.



average salary increase for Sheriff's Officers in other counties in 2002 is nearly 4%. The average would be much higher if I included the 7.15% increase in Monmouth County. The salary data shows that the average salary increase for Sheriff's Officers in other counties in 2003 is 4.19%. The average would be much higher if I included the 7.85% increase in Burlington County. The salary data shows that the average salary increase for Sheriff's Officers in other counties in 2004 is 4.12%. The average would be much higher if I included the 14% increase in Burlington County, the 12% increase in Monmouth County and 9% increase in Passaic County.<sup>12</sup> The salary data shows that the average salary increase for Sheriff's Officers in other counties in 2005 is 4.23%.

As noted above, the PERC statewide data on average salary increases (for all public safety officers) in voluntary settlements and awards for 2002 and 2003 show average salary increases of reported voluntary settlements as 4.05% in 2002 and 4.01% in 2003 and average salary increases of all award as 3.83% in 2002 and 3.82% in 2003. The PERC data for 2004 and 2005 indicates that the average salary increases for both voluntary settlements and awards are somewhat higher than the average increases in 2002 and 2003.

The County's proposal provides a base salary increase of 7% over four years.<sup>13</sup> The County's salary proposal is more than 9% less than the average salary increases received by all other Sheriff's Officers in the State in 2002-2005. The County's salary proposal is also approximately 9% less than the average salary increases received by all public safety officers statewide in 2002-2005.

The following statewide Sheriff's Officer salary data shows the relative placement of the 2001 Essex County maximum salary of \$59,238:

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<sup>12</sup>I served as mediator or arbitrator in Monmouth, Burlington and Passaic counties and recognized that these higher salary increases in 2002, 2003 and 2004 were due to circumstances unique to those counties.

<sup>13</sup>The County's salary proposal provides for a 7% base salary increase (recurring) and a 10% payout when the 3% (non-recurring) "bonus" is paid on July 1, 2002.

**2001 Sheriff's Officer Maximum Salaries**

Bergen	\$74,601
Ocean	\$62,350
Passaic	\$60,771
Union	\$60,406
Morris	\$59,979
<b>Essex</b>	<b>\$59,238</b>
Mercer	\$58,584
Somerset	\$58,537
Middlesex	\$58,000
Monmouth	\$56,000
Camden	\$53,843
Hudson	\$51,547
Sussex	\$48,303
Warren	\$47,130
Atlantic	\$47,000
Hunterdon	\$45,650
Gloucester	\$44,832
Cape May	\$44,345
Burlington	\$41,250
Salem	\$38,709
Cumberland	\$38,000

The following statewide Sheriff's Officer salary data shows the relative placement of the 2004 Essex County maximum salary of \$63,480 under the County's last offer:

**2005 Sheriff's Officer Maximum Salaries**

Bergen	\$87,273
Passaic	\$75,779
Ocean	\$74,075
Morris	\$70,479
Monmouth	\$70,000 (2004)
Union	\$69,314 (2004)
Mercer	\$66,786 (2004)
Middlesex	\$66,664
Somerset	\$65,846
<b>Essex</b>	<b>\$63,480</b>
Hudson	\$59,580
Camden	\$55,996 (2002)
Atlantic	\$55,000
Hunterdon	\$54,361
Burlington	\$52,777
Sussex	\$51,994 (2003)
Cape May	\$49,882 (2004)
Gloucester	\$45,841 (2002)
Salem	\$41,066 (2003)
Cumberland	\$38,770 (2002)
Warren	Not available

Implementation of the County's last offer would result in a substantial erosion in the maximum salary of Essex County Sheriff's Officers in comparison to the maximum salaries of Sheriff's Officers in other counties. The 2001 data shows that Essex County Sheriff's

Officers ranked 6th out of 21 counties. An award of the County's last offer results in a drop to 10th out of 21 counties. Application of the awarded salary increases results in a maximum salary of \$68,635 in 2005 ranking the Essex County Sheriff's Officer 7th out of 21 counties. The awarded salary increases will maintain the relative placement from 2001 to 2005.

The average maximum salary of a Sheriff's Officer in the top ten grouping statewide was \$60,846 in 2001. The Essex County maximum salary in 2001 was \$59,238, a \$1,608 difference. This is equivalent to 2.7% below the 2001 average maximum salary in the top ten grouping.

