

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

In the Matter of the Interest Arbitration Between:

**BURLINGTON COUNTY
(DEPARTMENT OF CORRECTIONS)**

-and-

Docket No. IA-2018-02

PBA LOCAL NO.249

Before: Joseph Licata, Interest Arbitrator

Appearances:

For the County:

Capehart and Scatchard, P.A.
(Attorneys Evan Crook and Andrew C. Rimol)

For the PBA:

Mets, Schiro & McGovern, LLP
(Attorneys James M. Mets and Matthew T. Clark)

Witnesses:

Dr. Joseph Petrucelli, PBA Financial Consultant
Robert J. Swenson, PBA Local 249 President
Marc Krassan, Chief Financial Officer
Mildred Scholtz, Warden, Burlington Co Corrections Dept.
Matthew Leith, Admin. Cpt., Burlington Co Corrections Dept.

Mediation Dates: October 3 and 13, 2017

Hearing Dates: November 6 and 9, 2017

PROCEDURAL HISTORY

PBA Local 249 and the Burlington County Board of Chosen Freeholders (“County”) are parties to a Collective Negotiations Agreement with an effective term of January 1, 2012 through December 31, 2014. At the time of the November 9, 2017 interest arbitration hearing, the Agreement had been drafted, but not signed, by the County. The PBA accepted and signed the County’s proposed Agreement. In addition, the parties mutually acknowledge that they have abided by the terms of the underlying Interest Arbitration Award; and paid leave conversion dispute supplement – both issued by Arbitrator Susan Osborn. Therefore, there is no dispute over the *status quo ante* in connection with this proceeding.

The parties met for negotiations on nine (9) separate occasions from April 8, 2015 through May 5, 2017 after which impasse was declared. On August 30, 2017, the PBA filed a Petition to Initiate Compulsory Interest Arbitration with the New Jersey Public Employment Relations Commission (“PERC”). On September 5, 2017, PERC filed the Petition under Docket No. IA-2018-002. On September 7, 2017, PERC appointed the undersigned to hear and decide the Petition, pursuant to N.J.S.A. 34:13A-16e(1). Consistent with N.J.S.A. 34:13A-16b(3), a mediation ensued on October 3, 2017. In accordance with the parties’ request, a second day of mediation was held on October 13, 2017.

In accordance with N.J.S.A. 34:13A-16f(1) and N.J.A.C. 19:16-5.7(f), on October 23, 2017, the PBA submitted its Final Offer. The County followed suite on October 24, 2017. On November 6, and 9, 2017, I conducted a hearing in accordance with N.J.A.C. 19:16-5.6(d). The parties had the opportunity to present testimony and documentary evidence. The following joint exhibits were admitted in evidence: Joint Exhibit 1 (2012-2014 Collective Negotiations Agreement); Joint Exhibit 2 (Scattergram); Joint Exhibit 3 (2009-2011 Collective Negotiations

Agreement); Joint Exhibit 4 and 4A (the Osborn Interest Arbitration Award and Supplemental Award); Joint Exhibit 5 (PBA 249 Final Offer); and Joint Exhibit 6 (County of Burlington Final Offer). Voluminous exhibits were introduced separately by each party as well. The PBA and County presented financial testimony from Joseph R. Petrucelli, CPA and Mark Krassan, County CFO, respectively. The PBA and County also presented operational testimony (including the pros and cons of the current and prior work schedules) from Robert Swenson, PBA President and Warden Mildred Scholtz, respectively.

The parties' representatives submitted post-hearing briefs on Monday, November 21, 2017. By email dated November 24, 2017, the undersigned asked the parties to stipulate to the number of correction officers who left employment in the 2014 base year. Upon receipt of the requested stipulation on December 1, 2017, the record was closed. The parties were each expertly represented throughout this proceeding.

Finally, the within Interest Arbitration Opinion and Award is issued in accordance with the 2% hard cap limitation in tandem with the 16g interest arbitration criteria, to the extent deemed relevant. See, N.J.S.A. 34:13A-16.7(b) and N.J.S.A. 34:13A-16g.

BACKGROUND

Demographics (Osborn IA Award-2013)

Burlington County was formed on May 17, 1694. The County consists of 524,160 acres bordered by Mercer County from the north, Monmouth County from the northeast, Ocean County from the east, Atlantic County from the southwest, and Camden County to the west. The land extends from the Delaware River and the Great Bay on the Atlantic Ocean. The County is the largest in New Jersey covering 827 square miles. As of 2010, the US Bureau of the Census estimated the County's population as 448,734.

Forty political subdivisions exist within the County, consisting of three cities, six boroughs and thirty-one townships. While the County is principally known for its agriculture, there is considerable manufacturing, particularly along the Delaware River Waterfront.

The following chart is a snapshot of US Census Bureau State and County Quick Facts for Burlington County¹:

Burlington County, New Jersey		
People Quick Facts	Burlington	State
Population 2011 estimate	449,576	8,821,155
Population 2010 estimate (Apr 1)	448,734	8,791,894
Population % change Apr 1, 2010 to Jul 1, 2011	0.2%	0.3%
Persons under 5 years, % 2011	5.6%	6.1%
Persons under 18 years, % 2011	22.8%	23.2%
Persons under 65 years, % 2011	14.1%	13.7%
HS graduates, % of persons age 25+, 2006-2010	90.9%	87.3%
Bachelor degree or higher, % of persons age 25+, 2006-2010	33.5%	34.6%
Veterans 2006-2010	37,650	488,675
Housing units, 2011	176,098	3,562,553
Homeownership rate, 2006-2010	79.0%	66.9%
Median value of owner-occupied housing units, 2006-2010	\$270,200	\$357,000
Households, 2006-2010	165,284	3,176,069
Persons per household, 2006-2010	2.63	2.69
Per capita money income in past 12 mos. (2010 \$) 2006-2010	\$34,802	\$34,858
Median household income 2006-2010	\$76,258	\$69,811
Persons below poverty level, 2006-2010	5.5%	9.1%

Burlington County Correctional Facility Operations

The Burlington County Corrections Department, which is owned and operated by the County, consists of only the Burlington County Detention Center in Mount Holly, New Jersey (“the jail”). On June 19, 2015, the County closed its Corrections and Work Release Center (“CWRC”) in Pemberton, New Jersey. The Corrections Department provides secure custody to

¹ Source data is 2011 Edition.

approximately 450 or more inmates on any given day, although inmates are committed to and released on a frequent basis so that the number of inmates routinely fluctuates. The inmate population ranges from pre-trial detainees to State-sentenced prisoners (including inmates awaiting transportation to State correctional facilities and inmates sentenced to county time). The inmate population includes, from time to time, other types of prisoners such as those in federal custody. The violations committed (or alleged to have been committed) by incarcerated individuals vary from motor vehicle violations and municipal violations to more serious offenses such as armed robbery and murder.

In 2012, the Department was authorized for a total of 223 correction officers and employed approximately 209 rank-and-file correction officers. The superior officers unit consists of approximately 31 officers in the ranks of sergeant and lieutenant. The remainder of the chain-of-command is comprised of 4 captains and Warden, Mildred Scholtz. Inclusive of superior officers, the salaries and wages for the Department in 2012 was \$20,619,254. At the time of the present Interest Arbitration proceedings, the Department was authorized for a total of 175 correction officers, but employed only 162. Inclusive of superior officers, the salaries and wages now total \$14,654,431.

The Corrections Department operates a “direct supervision” jail. A direct supervision jail is a corrections facility that operates with correction officers on prison tiers, interacting directly with prisoners. This arrangement is in contrast to a “linear supervision jail,” where correction officers have more limited direct interaction with prisoners because they observe prison tiers from a booth. A direct supervision jail, such as the jail here, compounds the dangers faced by correction officers.

Unit members are now responsible for execution of detainer orders issued by Immigrations and Customs Enforcement (“ICE”). Unit members are responsible for knowing and implementing 792 pages of standard operating policies and procedures. Rank-and-file correction officers are accountable to:

1. Report to work to attend roll calls and line-ups, read bulletins, and otherwise familiarize themselves with the current status of the jail;
2. Listen for unusual sounds in the cellblocks;
3. Control the general conduct and behavior of inmates;
4. Detect unusual odors;
5. Keep continual and accurate count of the number of inmates in their immediate charge;
6. Patrol cellblocks, tiers, grounds, and corridors to check for hazards;
7. Escort/transport inmates;
8. Physical and mechanically restrain inmates as necessary;
9. Practice good observation, identify, and learn about inmates;
10. Listen to informers and conversations;
11. Directly supervise inmates performing jail maintenance assignments;
12. Complete head count forms, incident reports, safety reports, and provide routine information;
13. Report unusual activities;
14. Search inmates, cells, and other jail areas;
15. Maintain proficiency in firearms handling;
16. Perform assigned duties in accordance with rules and regulations; and,
17. Perform other related and assigned duties. (Id., pp. 21-22).

Testimony from both President Swenson and Warden Scholtz illustrates further the duties performed by unit members. Unit members work both inside and outside the jail. Unit members not only walk the jail's tiers, but also supervise inmates who perform services in the County's Veterans' Cemetery. This has included assumption of a significant number of responsibilities from the Burlington County Sheriff's Office. For example, unit members are responsible for transporting inmates throughout the State and to medical visits. During medical visits, unit members supervise inmates. Unit members also transport juvenile detainees to and from court. A two-person minimum is required for transportation.

President Swenson explained that unit members must respond whenever a "code" is called, such as when an inmate is injured and sent to the hospital, or a disruption, fight, or inmate's refusal to obey orders occurs. (Id., 97:15-22, 106:25-109:14). Codes start when an officer calls for a supervisor. (Id., 108:7-9). But, codes may get escalated when other inmates become involved in an incident. (Id., 108:7-13). When a code is called, all officers respond to the area where help is needed most. (Id.). Warden acknowledges that "[a]ny correctional facility has stress...just by the nature of the job."

The Pitman Work Schedule

In 2013, a 12-hour work schedule, a/k/a "Pitman Schedule" was awarded by Arbitrator Susan Wood Osborn in Burlington County Department of Corrections -and- PBA Local No. 249, IA-2013-005 ("Osborn Award") (Exhibit J4). Under the Award, the Pitman Schedule was put into effect as an "experimental schedule" for a period of 18 months, after which both parties were to evaluate its effects to determine whether it accomplished the County's stated goals and whether it was palatable to the members of the bargaining unit. Consistent with PERC's rulings in City of Clifton, the schedule was not deemed part of the *status quo*, but

rather, the County was notified that it would have to justify its continuation to an interest arbitrator in the future, i.e., this Arbitrator. In that Award, as supplemented (Exhibit J4a), Arbitrator Osborn also converted all paid leave benefits from days to hours based on a multiplier of 8 hours. For example, a correction officer having ten (10) vacation days under the 5/2 Schedule would now have 80 hours of vacation time (or 6.67, 12-hour days).

Under the Pitman Schedule, officers have, in sequence, two days off, two days on, three days off, two days on, two days off, and three days on (and repeating). This results in officers working three shifts in one week (34.5 hours) and four shifts (46 hours) the next with three consecutive days off (Friday – Sunday), every other weekend. The original Pitman shifts were 6:00 a.m. - 6:00 p.m., 9:00 a.m. - 9:00 p.m. (overlap) and 6:00 p.m. - 6:00 a.m. However, the PBA subsequently agreed to the County's request to add a fourth shift, i.e., 5:00 a.m. to 5:00 p.m. Each work shift is comprised of eleven and one half (11.5) hours of paid time, including a one-half (1/2) hour paid break as well as a 10 minute paid break, and a separate one-half (1/2) hour unpaid break. The Pitman Schedule is credited by the County and jail administration for increasing coverage during busiest times (due to overlap in shifts).

