

The County and the PBA are parties to a collective negotiations agreement with a term of January 1, 1994 to December 31, 1995.¹ The employees included in the bargaining unit are Corrections Officers employed at the Adult Correction Center ("Jail").

The proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render the opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension. The parties mutually agreed to extend the time for the issuance of a decision to October 25, 1997.² Pursuant to the parties' agreement and in accordance with N.J.A.C. 19:16-5.7(f) of the PERC's Rules, the parties submitted revised final offers prior to the close of the hearing on July 13, 1997.

In the absence of an agreement to the contrary, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria in subsection g. of this section."

Statutory Criteria

The statute requires the arbitrator to:

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

¹Joint Exhibit J-1.

²See stipulated agreements of June 13 and September 4, 1997.

(1) The interests and welfare of the public. Among the items the arbitrator 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) Comparisons of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wage, hours, and conditions of employment of other employees performing the same or similar service 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.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received.

(4) Stipulation of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).

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

affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority 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. (N.J.S.A. 34:13A-16g)

Final Offer - County

The County's final offer is as follows:

1. **Duration:** January 1, 1996 to December 31, 1998.
2. **Wages:**
 - A. 1996: \$500 January 1 and \$500 July 1; Added to base.
1997: \$600 January 1 and \$400 July 1; Added to base.
1998: \$700 January 1 and \$450 July 1; Added to base.
 - B. 5% increase on minimums up to \$25,000 effective April 1, 1997
(Training Rate is not the minimum and remains unaffected.)
 - C. A \$250 performance incentive based on a numerical score and objective criteria.
3. **Overtime:**

Overtime will be calculated on a weekly rather than daily basis. Time-and-a-half will begin after the 40th hour for 40-hour per week employees. Authorized, paid time-off for holidays, vacation, bereavement

and personal time shall count toward the 40-hour calculation. Unpaid or unauthorized leave shall not be counted. Paid sick-time taken or scheduled in advance of an employee's overtime, or sick-time accompanied by a doctor's note or otherwise authorized by the employee's supervisor or designee pursuant to N.J.A.C. 4A:6-1.3 g & h shall also count toward the calculation of overtime.

4. Compensatory Time:

Eliminate all compensatory time.

5. Health Benefits:

The union will agree to limit health care options to the Traditional Plan, the PPO and three HMO's effective January 1, 1997. Management agrees not to require employee co-pay for health benefits during 1998.

6. Bereavement Leave:

- A. Spouse, child, or parent, persons in spousal relationships - 4 days
- B. Brother, sister, grandparents, grandchildren or relative continuously residing in the employee's household - 3 days
- C. Current In-laws, Aunts, Uncles, Nieces and Nephews - 1 day

No annual cap on bereavement time.

7. Pay Periods:

The Union will agree to a change to semimonthly rather than biweekly pay, if other bargaining units agree and the County elects to change over. This will save about \$350,000 per budget year by not having to budget for an accrual.

8. Child Care Assistance Program:

Weekly reimbursement will be increased as follows:

- A. \$18,001 to \$25,000 per annum will increase \$5.00 per week from \$20.00 to \$25.00.
- B. Employees over \$25,000 per annum will remain the same.

9. Shift Bidding:

Eliminate.

Final Offer - PBA

The final offer of the PBA is as follows:

1. Duration January 1, 1996 - December 31, 1998.
2. Wages:
 - A. 1/1/96 -- 4.25% across the board
 - B. 1/1/97 -- 4.75% across the board
 - C. 1/1/98 -- 5.25% across the board
3. Clothing Allowance:
 - A. Increase by \$200 commencing 1/1/97
 - B. Increase by \$300 commencing 1/1/98
4. Compensatory Time:

Increase available number from 7 days to 12 days.
5. Shift Differential:

Third Shift increase by \$.50 per hour (total differential \$1.00 per hour).
Second Shift increase by \$.35 per hour (total differential \$.75 per hour).
6. PBA Time:

Increase to 100 hours allotted PBA time for Executive Board members.
7. Shift Bidding:

Remove from Appendix E -- p. 78 #6, and p.77 ¶D of current agreement -- one rebid in December 1997, effective January 1998.

Positions of the Parties

County of Middlesex

The County provided documentary evidence and testimony from Warden Rudolph Johnson and Administrative Officer Rick van den Heuvel.

The County introduced the following exhibits:

- C-1 Roster of Bargaining Unit Employees: Name, Salary, and Date of Hire (Compiled April, 1997; as of March 31, 1997)

- C-2 Collective Negotiations Agreement Between the County of Middlesex -and- PBA Local No. 152, Corrections Officers, effective January 1, 1994 through December 31, 1995
- C-3 1997 Seniority Breakdown of PBA Local No. 152
- C-4 Scattergram of PBA Local No. 152
- C-5 Revised New Jersey Police and Fire Compulsory Arbitration Act, N.J.S.A.34:13A-16(g)
- C-6 Adopted PERC Regulations Implementing Revised Interest Arbitration Law.
- C-7 Memorandum of Law on Recent Changes to the Interest Arbitration Law
- C-8 Governor Whitman's Conditional Veto Message (December 18, 1995)
- C-9 PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994)
- C-10 Washington Tp. V. New Jersey PBA, Local 206, 137 N.J. 88 (1994)
- C-11 John M. Fox. Morris County Sheriff v. Morris County Policemen's Association
PBA 151, 266 N.J. Super. 501 (App. Div. 1993)
- C-12 County's Final Offer
- C-13 Union's Final Offer
- C-14 Supply of Available Labor - New Jersey Department of Personnel List of Eligibles for the position of Corrections Officer, disposition date 5/12/97
- C-15 1995 Overtime figures report
- C-16 1996 Overtime figures report
- C-17 Middlesex County Correction Center Injury and Time Loss Analysis
- C-18 "Jail labeled a hellhole proves clean and orderly", Home News, 10/27/96
- C-19 "County Jail to receive more guards", Star-Ledger
- C-20 Officer to Inmate Ratios
- C-21 "Staff/Inmate Ratios: Why It's so Hard to Get to the Bottom Line," Barbara Krauth, U.S. Dept. Of Justice, National Institute of Corrections
- C-22 Staffing Standards per the National Institute of Corrections
- C-23 Adult Correction Center Minimum Staffing Report
- C-24 Wages, Longevity and 1996 Overtime of Corrections Officers
- C-25 Prior Increases for Middlesex County Corrections Officers
- C-26 Comparative Analysis of Base Salary, Number of Steps and Minimum and Maximum Salaries of Corrections Officers statewide
- C-27 Comparative Analysis of Holidays, Personal Days, Sick Days, Vacation and Longevity for Correction Officers statewide
- C-28 Comparative Analysis of Total Income for Corrections Officers with 8 years of service, Statewide comparison
- C-29 Statement of Settlement for AFSCME Local 3440, Council I73, 1/1/96-12/31/98
- C-30 Roster of AFSCME Local 3440, Council 73
- C-31 Collective Negotiations Agreement between Middlesex County and AFSCME Council #73, Local 3440 - 1993-1995
- C-32 Collective Negotiations Agreement between Middlesex County and Middlesex County Prosecutor's Superior Officers Association, FOP Lodge No. 41, 1995
- C-33 Collective Negotiations Agreement between Middlesex County and Middlesex County Prosecutors' Detectives and Investigators, PBA Local 214, 1995

- C-34 Collective Negotiations Agreement between Middlesex County and Middlesex County Superior Sheriff's Officers, 1995
- C-35 Collective Negotiations Agreement between Middlesex County and Middlesex County Sheriff's Officers, 1995
- C-36 Collective Negotiations Agreement between Middlesex County and Middlesex County Superior Corrections Officers, PBA Local 152A, 1994-1995
- C-37 Collective Negotiations Agreement between Middlesex County and Middlesex County Police, PBA Local 156, 1995
- C-38 Collective Negotiations Agreement between Middlesex County and Middlesex County Park Police, Superior Officers Association, FOP Lodge 95A, 1995
- C-39 Collective Negotiations Agreement between Middlesex County and Weights and Measures, PBA No. 203, 1995
- C-40 Collective Negotiations Agreement between County of Middlesex and HeadNurses and Supervisory Division, Local No. 1564, 1994-1995
- C-41 Collective Negotiations Agreement between County of Middlesex and Roosevelt Hospital Non-Professional Employees, December 21, 1992 - December 12, 1995
- C-42 Collective Negotiations Agreement between County of Middlesex and Middlesex County Professionals, 1991-1995
- C-43 Collective Negotiations Agreement between County of Middlesex and AFSCME, Council #73
- C-44 Median weekly earnings report, BNA, August 15, 1996
- C-45 BNA's State and Local Government 1995 Bargaining Preview
- C-46 Stipulation of Settlement, State of New Jersey and Communications Workers of America, 7/1/95-6/30/99
- C-47 "AFSCME Members Ratify State Contract", Star-Ledger, 7/10/95
- C-48 "College staffers breath easier yet express doubts on contract settlement" Star-Ledger February 27, 1996
- C-49 State of New Jersey and State Law Enforcement/State Policeman's Benevolent Association, Docket No. IA-96-013 (Pierson, J.J., 1/31/97)
- C-50 Montclair State University and New Jersey's State Colleges (Teachers) (7/18/96)
- C-51 Middlesex Corrections Officers Weekly Wage compared to private sector Weekly Wage
- C-52 Private Sector Salary Increases compared to Middlesex County Corrections Officers average increases
- C-53 "St. Mary Hospital Workers OK 5-year pact," Jersey Journal, July 2, 1996
- C-54 "Union bargaining power shrinks with lag in pay raises." Star-Ledger, March 28, 1996
- C-55 Collective Bargaining Wage Settlements, BNA Labor Relations Reporter, 1996 New Jersey entries
- C-56 Weekly Earnings of Manufacturing Production Workers in Dollars
- C-57 Hours and Earnings of Production Workers in New Jersey - (Provided by New Jersey Department of Labor)
- C-58 Turnover Rate for Middlesex Corrections Officers - 1992 to present
- C-59 List of Middlesex County Corrections Officers laid-off between 1/1/95 and 12/31/96

- C-60 New Jersey Labor Force Estimates - 1/24/97
- C-61 N.J. Dept. of Labor - Industry and Occupational Employment Projections through 2005 (December 1996)
- C-62 "Jobless Rate Rises Sharply in Jersey," Newark Star-Ledger, January 20, 1996
- C-63 "In Hudson, 85 jobs lost as police force disbands," Star-Ledger, 9/28/96
- C-64 "Layoffs affected Quarter Million Workers' in 1st quarter of 1996, BNA Labor Relations Reporter, August 5, 1996
- C-65 BLS First Monthly Report Shows Mass RIF Statistics, BNA Labor Relations Reporter, December 2, 1996
- C-66 "135 laid off at HIP health centers," Jersey Journal, July 30, 1996
- C-67 "State targets 252 workers for layoffs starting today," Jersey Journal, July 6, 1996
- C-68 "Union Camp to cut costs by axing 400 jobs," Newark Star-Ledger, December 31, 1996
- C-69 "Defense firm seeks survival" Star-Ledger, January 16, 1997
- C-70 "GM to close its plant in Ewing, idling 900" Star-Ledger, February 4, 1997
- C-71 "AT&T to cut 40,000 jobs in three years," BNA Labor Relations Reporter, January 9, 1996
- C-72 Business Failures (provided by New Jersey Department of Labor, dated December 1996)
- C-73 "Trust Co. Slashing 90 jobs", Jersey Journal, April 3, 1996
- C-74 Local Budget Cap Law
- C-75 Legislative policy, N.J.S.A. 40A:4-45.1
- C-76 "Privatized Nursing Home may not heal county budget; Star Ledger, April 1, 1997
- C-77 "Middlesex uses one-shot windfalls to deliver on promise of tax cut", Star-Ledger, 2/96
- C-78 "County relies on golf-lease windfall for small '96 property tax reduction", Star-Ledger, 4/5/96
- C-79 "Counties rebuffed on funds for poor", Star-Ledger, July 16, 1996
- C-80 Fiscal Year 1996/Calendar Year 1995 State Aid Allocations
- C-81 Concentration of Distressed Cities - State-wide analysis
- C-82 Municipal Distress Index (MDI) October, 1993
- C-83 State-wide comparison of selected demographics
- C-84 1994 Average Tax Rate Per Parcel of Land
- C-85 Average Gross Income
- C-86 CPI 1992 to 1995 vs. Middlesex County Corrections Officer Salary Increases
- C-87 CPI for 1996 was 2.9, BNA, January 16, 1997
- C-88 CPI for 1995 was 2.8, BNA, July 18, 1996

The interests and welfare of the public

The County asserts that the arbitrator must consider the "interests and welfare of the public" in considering his award. N.J.S.A. 34:13A-16(g) (1). The County cites the Appellate Division decision in Hillsdale, noting that the public interest factor "focuses

in part on the priority to be given to the wages and monetary benefits of public employees within a municipality's budget and plans." Hillsdale, 263 N.J. Super. at 188. (C-9) Further, the County submits that the Court stated that "it is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award" since "that would also conflict with other enumerated factors and render them hollow."