The average maximum salary of a Sheriff's Officer in the top ten statewide grouping was \$71,793 in 2005.<sup>14</sup> The Essex County maximum salary in 2005 would increase to \$63,480 under the County's last offer. The difference, only \$1,608 in 2001, would increase to \$8,313 under the County's last offer increasing the percentage difference from only 2.7% in 2001 to 13.1% in 2005. The award salary increases result in a \$68,635 maximum salary that is \$3,158 less than the average maximum salary in the top ten statewide grouping.

An award of the County's last offer results in a dramatic decrease in the maximum salary of an Essex County Sheriff's Officer when compared with the maximum salaries of their peers in other counties.<sup>15</sup> The County's pattern argument would be given greater weight if its last offer was more in line with external comparability data. The County's last offer is less than 50% of the average salary increases negotiated in 2002-2005 for law enforcement employees at every level (municipal, county and state) and all other public employees.

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<sup>14</sup>I have increased the Morris, Monmouth and Union maximum salaries by 4% in 2005 to make the comparison.

<sup>15</sup>In E-62, the County includes Associates Degree stipends and Detectives' Automobile Allowances to show a higher ranking. This data has been considered but does not alter the finding that maximum salaries will be seriously eroded by the County's last offer. The record does not show how many Essex Sheriff's Officers currently receive either the education allowance or the automobile allowance. I note that the automobile allowance is provided "for the purpose of defraying the costs of fuel, insurance, repairs and depreciation of the vehicle."

Second, the County's last offer would be given great weight if the claimed pattern had stood the test of interest arbitration. All of the settlements were made with bargaining units of civilian employees. None of the settlements were made with other Essex County law enforcement bargaining units. It is undisputed that all of the other eight Essex County bargaining units are working under expired CBAs. This is an important consideration in this matter. Pattern bargaining is usually appropriate and applicable in situations where there are multiple bargaining units, i.e., municipalities with police and fire rank-and-file and SOA bargaining units; counties with multiple public safety bargaining units; state bargaining units; etc. Also, common relationships between fire and police bargaining units are maintained through pattern bargaining. This holds true for multiple bargaining units that have common relationships at the state and county level. The County's pattern argument would be given greater weight if it had reached settlements (or awards) with other Essex County law enforcement bargaining units consistent with its other civilian employee settlements.

Third, I make no finding concerning the PBA's contention that the County's pattern is flawed and that it costs more than the County claims. I have found that the County's last offer will result in a serious erosion of earnings for an Essex County Sheriff's Officer when compared with all other salary data. However, I note that the County's settlement with the Assistant Prosecutor's bargaining unit was for only two years commencing on January 1, 2002 and expiring on December 31, 2003. I take arbitral notice that the County recently negotiated a new CBA with this bargaining unit that provides for "raises averaging \$9,000 beginning August 1, 2004."<sup>16</sup> This settlement provides considerable salary increases in 2004 and 2005. A review of the Star Ledger newspaper article reveals that the settlement costs "an additional \$374,181 this year and \$1.2 million next year." The article notes that the

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<sup>16</sup>See "Assistant Prosecutors in Essex get pay raises", Newark Star Ledger, July 16, 2004.

salary increases will make the Essex salaries more competitive with other county Prosecutor's offices. This settlement demonstrates that the County's "lock-step" approach to imposing a pattern fails to account for the differences in bargaining units. Carried to an extreme, a public employer could negotiate a very low wage increase with nine non-law enforcement bargaining units and then assert a "pattern" in its negotiations with its nine law enforcement bargaining units rendering the interest arbitration process meaningless.

In summary, I find that the most significant sub-factor is the external comparability data detailing salary increases in other Sheriff's Officer bargaining units and is therefore entitled to the most weight. My award brings the maximum salary to \$68,635 in 2005. This salary will maintain the relative position of the Essex County maximum salary at the 2001 level when compared to other county Sheriff's Officers. I have maintained the relative standing of the maximum salary by deferring the salary increases in 2002, 2003 and 2004 giving the County needed financial relief needed to get its financial house in order. I have also given considerable weight to comparisons with average settlement data for all other law enforcement officers throughout the State and all other public employees. The private sector data, while limited, shows that the terms of my award are lower in payout in 2002 and 2003 and somewhat higher on base over the full term of the new CBA. I have given little weight to the County's pattern argument since this would result in a dramatic decrease in the maximum salary of an Essex County Sheriff's Officer when compared with the maximum salaries of their peers in other counties and result in a serious reduction in real earnings over the term of the CBA. The County's pattern argument would deserve stronger consideration if it included settlements with its other law enforcement units. Imposition of a pattern reached with civilian employees (not subject to interest arbitration) which is less than 50% of the comparable salary data in the record, would render the interest arbitration process meaningless.

