

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**BURLINGTON COUNTY DEPARTMENT OF CORRECTIONS**

-and-

Docket No. IA-2013-5

**PBA LOCAL NO. 249**

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Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the County:

Capehart and Scatchard, Attorneys  
(Carmen Saginario, of counsel)

For the PBA:

Detsky & Hunter, Attorneys  
(Stephen B. Hunter, of counsel)

Witnesses:

Dr. Raphael Caprio, PBA Financial Consultant  
Robert J. Swenson, PBA Local 249 President  
Marc Krassan, Acting County Chief Financial Officer  
Nathanial Talbert, Supervising Juvenile Detention Officer  
Lawrence Artis, Warden, Burlington Co Corrections Dept.  
Daniel Hornickel, Burlington Co Director of Labor Relations

**INTEREST ARBITRATION AWARD**

On October 9, 2012 the County of Burlington filed a  
Petition with the Public Employment Relations Commission to  
initiate interest arbitration over a successor collective  
negotiations agreement with Burlington County PBA Local 249.  
The previous agreement expired on December 31, 2011.

On October 12, 2012, I was appointed to serve as the  
interest arbitrator by a random selection procedure pursuant to  
N.J.S.A. 34:13A-16(e)(1). This statutory provision requires

that an award be issued within 45 days of my appointment with no provision for a mutually agreed upon extension of any length.

Interest arbitration hearings were held on November 7 and 9, 2012 at the County Administration Building. Both parties were given an opportunity to offer testimony and documentary evidence. The County and PBA Local 249 each submitted substantial documentary evidence. Both parties submitted Final Offers and calculations of the financial impact of their respective economic proposals. The PBA submitted a financial analysis prepared by Dr. Raphael Caprio; the County submitted financial data and analysis by its acting Chief Finance Officer Marc Krassan. Both testified at the hearing. Post-hearing summations were filed by November 19, 2012.

#### **FINAL OFFERS OF THE COUNTY**

The County submitted the following final offer:

**Art. II Salary:**

2012: 0% (and elimination of step increments)

2013: 0% (no step movement)

2014: 1.75% to existing base salary per unit member

2015: 1.75% to existing base salary per unit member

(New Direct Deposit):

The County shall pay all employees' salaries by way of direct deposit each payday, and shall furnish employees with a paper or electronic pay stub for each pay period. All employees shall complete and periodically update, as necessary, direct deposit forms which shall be delivered to the Department of Human Resources/ Payroll unit.

**Art. V Sick Leave:**

- Revise paragraph A:

All sick time shall be credited in hours. A new employee shall be credited with 8 hours of sick time if hired b/t the 1<sup>st</sup> and 8<sup>th</sup> day of the month and 4 hours if hired between the 9<sup>th</sup> to 23<sup>rd</sup> day. Full time employees shall be credited with 120 hours.

Paragraph B, C - Delete reference to 15 sick days and replace with "120 hours."

Paragraph C - Revise to explain that sick time is credited at the rate of 10 hours per month.

Paragraph D - Eliminate (there are no part time correction officers) and replace with the following language:

Employees shall notify the Employer at least 48 hours prior about scheduled doctors' appointments and shall be permitted to use sick time for such appoints (to include reasonable travel time to and from).

Paragraph E, F - Replace "days" with "hours."

Paragraph G. sub. 1, 2 - Change 10 and 5 days to 80 hours and 40 hours, respectively.

Paragraph H Add "legally recognized domestic partner or member of civil union."

Paragraph I - Change five (5) consecutive working days to "more than 34.5 hours."

**Art. VII Family & Medical Leave:**

- Add new sentence: "Employees must use all earned sick and vacation time during an approved FMLA/NJFLA absence."

**Art. IX Personal Leave:**

- Revise paragraph A:

All personal time shall be credited in hours. Each employee shall be entitled to 24 hours of personal time per year.

- Paragraph B - Revise to reflect new employees shall receive eight (8) hours for each four (4) months of service.

**ART. X HOLIDAYS:**

Paragraphs A. - D: Delete and replace with the following language:

A. The County shall convert the fourteen (14) holidays listed above into 112 hours of holiday pay and shall pay out such holiday time, subject to Paragraph B, below, twice per year in installments of up to 56 hours by June 15<sup>th</sup> and December 15<sup>th</sup>, respectively.

B. An employee who calls out sick on a holiday, or if not scheduled to work on a holiday, on his/her last regularly scheduled day before and first day after said holiday, shall be required to supply a doctor's note within three days of calling out sick on the holiday. An employee who fails to submit a doctor's note shall not receive pay for the holiday and shall be subject to discipline for unauthorized absence. An employee who calls out sick on more than one holiday (and/or last regularly scheduled day before and first day after said holiday) shall receive progressive discipline for calling out sick, regardless of whether a doctor's note is supplied, unless the employee is absent for three (3) consecutive days in conjunction with the holiday; proof of illness shall be required to excuse such absence.

**ART. XI VACATION LEAVE:**

- Revised to convert all time to hours consistent with the proposal for Sick Leave. By way of example, an employee entitled to 12 days would receive 96 hours.

Paragraphs A, B and C - Revise to reflect hours not days.

Paragraph E - Replace "days" with "hours."

Paragraph G - Eliminate.

Paragraph H - Revised/reneegotiate to reflect changes due to proposed new work schedule.

**ART. XII OVERTIME:**

- Paragraph A. - Edit to read:

Overtime refers to any time worked beyond 34.5 hours (during the three day workweek) and after 46 hours

(during the four day workweek) and is to be earned only when the employee is ordered to work by a supervisor. ~~Such orders shall be given only when unusual circumstances arise.~~ Upon the effective date of this agreement time worked over the normal 34.5 hours (during the three day workweek) and after 46 hours (during the four day workweek) will be paid at one and one half (1 ½) times ~~his~~ the normal salary and included in the next paycheck for the payroll period in which the overtime was worked, whenever possible.

- Paragraph C. 3. - Revise to read:

Overtime slots may be filled by volunteers based upon a rotating list in order of seniority. Whether the next officer on the list chooses to work or declines the overtime offer, his/her name shall then be placed at the bottom of the list and the next name shall be called. ~~The officer presently on a post whose relieving officer calls out may elect to continue working the post as overtime so long as he/she has not worked in excess of eight hours prior to the start of the relieving shift.~~

- Paragraph D. - Add the following language:

The above procedures will apply to daily overtime. Pre-scheduled overtime shall continue to be filled by volunteers through the existing procedure involving the rotating list which shall be administered as outlined in paragraph C.3. above.

#### **ART. XIII SENIORITY:**

- Paragraph D - The County proposes revising subparagraphs 1 and 2 to reflect changes that are outlined in the County's proposed new work schedule (below).

#### **ART. XVII WORK SCHEDULE:**

- Replace paragraph C and Part of Paragraph D to reflect:

All employees shall select by seniority or be assigned a work schedule based upon a twelve (12) hour shift which shall be structured to require two days off, followed by two days on duty, followed by three days off, then two days on duty, then two days off,

followed by three days on duty. The twelve hour work schedule shall be designed to require employees to work three shifts in one week and four shifts the other week, and will enable employees to have off three consecutive days (Friday - Sunday), every other weekend.

Each work shift shall encompass eleven and one half hours of paid time (11.5 hours) consisting of a one-half (1/2) hour paid break as well as a 10 minute break, and a separate 30 minute unpaid break (propose retaining language regarding not being completely relieved during lunch period).

Work shifts shall be as follows:

BCDC:	CWRC:
6:00 AM to 6:00 PM	6:00 AM to 6:00 PM
9:00 AM to 9:00 PM	9:00 AM to 9:00 PM
6:00 PM to 6:00 AM	6:00 PM to 6:00 AM

(Management retains the right to determine the number of staff needed and posts required for each work shift and facility.)

The County recognizes that Correction Officers are public safety employees under the Fair Labor Standards Act. The County will pay overtime at time and a half after 34.5 hours (during the three day workweek) and after 46 hours (during the four day workweek), and shall modify **Article XII (Overtime)**, paragraphs A and B, accordingly.

As this work schedule will have the effect of causing employees to work a half hour more (80.5 hours) per pay period, the County proposes paying employees at the straight-time rate for the extra 30 minutes, for full pay periods worked, in the next regular pay check.

**ART. XX DISCIPLINE:**

- New paragraph:

All employees who violate the time and attendance policy shall receive a working suspension/\$25 per day fine. Suspensions will be issued in increments of eleven and one half (11.5), twenty-three (23), thirty-four and one half (34.5), and forty-six (46) hour increments. By way of example, a 23 hour suspension would be served over two, 11.5 hour days and/or result

in a cumulative working suspension/fine of \$50. Major discipline shall occur when management seeks to suspend an employee for more than 40 hours.

**ART. XXXVI EQUAL TREATMENT:**

- Add/clarify to include:

sex, age, nationality, race, religion, marital status, political status, political affiliation, sexual orientation, gender expression (as defined under NJ State law), national origin, color, handicap, union membership, union activities, or the exercise of any concerted rights or activities or any other legally protected class.

- (New):

The Association and the Employer shall continue to discourage bias, prejudice and bigotry, and foster understanding of others in the workforce regardless of race, creed, color, national origin, sexual preference, gender and its expression, age, or physical condition.

**ART. XXXVII TERM OF AGREEMENT:**

- January 1, 2012 through December 31, 2015.

**PBA LOCAL 249'S FINAL OFFER**

**ARTICLE XXXVII - TERM OF AGREEMENT:**

January 1, 2012 to December 31, 2014

**ARTICLE II - SALARY (Also see worksheet attached to the PBA's Final Offer):**

2012 - No salary increases for 2012; i.e. no across the board salary increases and no salary step incremental movement during 2012

2013 - Every salary step (Steps 1 through Step 7) shall be increased by 2%, with no salary step incremental movement during 2013.

2014 - (1) effective January 1, 2014 the top step (Step 7)

shall be increased by an additional 3% (\$65,364 to \$67,323); (2) Effective September 22, 2014 all Officers who are not at Step 7 shall move one full step on the Salary guide (i.e. Step 1 to Step 2, Step 2 to Step 3, Step 3 to Step 4, Step 4 to Step 5, Step 5 to Step 6, Step 6 to Step 7); (3) Effective September 22, 2014 the top step (Step 7) shall be increased by an additional 85 hundreds of one percent; .0085; i.e. the 7<sup>th</sup> Step shall be increased from \$67,325 to \$67,897.

Add:

The salary incremental step guide shall survive the expiration of the contract; i.e. effective January 1, 2015, in the absence of a new negotiated agreement, every Officer, who is not at the top step (Step 7) of the salary schedule shall move one additional step on the salary schedule.

**ARTICLE V - SICK LEAVE (BEREAVEMENT LEAVE):**

Paragraph G(2) shall be modified as follows:

In the event of the death of a member of an employee's immediate family, as defined in Article V(H), an employee shall be granted, at his request, up to five (5) paid working days bereavement leave, which shall be in addition to any contractual leave time that the employee may have. Upon a written request of the employee and the approval of the Jail Administrator, this bereavement leave may be expanded.

**ARTICLE IV - HEALTH BENEFITS:**

Add the following:

The health plan shall provide for well child and baby care, including vaccinations and gynecological coverage for dependents, consistent with coverage that is provided to members of other County bargaining units.

**ARTICLE VII - FAMILY AND MEDICAL LEAVE:**

Shall be modified as follows:

Family and Medical Leave of absence shall be in accordance with the Federal Family and Medical Leave Act (29 U.S.C. Sec. 2601 et seq.) and/or the New



Jersey Family Leave Act (N.J.S.A. 34:11B et seq.). Officers shall not be required to, but may at their option, use paid leave time prior to or concurrent with FMLA/FLA. In addition, an officer may not be involuntarily placed on FMLA/FLA.

**ARTICLE XIV - EMPLOYEE EXPENSES:**

Revise paragraph A as follows:

Employees required to use personal vehicles in the pursuit of proper and necessary County business shall be reimbursed at the IRS rate.

**ARTICLE XIX - WORK RULES:**

Amend Section B as follows:

Work rules shall be updated by the Employer as necessary. Copies of any changes or new work rules shall be distributed to each employee, posted on the bulletin boards and mailed to the Association to be inserted in said binder. A copy of any changes to the Administrative Plan Manual ("APM") or post orders shall be provided to the Association. Changes to work rules shall not be implemented until the Association has had a minimum of 7 days to review and comment on same, emergencies excepted.

Amend Section D.3 to include this final sentence:

The Association shall be provided with the name of the computer program used by the County for random selection.

**ARTICLE XV - TUITION REIMBURSEMENT:**

Shall be modified to add the following:

Courses in Public Administration, Business, English, Spanish, Education (with law enforcement emphasis), Police Science, and Criminal Justice shall be considered job-related for the purposes of this Article.

**NEW ARTICLE - RECIPROCAL DAYS:**

Reciprocal Days Purpose:

To provide a means by which employees who occupy 24 hour per day, 7 day per week positions can

temporarily reorganize their work schedules to attend to personal business.

Procedure:

When circumstances demand an employee's absence from his/her shift on a given day, the employee may submit a request for a Reciprocal Day. A Reciprocal day is a temporary reassignment between two employees with the same job title who are employed within the same organizational unit. Such reassignments must be mutually agreed upon by both employees, and must take place during the same workweek.

To be eligible for a reciprocal day, the petitioner must identify another employee with the same job title within the organizational unit, who will formally agree to work the shift in question. In exchange, the employee requesting the reciprocal day must formally agree to work a shift during the same workweek for the employee who agreed to the temporary assignments. If one of the assignments requires a current weapons qualification, valid driver's license or commercial driver's license, for example, the employee accepting that assignment must possess that qualification. Applications where employees are not properly qualified for the respective assignments shall be denied. Applications where employees are properly qualified will be approved.

To apply for a Reciprocal Day the Petitioner and the co-worker who is willing to be temporarily reassigned will complete their respective portions of an Application for Reciprocal Day form that will be mutually developed by the parties. The completed application, which has been signed by both parties, will be submitted to the employees' department head at least five (5) days before the first schedule change. Applications that are submitted less than five (5) days in advance may be denied. No request for a reciprocal day will be unreasonably denied.

The department head, or designee, shall render a determination on the application for a Reciprocal Day within two days of receipt.

The employees who cosigned the application are responsible for contacting the operations unit (for custody staff) or their department head (for non-custody personnel) to determine the status of their

application. When the department approves the request, he or she will forward it to the operations unit (for custody) or the unit's timekeeper (for non-custody). Operations unit staff or the timekeeper will note the necessary scheduling assignments for the days on which the temporary reassignments will occur. When an employee agrees to work, as the applicant or co-worker, he/she shall be subject to all Department of Corrections rules and regulations and shall be subject to appropriate disciplinary action for any violation of rules and regulations on a Reciprocal Day he/she agreed to work.

### **BACKGROUND FACTS**

#### **Demographics**

Burlington County was formed on May 17, 1694 (PBA-1-4F). The County consists of 524,160 acres bordered by Mercer County from the north, Monmouth County from the northeast, Ocean County from the east, Atlantic County from the southwest, and Camden County to the west (PBA-1-4A). The land extends from the Delaware River and the Great Bay on the Atlantic Ocean (PBA-1-4A). The County is the largest in New Jersey covering 827 square miles<sup>1</sup> (PBA-1-4A). As of 2010, the US Bureau of the Census estimated the County's population as 448,734 (PBA-1-4A).

Forty political subdivisions exist within the County, consisting of three cities, six boroughs and 31 townships (PBA-1-4A). While the County is principally known for its agriculture, there is considerable manufacturing, particularly along the Delaware Riverfront (PBA-1-4A).

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<sup>1</sup> Exhibit PBA-1-4B reflects total "land" area in square miles in 2010 as 793.58; "water" square miles is 21.26, for a total area of 819.84 square miles.

The County asserts that its taxpayers are suffering from high unemployment of 9.5%, decreasing median income and increased poverty (CO-3D). It further states that the County's unemployment rate is in the top 50% of the counties within New Jersey and that estimates are that Burlington County has 24,200 jobless residents from a total workforce of 245,900 (CO-3C).