The prior 5/2 Schedule consisted of five (5) 8 ½ hour days (8 paid), followed by two (2) days off. The 5/2 Schedule operated over three (3) standard shifts: 7:00 a.m. - 3:30 p.m., 3:00 p.m. - 11:30 p.m., and 11:00 p.m. - 7:30 a.m., and in some cases 9:00 a.m. - 5:00 p.m. on Saturdays and Sundays. This scheduling system would result in 26 different schedules with different days of the week off for every shift. This schedule also provides for three, half-hour overlaps over the course of the day, and during shift changes. The 5/2 Schedule had a “locked in” days off system, which at the time of the Osborn Award, resulted in only 44 (the more senior) of the 209 officers able to take weekends off by virtue of seniority –based bidding.

Since the implementation of the Pitman Schedule in mid-2013, overtime costs have dramatically diminished: \$3,119,370 in overtime in 2010; followed by \$2,642,920 in 2011; \$2,705,676 in 2012; \$1,486,581 in 2013; \$196,658 in 2014; \$305,602 in 2015; and \$471,673 in 2016.

THE PARTIES' FINAL OFFERS

PBA FINAL OFFER (EX. J5)

I. ARTICLE II – SALARY

A. Guide

Using 26 Pays in 2014 with a Starting Base of \$11,739,529

	2015	2016	2017
Academy	\$38,500	\$38,500	\$38,500
1	\$40,346	\$40,346	\$40,346
2	\$42,829	\$42,829	\$42,829
3	\$45,046	\$45,046	\$45,046
4	\$47,230	\$47,230	\$47,230
5	\$49,685	\$49,685	\$49,685
6	\$52,140	\$52,140	\$52,140
7	\$54,622	\$54,622	\$54,622
8	\$57,105	\$57,105	\$57,105
9	\$60,001	\$60,001	\$60,001
10	\$62,897	\$62,897	\$62,897
11	\$65,793	\$65,793	\$65,793
12	\$68,516	\$69,715	\$70,935
13	\$70,521	\$73,030	\$74,316

Using 27 Pays in 2014 with a Starting Base of \$12,241,564

	2015	2016	2017
Academy	\$38,500	\$38,500	\$38,500
1	\$40,346	\$40,346	\$40,346
2	\$42,829	\$42,829	\$42,829
3	\$45,046	\$45,046	\$45,046
4	\$47,230	\$47,230	\$47,230
5	\$49,685	\$49,685	\$49,685
6	\$52,140	\$52,140	\$52,140
7	\$54,622	\$54,622	\$54,622
8	\$57,105	\$57,105	\$57,105
9	\$60,001	\$60,001	\$60,001
10	\$62,897	\$62,897	\$62,897
11	\$65,793	\$65,793	\$65,793
12	\$72,516	\$73,715	\$74,935
13	\$74,521	\$75,880	\$77,353

Officers on the Current Step Guide Will Move in the New Step Guide as Follows:

	Effective 7/1/2015	Effective 7/1/2016	Effective 7/1/2017
Step 7	To Step 12	To Step 13	Step 13 Increase
Step 5	To Step 8	To Step 9	To Step 10
Step 4	To Step 6	To Step 7	To Step 8
Step 3	To Step 5	To Step 6	To Step 7
Step 2	To Step 4	To Step 5	To Step 6

- Effective December 31, 2017 and thereafter, step movement shall be on January 1 of each calendar year.
- Step movement shall survive the expiration of the contract.
- All raises are retroactive.

- Retroactivity shall be paid to all active officers and all officers who retired during the term of the contract.

B. It is agreed that to be covered by the retroactive wage provisions of this agreement, an employee shall have maintained continuous full time employment up to and through December 31, 2014, has retired on or after January 1, 2015, or, if the employee has died on or after January 1, 2015, his estate shall receive such retroactive payment.

II. ARTICLE III - UNIFORM ALLOWANCE

Annual Allowance: Increase by \$50.00 each contract year.

III. ARTICLE V - SICK LEAVE

A. Sick leave shall be received based on the number of hours in the employee's regular workday.

B. Delete Section C.

C. Change 40 to 5 consecutive workdays.

IV. ARTICLE VII - FAMILY AND MEDICAL LEAVE

Replace with: Family and Medical Leave of Absence shall be in accordance with the federal Family and Medical Leave Act (29 U.S.C. Sec. 2601 et seq.) and/or the New Jersey Family Leave Act (N.J.S.A. 34:11B-1 et seq.). Officers shall not be required to, but may at their option, use paid leave time prior to or concurrent with FMLA/FLA. In addition, an officer may not be involuntarily placed on FMLA/FLA.

V. ARTICLE IX - PERSONAL LEAVE

A. Section A: Change 24 hours to 3 personal days and base the time on the number of hours in the officer's regular shift.

B. Section B: Change 8 hours to 1 personal day.

C. Personal leave days shall be based on the number of hours in the employee's regular workday.

D. Replace Section C with: Except as set forth in paragraph D, an employee shall give no less than twenty-four (24) hours of notice of his request to take a personal leave day. Such request shall be made through the Jail Administrator or designee. The fact that a personal day may cause overtime is not an acceptable reason for denial. If a personal day is denied and a grievance is filed by the Association and it prevails on the grievance, the employee who was denied the personal day shall be paid as liquidated damages 2 days' pay for each day denied.

VI. ARTICLE X - HOLIDAYS

A. A holiday shall be paid based on the number of hours in the officer's regular workday.

B. Replace Section C with: An employee may carry holidays for two (2) years from the date the holiday is earned. An employee with holidays on the books can elect to receive monetary compensation for said holidays at straight time pay based on the rate of pay at which the holiday was earned at any time during the year or carryover period. If the employee does not use a holiday within a 2 years from the date earned, then the employee shall be paid for the holiday on June or December 1 (as applicable) at the rate in effect when the holiday was earned. Any payment made by the Employer on June and December 1 shall be paid to the employee by separate checks.

VII. ARTICLE XI - VACATION LEAVE

A. Change 8 hours to the number of hours in the officer's regular workday.

B. Section B: After the initial month of employment and up to the end of the first calendar year, employees shall receive one (1) working day (based on the number of hours in the officer's regular workday) credited the first day of the next month for each month of service. Thereafter, employees shall receive paid vacation days (based on the number of hours in the officer's regular working day) as follows:

1 year and up to 5 years	12 days
after 5 and up to 12 years	15 days
after 12 and up to 20 years	20 days
after 20 years up to 24years	25 days
after 24 years	1 additional day per year to 30 days

VIII. ARTICLE XII - OVERTIME

A. Section A: Overtime shall be paid for all time worked outside the officer's regular working day. Overtime shall be paid in a separate check.

B. Add to Section C: No officer shall be required to perform mandatory overtime upon completion of his regular shift prior to going on vacation or before using a holiday or personal day.

C. Add a new Section F: If an officer is required to work more than 16 consecutive hours, all hours after the 16th shall be paid at two (2) times the officer's hourly rate.

IX. ARTICLE - XIII SENIORITY

Section E, add: Openings shall be filled by Unit (using seniority).

X. ARTICLE XIV - EMPLOYEE EXPENSES

Add a new Section E: If officers are required to have a land-line telephone, the County shall reimburse them for the cost.

XI. ARTICLE XVII - WORK SCHEDULE

Effective as soon as practicable after the issuance of the Award but in no event later than April 1, 2017, revert back to the 5/2 schedule. Proposed language:

A. The regular starting time of work shifts shall not be changed without one (1) week notice to the affected employees unless deemed an emergency by the Jail Administrator in order to provide for the orderly running of the Institution.

B. When there is no more than one (1) work shift per day within a given classification, preference will be given to the most senior employee.

C. Employees shall be scheduled so as to provide five (5) consecutive working days on, followed by two (2) consecutive days off unless otherwise requested by the employee and approved by the Jail Administrator. All employees whose schedules are changed to meet emergency needs of the present work week schedules shall be notified in writing.

D. Employees shall be scheduled as follows:

7:00 a.m. to 3:30 p.m.
3:00 p.m. to 11:30 p.m.
11:00 p.m. to 7:30 a.m.

Should any employee not be permitted to leave his post or be completely relieved from duty for a thirty (30) minute meal break, he shall be compensated for the full thirty (30) minutes in accordance with the Overtime Article.

E. If employees are needed in an emergency to work a shift other than their permanently assigned shift, such temporary transfers shall be based on inverse seniority.

F. All new employees shall be assigned to on the job training (OJT) for two (2) weeks day shift 7:00 a.m. to 3:30 p.m. and placed on a post o regular schedule with permanent shift and days off.

G. All employees who have completed a four (4) month probationary period shall be assigned based on seniority a permanent shift having two (2) permanent days off unless requested otherwise in writing. Days off shall not be changed on holidays.

Management maintains its right to change officers' work schedules to meet the needs of its operations to including filling any open assignments where the assignment requires minimum qualifications that include at least fifteen (15) months experience as a correction officer with the County. Such assignments shall be based upon inverse seniority.

H. Whenever an employee is delayed in reporting for a scheduled work assignment, he shall contact his supervisor in advance. Any employee who calls in within one-half (½) hour after the start of a shift and arrives at work within one (1) hour from the start of the shift shall be permitted to work.

XII. ARTICLE XXI - GRIEVANCE AND ARBITRATION PROCEDURES

Add a new Section J: If a grievance involves the denial of a request for time off, the parties shall bypass the grievance procedure set forth above and proceed directly to expedited arbitration. An expedited arbitration hearing shall take place within 48 hours, or less if less time is available, before Arbitrator _____, in person or via telephone, whereupon Arbitrator _____ shall issue a binding arbitration award at the close of the hearing. The parties may not file post-hearing briefs. If a grievance involving the denial of a request for time off is sustained and the requested day(s) has already passed, the arbitrator shall award the grievant 2 days' pay for each day off denied.

XIII. ARTICLE XXIII - OFFICERS' BILL OF RIGHTS

A. Add the following to Section F.

10. The Department shall apply the AG Guidelines on Internal Affairs to all investigations.

11. Anytime an Officer is involved in a critical incident, which is defined as a shooting, near death experience, policing of fatal traffic crashes, or other situations involving significant human suffering, he/she has a right to immediate medical treatment, psychological treatment, and consultation with counsel, and a reasonable amount of time to give his report or account of the incident. Nothing in this clause is intended to hamper an investigation or incident and a timely report by the Officer involved.

B. Add a new Section as follows: Corrections officers shall not be required to reside in the County.

XIV. ARTICLE XXXIV - JURY DUTY

Employees who are called to jury duty shall be scheduled on a Monday to Friday day shift until jury duty is completed.

XV. ARTICLE XXXVII - TERM OF AGREEMENT

January 1, 2015 through December 31, 2017.