### **Overall Compensation**

I have considered the overall compensation received by the Sheriff's Officers and find that the terms of my award will maintain the existing levels of economic benefits. The current overall compensation is competitive and will not be diminished by the terms of my award. Essex County Sheriff's Officers will maintain their relative ranking in comparison to other Sheriff's Officers throughout the State and other law enforcement officers. The terms of my award will provide a lower payout in 2002 and 2003 (in consideration of the County's financial needs) but this will be remedied in 2004. The terms of my award are consistent with other external settlements in Essex County and throughout the State thus maintaining a consistent level of benefits.

### **Lawful Authority**

There is no evidence that the terms of my award will require the County to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding. Evidence in the record indicates that the County has not exceeded its cap and has waived its cap flexibility. According to the PBA, the County has not utilized its full cap option and the flexibility not utilized is available for "cap banking" and carried forward into the next budget year. County Treasurer Hopkins testified that at the time of the hearing there was no cap problem in 2003.

The County's arguments on this factor centered on its inability to fund the PBA's proposal which cost \$1.4 million more than the County's salary proposal in 2002; nearly \$1.35 million more than the County's salary proposal in 2003; more than \$2.6 million more than the County's salary proposal in 2004; and \$3.15 million more in 2005.

This is contrasted to the terms of my deferred salary award that costs \$209,973 more than the cost of the County's proposal in 2002 and 2003. The cost of my award is less than

the cost of the County's bonus in 2002 and only \$209,973 more than the County's total cost in 2002 and 2003. The cost of my award in 2004 and 2005 is significantly higher than the cost of the County's salary proposal resulting from the impact of two zero increases and a three-year salary proposal that increases the base salary by only 3%. The financial impact of the County's 2005 salary proposal of a split 4% increase in base salary is nearly identical to my award which provides for a 4% increase in base salary.

My award of 4% in 2005 increases the base salary by \$881,697 whereas the County's salary proposal of 4% (2/2 split) in 2005 increases the base by a similar figure. Again, the difference between the awarded 4% increase and the County's split 4% increase can be primarily attributed to the accumulative impact of the 0.0% increase in 2002 and 2004.

I conclude that the implementation of the terms of my Award will not conflict with the lawful authority of the County.

**The Financial Impact on the Governing  
Unit, its Residents and Taxpayers**

The financial impact of the award on the governing unit, its residents and taxpayers is a factor entitled to considerable weight. I have given this factor considerable weight by structuring the award with deferred salary increases without full retroactivity. Full retroactivity is common in nearly all other settlements and awards in 2002, 2003 and 2004. As explained above, I structured the award to defer the cost of a reasonable overall base salary increase to later years. The "back-loaded" format of the award was fashioned to afford the County short-term relief in order to get its "financial house" in order and at the same time provide Sheriff's Officers with reasonable base salary increases and an acceptable increase in real earnings over the term of the new CBA. Stated differently — I have designed my award by deferring a portion of the cost to later years thereby reducing the



financial impact on the governing unit, its residents and taxpayers. I have reduced the financial impact in three of the four years of the new CBA, 2002, 2003, and 2004. The terms of my award provide financial relief to the County by offsetting the impact of retroactive payments in 2002, 2003 and 2004. This is a prudent approach which takes into account the structural problems that any public employer would have in implementing an award that could be fully retroactive for more than thirty months.

The limited retroactivity is a sound course of action made necessary by the convincing testimony of County Treasurer Hopkins which established the County's need for strict financial planning.<sup>17</sup> Hopkins discussed the County's historically low bond ratings (lowest in the State); the impact of low bond ratings on interest rates and insurance costs; the financial problems caused by "one-shot" revenues; the need to establish recurring revenue sources; to restructure debt; restructure pension bonds; and increase taxes. Hopkins cited the directives from the independent rating agencies (Moody's and Fitch) and "its expectations that newly elected County Officials will continue to make necessary decisions to augment recurring revenues and property taxes to offset a budgetary gap...and promote ongoing structural balance." (E-14).