The County also notes that the Supreme Court in Hillsdale emphasized that "the public is a silent party" to the interest arbitration process, and that "an award runs the risk of being found deficient if it does not expressly consider" the public interest. Hillsdale, 137 N.J. at 82-83. (C-9)

The County argues that the public interest has moved to the forefront of interest arbitration, not only in terms of the Reform Act itself, but also in terms of recent case law. The County asserts that the public interest is clear: the taxpayers have expressly commanded the Freeholders to not increase taxes and to streamline government. The County further asserts that the Freeholders determined to implement that mandate by the adoption of a budget that included the same set dollar increase for every County employee. (C-89)

The County argues that arbitrators have historically interpreted this criterion as requiring that public safety employees be well compensated. Again, citing the Appellate Division decision in Hillsdale, the County asserts that the Appellate Court interpreted the criterion differently, holding that the criterion "focuses in part on the priority to be given to the wage and monetary benefits of public employees within [a public employer's] budget and plans."

The County asserts that its wage increases fall foursquare into the County's budget priority. On the other hand, the County asserts that the increases sought by the PBA exceed the budget greatly, and run counter to the public's interest in maintaining a no-tax increase budget. The County argues that any award which exceeds the carefully planned, taxpayer-driven budget runs counter to the public interest.

The County observes that when discussing the interests and welfare of the public, it is important to recognize that the public's interest requires the Adult Correction Center to be properly and safely staffed. The County maintains that the Adult Correction Center is both properly staffed and safe.

The County states that it provided unrefuted evidence that when compared to National Staffing Standards, the Adult Correction Center is actually over staffed. (C-21, C-22, C-23; testimony of Warden Rudolph Johnson). Additionally, the Adult Correction Center's officer/inmate ratio is below the state average. (C-20) The County notes that the desirability of working at the Jail is also supported by the evidence that the annual turnover rate is a mere 10% (C-58)

The County acknowledges that Corrections work includes an inherent level of danger. However, the County asserts that the Middlesex Jail has minimized dangerous situations, using state-of-the-art management techniques and equipment. Furthermore, the County points out that the Jail has not received a single citation from the State for the past four years and that the Adult Correction Center Report for 1996 states that, although the Jail is crowded, it is safe and violence and disruptions are infrequent.

Additionally, the County provided evidence that the number of lost time incidents at the Jail was decreasing greatly noting that only 10% of lost time accidents are due

to inmate assault. (C-17) Additionally, the County provided evidence that the Jail is clean, orderly and well-run. (C-18) Thus, although not seeking to minimize the safety concerns raised by the PBA, the County maintains that the Middlesex County Jail is succeeding in minimizing all types of potential danger to its Corrections Officers.

The County observes that the PBA sought to establish that the Jail was dangerous, in part due to the intake of state inmates. However, the County notes that PBA testimony confirmed that maximum security inmates comprise only 2% of the facility's population.

The County cites the testimony of Corrections Officer Mike Buczynski that Middlesex Corrections Officers are a "new generation" of Corrections Officers, with a proactive attitude toward corrections and this management approach requires fewer Corrections Officers. In response to Buczynski's testimony that the number of Corrections Officers had decreased in the past few years, the County points out that 30 new Corrections Officers were hired in May of 1997. Furthermore, Warden Johnson testified that at no time did the Corrections Officers staff dip below 190 positions. Warden Johnson also testified that staffing was one of the criteria evaluated by the State; as set forth earlier, the State found that the Jail met all of the criteria, including staffing, for four years running. The County submits that PBA testimony confirmed that 18 posts were "civilianized" resulting in 18 additional Corrections Officers to perform line functions, and actually supervise the inmates.

The County concedes that mandatory overtime has been an issue in the past. However, the County contends that Jail management has made great strides in reducing mandatory overtime. The County points to the testimony of Warden Johnson, confirmed by PBA testimony, that in the first week the 30 new officers were hired,

mandatory overtime decreased 90%. Additionally, the civilianizing of certain positions provided 18 additional officers to work the line and further reduce overtime. Furthermore, the County notes that management reconfigured the midnight shift so that 60 officers went from working four 10-hour days to five 8-hour days. Thus, each officer worked an additional day per week, which equates to another 12 Corrections Officers available to further reduce mandatory overtime. These changes represent an increase of approximately 60 officers which is almost one-third of the workforce. Thus, the County maintains that management is instituting measures which significantly reduce overtime.³

The County contends that the Jail has a near nonexistent violence rate and thorough safety precautions to deal with HIV-positive patients. The County notes that the testimony of Corrections Officer Cruz confirmed that there had never been a murder in the facility, there had never been a case of an inmate hospitalized due to violence, there had never been a case of a Corrections Officer hospitalized and there had never been hostages taken at the facility. The County maintains that the public's interest in a safe, adequately staffed facility is clearly met by the current conditions of the facility.

The County maintains that its wage proposal satisfies the taxpayers' express mandate and meets the public's interest. The County argues that the PBA provided no evidence that its salary increase would improve the level of services provided by the Corrections Officers. Thus, with respect to the interests and welfare of the public, the County maintains that its offer should be awarded.

³The County asserts that the reduction of overtime also supports the County's position that no increase in compensatory time is necessary.

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

The County contends that the evidence demonstrates that the Corrections Officers are more than adequately compensated when compared to other Middlesex County employees, when compared to other County Corrections Officers, and when compared to comparable and similar jobs in the private sector.

The County argues that the common practice in interest arbitration proceedings used to be limited to a comparison of the "going rate of settlement" between other particular units, such as the going rate of settlement of County Corrections Officers. However, the County asserts that the Appellate Division in Hillsdale specifically rejected the practice of basing awards solely on the "going rate of settlement" and further that "over-reliance on comparability inevitably leads to what is known as 'whipsawing' or a domino effect of 'keeping up with the Jones'."

The County maintains that its offer is reasonable when compared to private employment in general. The County notes that private sector wages increased by 3% in 1995 at the same time Corrections Officers were receiving 4.3%. (C-52) The County also notes that the average Corrections Officer's weekly wage was \$757.50 compared to \$566.81 for private sector. (C-51). The County cited other private sector wage settlements which contained wage freezes in one or more years of the contract. The County maintains that its final offer is far closer to the rate of private sector settlements than the final offer of the PBA.

The County maintains that its final offer, which equates to an average percentage increase of 2.6% is in line with recent private sector settlements. Thus, the County submits that its final offer is more reasonable in terms of the private sector comparability criterion.

The County asserts that the PBA provided a cost-out which is based on incorrect data. The PBA proposes that the starting base salary figure for 1996 is \$7,273,162, however, the County asserts that the current actual base (C-1, Supplemental Cert. cost-out) before 1996 increases have been applied is \$8,075,123. Furthermore, the County notes that the PBA's cost-outs include a "turnover savings" factor to reduce the cost of its proposal. The PBA's turnover savings is premised on 100% of the officers who leave being at top step. The County contends that there is no evidence on the record that supports this premise. Furthermore, the "turnover savings" will not occur all at the beginning of the year. For some portion of the year (and it could be almost all of the year), while the top step officer is employed, the County will realize little or no "turnover savings". Thus, without factual data to support the PBA's "projected turnover savings", the County suggests that this data is wholly speculative and should be disregarded.

The County asserts that its offer is reasonable when compared to public employment in general. The average base salary for Corrections Officers is \$39,390. (C-4) This is a vast difference from the average salary for an AFSCME member, which, including the recently negotiated 1996 increase, is \$26,746.67.⁴ The County submits that its final offer provides a salary increase that falls squarely in line with the largest bargaining unit in the County, does not impact negatively on the budget and continues to provide the salary premium that Correction Officers have traditionally enjoyed.

The County maintains that its offer is reasonable when compared to public employment in the same or similar comparable jurisdictions. The County notes that Middlesex County Corrections Officers rank 6th state-wide in compensation. (C-28)

⁴ AFSCME comprises the largest bargaining unit in the County with 760 members. (C-30)

Also, Corrections Officers' maximum salary is well above the average maximum in the State. (C-26) Finally, the County asserts that Middlesex Corrections Officers enjoy equal or better benefits when compared to all other Corrections Officers units in the State. (C-27)

The County notes that nationwide, public law enforcement contracts averaged a 3.1% increase for the same period that Middlesex County Corrections Officers were averaging 5.36%. (C-45) The County notes that the State of New Jersey settled contracts with various state bargaining units, including Corrections Officers, that included wage freezes in 1995 and 1996.

The County contends that while the PBA provided salary information on Middlesex County municipalities, it did not present evidence to explain why a municipal police officer is comparable to a County Corrections Officer. The County submits that comparison should be to other County Corrections Officers. The County maintains that the job of a Correction Officer is quite different from that of a municipal patrol officer.

The County also disputes the PBA's data on teachers' salaries. The County contends there is no legitimate job or salary comparison between a teacher and Corrections Officer. Thus, the County submits that a teaching position is not comparable to a Corrections Officer position.

The overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received.

The County notes that the average total cash compensation, excluding benefits, for members of this unit is \$50,856.39 The County contends that this is far better than other County Corrections Officers state-wide, other Middlesex County employees and other public and private employees. The County notes that in 1992, 1993, 1994 and

1995, Corrections Officers received annual increases averaging 5.58% which exceeded other comparable units. (C-25) The County points out that Corrections Officers also receive additional benefits including longevity, as well as generous time off benefits and a comprehensive health insurance package. (C-24 - C28)

Stipulations of the parties.

The only stipulation is the parties' agreement to a three-year contract.

The lawful authority of the employer. Among the items the arbitrator 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.).

The County submits that in Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget line items. Hillsdale, at 35. (C-9) In applying this criterion, the County maintains that the arbitrator must address the County's budget Cap situation, and the requirement that the County prepare a balanced budget each year, as well as the budget directive of the Middlesex County taxpayers that no new taxes be levied.

The County cites the certification by Albert Kuchinskas, the County's Chief Financial Officer, Comptroller and Budget Director, that the 1997 budget is currently adopted and the County cannot utilize the CAP. (C-89) The County asserts that any award in excess of the County's final offer would wreak havoc because the Freeholders have a very limited area in which to make reductions to fund such an award. The County contends that it will be forced to cut other expenditures to remain within its CAP if the PBA's final offer is awarded.

The County maintains that, even if the County maximized its CAP for 1996, 1997 and 1998, it could not absorb the cost of the PBA's offer without making

reductions in other line items to remain within CAP. The County asserts that the three-year 14.93% PBA proposal will have a detrimental effect on other budget items.

The financial impact on the governing unit, its residents and taxpayers.

The County maintains that the financial impact criterion does "not equate with the municipality's ability to pay." Hillsdale, 137 N.J. at 85. (C-9) The County asserts that the correct application of this criterion does not require an employer to prove that it would suffer a "substantially detrimental result," or that financial difficulties would be created or worsened. Hillsdale, 263 N.J. Super. at 194. (C-9)

The County maintains that arbitrators must consider the effect their awards will have on other employees, and on the employer's overall budget. Further, the County maintains that arbitrators must consider factors such as the percentage of citizens on fixed incomes, and the impact of tax increases and other costs on each income category of residents.

The County argues that the Freeholders have been straining to trim the budget and maintain services while not increasing taxes pursuant to the taxpayer directive.

The County again cites the certification of Albert Kuchinkas, the Middlesex County Chief Financial Officer, Comptroller and Budget Director.⁵ The County points to Kuchinkas' assertion that the 1996 budget included over \$11 million in one-shot revenue sources which will be unavailable in 1997.

The County also cites Kuchinkas' declaration that after the adoption of the 1996 budget, the retained surplus was only \$6,785,273 and that the current surplus is \$8.9

⁵The County maintains that each of Kuchinkas' assertions are supported by evidence in the form of budgets and rating agency statements. Furthermore, Fitch Investors' Service provided a written document to the County which states that the County must increase its surplus to maintain its bond rating. However, Kelly does not challenge the assertion made by Kuchinkas: that each of these items placed additional strain on the Middlesex County budget.

million.⁶ Furthermore, the County maintains that three major financial rating agencies, Standard & Poor's, Moody's Investors Service and Fitch Investors have required the County to increase its retained surplus to \$10 million.

Therefore, the County maintains that it does not have a "cushion" with which to fund an award in excess of the County's final offer. The County asserts that it is also facing increased debt service and lease/purchase payments in 1997 of approximately \$2.1 million. Also, the County is facing additional increases in the Police and Fire Pension System and Public Employees' Retirement System of an estimated \$1.7 million. Furthermore, the County observes that it is likely that the self-insurance liability fund will be depleted in 1997 and that the self-insurance fund and Worker's Compensation fund will need an additional infusion of \$2.5 million.

The County maintains that, in keeping with the taxpayers' directive to cut spending and not increase taxes, the County budgeted a set \$790 increase for all employees. The County argues that an award in excess of the \$790 will cause a decrease in spending and/or elimination of other services.

The County asserts that it has the eighth highest tax rate in the state. (C-84) The residents of Middlesex County have an average per capita income of only \$18,714. (C-83) The County has the sixth highest number of persons living in poverty, (C-83) and 28% of the County is considered "distressed." (C-81) The County notes that the Freeholders have sought to privatize certain operations to stave off a tax increase. (C-76) The County maintains that any award other than the County's final offer runs contrary to these legitimate governmental objectives.

⁶ The County points out that Kuchinskas confirmed that the Morris County surplus is \$3.0 million, instead of the \$2.5 million indicated by PBA Exhibit 36.

The cost of living.

The County observes that the 1996 CPI was 2.9% and the 1995 CPI was 2.8%. The County also notes that since 1992, Middlesex County Corrections Officers' increases were almost double the CPI for the same period. The County points out that the wage increases sought by the PBA for 1996, 1997 and 1998 are far in excess of the cost of living.

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.