COUNTY FINAL OFFER (EX. J6)

I. ARTICLE II – SALARY

A. Delete current language.

New Language:

1. 2015 – No Salary Increases or Step Movement
2. July 1, 2016 – New Salary Guide Established

Current Salary	New Step	January 1, 2015	January 1, 2016	January 1, 2017
\$42,396	1		\$40,346	\$40,346
\$45,004	2	\$42,396	\$42,829	\$42,829
\$47,335	3		\$45,046	\$45,046
\$49,629	4	\$45,004	\$47,230	\$47,230
\$54,789	5	\$47,335	\$49,685	\$49,685
\$60,006	6	\$49,629	\$52,140	\$52,140
\$67,338	7		\$54,622	\$54,622
	8	\$54,789	\$55,922	\$55,922
	9		\$57,222	\$57,222
	10	\$60,006	\$59,422	\$59,422
	11		\$61,722	\$61,722
	12	\$67,338	\$63,922	\$63,922
	13		\$66,122	\$66,122
	14		\$67,338	\$67,338
	15		\$70,521	\$70,521
	16		\$71,755	\$71,755
	17		\$73,011	\$73,011

Effective July 1, 2016, step movement shall be as follows:

2014 Step	July 1, 2016 New Step*
2	4
3	5
4	6
5	8
7	15

* Payments shall be retroactive to July 1, 2016.

3. Effective January 1, 2017 step movement on the new guide shall be as follows:

July 1, 2016 Step	January 1, 2017 Step**
1	2
4	5
5	6
6	7
8	9
15	17

** Payments shall be retroactive to January 1, 2017.

4. Placement on July 1, 2016 Step System and Step Movement on January 1, 2017 ONLY for Contract Years (2015 to 2017). No “Status Quo.”

SUMMARY OF THE POSITIONS OF THE PARTIES²

PBA Summary

The PBA submits that its Final Offer is more consistent with the statutory criteria set forth in the Police and Fire Public Interest Arbitration Reform Act (“Reform Act”) than the Final Offer of the County. The PBA’s expert financial witness, Joseph Petrucelli, and the County’s

² The positions of the parties are more thoroughly discussed throughout this Opinion.

Chief Financial Officer, Marc Krassan testified that County is on sound financial footing. The wage increases sought by the PBA will help boost the significantly damaged morale of a negotiations unit that is exceptionally underpaid and overworked and that has not seen any meaningful salary increases in at least six (6) years. Indeed, these unit members are the lowest paid in the State. They will remain at that spot and the salary gap between this unit and the next lowest will expand – if the County’s economic proposal is awarded. The PBA’s proposed salary increases will help remedy this problem while staying within the confines of the hard cap.

Conversely, the County’s economic proposal will do nothing more than decimate the morale and continuity of a negotiations unit that is already underpaid and experiencing a significant amount of attrition. It will insure that the unit members preserve the dubious distinction of being the lowest paid in the State. Moreover, the County seeks to use this Interest Arbitration proceeding to re-write the Reform Act.

More specifically, the County argues that the 2% hard cap should not be calculated based on the amount of pensionable salary paid in the terminal year of the contract (2014). Instead, without any legal support, the County asserts that the base should be calculated using only the salary spent on the actual number of current unit members remaining as of the instant Interest Arbitration proceeding. This argument is so contrary to well-established case law regarding the proper method of calculating the value of 2% that the Arbitrator must reject it out of hand. With the proper 2% hard cap calculation in place, the PBA submits that its Final Salary Officer best reflects the 16g criteria.

In its Final Offer, the County seeks to maintain the modified Pitman Schedule (hereinafter, “the Pitman Schedule”).³ The Pitman Schedule was awarded by Arbitrator Susan Wood Osborn in Burlington County Department of Corrections -and- PBA Local No. 249, IA-2013-005 (“Osborn Award”). (See, Exhibit J-4 and J-4A). In awarding that schedule, Arbitrator Osborn specifically stated that the “schedule will not be part of the status quo” and that “the County will have to justify its continuation to an interest arbitrator in the interest arbitration for a successor agreement.” (Id. at p. 110). According to the PBA, the County has not met this burden and the schedule must revert back to a 5/2, eight-hour schedule.

The PBA asserts that the Pitman Schedule exacts a heavy toll on its members. They are compelled to work a day that is 50% longer than their prior 8-hour workday thereby exposing them to specifically longer periods of time to a high stress environment, isolated from the world outside. Indeed, at times, unit members never get to see daylight. The County, when questioned about the goals that it claimed the Pitman Schedule has achieved, admitted that it had not reached those goals. Therefore, consistent with Arbitrator Osborn’s Award, this Arbitrator must grant the PBA’s proposal to return to a 5/2 Schedule.

The evidence presented by the parties at the hearings of November 6 and 9, 2017 strongly supports awarding the PBA’s Final Offer in its entirety. Therefore, the PBA asks the Arbitrator to award its Final Offer without modification.

County Summary

The County first advances its financial position in favor of its salary proposal, over that proposed by the PBA. The testimony of the County’s CFO, Marc Krassan, demonstrates the austere measures undertaken by the County to reduce spending, cut its budget, take advantage of

³ The Pitman Schedule at issue is two (2) days on, two (2) days off, three (3) days on, two (2) days off, two (2) days on, and three (3) days off. Shift lengths are eleven and one-half (11 ½) hours long and with an additional ½ hour unpaid lunch period, for a total workday of 12 hours.

shared services opportunities, sell major County assets, and close down major County facilities (including the CWRC); all to provide tax relief for struggling Burlington County citizens. The PBA's utilization of flawed methods to calculate the 2% cap allowance, combined with its demand for the County to pay the maximum salary increases allowable under its flawed methods is misplaced and flies in the face of the objectives of fiscally responsible government and the County's prudent financial policies.

The most significant issue between the parties, as it pertains to salary, is whether or not the County should be credited with the savings it has achieved by closing the CWRC on or about June 19, 2015, and the corresponding reduction in salary the County achieved through the reduction of approximately 30 full-time correction officers positions. While it should seem logical that the savings the County has achieved should be passed on to its taxpayers, the PBA's salary proposal seeks to apportion the entirety of the salary savings amongst correction officers employed in 2014 that remain employed at the present time. Thus, despite the permanent staff reduction following the closure of the CWRC in June 2015, PBA's proposal ignores the reduction of those 30 positions and spreads the corresponding salary costs among the officers remaining from 2014, resulting in those correction officers receiving individual salary increases of anywhere between 10-20% over the three year contract term. (County Exhibit "N"). Further, the PBA's proposal does not give any salary increases to officers hired in 2015 and 2016.

In sum, the PBA proposes increases (over a three-year contract period) in the amount of \$1,595,530, which exceeds the permissible 2% per year aggregate salary cap for the contract period. (See, PBA 1, p. 5; County 1, Exhibit "C"). On the other hand, the County proposes a three-year agreement based on an overall increase in salaries in the aggregate amount of \$522,605, or 1.85% per year, based on the actual amount of total salary paid by the County to the

correction officers still employed -- following the closure of the CWRC and the permanent staff reduction of approximately 30 correction officer positions.

In doing so, the County maintains steadfast in its commitment that it will not “balance the budget on the backs of the taxpayers,” and has consistently represented that reducing the County budget (spending), tax levy (amount to be raised by property taxes), and the tax rate continue to be priorities in the troubling economic times facing the residents of Burlington County. Significantly, the County’s proposal captures the savings from the reduction in staff from the closure of the CWRC, rather than paying it as bonus/windfall to the remaining correction officers over the three-year term of the contract.

The County undertakes great effort to enact and follow prudent fiscal policies to benefit its taxpayers. Significantly, if the County had agreed to pay all its bargaining units raises of 2% per year and to use all of the legally permissible tax levy cap and interest arbitration cap allocations since 2007, Burlington County taxpayers would unquestionably be in a much worse off position than they are today. Furthermore, utilization of the PBA’s flawed arbitration CAP analysis would result in a situation wherein the only beneficiaries of the County’s decision to close down the CWRC would be the correction officers not the taxpayers. This is so because the PBA’s proposal calls for any saving that the County realized from not having to pay the salaries of approximately 30 fewer officers than in 2014, due to the closure of the CWRC, to be paid to the present correction officers.

The County’s proposal fairly increase salaries by \$522,605, or approximately 1.85%, over the three-year term of the proposed collective negotiations agreement, including the final step for the most senior correction officers, to \$73,011. Certainly this economic outlay is reasonable in light of the County’s financial concerns regarding the plight of its taxpayers who

continue to struggle to make ends meet. The County refuses to balance its budget on the backs of the taxpayers.

Finally, the County has demonstrated good cause to keep the Pitman Schedule. The Pitman Schedule replaced an archaic scheduling system that had, for many years, cost County taxpayers tens of millions of dollars in overtime while, at the same time, depriving most correction officers the opportunity to have weekends off.

The record here shows that the County has met the operational objectives of the Pitman Schedule conditionally awarded by Arbitrator Susan Osborn -- both in terms of the safety and security of the correction officers and the facility and by reducing overtime by millions of dollars annually. Simply stated, the County's taxpayers do not deserve to pay millions of dollars in annual overtime that can be avoided by maintaining the Pitman Schedule which, without question, has fulfilled the operational objectives of the jail.

As demonstrated by the exhibits and testimony presenting during the arbitration hearing, the previous 5/2 eight-hour schedule resulted in paying an average of \$3 million per year in overtime for the jail. In contrast, overtime has been reduced by 80% since the switch to the Pitman Schedule.

In comparison to the 5/2 Schedule, the Pitman Schedule has resulted in each correction officer enjoying a three-day weekend off (every other week). Under the 5/2 Schedule, notes the County, only 44 officers (the most senior) enjoyed weekends off as the result of seniority bidding. Simply stated, the Pitman Schedule has been extremely beneficial to both the County and the majority of the rank and file correction officers.

Based on the foregoing, the County asks the Arbitrator to award its Final Offer and to reject the Final Offer of the PBA, in its entirety.

ANALYSIS AND DETERMINATIONS

Conventional Authority

The undersigned will issue an award within the parameters of “conventional authority”, N.J.S.A. 34:13A-16d; and, N.J.A.C. 19:16-5.7(e). Under conventional authority, an arbitrator’s award is in no way limited by either party’s last offer. The arbitrator has the power to select from either party’s last offer or, alternatively, the arbitrator may use his or her judgment and grant an award that he or she feels is more reasonable than any offers made by the parties. See, e.g., Hudson County Prosecutor and PBA Local 232, P.E.R.C. NO. 98-88, 24 NJPER (¶29043 1997) (Arbitrator did not err by establishing third year salary for county prosecutor investigators which was lower than the employer’s offer).

General Principles

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

Statutory Hard Cap

In calculating the statutory 2% hard cap, the arbitrator is dependent upon the parties to provide the necessary information. In City of Atlantic City, P.E.R.C. No. 2013-82, PERC

addressed the issue of the parties' responsibilities to produce accurate employee information sufficient to enable the arbitrator to make the calculations:

...the parties may not always agree on base salary information and calculations. In those circumstances, the arbitrator must make a determination based on the evidence presented. . . . We [direct] that all public employers in interest arbitration to provide arbitrators with the required base salary information and calculations, including... (1) a list of all unit employees, their base salary step in the last year of the expired agreement, and their anniversary date of hire; (2) Cost of increments and the specific date on which they are paid; (3) cost of any other base salary items (longevity, educational costs, etc.) and the specific date on which they are paid; and (4) the total cost of all base salary items for the last year of the expired agreement.

In that decision, PERC recommended that the arbitrator push the parties to submit the list before the hearing and to reconcile any disputes at the beginning of the hearing. Here, I observe, the parties have complied with the requirement to present the Scattergram and related data called for by the statute.