The following chart is a snapshot of US Census Bureau State and County Quick Facts for Burlington County<sup>2</sup>:

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

### **Department of Corrections**

The Burlington County Department of Corrections consists of the Burlington County Detention Center, located in Mount Holly, the County Work Release Center, located in Pemberton,

<sup>2</sup> Source data is 2011 Edition.

which houses minimum security inmates and female inmates, and the Juvenile Detention Center, which is responsible for juvenile detainees. The Detention Center is managed by Warden Lawrence Artis, who is also the head of the Corrections Department. Reporting to the Warden are three captains, nine lieutenants, 23 sergeants, and currently 209 corrections officers (CO's). Eight additional CO's have been hired and will start working on November 26 (2T153).

The County detention center houses an estimated 380 to 390 inmates, which are all males. Inmate security levels vary from minimum security up through triple maximum and administrative segregation (1T126). The County work release center houses female, inmates pre-trial detainees and minimum security level inmates of both genders, as well as inmates participating in the work release program. Both facilities employ the "direct supervision" model which means that inmates are directly supervised at all times including, at times, when the inmate is off of the unit, such as going to "chow", visitations, recreation, the law library and religious services. When the inmates are locked down in their cells, an officer is locked down in the wing with them. During certain times of the day, when one tier of the facility is out of their cells, the other tier is locked in. One tier of a wing consists of about twenty inmates. Inmates in administrative segregation and protective custody are

locked down twenty-three hours a day with one hour out (1T128-131). A pod consists of two wings. There is one wing officer assigned to each wing per shift. An additional officer mans the control booth and is charged with monitoring the activities on both wings.

CO Robert Swenson, the president of Local 249, provided unrebutted testimony about daily life within the detention center. According to Swenson, with a direct supervision model, officers are in close proximity to the inmates, such that "an inmate could pat you on the back or punch you in the face" (1T132). Except for officers performing outside duties such as prisoner transport, officers carry no weapons or self-defense apparatus other than a radio. They are not permitted to use mace, handcuffs or a baton. All officers are required to wear stab-proof vests.

Special assignment officers (SA's) are assigned to that position on a daily basis. There is one special assignment officer for each pod per shift, plus three floating SA's per shift. They are responsible for ensuring that wing officers have everything they need, picking up count slips and providing relief for wing officers. They also take individual inmates to a destination such as visiting or central booking (1T134). SA's do carry handcuffs, as they are responsible for responding when a "code" is called.

In addition, there are two recreation officers and two

transportation officers assigned per shift, except midnights. Since officers rotate positions within the pod, consistency is improved. Officers get to know the inmate population and vice versa. Transportation officers are responsible for transporting inmates to medical appointments. At the CWRC, the transportation officer transports inmates to work details (1T-148). Transportation officer is a bidded position. The II unit and the Classification Unit are specialized positions and are not bidded. Another specialized assignment is that of training officer. There are currently two full-time training officers and one assigned as part-time training officer. Visitation officers monitor the inmate visitations with attorneys and other visitors. Visits are non-contact during the week and contact visits occur on the weekend. Visitation officers are assigned to a nine-to-five shift on weekends (1T151).

Swenson testified that there have been occasional assaults by inmates on officers. Swenson recalled that only one such incident has happened since the last contract was signed in late 2011 (1T138-139). However, prior to the last contract, he recalled that five or six incidents occurred where officers were assaulted, including Swenson. More typically, inmates are involved with assaults on each other, resulting in a code two, where officers are required to respond to break up a fight.

All correction officers are trained at the Correction Officers Training Academy (CODA) where they are taught administrative codes, defense tactics, physical training and weapons training (1T146-147). Typically, a new recruit to the corrections department goes through in-house training before going to the academy. Following academy training, they are then ready to assume full responsibilities as correction officers (1T147).

The Corrections Officers are represented for collective negotiations by PBA Local 249, while the sergeants and lieutenants are represented in a separate bargaining unit by a superior officers' organization. Juvenile Detention Officers do not have police powers, and are represented by CWA within its broad-based unit of County white-collar and blue-collar workers. In addition, a handful of clerical employees are assigned to the Department, and are also represented in the CWA unit (2T153).

#### **STATUTORY CRITERIA**

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

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



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

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

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

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

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

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

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

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

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. I consider the public interest to be the most significant of all statutory factors to be considered.

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

that individual issue in relation to the terms of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the Award.

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among those factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] and the Borough's statutory budgetary limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)] and, most importantly, the 2% limitation on the total increase of base pay on an arbitration award [N.J.S.A. 34:13A-16.7(b)].

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

### **ANALYSIS**

#### **Length of Contract**

The PBA seeks a three-year contract covering 2012 through 2014. The County proposes a four-year contract extending through 2015.

The County argues that a four-year agreement furthers the public interest as it will allow the County to more efficiently plan its budget. Further, Human Resource Director Daniel Hornickel stated, the County seeks to "get some labor peace and work under a contract for a while, instead of having an arbitration award and going back to the table rather soon" (2T325).

The PBA argues that a three-year contract is more reasonable because it is impossible to predict what budgetary pressures the County will face by 2015, or whether the economy will have fully recovered by 2015. Further, it asserts that the Chapter 78 health care premium contributions affecting public employees and the 2% interest arbitration cap are both scheduled to sunset in April, 2014, which may change the dynamics of negotiations. Further, it notes that there is virtually no comparative data available at this time for 2015 on which appropriate wages could be based.

I award a three-year agreement. The PBA has negotiated three-year contracts with the County in the past, as have other units. The County is correct that a period of labor peace and stability following years of on-going negotiations is beneficial to the parties and furthers the public

interest. The 2009-2011 contract, which did not get finalized until late in 2011, resulted in the parties immediately beginning negotiations for its successor. However, that is not the case here: the new contract will be in place for two more years before the parties will be returning to the negotiations table.

Moreover, the record does not reveal that any of the County's bargaining units now have contracts extending beyond 2013. Therefore, there is no internal pattern in place. Nor has any data been provided from other corrections departments or law enforcement groups concerning comparative wage rates beyond 2014. Accordingly, I find that a three-year contract for 2012-2014 is in the best interest of the public and the parties themselves.

### **Salaries**

The parties' last contract came as a result of an interest arbitration award in the matter of Burlington County Department of Corrections and PBA Local 249, Docket No. IA-2009-115, T. Hundley (8/15/11) (PBA-2-7) ("The Hundley Award"). In that matter, the arbitrator awarded a three-year contract covering the period January 1, 2009 through December 31, 2011. As the terms of that contract remained in effect while the parties were in negotiations for a successor agreement, and continued through this interest arbitration, correction officers' current salaries are as set forth in the following

salary guide:

<b>Salary Guide</b>	
<b>Step</b>	<b>Salary</b>
1	40,346
2	42,829
3	45,046
4	47,230
5	52,140
6	57,105
7	64,082

At the beginning of 2011, there were 216 rank and file correction officers in the department. During 2011, thirteen officers retired, resigned or separated from service. During the same period, the County hired ten new officers. Thus by January 1, 2012 there were 213<sup>3</sup> correction officers on the payroll. (J-1)

Article 2 of the 2009-11 contract provides at Section A, On January 1 of each calendar year indicated below, employees shall move one step on the step systems from their step on the previous year. . . (PBA-1-2, p. 2)

The parties stipulated that, regardless of an employee's actual anniversary date, all step movement on the salary guide occurs on January 1 of any given year. At the end of 2011, there were 129 employees at step seven of the guide (maximum) and 83 employees still progressing through the guide. Notwithstanding the contract language in Article 2, the parties stipulated that corrections officers were not advanced to the next step on the salary guide in January

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<sup>3</sup> This total includes one employee who retired effective January 1, 2012.

2012.

In their final offers, both the County and the PBA proposed no salary step increases and no across-the-board salary increases for 2012. The County also proposed to eliminate the step guide entirely in 2012. For 2013, the PBA proposed that employees again be frozen on step and that all employees receive an across-the-board increase of 2%. For 2013, the County proposed no salary increases, and with the step guide eliminated, of course, no step increases.

For 2014, the PBA demanded a combination of increases as follows: (a) effective January 1, 2014, all employees at the top step be given an increase of 3%; (b) effective September 22, 2014, the top step employees be advanced an additional .85% and (c) that employees at less than step 7 of the salary guide be moved one step on the guide. For 2014, the County proposes an across-the-board increase of 1.75%, and an additional 1.75% for 2015.

The County contends that its proposal (including all four years), amounts to 62% of the maximum available funds allocated under the 2% arbitration cap. It argues that the PEA's proposal, which would spend nearly 100% of the available cap, is unnecessary excessive and should not be awarded. The County asserts that its County-wide labor relation strategy is designed to "hold the line" with regards to salary costs and benefits so that it can provide needed



tax relief to its residents. It notes that the 2012 budget includes a tax cut for a fifth year in a row, as well as a spending cut, for the fourth consecutive year. It argues that corrections officers are already compensated as their average salary is approximately \$58,000 per unit member, which is on par with other Burlington County law enforcement groups and vastly exceeds the private sector wage<sup>4</sup>. Further, the County notes, that the raises sought by the PBA exceed the current CPI rate of 1.3% in 2012. The County also points out that it has proposed a wage freeze for 2011 and 2012, followed by a 1.5% raise in 2013, to the CWA units which comprise 68% of the County's unionized workforce. The County maintains that the levy cap law does not require a County to raise taxes to the minimum extent allowable, and that the cap allowance is not cash on hand. In summary, the County asserts that, in balancing the choice between limiting expenses and taxing its residents, it is time for the tide to shift in favor of its taxpayers.

The PBA argues that the 2% arbitration cap limit has had a significant depressive effect on salary increases that may be awarded. It notes that no arbitration award issued since the 2% arbitration cap was passed in 2011, has provided raises less than the full 2%. The PBA observes that Burlington's correction officers have the second lowest top

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<sup>4</sup> The Department of Labor data for 2011, shows that the average wage for all private sector jobs in Burlington County was \$49,628. (CO-1-I)

step salary in New Jersey. The PBA particularly notes that, it agreed to freeze all salaries and step movements in calendar year 2012. Moreover, it points out, because of the Chapter 78 health care contribution requirement and escalating health insurance premium cost, officer's net salaries will actually decline during the 2012-2014 contract even if the full 2% is awarded. It asserts that the impact of its proposal would be \$2.00 per year for the average Burlington County residential property owner. It seeks by its proposal to expend the full 2% annually, to provide the most money to the greatest number of corrections officers through the reestablishment of step increases in September 2014 and a 5.85% across-the-board increase over the life of the three-year contract.

The County asserts that their 2012 budget reflects an attempt to effectuate fiscally sound policy and to implement austere operational and tax decisions in the midst of troubling economic times, including unemployment and other economic factors (CO-1D). Overall, the budget reflects a reduction in the tax levy for the fifth year in a row; a reduction in the tax ratables, retaining a historically low rate; and an actual spending decrease from the 2011 budget (CO-1E).

The County's current fund balance as of December 31, 2010 was \$7,210,976 (CO-1F). The 2012 budget did not utilize any of the available surplus reserves (CO-1F). The County began 2012

with a net debt of \$375,374,050, which was \$4,715,448 less than in January 2011 (CO-1F). The current debt is 37.59% of the borrowing capacity established by law. In 2012, the County will retire \$16,638,999 of its presently bonded debt (CO-1F). The County's gross debt is increasing \$217,880 to a total \$28,876,880 (CO-1F).

A total of \$55,928,300 in new capital improvements and investments are expected to be authorized during the 2012 budget year (CO-1F). Of these amounts, the County expects \$34,805,388 to be funded with outside grants and other funding, leaving remaining new debt of \$21,122,912 to be authorized (CO-1F).

Construction activity in Burlington County municipalities, as measured by permits issued for the estimated value of construction, is robust compared to recent years with a full year estimated value of construction increasing in Burlington County Burlington County from \$428,839,209 in 2011 to an estimated \$613,226,009<sup>5</sup> in 2012 (PBA-1-3).

The County has budgeted a \$17.1 million decrease in the total 2012 budget; an overall \$33,932,872 decrease since 2007 (CO-1D). Some measures used to decrease expenditures in the 2012 budget were the reduction of the County's workforce through layoffs and realignments (CO-1D). These actions resulted in a decrease in salaries and wages by \$6,345,433 or 8.2% (CO-1D).

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<sup>5</sup> The PBA asserts that 2012 is estimated on Jan through June 2012 actuals, compared to YTD 2008 through 2011 actuals and then projected full year for 2012 based upon prior year-to-date results.

The County workforce was reduced from 1,467 in 2011 to a projected 1,070 at the end of 2012, partly based upon the sale of Buttonwood Hospital (CO-1D). The County has also implemented a hiring freeze which requires departments to justify any requests for hiring new personnel.

The County budget committee has consistently sought ways to reduce expenses in contemplation of declining revenues (CO-1D).

Their measures included:

- Outsourcing of services, where practical
- Refinancing of debt
- Renegotiation of service contracts
- Reducing inventories
- Freezing spending toward the end of the budget year
- Zero-based vs. carryover budgeting analysis
- Budgeting based upon prior year actual expenditures
- Increasing shared-service agreements
- Planning for significant decreases in revenues
- Decreasing tax levy and tax rate
- Relying on revenues from County-related agencies
- Imposing a hiring freeze

Marc Krassan, the County's Acting Chief Financial Officer, testified that the County has increased reliance on County-related agencies (2T25). The County issues debt to finance the agency's capital projects (2T25). He stated that the County requires those agencies to pay the debt service on that debt (2T25). This was not a previous practice, but one that the County had to implement to help with the overall goal of being sensitive to the financial hardships of its constituents,

keeping taxes low, and the at same time attempting to reduce its expenses (2T25).

The County relies on shared-service funding from the Burlington County Bridge Commission (CO-1D). Krassan testified that the Commission pays for services that the County provides them, such as maintaining their approaches and roadways to the bridges to their facility (2T-29). This shared-service funding has been increasing since 2008 as follows:

- 2008: \$1.2 million
- 2009: \$1.2 million
- 2010: \$2.0 million
- 2011: \$3.0 million
- 2012: \$3.0 million

Another shared-service is the County Library. The library funded certain indirect costs from 2009 and remaining through 2013 of approximately \$725,000 per year (CO-1D). Also, the County had received contributions to debt service from the Burlington County College in the amount of \$2.5 million; the Burlington County Institute of Technology in the amount of \$1.9 million; and the Burlington County Special Services School in the amount of \$300,000 (CO-1D). The County has also decreased its subsidy to Burlington County College from \$12,040,000 in 2007 to \$500,000 in 2012 (CO-1D).

Krassan confirmed that the County's net property valuation tax apportionment has had a steady decline of 11.6% since 2009.

The net valuation for Burlington County for the years 2009-2013 is as follows (CO-1B; PBA-1-3):

<b>Net Property Valuation 2009-2013</b>		
<b>Year</b>	<b>Net Valuation - County Tax Apportionment</b>	<b>Percent Change</b>
2009	\$52,622,354,982	
2010	\$51,894,781,054	-1.38%
2011	\$50,005,099,970	-3.59%
2012	\$48,206,959,031 <sup>6</sup>	-3.42%
2013*	\$46,519,715,465 <sup>7</sup>	<u>-3.21%</u>
* Projected	<b>Total</b>	<b>-11.60%</b>

Krassan testified that it would appear unlikely that the County will see any increase in property valuations for 2014 (2T-11).

The County decreased the tax levy, or the amount to be raised by property taxes, for the fifth year in a row; in 2012, by the sum of \$6,200,181 (CO-1F).

The following chart depicts the 2012/2011 summary of the approved budgets for appropriations, anticipated revenues and amount to be raised by taxation (CO-1F):

<b>Summary of Approved Budget</b>	<b>2012</b>	<b>2011</b>
<b>Total Appropriations</b>	<b>\$199,581,760.37</b>	<b>\$232,548,427.23</b>

<sup>6</sup> The PBA uses the Division of Local Government Services website data as source for their equalized valuations. The PBA reported a total of \$47,871,431,268 for 2012 equalized valuations (PBA-1-3). This raw data differs from the County's Budget data by \$335.5 million dollars. Krassan testified that the PBA's independent financial consultant, Dr. Raphael Caprio, may have made an error in his report (2T78). Caprio testified that the County's equalized valuations still did better than 17 other counties in the State during an economic recession.