The County notes that the County's salary and benefits package is sufficient to attract a large number of qualified candidates with over 184 individuals listed on the current Department of Personnel eligibility list. (C-14) The County points out that the average seniority in the unit is 8 years. (C-3). The County also points out that no Corrections Officers have been laid off in at least the past three years. (C-59) The County also maintains that since 1992, the turnover rate has averaged only 10% of which 4% have left to pursue other jobs in law enforcement. (C-58) The County maintains that the compensation package of the Corrections Officers is satisfactory given the low turnover rate, and the lengthy seniority of the unit.

The County maintains that law enforcement units are not affected by mass layoffs, downsizing and privatization, which is prevalent in New Jersey's current economic climate. (C-61 - C-73). The County notes certain significant layoffs in New Jersey: 40,000 employees at AT&T, 135 employees at HIP, 252 state workers, 400 at Union Camp, 900 workers at GM, and 90 workers at the Trust Company of New Jersey.

(C-71; C-66; C-67; C-68; C-70; C-73) The County notes that the County of Hudson abolished its entire County Police force. (C-63)

The County maintains that Middlesex Corrections Officers enjoy a stable employment without the threat of job loss. The County argues that the cost of the PBA salary proposal increases the likelihood of layoffs in the County with a detrimental effect upon the "continuity and stability of employment" for the County's Corrections Officers.

The County notes that its final offer contains additional provisions. These provisions include a 5% increase in the salary minimum up to \$25,000 and a performance bonus of up to \$250. The County is also offering an increase in child care reimbursement to employees who earn less than \$25,000.

The County asserts that other provisions set forth in its final offer are also reasonable. The County maintains that the elimination of compensatory time is the solution to the Corrections Officers' complaints concerning mandatory overtime.

The County asserts that Administrative Officer Rick van den Heuvel's testimony provided factual data demonstrating that as compensatory time increases, mandatory overtime increases on an incremental basis. The County also points to Warden Johnson's testimony that mandatory overtime decreased 90% with the addition of the 30 new Corrections Officers.

The County submits that van den Heuvel's testimony shows that as an officer earns compensatory time at time and one-half for filling in on overtime for an absent officer, when that officer takes the compensatory time, he creates another instance of mandatory overtime, and a credit of compensatory time at time and one-half to the officer who fills in for him. When that officer takes the time, yet another officer earns compensatory time at time and one-half thus "snowballing" the amounts of

compensatory time and mandatory overtime. The County maintains that the factual evidence provided by van den Heuvel shows that decreases in compensatory time result in decreases in overtime. The County submits that the only solution to the problem of mandatory overtime is the elimination of compensatory time.

With respect to shift bidding, the County asserts that Warden Johnson's testimony demonstrated that shift bidding erodes management's ability to staff the Jail to maximize its resources and minimize danger by lack of diversity in terms of experience on the shifts and limited ability to match Corrections Officers with the appropriate assignments.

The County also points to Warden Johnson's testimony that more senior people tend to gravitate toward the shifts during the day, with weekends off, resulting in the creation of vulnerability since the midnight and weekend shifts are now staffed with the less senior, less experienced Corrections Officers. The County contends that this situation creates an additional void in that these less experienced Corrections Officers are not able to gain training and development from working side by side with more senior experienced officers.

Thus, the County maintains that shift bidding creates a situation where management is unable to alleviate the threats of danger which the PBA is concerned about.

The County also points to Warden Johnson's testimony that shift bidding eliminates the ability to match Corrections Officers' temperaments with appropriate assignments and eliminates the Warden's ability to staff the different shifts with a diverse workforce.

The County contends that the upheaval caused by shift bidding, as well as the limitations it places on the ability to optimally staff the Jail and minimize danger, requires the elimination of shift bidding.

With respect to overtime, the County maintains that it is seeking to pay overtime in compliance with the Fair Labor Standards Act. The County is offering to count legitimate holidays, vacation, bereavement, personal time and sick time toward the calculation of overtime. The County asserts that it is seeking to control health care costs through managed care plans. The County is seeking employee co-payments for these plans in 1998. The County maintains that its bereavement proposal is designed to control time off away from the job, as well as time off costs. The County is also seeking to change to a semimonthly, rather than a biweekly payroll system. The County submits that this change will result in a savings of \$350,000 per year. The County notes that the County's largest bargaining unit, represented by AFSCME, has accepted the above changes. (C-29; C-30)

With respect to the clothing allowance, the County submits that Warden Johnson provided unrefuted testimony that the contract prices were much cheaper than those provided by the Union and that Corrections Officers could avail themselves of those prices. Thus, the County asserts that the PBA's rationale for receiving more money for clothing allowance is based on costs higher than they would have to spend. The County maintains that evidence provided by the PBA demonstrates that Middlesex Corrections Officers have the seventh highest clothing allowance in the State. (U-7) The County maintains that the PBA provided no evidence to support a higher clothing allowance except that the SOA receives a \$1000 clothing allowance. However, the County notes that during those contract years, the rank and file Corrections Officers received a higher percentage salary increase than the SOA. Thus, the County submits that the PBA's proposal is not supported by the evidence and must be rejected.

The County points out that the PBA is seeking an increase in the shift differential: \$.50 increase for the third shift and \$.35 for the second. These increases would make the shift differential for the third shift \$1.00 per hour and \$.75 per hour for the second shift. The County submits that the PBA provided no data as to comparable shift differentials for other groups. In the absence of any evidence to the contrary, the County maintains that the current shift differential is reasonable and should not be changed.

The final proposal of the PBA is to increase PBA time. The County points out the PBA conceded that Warden Johnson had voluntarily increased the PBA time from 50 to 60 hours. The County argues that the PBA provided no evidence that 60 hours was not enough, or any evidence of PBA work that did not get completed or that any member did not have access to a PBA representative. Furthermore, the County submits that the PBA provided no evidence that 60 hours is unreasonable compared to other County Corrections Facilities. Again, in the absence of any evidence to the contrary, the County maintains that the current 60 hours PBA time is reasonable and should not be changed.

For the foregoing reasons, the County asserts that its final offer is more reasonable and must be awarded, in its entirety.

PBA

The PBA provided documentary evidence and testimony from Corrections Officers Mike Buczynski, Gene Conlon, Edwin Cruz and Thomas Kaminski: and Francis M. McEnemey, CPA.

The PBA introduced the following exhibits:

- PBA-1 Collective Bargaining Agreement (1994-1995)
- PBA-2 New York Times Magazine Article (12/25/95)
- PBA-3 County Corrections Salaries in Descending Order
- PBA-4 County Corrections Salaries Top Step w/Longevity
- PBA-5 County Corrections Salaries Top Step Rank & File
- PBA-6 County Corrections Benefits
- PBA-7 County Corrections Benefits (continued)

PBA-8	County Corrections Vacation Days
PBA-9	County Crime Rates
PBA-10	County Corrections Salary/Longevity
PBA-11	Middlesex County Municipalities Maximum Base Salary
PBA-12	Middlesex County Municipalities Maximum Salary w/Longevity
PBA-13	Middlesex County Municipalities Benefits
PBA-14	Middlesex County Municipalities Vacation
PBA-15	Middlesex County Municipalities Longevity
PBA-16	Inmates per Uniformed Staff (National)
PBA-17	Inmates per Correctional Officer (National)
PBA-18	Changes in Line Officers (National)
PBA-19	County C/Os on each pay step as of 1/1/97
PBA-20	County Corrections Officer Retirements/Turnovers
PBA-21	State Sentenced Inmates In County Jail w/Reimbursements
PBA-22	Daily Inmate Population for County Jail, May 1997
PBA-23	Report of Private Sector Wage Changes
PBA-24	NJ Teacher Salary Guides (1995-96)
PBA-25	NJ Teacher Salary Guides (1995-96)
PBA-26	Consumer Price Index
PBA-27	County Median Incomes
PBA-28	Newspaper Article "Cut in Tax Levy Expected" (4/9/97)
PBA-29	Newspaper Article "Budget Due for Comment" (5/5/97)
PBA-30	Memorandum re: Settlement Essex County Corrections Officers 5/15/97
PBA-31	Middlesex County Adult Corrections Center 1995 Annual Report
PBA-32	Cost of PBA Proposal and Comparison with County Proposal
PBA-33	PBA Final Proposal
PBA-34	County Final Proposal
PBA-35	Uniform Costs
PBA-36	Middlesex County Government Profile
PBA-37	Newspaper Article "Budget Outlook is Bright" (June 1997)
PBA-38	Curriculum Vitae - Francis M. McEnerney, CPA
PBA-39	Curriculum Vitae - John W. Kelly

In its brief, the PBA submits that it has presented a compelling case in support of its final position. The PBA maintains that its proposal will barely outpace inflation and the cost of living whereas the County's proposal would result in real and significant economic losses to Corrections Officers. The PBA asserts that this is unnecessary in light of the County's sound financial footing and completely at odds with the ever-increasing difficulties of the Corrections Officers' job.

The PBA contends that its proposal is consistent with the statutory criteria and will allow Middlesex County Corrections Officers to maintain relative consistency with their counterparts in neighboring counties. The PBA suggests that its proposal is realistic in view of the County's excellent financial condition, and properly within the framework of comparable public and private sector contracts.

The PBA contends that there is no economic necessity for the County to propose such a lack of advancement in compensation, or backward movement in the non-economic benefits Corrections Officers currently enjoy. The PBA maintains that the County is in sound financial condition, both in terms of its past, current and prospective revenues, its existing budgetary surplus, and excellent credit rating. In addition, the PBA notes that state-sentenced inmates at the Jail have resulted in significant annual income (\$9 million) to the County because of the state's per diem payment. Factoring in the amounts which the County has already budgeted for proposed increases for the bargaining unit, the PBA asserts that the County has the financial ability to fund the PBA's economic proposals.

The interests and welfare of the public.

The PBA contends that this criterion encompasses several elements. It encompasses fiscal issues, including the effect of any Cap constraints and any fiscal issues which have an impact on the public. It also encompasses other issues involved in the terms and conditions of employment of members of this bargaining unit which have an impact on the interest and welfare of the public, including the quality of law enforcement services.

With respect to the fiscal issues, the PBA maintains that there are no Cap constraints which would negatively impact upon the award of the PBA's proposal

The PBA suggests that in assessing this statutory criterion, it is necessary to acknowledge that the functions performed by Correction Officers are among the most compelling and important services provided to the County. The PBA notes that the County has consistently announced that the incarceration of criminals, and the assurance that they will not prey upon the public, is among its foremost obligations. The PBA also notes the exponential increase in the number of prisoners housed in all prisons — County, State and Federal — demonstrates the importance which the public places upon the corrections functions.

The PBA contends that a fair compensation package is critical to the County's own goals: a properly paid, well trained and reasonably satisfied force of Corrections Officers is an essential component in the assurance that the County Jail will be safe. The PBA asserts that Corrections work is stressful, demanding and often life-threatening. The PBA contends that the number of County Corrections Officers has remained relatively stagnant, while the prison population has exploded, and the duties and responsibilities imposed upon the Corrections Officers have increased.

The PBA acknowledges that County Corrections Officers have performed their critical functions well and are well trained. The PBA argues that the morale and excellent job performance of Corrections Officers would best be maintained if their compensation levels over the life of this contract reflect their performance, and are not reduced below those of comparable County Corrections or other law enforcement officers. The PBA contends that this is in the interest of the County, its residents, taxpayers and the public, all of whom depend upon Corrections Officers for their protection.

The PBA suggests that an additional factor to be considered is the productivity of this unit when measured against its task — the safe and secure incarceration of inmates. The PBA contends that even with a declining base of officers, and a high turnover rate due to injuries and morale problems, the unit has successfully managed an inmate population which has been increasing almost 10% per year. (PBA Exhibit 20) The PBA asserts it is in the public interest to have high morale within law enforcement units, and this certainly requires a staff which is paid commensurate with its duties and responsibilities.

The PBA contends that its proposal for salary increases barely keeps pace with the cost of living. The PBA suggests that assuming the CPI rises approximately 3% annually, the cost of living will effectively rise by at least 9% over the term of the new contract. The PBA notes that while clothing allowances would rise modestly, total payment would still remain less than the Correction Officer's supervisors, the Superior Officers. The PBA contends that the proposed increase barely keeps pace with inflationary costs that occurred over the last ten years, and simply covers employee expenditures for maintaining uniforms.

Percentage increases result in raises which are directly related to the salary of the particular officer. Percentages are a fairer method of remuneration, because they provide salary increases which are tied to current wages. The PBA contends that the County's salary proposal would result in a severe decline in real dollars for Corrections Officers, setting them back significantly over the life of the contract. The PBA asserts that the County's salary proposal will result in increases of only 6.7% for the vast majority of Corrections Officers (those at maximum) over a three year period — significantly less than the projected increase in the cost of living. (PBA-32)

The PBA also asserts that the interest and welfare of the public similarly mandate that the non-economic proposals requested by the PBA should be awarded. The PBA seeks to continue the current shift bidding process, and allow officers a one time "rebid" over the three years. The PBA submits that this takes into consideration the changed needs employees may encounter over that period and imposes no harm to the County. The PBA also maintains that its request to modestly increase the bank of compensatory time also will not harm the County, while advancing legitimate officer interests. The PBA submits that both its economic and non-economic proposals are clearly more consistent with this statutory criterion.

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

The overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received.

The PBA combined these two criteria in its brief. The PBA contends that comparisons of private sector employment with law enforcement are of little meaning, because there is no true "comparability" in the type of services which are provided. The PBA maintains that the standards and qualifications required to become a public sector law enforcement officer, the requisite physical qualifications, the needed police academy training and the unique responsibilities required of these employees to protect the public sets them apart from virtually any other private sector employee. The PBA maintains that the only realistic comparisons must be made with other law enforcement units.