N.J.S.A. 34:13A-16.7(a) and (b) defines the basis of both the initial calculation, and subsequent years' application as follows:

a. As used in this section:

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

“Non-salary economic issues” means any economic issue that is not included in the definition of base salary.

b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c. 85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the

arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.⁴

In interpreting the law, both PERC and the courts, on appeal, have reached uniform conclusions concerning the methodology for the calculation.

In Borough of New Milford, 2012-53, 38 NJPER 340 (¶116 2012), PERC adopted guiding principles concerning the arbitrator's responsibility in applying the 2% hard cap:

. . . we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties.

Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the

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

employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year, or 6% in the aggregate.

Particularly instructive to this matter, PERC continued:

Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter, added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act. (emphasis added).

With regard to the first component of the calculation, the objective is to determine how much the employer actually paid unit employees for all components of base pay in the last year of the expired agreement. The arbitrator's responsibility to pro-rate pay for new hires and mid-year terminations during the base year was confirmed by PERC in Borough of Byram, P.E.R.C. No. 2013-72, (4/18/13). Once the total base pay paid in the base year is determined, then the 2% is calculated. This is the maximum amount that can be awarded in the first year of the new agreement. It must include amounts the employer will expend (or in some cases, has already paid out) for step increases and longevity increases.

Here, for the reasons which follow, I conclude that neither party complied with the statutory cost-out formula.

The Parties' Flawed Cap Calculations

In the present matter, the calculation of base pay and subsequent years' application of the 2% hard cap is simplified because the contract does not include longevity, increment movement is not automatic (but rather, has been determined through arbitration awards), and both parties propose new salary guides differing in the number of steps, the value of each step, the placement of members on the guide, and the timing of movement along the guide. Ultimately, this Arbitrator is not satisfied with either party's compliance with the calculation of the cap under existing law.

As of December 31, 2014, the salary guide and step placement was as follows:

Existing Salary Guide		Placement
Step	Salary	
1	42,396	
2	45,005	(20)
3	47,335	(6)
4	49,629	(10)
5	54,789	(18)
6	60,006	
7	67,338	(131)
		185

The total base salary paid to these 185 remaining officers in 2014 amounted to \$11,487,880, based on 26 pay periods.⁵ However, during 2014, there were actually 201 officers employed and the total base salary paid to the 201 officers was \$11,739,528. Therefore, consistent with N.J.S.A. 34:13A-16.7(a) and (b) and Borough of New Milford and its progeny,

⁵ I acknowledge that the PBA also proposes as an alternative, higher salary award based on an alleged 27th pay in 2014. However, in rejecting the PBA's argument, I find that a true 27th pay did not naturally occur in 2014. Rather, the alleged 27th pay for 2014 actually was the 1st pay of 2015, but payday fell on January 1, 2015 when administrative offices were closed. In essence, the County simply elected to pay its staff earlier, rather than later. Under these circumstances, I find and conclude that the early payment of what was actually the 1st pay in January 2015 should not be counted as "base salary" for 2014. Although the payment was pensionable, it was not part of the annual base salary for 2014, as contemplated by the existing salary guide. Finally, I find it hard to believe that the legislature envisioned such an odd occurrence when formulating the definition of "base salary" under N.J.S.A. 34:13A-16.7(a). For all these reasons, I will not include the alleged 27th pay within the 2014 base salary calculation.

the maximum 2% increase for application in the first year of the new contract (2015) must be calculated by multiplying 1.02 x \$11,739, 528, which is \$11,974,319 (a \$234,791 net increase over 2014); 1.02 x \$12,213.804 for 2016 (or a \$239,486 net increase over 2015); and 1.02 x \$12,458,080 in 2017 (or a \$244,276 net increase over 2016). In the aggregate, therefore, the maximum net increase that may be awarded to this unit for all three (3) years is \$718,553. For the reasons which follow, I am not satisfied with the accuracy of either party's salary guide proposal under the statutory hard cap formula.

In contrast to a proper cap calculation and application, I find that the net increases in costs of the PBA's salary guide proposal far and away exceed a proper calculation of the 2% hard cap. The PBA sets the 2014 total base salary, not at \$11,739,528, but instead at \$11,487,880, which represents the total base salary paid to the 185 correction officers remaining at the end of 2014. From that low starting point, the PBA posits that its proposal for 2015 brings total base salary to \$11,713,561, which it reasons is \$260,758 below the 2% cap maximum of \$11,974,319 (See, PBA 1).

In my opinion, however, this mix and match methodology is not consistent with the statutory formula. Using the PBA's base year 2014 calculation of \$11,487,880 (which does not include the pro rata salaries of fourteen (14) other correction officers who worked in 2014), I observe that the net dollar increase of the PBA's salary proposal (\$11,713,561-\$11,487,880) is actually \$9,110 under cap (\$234,791- \$225,681), and not \$260,758 under cap, as represented by the PBA.

The gap widens more dramatically in 2016 where the total cost of the PBA's salary guide proposal increases to \$12,204,425. The PBA reasons that its proposal for 2016 falls \$9,380 below the maximum cap total salary for 2016 of \$12,213,805. Although the PBA correctly

represents the aggregate cap figure of \$12,213,805, it neglects to mention that the starting point for the cap calculation in 2014 was \$11,739,528, and not \$11,487,880. As stated previously, I observe, the PBA's proposal improperly mixes and matches the cap dollar values in this case. The actual net increase permissible for 2016 under a proper calculation of the cap is \$239,486. The PBA's 2016 increase over 2015 is actually \$490,864 ($\$12,204,425 - \$11,713,561$), or \$251,378 over the cap.

The flaw in the PBA's hard cap presentation deepens even greater in 2017. The PBA's salary guide proposal for 2017 totals \$12,728,089, which it represents is \$270,008 over the \$12,458,081 cap. Again, the substantial undervaluation by the PBA of the starting point for the cap calculation repeats itself here. The actual net increase in the PBA's 2017 salary guide proposal ($\$12,728,089$) over 2016 ($\$12,204,425$) is \$523,664, or \$279,388 over the permissible \$244,276 cap increase.

In the aggregate, the net salary increases presented by the PBA's salary guide proposal is \$1,240,209, or \$522,209 above the \$718,553 aggregate maximum permitted under a proper application of the hard cap statute and decisional law noted above. In relation to the true 2014 total base of \$11,739,528, the percentage increase corresponding to the aggregate dollar increases proposed by the PBA (\$1,240,209) is 10.5% over three years or 3.52% on average. In passing, I add that the PBA's salary guide proposal in 2017 calls for a delayed increase on July 1, 2017 which means that an equally large, net increase will rollover into 2018.

For these reasons, I cannot accept the PBA's hard cap calculations or its proposed salary guide.

Likewise, I cannot accept the County's representations of the value of its salary guide proposal, due to its flawed cap calculation formula. The County too employs a creative

calculation methodology. The County calculates the base year 2014, not based on total salary paid as of December 31, 2014, which was \$11,739,528, but, instead, based on a retrofitted \$9,450,379 base. The logic of the County is that when the CWRC closed in 2015 approximately thirty (30) correction officers were reassigned to the main jail. According to the County, it would be unfair to the tax-paying public to allocate the 2% hard cap based on the \$11,739,528 figure, which was, after all, attributable to a much larger unit. However, as the PBA correctly observes, the closure of the CWRC took place in June of 2015, not 2014. And, in any event, the correction officers affected were not laid off. Rather, they were reassigned to the jail. Eventually, the compliment of 185 correction officers decreased, not immediately coterminous with the CWRC closure, but due to attrition over time.

Under Borough of New Milford and subsequent decisional law, just as the PBA would not be entitled to apply the 2% hard cap calculation for 2015, 2016, and 2017 by dividing the corresponding dollar increases in each year by fewer than 185 correction officers (even though fewer exist), so too, I find, the County cannot retroactively adjust the 2014 base to account for the attrition which occurred subsequent to that point in time. Accordingly, I reject the County's suggested 2% hard cap formula.

Having said this, however, unlike the PBA's dilemma, the County's aggregate salary guide cost, perhaps not surprising, does not exceed the 2% hard cap. Rather, at \$522,605, the County's total net increase in salary is \$195,948 less than the permissible aggregate of \$718,553. The problem here is that the County has not accurately represented the value of its proposal in percentage terms. The County asserts that it has proposed the equivalent of a 1.85% average increase to the unit, over the three (3) years of the new contract, consistent with an internal pattern of settlement. However, based on the total net increase of \$522,605, I observe, the

correct percentage increase resulting from the County's salary proposal is actually 1.48%, and not 1.85%. To reach this conclusion, one need only divide \$522,605 by \$11,739,528 which, in turn, yields a total percentage increase of 4.45%, or 1.48%, on average. Indeed, only by the County's improper substitution of \$9,450,379 as the 2014 total base salary paid, I note, does a 1.85% average increase result ($\$522,605/\$9,450,379 = 5.53\%$, or 1.84% per year). Accordingly, because I find that the County's 2% hard cap calculation is incorrect, I must weigh the County's proposal in percentage terms for what it actually is -- an average increase of 1.48%.

As will be discussed in more detail below, after a consideration of the 16g criteria, I will fashion an appropriate award of salary increases, consistent with the statutory hard cap. I will also address the other major item in dispute, the work schedule and, lastly, I will address a host of secondary items sought by the PBA in this proceeding.

The 16g Criteria

N.J.S.A. 34:13A-16g provides the following criteria for guidance in fashioning an interest arbitration award:

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

- (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et. seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor

are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

Application of the 16g Criteria

Public Interest Criterion

The Interest and Welfare of the Public, N.J.S.A. 34:13A-16g(1); The Lawful Authority of the Employer, N.J.S.A. 34:13A-16g(5); The Financial Impact on the Governing Unit, Its Residence, The Limitations Imposed Upon the Local Unit's Property Tax Levy, and Taxpayers, N.J.S.A. 34:13A-16g(6); and Other Restrictions Imposed on the Employer, N.J.S.A. 34:13A-16g(9).

The public interest criterion is typically deemed the most significant of all statutory factors to be considered. It is a classification that embraces many other factors and recognizes the interrelationships among all of the statutory criteria, including the interest of the public in knowing that its correctional facility is staffed by competent, dedicated personnel possessing good working morale, and the interest of the public in avoiding higher taxes and/or diminished services. For the reasons which follow, an analysis of the public interest criteria, in my opinion, fully supports a salary award to this group at, or near maximum and a continuance of the Pitman Schedule.

CFO Petrucelli presented a bullet point financial analysis of the County's economic well-being. (Exh. PBA 9). The County's portion of the total Burlington County property tax allocation of \$1,231,643,288.71 is \$184,518,246.08, or 15%. In comparison, municipalities absorb \$262,848,802.63, or 21% of the total and the schools absorb the largest portion, \$784,276,240, or 64% of the total. Impressively, County tax rates have increased by only 1.40% between 2011 and 2016, and between 2015 and 2016 the County reduced its tax rate. The average home in Burlington County was assessed at \$227,909.53 in 2016; and corresponding taxes were \$6,493.90. The County paid for its corrections operations, in part, by raising taxes 1.7% in 2016 (.3% below the 2% levy cap). The current cost-per-resident for funding total

County operations is \$346.00 per year, including \$111.54 per year for the entire cost of the Burlington County Correction Department.