Another factor leading to deferral of the full financial impact of my awarded salary increases is the County's low fund balance. The County notes that both Moody's and Fitch's expressed concern about the fund balance. The County's fund balance in 2003 was approximately \$5.4 million. This is less than 1% of the County budget and well below recommended levels and down from \$12.64 million in 2000. (E-14). The median fund balance in the state is \$19.1 million. (E-191). The County's low fund balance (surplus) influenced my decision to defer salary increases thereby substantially reducing the County's retroactive financial obligations.

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<sup>17</sup>See Hopkins' testimony on pages 74-84 of this award.

E-14 is Moody's assessment of Essex County in June 2003 which is consistent with Hopkins' testimony that the County would not have seen a lower bond rating if it did not provide specific plans to restore the County's fiscal health. Excerpts from this assessment indicate that Moody's recognized that the County is moving in the right direction:

The stable outlook reflects careful scrutiny of the fiscal 2003 budget adopted in May which include \$33 million in non-recurring revenues and will allow for the repayment of the \$22 million in deferred charges. It will also benefit from a \$14 million tax increase (property taxes will total \$304 million) and a debt restructuring (scheduled for this summer) that will alleviate some of the financial strain over the next three years. Analysis of the fiscal 2004 and 2005 budgetary pressures reflects that continued vigilance on the expenditure side, aided by debt restructuring, savings from the opening of the new county jail, and growing recurring revenues - both locally and potentially from the state - should enable the county to return to a state of near structural balance. This expectation, coupled with commitment of the county's fiscal management team to adjust property taxes and other revenues to promote fiscal health, is critical to the rating outlook. Important to note is the fact that the county does not anticipate to use any Current Fund reserves to balance the budgets in 2003 through 2005; therefore positive budgetary variances should be available to augment the year-end balance and promote subsequent year stability.

Officials are hopeful that a new public housing strategy, a performing arts center, a minor league baseball stadium and proposed indoor professional sports arena in Newark will spur growth, bolster the county's economic and employment base, and contribute to the reversal of the tax base contraction.

The county's debt profile evidences a moderate (debt burden is 4.6%) amount of rapidly repaid debt (amortization over ten years is 77%). Given the current budget pressures, management expects to restructure a portion of its general obligations this summer to provide between \$10 and \$20 million annually over three years in debt service relief. (E-14 at 1-2).

The impact of the "back-loaded" format of the award was fashioned to afford the County with short-term relief in order to get its "financial house" in order. This is consistent with the Moody's assessment. The total County budget in 2002 was more than \$571 million. The total cost of base salaries in 2002 under the deferred salary increase will be \$20,131,673. This is an increase of \$346,245 above the 2001 base salary and less than the cost of the

\$593,563 salary increase in the County's proposed 3% bonus. This increase would cost \$692,490 if not deferred to 2003. The cost of the County's 3% salary increase in 2003 is \$593,563. The cost of the deferred 3.5% increase in 2003 is \$358,364. This would cost \$716,728 if not deferred to 2004. Again, I have structured the lesser payout in 2003 in order to defer the cost of my award to later years. The deferred format increases the Sheriff's Officer base salary at a reduced cost to the County in 2002 and 2003. The total cost of my award in 2002 and 2003 in "new money" is \$1,397,099.<sup>18</sup> The deferred salary increases awarded cost \$209,973 more than the cost of the County's salary proposal in 2002 and 2003.<sup>19</sup> The deferred salary increases awarded cost \$1,620,148 less than the cost of the PBA's salary proposal in 2002 and 2003.

I have also deferred the application of the 2004 awarded salary increase to further limit the retroactivity in 2004. This provides the County with additional assistance in getting its financial house in order. The impact of the two years with 0.0% salary increases widens the gap between the cost of the County's salary proposal and the cost of the award. The award gives the County the benefit of twenty-seven months of deferred salary increases over the first thirty-six months of the new CBA.

The financial impact of the County's 2005 salary proposal of a split 4% increase in base salary is nearly identical to my award which provides for a 4% increase in base salary. My award of 4% in 2005 increases the base salary by \$881,697 whereas the County's salary proposal of 4% (2/2 split) in 2005 increases the base by a similar figure. The difference in the total salary base in 2005 is again the widening gap caused by the impact of two 0.0%

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<sup>18</sup>I have included the impact of the roll-over from the deferred 3.5% base increase in 2002.