The PBA submits that its proposal is reasonable whether the comparisons are based upon the private sector, the public sector in general or employees in the same or comparable jurisdictions.

The PBA cites recent data indicating that, in 1996, median wage increases in the private sector equaled 3%, and 3.1% when factoring in lump sum bonuses. 153 LRR 509-510 (BNA 12/16/96). The PBA observes that private sector salary increases in New Jersey are higher than the nationwide figure noting that private sector wages in New Jersey jumped almost 4% from the second quarter of 1994 to the second quarter of 1995. The average quarterly wages in the second quarter in 1994 equaled \$9,220.00. That figure jumped to \$9,560.00 one year later, representing an increase of 3.7%. The PBA suggests that if one factors in the Department of Labor's wage figures for government sector, the increase in the same period of time is 3.9%. The average quarterly wages in the second quarter in 1994 for private and government sectors was \$8,038.00. The figure for the same time in 1995 was \$8,354.00, representing an increase of 3.9%. The PBA submits that private sector wage increases are comparable to the increases sought by the Corrections Officers. The PBA points out that PERC's most recent report indicates that private sector wages increased 3.5% in Middlesex County in 1995. (PBA 23).

The PBA points to other public employees in New Jersey to support its position. The PBA notes that the average teacher salary in the 1994/95 school year was \$47,285.00 which exceeds the average salary of Middlesex Correction Officers. (PBA Exhibit 20)

The PBA presented evidence of the salaries and benefits of other County Correction Officers in New Jersey, maintaining that many of these Corrections Officers

earn significantly more than those in Middlesex. (PBA 3-5). The PBA points out that the top step Middlesex County Corrections Officers in 1995 earn \$45,911 annually. In contrast, the PBA points out that in 1995, top step Bergen County Correction Officers earned \$56,375; Passaic County Correction Officers earned \$52,346; in Ocean County Correction Officers earned \$50,000; Morris County Corrections Officers earned \$48,179 and Monmouth County Corrections Officers earned \$46,057.

The PBA asserts that, whether compared within Middlesex County, outside of Middlesex County, or even the percentage increases which are the "going rate" in the private sector or among law enforcement, the proposed increases for the Corrections Officers are in line with awards to other bargaining units. The PBA contends that salary resolutions in and above the 4% per year range are now the norm, not the exception. The PBA submits that Middlesex County Corrections Officers are arguably underpaid. However, the PBA asserts that its proposal seeks only to maintain the value of the current compensation package.

The PBA maintains that Middlesex County Corrections Officers are not highly or overpaid, when compared with law enforcement officers within the County, law enforcement officers outside the County, or Corrections Officers in any other county. The PBA submits that Middlesex County Corrections Officers are significantly underpaid in comparison with their peers in county law enforcement. The PBA asserts that Middlesex Corrections Officers' base salaries, with longevity, is exceeded by the salaries of numerous Corrections Officer units in the State. The PBA concedes that the Corrections Officers' benefit package in terms of holidays, vacations, sick leave, and other traditional benefits is basically identical to other local Middlesex County law enforcement units. (PBA Exhibit 13, 14 & 15).

The PBA points out that virtually every law enforcement unit in Middlesex County (East Brunswick, Plainsboro, South Plainfield, Middlesex, Dunellen, Metuchen, Milltown, County Prosecutors, Piscataway, Edison, Old Bridge, Woodbridge, Highland Park, South Amboy, Middlesex County Sheriffs and County Police) exceeds the maximum salary with longevity paid to County Corrections Officers (PBA Exhibits 11-15). The PBA observes that available data suggests that County Corrections Officers are among the lowest paid law enforcement officials in Middlesex County. (PBA Exhibit 11). Other than Helmetta Borough (with a police force in single digits) every police officer, sheriff's officer, or county police officer in Middlesex earns more than County Corrections Officers.

The PBA maintains that as to comparability in the public sector, Middlesex Corrections Officers are at or near the bottom of salaries at the top steps, with or without longevity, and will not achieve the average even if its salary increases are awarded, and will fall significantly behind if the County's salary increases are granted.

The PBA asserts that its proposed salary increases are in line with raises for similarly situated employees both within the County and in adjacent counties. The PBA cites the recent decision of Arbitrator Carl Kurtzman with reference to Middlesex County Police which provides salary increases in excess of 12% over the three-year period. The PBA notes that although the raises were awarded in split percentages, the ultimate percentage raises are similar to the increases sought by the PBA.

The PBA cites the recent agreement for Essex County Corrections Officers providing percentage increases of 2% in 1996, 5% in 1997 and 5% in 1998. (PBA Exhibit 30) The PBA observes that Essex County Corrections Officers were already paid several thousand dollars more than Middlesex officers prior to the recent increases. (PBA Exhibit 3-5). The PBA submits that the new raises would significantly increase Essex County Corrections Officers' pay over that of their Middlesex counterparts.

In analyzing the respective positions of the parties, and the County's assertion of the importance of its pattern of settlement, the PBA submits that it is important to convert each proposal to percentage increases so that the appropriate comparisons can be made. The PBA submits that conversion of the County's flat dollar offer into percentages, based upon the top Corrections Officers step, converts to 2.18% in 1996, 2.13% in 1997 and 2.40% in 1998. (PBA Exhibit 32). The PBA maintains that the County's proposed dollar increases, when converted into percentages to the top salaries of these officers, would result in increases significantly less than the cost of living, as well as the pattern of settlements in both the private and public sector.

The PBA suggests that another method for analyzing the County's proposal is to look to the increases awarded to AFSCME, which the County itself claims should be the standard for contract resolution with County Corrections Officers. The PBA notes that in his recent arbitration award regarding County police, Arbitrator Kurtzman converted the AFSCME flat dollar amounts into percentages based upon the average salary within that bargaining unit. Kurtzman's award notes that conversion of those flat amounts into percentage increases for the AFSCME unit, based upon the flat dollar amounts the County has already awarded members of that unit, averages 2.91% in 1996, 3.96% in 1997, and 4.08% in 1998.

The PBA also contends that the County has also been generous with its employees who are not represented by unions. The PBA notes that Exhibit B to the Fagella Certification, shows that raises of \$3,000 to \$5,000 were recently awarded to a number of County employees — some earning more than twice the average Corrections Officer. The PBA notes that Warden Johnson received a \$3,000 increase on an \$87,000 salary.

The PBA also cites the recent compilation by PERC of public sector settlements and interest arbitration awards for public safety employees in the past year. The PERC document is a summary of interest arbitration proceedings since January 1, 1997. The PERC document indicates that the average police settlement increase was 3.8% in 1996, 4.4% in 1997 and 4.38% in 1998. The summary of interest arbitration awards indicates that salaries increased 4.19% in 1996, 3.91% in 1997 and 3.53% in 1998.

The PBA contends that both the private and public sector settlement pattern, either for law enforcement or non-law enforcement, is averaging or exceeding 4% per year for the next 3 years. The PBA also points out that the County's negotiated settlement with the AFSCME bargaining unit, when converted into percentages, is approximately 4% per year. Finally, the PBA maintains that Middlesex County Corrections Officers are the lowest paid of Middlesex law enforcement agencies. With an average base pay at the top step of \$45,911, County Corrections Officers receive nearly \$6,000 less than the county-wide average of \$51,518.00.

With respect to comparable private sector increases, the PBA also cites PERC records for 1995 indicating that the average salary percentage increase in the private sector was 3.5% in Middlesex County (Exhibit PBA 23).

Stipulation of the parties.

The only stipulation is the parties' agreement to a three-year contract.

The lawful authority of the employer. Among the items the arbitrator 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.).

N.J.S.A. 34:13A-16(g)(5) requires that the arbitrator consider the lawful authority of the employer. The PBA maintains that, with one exception, this criterion has little relevance to the parties to this proceeding.⁷

⁷It is the PBA's position that the County's proposal to modify health benefits is not arbitrable

This statutory provision is directed toward the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq., which effectively limits the extent of expenditures at the local level. The PBA submits that there are no statutory prohibitions upon any of the financial issues which must be resolved in this case. The PBA maintains that its proposal will not approach the CAP. The PBA relies on the Certification of Jack Kelly, a financial expert, submitted on July 10, 1997. This Certification was in response to the earlier Certification provided by Albert P. Kuchinskas, Middlesex County Budget Director. Kelly's Certification included the following conclusions:

- The County completed the year with a \$13,656,102 surplus according to the County's annual financial statement.
- Taxes have been lowered four years in a row and when adjusted for inflation taxpayers will pay less in 1997 than they did in 1987.
- The County has the largest CAP Bank in the State. (The amount taxes can be legally raised, if necessary, reserved from prior years.)
- The equalized value of real property has more than doubled in ten years.
- New construction starts are the highest in northern New Jersey.
- The County's unemployment statistics are better than both State and national averages.
- The County has earned a Triple A rating from three independent credit rating agencies. This indicates that the County's financial health is enviable and will be in the foreseeable future.

The PBA asserts that the County has the lawful authority to award the economic and non-economic proposals sought by the PBA.

The financial impact on the governing unit, its residents and taxpayers.

The PBA maintains that the proposals sought by the PBA would not have any adverse impact on the County, its residents or its taxpayers. The PBA submits that the total cost of its package, allowing for expected turnover of officers, is estimated to be

approximately \$1.6 million in contrast to the County's estimated cost of \$1.16 million for its economic package. In analyzing the cost of its proposal, the PBA factored in the impact of turnover of officers at the Middlesex County Jail. The PBA suggests that an average of fifteen at the maximum step leave on an annual basis. (PBA Exhibit 20; PBA 32). Those officers, if replaced, are replaced by officers at the initial salary step. The PBA submits that a proper analysis of the cost of the PBA proposal must include a turnover assumption, and a recognition that officers at maximum will in reality be replaced by officers earning lower salaries, who would consequently receive lower salary increases.⁸

The PBA submits that the County did not present any evidence that the economic package sought by the PBA adversely impacted on the finances of the County. The PBA submits that its economic proposal, when measured against the total County budget of approximately \$225 million, is virtually imperceptible.

The PBA maintains that the County is in excellent financial condition and is fully capable of funding the PBA proposal. The PBA submits that the County does not need any of the requested reductions in the existing level of benefits currently provided to Corrections Officers. The PBA notes that Middlesex County is a relatively wealthy county ranking 7th state-wide in per capita income. The County has a AAA credit rating. Its 1994 median income was over \$57,000, ranking it seventh in the state. (Median N J income was \$50,322; U.S. median income was \$36,056) It has a CAP "bank" of \$19.6 million and a tax levy \$16 million below permitted amounts.⁹

⁸The PBA asserts that since the County proposal is based on equal monetary raises regardless of current salary, its proposal does not result in turnover savings.

⁹PBA Exhibit #36 - "County of Middlesex Government Profile" May 1997 prepared by McEnerney, Brady & Co.

The PBA argues that the County cannot claim that the cost of collective bargaining agreements has triggered increases in a tax rate. To the contrary, the PBA notes that the County repeatedly emphasizes that it has cut the County tax rate several years in a row and anticipates cutting the tax rate again.¹⁰

The PBA argues that a unilateral desire by a public entity to reduce revenues continuously cannot properly deny the legitimate interests of the work force. Finally, the PBA contends that the County has ample financial capacity, certainly has not imposed burdensome taxes on its citizens, and need not impose any taxes in the future in order to fund the PBA's proposal.

The PBA asserts that it is also indisputable that the productivity of the members of this bargaining unit has increased significantly over the life of the last contract. The PBA notes that the actual number of Corrections Officers employed during the life of the contract over the last three years has varied between 175 and 200 officers. However, the PBA points out that the Jail has experienced significant increases in the number of inmates housed in the facility.¹¹ Corrections Officers are unarmed and yet responsible for upwards of 80 or more inmates in dormitory settings. The PBA submits that a static number of Corrections Officers have successfully maintained a safe and secure Jail even with increasing numbers of inmates.

The PBA argues that the inmates are more difficult to handle than ever. A significant percentage of the average population of the facility is now made up of state sentenced inmates. Because of State overcrowding, inmates are often backed up into

¹⁰PBA Exhibits 28 & 29.

¹¹The PBA asserts that Warden Johnson's 1996 summary of jail operations confirm these facts. In his Executive Summary, Warden Johnson notes the Jail population increased 6.4% in one year, averaging 1,048 daily inmates, and yet "the 1996 expense budget is less than 1995." (PBA Exhibit 22)

the Middlesex County facility for some time. The PBA submits that this results in violent, often predatory inmates involuntarily confined to the County jail while they await transfer to the appropriate state facilities creating a more difficult population to control. The PBA maintains that the Middlesex County Jail simply is not equipped to house long-term, violent offenders.

The PBA submits that while the incarceration of State sentenced inmates has made the job much tougher for Corrections Officers, it has proved to be a financial benefit to the County. The PBA points out that the County is paid almost \$60 per day for each State sentenced inmate incarcerated at the County Jail. The PBA claims that the County has obtained significant financial benefits as a result of the incarceration of State sentenced inmates realizing additional income totaling almost \$9 million a year¹² without incurring any significant additional expenses. The PBA points out that until very recently the County did not hire any additional officers with the number of officers declining while the inmate population increased. The PBA submits that while the burden fell on the Corrections Officers, the benefits went to the County. The PBA asserts that it is equitable that Corrections Officers be rewarded for the harder work they have provided and the monies generated to the County as a result of their efforts.