It is acknowledged that property values have decreased in New Jersey and nationwide since 2009. In 2009, the net property valuation for all of Burlington County was \$52.6 billion dollars. After dropping each year to \$45.8 billion dollars in 2014, the values stabilized and, in fact, have increased to \$46.5 billion dollars in 2016 and to \$46.6 billion dollars in 2017 (projected).

Against the backdrop of declining property values, the County has decreased its total tax levy by \$10 million dollars from 2008 to 2016 (or by 5.1%). Meanwhile, the average total tax levy imposed on the public by New Jersey counties during the same period increased by \$34.8 million dollars (a 14% increase). Indeed, during the same period, neighboring Camden, Ocean and Mercer counties increased their total levy by \$60.7, \$58.7 and \$46.2 million dollars, respectively. Similarly, whereas the County has decreased spending by \$29.2 million dollars from 2008 to 2016, spending has increased by \$28.4 million dollars for the average county in New Jersey during the same period. Neighboring Camden, Ocean and Mercer counties increased their total spending by \$47.2, 41 and \$24.4 million dollars, respectively, during the same period.

Other areas of “stress reduction” on the County’s overall finances are noted. The County received “roughly double the \$4.98 million in Annual Transportation Program funding it receives from the Transportation Trust Fund” and “about \$2.3 million in Local Bridges, Future Needs funding” for 2018. (Exh. B-75).

Also, the County has regularly regenerated its budget surplus in the years which will comprise the new agreement:

	Budgeted 2017	Actual 2016	Actual 2015
January 1 Fund Balance	\$17,348,401	\$18,108,861	\$13,918,661
Surplus Used in Budget	\$6,040,000	\$6,040,000	\$2,390,000
Remaining Surplus Fund Balance	\$11,308,401	\$12,068,861	\$11,528,661
Excess from Operations/Revenue		\$5,279,540	\$6,580,200
Fund Balance as of December 31		\$17,238,401	\$18,108,861
Net Change		-\$760,460	\$4,192,040
Percent of Surplus Used	35%	33%	17%

Furthermore, the County itself has created cash reserves within the Department of Corrections, as measured by the budgeted versus actual expenditures on correction officer salaries. The total differential over the past four (4) years, as depicted below, is \$2,526,389:

	Budgeted	Paid	Reserved
2017	\$14,654,431		
2016	\$14,451,579	\$13,136,061	\$1,504,518
2015	\$15,901,457	\$14,199,885	\$716,572
2014	\$17,105,746	\$15,121,704	\$985,542

(Exh. PBA-9, p. 5).

Meanwhile, the County has opened up spending on other items, most recently:

- (1) \$5 million for upgrades to its public safety facilities;
- (2) \$6 million to purchase land to create athletic facilities for Rowan College at Burlington County;
- (3) \$264,500 to purchase and rehabilitate or demolish properties to provide residents “a more aesthetically pleasing view of the lake in Historic Smithville Park”; and,
- (4) \$24 million to upgrade 9-1-1 communications systems.

(Exhs. B-76, B-77, B-78, B-81, B-82).

The County also managed to continue its Meals on Wheels program without cuts in 2017. (Exh. B-80).

Undoubtedly, the County's fiscal achievements are impressive and should be encouraged to continue. A good part of the County's success, however, is attributed to reductions in services and staff – “doing more with less” a phrase quoted by CFO Krassan in his testimony. These reductions stemmed from, in large part, the sale of Buttonwood Hospital in or about 2012 to a private company (thereby resulting in numerous layoffs from County employment) and the closing of the CWRC in June of 2015, which resulted in reassignment of approximately thirty (30) officers to the jail. (*Id.*, 27:10-21). Subsequent to the transfer of CWRC correction officers to the jail, manpower levels decreased through attrition from a high of 199, in 2014 to a low of 162, as of the November 9, 2017 hearing. Consequently, the actual salary costs attributed to this unit have dropped by over two million dollars in the past three (3) years.

Also, without question, the County's finances have been bolstered by a forced switch in correction officer work schedule from the 5/2 Schedule to the Pitman Schedule in 2013, pursuant to the Interest Arbitration Award of Susan Osborn. The unit did then, and does now oppose the Pitman Schedule due to the additional four (4) hours of work per day in a direct supervision jail. Under the 5/2 Schedule, the County incurred substantial overtime expenses for the Corrections Department, an average of \$3 million dollars per year over the term of the expired 2012-2014 contract (or 9 million dollars in total). (County Exhibit “G”). During this time, although the Corrections Department accounted for roughly 20% of the County's unionized workforce, it accounted for approximately 60% of the County's total overtime expenditures. In 2011, for example, the County paid unit members \$11,984,134.86 in base salary and, an additional

\$2,638,716.89 in overtime. (County Exhibit "G"). Thus, overtime was 22% of the salary payments made in 2011.

However, since the implementation of the Pitman Schedule in mid-2013, overtime has dropped precipitously. CFO Krassan produced an exhibit showing that the County paid a recent high of \$3,119,370 in overtime in 2010; followed by \$2,642,920 in 2011; \$2,705,676 in 2012; \$1,486,581 in 2013; \$196,658 in 2014; \$305,602 in 2015; \$471,673 in 2016; and \$412,279 to date in 2017. (County Exhibit "G"). According to Krassan:

...in terms of overtime savings, you know, from the implementation of the previous contract to now, I [think] it was important to go across from 2012 to now. And what we're showing is actual savings of a little more than \$13,000,000 over that period of time, again, comparing it to a recent high of the \$3.1 million. [T2. 63:8-14]

The \$13,000,000 aggregate savings in overtime is the equivalent of well over one year of base salary for the entire unit, and that figure far and away exceeds the difference between the 2% hard cap calculation and the County's 1.48%, on average, salary proposal.

Viewed against the reality that the County is on sound economic footing, the County offers what may be fairly described as a preferential budgetary practice to keep salary increases at the 1.75% to 1.85% level (even though, as discussed previously, the County actually proposes a 1.48% increase to this group). The County's historical budgetary/operational practices have created extra sources of funding salary increases without forcing a conflict with the 2% levy cap. While the County should be commended, not punished for its efforts, the 16g factors must be analyzed as a whole to determine whether an increase above what the County prefers to spend on correction officer salaries is justified. Suffice it to say that, based on the facts of this matter, I am persuaded that the interest and welfare of the public both financial, as it impacts the taxpaying

public, and in terms of the working morale of those guarding often dangerous inmates, is furthered by a salary guide award at or near the hard cap maximum.

By the same token, I find and conclude that the public interest criterion, on balance supports a continuation of the Pitman Schedule.

Comparability

Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of [P.L.1995, c. 425 \(C.34:13A-16.2\)](#); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

Internal Comparisons

Internal comparability can be broken down into two general categories consisting of uniformed and non-uniformed employees within the same jurisdiction. An internal pattern of settlement in the same jurisdiction involving both uniform and non-uniform employees is a significant factor in the determination of a salary award because it usually corresponds to a public employer's budgetary capabilities and connotes uniform treatment.

In this matter, the parties' examined fourteen (14) different collective negotiations agreements. (See, Exhs. G-1 to G-9). Only one (1) negotiations unit, FOP Lodge No. 166 (sheriff officers) has a current negotiations agreement (which expires on December 31, 2017).

All other agreements expired as of January 1, 2015 or 2016. The County has agreed to the following terms and conditions of employment with such other negotiations units:

Negotiations Unit	2014	2015	2016	2017
PBA Local 320, Prosecutor's Detectives and Investigators*	0	Steps increased by 1.5% Average increase 3.46%	Steps increased by 1.5% Average increase 1.53%	Out of Contract but 1.53% carryover
PBA Local 320, Prosecutor's Lieutenants and Sergeants	1.75%	1.75%	1.75%	Out of Contract
Burlington County Assistant Prosecutor Association	1.75%	1.75%	1.75%	Out of Contract
PBA 249A, Superior Corrections Officers	1.64%	Out of Contract	Out of Contract	Out of Contract
FOP Lodge No. 166, Sheriff's Officers, Sergeants, and Lieutenants	Up to 2% Step 1.75% to Top Step	Up to 2% Step 1.75% to Top Step	Up to 2% Step 1.75% to Top Step	Up to 2% Step 1.75% to Top Step
CWA Local No. 1036, Prosecutor's Clerical Employees	Out of Contract	Out of Contract	Out of Contract	Out of Contract
CWA, Superintendent of Elections	2.0%	1.75%	Out of Contract	Out of Contract
CWA, County Library Supervisors	2.0%	1.75%	Out of Contract	Out of Contract
CWA, County Library Employees	2.0%	1.75%	Out of Contract	Out of Contract

The uniformed groups receiving salary increases during the term of what will be the new agreement here, i.e., 2015, 2016, and 2017, and who are entitled to binding interest arbitration, include sheriff officers (below the rank of captain), who are members of FOP Lodge No. 166, and rank-and-file and superior investigators and detectives employed by the Burlington County Prosecutor (two separate PBA Local 320 units).

In my opinion, the closest group for internal comparison is the rank-and-file sheriff officers represented by FOP Lodge No. 166. Both groups interact with prisoners and, until recently, both groups performed prisoner transportation duties.

A little further removed, I observe, are the investigative personnel of the Burlington County Prosecutor. Both groups are directly involved in the criminal justice system, are in the same pension system, and are entitled to binding interest arbitration.

Next, though relatively less related, assistant prosecutors have in common with correction officers the administration of criminal justice (one group in the courts and the other in the jail).

Out furthest on the horizon are the non-law enforcement groups noted above, that is, library employees, clerical employees, etc., who have no direct law enforcement or criminal justice responsibilities, who are in a different pension system, and who are not entitled to binding interest arbitration.

In light of the foregoing, in determining the weight to be accorded to internal comparisons, I am most persuaded by salary statistics concerning (1) sheriff officers and (2) investigators and detectives employed by the Burlington County Prosecutor. As demonstrated by the record before me, the County is correct that, on average, the percent increases granted to sheriff officers and detectives and investigators range from 1.75-1.85%. Having said this, however, the County has not even offered a 1.5% per year salary increase to this unit, let alone a

1.75% to 1.85% increase. Also, it must be acknowledged that the salary guides applicable to sheriff officers represented by FOP Lodge No. 166, and rank-and-file detectives, represented by PBA Local 320, respectively, are substantially more valuable than the existing correction officers' salary guide.

The sheriff officers' salary guide which the County examined in formulating its proposed salary guide in this proceeding is comprised of 12 steps:⁶

Hired Before 1/1/15

Officers Salary Guide 2012 – 2017 with a 1.75% Increase at Step 12

Step	2012	2013	2014	2015	2016	2017
Academy	\$36,500	\$36,500	\$36,500	\$36,500	\$36,500	\$36,500
FTO (0-2 Months)	\$38,500	\$38,500	\$38,500	\$38,500	\$38,500	\$38,500
1	\$40,346	\$40,346	\$40,346	\$40,346	\$40,346	\$40,346
2	\$42,829	\$42,829	\$42,829	\$42,829	\$42,829	\$42,829
3	\$45,046	\$45,046	\$45,046	\$45,046	\$45,046	\$45,046
4	\$47,230	\$47,230	\$47,230	\$47,230	\$47,230	\$47,230
5	\$49,685	\$49,685	\$49,685	\$49,685	\$49,685	\$49,685
6	\$52,140	\$52,140	\$52,140	\$52,140	\$52,140	\$52,140
7	\$54,622	\$54,622	\$54,622	\$54,622	\$54,622	\$54,622
8	\$57,105	\$57,105	\$57,105	\$57,105	\$57,105	\$57,105
9	\$60,001	\$60,001	\$60,001	\$60,001	\$60,001	\$60,001
10	\$62,897	\$62,897	\$62,897	\$62,897	\$62,897	\$62,897
11	\$65,793	\$65,793	\$65,793	\$65,793	\$65,793	\$65,793
12 – 1.75%	\$66,944	\$68,116	\$69,308	\$70,521	\$71,755	\$73,011

Due to the noncompliance of the PBA's salary guide proposal with the 2% hard cap maximum, I considered only the County's proposed salary guide. Here, the County proposed a 17-step guide for all correction officers (new and old), as follows:

⁶ It is acknowledged that a new hire guide was established for sheriff officers hired on or after January 1, 2015. A separate new hire guide was not proposed by either party in this proceeding.