<sup>5</sup> Krassan testified that the 2013 numbers were preliminary numbers obtained from the tax assessor's office based on appeals they have received.

Less: Anticipated Revenues <sup>8</sup>	\$51,531,941.37	\$78,298,427.23
Amount to be Raised by Taxation	\$148,049,819.00	\$154,250,000.00

The County maintains that the amount of tax dollars required to run the county government has decreased by \$14,750,000 since 2007 (CO-1D; PBA-1-3). The County has reduced the 2011 tax rate from 0.3096 to 0.3091 per \$100 of equalized valuation for 2012, which is a historical low for the County (CO-1D). PBA's independent financial consultant, Dr. Raphael Caprio testified that the property tax burden has declined from approximately \$163 million in 2008 to \$148 million in 2012 (1T45). He further maintained that this decrease has provided the average residential property owner in Burlington County a tax savings in the order of \$104.00 (1T45).

The PBA asserts that the County has significant levy Cap capacity it has not used for several years (PBA-1-3). Both parties agree that the County has more than significant resources to fund the Arbitration Award at the maximum amount allowable (PBA-1-3). However, the County maintains steadfast in its commitment that it will not "balance the budget on the backs of the taxpayers," and has consistently represented that reducing the County budget (spending), tax levy (amount to be raised by property taxes), and the tax rate continue to be

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<sup>8</sup> The budget line for anticipated revenues is actually "General Revenues" from sheet 9, line 5 of the approved 2012 budget (CO-1-F). General revenues consist of local, State Aid, State assumptions of costs of County Social and Welfare Services, etc., Director of Local Government Services - public and private revenues offset with appropriations and other special items.

priorities in the troubling economic times facing the residents of Burlington County. The PBA states that the amount necessary to fund the award will have virtually no impact on the community and property owners (PBA-1-3).

The following chart reflects Burlington County as being ranked 21<sup>st</sup> in the State in lowest property tax change from 2008 to 2012 (PBA-1-3).

County Property Tax Change (2008 to 2012)					
County	2008	2012	Increase (Decrease)	Percent Change	Statewide Rank
Atlantic	\$131,689,481	\$152,745,744	\$21,056,263	15.99%	4
Bergen	\$319,981,292	\$358,524,718	\$38,543,426	12.05%	9
<b>Burlington</b>	<b>\$162,976,478</b>	<b>\$148,049,819</b>	<b>\$14,926,659</b>	<b>-9.16%</b>	<b>21</b>
Camden	\$242,605,099	\$280,121,500	\$37,516,401	15.46%	5
Cape May	\$82,916,498	\$94,603,535	\$11,687,037	14.09%	7
Cumberland	\$84,677,221	\$82,938,491	\$1,738,730	-2.05%	17
Essex	\$354,510,483	\$391,714,299	\$37,203,816	10.49%	11
Gloucester	\$143,190,057	\$139,975,000	\$3,215,057	-2.25%	18
Hudson	\$247,243,595	\$292,680,093	\$45,436,498	18.38%	2
Hunterdon	\$69,944,122	\$64,155,000	\$5,789,122	-8.28%	20
Mercer	\$208,739,878	\$236,244,521	\$27,504,643	13.18%	8
Middlesex	\$282,098,062	\$328,466,000	\$46,367,938	16.44%	3
Monmouth	\$287,561,452	\$302,475,000	\$14,913,548	5.19%	14
Morris	\$195,023,783	\$217,917,846	\$22,894,063	11.74%	10
Ocean	\$276,855,375	\$300,026,643	\$23,171,268	8.37%	13
Passaic	\$278,618,331	\$305,066,953	\$26,448,622	9.49%	12
Salem	\$49,126,832	\$51,356,241	\$2,229,409	4.54%	15
Somerset	\$171,294,660	\$170,913,462	\$381,198	-0.22%	16
Sussex	\$68,623,448	\$79,135,226	\$10,511,778	15.32%	6
Union	\$254,622,421	\$303,039,176	\$48,416,755	19.02%	1
Warren	\$68,566,735	\$66,900,786	\$1,665,949	-2.43%	19

In 2011, the County was ranked 13th in highest tax burden out of 21 counties' total average taxes paid for all levels of government and the values of property upon which taxes are assessed (PBA-1-3). According to Caprio, the County has, on average, the 14<sup>th</sup> highest average residential value, while it has



the 13<sup>th</sup> highest tax burden, which is what one would expect since tax burden should be proportional to value (PBA-1-3).

The following chart depicts the average residential value versus average property tax in New Jersey for 2011:

Average Residential Value vs. Average Property Tax				
County	Value (Avg.)	Rank Value	Taxes (Avg.)	Rank Taxes
Atlantic	257,229	9	5,382	18
Bergen	489,536	2	10,323	2
<b>Burlington</b>	<b>223,659</b>	<b>14</b>	<b>6,004</b>	<b>13</b>
Camden	154,742	17	5,850	15
Cape May	517,914	1	4,468	19
Cumberland	108,190	21	3,713	21
Essex	388,775	5	10,515	1
Gloucester	157,059	16	5,776	16
Hudson	123,839	20	7,151	10
Hunterdon	351,238	7	8,134	7
Mercer	240,107	11	7,336	9
Middlesex	152,575	18	7,137	11
Monmouth	420,955	3	8,040	8
Morris	384,345	6	9,214	4
Ocean	346,941	8	5,434	17
Passaic	229,193	12	8,861	5
Salem	162,492	15	4,234	20
Somerset	411,209	4	8,534	6
Sussex	252,576	10	6,720	12
Union	136,317	19	9,472	3
Warren	224,642	13	5,886	14

Krassan testified that the County has seen even more dramatic decreases, from a percentage standpoint, in the revenues as they saw with tax values (2T12). The County has experienced a high of \$263 million in revenues in 2007 and is

currently projecting a decreased amount of \$210 million in 2012. Krassan stated that this is approximately a \$53 million decrease in values or a 20% decrease overall since 2007 (2T12). He further stated that decreases in net assessed property valuations of \$4.4 billion directly relate to decreases in County revenues (CO-1B; 2T12).

Total 2012 anticipated revenues for the County are \$51,531,941.37 (CO-1F). The remainder of \$148,049,819 will be raised by taxation (CO-1F). The following chart reflects Burlington County's total revenues from 2007-2012 (CO-1C):

<b>Total Revenues 2007 - 2012</b>		
<b>Year</b>	<b>Total Revenues</b>	<b>% Chg</b>
2007	\$263,414,477	
2008	\$256,608,483	-2.58%
2009	\$254,442,492	-0.82%
2010	\$242,376,563	-4.58%
2011	\$229,779,161	-4.78%
2012 *	<u>\$210,000,000</u>	-7.51%
* Projected	\$53,414,477	-20.28%

Krassan testified that in 2010 the County received about \$560,000 in miscellaneous revenues (State Aid) (2T14). He further stated that in 2011, the amount dropped to \$132,000; and to \$32,643 for 2012 (2T15).

The County had received reimbursement for State prisoners that were being housed at its jail facility (2T14). The County does not expect to collect any revenue from the State for the maintenance of State prisoners (2T15). Krassan testified that

the County only receives reimbursement from the State if the prisoner is at its facility greater than 15 days (2T15). As of September of 2012, the State had removed their prisoners when the 15 day "free" period expired (2T15). The State anticipates maintaining the same course of action now and in the future (2T15).

Caprio stated that the County's patterns of locally generated revenue are remarkable; however, much of this revenue has come from State Medicaid patients for patients at Buttonwood Hospital (1T-104,105). This stream of revenue is now discontinued as the hospital has been sold (PBA-1-3). The following chart reflects the PBA's exhibit on locally generated revenue and State aid for the County from 2008 to 2012 (PBA-1-3 :

<b>Locally Generated Revenue and State Aid</b>					
<b>Revenue</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Budget</b>	\$19,835,312	\$18,685,164	\$14,801,398	\$17,142,023	\$12,069,018
<b>Actual</b>	\$15,802,346	\$17,717,062	\$14,863,582	\$14,519,649	\$12,119,723
<b>Net</b>	(\$4,032,966)	(\$968,102)	\$62,184	(\$2,622,374)	\$50,705
	79.7%	94.8%	100.4%	84.7%	100.4%
<b>State Aid</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Budget</b>	\$12,230,490	\$13,059,215	\$14,653,515	\$13,207,694	\$8,270,745
<b>Actual</b>	\$13,323,565	\$14,643,532	\$13,297,642	\$13,485,554	\$10,000,000
<b>Net</b>	\$1,093,075	\$1,584,317	(\$1,355,873)	\$277,860	\$1,729,255
	108.9%	112.1%	90.7%	102.1%	103.5%

A significant savings from the sale of Buttonwood Hospital to a private operator for a high bid of \$15 million occurred in 2012 (CO-1D). This sale is expected to generate upwards of \$50

million in tax savings from operating costs over the next ten years (CO-1D). The County will escrow approximately \$8 million of the sale proceeds to retire existing debt on the facility (CO-1E).

No surplus is anticipated for the 2012 budget year (PBA-1-3). A fund balance of \$8 million was realized in 2011 and there are \$0 dollars surplus anticipated for 2012 (CO-1F).

<b>Fund Balance Analysis</b>		
<b>2007 to 2012</b>		
<b>Year</b>	<b>Adopted Budget</b>	<b>Fund Balances - End of Year</b>
2007	\$226,543,256	\$23,152,884
2008	\$227,937,602	\$16,349,126
2009	\$223,981,474	\$12,870,650
2010	\$221,265,141	\$13,417,145
2011	\$216,938,543	\$7,210,976
2012	\$199,581,760	N/A

Caprio asserts that the County averaged approximately \$5 million annually in excess operations while budgeting approximately \$7.5 million from the fund balance (PBA-1-3). They further state that concurrently, Burlington reduced revenue from property taxes approximately \$3 million per year (averaged), totaling almost \$15 million (PBA-1-3). Caprio testified that the County could still have, over a five-year period, reduced taxes by \$17 million cumulatively while maintaining the same size surplus (fund balance) (1T38). The PBA asserts that the change in the fund balance was the County's choice, not fiscal distress (PBA-1-3).

Upon cross-examination, Caprio concluded that the County could afford the \$719,048 two-percent award (1T83). He also testified that he did not consider the County's associated increase in costs to appropriations for wages and salaries, insurance, and debt service (1T83). Caprio agreed that the County's "balancing act" of costs that it might incur is only half of the equation (1T84). He stated that the other half of the equation is that the County has revenue and it has significantly and regularly over time refused to increase property taxes (1T84).

The PBA's chart below reflects the County's use of the fund balance for years 2008 through 2012 to reduce the tax levy in part (PBA-1-3):

<b>Property Tax Levy: 2008-2012 v. Use of Fund Balance to Reduce the Tax Levy in Part</b>						
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Change from High</b>
Property Tax	\$162,686,033	\$162,318,090	\$160,172,090	\$154,250,000	\$148,049,819	
Change	\$113,967	\$367,943	\$2,146,000	\$5,922,090	\$6,200,181	\$14,750,181
Final Budget Revenue <sup>9</sup>	\$248,533,811	\$246,254,660	\$234,176,769	\$232,548,427		
Adopted Budget Revenue	\$227,937,602	\$223,961,474	\$221,265,141	\$216,938,543	\$199,682,627	
Percent of Property Tax of Total	71.373%	72.476%	72.389%	71.103%	74.143%	
Additional Offset Revenue <sup>10</sup>	\$20,596,209	\$22,293,186	\$12,911,628	\$15,609,884	\$15,000,000	
Percent Additional	9.04%	9.95%	5.84%	7.20%	7.51%	
<b>Use of Fund</b>	<b>\$14,400,000</b>	<b>\$8,220,586</b>	<b>\$7,600,000</b>	<b>\$8,000,000</b>	<b>\$0</b>	<b>\$38,220,586</b>

<sup>9</sup> Caprio testified that he did not reflect the 2012 adopted budget number because through the year many budget programs with offset appropriations come into play, so the ending budget is larger than the adopted budget (1T64).

<sup>10</sup> Caprio stated that the additional offset revenue is conservatively projected for 2012.

<b>Balance</b>						
Excess Operations	\$7,596,242	\$4,742,110	\$8,146,380	\$1,793,946	\$7,229,322	\$29,508,000
Total Cumulative Fund Balance <u>Not Replenished from Operations</u>						\$8,712,586
Cumulative Change from 2007 Property Tax Base (\$162,800,000)	\$113,967	\$481,910	\$2,627,910	\$8,550,000	\$14,750,181	\$26,523,968

Krassan testified that the fund balance is replenished through a combination of reserves from previous years, as well as excess revenues titled Miscellaneous Reserves Not Anticipated (MRNA) (2T44). He stated that there are a few other little nuances, but reserves from previous years and MRNA are the two major categories (2T44).

The following chart reflects the PBA's perspective of the County's replenishment of their fund balance (PBA-1-3):

<b>Replenishment of Fund Balance</b>				
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u> <sup>11</sup>
MRNA	\$3,560,970	\$1,957,101	\$1,354,427	\$2,000,000
Prior Year Cancellations	\$4,241,818	\$1,574,896	\$3,956,206	\$3,257,640
Current Year Cancellations	\$83,218	\$29,610	\$33,094	\$48,641
Other Excess Revenue	\$2,814,656	\$4,854,264	\$172,243	\$3,229,255
Interfund Advances	\$851,637	\$163,431	\$940,797	\$750,000
Deficit in Anticipated Revenue	\$2,099,147	\$103,130	\$2,769,268	\$500,000
Other Debits	\$153,636	\$2,930	\$12,074	\$56,213
<b>Total</b>	<b>\$7,596,242</b>	<b>\$8,146,380</b>	<b>\$1,793,831</b>	<b>\$7,229,323</b>
PBA asserts that given that no fund balance resources were budgeted in 2012, past "excess" operations suggest the County will add to its surplus by approximately \$7 million for a total of \$14.2 million.				

<sup>11</sup> 2012 numbers are projections by Caprio.

Krassan testified that he became very concerned when he started to look through the 2012 projections of the above chart (2T44). He stated that Caprio had projected the 2012 fund balance to be almost doubled from the \$7.2 million. Krassan indicated that during Caprio's testimony he may have even indicated that the amounts were guesses based on averages of the three previous years (2T44). Krassan testified that he went to the County's financial system and identified that MRNA for 2012 to date, were a little over \$612,000 or for projection purposes at \$700,000 for the year and not \$2 million as projected on the PBA's above chart (2T46). Upon reviewing the excess revenue figures for 2010, 2011, etc., Krassan averaged the three years as Caprio had said he had done and found the average for 2012 to be \$2.6 million and not the \$3.2 million identified by the PBA (2T46). He further testified that by using Caprio's methodology, the number at the bottom of the chart will not be \$7.2 million but rather 4.1 million (2T46). Similarly, deficit and anticipated revenues reflects \$500,000 decrease whereas, using a three year average, the result would be a \$1.6 million decrease or deficit (2T46). Overall, Krassan stated that the total fund balance for 2012 would result in \$11.3 million (2T47).

Chapter 62, N.J.S.A. 40A:4-45 et seq, provides that a municipality shall limit any increase in its annual budget to 2.5% over the previous year's final appropriations unless

authorized by ordinance to increase it to 3.5%, with certain exceptions. This is commonly referred to as the "Appropriations Cap." Chapter 68, N.J.S.A. 40A:4-45.45 prevents a municipality from increasing the tax levy by more than 2% absent a public referendum. This is commonly called the "tax levy cap."

The Appropriation CAP calculation, which is applicable to the County, indicates that the amount to be raised by taxation is \$12,273,246 less than the amount permitted by law (CO-1F). The amount to be raised by taxation in 2011 was \$154,250,000 versus \$148,049,819 for 2012 (CO-1F). By law, the county is bound by the Appropriation Cap limit (CO-1F). The levy is \$5,764,427 under the maximum increased permitted by the Levy Cap and is available for banking in CY 2013 - CY 2015 (CO-1F).