The cost of living.

The PBA submitted BLS data showing a 2.9% increase in the Consumer Price Index for calendar year 1996.¹³ The PBA suggests that projected increases in the cost of living are expected to range in the area of 3% per year suggesting the cost of living would increase approximately 9% over the life of the three-year contract.

¹²PBA Exhibits 28, 29 & 37.

¹³PBA Exhibit 26.

The PBA points to the distorted manner in which salary increases would be provided under the County proposal. At the lowest steps, relatively new employees would receive approximately 14.40% increases over three years, while maximum step, veteran employees would receive only 6.71% over that same period.¹⁴

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.

The PBA submits that the evidence relevant for this criterion overlaps with evidence presented for other criteria, particularly the interest and welfare of the public and comparability. The PBA asserts that the most critical factor here is that Corrections Officers in this unit represent the difference between an ordered society and a lawless, chaotic one. The public relies upon the law enforcement officers in these units to enforce the laws, supervise the custody and control of inmates and insure the safety of the citizens of the County.

The PBA argues that the difficulty of the job is taking its toll. Officer morale is at an all-time low and turnover is high. The PBA points out that in a unit of 200 officers, 10 officers left in 1995, 27 left in 1996 and 10 have already left in 1997.¹⁵ The PBA contends a number of reasons account for the high turnover — the job provides little satisfaction, mandatory overtime is high and salaries are comparatively low.

¹⁴PBA Exhibit 32 converts the County's flat dollar raises into percentage increases at various salary levels.

¹⁵PBA Exhibit 20.

Other Issues

Clothing Allowance

The PBA's proposed \$200 increase in 1997 would cost \$40,000 and the \$300 increase in 1998 would cost \$60,000. (PBA Exhibit 32). The PBA asserts that these increases are in line with the current uniform costs. The PBA cites the testimony of Officer Michael Buczynski that uniform costs have risen significantly in the last decade. The PBA maintains that its analysis of the cost of maintaining a uniform indicates that an officer can spend in excess of \$1,000 per year dry-cleaning and replacing the various uniforms which are required attire. (PBA Exhibit 35)

The PBA submits that clothing allowances for Corrections Officers have not been increased from the current \$650 in 10 years. However, the PBA notes that Superior Officers at the Jail already receive a \$1,000 annual clothing allowance. The PBA points out that if its requested increases are granted, the officers would still receive less than the \$1,000 received by superior officers.

PBA Days

The PBA seeks an increase, from 60 to 100 hours, of time off for PBA officials to perform union business. The PBA points to the testimony of PBA officials that this proposed increase will not cover the time actually needed. One additional week of PBA time, even for maximum step officers, would cost less than \$2,000 over the next two years.

Shift Differential

The PBA seeks to increase shift differentials for the second shift by 35 cents and third shift by 50 cents. The PBA notes that the shift differentials have not been increased in 10 years.

Compensatory Time

The PBA seeks to increase from 7 to 12 the available compensatory days bargaining unit members may accumulate and use annually. The PBA has previously agreed to significant conditions placed on the utilization of compensatory time and that the current level of seven days has been reduced from the unlimited amounts previously available.

The PBA points out that compensatory time is earned by officers for overtime worked. The only issue is how the overtime will be paid. The PBA submits that officers should be allowed to choose whether payment of their overtime is in cash or time off. The PBA also maintains that with significant mandatory overtime, officers should be allowed to accumulate more than 7 days per year for needed time off.

Overtime

The County seeks to change the status quo and calculate overtime on a "weekly" rather than "daily" basis. The PBA submits this proposal is unfair since it would mean an employee could work up to 16 hours in a single day, or 32 hours in two days, and not receive any overtime. The PBA points out that such "doubles" are often mandatorily and involuntarily assigned.

Shift Bidding

The County seeks to eliminate shift bidding. The PBA submits that the testimony showed that shift bidding is an extremely important component of the contract which was negotiated only two years ago. The PBA maintains that the bidding process has worked well. The PBA submits that no testimony from Jail officials justified the County request and there is no reason to change it.

The PBA seeks to maintain seniority as a basis for shift and duty off assignments. The PBA cites testimony that in the absence of shift bidding, there is no prohibition on the most arbitrary assignments. The PBA submits that any needed flexibility which the institution claims it may need in making assignments is already included in the existing shift-bidding procedures. The PBA points out that officers who do not have 36 months of continuous employment are not even permitted to bid. The warden retains unfettered discretion to assign those officers to any shifts and days. The PBA also submits that Corrections Officers do not bid on particular assignments – they simply are allowed to bid on the times of day and days of week when they will be working. The warden retains the right to decide where officers will work within those shifts and days.

The PBA cites the testimony of Warden Johnson who claimed that with shift bidding, he could not get experienced officers on the third shift because senior officers do not bid on it. The PBA notes that two very senior officers who happened to be in attendance at the interest arbitration hearing (Kaminski and Conlon) routinely seek, bid for, receive and are currently assigned to the third shift.

The PBA asserts that shift bidding is a usual and reasonable component of most contracts in law enforcement. Seniority is clearly the criterion by which days off and hours of work are regulated throughout the public and private sector.

The PBA requested one change in the shift bidding procedure — that officers be permitted to "rebid" for their shifts and days off once during the life of the contract (every 18 months).¹⁶ The PBA submits that because of changing needs which often occur to

¹⁶ The PBA maintains that its request to eliminate certain provisions in Appendix E is not substantive — it simply eliminates provisions which have become obsolete.

officers over a three year period. The PBA suggests that testimony revealed that very few officers will even seek to change their shift or days off. However, the PBA proposal does provide a needed safety valve to afford officers some relief in adjusting their lives to the needs of the institution.

Health Benefits

The County proposes to "limit health care options to the traditional plan, the PPO and three HMO's." The PBA asserts that the County's proposal should not be considered since it was never raised in any prior negotiations. The PBA submits that this issue appeared for the first time, the day before the interest arbitration when the final offer was submitted. The PBA cites the recent PERC decision in the Middlesex County Police proceedings in which PERC held that untimely submitted issues cannot be considered by the arbitrator. The PBA also asserts that health benefit issues are not subject to interest arbitration proceedings. N.J.S.A. 34:13A-18.

The PBA contends that the County's proposal to reduce health benefits by limiting health care options to the traditional plan, PPO and three HMOs would unnecessarily disrupt the lives of many corrections officers who are currently in one of the several other HMOs which would be eliminated.

The PBA submits that its position is more consistent with the statutory criteria and a more reasonable proposal in its totality. For all the foregoing reasons, the PBA submits that I select its economic and non-economic proposals as the interest arbitration award in this matter.

Costing Out The Parties' Proposals

The PBA submits that the correct figure for the base salary for the bargaining unit is \$7,273,162. The County submits that the correct figure for the base salary of the bargaining unit is \$8,075,123. A review of County Exhibit 1 (Roster of Bargaining Unit Employees: Name, Salary and Date of Hire; Compiled April 1, 1997; as of March 31, 1997) and County Exhibit 24 (Wages, Longevity and 1996 Overtime of Corrections Officers) indicates that the County included thirty-two (32) Correction Officers who were hired on January 27, 1997 in the 1996 salary base.¹⁷ This accounts for \$667,520 of the difference. A further review of these two County exhibits indicates that the additional \$134,441 difference is generated by internal salary guide movement in 1997 that was incorrectly included in the 1996 base salary.

Accordingly, I shall use \$7,273,162 as the base salary for one hundred seventy-three 1996 positions. This reconciliation is only to set the record straight as to the base salary for 1996 — it does not affect the costing out of the parties' proposals since the proposed salary increases are to be applied to the salary guide in effect upon the expiration of the prior 1994-95 Agreement.¹⁸ The following is the salary schedule in effect upon the expiration of the 1994-95 Agreement:

Tr.	\$20,860
A	\$25,252
B	\$27,547
C	\$29,843
D	\$34,433
E	\$40,172
F	\$45,911

¹⁷This is also confirmed by the County's supplemental submission of June 27, 1997.

¹⁸This figure provides the base upon which the parties' final offers and my award can be measured against. Guide movement pursuant to increased seniority is not included in either parties' calculations.

The County's proposal in 1996 is a \$500 salary increase on January 1, 1996 and an additional \$500 salary increase on July 1, 1996. This salary increase is to be applied to all of the steps on the above salary schedule. The cost to the County in 1996 is \$750 per employee.¹⁹ The following would be the salary schedule in effect in 1996:

	<u>1995</u>	<u>1-1-96</u>	<u>7-1-96</u>
Tr.	\$20,860	\$21,360	\$21,860
A	\$25,252	\$25,752	\$26,252
B	\$27,547	\$28,047	\$28,547
C	\$29,843	\$30,343	\$30,843
D	\$34,433	\$34,933	\$35,433
E	\$40,172	\$40,672	\$41,172
F	\$45,911	\$46,411	\$46,911

The County's 1996 proposal results in a \$750 (in pocket) salary increase in 1996 with a rollover of \$250 to be paid out in 1997. This results in a percentage salary increase that ranges from 3.6% for the training rate of \$20,860 to 1.6% for the top step rate of \$45,911. The corresponding rate increase at \$1,000 is 4.8% for the training rate and 2.2% for the top step.

The County's proposal in 1997 is a \$600 salary increase on January 1, 1997 and an additional \$400 salary increase on July 1, 1997. This salary increase is to be applied to all of the steps on the above July 1, 1996 salary schedule. The following would be the salary schedule in effect in 1997:

	<u>1996</u>	<u>1-1-97</u>	<u>7-1-97</u>
Tr.	\$21,860	\$22,460	\$22,860
A	\$26,252	\$26,852	\$27,252
B	\$28,547	\$29,147	\$29,547
C	\$30,843	\$31,443	\$31,843

¹⁹The first \$500 is paid out for the entire calendar year and the second \$500 increase is paid out for only six months resulting in an in-pocket increase of \$750. (\$500 + \$250) There is a roll-over of \$250 to be paid in 1997 which I will apply to the County's 1997 salary proposal.

D	\$35,433	\$36,033	\$36,433
E	\$41,172	\$41,772	\$42,172
F	\$46,911	\$47,511	\$47,911

The County's proposal results in an \$800 salary increase in 1997 with a rollover of \$200 to be paid out in 1998. The incoming rollover from 1996 is \$250 for a total salary increase of \$1,050 (in pocket) in 1997. This results in a percentage salary increase that ranges from 4.8% for the training rate of \$21,860 to 2.2% for the top step rate of \$46,911. The corresponding rate increase at \$1,000 is 4.6% for the training rate and 2.1% for the top step.

The County's proposal in 1998 is a \$700 salary increase on January 1, 1998 and an additional \$450 salary increase on July 1, 1998. This salary increase is to be applied to all of the steps on the above July 1, 1997 salary schedule. The following would be the salary schedule in effect in 1998:

	<u>1997</u>	<u>1-1-98</u>	<u>7-1-98</u>
Tr.	\$22,860	\$23,560	\$24,010
A	\$27,252	\$27,952	\$28,402
B	\$29,547	\$30,247	\$30,697
C	\$31,843	\$32,543	\$32,993
D	\$36,433	\$37,133	\$37,583
E	\$42,172	\$42,872	\$43,322
F	\$47,911	\$48,611	\$49,061

The County's proposal results in a \$925 salary increase in 1998 with a rollover of \$225 to be paid out in 1999. The incoming rollover from 1997 is \$200 for a total salary payout of \$1,125 (in pocket) in 1998. This results in a percentage salary increase that ranges from 4.9% for the training rate of \$22,860 to 2.3% for the top step rate of \$47,911. The corresponding rate increase at \$1,150 is 5% for the training rate and 2.4% for the top step.

The County's three-year salary proposal provides increases of \$750, \$1,050 and \$1,125 for a total of \$2,925 (in pocket).²⁰ The \$2,925 in-pocket increase is equivalent to 13.3% for the training rate and 6.1% for the top step of the salary schedule.

The County's salary proposal increases each step on the salary schedule by \$3,150 over the three-year term of the Agreement. This \$3,150 increase is equivalent to 14.4% for the training rate and 6.7% for the top step on the salary schedule.²¹

The total cost of the County's salary proposal is \$129,750 (173@750) in 1996, \$215,250 (205@1,050) in 1997, and \$230,625 (205@1,125) in 1998. The corresponding percentage increases are 1.78% in 1996, 2.67% in 1997 and 2.63% in 1998 for a total of 7.08% over three years.²²

The PBA's salary proposal is a 4.25% salary increase to be effective January 1, 1996, an additional 4.75% to be effective January 1, 1997 and 5.25% to be effective January 1, 1998. These percentage salary increases are to be applied to all of the steps on the schedule in each of the three years. The following would be the 1996, 1997 and 1998 salary schedules as proposed by the PBA:

	<u>1995</u>	<u>1-1-96</u>	<u>1-1-97</u>	<u>1-1-98</u>
Tr.	\$20,860	\$21,747	\$22,780	\$23,976
A	\$25,252	\$26,325	\$27,575	\$29,023
B	\$27,547	\$28,718	\$30,082	\$31,661

²⁰\$225 rolls over into 1999 as a result of the \$450 increase applied on July 1, 1997.

²¹The County's Scattergram (Exhibit C-4) indicates that 140 Corrections Officers are at the top step on the salary schedule. The County's Scattergram lists 205 positions of which thirty-seven (37) are at the training level. The County places 68% of the unit at the top step on the salary schedule. County Exhibit C-1 shows thirty-two of these positions with a date-of-hire of January 27, 1997. This reduces the total positions to 173 thereby increasing the percentage of senior officers in the unit to 81% in 1996. This difference can also be attributed to the twenty seven (27) Corrections Officers who left County service in 1996.