<sup>19</sup>It appears that my award in 2002 and 2003 providing for 1.75% mid-term pay-outs should cost less than the County's 3% bonus in 2002 and 3% base increase in 2003. This is not so since the 3.5% increase awarded in 2002 is recurring (unlike the County's 3% bonus) and carries over to 2003. All salary increases are recurring expenses to an employer except in those rare cases where a non-recurring bonus is negotiated.

salary increases and a four-year salary proposal that increases base salary by only 7%. This contrasts to the approximate 15-16% salary increases received by all other law enforcement officers statewide and the approximate 14-16% salary increases received by all other public and private sector employees during the same four-year period.

The award was fashioned to provide the County with short-term relief in order to get its "financial house" in order and at the same time afford Sheriff's Officers with reasonable base salary increases and an acceptable increase in real earnings over the term of the new CBA. The awarding of increases in prescription co-pays will offset the impact of the salary increases in 2004 and 2005. I conclude that the implementation of the terms of my Award will have a minimal financial impact on the governing unit, its residents and taxpayers.

#### **Cost of Living**

Arbitrators must consider changes in the cost of living. The cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 2.6% in 2002 and 3.1% in 2003. This is below the 3.5% rate increases in my Award in 2002 and 2003 and above the actual payout generated by the deferment and delayed retroactivity.

The 2004 CPI data is incomplete. The most recent data shows that the CPI for the year ending June 2004 increased by 4.3%, the largest annual increase in 13 years. However, most of that increase came in March when the CPI increased by 1.1%, the largest month-to-month increase since 1990.<sup>20</sup> There is no reason to believe that this trend of higher month-to-month increases will continue and it is more likely that the awarded 4.0% salary increases in 2004 and 2005 will exceed the CPI resulting in an increase in real earnings of bargaining unit members for the 2002-2005 duration of the new CBA.

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<sup>20</sup>New York-Northern New Jersey CPI, U.S. DOL, Bureau of Labor Statistics "News" issued April 14, 2004.

I conclude that the awarded base salary increases, while marginally higher than the increases in the cost of living in 2002 and 2003 (and probably higher in 2004 and 2005), provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Sheriff's Officers. The award provides for base salary increases that over the full term of the CBA will allow for a modest increase in the real earnings of the Sheriff's Officers consistent with historical trends.

### **Continuity and Stability of Employment**

The terms of my Award will maintain the continuity and stability of employment for Essex County Sheriff's Officers. The awarded salary increases will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the County to continue to recruit and retain qualified Sheriff's Officers.

Testimony and evidence in the record shows that turnover in the Sheriff's Department is low with more than 50% of turnover due to retirements. This is an important indicator of continuity and stability in employment. There is no evidence that the County is losing its Sheriff's Officer to municipal police departments. Such evidence would have been given strong consideration in evaluating the PBA's argument that the maximum salary of Essex County Sheriff's Officers was substantially below that of Essex County municipal police departments. This was an important consideration in a recent award involving Somerset County and its Sheriff's Officers:

“The external salary comparisons with municipal police officers is also not entitled to as much weight as the internal comparisons to other Somerset County public safety employees. However, the municipal salary data is entitled to more weight than comparisons to other county Sheriff's departments.

Evidence in the record shows that thirteen of the twenty-one employees left the Sheriff's Department between 1998 and 2001 for police officer positions in Somerset County municipalities. This is a significant number (62%) making the municipal salary data more of a factor in

measuring the competitiveness of the Sheriff's Officer salary schedule. Evidence in the record does not pinpoint the reasons why thirteen out of twenty-one employees have left for municipal police work. However, the County cannot afford to become a training ground for municipal police officers.

Recruitment and retention of qualified Sheriff's Officers are significant factors in maintaining the high quality services currently provided by the Sheriff's Department. High turnover is not only expensive but it also has the potential to reduce the quality of services. (Somerset County and FOP Lodge 39, PERC Docket No. IA-2002-046, at 84-85, issued March 15, 2003).

This factor influenced my conclusion that the County's pattern argument would result in a dramatic decrease in the maximum salary of an Essex County Sheriff's Officer when compared with the maximum salaries of their peers in other counties and result in a serious reduction in real earnings over the term of the CBA. This erosion would undermine the County's ability to retain and recruit Sheriff's Officers and jeopardize the stability and continuity of employment.

Accordingly, I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

#### **Other Issues**

It bears repeating that a governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. I have also applied this principle to new proposals.

#### **Prescription Copay Increases**

The County proposed an increase in its prescription health benefits plan consistent with the pattern accepted by nine other bargaining units. The County proposes an increase to \$5 for generic drugs (currently \$1) and \$10 for brand name drugs (currently \$5) effective thirty days after the signing of the agreement and to \$10 for generic drugs and \$15 for brand

name drugs effective January 1, 2005. The County proposes the continuation of the current mail order program. The County notes that the co-pays have not increased since 1993.