Caprio testified that in 2012, Burlington County is the most under cap for any County in the State and number one in the terms of unused tax capacity (1T54).

The following chart depicts a Fiscal Year (FY) 2012 Comparative Levy Cap Analysis for the State of New Jersey Counties (PBA-1-3):

FY2012 COMPARATIVE LEVY CAP ANALYSIS						
County	1977 Cap	2% Cap	Levy	Over (Under)	% Over (Under)	Rank
Atlantic	\$158,298,146	\$156,347,088	\$152,745,744	\$3,601,344	-2.30%	16
Bergen	\$371,198,961	\$364,130,337	\$358,524,718	\$5,605,619	-1.54%	14
<b>Burlington</b>	<b>\$157,622,964</b>	<b>\$157,881,318</b>	<b>\$148,049,819</b>	<b>\$9,573,145</b>	<b>-6.06%</b>	<b>21</b>
Camden	\$280,121,588	\$280,121,588	\$280,121,500	\$88	0.00%	4
Cape May	\$96,084,969	\$94,765,764	\$94,603,535	\$162,229	-0.17%	7
Cumberland	\$84,096,336	\$84,841,023	\$82,938,491	\$1,157,845	-1.36%	13
Essex	\$391,714,299	\$392,301,636	\$391,714,299	\$0	0.00%	2



Glooucester	\$148,762,173	\$148,762,173	\$139,975,000	\$8,787,173	-5.91%	20
Hudson	\$292,680,093	\$292,686,342	\$292,680,093	\$6,249	0.00%	5
Hunterdon	\$66,610,622	\$66,610,622	\$64,155,000	\$2,455,622	-3.69%	19
Mercer	\$245,240,757	\$245,240,757	\$236,244,521	\$8,996,236	-3.67%	18
Middlesex	\$330,383,752	\$329,941,997	\$328,466,000	\$1,475,997	-0.45%	8
Monmouth	\$313,304,039	\$307,923,905	\$302,475,000	\$5,448,905	-1.77%	15
Morris	\$220,838,404	\$221,976,993	\$217,917,846	\$2,920,558	-1.32%	12
Ocean	\$304,101,393	\$302,814,920	\$300,026,643	\$2,788,277	-0.92%	9
Passaic	\$310,343,306	\$305,066,953	\$305,066,953	\$0	0.00%	2
Salem	\$51,856,241	\$53,250,627	\$51,356,241	\$500,000	-0.94%	10
Somerset	\$175,308,435	\$172,974,427	\$170,913,462	\$2,060,965	-1.19%	11
Sussex	\$79,135,130	\$79,995,021	\$79,135,226	\$96	0.00%	1
Union	\$307,462,184	\$303,543,083	\$303,039,176	\$503,907	-0.17%	6
Warren	\$69,243,682	\$67,463,704	\$66,900,786	\$2,342,896	-3.47%	17

Caprio testified that the County has foregone statutorily-available tax raising capacity, in fact, for four consecutive years (1T37).

### Comparables

Neither party provided comprehensive data on the salary levels or recent percentage increase for other County bargaining units. However, in April 2012, Interest Arbitrator Joseph Harris issued an award in Burlington County Prosecutor's office and PBA Local 320, IA-2012-16 (4/21/12) (EBA-3-8(a)). In that matter, Harris awarded a three-year contract covering prosecutor's investigators and detectives for 2011 through 2013, with across-the-board salary increases of .5%, 1.25% and 2.0%. He also denied the County's request to freeze employees' movement on the step guide. The County appealed the award, arguing that the 2.0% arbitration cap should have been applied because the contract expired at

twelve midnight on December 31, 2010. PERC rejected this argument and affirmed that part of the award<sup>12</sup>. P.E.R.C. No. 2012-61 (May 30, 2012), and the County filed an appeal with the courts, which is pending.

Testimony at the arbitration hearing reveals that the corrections superior officers do not yet have a contract beyond 2011. Further, the County sheriff's officers and sheriff's superiors are awaiting the outcome of an Interest Arbitrator's Award. Likewise, the County's civilian employees, represented by CWA, are also in negotiations for successor agreements. Therefore, it appears that, other than the prosecutor's office, this will be the lead contract going into 2012 and beyond.

PBA Exhibit No. 3-9 shows the top step base salary of all county correction officers in New Jersey:

Top Step Base Salary – NJ Correction Officers						
Rank	County	2008	2009	2010	2011	2012
1	Bergen *	\$98,076	\$102,046	\$106,385	\$108,513	\$110,683
2	Monmouth	\$85,001	\$86,276	\$88,864	\$91,752	\$94,734
3	Ocean	\$83,324	\$86,657	\$88,390	\$90,158	\$91,961
4	Morris	\$79,259	\$82,429	\$85,726	-	-
5	Hudson	-	\$81,861	\$83,498	\$84,751	\$86,446
6	Somerset	\$77,334	\$81,471	-	-	-
7	Mercer	\$79,161	-	-	-	-
8	Union **	-	-	\$79,110	\$84,922	\$89,581
9	Essex	\$74,239	\$76,280	\$78,188	\$79,751	\$81,347
10	Middlesex	-	\$74,974	\$76,860	\$78,793	\$80,368
11	Sussex	-	\$71,526	\$74,547	\$77,674	\$80,910
12	Cape May	-	\$69,118	\$72,082	\$75,165	\$78,372

<sup>12</sup> The award was remanded to the Arbitrator for clarification on a seniority provision.

13	Gloucester	\$63,501	\$68,041	\$68,883	\$71,430	-
14	Warren	\$61,161	\$64,885	\$68,836	-	-
15	Camden	\$66,535	\$68,465	\$68,465	\$70,450	\$72,454
16	Atlantic	\$61,597	\$63,907	\$66,463	-	-
17	Burlington	\$60,357	\$61,866	\$63,103	\$64,082	-
18	Hunterdon	-	\$57,500	\$58,500	\$60,000	-
	Cumberland	NO	DATA			
	Passaic	NO	DATA			
	Salem	NO	DATA			
	Average	\$74,129	\$74,831	\$75,429	\$75,399	\$82,538

\* Bergen County is in litigation with the PBA and the Sheriff over contract implementation.

\*\* In 2011, holiday pay was rolled into base salary in Union County.

Although the chart above shows that the statewide average (of those 18 counties with data available) is \$82,538, this average does not take into consideration the statewide diversity of socioeconomic factors. For instance, no real comparison could be made between such factors as earning power in Bergen or Monmouth County in comparison to Burlington. A more meaningful comparison might be to take the five counties, with data provided, from Burlington on south to Cape May: the average top step salary for 2011 of these five counties is \$70,281. Nevertheless, by any measure, Burlington County has the lowest top step pay rate of any county in the state except Hunterdon. In addition, unlike eight other counties, Burlington has no longevity program, and unlike twelve other counties, Burlington provides its officers with no shift differential (PBA-3-9).

The New Jersey Department of Labor Wage Report issued in September 2012, shows that the average annual wages in the

private sector increased by 2.1% in New Jersey between 2011 and 2012 while the local governmental sector increased during the same period by 1.4%. The same report broken down by county shows a private sector wage increase in Burlington County of 1.3% (PBA-3-12B).

The Interest Arbitration report issued by the Public Employment Relations Commission in mid-2012, shows that the average salary increase for the period January 1, 2012 through April 30, 2012, was 1.82% where awards were issued and 1.83% for voluntary settlements (PBA-3-13).

The PBA maintains that its members' purchasing power is significantly decreasing because of increases in the cost of living (PBA-1-3).

The Philadelphia-Wilmington-Atlantic City CPI-U increased 4.84% since August 2010 (1T65). The Bureau of Labor Statistic's September 12, 2012 Consumer Price Index (CPI) Report shows that over the last twelve months the all items index of CPI-Urban Consumers increased by 2.0% before seasonal adjustment (PBA-3-14). Over the past twelve months, the CPI-U increased 1.4%. The all items, less food and energy index, advanced 2.0% since August 2011. The food index increased by 1.2% over the year, while the energy index declined, down 2.5% (PBA-1-3).

The PBA further points out that corrections officer's incomes are further eroded over the next three years as the health care contributions required by Chapter 78 become fully

implemented. PBA-1-3, excerpted below, shows the following premium contribution rates from base pay for the years 2012 through 2014.

<b>Chapter 78 Health Care Contributions</b>			
<b>Base Pay</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
40,000	1.8%	3.5%	5.3%
45,000	2.3%	4.5%	6.8%
50,000	3.0%	6.0%	9.0%
55,000	3.5%	7.0%	10.5%
60,000	4.3%	8.5%	12.8%
65,000	4.8%	9.5%	14.3%

The PBA was not provided evidence of employee coverage levels or coverage rates and therefore provided estimates of the effects on employees as the contribution rate increases as well as the price of the premiums. The PBA's Financial Analyst Caprio estimates that officers with single coverage would experience a 3.54% pay loss over a three-year period, requiring a 1.2% annual COLA to maintain base pay. Employees with family coverage would, on average, experience a 6.82% pay loss requiring a 2.3% annual COLA to maintain base pay. Employees at the top of the pay scale, would lose 5.7% to 6.0% requiring an annual COLA of 1.5 to 2.0% to maintain the same base pay as 2011 (PBA-1-3(ex.34)).

That said, however, I am confident that it was not within the goals of the legislature in passing Chapter 78 that employers "make up the difference in employees' pay" by awarding salary increases to cover the cost of employee contributions. Therefore, while the net loss in correction

officers' earning power is noted, the purpose of this award is not to make employees whole for this contribution.

**2. Arbitration Cap**

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

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

Here, the parties stipulated that total base salary paid in the base year (2011) was \$11,984,135. 2% of the total base paid is \$239,683. This is the maximum that I can allocate for salary increases for each year of the contract. Therefore, for the life of a three-year contract, the maximum increases may not exceed an aggregate of \$719,049 (\$239,683 x 3 years). Moreover, it includes the amount needed to fund any across-the-board increases and the payment of step increases as well. See, Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2(12)).

I find that the County's salary proposal for 2013 and 2014 is unrealistic. First, it cannot be ignored that Burlington's corrections officers have the lowest top rate step in the State except for Hunterdon County. Further, even when compared with

the other five counties in the southeast section of the State, Burlington top step salaries is more than \$6,000 below average. Further, the fact that Burlington's corrections officers make an average of \$13,000 to \$14,000 in annual overtime pay does nothing to offset their low wage rates, as presumably, other corrections officers around the State also earn overtime dollars. Moreover, the County's offer, totaling 1.75% salary increases, with no step movements, over a three-year period, averages .58% each year of the contract. This is out of sync with the average increases of 1.83% being awarded through interest arbitration, as reported by PERC, for the period January through April 2012. Additionally, the County's offer does not come close to keeping up with the cost of living as reported in the CPI figures. It also completely ignores the fact that employees have a negotiated step guide on which employees have not advanced since January 2011. The County's proposal to eliminate or freeze this guide for the life of the contract would decimate employee morale, potentially create employee turnover and would be contrary to the public interest.

The PBA's proposal, which seeks to advance the top step of the salary guide by 5.83% over the life of the contract, and spend all available resources under the 2% arbitration cap, appears to be excessively weighted to the back end of the contract, creating a significant flow-through effect into

future years beyond the contract's expiration. Further, the PBA's proposal is too generous to the top step employees to the exclusion of employees still in the step guide - as the PBA proposed to delay payment of any increment until September of 2014. My award is intended to create a more equitable salary approach to benefit the unit as a whole and at the same time, recognize the County's fiscal prudence needs going forward into future years.

For 2012, both parties proposed to freeze the salary guide (that is, a zero across-the-board increase) and to freeze employees on their current step. I will not disturb this mutual agreement.

For 2013, I will continue to freeze employees at their current step of the salary guide. However, all steps of the salary guide will increase by 2% across-the-board effective January 1, 2013. The rationale for this is that the cost of paying increments to the 83 officers who are still moving through the salary guide would be as follows:

Step	# of Ees	Step Differential	Total
1	9	2483	22347
2	7	2217	15519
3	9	2184	19656
4	19	4910	93290
5	4	4965	19860
6	35	6977	244195
Total	83		414,867

As paying increments in 2013 would cost \$414,867, this would virtually swallow nearly two years' worth of the



possible available funds under the 2% arbitration cap and leave practically nothing left for across-the-board raises for the 129 employees at the top of the guide. It must be remembered that all unit employees have not had a pay increase since January of 2011. Therefore, I have determined that the fairer approach would be to again freeze the guide for 2013 and to distribute an across-the-board increase of 2% to all employees effective January 1, 2013. The cost of this increase is \$247,509.

For 2014, I am awarding an additional 1% across-the-board increase for all employees effective January 1, 2014. The cost to the County to fund this increase is \$126,229. Furthermore, I am awarding salary step movements on July 1, 2014, to all employees in steps one through six on the guide. As can be seen by the chart below, the full annual cost of paying all employees an increment at this time is \$427,402; however, the cost to the County for the 2014 payment is half that (because the increment is only being paid for half a year) which equals \$213,701.

Step	# of Ees	Step Differential	Total
1	9	2558	23022
2	7	2284	15988
3	9	2250	20250
4	19	5058	96102
5	4	5115	20460
6	35	7188	251580
<b>Total</b>	<b>83</b>		<b>427,402</b>

Further, on August 1, 2014, I award all employees an additional 2% across-the-board increase. The cost to the County in 2014 to fund this increase is \$110,420.

These increases, which total 5% over the life of the three-year agreement, average 1.66% annual increases for all unit employees, which is still below the average annual increases for law enforcement groups in 2012 as reported by PERC. However, it will bring top step employees up to \$57,338 by the end of the contract period - an amount which is still below the average top step for the six counties in southeastern New Jersey. It will also provide employees who are still in guide, one step movement during the contract period in recognition of the fact that the last step movement was in January 2011. I am well aware that there is some flow-through cost to the County of the 2014 increases in 2015, as the August 2014 raises will carry forward into 2015. However, I believe that this award represents a fair balance between the needs of the employees to maintain pace with comparable jurisdictions and the cost of living and the needs of the County to maintain its sound financial structure. This award is also in compliance with the arbitration cap, the levy cap and appropriations cap for each year of the award. This award encourages unit continuity as employees will be less likely to leave Burlington for employment in jurisdictions with better compensation packages, it maintains

employee satisfaction and morale and is in the public interest because it freezes salaries in 2012, increases salaries by 2% in 2013, and increases salary payments by 1.42% in 2014. Thus, the salary award in this matter when taken in conjunction with the County's predicted savings in overtime costs as a result of implementing the new work schedule will result in a significant overall decrease to the Department of Correction's salary budget and thus is in the public interest.

The cost of the award is as follows:

- 1/1/13	2% ATB	\$247,509
- 1/1/14	1% ATB	\$126,229
- 1/1/14	Increments	\$213,701
- 8/1/14	2% ATB	<u>\$110,420</u>
Total Costs 2012 - 2014		\$697,859

#### **Increments in Future Years**

The County proposes to eliminate the step guide altogether in 2012, while the PBA seeks to guarantee that step increases will automatically continue beyond the expiration of the 2012-2014 contract.

Other than citing the costs associated with step increases, when combined with across-the-board increases, the County presents no real rationale for its position to end the increment system. When I pressed the County on the record at the arbitration hearing for its prognosis of what would happen to the employees' wage rates if the guide were abolished, it responded that all employees would simply

remain at their current salaries except for any across-the-board salary increases.

In its final offer, the PBA included this proposal:

The salary incremental step guide shall survive the expiration of the contract; i.e. effective January 1, 2015, in the absence of a new negotiated agreement, every officer who is not at the top step (Step 7) of the salary schedule shall move one additional step on the salary schedule.

In essence, the PBA asks that I confirm, pursuant to the *status quo* doctrine, that the employer's obligation to maintain the status quo post-contract expiration includes a mandate to advance officers to the next salary step. It argues that to do otherwise is contrary to the existing past practice clause in the parties' contract and flies in the face of statutory language requiring the parties to negotiate over "proposed new rules" before they are established. N.J.S.A. 34:13A-5.3. The PBA contends that the courts have affirmed that statutory rights are to be read into the contract even if not specifically stated in the express terms. Sayreville Board of Education, N.J. Superior Court, Appellate Division Docket No. A-373-11T4, (12/28/81).