²²These calculations assume that no additional employees will be hired and no employees retired.

C	\$29,843	\$31,111	\$32,589	\$34,300
D	\$34,433	\$35,896	\$37,601	\$39,575
E	\$40,172	\$41,879	\$43,868	\$46,171
F	\$45,911	\$47,862	\$50,135	\$52,767

The PBA proposal provides salary increases at the training level step of \$887, \$1,033 and \$1,196 for a total salary increase of \$3,116. The salary increases at the maximum step are \$1,951, \$2,273 and \$ 2,632 for a total salary increase of \$ 6,856. The total percentage increase is 14.25 over three years. The PBA also proposes an increase in the clothing allowance of \$200 in 1997 and an additional \$100 in 1998. The PBA calculates this to be an additional cost of \$40,200 (201 unit members at \$200 each) and \$20,200 (201 unit members at \$100 each).²³ The PBA is also seeking an increase of \$.50 per hour for the third shift and \$.35 for the second shift. The PBA estimates this cost to be \$83,536.²⁴ The shift differential equals a 1.1% increase on the base salary of \$7,273,162. The clothing allowance increase is equal to a .50% increase in 1997 and approximately .25% in 1998. This brings the total cost of the PBA proposal to 16.1% over three years.

The total dollar increase of the PBA proposal in each year is: \$392,645 in 1996 (\$309,109 - 4.25% plus \$83,536 - shift differential increase); \$409,830 in 1997 (\$369,630 - 4.75% salary increase plus \$40,200 - clothing allowance increase); and \$494,095 in 1998 (\$473,895 - 5.25% salary increase plus \$20,100 - clothing allowance increase).

²³The PBA's estimate of 201 positions in 1997 is accurate considering the addition of 32 officers and turnover.

²⁴PBA Exhibit 33 places 50 officers on the third shift and 60 officers on the second shift with total annual hours of 90,800 on the third shift and 108,960 on the second shift.

Discussion and Analysis

The arbitrator is required to decide a dispute based on a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence presented by the County and the PBA as well as their arguments. As set forth below, I have carefully considered this evidence in light of the statutory criteria by which I am bound. I have considered each criterion and found all of them to be relevant. I have discussed the weight I have accorded to each factor. I also have determined the total net annual economic changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

In order to provide a basis for understanding this analysis, I shall set forth the award and the total net economic changes for each year. This will permit the reader to follow the analysis which led to this award.

I have determined, based on the evidence and the arguments of the parties, that salaries should be increased by 3.5% effective January 1, 1996, an additional 3.5% effective January 1, 1997 and an additional 3.5% effective January 1, 1998. I have awarded the County's proposal on Child Care Assistance Program. I have rejected all other proposals of the parties for the reasons hereinafter set forth.

Total Annual Net Economic Change - 1996

I have determined that the correct base salary to apply the 1996 salary increase to is \$7,273,162 for 173 bargaining unit members. This accurately reflects the number

of employees after removing the thirty-two employees who were not hired until January 27, 1997 from the 1996 roster. I included the thirty-two new employees in my 1997 and 1998 calculations. These calculations assume that no additional employees will be hired or leave County service. The following is the salary schedule and step placement of the bargaining unit members in effect upon the expiration of the 1994-95 Agreement and the net economic change after applying a 3.5% increase to each step of the salary schedule:

<u>Step</u>	<u>1995 Salary</u>	<u>Unit Members</u>	<u>1996 Salary</u>	<u>1996 Increase</u>	<u>Total Increase</u>
Tr.	\$20,860	10	\$21,590	\$730	\$7,300
A	\$25,252	2	\$26,136	\$884	\$1,768
B	\$27,547	6	\$28,511	\$964	\$5,784
C	\$29,843	7	\$30,888	\$1,045	\$7,315
D	\$34,433	4	\$35,638	\$1,205	\$4,820
E	\$40,172	19	\$41,578	\$1,406	\$26,714
F	\$45,911	125	\$47,518	\$1,607	\$200,875

The total number of unit members is 173. This does not include the 32 officers hired on January 27, 1997. The step placement of the above 173 bargaining unit positions is consistent with the PBA and County Scattergrams.²⁵ The total cost of the above scattergram for 173 bargaining unit employees before applying the 3.5% increase at each step is \$7,273,162. The cost of the 3.5% salary increase and total net economic change in 1996 is \$254,561.

Total Annual Net Economic Change - 1997

The following is the salary schedule and step placement of the bargaining unit

²⁵County Exhibit 1 and PBA Exhibit 32 both show the same 205 positions. See discussion on page 44 for difference in costs. PBA Exhibit 20 indicates that twenty-seven (27) employees left County service in 1996. Twenty-two (22) were at the maximum step on the salary guide. Neither the PBA, nor the County scattergrams include the 27 employees who left County service in 1996.

members in effect in 1997 and the net economic change after applying a 3.5% increase to each step of the salary schedule:

<u>Step</u>	<u>1996 Salary</u>	<u>Unit Members</u>	<u>1997 Salary</u>	<u>1997 Increase</u>	<u>Total Increase</u>
Tr.	\$21,590	32	\$22,346	\$756	_____
A	\$26,136	10	\$27,051	\$915	\$9,150
B	\$28,511	2	\$29,509	\$998	\$1,996
C	\$30,888	6	\$31,969	\$1,081	\$6,486
D	\$35,638	7	\$36,885	\$1,247	\$8,729
E	\$41,678	4	\$43,137	\$1,459	\$5,836
F	\$47,517	144	\$49,181	\$1,664	\$239,472

The total number of unit members in 1997 is now 205 with the addition of the thirty-two (32) officers hired on January 27, 1997. The total cost of the above scattergram for the 173 bargaining unit employees before applying the 3.5% increase at each step is \$7,781,700.²⁶ The total cost of the 3.5% increase is \$271,669. This brings the total salary for the original 173 bargaining unit members in 1997 to \$8,054,060. The inclusion of the thirty-two (32) new hires brings the 1997 salary base for 205 employees to \$8,769,100. The cost of the 3.5% salary increase and the total net economic change in 1997 is \$271,669.

Total Annual Net Economic Change - 1998

The following is the salary schedule and step placement of the bargaining unit members in effect in 1998 and the net economic change after applying a 3.5% increase to each step of the salary schedule:

²⁶This calculation assumes the forty-eight (48) employees on the salary schedule move up one step. Neither party factored this movement in their costs. This does not factor in employees who may have left County service in 1997 or the 32 employees hired on January 27, 1997.

<u>Step</u>	<u>1997 Salary</u>	<u>Unit Members</u>	<u>1998 Salary</u>	<u>1998 Increase</u>	<u>Total Increase</u>
Tr.	\$22,346	—	\$23,127	\$782	—
A	\$27,051	32	\$27,996	\$945	\$30,240
B	\$29,509	10	\$30,542	\$1033	\$10,330
C	\$31,969	2	\$33,088	\$1119	\$2,238
D	\$36,885	6	\$38,176	\$1291	\$7,746
E	\$43,137	7	\$44,647	\$1510	\$10,570
F	\$49,181	148	\$50,902	\$1721	\$254,708

The total number of unit members in 1998 is now 205 with the addition of the thirty-two (32) academy graduates hired on January 27, 1997. The total cost of the above scattergram for the 205 bargaining unit employees before applying the 3.5% increase at each step is \$9,026,579.²⁷ The total cost of the 3.5% increase is \$315,832. This brings the total salary for the original 205 bargaining unit members in 1998 to \$9,342,475. The cost of the 3.5% salary increase and the total net economic change for 1998 is \$315,896. In summary, the total net economic change for the term of the award is \$254,561 in 1996, \$271,669 in 1997 and \$315,832 in 1998.

I shall describe the complete terms of my award so that the award will be the reference point in discussing and applying the statutory criteria. The parties, in their briefs, emphasized their own positions and that of the other party. Since this is a conventional arbitration proceeding, I shall not focus on the parties' positions since I shall not adopt either of their positions.

The term of the new agreement shall be three years, January 1, 1996 to December 31, 1998. Salaries shall be increased as follows: January 1, 1996 - 3.5%,

²⁷This calculation assumes the forty-eight (48) employees on the salary schedule move up one step. This does not factor in employees who may have left County service in 1997.

January 1, 1997 - 3.5%, and January 1, 1998 - 3.5%. The 3.5% increases shall be across-the-board and applied to each of the seven steps (Tr. - F) of the salary schedule in all three years. The total net economic change is limited to the cost of the salary increases for the three years of the new agreement.

I shall award the County's proposal on the Child Care Reimbursement Assistance Program. There shall be no change in overtime. There shall be no change in compensatory time. There shall be no change in health benefits. There shall be no change in bereavement leave. There shall be no change in pay periods. There shall be no change in shift bidding. There shall be no change in the clothing allowance. There shall be no change in PBA Time.

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

The interests and welfare of the public.

The New Jersey Supreme Court in Hillsdale determined that an interest arbitration decision that failed to consider the interests and welfare of the public would be found deficient and subject to reversal. The amended statute clearly requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the limits of the CAP law in the section on Lawful Authority.

The County properly noted that the Hillsdale decision emphasized that "the public is a silent party" to the interest arbitration process, and that "an award runs the risk of being found deficient if it does not expressly consider" the public interest. The County asserts that the public interest is clear: the taxpayers have expressly commanded the Freeholders to not increase taxes and to streamline government. The County further asserts that the Freeholders determined to implement that mandate by

the adoption of a budget that included the same set dollar increase for every County employee. The Count argues that any award that exceeds the carefully planned, taxpayer-driven budget runs counter to the public interest.

The County maintains that the Jail is properly and safely staffed and that the desirability of working at the Jail is supported by the low turnover rate. The County acknowledged the problem of mandatory overtime and believes this problem will be reduced dramatically by the hiring of the thirty-two additional officers.

The PBA contends that a fair compensation package is critical to the County's own goals: a properly paid, well trained and reasonably satisfied force of Corrections Officers is an essential component in the assurance that the County Jail will be safe. The PBA asserts that Corrections work is stressful, demanding and often life-threatening. The PBA contends that the number of County Corrections Officers has remained relatively stagnant, while the prison population has exploded, and the duties and responsibilities imposed upon the Corrections Officers have increased.

The work of a Corrections Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Corrections Officers are certainly aware of this condition of employment. These officers deserve a reasonable level of compensation in recognition of their service. A reasonable level of compensation is a necessary ingredient in maintaining a productive work force with requisite high morale. There is also the need to balance the level of compensation with the County's need to be fully staffed. I am satisfied that the County's staffing levels are in conformance with national and state standards as testified to by Warden Johnson at the hearing. This must be balanced against the County's need to maintain adequate staffing levels at affordable compensation levels to meet the legitimate and essential service

requirements at the County Jail.

The significant amount of voluntary and mandatory overtime in 1995 (\$2,056,524) and 1996 (\$2,296,252) and the large number of employees (27) leaving County service in 1996 is indicative of staffing problems in the workplace.²⁸ The \$2,296,252 expended for overtime in 1996 is 28% over the actual \$8,146,523 paid out in straight salaries in 1996. This is inconsistent with the interests and welfare of the public both from a staffing and budgetary perspective — large amounts of mandatory overtime increase stress on the job and is clearly not the most efficient use of human resources and monies.

The County has made great strides in alleviating this acknowledged problem by the hiring of thirty-two new officers thereby greatly reducing the amount of overtime and the stress caused by large amounts of mandatory overtime. It is also more cost effective for the County and consistent with the interests and welfare of the public. The salary costs of thirty-two new employees at a salary of \$22,346 in 1997 is significantly less than overtime costs of employees being paid \$49,180 at maximum. Warden Johnson testified that overtime had been reduced by 90% following the assignment of the thirty-two new officers upon graduation from the police academy.²⁹ This could provide great financial relief for the County in 1997 and 1998.³⁰

²⁸See County Exhibits C-15, C-16 and C-24 and PBA Exhibit PBA-20 .

²⁹Warden Johnson testified that the civilianizing of certain positions provided 18 additional officers to work the line and further reduce overtime. The warden also testified that the midnight shift was reconfigured so that 60 officers who worked four 10-hour days moved to five 8-hour days. Thus, each officer worked an additional day per week, which equates to another 12 Corrections Officers available to further reduce mandatory overtime. These changes represent an increase of approximately 60 officers which is almost one-third of the workforce.

³⁰The hourly rate for the new employees is approximately \$10.75 whereas the overtime rate at just time and one-half (1½) is approximately \$35.50, nearly three times the hourly rate. This could amount to several hundred thousand dollars in 1997 and 1998.

The County argues that the Freeholders budget and salary proposal is taxpayer driven and any award other than their proposal runs counter to the public interest. The County deserves much credit for its strong fiscal management which I shall detail in subsequent discussions. The County's salary proposal places great emphasis on the AFSCME settlement providing for a 6.7% increase over the three-year agreement for the large majority of the Corrections Officers who are at the maximum step. The PBA's salary proposal provides a 16.1% increase over the same time period for the Corrections Officers at maximum.

I do not believe that either the PBA or County proposal is reasonable and satisfies the requirement of the interests and welfare of the public. As previously stated, a reasonable level of compensation is a necessary ingredient in maintaining a productive work force with requisite high morale.

I believe that my role as arbitrator is to balance the competing and diverse needs of the County and the PBA in order to satisfy the interests and welfare of the public. I believe that salary increases of 3.5% each year achieve that balance and are consistent with the public interest.