The County provided evidence showing that the cost of prescription benefits increased from \$4.6 million in 2002 to \$5.5 million in 2003. The County submitted data showing that the average drug prescription generic co-pay is \$9 and the brand-name co-pay averages \$19.

A review of the contracts in evidence supports the County's proposal to increase the prescription co-pays. Cost containment of prescription costs is commonly achieved by increases in co-pays. The current prescription co-pays are significantly less than the prescription co-pays included in recent voluntary settlements and awards.

Accordingly, I conclude that the County has met its burden to justify an increase in the prescription co-pays. The prescription copays shall be increased to \$5 for generic drugs and \$10 for name brand drugs to be effective September 15, 2004. Effective January 1, 2005, the prescription copays shall be increased to \$10 for generic drugs and \$15 for name brand drugs. The mail order prescription plan shall be continued.

The County's proposal is awarded.

#### **Overtime Compensation**

The County proposed the following modification of Article VI (Overtime):

- (a) Section 2 Add the following:

At the request of the Sheriff the contract may be reopened to negotiate changes in the existing work schedule as required by operational need. Such negotiations may include weekend work as part of regularly scheduled work days and work schedules covering a fourteen day cycle with straight time and overtime as authorized by law. This provision shall not infringe or change the Sheriff's managerial prerogative regarding manpower, work schedules, staffing or manning.

The County proposed that it have the opportunity to reopen the contract to negotiate changes in the existing work schedule as required by operational needs. The County pointed

to operational needs related to the opening of the new jail and staffing issues related to the possible manpower needs of the new jail.

The County has not met its burden to justify a change in the existing overtime language. The County has not made any specific proposals nor has it provided any justification to reopen the CBA. The current CBA expired more than 2½ years ago. The parties are well aware of the toll that protracted negotiations have on morale and productivity. I see no basis to permit the reopening of the 2002-2005 CBA that will expire in less than eighteen months. The County's proposal is denied.

### **Compensatory Time**

The County proposed the following compensatory time procedures:

Add new Section 5 to Article VI. (Compensatory Overtime Option)

Overtime shall be paid in cash or compensatory time at the rate of time and one-half in accordance with the following procedure:

Except as set forth in Section 3 above, the employee shall have the option as to whether overtime shall be paid in cash or compensatory time and shall notify his/her commanding officer in writing of the decision at the completion of such overtime and shall indicate same on the overtime report upon submission.

However, an employee may accumulate no more than eighty (80) hours to be banked as compensatory time.

For all hours in excess of eighty (80) hours of overtime pay, the employee shall receive only paid overtime compensation.

Any compensatory time not utilized by the employee during the calendar year in which it is earned shall be paid to him pursuant to the paid overtime compensation provision of this agreement.

The County's proposal seeks to codify the current practice regarding the payment of compensatory time. Brown testified that the rationale for the proposal was to codify current practice. Brown testified that the current practice is that up to 80 hours of



compensatory time is paid at the 26<sup>th</sup> pay period each year and there is no longer any carryover. Essentially, the County seeks to codify a practice that eliminated its long term liability to pay out compensatory time banks that had increased from year-to-year. This is a good financial practice commonly seen in CBAs as public employers seek to limit their long-term financial liabilities. This is particularly important in Essex County.

The County's proposal to codify the current compensatory practice is awarded. I shall retain limited jurisdiction for thirty (30) days to resolve any questions as to current practice.

### Vacation

The PBA proposed the following modifications in the vacation schedule:

Effective 1/1/2003, Sections 1 and 2 of the Vacation Article will be modified to provide as follows:

Section 1 - Employees shall be granted vacation leave with pay subject to the approval of the Sheriff as follows:

- (a) During the first twelve (12) months of employment, one (1) working day's vacation for each month completed.
- (b) During the second (2<sup>nd</sup>) through the tenth (10<sup>th</sup>) years of employment, fifteen (15) working days.
- (c) During the eleventh (11<sup>th</sup>) through the fifteenth (15<sup>th</sup>) year of employment, twenty (20) working days.
- (d) During the sixteenth (16<sup>th</sup>) year and thereafter, twenty-five (25) working days.

Section 2 - Upon celebrating the tenth (10<sup>th</sup>) and fifteenth (15<sup>th</sup>) years of service, an employee shall be granted the additional vacation during the calendar year in which the employee celebrates that anniversary.