By way of background, the parties agree that the County has a long-standing practice of paying step increments to employees progressing through the salary guide even after the contract has expired. The parties stipulated that such increments are paid January 1 of each year, regardless of

the employee's actual anniversary date. The parties further stipulated that in January 2012, increments were not given, and officers remained on their 2011 salary step. In late January, 2012, the PBA filed a grievance citing violations of Article II and XXXV. The grievance was denied, the PBA filed for arbitration, and I was selected as the grievance arbitrator (PERC Docket No. AR-2012-646). After both parties submitted their final offers in this matter, it became apparent that both parties proposed a salary guide freeze (no increments) for 2012. Thereafter, the PBA withdrew its grievance.

Article II (Salary) of the 2009-2011 contract provides in relevant part,

A. On January 1 of each calendar year indicated below, employees shall move one step on the step systems from their step on the previous year. (e.g., an employee at step 3 in 2008 shall move to step 4 in 2009, to step 5 in 2010, etc.)

Article XXXV (Administrative Rules and Regulations) states,

The Employer and the Association agree that all rules promulgated by the New Jersey Department of Personnel, Public Employment Relations Commission, Employment Relations Commission of the New Jersey Police Training Commission concerning hiring, firing and training practices or any other matters, whether or not specifically covered on this Agreement, shall be binding upon all parties.

The County objects to the PBA's proposal and argues that in the past, it did not "voluntarily" pay increments; rather, increments were only paid because PERC's "dynamic status quo"

rule required it to do so. It asserts that the Commission Chair's recent interim relief ruling in Atlantic County and PBA Local 243, 34 NJPER 29 (2011) has, in essence, set aside the dynamic status quo doctrine, and automatic increments are no longer required. The County further contends that it should not now be forced to pay increments involuntarily absent an express agreement between the parties to do so.

The County also argues that the PBA's proposal to freeze increments in 2012 and its proposal to make future increments automatic are inconsistent with each other. Finally, the County notes that the PBA has produced no evidence that the language it proposes is included in any other County labor contract.

First it appears that, by asking for a decision in this interest arbitration on whether the current provisions of Article XXXV require the County to pay increments in future years, the PBA is attempting to obtain a ruling on the very grievance arbitration it withdrew. This is not the forum for that ruling.

Second, I am not inclined to grant the PBA's proposal for new language in Article II, that would guarantee increments beyond 2014, partly for the same reasons that I declined to extend the contract for a fourth year into 2015. Further, as the PBA points out, the 2% arbitration cap law is scheduled to sunset in April, 2014. No one can predict whether the

statutory caps will lapse, be re-enacted as is, or be even further restricted. Moreover, we see what happened in the 2012-2014 contract period: were increments paid in 2012 or 2013, it would have virtually exhausted nearly all available monies "in the pot" under the 2% arbitration cap, thus leaving no funds available to provide for increases for the employees at the top of the guide - in this case, the majority of the bargaining unit.

Finally, the Atlantic County ruling was an interlocutory decision issue by the Commission's Chair. There is no final decision issued by the full Commission which has overturned or modified the Commission's dynamic status quo doctrine. For the foregoing reasons, I decline to award the PBA's proposal guaranteeing automatic increments beyond the length of the contract.

I also reject the County's proposal to abolish the increment plan altogether. The underlying purpose of a salary step system is to give recognition to the fact that rookie officers, fresh out of the academy, do not bring the same value to the workplace as seasoned, experienced officers. Recruits are brought into the department at a lower salary, but with the understanding (expressed or implied) that they will have the opportunity to work their way up the step guide to eventually reach top pay. Abolishing the long-standing salary step guide is, in

essence, a breach of that covenant made with employees when they are hired. Further, it would leave current in-guide employees "stuck" in place at lower pay rates for all time. This, in turn, would make recruiting for new hires difficult for the County, as it would not be competitive with most other county corrections departments. It would also be the source of divisiveness among the employee work group and would run contrary to the County's stated goal of building esprit de corps. It would weaken employee morale and create high turnover as employees would seek employment elsewhere. I conclude that it is not in the public interest, nor does it foster employment continuity, or give any recognition to comparable employment in other jurisdictions. Therefore, the County's proposal is denied.

**Direct Deposit**

The County seeks to amend the salary provisions of the contract to require that all compensation be made to employees by direct deposit. The PBA's position is that employees should continue to be given a choice of direct deposit or paycheck.

The County has not provided any specific information concerning this proposal. Therefore, I am not aware of the costs or administrative inconvenience to the County of the current payment methodology. Nor does the record show how many unit employees are not using direct deposit. There is no evidence in the record concerning whether other County employees



are required to have compensation deposited directly.

Therefore, this proposal is denied.

### Work Schedule

The County seeks to replace the existing 8-hour work schedule with a 12-hour work schedule. The PBA is strongly opposed to this change.

Warden Artis testified in detail about the current normal routine of a corrections officer during any given day:

At 11 p.m., the "first shift" or "midnight shift" comes on duty. The officers are required to attend a "line up," during which the supervisor inspects the officers, briefs them on any situations they need to be aware of from the previous shift, and assigns them their posts. The officers are then sent to their posts, and the employees on the previous shift are relieved (2T165).<sup>13</sup> At this point, inmates are locked in their cells, and a physical count is done of all inmates in the entire facility. Once the count sheets are submitted and tallied, the count is considered cleared and the employees on the prior shift are relieved for the day. (2T166) The officers on the midnight shift work one officer on a tier and rotate in half-hour segments between one tier and the other. They are responsible for supervising housekeeping details where minimum to medium security inmates

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<sup>13</sup> Employees are permitted to leave the shift once they are relieved, which typically happens at about ¼ past the hour. However, their shift time actually ends at 11:30. If circumstances dictate that they must stay for the full shift, they do not receive additional compensation, as it is considered part of the contractual workday.

clean the jail. If local police bring a "new commit" in, he is processed through the booking area. His paperwork is checked, the inmate is searched, he is showered and given a prison uniform. After the inmate is taken to the nurses' station for a medical interview, he is then taken to the holding area for classification the next morning. Some nights, there may be no new commits; some as much as ten (2T168).

At approximately 5 a.m., the officers begin "med call", where inmates are dispensed their medications. At 5:30 a.m., the officers start "chow." Inmates in C wing, the close custody wing, are locked in at all times, so officers must bring them their food. Night shift officers escort inmates from Wings A, B and D to the kitchen area. Artis estimated that about 50 inmates are escorted for one sitting (2T169). Five officers and a supervisor are present during each chow (2T170). Chow is finished at about 6:30 a.m.

At 7:00 a.m., the day shift arrives for duty. Like other shifts, their day begins with a lineup, the inmates are locked in their cells, and a facility-wide physical count of the inmates is taken. Thereafter, the midnight shift is considered relieved of duty for the day. The day shift then runs Wings E and F to breakfast chow. Thereafter, the morning is filled with activity: prisoners must be escorted to doctor's visits. Inmates who are appearing in court that

day must be taking to a holding area (the tank) to await transport by sheriff's officers. Classification of new inmates takes place; this is a process wherein a classification committee evaluates a new inmate to determine where in the facility the inmate will be housed (e.g., security level). The classification committee meetings take place beginning about 9:00. Additionally, the inmates are responsible for cleaning their rooms and making their beds, after which a lieutenant performs a jail inspection.

Beginning at about 8:30, visitors are permitted to meet one-on-one with the inmates. Visiting hours finish at 11 a.m. Later in the morning, individual inmates may have a "first appearance" session before a judge via video camera. This takes place in the all-purpose room.

At around 11:15 to 11:30, the day shift begins escorting inmates to lunch chow, again in groups of about 50 (2T177). This process takes between an hour and an hour and a half. Visiting hours resume at 1:00 p.m. (2T178). During the day, inmates from the bottom tier are permitted out of their cells and may congregate in the "quiet rec area", or the day room. The other tier is locked during this period, but is permitted time out in the evening. The two tiers rotate daily. Inmates are also permitted to go outside for a recreation period during nice weather, or to the gym. They are supervised by a recreation officer.

At 3:00 p.m., the evening shift comes on duty, and this process begins with a lineup, followed by an inmate lockdown and a physical count of the inmates. By this time, inmates are returning from court. The evening shift is responsible for escorting the inmates, again in groups of about 50, to evening chow. Artis testified that the evening shift usually runs chow until about 4:30.

From 7 to 9 p.m., additional visiting hours are held. At 7 p.m., depending on the day of the week, certain outside groups such as Alcoholics Anonymous, Narcotics Anonymous and religious groups hold meetings with some inmates in the All-Purpose Room. Also, the law library is open in the evening. At 9:00 there is a lock-down and an additional physical count is done (2T183). Then additional quiet rec time is held from 9:00 to 10:45 p.m. At 10:45 p.m., the inmates are locked in for the night (2T185).

The Burlington County Corrections Department has been on the present work schedule for many, many years. Burlington correction officers currently work a fixed (non-rotating) eight-hour work schedule of five days on duty, followed by two consecutive days off. There are three main shifts<sup>14</sup>, consisting of 7:00 a.m. to 3:00 p.m. (day shift), 3:00 p.m. to 11:00 p.m. (evening shift), and 11 p.m. to 7:00 a.m. (right shift). Each combination of shift and days off is a

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<sup>14</sup> Swenson testified that certain specialized officers are on nine-to-five shifts.

different "tour" and therefore, there are 45 different tours presently in existence. Most tours, except specialized assignments, are bid by seniority pursuant to the PBA contract.

In an interest arbitration proceeding before Timothy Hundley for the 2009-2011 contract, the County also proposed to modify the employees' work schedule. In that matter, the County then proposed a 10.5 hour workday with 4 days on followed by 3 days off (the 4/3 schedule), and the PBA vigorously objected. Simultaneous, the PBA made the same proposal regarding Reciprocal Days off as it does here. Arbitrator Hundley performed an in-depth analysis of the parties' arguments and the evidence submitted in that record and found in his award, Burlington County and PBA Local 249, Docket No. IA-2009-115, T. Hundley (8/15/11),

On balance, I find that the record is not detailed enough for me to make an informed decision as to whether the [schedule] changes are necessary or desirable. For example, the proffered benefit of having more staff during the busiest portion of the day has a strong abstract appeal. However, there is little if any particularized testimony about how this new staffing allocation would improve current operations; what, if any, problems it is designed to correct; the possible impact of having fewer staff between 7:00 a.m. and 10:00 a.m., and 4:30 to 11:30 p.m. . . In light of all of the foregoing, I conclude that the County has not met its burden of justifying the award of the 4/3 work schedule. At the same time, however, I note that both the County's proposal [regarding work schedules] and the PBA's Reciprocal Day proposal focus on providing officers with three consecutive days off. . . I award a joint committee, composed equally Local 149 and County representatives, to discuss the feasibility

of implementing the 4/3 schedule and the Reciprocal Days proposals, as well as any adjustments to those proposals that might make either or both mutually agreeable (PBA2-7, pp. 144-148) (emphasis mine).

After Hundley's award issued in August, 2011, a committee was formed to further explore the work schedule issue and the reciprocal days off issue. Although the committee met several times, there came a point where the PBA representatives would not return Hornickel's emails or calls requesting more information and additional meetings.

In this round of negotiations for a successor contract, the County has a whole new proposal regarding work schedules. More specifically, the County proposes a schedule consisting of a twelve-hour days, with three shifts: 6:00 a.m. - 6:00 p.m., 9:00 a.m. - 9:00 p.m., and 6:00 p.m. - 6:00 a.m.; and six different platoons. Each platoon would work seven days in a 14-day period. This is commonly called the "Pitman Schedule." Officers would have two days off, followed by two days on duty, followed by three days off, then two days on duty, then two days off, followed by three days on duty. Thus, officers would work three shifts in one week (34.5 hours) and four shifts (46 hours) the other week; this would enable employees to have off three consecutive days (Friday - Sunday), every other weekend.

Each work shift would encompass eleven and one half hours of paid time (11.5 hours) including a one-half (1/2) hour paid break as well as a 10 minute paid break, and a separate one half

hour unpaid break.

The County expressed two main concerns with regard to the current work schedule. First, the current work schedule scheme results in about half of the bargaining unit never having a Saturday or Sunday off, unless the officer takes leave time. Second, the County points to the extraordinary amount of time off taken by correction officers; nearly all of which results in an overtime expense to the County. More specifically, 44 officers have both Saturdays and Sundays off, 28 officers have scheduled days off of Sunday/Monday and 37 officers have a Friday/Saturday combination days off. This means that of the 213 unit employees, 104 officers are never scheduled for either weekend day off. The County believes that this results in employees self-creating weekends off by calling out sick or taking other leave time.

Despite the fact that there are fewer officers scheduled to work on weekends, the highest number of call outs have consistently occurred on Saturdays and Sundays. The County particularly points to their own statistical analysis which shows that in 2011, for instance, the bargaining unit called out an average of 390 days chargeable to sick leave on Saturdays, plus 33.81 days charged to leave without pay; on Sundays, the 2011 call out rate was 470 days charged to sick leave and an additional 35.88 days charged to leave without pay. These call-out rates compare with weekday call out rates

which average 347.6 days for 2011 (CO2-F).

In the four year period 2009 through 2012, the County offers the following chart (CO2-I) of leave time hours taken by the bargaining unit:

County of Burlington Total Annual Leave Hours							
	# of COs	Sick	W	Susp	FMLA	W/C	Totals
2009	228	21,103.90	8,570.75	9,136.00	13,704.00	10,378.40	62,893.05
2010	227	20,931.10	7,924.00	7,624.00	11,879.50	2,177.60	50,536.20
2011	226	20,431.80	5,202.50	6,856.00	11,860.00	5,202.50	49,552.80
*2012	218	22,141.48	2,732.49	6,384.62	14,747.25	1,516.48	47,522.32
<b>4-Yr. Avg.</b>	<b>225</b>	<b>21,152.07</b>	<b>6,107.43</b>	<b>7,500.15</b>	<b>13,047.69</b>	<b>4,818.75</b>	<b>52,626.09</b>

\* 1 rojected

**Key:**

*Sick* = Paid sick leave exclusive of FMLA approved paid sick leave

*W* = Unauthorized/unapproved/unexcused absence from work; includes lateness docking

*Susp* = Unpaid suspension time for disciplinary actions

*FMLA* = Approved paid and unpaid FMLA leave as well as extended contractual leaves of absence

*W/C* = Approved worker's compensation leaves of absence

**Calculation of Total Leave:**

4-Year Average Leave Hours Taken (Above)	234 (52,626 hours/225 Officers)
Average Vacation Time Hours	160 (20 days x 8 hours)
Personal Time Hours	24 (3 days x 8 hours)
Total Hours	418
Annual Hours	2,088
Percent Leave Time	20.0%

Thus, it can be seen that Burlington's correction officers take an average of 29 working days (about 6 weeks) off a year before vacation and personal days are factored in. When all time, including leave time, is aggregated,



correction officers collectively take an average of 20% of their work year off. Since the correctional facilities must have minimum staffing levels 24 hours a day/7 days a week, the consequence of employees taking time off is that, in most instances, the positions must be filled by calling in employees for overtime.

Hornickel explained that the County has averaged \$3 million a year in overtime in each of the three years of the last contract (2T50; 2T285). In 2011, the County paid \$2.6 million in overtime costs for this bargaining unit (CO-2K). He calculated that the County is paying roughly \$14,000 average a year per officer in overtime payments notwithstanding that the Corrections Department "generates more discipline for absence and lateness than the rest of the entire county workforce combined" (2T308). Warden Artis testified that officers generally call out sick to get a "3-piece" (three days off together), particularly on weekends.

The County argues that it simply cannot justify these overtime payments to its taxpayers. Hornickel stated that the Corrections Department employs roughly 20% of the County's unionized workforce, but it accounts for approximately 60% of the County's total overtime expenditures (2T285). By comparison, the County's Communications Center (also known as the 911 call center) employs 115 people, and paid its dispatchers an average of just \$7,000 in overtime per year

(2T285-286).