Steps	Current Salary Guide	January 1, 2015	January 1, 2016	January 1, 2017
1	\$42,396	Same guide	\$40,346	\$40,346
2	\$45,004	No increase	\$42,829	\$42,829
3	\$47,335		\$45,046	\$45,046
4	\$49,629		\$47,230	\$47,230
5	\$54,789		\$49,685	\$49,685
6	\$60,006		\$52,140	\$52,140
7	\$67,338		\$54,622	\$54,622
8			\$55,922	\$55,922
9			\$57,222	\$57,222
10			\$59,422	\$59,422
11			\$61,722	\$61,722
12			\$63,922	\$63,922
13			\$66,122	\$66,122
14			\$67,338	\$67,338
15			\$70,521	\$70,521
16			\$71,755	\$71,755
17			\$73,011	\$73,011

Using the existing 2017 sheriff officer’s salary guide for comparison, I find that it takes a rank-and-file sheriff officer 12 years (after the academy) to reach a salary of \$73,011. Under the County’s proposal, in contrast, a correction officer will have to work for 17 years to reach the same salary level. At Step 10, a rank-and file sheriff officer receives \$62,897. However, a correction officer, under the County’s proposal, will receive a comparatively lesser \$59,422 salary at Step 10.

Also, it is clear that the dollar value of a percentage point using a step-by-step comparison between the two guides is of greater value to a sheriff officer, as compared to a correction officer. For example, a percentage point increase for a sheriff officer at Step 10 in 2017 (\$62,897) is \$628.97, whereas a percentage point increase for a correction officer at Step

10 (\$59,422) is \$594.22. Considering that the County granted sheriff officers a salary increase of approximately 1.75-1.85% annually, the relative value of the County's 1.48% proposal to this unit is further diminished by the comparatively lower value of their existing salary guide.

Finally, I observe that the salary guide pertaining to the detectives and investigators of the County Prosecutor's office is much more valuable than either the sheriff officers' or correction officers' guides:

PBA LOCAL 320

(Detectives & Investigators)

PBA 320 Steps:	2013/2014 B	2015 1.5%	2016 1.5%
1	54,482	55,299	56,128
2	57,392	58,253	59,127
3	60,888	61,801	62,728
4	65,068	66,044	67,035
5	67,953	68,972	70,007
6	73,072	74,168	75,281
7	75,631	76,765	77,916
8	79,025	80,210	81,413
9	83,756	85,012	86,287
10	91,856	93,234	94,633

However, the differences between the two groups are notable, including the nature of the work performed, job prerequisites, and, not to mention, that the Prosecutor is the direct employer of the aforementioned unit. And while the County is the funding source for Prosecutor detectives and investigators, the Prosecutor does have a right to petition the County assignment judge to direct the County to provide more funding. Conversely, the Warden lacks such authority. Accordingly, I grant more weight to a comparison of compensation between sheriff and correction officers than I do to a comparison of compensation between detectives/investigators and correction officers.

Based on the percentage increases granted to sheriff officers and the higher dollar value of the sheriff officers' salary guide, I am persuaded that a salary guide formulated by application of the hard cap at, or near, maximum is more closely supported by the internal comparability criterion than is the County's 1.48% proposed average increase in salary.

By the same token, on the surface at least, internal comparisons do not support the County's preferred Pitman Schedule for this group. However, it is not at all clear that an "apples to apples" comparison can be made here. No evidence was introduced showing whether the Pitman Schedule is even practical with respect to the operations of either a sheriff department or a county prosecutor's office. For example, no evidence was introduced by either party showing the extent to which such law enforcement agencies operate in New Jersey, if at all, according to a Pitman Schedule. Therefore, I cannot accord significant weight to internal comparisons regarding the Pitman Schedule herein.

External Comparisons

External comparability consists of comparisons between the group subject to the petition and other public safety employees in similar jurisdictions, other public employees, generally, and private sector comparisons. In weighing salary statistics introduced by a party, I observe that PERC has promulgated guidelines that may be broken down into the following five general categories:

1. Geographic comparability, contiguous jurisdiction or nearby, size of jurisdiction, and nature of employing entity;
2. Socioeconomic considerations, basically a comparison of the type of statistics found in the New Jersey Municipal Data Book and the UCR, such as population density, cost of living, crime rate, violent crime rate, fire incident and crime rate, etc.;

3. Financial considerations, such as the tax collection rate, state aid, budget surplus, surplus history, ratios of tax revenue to total revenue, etc.;
4. Compensation/benefits provided to employees of the comparison group; and
5. Any other comparability considerations deemed relevant by the arbitrator.

Salary

As of the implementation of the 2% hard cap in 2011, comparability of percentage increases alone lost some of its luster. For example, trying to distinguish why one group received a 1.89% per year increase while another received a 1.94% increase may be an exercise in futility. The point is that, since advent of the hard cap, it may be expected that, in most cases, law enforcement units will likely maintain their respective salary standing in the State. For this reason, although I will review percentage-based comparisons, I find it more useful to evaluate salary guide comparisons in conjunction with percentage increases.

On its website, PERC has reported thirty (30) post-hard cap interest arbitration awards encompassing contract years 2012 through 2015 – 7 in 2012 averaging 1.98%; 11 in 2013 averaging 1.16%; 6 in 2014 averaging 1.69%; and 6 in 2015 averaging 1.71%. It is presumed that 2016 and 2017 awards fall within the range observed from 2012 through 2015.

Having said this, however, the true impact of a 2% hard cap is better measured, in my opinion, based on the comparative strength or weakness of a unit’s salary guide.

As to the comparative strength or weakness of this unit’s existing salary guide, I credit the PBA’s presentation of the following graphics:

County	Start Salary*	Top Salary	Guide Steps	End Date
Atlantic	\$36,152	\$76,343	10 or 13	12/31/17
Bergen	\$33,909	\$122,024	9	12/31/17

County	Start Salary*	Top Salary	Guide Steps	End Date
Burlington	\$42,396	\$73,011-\$74,316	13-17	12/31/17
Camden	\$37,152.47 or \$40,822.88**	\$81,824.51 or \$86,104.27	12	12/31/16
Cape May	\$40,000	\$82,000	6	12/31/17
Cumberland	\$29,500	\$74,000	11 or 15	12/31/19
Essex	\$41,257	\$89,814	6	12/31/17
Gloucester ⁷	\$41,412	\$82,492 or \$89,091	6 or 12	12/31/15
Hudson	\$34,088.29	\$83,500.00 or \$86,446.16	12 or 14	12/31/17
Hunterdon ⁸	\$32,311.00	\$63,752.88	16	12/31/19
Mercer	\$40,685	\$88,260	8	12/31/14
Middlesex	\$38,750	\$101,509 or \$102,866	7 or 11, w/ senior pay increases at 15 and 20 years	12/31/20
Monmouth	\$34,006	\$106,000	12	12/31/2017
Morris	\$47,352	\$95,241	13	12/31/2017
Ocean	\$38,000	\$91,961, with \$1,500 stipend for senior officers	19	12/31/2016
Passaic	\$38,301	\$96,250	7	12/31/2014
Salem [^]	\$31,283.20	\$71,926.40	9	12/31/2016
Somerset	\$39,553	\$96,866	14	12/31/2018
Sussex	\$38,686	\$84,599 or increase to \$86,273 at 15 years of service	12	12/31/2016

⁷ Gloucester County closed its jail in 2013. See http://www.nj.com/gloucester-county/index.ssf/2014/07/gloucester_county_officials_reflect_on_jail_closure_one_year_later.html.

⁸ Beginning in 2015, Hunterdon County began outsourcing a majority of its corrections services to Somerset County. See http://www.nj.com/hunterdon/index.ssf/2015/08/hunterdon_county_freeholders_jail_to_close.html.

County	Start Salary*	Top Salary	Guide Steps	End Date
Union	\$39,570 or \$34,128	\$97,919 with increases up \$100,994 based on 20+ years of service; or \$84,470	10	12/31/2017
Warren	\$39,087	\$80,450	10	12/31/2016

(Exhs. J-1 to J-21 (not Joint Exhibits), PBA-4, PBA-5, PBA-7).

* “Academy” or “Training” steps are not included as starting salaries. Starting salaries are defined as the salary received once an officer becomes a full-time corrections officer.

** Where two (2) or more numbers are provided, the CNA includes more than one (1) salary guide based on officers’ date of hire or other criteria.

^ Salaries in CNA are set forth as hourly rates. Figures reflected herein represent annualized salary by calculation of [Hourly Wage Rate] X [2,080 Hours].

As may be extrapolated from the above, as early as 2014, correction officers at the top of an 8-step salary guide in nearby Mercer County earned \$88,260 in base salary, or \$20,922 more than a top step unit member (\$67,338).

Similar comparisons with other corrections units in New Jersey, as of the end of 2016 reveal the following:

County	Top Pay	PBA Offer \$73,030	County Offer \$70,521
Camden	\$81,824.51	-\$8,794.51	-\$11,303.51
Ocean	\$91,961.00	-\$18,931.00	-\$21,440.00
Salem	\$71,926.40	\$1,104.00	-\$1,405.00
Sussex	\$84,599.00	-\$11,569.00	-\$14,078.00
Warren	\$80,450.00	-\$7,420.00	-\$9,929.00

And, as of the end of 2017, the following is observed:

County	Top Pay	PBA Offer \$74,316	County Offer \$73,011
Atlantic	\$76,343	-\$2,027	-\$3,332
Bergen	\$122,024	-\$47,708	-\$49,013
Cape May	\$82,000	-\$7,884	-\$9,189
Essex	\$89,814	-\$15,498	-\$16,803
Hudson	\$83,500	-\$9,184	-\$10,489
Monmouth	\$106,000	-\$31,684	-\$32,989
Morris	\$95,241	-\$20,925	-\$22,230
Union	\$97,919	-\$23,603	-\$24,908

Based on the foregoing, I find that a new salary guide based on a cap calculation at, or near, the maximum permitted is justified based on the comparability criterion.

Work Schedule

Although other corrections facilities follow a Pitman Schedule in New Jersey, a good portion of those jurisdictions provide some form of related benefit or “sweetener.” The following data explains this finding in more detail.

Atlantic County: The work schedule consists of eight (8) hour workdays, five (5) days on duty and two (2) consecutive days off, except in emergency situations. Start and end times of work shifts cannot be changed without thirty (30) days’ notice to affected officers and officers who do not personally agree with such changes may opt out of the next shift and the opening will be filled through shift-bidding. All shifts and workday scheduling are subject to a bidding process governed by seniority. (Exh. J-1, pp. 4-5, 10).