The PBA's proposal increases vacation days for second, third, fourth and fifth year employees who would receive three additional days annually. Employees in the eleventh, twelfth, thirteenth, fourteenth, and fifteenth years would receive five additional vacation

days annually. Employees in their sixteenth year to twenty-first year would receive five additional vacation days annually. The proposal also provides that employees celebrating their 10<sup>th</sup> or 15<sup>th</sup> anniversary would get an extra day in that year.

The County is opposed to any change in the vacation schedule. County Treasurer Hopkins estimated the cost of implementing the PBA's proposal as \$663, 173 over the term of the new CBA. This would add more than 3% to the overall cost of the new CBA. The evidence shows that Essex County Sheriff's Officers have a vacation schedule that is comparable to other Essex County law enforcement units and to other county Sheriff's Officers.

Accordingly, I conclude that the PBA has not met its burden to justify a change in the existing vacation schedule. The proposal is hereby denied.

#### **Critical Event Excusal Time**

The PBA proposed the following:

The Essex County Sheriff's Department will produce a policy and furnish a copy to the Union whereby an officer will be excused from duty, up to two work days, immediately following his/her involvement in a critical incident if requested by the officer and deemed necessary by the officer's supervisor. This time off shall not be deducted from any compensated time i.e. vacation, sick, personal, etc. The Sheriff or the Chief shall approve this time off. A critical event is defined as:

- a. Hostage/barricaded persons negotiations (prolonged)
- b. Involvement in use of deadly force at or by the officer
- c. Certain life savings events (fire, disaster, multiple deaths)
- d. Actual bomb disposal operations

The appropriate medical doctor, to be supplied by the County, shall evaluate any request for more than two days excusal.

During any critical event excusal the officer shall be fully accessible by the department. Failure to do so will revoke this privilege and subject the officer to charged time off and disciplinary action. Acts of war or the participation in recovery efforts are excluded.

The County opposes the PBA's proposal. Brown's testimony revealed that a Sheriff's Officer who has been involved in a hostage incident, fire, lifesaving disaster, multiple death, bomb disposal operation, or deadly force incident has never been denied a day off. Brown notes that Sheriff's Officers have significant amounts of paid leave and sick time and that Sheriff's Officers have "significant" amounts of time accrued. Finally, Brown's uncontroverted testimony is that paid time off is often not deducted from an officer's time bank and the determination whether or not time is deducted is discretionary. The evidence in the record shows that no other County Sheriff's Officers contract has a critical event excusal time provision and no other Essex County law enforcement unit has a critical event excusal time provision.

The record includes no evidence or testimony to substantiate a need for new language in the CBA regarding this issue. Specific examples of incidents where such leave was denied would be telling and deserving on consideration. However, the record includes no such evidence to justify the PBA's proposal.

Accordingly, I conclude that the PBA has not met its burden to justify its proposal and the proposal is hereby denied.

#### Association Time

The PBA proposes that Article XVIII of the contract be modified to provide that two PBA Local 183 members be placed on full release time with full compensation for the purpose of attending to union business. The current CBA provides that "the President of Local 183, or his designee, may process grievances of Local 183 while on working time."

The County is opposed to the PBA's proposal. The cost of the PBA's proposal is estimated to be approximately \$100,000. The evidence reveals that there have been very few

grievances filed over the years. This is a confirmation of the mutual testimony that this is a highly productive work force that enjoys high morale. There is no evidence in the record to show that this benefit of full release time is enjoyed by any other county Sheriff's Officer.

The record includes no evidence or testimony to warrant a change in the current language. The record includes no evidence to justify that two PBA Local 183 members be placed on full release time with full compensation for the purpose of attending to union business.

Accordingly, I conclude that the PBA has not met its burden to justify its proposal and the proposal is hereby denied.

#### **Senior Officer Differential**

The PBA proposed that a Senior Officer Differential be established effective January 1, 2004 as follows:

Effective 1/1/ 2004, permanently appointed employees who have completed 20 or more years of service with the County of Essex in the title of Sheriff Officer/Investigator shall be entitled to Senior Officer Differential (SOD) which is defined as an adjustment equal to  $\frac{1}{2}$  the difference between the current base rate for the eligible employee and the next higher rate of pay. For example, Senior Officer Differential for employees in this unit would normally be  $\frac{1}{2}$  the difference between Sheriff Officer/Investigator top pay and the base rate of pay for Sergeant. The Senior Officer Differential will be paid with base pay in the regular paycheck starting on the anniversary date of eligibility. Any future adjustment to base pay will be calculated without SOD, and after such wage adjustment is made the SOD will be recalculated and paid as set forth above. Up to 4 years credit will be given for prior service covered by PERS, PFRS, CPFPPF, and ERS.