The County calculates that moving from an eight-hour shift to a twelve-hour shift will save \$1,311,721 in overtime expenses even without any changes in employee behavior as it relates to leave time taken. However, the County theorizes that, once employees have the ability to work on a schedule with three consecutive days off every other weekend, the call-out rates will decrease significantly. The chart below shows the County's calculations of the savings if employees modify their leave time behavior by 10%, 20%, or 30%:

#### County of Burlington Overtime Savings Analysis

	8 Hour Shift		12 Hour Shift		
	Current leave Behavior	Current Leave Behavior	10% Reduction in Avg Leave	20% Reduction in Avg leave	30% Reduction in Avg Leave
Total Staff Hours Available	434,304	434,304	434,304	434,304	434,304
Average Leave Time*	234	234	211	187	148
Vacation and Personal Time	184	184	184	184	184
Total Leave Time	418	418	395	371	332
Leave Time %	20.0%	20.0%	18.9%	17.8%	15.9%
Total Min. Staff Hours- Adjusted for Leave	N/A	464,463	458,192	451,942	441,700
Overtime Hours Required	59,971	30,159	23,888	17,638	7,396
<b>Overtime Cost</b>	<b>\$2,638,717</b>	<b>\$1,326,996</b>	<b>\$1,051,075</b>	<b>\$776,088</b>	<b>\$325,435</b>
<b>OT Savings Over Current Schedule</b>		<b>\$1,311,721</b>	<b>\$1,587,641</b>	<b>\$1,862,629</b>	<b>\$2,313,282</b>

\* Average Leave Time includes sick, unexcused absences, suspensions, FMLA and worker's comp but not holidays.

Or, calculated differently, the County's acting CFO Mark Krassan calculated that, absent any change in officers' absenteeism rates, the County would still need 30,159 hours of annual overtime to staff the facility based on the 12-hour shift" (2T57

and chart above). However, this is about half of the overtime hours currently being used under the existing eight-hour work schedule. Based upon the current average of \$44 per hour overtime rate, the proposed work schedule change would reduce the County's overtime burden from \$2.6 million annually to about \$1.3 million annually, even without any change in employees' call-out rates.

However, the County asserts that it has demonstrated that the department will likely experience a reduction in the call outs. Warden Artis testified that the high number of callouts is "absolutely" a direct result of the fact that officers do not have any weekends off (T2-196).

Further, the County points to its recent experience with its Juvenile Detention Center. Over the summer of 2012, CWA and the County negotiated to change the work schedules of the County's Juvenile Detention Officers from an eight-hour tour to a 12-hour tour. After the officers voted to accept the new schedule, it was implemented in August, 2012. The resulting reductions in calls outs and overtime hours from the first two months after the schedule change are depicted in the chart below (CO-2-M):

<b>JDC Call-Outs and Overtime</b>		
<b>Sept.</b>	<b>2011</b>	<b>2012</b>
Call-Outs	28*	16**
Overtime Hours	497.5	274.24
<b>Oct.</b>	<b>2011</b>	<b>2012</b>
Call-Outs	24***	14****

Overtime Hours	650.25	176.08
* 11 of the 28 were on Fri., Sat., or Sun		
** 7 of the 16 were on Fri., Sat., or Sun.		
*** 12 of the 24 were on Fri., Sat., or Sun.		
**** 5 of the 14 were on Fri., Sat., or Sun.		

This document shows that calls outs during the first month were reduced by 42.9% and 41.6% in the second month after the schedule change. Overtime hours were reduced by 44.8% the first month, and 72.9% the second month.

Turning back to the corrections officers unit, the County demonstrated that overtime would be reduced from the current \$2.6 million to \$1.3 million even without changes in employee behavior. However, the County presented the financial impact if call-outs are actually reduced as it expects. A 10% reduction in calls outs would increase its savings on overtime expenses from \$1.3 million to \$1.5 million annually; a 20% reduction would result in a total of \$1.8 million in annual savings, and a 30% reduction would result in a total savings of \$2.3 million annually.

The County has also avers that the overlapping structure of the 12-hour work schedule would, in and of itself, save the taxpayers overtime dollars. If employees on the day shift call out at 6 a.m., the next shift arrives at 9:00 a.m., so overtime would only have to be called for three hours. Alternatively, Artis testified that, depending on the situation, he may "make due" with the staff in place until the 9:00 a.m. shift arrives

(T202).

Operational Efficiency, Predictability and Better Supervision

The County maintains that the current 8-hour schedule presents an operational "nightmare." The two correctional institutions are 24/7 facilities and must be staffed at all times. Artis noted that the current schedule makes it "impossible" for more than 44 people to be scheduled a full weekend off. As a result, Artis stated, officers either, "call out in conjunction with their days off... or most of the time they call out Saturday or they call out for a Sunday, because you know, at the jail it's always been known that it takes a long time to get a piece of the weekend" (T2: 195). These call outs create recurring staffing shortages as the administration then has to attempt to "absorb" the shift, or call someone in on overtime.

Hornickel noted that with the currently 45 different schedules the "daisy chain style" shift selection process every time a tour is opened for bidding is burdensome and arduous. As Swenson explained, when an officer retires or separates from service, his/her tour becomes available for bid. Once an officer selects the tour, his tour is then posted for bid, and so on. Swenson testified that this creates a spiral effect where a single vacant tour could result in maybe seven or eight tours being bidded in sequence. The County contends that these bidding processes and shift changes are time

consuming and destabilizing to workforce continuity.

By contrast, the proposed work schedule would be assembled using only two platoons in each facility for each tour. Thus, there would only be a maximum of six possible tours to be bidden on. This, the County contends, would streamline shift selection enormously.

In addition, the County argues, the current work schedule provides only 15 to 30 minutes of overlap during shift changes. Hornickel testified that the current schedule "does not maximize employee resources to meet the operational workday needs" (2T304). One of the County's main objectives in redesigning the work schedule was to guarantee an overlapping schedule to provide more available manpower when inmates are the most active. The 12-hour schedule achieves that objective by providing a 12-hour overlap, during the busiest part of the day (9 a.m. to 9:00 p.m.) The County asserts that this affords immense operational benefits to the department. As Artis testified, the overlap would provide the department with "incredible flexibility" (2T-202). For instance, Artis testified that many of the jail's daily activities are interrupted by mandatory lockdowns in the middle of the afternoon. This interruption would not be necessary with the 12-hour schedule.

Artis confirmed that the 12 hour schedule proposal provides the jail with the majority of its staffing resources when they

are needed the most and "would enhance the operations" of the jail (T2-202). Under the proposed 12-hour schedule, the overlap would facilitate smoother, more efficient operations, and would allow the officers on different shifts to work in conjunction with each other. The current lack of overlap in the shifts is inefficient since it prevents the jails from having the majority of staff working during the busiest parts of the day (i.e., majority of the activities involving inmates occur between 6:00 a.m. and 9:00 p.m., with the busiest time occurring between 9:00 a.m. and 5:00 p.m., when courts are in session).

Further, under the current schedule, Artis testified that every shift runs chow: 11:00 p.m. - 7:30 a.m. runs breakfast, 7:00 a.m. - 3:30 p.m. runs lunch, and 3:00 p.m. - 11:30 p.m. runs dinner. This is disruptive from a continuity perspective. Artis believes that, when each meal is managed by a different shift and an incident occurs between two inmates during chow, that information is not adequately communicated to the officers or the next shift. There is no way for the officers on the next shift to know that there may be an issue; having the day shift run all chow sessions would improve communications and strengthen the chance that the officers can prevent an incident between inmates from recurring. The 12-hour shift solves this problem.

Further, the County observed that, unlike the proposal made in the Hundley arbitration two years ago, this proposal will not

require any operational changes from outside entities, such as the courts. Further, nothing about the jail operation would need to be altered except running breakfast chow at 6:00 a.m. instead of 5:30 a.m. (2T200)

The County also contends that the 12-hour schedule will enhance supervision by providing consistency and predictability about which employees are on duty at any given time. Under the current schedule, supervisors are generally unaware of who will be on duty on any given day. The 12-hour proposal splits each shift into two platoons, rather than seven different schedules revolving around days off. Supervisors will know exactly who is coming in for the shift by virtue of which platoon that is scheduled. The County notes that it will also propose the 12-hour work schedule to the superior officers, and, if accepted, the same group of employees will be working together with the same supervisors.

The County concludes that the work schedule it proposes will enhance operational efficiencies at its facilities. As Artis noted, "it has to be operational. That's the most important thing. . . I wouldn't co-sign it if it didn't" (2T211).

The County provided the following chart to graphically demonstrate its operational needs during specific parts of the work day:



<b>BCDC</b>					
<b>Minimum Staffing</b>					
	<b>Available</b>	<b>Required</b>		<b>Adjusted for Leave **</b>	
Hours	Mon - Sun	Mon - Fri	Sat - Sun	Mon - Fri	Sat - Sun
6A -9A	23	20	20	25	25
9A - 6P	40	35	31	44	39
6P - 9P	41	30	26	38	33
9P - 6A	24	20	20	25	25
<b>CWRC</b>					
<b>Minimum Staffing</b>					
	<b>Available</b>	<b>Required</b>		<b>Adjusted for Leave **</b>	
Hours	Mon - Sun	Mon - Fri	Sat - Sun	Mon - Fri	Sat - Sun
6A -9A	15	13	13	17	17
9A - 6P	24	20	17	25	22
6P - 9P	25	16	14	20	18
9P - 6A	16	13	13	17	17
** Adjusted for Leave: Includes sick, vacation, unexcused absences, unpaid suspension, FMLA and Worker's Comp. Average percentage = 20%.					

### Impact on Morale and stability of Employment

The County argues that it cannot be disputed that the current work schedule negatively impacts employee morale as a whole. It notes that after the eight new officers are hired at the end of November, there will be 173 officers, some with more than ten years' service, without a single weekend off during the year, and 109 officers will not have either weekend day off.

Local 249's president Robert Swenson acknowledged that not ever having a weekend off is stressful. He stated, "There is a lot of stress that comes with the job... it's very seldom that you have holidays off because more than likely you're

going to work holidays, you're going to work weekends (LT160)." He further described the stress of having to leave family on holidays, such as Thanksgiving and Christmas, where you "know you are going to be stuck with a double shift." (LT160).

The Warden testified that, overall, the 12-hour schedule will produce a happier and more equitable working environment. He stated,

I definitely believe that if all our staff had a little piece of the weekend that it would make for a happier employee. Jail life ain't the happiest life, but it's the one we chose. But I think that it would be nice to share a little of the wealth. You're talking to a guy, I haven't had weekends off for 15 years or better, but I still think that it would be nice to be able to have that (T2-211).

Further, the County asserts that the current schedule advances a working environment that quashes uniformity, unity and fairness and fosters a mentality, which Artis says has always existed at the jail, of "you put in your time" and "you got to get yours" (2T197-198). The County seeks to change the culture of the department. It contends that such self-minded thinking is detrimental not only to the efficiencies of the department, but to the overall morale of the unit's officers.

Turning to the factor of comparability, the County points to its experiences with the Juvenile Detention Facility (JDC) and the Central Communications Department. It notes that Communications has been on a 12-hour schedule since 1987

(2T288). JDC went to a 12-hour schedule in August, 2012. According to Hornickel, both facilities generate less overtime per employee than the correction officers unit.

The PBA argues that the JDC is distinguishable because those employees are not "sworn law enforcement officers". The County responds to this contention by pointing out that both the jails and the JDC are under the control of Artis; like the adult facilities, the JDC is a direct supervision facility, with cells, which houses from the age of 12 to 18. Like corrections officers, JDO's are tasked with the stressful job of running a facility that houses people accused of committing violent crimes (2T109). Like corrections officers, JDO's face some of the same risks of assaults by detainees (2T110). Both attend the Correction Officer Training Academy and undergo virtually the same training with the exception of firearms training.

In fact, in some respects, the County avers that juvenile detention officers' jobs are more difficult in that, unlike the corrections officers here, the JDO's have significant limitations on their use of force and/or restraints as well as lockdown.

The County argues that these facilities are very similar, and the success of the 12-hour work schedule at the JDC is indicative of the kind of success the corrections department can expect to achieve under the 12-hour work schedule. It notes

that the experience of the JDC is also an example of the potential for increasing employee morale. Talbert, a Supervising JDO at the facility, testified that the new work hours were working well, that employees were generally satisfied, and that JDO's approaching a three-day weekend were excited and practically "dancing" (2T117). Further, he testified that he felt JDO's were not any more stressed or fatigued than before. He noted that employees have one 10-minute break, and two half-hour breaks (one paid, one unpaid) when they are permitted to leave the work area. The shift times in that facility are now 6 a.m. to 6 p.m. or 6 p.m. to 6:00 a.m. As a result of the new shift schedule, all JDO's have every other weekend with three days off. Talbert's feeling was that morale had increased since the change in shift. He stated that the only complaint he has heard was that some officers felt the Union should have used the change "as a bargaining tool to get more money" (2T121).

With regard to the schedule change at the JDC, Warden Artis testified that "I haven't heard anything negative. I've heard a lot of positive."

The Warden also testified that the overlapping structure of the proposed schedule will improve employees' chances of getting holidays and requested days off because there are more officers available during the busiest part of the day (2T200). This was consistent with Talbert's testimony that

the JDO's were now able to split the holidays under the new schedule, whereas before, "unless an officer had 10 years in, he would not get off either Thanksgiving or Christmas [off]" (2T117-118).

The County contends that most correction officers actually support the schedule change. It points to Artis' testimony that he has been approached by "50 to 60" officers asking "when are you going to 12's?" and expressing favor for the change. But Artis also noted that other officers have told him, "Don't mess up my schedule". I don't want to go to no 12's" (2T203). Artis stated that the officers who are opposed to the schedule change "are part of the 20% that already enjoy every Saturday and Sunday off" under the current schedule (2T204).

The County also notes that the proposed schedule provides employees with increased opportunities for outside employment because it provides officers with 78 more days off per year.

In addition, the County submits that the proposed schedule will enhance unit continuity and stability of employment. It notes that awarding the proposal will mean that over 100 officers are likely to want to remain with Burlington County for many years because they will not likely want to move to other employers, such as the State DoC, where they will never have weekends off for years. In fact, the County asserts, the proposed work schedule will enhance

recruiting efforts. On the other hand, continuing with the present work schedule will potentially impact on workforce continuity and stability as correction officers may leave Burlington for one of the five surrounding counties that do have a schedule that guarantees weekends off.

#### Other County Correctional Facilities

Moreover, the County also relies on the experiences of five other counties on the twelve-hour shift. In Camden County, the parties agreed in the 2006-2012 contract that "Management may, at its discretion, move to twelve-hour shifts" (CO-2U, Article IV). The certification of Assistant County Counsel Sherri Schweitzer states that the County has also recently negotiated for a twelve-hour shift for its superior officers, is in the process of determining the exact schedules, and will move to the twelve-hour shift as a standard shift for the department, except for certain administrative day-shift positions. Camden County has 323 rank-and-file correction officers (CO-2U).

In Cape May County, a twelve-hour shift was implemented for correction officer personnel in January of 2009 (CO-2V). In that facility, correction officers work twelve-hour days, 84 hours per pay period. The regular work schedule is three days on, two days off, two days on and three days off, two days on and two days off (CO-2V). Cape May County has 87 correction officers working the twelve-hour shift. In

addition, superior officers, the internal affairs officer and the classification officer work an eight-hour day shift.

In Gloucester County, a twelve-hour shift has been in effect for 21 years (CO-2W). Employees work seven twelve-hour shifts in a fourteen day period and there are 88 correction officers and 21 superiors on the twelve-hour shift. Administrative corrections personnel work an eight-hour shift. The shift times for the twelve-hour personnel are 6:30 A.M. to 6:30 P.M. and 6:30 P.M. to 6:30 A.M.

In Hunterdon County, twelve-hour shifts have been in effect for nine years (CO-2X). Shift hours are 6:00 A.M. to 6:00 P.M. and 6:00 P.M. and 6:00 A.M. All employees are on the twelve-hour tours except the classifications officer and investigations officer. Thirty-two officers and three superiors are on the twelve-hour shift (CO-2X).