Bergen County: Correction officers work eight (8) hours a day on a 5/2 rotation. (Exh. J-2, p. 6).

Camden County: Mutual agreement to 12-hour shifts in 2014. However, Camden County agreed to increase correction officer salaries by an amount sufficient to pay them for the

additional sixty-eight (68) hours a year that they would work on the 12-hour shift. The parties further agreed to include all forms of paid time off in the computation of “hours worked” for overtime purposes because of the change to a 12-hour schedule. (Exh. J-4, pp. 5-7, 9-10).

Cape May County: Pursuant to mutual agreement, correction officers in Cape May work a 12-hour work schedule with a 3-on, 2-off, 2-on, 3-off, 1-on, 1-off format. In Cape May, unlike in Burlington, the parties agreed to this work schedule. The parties agreed that “leave days will be equivalent to the employee’s normal twelve (12) hour workday.” (Exh. J-5, pp. 19, 25, 27).

Cumberland County: By mutual agreement, correction officers in Cumberland County work a 12-hour work schedule which includes 2 paid one-half hour breaks as well as a paid 10 minute break” (Exh. J-6, p. 24).

Essex County: Correction officers in Essex County work a 5/2, eight-hour schedule with shifts and overtime subject to a seniority-based bidding system (Exh. J7, pp 14).

Gloucester County: Correction officers work either a modified eight (8) hour schedule or a twelve (12) hour schedule, both of which are compensated based on a total of 2,184 work hours per year. Employees working 12-hour shifts are guaranteed 12 full hours of pay, inclusive of two (2) paid forty-five (45) minute meal breaks. Additionally, all contractually guaranteed leaves are computed based on a ratio of 12 hours to 1 full workday. (Exh. J-9, p. 8).

Hudson County: Correction officers work a 5/2, eight-hour work schedule (Exh. J-9, p. 36).

Hunterdon County: Correction officers worked 12-hour days, with 3 days on duty followed by 3 days off duty. (Exh. J-10, p. 22).

Mercer County: Correction officers work a 5/2, eight-hour schedule (Exh. J-11, p. 10).

Middlesex County: Correction officers work a 5/2, eight-hour schedule. Officers are guaranteed a thirty (30) minute meal break and two (2) other breaks of fifteen (15) minutes each (Exh. J-12, p. 7).

Monmouth County: Correction officers work a 5/2, eight-hour schedule with two (2) fifteen (15) minute breaks and a thirty (30) minute meal break. (Exh. J-13, p. 14).

Morris County: Correction officers work a 5/2, eight and one-half hour schedule. Leave time is based on a 1 day to 8 ½ hour standard (Exh. J-14, p. 31).

Ocean County: Correction officers work a 5/2, eight-hour schedule. (Exh. J-15, p. 6).

Passaic County: Correction officers work on a rotating 4/2, eight-hour schedule, inclusive of a thirty (30) minute lunch period (Exh. J-16, p. 6).

Salem County: By mutual agreement, correction officers work an agreed upon 12-hour shift (Exh. J-17, pp. 25-27).

Somerset County: Correction officers work a 5/2, eight-hour schedule (Exh. J-18, p. 33).

Sussex County: Correction officers work a 5/2, eight-hour work schedule (Exh. J-19, pp. 3, 6).

Union County: Correction officers work a 5/2, eight-hour and twenty-minute schedule (Exh. J-20, p. 6).

Warren County: Correction officers work a 4-on duty, 1-off duty, 4-on duty, 2-off duty, 3-on duty, 2-off duty rotation (each day consisting of eight hours and fifteen minutes (Exh. J-21, p. 43).

In sum, I find that 12 of 20 New Jersey county correctional facilities do not operate according to either a Pitman, or modified Pitman, Schedule and 4 of the 8 Pitman jurisdictions

provide some form of sweetener. Therefore, I find and conclude that the external comparability evidence presented does not necessarily tilt the scale in favor of either a return to the 5/2 Schedule or retention of the Pitman Schedule.

Private Sector Wage Data

Although an arbitrator must consider the general level of wage increases in the private sector, an arbitrator is not required to accord such statistics any particular weight. Indeed, unless a party can develop an objective framework for comparing a private sector classification to a public sector classification, the consequence rightfully may be that the private sector comparison will not be outcome determinative, although it must be considered. See, e.g., Borough of Bogota and Bogota PBA Local 86, P.E.R.C. NO. 98-104 (January 28, 1998)(Arbitrator must consider private sector wage increases even in the absence of a showing of job duty comparability).

On June 30, 2017, PERC published its most recent report of private sector wage changes based on data compiled by the New Jersey Department of Labor and Workforce Development. (Exh. C-1(K)). For the fiscal year period July 1, 2015 through June 30, 2016, according to PERC's reporting, private sector wages increased .7%. According to the Bureau of Labor Statistics ("BLS") News Release USDL-16-0159, private sector wages and salaries increased 2.1% from December of 2014 to December of 2015 (County Exh. L); and, according to BLS News Release USDL-17-1445, private sector wages and salaries increased 2.4% from September 2015 to September 2016; and by 2.6% from September 2016 to September 2017 (County Exh. M). Therefore, whereas the PERC study of private sector wage increases would favor a salary award lower than 2%, I observe, a 2% or maximum cap salary increase would be justified based on the private sector wage increases reported by the BLS.

Finally, I note that neither party presented a private sector parallel to county correction officers, even though privately run prisons, such as “Community Education Centers” do exist.

Based on the foregoing, while I have considered private sector wage and salary increases to range from .7% (PERC) to 2.6% (BLS), I accord the private sector experience less weight than the internal and external comparisons involving rank-and-file correction and other law enforcement units.

Overall Terms and Conditions of Employment

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.

Neither party presented a specific argument based on this criterion. The evidence considered by the Arbitrator obviously encompassed the *status quo* terms and conditions of employment upon which both parties propose a change or changes. Other than that, I add that this unit receives overtime based on a weekly standard, a lower than average uniform allowance, standard health benefits, and standard leave time benefits converted to the Pitman Schedule, e.g., 15, 8-hour sick days became 120 hours of sick leave to be used or accumulated. Finally, correction officers in this unit do not receive longevity.

The Stipulation of the Parties, N.J.S.A. 34:13A-16g(4).

The stipulations of the parties are as follows:

A. The parties stipulated that the total salary amount established by Exhibit J-2, \$11,739,579, represents “a strict application of the statute” regarding base salaries as of December 31st of the last year of the preceding contract. (Exh. J-2; T1: 11:21-25; T2, 104:18-23).

B. The parties stipulated that the contract subject to this interest arbitration shall be a three (3) year contract, beginning on January 1, 2015 and ending on December 31, 2017. (T1: 13:25-14:9).

C. The PBA stipulated that Arbitrator Osborn converted leave time to hours based on a change from an 8-hour to a 12-hour day. (T2 193:21-23).

Cost-of-Living Criterion, N.J.S.A. 34:13A-16g(7).

Cost-of-living statistics can be obtained from a variety of sources, such as area newspapers, the New Jersey Department of Labor and BNA publications. Cost-of-living data tends to have a neutralized impact. This is so because employees and employer alike feel the impact of increases in CPI. It is a measure of both how the economy takes a piece of a pay increase (employee and taxpayer alike) and how it adds to the cost of doing business. Compiled and published the by the Federal Bureau of Labor Statistics (“BLS”), the Consumer Price Index (“CPI”) documents and represents changes in prices of goods and services purchased for consumption by American households.

The CPI-U for the Philadelphia-Wilmington-Atlantic City area (covering Burlington County) published October 2017 shows a 0.8% increase over 2016. Both parties’ proposals exceed CPI (as does the undersigned’s award). Neither party presented CPI as a critical factor underlying their respective positions in this proceeding and, hence, I do not accord CPI significant weight.

Next, I will address the continuity and stability of employment criterion, N.J.S.A. 34:13A-16g(8).

The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment

through collective bargaining between the parties in the public service and in private employment.

The continuity and stability of employment incorporates three concepts. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Finally, the continuity and stability of employment also implicates the importance of considering internal settlements, since unwarranted deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability within a jurisdiction. An application of all three prongs of this criterion, I find, militates against the County's proposed 1.48% salary increase and in favor of an awarded salary guide based on an application of the hard cap at, or near, the maximum.

In the present matter, I observe that the County has been running the jail with approximately 162 correction officers (or 23 less than in the beginning of 2015). The County did not hire any new correction officer in 2014. Out of the three (3) correction officers hired in 2015, two (2) left employment; and out of 23 new hires in 2016, four (4) have left. This unit has no longevity benefit, it experiences the second to the lowest salaries in the State, and it has a salary step guide that for the past two contracts could not be economically accommodated by the County in the form of annual step movement. Therefore, during that time period, the guide has existed on paper only.

As to the impact of Pitman Schedule on the continuity and stability of employment, I have been presented with no direct evidence that the Pitman Schedule is the root cause of the exodus of 2 out of 3 new hires in 2015 or 5 out of 23 in 2016. Nonetheless, this does not mean that the Pitman Schedule is "palatable" (to use Arbitrator Osborn's term) to the unit.

Rather, I find that one may fairly conclude that the Pitman Schedule has its drawbacks when applied to a direct supervision jail model. Even Warden Scholtz recognized that a 12-hour day is a “long workday” in the jail.

Unlike a municipal police officer assigned to a Pitman Schedule, a correction officer has a far more confining occupational existence. While a municipal police officer may spend the day in a variety of environments, e.g., sitting radar, engaging in community policing, monitoring a construction site, writing reports, etc., correction officers are, for a lack of a better term, “stuck” with inmates all day long. Therefore, this Arbitrator fully understands and appreciates that not every correction officer is as enthusiastic as the County is over the Pitman Schedule. At the very least, one may reasonably expect that morale may diminish during the later hours of a 12-hour workday spent consistently with inmates.

In light of the foregoing, I have given full weight to the continuity and stability of employment criterion in formulating a new salary guide at, or near, the maximum that also accounts for the continuation of the Pitman Schedule.

The New Salary Guide/Increases 1/1/15-12/31/17

After carefully considering the 16g criteria deemed relevant, and consistent with the statutory 2% hard cap, I will award salary increases in the form of horizontal movement only. The parties’ agreement resulting from this proceeding expires at the end of this month. What is most important, in my opinion, is that the parties leave this proceeding with a reasonably manageable salary guide. With respect to all three (3) years, for the reasons set forth previously, I have fully allocated the statutory cap in each of the three (3) years of the new Agreement. Based on the 2014 Scattergram, the 54 correction officers below guide maximum will receive salary increases of \$1,000 (7/1 2015) - \$1,100 (7/1/2016) and \$1,100 (7/1/2017) for a total cost

of \$87,450 out of the permissible \$718,553 aggregate. In 2017, they will be placed on the new guide.