The County is opposed to the PBA's proposal. The County estimates that the cost of this proposal over the life of this contract is \$244,255. This is equivalent to more than 1% of the salary base.

This is another form of a salary increase that cannot be justified at this time given the current circumstances and the structure of my award on salary. The evidence also shows that

no other law enforcement units employed by Essex County enjoy a senior officer differential and that only 5 of the other 20 counties have this benefit.

Accordingly, I conclude that the PBA has not met its burden to justify its proposal and the proposal is hereby denied.

#### **Holiday Fold-In**

The PBA proposes that Article VIII of the contract be modified so that all holiday benefits shall be compensated and paid on a folded in basis and utilized for all computation purposes. The County is opposed to the PBA's proposal.

Examination of Article VIII of the CBA reveals that Sheriff's Officers are not required to work on holidays. While it may be that some Sheriff's Officers assigned to units outside of court security are required to work on holidays, there is no evidence in the record to confirm this. An award in favor of the PBA's proposal would mean that all Sheriff's would be required to work on holidays and therefore entitled to additional compensation for the additional work time. There is no basis for such a result in this matter.

Accordingly, I conclude that the PBA has not met its burden to justify its proposal and the proposal is hereby denied.

#### **Grievance Procedure:**

The PBA proposes Article XI be modified to include a new grievance definition:

For purposes of this Agreement, the term "grievance" means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement.

Minor disciplinary matters (less than six (6) days of fine or suspension or equivalent thereto) shall be included in the Grievance Procedure.

unsatisfactory resolution of grievances. To the contrary, the evidence reveals that there have been very few grievances filed over the years. There is also no basis to conclude that the PBA has been prevented from filing grievances because of the current grievance definition.

I conclude that the PBA has not met its burden to justify its proposal and the proposal is hereby denied.

Accordingly, after carefully considering each of the statutory criteria in relation to the evidence in the record, I respectfully issue the following award:

## AWARD

1. **Term of Agreement:**

There shall be a four-year agreement effective January 1, 2002 through December 31, 2005.

2. **Salary:**

The 2001 salary schedule shall be increased by 3.5% effective July 1, 2002; an additional 3.5% effective July 1, 2003; an additional 4% effective April 1, 2004; and an additional 4% effective January 1, 2005. The annual salary increases shall be applied to all steps on the 2001 salary schedule on the above effective dates and shall be retroactive only to the effective dates.

3. **Compensatory Time:**

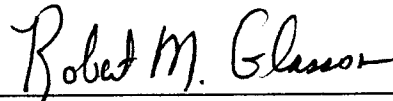
The County's proposal to codify the current compensatory practice is awarded. I shall retain limited jurisdiction for thirty (30) days to resolve any questions as to current practice.

4. **Prescription Co-Pays:**

The prescription co-pays shall be increased to \$5 for generic drugs and \$10 for name brand drugs to be effective no earlier than September 15, 2004. Effective January 1, 2005, the prescription copays shall be increased to \$10 for generic drugs and \$15 for name brand drugs. The mail order prescription plan shall be continued.

5. All proposals of the County and PBA not awarded herein are denied and dismissed. All provisions of the existing CBA shall be carried forward except for those modified by the terms of this Award.

Dated: August 20, 2004  
Pennington, NJ

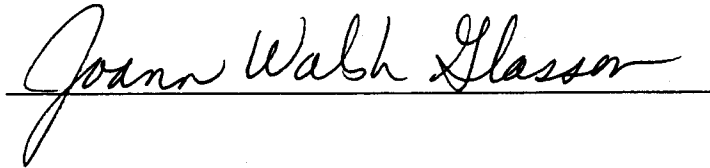


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ROBERT M. GLASSON  
ARBITRATOR

STATE OF NEW JERSEY) ss.:  
COUNTY OF MERCER)

On this 20<sup>th</sup> day of August 2004, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script that reads "Joann Walsh Glasson". The signature is written in black ink and is positioned above a solid horizontal line.

**Joann Walsh Glasson**  
Notary Public  
State of New Jersey  
Commission Expires 12-11-06