In Salem County, twelve-hour shifts have been in effect since 1996 (CO-2Y). There are 122 correction officers and 22 superiors on this shift, while administrative personnel are on an eight-hour shift. Shift times are 7:00 A.M. to 7:00 P.M. and 7:00 P.M. to 7:00 A.M. Notably, the implementation of this work schedule was originally on a trial basis and is reviewed quarterly by the sheriff. The contract addendum was made to the 1993-1996 CBA in 1996. specifically states

This addendum is intended to be in full force and effect for as long as the 'Twelve (12) Hour Work Schedule' is in effect, and in the event that the 'Twelve (12) Hour Work Schedule' fails to produce the

desired results (i.e., reduced sick leave abuse and reduced overtime) and is subsequently vacated by the Sherriff, thereupon this addendum is to be considered null and void effective on the date of the return to the previous work schedule (CO-2Y) (emphasis added).

The County asks that I take note that, although Salem County reserved the right to return to an 8-hour schedule if the goals of the switch (which are two of the County's goals here) were not achieved, they have not reverted to an 8-hour schedule, and continue to use a 12-hour schedule, sixteen years later. Salem County has 8-hour shifts only for support departments such as classification, maintenance, and social rehab (CO-2Ya).

Local 249's president testified that the 12-hour work schedule "does not work for corrections, and they do not use it." The PBA argues that this evidence is not particularly meaningful as these are some of the smallest<sup>15</sup> corrections department in the state.<sup>16</sup> The County counters that Camden, the third largest correctional facility in the state, is in the process of implementing a 12-hour work schedule. The PBA points out that Camden's implementation "may be months away."

The PBA further argues that these work schedules in other counties were negotiated and were neither unilaterally

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<sup>15</sup> The County objects to the PBA's characterization of Salem's correctional facility as "small" since it houses 447 inmates.

<sup>16</sup> The PBA Attorney asserts in a November 16 e-mail that the PBA believes none of these facilities operate as a direct supervision model. I have not treated this assertion as evidence. At best, it can be said that the record does not indicate whether any of these facilities are or are not direct supervision models.



implemented nor imposed pursuant to an interest arbitration award. This fact does not appear in the record.

Burlington County Municipal Police Departments

Additionally, the County notes that 17 municipal police forces in Burlington County utilize 12-hour shifts. The PBA asserts that municipal police departments are distinguishable because those law enforcement officers are not constantly exposed to dangerous violent criminals all day, every day. The County responds that, although municipal police officers perform different tasks than the corrections officers here, the fact remains that police officers are sworn law enforcement officers who face dangerous situations and the same level of stress (while the kind of stress may be different) as the correction officers here. Despite this high level of stress, police officers are clearly able to operate on a 12-hour work schedule, as evidenced by the fact that many of the police departments in Burlington County are now using 12-hour shifts.

The PBA argues that its bargaining unit members oppose the proposed 12-hour schedule. Swenson's testified that "the masses" would not be happy with the 12-hour schedule (1T167). However, the County points out that Swenson could not quantify how many members the PBA's executive committee spoke to, the PBA did not survey their membership, nor could Swenson provide any documentation that supported his statement (1T175-176).

Daycare Before 6:00 a.m.

Officer Swenson also testified that the 6:00 a.m. start time proposed in the County's final offer is troubling because, "I know I can't find childcare at 5:30 in the morning." (1T178). However, Officer Swenson's statements were made in reliance on information that was obtained approximately two years ago, for a prior arbitration hearing. When confronted with the fact that the State correctional facility in Burlington County has shifts that begin at 6:00 a.m., Swenson dismissed this fact and simply stated, "[t]hey go in knowing that their shift is 6:00 a.m. to 2:00 p.m. Their arrangements are already made knowing that's the job they're taking" (1T198).

However, the County presented evidence that at least two daycare facilities in Burlington County open prior to 6:00 a.m. (C02S). The County points out those officers who have difficulty making childcare arrangements prior to 6:00 a.m. can always bid for a position on the 9:00 a.m. - 9:00 p.m. shift. Therefore, the County argues that daycare is not an issue.

Longer Work Year Argument

The PBA argues that, under the County's proposal, officers would have their work day lengthened by nearly 50%, and would also be forced to work an additional 104 hours per year without additional compensation. The County disputes this calculation.

Officers are now working (and are paid for) 8.5 hour days, less 30 minutes unpaid lunch, which equals 80 hours per pay

period. Under the County's proposal, they would work (and be paid for) 12 hours a day, less 30 minutes unpaid lunch, or 11.5 paid hours per day, for 7 working days during a pay period. This equals 80.5 hours per pay period - or ½ hour more per pay period. This aggregates to 13 extra hours a year. The County has acknowledged its obligation to pay the officers for the extra ½ hour per pay period.

The County points out that officers would actually be required to be at the facility fewer hours a year under its proposal: Officers are currently at the facility 8.5 hours daily for a total of 2210 per year (8.5 x 10 x 26). Under the proposed schedule, they would be at the facility for 12 hours a workday, seven workdays per pay period, or 2184. Further, the County points out that, as to the number of annual work days, that number would be reduced from 260 days to 182 days - a reduction of 78 days.

#### Additional Stress of a 12 Hour Shift

The PBA contends that the longer shifts will increase stress due to the extended period of time officers will be in the jail and in contact with inmates. Artis commented, "you know it's dangerous when you walk in the door. It doesn't get more dangerous because you are there longer".

#### Higher Risk of Danger/Injury

Swenson also testified that a 12-hour work schedule "multiplies the risk level of getting injured, because you're

nct only on that tier now for eight hours, you're on that tier now for 12 hours. So I mean that poses a substantial risk to the officers as well." (1T162). Swenson further testified that this increased risk of injury is related to a higher probability of something "happening because... you're spending more hours directly supervising these inmates, whereas before you were spending seven and a half hours" (1T189). However, the record shows that CO's routinely work more than 12 hours, and in fact occasionally work double shifts. Moreover, as Talbert testified, the JDC has not experienced an increased risk of danger, because the detainees are, "still spending the same amount of time [out]. It hasn't changed because we worked four more hours. They're not out four more hours." (2T-120).

Additionally, Artis testified that the 12-hour schedule would not cause an increased risk of danger. The Warden stated:

[A]s a correction officer, as soon as we walk in the building, the danger level is the danger level. Doesn't matter if you're in there for five minutes or 16 hours... The only time the danger level changes, it lessens. That means [if] you're in a control booth...of course it lessens because the inmates can't get to you. When you're running rec or you're in a chow hall, the danger level is the same. It doesn't matter how many hours you're there... If you're a CO and in the midst of inmates, at any time it can be a danger... It's the same danger. Hours [don't] matter... [A]s a correction officer, every time we step into the building, the danger is what the danger is. As a correction officer you should be on point and know that and never get lax (2T205-206).

Further, Artis pointed out that the total amount of time inmates are out of their cells due to daily activities will not change

or increase. Therefore, the County contends that its work schedule proposal does not expose correction officers to any increased risk of danger beyond what presently exists under the current work schedule.

#### Problems with Weekend Visitation

The PBA also contends the County's proposed 12-hour work schedule would create problems with weekend visitations for CO's who are non-custodial parents. The County contends that the 12-hour work schedule would actually afford CO's who do not currently have weekends off a better opportunity to spend time with their children on the weekends as the schedule has two three day weekends per month built into it. Additionally, it notes, there have not been any negative reports regarding weekend visitation issues at the JDC or Central Communications.

#### Not Fair to Senior Officers

The PBA's main objection to the 12-hour shift is that it would not be fair to senior officers who have put in years of service to obtain every weekend off. Swenson testified, "[w]hat is not fair is the officer that's been there for 30 years, 34 years and now, you know, with maximum seniority, that you know, he's already been to war to get his weekend taken and regress down to only having every other weekend off" (1T165).

Swenson also contends that by implementing a 12-hour work schedule, the County would be, "forcing them to [take weekends off]. . . There's people that bid on Wednesday Thursday"

(T187). Artis addressed this statement about CO's "wanting" midweek days off by stating, "the real response is... nobody wants [midweek] days off. But they would want them if they [were] on day shift. That's what happens. We have three shifts. So if you can get those days on day shift, then, yeah, they'll take those [days]... [i]t's about the shift. Of course, nobody, if they can be off on the weekends, nobody wants Tuesday, Wednesday." (2T190).

The PBA also argued that less senior officers already have a mechanism to get days off on the weekends, and that is to use their accrued holidays. Swenson stated that in order to get credit for a holiday, officers have to work, or not be out on leave for three days: the day before the holiday, the day of the holiday, and the day after. Therefore, officers have to work three days to get credit for one holiday. Additionally, like the shift bidding process, the use of "floating" holidays is also based on seniority. Therefore, if one officer with ten years of seniority and one officer with eight years of seniority both request to use a "floating" holiday on the same day, (30 days out), the officer with more seniority will get the day off (T206-207).

\* \* \*

As was previously noted in the Hundley award, PERC has provided guidance with respect to how an interest arbitrator should analyze a proposed new work schedule. First, before

awarding a major work schedule change, an arbitrator must carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as the impact on employee morale and working conditions. Teaneck Township, P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999); City of Clifton, P.E.R.C. 2002-56, 28 NJPER 201 (¶33071 2002). PERC has also held that a work schedule should not be changed without strong reasons for doing so. Further, as PERC reasoned, "an arbitrator should consider whether there is evidence of problems with an existing schedule, but interest arbitration must allow for a schedule change that an arbitrator reasonably concludes is warranted after a full and fair consideration of all of the statutory criteria." Clifton.

As noted earlier, the burden to produce convincing evidence and rationale for a change, especially a work schedule change of this magnitude, is on the party seeking the change. Here, I find that the County has met its burden.

First, the County has produced evidence beyond dispute that it has, for at least several years, been experiencing a very high rate of absenteeism in the correction department and that absenteeism is directly corresponding to significant overtime expenses. Even before earned vacation and personal leave time is factored in, employees are collectively taking 29 days off a year. This amounts to just shy of 6 weeks yearly. Once vacation and personal time are added to the

max, Burlington's correction officers are out (not at work) about 20 percent of the scheduled work time. While the PBA may say that this is typical of a correction officers' work group, being the norm does not make it the optimum.

Further, the County is experiencing substantial overtime expenses, in large part, precipitated by the absenteeism rate. In 2011, the County's overtime bill for this bargaining unit exceeded \$2.6 million. The evidence shows that, for the most part, it is due to the need to fill positions of employees not at work. The County has shown that, even with no change in employee behavior regarding call-outs, it will save about \$1.3 million by implementing the proposed shift change.

This is particularly true when I consider the experience of the Juvenile Detention Center's recent conversion to a 12-hour shift. While the experience is limited to only the first two months, and it is possible that the work group is experiencing the "novelty" factor, the improvement to absenteeism, together with the concomitant reduction in overtime, is impossible to ignore. Not only did the County reap the benefits of substantial overtime savings, but apparently the JDC employees had an incentive to use existing time-off within their work schedules rather than taking leave time.

Whether the change in shift times will produce the



optimum results in absenteeism and overtime reductions that the County theorizes it will, of course, remains to be seen. In any event, the potential savings here are so significant that the proposal must be given serious consideration to determine whether there are negatives, especially in impact on organizational objectives or detrimental effects to employees' lives, which outweigh the financial savings.

The County maintains that the proposed 12-hour schedule will better meet its organizational needs, will create greater efficiencies at the correctional facilities, will improve supervision and continuity among the scheduled tour or duty and will streamline the tour bidding process. The County also asserts that the new schedule, because of the overlapping tour, will provide the greatest amount of coverage when the facility needs it most. The record supports each of these conclusions. The overlapping shift (9 to 9) will permit the BCDC to have sufficient staff available to well accommodate inmate movements, and will permit it to run chow entirely by the 6 a.m. to 6 p.m. shift -- one of its stated goals -- providing better communications about inmate grievances or disturbances during chow runs. There is no doubt that having only 6 platoons per facility will significantly facilitate the shift selection process.

As to supervisors' continuity with a group of subordinates, this depends on whether the County is

successful in negotiating the same shift change with the superior officers' union.

The County also repeatedly argues that employee morale will be significantly improved by the change, since all employees will be able to enjoy a three-day weekend every other weekend. As Artis put it, "I'm giving them a 3-piece and a good three-piece - every other weekend off." However, any schedule change necessarily involves a set of unproven predictions about what employees will like or accept, and the consequences of those feelings. Of course, it is impossible for the County, or any party (management or labor) to accurately predict employee sentiment or resultant behavior for an event that has not yet happened. It is necessarily speculation. No doubt, the current 100 plus employees currently with no weekend days off will be happier with regular three-day weekends twice a month. However, the "most senior" employees who already enjoy every weekend off will, to say the least, be disappointed with such a schedule because it is a diminution of a long-awaited benefit of seniority.

In weighing all of the above factors together, I am convinced that the County has demonstrated a legitimate reason for implementing a 12-hour work schedule on an experimental basis. I do have one serious reservation in awarding the proposal. The language of the current overtime

clause permits employees to be held over beyond the end of their shift for additional coverage. Although the contract contemplates a double shift, Swenson testified that the current practice is actually to split the shift into two 4-hour segments. I cannot imagine employees safely working a continuous shift of more than 16 hours. Swenson essentially corroborated this when he testified that he envisioned that employees working a 12-hour shift would be held over, at most, for four hours (1T161). I intend to place a cap of no more than 16 hours in a 24-hour period in which an officer can be required to work. Therefore, the overtime provisions in the contract will be modified to accommodate this limitation. I award the following 12-hour shifts on a trial basis, effective July 1, 2013:

6 a.m. to 6 p.m.

9 a.m. to 9 p.m.

6 p.m. to 6 a.m.

The County reserves the right to determine the number of officers on each shift. Additionally, officers in specialized assignments will maintain their current work schedules.

The delay in implementation is to permit any appeals from this decision; to give the department time to determine the number of officers it needs on each tour/platoon; to allow sufficient time for the Corrections Department to put the entire schedule up for bidding; to allow time for the County

to negotiate with the SOA over proposed changes in their work schedule, and (perhaps most importantly) to allow time for corrections officers to plan their lives around the new schedule.

The experimental schedule will be in effect for a period of 18 months, after which both parties will evaluate its effects to determine whether it accomplished the County's stated goals and whether it was palatable to the members of the bargaining unit. Consistent with the Commission's rulings in City of Clifton, the schedule will not be part of the status quo, but rather, in the absence of the parties' agreement to either maintain it or abandon it, the County will have to justify its continuation to an interest arbitrator in the interest arbitration for a successor agreement. Further, the parties will retain the existing schedule after the expiration of the contract until a new agreement is reached or an interest arbitration award is issued. Clifton. This will give both parties a body of proofs from which to convince the next arbitrator of the merits of the revised work schedule versus the old work schedule.

### **Overtime Assignments**

The County proposes a major modification in the overtime clause such that voluntary overtime would no longer be distributed purely on a seniority basis, but rather would be

distributed based upon a rotating list of employees desiring such voluntary overtime. The County argues that such a scheme would be far fairer to all employees in the unit, as all employees would eventually have an equal opportunity to obtain some of the overtime. Warden Artis noted that it has long been known at the detention center that, at least on the day shift, it takes at least 22 years of service before an officer is high enough in the seniority list to obtain any of the overtime opportunities. Further, the County submitted a list of all overtime worked in 2011 ranked by the amount of overtime paid (CO-2H). That list shows that the highest paid overtime earner made \$107,920 in overtime alone, whereas 93 employees earned less than \$5,000 during 2011. The County also asserts that because the most senior employees obtaining the overtime are also the highest paid employees, changing the overtime scheme to a rotating one would potentially save the County significantly in overtime expenses.

The PBA argues that correction officers are hired with the knowledge that the seniority-based overtime system will mean that they will have to work many years before they are eligible for voluntary overtime. The PBA does not dispute that a significant majority of Officers who receive \$10,000 or more annually in overtime payments are the more or most senior officers within the department. This is the nature of the existing seniority based overtime allocation system that rewards

length of service and that does not provide overtime on a rotational basis. The PBA maintains that it would be unfair to senior officers who put in years of service within the County to be deprived of the benefit of their seniority by taking away their ability to substantially supplement their income through working voluntary overtime.