Based on the Scattergram, the 131 correction officers at max will receive a distribution of the remaining \$631,103 which equals a total salary increase of \$4,817.58, or \$1,605.86, on average. In 2017, they too will be placed on the new guide. Due to the limitations imposed by the 2% hard cap, it is acknowledged that no step movement occurs during the course of this contract. Rather, the purpose of constructing a guide in 2017 is to provide the parties with an opportunity to implement a new salary guide system that is both reasonable in cost and transparent to unit members as to what their career path should look like. The 2014-2015 and 2015-2016 increases result in the following costs

Salary Increases

	2014	7/1/2015	7/1/2016
1.	\$42,396	-----	-----
2.	\$45,000 (20)	\$46,000 (2)	\$47,100 (20)
3.	\$47,335 (6)	\$48,335 (6)	\$49,445 (6)
4.	\$49,629 (10)	\$50,629 (10)	\$51,729 (10)
5.	\$54,789 (18)	\$55,789 (18)	\$56,889 (18)
6.	\$60,006	\$61,006	\$62,106
7.	<u>\$67,338 (131)</u>	<u>\$68,718 (131)</u>	<u>\$70,093 (131)</u>
	\$11,487,880	(+117,395)	(+\$237,138)

Salary Guide Eff. 7/17/17

Steps	Salary
1. (0-6 mos.)	\$39,000
2. (6-12 mos.)	\$41,000
3.	\$42,396
4.	\$43,698
5.	\$45,000
6.	\$47,335

7.	\$48,200 (20)
8.	\$50,545 (6)
9.	\$52,829 (10)
10.	\$55,409
11.	\$57,989 (18)
12.	\$60,598
13.	\$63,206
14.	\$67,335
15.	\$69,430
16.	\$72,436 (131)
Total Net Increase Over 2016	(+ \$364,019)

In addition, I will award retroactive increases to July 1, 2015 to all correction officers who retired (any retirement recognized by the Board of Trustees, Police and Fire Retirement System) and to the estate of any correction officer who passed away during the window of retroactivity.

Finally, due to the ongoing tension between the value of step movement on the awarded salary guide and the 2% hard cap, which is still in effect as of the writing of this Award, and due to decisional law calling into question the propriety of awarding increments that do not take place until the first year of the new contract, see, State of New Jersey (Division of State Police) and State Troopers Fraternal Ass'n, P.E.R.C. No. 2017-20 (2017), I must reject the PBA's request for automatic, annual increment movement along the guide, effective December 31, 2017.

Analysis of Secondary PBA Proposals

Having addressed what I consider to be the primary items in dispute, I acknowledge that the PBA has proposed numerous other changes in terms and conditions of employment that may be fairly characterized as secondary in nature, and categorized as follows:

Additional Monetary Items – (increased uniform allowance; daily overtime; double pay for all work in excess of 16 consecutive hours; and requiring the County to reimburse each officer for the cost of a required landline telephone).

Conversion of Leave Time – In response to the Arbitration Awards of Susan Osborn, PBA seeks to define a day as 12 hours and eliminate the conversion of leave time to hours.

Other Leave Time Benefits – (Use of paid leave prior to or concurrent with unpaid FMLA; a new vacation schedule).

Seniority Benefits – (Openings shall be filled by Unit seniority).

Personal Day Usage and Grievance Procedure/Fixed Remedy – (personal day requests).

Miscellaneous – (Carrying two (2) holidays, jury duty – i.e., schedule alignment; officer's Bill of Rights).

In the interest of economy, I will briefly address each of the foregoing groups of proposals.

Additional Monetary Items

As to additional monetary items, after awarding a salary guide at, or near the maximum permitted, I am not inclined to add significant costs to the package. More specifically, I acknowledge that the current uniform allowance provided has remained steady at \$750 for some time. Under Article III, "Uniform Allowance", the County issues uniforms, gear and accessories, and officers use the annual lump sum payment to replace and maintain same. This record does not contain an itemization of maintenance and replacement costs that would allow for a more informed decision. While officers should not be expected to pay more out of pocket than the County provides for these items, on the other hand, the annual lump sum payment is not designed to be an alternative source of income. Suffice it to say that this record does not warrant

a conclusion that the annual lump sum payment is inadequate to cover the actual costs of uniform maintenance and replacement. Accordingly, I deny this proposal.

The PBA's daily overtime request is in response to the Pitman Schedule, especially in recognition that a 12-hour day is a long day, in and of itself. However, I observe that daily overtime was not a benefit under the 5/2 Schedule either. In my opinion, under the Pitman Schedule, the combination of 182 days off per year and weekly overtime after 34.5 hours (during the three-day workweek) and 46 hours (four-day workweek) seems to me to mitigate the need for daily overtime as well. Certainly, in many cases, an officer who works beyond 12 hours in any one day will likely earn weekly overtime as well, absent taking paid or unpaid leave not counted toward overtime during the same workweek. On this point, I have been presented with no data showing the number of correction officers who worked greater than 12 hours in one day without the extra time translating into weekly overtime. Similarly, I have been presented with no evidence showing that correction officers are significantly held over more than 16 consecutive hours in a given workday so as to even entertain the notion of double time pay. A similar lack of data, even anecdotal evidence is observed with respect to the PBA's proposal to exclude those officers from mandatory overtime on the shift immediately preceding vacation, using a holiday, or personal day. For all these reasons, I conclude that the PBA has not met its burden to prove that a change in the status quo concerning overtime is warranted.

Finally, I have received no evidence showing that individual correction officers use a landline telephone only for work. Accordingly, I reject the PBA's proposal for reimbursement for requiring officers to be reachable via a landline telephone.

Conversion of Leave Time

Arbitrator Osborn fully addressed the subject of paid leave conversion in connection with the switch from the 5/2 to Pitman Schedule in 2013 and in a subsequent decision encompassing the hourly equivalent of a holiday (Exhibits J4 and J4a). I adopt her findings as to the appropriateness of an hourly conversion, e.g., 10 vacation days = 80 hours of vacation time to be used over 12-hour workdays. Additional leave time necessitated by the PBA's proposal will only trigger increased overtime and chip away at one of the core benefits of the Pitman Schedule to the County. Also, as noted previously, correction officers have 182 days off built into their schedules. Accordingly, I deny the PBA's proposals seeking to undo the Osborn Awards concerning the topic of paid leave conversion. I include the PBA's proposed new vacation schedule in this determination as well.

Other Leave Time Benefits

The PBA proposes to allow officer's the option to use paid leave prior to or concurrent with unpaid FMLA leave. The County understandably responds that it is not interested in allowing a correction officer to save paid leave for other days off in addition to FMLA leave. Simply put, the more days off a correction officer has in his/her bank (legally or contractually) the more likely it is that the County will incur replacement costs, e.g. overtime. Finally, no evidence has been presented to suggest that unit members have been placed on FMLA and did not want to be paid for such leave by trading in paid leave days or hours. Accordingly, I deny the PBA's proposal.

Seniority Benefits

PBA President Swenson testified that seniority-based benefits, such as, vacation bidding are confined to one's squad. If a squad has a high number of senior officers, less senior officers

will not be able to enjoy premium time off, such as, Christmas. However, those “less senior” officers may actually have more seniority than members assigned to a different squad and, yet, they cannot compete with them for seniority-based benefits, such as vacation leave. As a remedy, the PBA proposes to open up bidding on positions by unit, instead of by squad. This means, however that once a position becomes open in a unit, bidding would be opened up much wider and the successful bidder’s assignment will open up for bidding and then the replacement officer’s assignment opens up, and so on. This is the type of drain on administrative resources that existed under the 5/2 Schedule and I do not believe it should be revisited here. Moreover, on direct examination, PBA President acknowledged that Warden Scholtz “has been putting positions out and things of that nature” (T1 102:3-9). Accordingly, while I encourage the Warden and PBA to continue to work cooperatively together to balance the legitimate concerns of both parties, I will not award the PBA’s proposal.

Personal Day Usage and Grievance Procedure/Fixed Remedy

This proposal is denied to the extent that it seeks to commit the County to 100% abandon overtime expenses as a justification to deny a personal leave request. Notably, I have been presented with no evidence that the Warden or other jail administrators are categorically denying any personal leave request, no matter how compelling, based on an overtime concern. And, a review of Article IX of the existing contract does not state that a personal leave request will be denied if it causes overtime. Ultimately, personal days must be used or they accumulate from year to year under the contract. Thus, management has a built-in incentive to grant personal leave requests during the calendar year in which they are made to avoid an even larger void in the future. Based on this record, I must deny this portion of the PBA’s personal leave proposals.

I also deny the PBA's request for an expedited arbitration procedure for each personal day request denied or, alternatively, for an award of double damages (2 days pay). The PBA correctly notes that a personal day request denial would be moot by the time a case reaches non-expedited arbitration. However, most denied leave request disputes heard at arbitration are not timely, at least not in the preemptive strike sense. Rather, if an employer is deemed to have improperly denied a leave request, then an arbitrator has broad discretion to remedy the injustice, so long as the remedy is within the rubric of a make-whole remedy. The PBA has presented no evidence or treatise showing that arbitrators are at a loss as to how to remedy such violations.

Also, the PBA may wish to be careful for what it wishes for. If such an expedited arbitration procedure was adopted, I observe, each and every member denied a personal leave request may be incentivized to board the arbitration train. Before the PBA may realize it, that train could go out of control and even off the rails in the form of a drain on its treasury.

Finally, conspicuously absent from the record is a presentation showing a history of grievances filed over personal leave request disputes or a single arbitration award on the subject. And while I recognize that the PBA may reply that this is due to futility associated with the timing problem identified, one would reasonably expect to see at least one grievance arbitration dispute that may have served to press the County to take the PBA's concerns more seriously, especially if the problem is so pronounced, as alleged. However, in contrast to reasonable expectations, I find that the record before me is barren.

For all these reasons, I deny the PBA's personal leave proposals.

Miscellaneous

This category of secondary proposals, I note, includes carrying two (2) holidays, jury duty schedule alignment, and an Officer's Bill of Rights. I will deny these proposals due to a

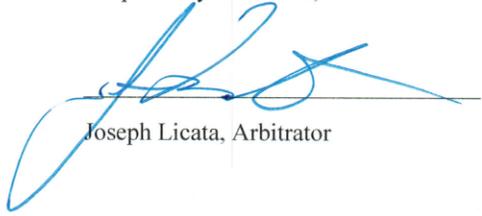
lack of evidence showing an actual detriment experienced by a PBA member with regard to an inability to carryover two holidays, an inability to align one's work schedule with jury duty and/or with respect to existing procedures and protections sought to be changed by the PBA's proposed Officer's Bill of Rights.

AWARD

1. Duration: January 1, 2015 through December 31, 2017.
2. Salary Increases: full net dollar increases permitted by the statutory 2% hard cap, as more thoroughly set forth on pages 53-55 herein. All increases are retroactive to January 1, 2015 and apply to all active correction officers, those who retired (any retirement recognized by the Board of Trustees, Police and Fire Retirement System) and to the estate of those who have passed away during the window of retroactivity.
3. Work Schedule: The 12-hour work schedule currently in effect shall be retained as the status quo until and unless a change is made through subsequent negotiations.
4. All other proposals by the County and the PBA not awarded herein are denied and dismissed.
5. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.
6. Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. My Award also explains how the statutory criteria factored into my final determination.
7. I have also calculated the net, annual economic change in base salary over the three year term of the new agreement, as follows:

2015 -- \$117,395; 2016 -- \$237,138; and 2017 -- \$364,019 – collectively \$718,553 (pursuant to N.J.S.A. 34:13A-16.7 A and B).

Respectfully submitted,



Joseph Licata, Arbitrator

Dated: December 8, 2017

State of New Jersey)
 :SS
County of Bergen)

On the 8th day of December, 2017, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.



Jacqueline M. Licata

JACQUELINE M. LICATA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 11/9/2020