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

This criterion includes three sub-parts: comparisons are to be made with other employees performing similar services and with other employees generally 1) in private employment in general, 2) in public employment in general and 3) in public employment in same or similar comparable jurisdictions.

I agree with the PBA that comparisons of private employment with law

enforcement are not meaningful since there are no employees who are performing the same or similar services in the private sector and no private sector comparisons were submitted by either party. This is predominately a governmental activity and I shall assign no weight to this part of the factor.

The second part of this factor requires a comparison with other employees generally in private employment.

The County and the PBA both submitted data compiled by the Bureau of National Affairs showing that private sector wages increased between 3% and 3.2% in manufacturing and nonmanufacturing settlements in 1995 and 1996.³¹ There is nothing in the record to suggest a change in these private sector wage increases in 1997 or 1998.

The Police and Fire Public Interest Arbitration Reform Act at N.J.S.A. 34:13A-16.6 requires PERC to prepare or have prepared a survey which is a public document of private sector wage increases for use by all interested parties. PERC provided such a survey in August 1996, the first year in which such reports were required. Data for 1997 has not yet been distributed by PERC. The August 1996 document reflects a 3.4% private sector wage change from 1994 to 1995. The figures are broken down by County and the figure for Middlesex County is 3.5%.

I have applied greater weight to the BNA data which is more current than the PERC data. The 3.5 % salary increases I have awarded are slightly higher than the salaries negotiated in private employment in general but more appropriate than either the County or the PBA salary proposals.

The next sub-part is comparison with public employees in general. The parties submitted very little data with respect to this factor. The County made reference to a

³¹See County Exhibit C-66 and PBA brief at page 21 citing same BNA wage data.

number of settlements between the State of New Jersey and its unions that provided for a two-year wage freeze beginning July 1, 1995. The County also noted the interest arbitration award for State Corrections Officers that also included a two-year wage freeze.

The PBA provided data on teacher salaries and also provided data on salaries of municipal police officers in Middlesex County asserting that County Corrections Officers lagged far behind in relation to average salaries of teachers and maximum salaries of municipal police officers in Middlesex County. The PBA also cites the recent compilation by PERC of recent public sector settlements and interest arbitration awards for public safety employees. The PERC document is a summary of interest arbitration proceedings since January 1, 1997, and indicates that the average police settlement increase was 3.8% in 1996, 4.4% in 1997 and 4.38% in 1998. The summary of interest arbitration awards indicates that salaries increased 4.19% in 1996, 3.91% in 1997 and 3.53% in 1998.

Again, the salary increases of 3.5%, while somewhat less than other public safety increases, are in line with the salaries negotiated in public employment in general and more appropriate than either the County or the PBA salary proposals.

The third sub-factor in this comparative analysis deals with public employment and it has two components: the same jurisdiction and comparable jurisdictions. N.J.S.A 34:13A-16-2 requires PERC to promulgate guidelines for determining comparability under this criterion. PERC has done so and I have been guided by this document which is not intended to be exhaustive. The parties are permitted to suggest consideration of other elements.

I shall begin with internal comparisons of other employees in the County. The County has placed great significance on its settlement with AFSCME Council #73 which

represents the largest bargaining unit in the County with 760 employees. The AFSCME settlement is identical, in total dollars (\$3,150), to the salary proposal the County offered the PBA. The average salary of the AFSCME unit members was \$25,747 before the six salary increases were applied.³²

The County submits that its final offer provides a salary increase that falls squarely in line with its settlement with the largest bargaining unit in the County.

The PBA submits that the AFSCME settlement is more appropriately evaluated by converting the County's salary increases to the equivalent percentage increases.

The County's main argument is that it has established a pattern with its largest bargaining unit. I do not agree. This might be the case if the County was proposing to increase the Corrections Officers' salaries on a commensurate basis. The vast majority of the County Corrections Officers are at the maximum step on the salary guide. The salary at this step is \$45,910. The average salary for Corrections Officers before the 1996-1998 salary increases are applied is \$42,041.³³ The County's pattern argument would be more persuasive if it was providing a similar salary increase to Corrections Officers. The average base salary increase for AFSCME units members over the term of the agreement is nearly 12%. The average base salary increase to the Corrections Officers average salary of \$42,041 is 7.3% and the average increase for the majority of the bargaining unit at the maximum step is 6.7%. The County's proposal is not consistent or in any way equivalent to the salaries received by AFSCME and therefore does not comport with the requirements of this sub-factor measuring internal

³²County Exhibit C-30, Roster of AFSCME Local 3440, Council 73.

³³See page 44 for analysis of scattergram and total salary base.

comparability.³⁴ Presumably, there is a relationship between different jobs that is reflected in the salary that is paid to the employees in these different jobs. Each job has different requirements that determine the level of pay for the work performed. The relationship of these jobs will be maintained if the salaries increase by the same percentage. Under the County's salary proposal, the salary relationship between the PBA and members of the AFSCME unit will be narrowed.

The only other internal comparison is with respect to the interest arbitration award issued by Carl Kurtzman providing salary increases of 2% effective January 1, 1996; 2% effective July 1, 1996; 2.25% effective January 1, 1997; 1.5% effective July 1, 1997; 2.5% effective January 1, 1998 and 1.5% effective July 1, 1998. This award affects twenty-three Middlesex County police officers and provides for a 11.75% increase over the same three-year period in the instant matter.

The County's voluntary settlement with AFSCME is the most relevant consideration with respect to internal comparability. Thus, the annual salary increases of 3.5% that I have awarded are somewhat less than the average percentage increase in the AFSCME voluntary settlement and the Kurtzman interest arbitration award. On balance, I believe my award will maintain internal comparability during the term of the new agreement.

The next sub-factor requires an external comparison with employees in similar comparable jurisdictions. The County notes that the Appellate Division decision in

³⁴The County's proposal might be considered a true pattern if it provided equivalent percentage increase on the average salary of the Corrections Officer unit. The equivalent percentage increase converts to across-the-board dollar increases of \$1,629 in 1996, \$1,629 in 1997 and \$1,875 in 1998 for a total increase of \$5,133 over the term of the agreement for all bargaining unit members. This is nearly \$2,000 more than the County's \$3,150 proposal and would bring the maximum step to \$51,043. The maximum step, after applying the annual 3.5% salary increases of my award, is \$50,902, which is a difference of slightly more than one-quarter of one percent (¼%) over the three-year agreement — 10.5% compared to 10.77%.

Hillside rejected the argument that municipal police are “more comparable” to police in other jurisdictions than they are to blue and white-collar employees in the same jurisdiction.³⁵

The PBA provided extensive salary and fringe benefit data for all municipal police departments in Middlesex County. The County argues that this data is not relevant since the PBA presented no evidence to explain why a municipal police officer is comparable to a County Corrections Officer. The County submits that comparisons should be made to Corrections Officers in other counties.

The top base salary in 1995 was \$56,375 in Bergen County. This is followed by Passaic County at \$52,346; Ocean County at \$50,000; Morris County at \$48,179 and Monmouth County at \$46,057. This places Middlesex at \$45,911; sixth in the State out of ten reported. PBA data indicates that the Middlesex County Corrections Officers top step is nearly identical to the state-wide Corrections Officers median salary of \$45,939. A review of data regarding fringe benefits (sick days, holidays, call-in time, etc.) indicates that Middlesex County Corrections Officers enjoy similar benefits with their counterparts in other counties. The PBA also cited the recent settlement for Essex County Corrections Officers providing for salary increases of 2% in 1996, 5% in 1997 and 5% in 1998.³⁶

The PBA is correct that police officers in municipal police departments in Middlesex County receive higher maximum salaries than County Corrections Officers with ten of thirteen departments reported providing maximum salaries in 1995 that

³⁵This argument reinforces my finding with respect to internal comparisons with the AFSCME unit which predominately represents blue and white collar employees.

³⁶A review of the PERC data indicates that Essex County Sheriffs Officers received the same increases as part of 4-year interest arbitration award with a salary freeze in 1995.

ranged from \$48,011 to \$54,167. There is, however, no specific data with respect to current settlements in order to make any meaningful comparisons with municipal police officers. These differences may be long standing, going back many years, with similar annual increases over the years. It is also worth noting that while this comparison has some value, its weight may be limited by several factors. The comparison is relevant since Corrections Officers and municipal police are drawn from the same geographic employment pool. The municipal police departments and the County share a portion of the same tax revenue source, local property taxes. The impact of these comparisons must be balanced by a recognition that the jobs of a municipal police officer and a County Corrections Officer differ. Also, county law enforcement salary and benefits are traditionally compared with other county units in the same or comparable counties rather than to municipal police units.

Accordingly, I find that greater weight must be afforded to comparisons with other County Corrections Officers than municipal police officers in Middlesex County. This places Middlesex at \$45,911; sixth in the State out of ten reported. PBA data indicates that the Middlesex County Corrections Officers top step is nearly identical to the state-wide median Corrections Officers salary of \$45,939. I also find, after reviewing the wage data provided by the PBA, that the relative position of the County Corrections Officers which places them almost exactly at the median will be maintained by the 3.5% salary increases awarded.

The PBA also made reference to a compilation by PERC of recent public safety settlements achieved and interest arbitration awards issued since January 1, 1997. The PERC data show average increases for voluntary settlements as 3.8% in 1996, 4.4% in 1997 and 4.38% in 1998. The corresponding PERC data show average increases

for interest arbitration awards of 4.19% in 1996, 3.91% in 1997 and 3.53% in 1998.

This data provides some insight into state-wide patterns but again it does not provide specific comparisons with Corrections Officers in other counties. It also does not include any of the award and settlement data from 1996 nor does it include voluntary settlements reached without the assistance of a PERC appointed interest arbitrator.

The PBA economic proposal averaging more than 5% annually exceeds the comparisons with other private employees in general; other public employees in general; other public employees in the same jurisdiction including the County's settlement with AFSCME and the Kurtzman interest arbitration; and other public employees in comparable jurisdictions. The PBA proposal does not comport with the requirements of this criterion and its many sub-parts.

The County's economic proposal providing salary rate increases of 2.2% in 1996, 2.1% in 1997 and 2.4% in 1998 is substantially less than the comparisons with other private employees in general; other public employees in general; other public employees in the same jurisdiction including the County's settlement with AFSCME and the Kurtzman interest arbitration; and other public employees in comparable jurisdictions.

The County's economic proposal also does not comport with the requirements of this criterion and its many sub-parts. The County's salary proposal would result in a deterioration of the Corrections Officers current state-wide median salary as compared to other County Correction Officers. The County's salary proposal is also substantially less — 6.7% v. 11.75% — than the salary increase it provided to members of its largest bargaining unit represented by AFSCME.

In summary, the 3.5% increases that I have awarded more accurately reflect the requirements of this criterion and its many subparts and are within the range of the various comparisons which must be considered. The 3.5% salary increases moderately exceed the average increases received by private employees and public employees in general and are somewhat less than the average increases received by AFSCME and the Middlesex County Police. The 3.5% salary increases will also enable the County Corrections Officers to retain its median position when compared on a state-wide basis with other county Corrections Officers.

The overall compensation presently received by the employees; inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received.

The PBA submitted substantial data on other fringe benefits currently received by Middlesex County Corrections Officers. A review of the data indicates that the existing set of terms and conditions of employment that Corrections Officers currently enjoy are very competitive. This is valid when measured against other county Corrections Officers and municipal police officers in Middlesex County. PBA Exhibit #6 indicates that Middlesex County Corrections Officers enjoy equal or better benefits than other county Corrections Officers in sick days, personal days, holidays, overtime (after 8), call-in pay minimum, court time minimum, optical benefits, and terminal leave.

The overall compensation criterion indicates a salary and benefits package which in total represents a standard, competitive set of terms and conditions of employment.

I will now discuss other fringe benefit issues as well as other non-economic issues.

The first issue is clothing allowance. I have not recommended any change in the current \$650 clothing allowance for three reasons: First, a review of data submitted by

the PBA indicates that the average clothing allowance received by municipal police officers and other County law enforcement units is \$679. Second, the unrefuted testimony of Warden Johnson that the contract prices were much cheaper than those provided by the PBA and that Corrections Officers could avail themselves of those prices. Third, the County provided unrefuted testimony that the SOA's \$1,000 clothing allowance was received in years when the Corrections Officers received a higher percentage salary increase than the SOA.

The County did not provide a sufficient basis and rationale to justify its proposal to change health benefits. It would be irresponsible for me to alter the parties' agreement without sufficient justification for such a major change. I shall reject this proposal. I note that Arbitrator Kurtzman also rejected the County's proposal in his award covering the County police. I agree with the PBA that the County had an obligation to make a timely submission of this issue in order to permit an opportunity for direct negotiations.

Neither party provided sufficient justification for changes in the number of compensatory days. The County seeks the total elimination of the current seven (7) compensatory days and the PBA seeks an increase to twelve (12). Both parties' arguments related to mandatory overtime. The PBA seeks an increase to alleviate the stress caused by the large amounts of mandatory overtime required in 1996. The County seeks to eliminate it because it creates additional overtime requirements. I have previously acknowledged the County's efforts to reduce mandatory overtime by 90% as a result of additional staffing, civilianizing of positions and work schedule changes. These changes obviate the need to increase or decrease compensatory days at this time.

The County provided no justification for its proposal to change pay periods. I note that Arbitrator Kurtzman also rejected this change. I also reject the PBA's proposal for increased PBA time since it provided insufficient justification for an increase. I also reject the PBA's proposal to increase shift differentials as too costly. The PBA's proposal would cost the equivalent of 1.1% over the term of the agreement and cannot be justified in light of the awarded salary increases. It is also inappropriate at this time since it would not be provided to all unit members and there is no evidence in the record that an additional incentive is necessary to maintain staffing levels on the second and third shifts.

The County's proposal to eliminate overtime after eight (8) hours is rejected. A review of PBA data indicates that this benefit is enjoyed by a large majority of other Corrections Officers on a state-wide basis and would undermine the competitiveness of the PBA's terms and conditions of employment. The County provided no justification for a change at this time and the County's acknowledged efforts in reducing mandatory overtime militates against any change at this time.

The County's proposal to increase the Child Care Reimbursement Assistance Program weekly allowance from \$20 to \$25 for employees who earn between \$18,001 and \$25,000 is granted. The County has not provided any justification for the implementation of a \$250 performance incentive and it is rejected.

The PBA is seeking to maintain shift bidding which uses seniority as a basis for shift and duty off assignments. The PBA requested one change in the shift bidding procedure — that officers be permitted to "rebid" for their shifts and days off once during the life of the contract (every 18 months). The PBA submits that Corrections Officers do not bid on particular assignments — they are only allowed to bid on the times of day

and days of week when they will be working. The warden retains the right to decide where officers will work within those shifts and days.

The County seeks to eliminate shift bidding. The County cites Warden Johnson's testimony that shift bidding erodes management's ability to staff the Jail to maximize its resources and minimize danger by limiting his ability to match Corrections Officers with the appropriate assignments.

The County also points to Warden Johnson's testimony that more senior people tend to gravitate toward the shifts during the day, with weekends off, resulting in the creation of vulnerability since the midnight and weekend shifts are now staffed with the less senior, less experienced Corrections Officers.

On cross-examination, Warden Johnson testified that Corrections Officers are permitted to switch shifts and he had not received any written complaints since its inception. Warden Johnson also testified that management has complete discretion to assign Corrections Officers to duties on a shift and to specific posts. The warden also acknowledged that employees are not allowed to bid for the first thirty-six months of their employment giving management complete discretion.

The current system has been in effect less than two years. The record includes no documentary evidence that less experienced Corrections Officers are available to work certain shifts or certain days during the work-week. Thus, I reject the PBA's requested modifications and also reject the County's proposal to eliminate this provision. It is common practice to use seniority to determine days off and hours of work. The current language on shift bidding shall be continued in the new agreement.

Stipulations of the parties.

The only stipulation is the parties' agreement to a three-year contract.

The lawful authority of the employer. Among the items the arbitrator 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.).

In considering the lawful authority of the employer, the statute requires the arbitrator, among other things, to assess the limitations imposed upon the employer by the CAP Law which, generally, limits the authority by which a public employer can increase its final appropriations from one year to the next as a means of controlling the cost of government in order to protect homeowners. This limitation goes to total appropriations and not to any one line item.

The County raised many questions and arguments regarding its ability to fund the PBA proposals under the CAP Law. This was appropriate in the days of "final offer" arbitration but does not accommodate a conventional arbitration matter as is now required under the Public Interest Arbitration Reform Act. These funding arguments were in response to the PBA's total economic proposal which is more than 16% over three years. The County could not have prepared a response to my award which costs 10.5% over three years. This is a difference of more than 5½%.

The PBA's financial consulting firm, McEnerney, Brady & Co., prepared a Government Profile³⁷ detailing the financial condition of the County. A Certification was provided by Albert P. Kuchinskas³⁸, Middlesex County Budget Director, and subsequent certifications were submitted by Kuchinskas and McEnerney, Brady & Co In July 1997.

The County submits that I must address the County's budget CAP and the requirement that the County prepare a balanced budget each year, as well as the budget directive of the County taxpayers that no new taxes be levied.

³⁷PBA Exhibit 36, County of Middlesex Government Profile, May 1997.

³⁸County Exhibit 89, prepared in March 1997.

First, it should be acknowledged that the County has been very responsive to the needs of the taxpayers. The County has managed to maintain services while adopting a prudent and fiscally responsive budget.

This fiscal prudence is evidenced by the County's ability to lower taxes in each of the last four years. Additional evidence of this fiscal prudence and of particular significance with respect to this criterion is that the County has accumulated a very large CAP bank — over \$16,000,000. The \$16,000,000 in the CAP bank is the difference between what the County could have taxed in 1995 and 1996 and what it actually taxed in 1995 and 1996. The difference between these two amounts for the two years preceding the current budget year budget can be used to increase the maximum allowed for taxation in the current year. This indicates that the 1995 and 1996 budgets were \$16,000,000 below the legal limit under the CAP.

The parties' financial experts disagreed as to the actual amount of the County's 1997 budget surplus. The PBA suggested that the County completed the year with a \$13,656,102 surplus. The County suggested that the retained surplus was \$6,785,273 after the adoption of the 1996 budget and the current surplus is \$8,900,000.

The parties agreed that the County has earned a Triple A rating from three independent credit rating agencies.

The above analysis needs to be put in perspective. The County's salary proposal costs \$129,750 in 1996, \$215,250 in 1997 and \$230,000 in 1998. The PBA salary proposals would have cost \$392,645 in 1996, \$409,830 in 1997 and \$494,095 in 1998. The cost of implementing my award is \$254,561 in 1996, \$271,669 in 1997 and \$315,832 in 1998. Undeniably, there are significant differences between the cost of the PBA salary proposals and the cost of the County's salary proposals.

Such differences are much less when compared with my award. The differences are \$124,751 in 1996, \$56,419 in 1997 and \$85,832 in 1998. The \$85,832 is arguably offset by the County's obligation to pay the rollover of \$46,125 in 1999. This reduces the impact of the award in 1998 to \$39,707. These are not significant differences when measured against the County's overall budget which in 1997 was more than \$275,000,000.

It is also appropriate to recognize the savings that the County will realize by its previously acknowledged efforts to reduce overtime costs. Overtime costs were in excess of \$2,000,000 in both 1995 and 1996. Corrections Officers received an average of \$10,000 in additional overtime pay in 1995 and 1996. Warden Johnson testified that the last piece of the staffing improvements, the deployment of the 32 new Corrections Officers, reduced overtime by 90%. This could save hundreds of thousands of dollars resulting in a total payroll in 1997 and 1998 that will be less than the total 1996 payroll. These overtime savings and reduced payroll costs must be balanced against the additional cost of implementing my award.

Thus, I conclude that given the relatively small amount at issue in this matter, that the County will not exceed its lawful authority in implementing the terms of the award.

The financial impact on the governing unit, its residents and taxpayers.

The financial impact of this award on the governing unit, its residents and taxpayers will be minimal, if any, because of the relatively modest 3.5% salary increases awarded (compared to the prior three-year increases of 4.3%, 6% and 6%) and the strong measures taken by the County to reduce the significant overtime costs it incurred in 1995 and 1996.

The 1996 total payroll was \$10,425,560 of which \$2,279,030 was incurred by overtime. The County expects to see major reductions in overtime costs in 1997 and 1998 through the improved deployment of personnel and additional staffing. This will have a significant positive financial impact on the County, its residents and taxpayers. Warden Johnson testified that the last piece of the staffing improvements, the deployment of the 32 new Corrections Officers, reduced overtime by 90%. This could save hundreds of thousands of dollars resulting in a total payroll in 1997 and 1998 that will be less than the total payroll in 1996.

The fiscal history, as detailed in the previous section on lawful authority, shows a fiscally prudent and solid management in tune with the needs of the taxpayers and residents. This is demonstrated by the County's ability to maintain a high level of services at the same time it has been reducing taxes — for four consecutive years. The amount to be raised by taxation in 1997 is down \$3,200,000 from the 1993 budget year.

The County enjoys the seventh highest median household income in the State at \$57,825. The median for the State is \$50,322. It should also be noted that the equalized value of real property has doubled in the last ten years and construction starts are the highest in northern New Jersey adding to the County's tax base.

The County has previously budgeted and encumbered money for salary increases. Overtime savings may account for the difference between the budgeted amount and the cost of funding my award. It is possible that it will require additional money beyond the amounts already encumbered and budgeted, however this amount is not sufficient to create a hardship or negative impact on the budget or the taxpayers.

Thus, I conclude that that the amount awarded, which is 3.5% per year annualized, is fully consistent with this statutory criterion.

Cost of Living

The evidence indicates that the cost of living, as measured by the Consumer Price Index has been increasing at approximately 3% a year for the last several years. There is no evidence that this figure will change significantly in the near future. This figure supports neither the PBA's nor the County's salary proposals with the County moderately below and the PBA significantly above cost of living increases. The awarded salary increases of 3.5% will maintain the Corrections Officers slightly ahead of the increases in the cost of living providing for a modest increase in real earnings. This is significantly less than when the salary increases of the past five years exceeded the cost of living by 2-3%.

Thus, I conclude that the awarded increases provide a modest increase in real earnings and are consistent with this statutory criterion.

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.

The County's asserts that its salary proposal and the County's current wage and benefit package is sufficient to attract qualified candidates noting that over 184 individuals are currently listed on the Department of Personnel eligibility list. The County submits that seniority is high and turnover is low. The County also notes that Corrections Officers are not affected by mass layoff, downsizing and privatization which the county contends is prevalent in New Jersey. The County submits that the PBA's proposal would cause layoffs and would be detrimental to the Corrections Officers and therefore not consistent with this criterion.

The PBA argues that the difficulty of the job is taking its toll. Officer morale is at an all-time low and turnover is high. The PBA points out that in a unit of 200 officers, 10 officers left in 1995, 27 left in 1996 and 10 have already left in 1997.³⁹ The PBA contends a number of reasons account for the high turnover — the job provides little satisfaction, mandatory overtime is high and salaries are comparatively low.

There is evidence that a large number of employees left County service in 1996. Employee turnover is high when twenty-seven employees, about 15% of the work force, leave employment. The record is not clear as to why these employees left. The record is clear that high levels of mandatory overtime in 1995 and 1996 had a negative effect on morale and created additional stress on the job. This appears to be rectified by the strong management measures implemented to reduce overtime.

The County's salary proposal is below all of the settlement data and could cause Corrections Officers to seek other employment or alternatively cause a decline in employee morale and productivity and the effectiveness of the Jail operations. On the other hand, the PBA's proposal might cause the County to reduce, replace or even lay off Corrections Officers which would also cause a decline in employee morale and productivity and the effectiveness of the Jail operations. I have already decided not to award either proposal.

The award of 3.5% annual salary increases, less than what the PBA sought and more than the County proposed to spend, will not jeopardize either employment levels or other government services. It will also not cause Corrections Officers to seek other employment and will maintain a sense of appreciation and respect for the jobs which they perform and the inherent dangers that Corrections Officers face on a regular basis.

³⁹PBA Exhibit 20.

The wage and benefit package will remain competitive permitting the continued recruitment and retention of qualified Corrections Officers.

The award of 3.5% annual salary increases will preserve the continuity and stability of employment and satisfy the requirements of this criterion.

Summary

I have carefully considered the record in this case including the testimony of the parties' witnesses and the numerous exhibits which were introduced. I have also fully and carefully considered the arguments advanced by the parties in support of their respective positions. I have considered the evidence and the arguments in relation to the statutory criteria which I am bound to consider and apply.

My award, consistent with the intention of conventional arbitration, represents a balancing of the PBA and County proposals. The award is slightly above private sector and other public sector increases and the cost of living and will provide modest gains in real earnings. The award, while slightly below increases for other public safety employees in New Jersey, will maintain the relative position of County Corrections Officers as compared to Corrections Officers state-wide. I determined that my award more appropriately satisfied internal comparisons and rejected the County's method of applying the terms of the terms of the AFSCME settlement. I determined that the County's acknowledged successful efforts in curtailing exceptionally high 1996 overtime costs would result in additional savings thus further reducing the already modest impact of the awarded salary increases. I also determined there are no CAP constraints and the financial impact, if any, is minimal.

Accordingly, I hereby issue the following:

AWARD

1. The term of the agreement shall be January 1, 1996 through December 31, 1998.

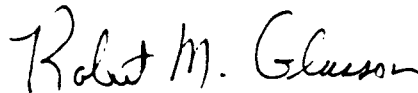
2. Salaries shall be increased by 3.5% across-the-board effective January 1, 1996, January 1, 1997 and January 1, 1998 and applied to all steps on the salary schedule as follows:

<u>Step</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Tr.	\$21,590	\$22,346	\$23,127
A	\$26,136	\$27,051	\$27,996
B	\$28,511	\$29,509	\$30,542
C	\$30,888	\$31,969	\$33,088
D	\$35,638	\$36,885	\$38,176
E	\$41,578	\$43,137	\$44,647
F	\$47,517	\$49,181	\$50,902

3. The County's Child Care Reimbursement proposal is granted.

4. All other provisions in the parties' January 1, 1994 to December 31, 1995 agreement shall continue unchanged except as mutually agreed to by the parties.

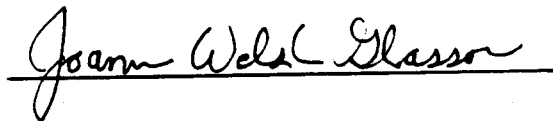
Dated: October 24, 1997
Pennington, NJ



Robert M. Glasson
Arbitrator

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

On this 24th day of October 1997, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Joann Walsh Glasson
Notary Public
State of New Jersey
Commission Expires 12-11-98