As expressed earlier in this award, a determination to award or deny any proposal must be made in conjunction with all other proposals being considered. Here, I agree with the County that a rotating overtime assignment system more fairly benefits all unit employees, but at the same time it would take away one of the long-held benefits of employees' seniority in the system. Having already granted the County's request to change the shift times from eight hours to twelve hours, the detrimental effects to senior employees resulting from that part of the award precludes me from further incursions into employees' long-held seniority rights. Therefore, this proposal is denied.

#### **Converting Leave Time**

The County proposes to convert employee leave time in all contract sections from days to hours. The PBA has no real issue with this proposal, except as to its vigorous opposition to the work schedule change in the first instance.

This proposal must be granted to square leave time with the work schedules being awarded herein. Accordingly, Articles V, IX and XI will be modified to state that effective July 1,

2013, leave time will be calculated in hours. Further, all other clauses in the contract, such as the discipline clause must be changed to refer to the calculation of days as hours.

### **Discipline**

The County proposes a new section which would fine employees who violate the time and attendance policy by \$25 per suspension day instead of putting the employee off on suspension without pay. The County made the same proposal to arbitrator Hundley in 2009-10. Hundley recognized that the proposal had the potential to benefit both the County (by having the employee at work instead of backfilling with overtime) and the individual officer (by not losing a day's pay during the suspension period). Nevertheless, Hundley rejected the proposal because he believed he was not provided with adequate information to properly assess the merits of the plan. The PBA now contends that the County again failed to adequately support this demand with sufficient information. The PBA opposes the proposal.

The County did include information on the record that shows that employees were out on suspension time an average of 7500 hours a year in suspension time over the last four years (CO2I). However, the County did not provide any authority under civil service regulations that permits such "fine" days, nor did it show any other corrections facility that uses such a disciplinary scheme successfully. The County also offered no theory on whether such working suspensions might have the

desired result of correcting employee behavior, or whether such a disciplinary measure would carry the same weight in evaluating progressive discipline. Therefore, I find that the information provided is insufficient to persuade me to grant the proposal. The proposal is denied.

### **FMLA Proposals**

Article VII of the existing contract provides:

Family and medical leave of absence shall be in accordance with the Federal Family and Medical Leave Act (29 U.S.C. Section 2601 et seq.) and/or New Jersey Family Leave Act (N.J.S.A. 34:11B-1 et seq.).

The PBA seeks to add this language:

Officers shall not be required to, but may at their option, use paid leave time prior to or concurrent with FMLA/FLA. In addition, an officer may not be involuntary placed on FMLA/FLA.

The County proposes to add this new sentence to the clause:

"Employees must use all earned sick and vacation time during an approved FMLA/NJFLA absence."

As to the parties' respective proposals regarding the use of sick and or vacation leave time as a precursor to use of FMLA, I am without sufficient information to make an informed judgment concerning whether either proposal is necessary or desirable. More specifically, no data has been provided which details the cost associated with the County's proposal or what specific impacts might be felt by employees by awarding either proposal. Therefore, both proposals are denied.



With regard to the second sentence of the PBA's proposal, it asks that contract language be added to prohibit the County from retroactively placing an employee on FMLA leave when the officer has not sought its use unless the County complies with the prompt notification requirement as set forth in Section 8:5:208(c). This section requires that, once an employer learns that leave is being taken for a "FMLA qualifying" purpose, the employer must promptly notify the employee that the leave is being designated as FMLA leave. Further, the regulation provides that, if an employer has enough information to designate leave as FMLA leave, but fails to do so in a timely manner, the employer "may not designate leave as FMLA leave retroactively".

The employer did not address this issue in its brief. I note that the contract already provides that FMLA "shall be in accordance with the Federal Family and Medical Leave Act." As the PBA argued in another section of this award, the New Jersey courts have long held that statutory rights are to be read into the contract even if not specifically stated in the express terms. Sayreville Board of Education, N.J. Superior Court, Appellate Division Docket No. A-373-1114, (12/28/81). Therefore, it appears to me that any dispute between the parties as to whether the County is acting in accordance with federal regulations is better left to the grievance arbitration process. I find that the PBA

has not demonstrated the additional language is necessary.  
This part of the proposal is denied.

**Notice of Doctor's Appointments**

The County seeks to amend the Sick Leave article to require that employees must advise the Employer at least two days in advance whenever taking sick leave for a doctor's visit. The PBA counters that the contract already provides that employees will give "reasonable notice."

The County has not supported this proposal with convincing evidence or argument that this change is necessary. The proposal is denied.

**Equal Treatment**

Both parties have proposed changes in the equal treatment clause which parallel each other. The PBA proposes this modified language:

. . .sex, age, nationality, race, religion, marital status, political status, political affiliation, sexual orientation, gender expression (as defined under NJ State law), national origin, color, handicap, union membership, union activities, or the exercise of any concerted rights or activities or any other legally protected class.

- (New):

The Association and the Employer shall continue to discourage bias, prejudice and bigotry, and foster understanding of others in the workforce regardless of race, creed, color, national origin, sexual preference, gender and its expression, age, or physical condition.

The County is not opposed to the modified language as

proposed by the PBA. Therefore, this proposal is awarded.

**Holiday Cash Out**

The County proposes to "cash out" employees' allotment of holidays. Article X of the expired contract, "Holidays" provides in relevant part,

A. If an employee works a regularly scheduled day on a holiday, the employee shall receive straight time pay and the holiday shall be put on the books. If the employee is called in to work a holiday on a scheduled day off, the employee shall receive one and one half (1 ½) time pay and accrue such holiday. If the employee is scheduled off on a holiday, the holiday shall be accrued. . .

C. An employee may carry a holiday for one (1) year from the date the holiday is earned. Each June 1 and December 1, an employee with holidays on the books can elect to receive monetary compensation for said holidays based on the rate of pay at which the holiday was earned. . .

As a practical matter, officers use these holidays as floating days on which they can have time off if approved by management. Seniority is given preference for such requests.

The County proposes to substitute this language in the contract:

A. The County shall convert the fourteen (14) holidays listed above into 112 hours of holiday pay and shall pay out such holiday time, subject to Paragraph B, below, twice per year in installments of up to 56 hours by June 15<sup>th</sup> and December 15<sup>th</sup>, respectively.

PEA opposes any change to the holidays article, but has posed no specific argument about this change, except to generally assert that the County has not presented any evidence as to why the proposed change is necessary or desirable. Likewise,

the County's brief contains no argument specifically addressing this proposal. I therefore, find that this proposal had not been adequately supported by the record. Without further supporting evidence and argument, the proposal cannot be granted.

#### **Holiday Documentation of Sick Time Use**

The County further proposes to require employees who call out sick on a holiday or, if not scheduled to work, then the last scheduled day before or first day after the holiday, to submit a doctor's note to verify illness. It asserts that this proposal is intended to curtail abuses in holiday call outs.

The contract currently provides at Section D:

Employees must work their last scheduled day before and their first scheduled day after a holiday in order to receive the holiday. For purposes of this Article, all paid time other than sick leave shall be considered as time worked. Sick leave shall not be considered time worked, except in the event of an extended period of sick leave of three (3) days or more for which the employee provides appropriate medical documentation. However, sick leave of less than three (3) days shall be considered time worked in the event that the employee is seen by a doctor and provides a doctor's note concerning the absence.

Therefore, I am not convinced of the necessity of this proposal, or even whether it would be more effective than the current requirements to obtain holiday pay. The proposal is denied.

#### **Bereavement Leave**

The PBA asks for a new provision, affording correction

officers bereavement leave of up to five days. Currently, employees may obtain a bereavement leave only by charging the time to other leave, such as sick leave, vacation or personal days. The PBA argues that this provision is comparable to every other bereavement article for law enforcement personnel in the state.

The County responds that, as noted elsewhere, corrections officers already take significant time off either by contractual leave or other forms of time off, and no additional time should be afforded to them.

I am not inclined to grant this additional benefit of more time off for employees. First, no evidence was produced at hearing to support a conclusion that the clause is necessary, and no evidence was submitted to determine the potential cost. Further, N.J.S.A. 34:13A-16.7(b) provides in part,

An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

This bereavement leave clause is, in essence, a new benefit and it is an economic issue, as granting an employee any additional leave is additional time that would have to be backfilled with overtime. Therefore, the proposal is denied.

**Expansion of Health Benefits**

The PBA seeks to certain health care coverage for dependents by amending Article IV "Health Benefits" to add this language:

The health plan shall provide for well child and baby care, including vaccinations and gynecological coverage for dependents, consist with coverage that is provided to members of other County bargaining units.

The PBA avers that this supplemental coverage is already enjoyed by the members of all of the other County bargaining units.

The County counters that the employees in other bargaining units negotiated for this benefit by agreeing to different co-payments and higher out-of-network deductibles.

As indicated at the outset of this decision, my determination to award or deny any individual issue in dispute, especially those having economic impact, includes consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. Here, the PBA is having what it sees as a major benefit - the 8-hour work schedule - taken away. The positive economic impact on the County of this decision is a tremendous savings to the County in overtime. The PBA membership therefore, deserves to be given this benefit. This proposal is awarded.

**Travel Reimbursement**

The PBA proposes to increase the mileage reimbursement rate from 31 cents per mile to the IRS rate (currently 55 cents per mile). The PBA has not submitted convincing

evidence that the existing provision is inadequate. Nor has it supplied any information about what value such a proposal might be to its members or how much such a proposal would cost. The proposal is denied.

#### **Work Rule Changes**

The PBA proposes to amend Article IX, "Work Rules", to require the Employer to provide the Association with any proposed changes and that the changes shall not be implemented until the Association has had a minimum of seven days to review and comment on the same, except in emergency situations.

The County responds that this provision is not necessarily a problem, as the County generally furnishes more notice than that as a practice. Accordingly, this proposal is awarded.

#### **Tuition Reimbursement**

The PBA has proposed to expand the contract language under the tuition reimbursement section to include other types of courses as eligible for reimbursement. The PBA has not submitted convincing evidence that the existing provision is inadequate. Nor has it supplied any information about what value such a proposal might be to its members or how much such a proposal would cost. The proposal is denied.

#### **Reciprocal Days Off (New Article)**

The PBA proposes a new article of the contract which would permit employees to "swap" days off. The clause as proposed would read as follows:

Purpose:

To provide a means by which employees who occupy 24 hour per day, 7 day per week positions can temporarily reorganize their work schedules to attend to personal business.

Procedure:

When circumstances demand an employee's absence from his/her shift on a given day, the employee may submit a request for a Reciprocal Day. A Reciprocal day is a temporary reassignment between two employees with the same job title who are employed within the same organizational unit. Such reassignments must be mutually agreed upon by both employees, and must take place during the same workweek.

To be eligible for a reciprocal day, the petitioner must identify another employee with the same job title within the organizational unit, who will formally agree to work the shift in question. In exchange, the employee requesting the reciprocal day must formally agree to work a shift during the same workweek for the employee who agreed to the temporary assignments. If one of the assignments requires a current weapons qualification, valid driver's license or commercial driver's license, for example, the employee accepting that assignment must possess that qualification. Applications where employees are not properly qualified for the respective assignments shall be denied. Applications where employees are properly qualified will be approved.

To apply for a Reciprocal Day the Petitioner and the co-worker who is willing to be temporarily reassigned will complete their respective portions of an Application for Reciprocal Day form that will be mutually developed by the parties. The completed application, which has been signed by both parties, will be submitted to the employees' department head at least five (5) days before the first schedule change. Applications that are submitted less than five (5) days in advance may be denied. No request for a reciprocal day will be unreasonably denied.

The department head, or designee, shall render a determination on the application for a Reciprocal Day within two days of receipt.



The employees who cosigned the application are responsible for contacting the operations unit (for custody staff) or their department head (for non-custody personnel) to determine the status of their application. When the department approves the request, he or she will forward it to the operations unit (for custody) or the unit's timekeeper (for non-custody). Operations unit staff or the timekeeper will note the necessary scheduling assignments for the days on which the temporary reassignments will occur. When an employee agrees to work, as the applicant or co-worker, he/she shall be subject to all Department of Corrections rules and regulations and shall be subject to appropriate disciplinary action for any violation of rules and regulations on a Reciprocal Day he/she agreed to work.

The PBA maintains that awarding this proposal will not result in any form of overtime liability to the County because employees will be trading time within the same workweek. The PBA offers that the proposal will give officers flexibility to obtain days off for special occasions.

The County objects to this proposal. First, it points out that Arbitrator Hundley directed in 2011 that a subcommittee explore the feasibility of this issue in conjunction with the County's schedule change proposal. It notes that, according to the unrebutted testimony of Hornickel, the PBA had refused to continue to meet with him over both issues. Therefore, the County states that the proposal should be rejected outright.

Second, the County cites Swenson's testimony that the proposal would provide an employee needing an "extra day off" with a way to obtain it by "working a double shift" (1T203). Swenson opined that this would permit an employee to get a

needed weekend day off without using leave time, or time off mid-week to take care of other business (1T203).

As the County notes, Warden Artis testified that, in limited circumstances, he does permit an officer to temporarily switch his/her shift, "[i]t's not automatic... it depends of what the scenario is and what the nature of it is, and the two people agreeing [but] no problem, I've done it." (T2: 244, 3-6). His office works with officers when they have a specific, limited need. The County objects to the PBA's proposal because it does not permit management any discretion when it comes to the reason an employee may need to switch his/her shift. Further the County notes that the contract already provides employees with three personal days during which business can be taken care of.

In addition, according to Hornickel, the PBA's proposal would add an additional administrative burden to an already labor-intense scheduling unit and would further compound the confusion of which officers may be working on any given day. Moreover, the proposal will result in management's lacking any real ability to deny an arrangement; meaning that employees could essentially self-schedule when they want to work (2T-331).

Moreover, the PBA contends that because the PBA's proposal lacks any cap, there is nothing that would preclude an officer from trying to avoid working on the same day every week of the year by simply "doubling up" on another workday. Also, the County notes, the proposal contains no penalty if one party or

the other defaults on his/her responsibility - the ordinary work rules would apply, and the County would again be saddled with paying overtime.

Finally, Hornickel noted that the State does not look favorably upon shift swap arrangement as proposed by PBA here (2T331). For all of these reasons, the County argues, the PBA's proposed shift swaps should be denied.

\* \* \*

It appears to me that, if the reciprocal days proposal can be properly structured so as to not cause a paperwork blizzard and chaos as to who is working when, then the proposal could be granted without much harm to the County.

Most importantly, the proposed contract language, as written appears to target the switching of days off - not contemplating doubling up of shifts. However, with the migration from 8-hour shifts to twelve-hour shifts, it would be beyond comprehension how an officer could safely work a "double" of two consecutive 12-hour shifts. I was careful in crafting the parameters of the 12-hour plan to avoid such an outcome, primarily because I believe it is way beyond the pale of human endurance to put in such continuous work hours. Therefore, I will limit my award to permit employees to switch days off, but in no event may an employee work more than 16 hours during any 24 hour period. Nor may an employee on a 12-hour schedule switch

a day off with an employee on the 8.5 hour schedule. Further, the days being switched must be within the same week.

Secondly, the County has expressed operational concerns about the predictability of employee's work schedules such that supervisors should know which employees are working when, and supervisors will be working with the same subordinates most of the time. It is inevitable that switching a day off with another employee will mean that switches will occur between officers from different platoons. In recognition of the County's concerns about maintaining continuity among the members of the workforce, as well as its concerns about administrative inconvenience, I will limit switches to two days a month per employee, regardless of which officer initiates the switch.

Finally, both parties ignored the very positive benefit that could result from this provision. The County complained mightily that correction officers were taking too much time off. Warden Artis attributed this in part to employees' desires to obtain a weekend day off. All parties, including myself, agreed that an officer's inability to attend holiday and family functions is part of the cause of correction officers' stress levels. Whether for this reason or any other reason, this proposal will enable any officer to get the day off by voluntarily switching with someone else. The alternative would have been that the officer calls off from work and overtime would be needed to fill the position. Under this proposal,

therefore, the County stands to save in overtime costs associated with callouts.

I find this proposal, as modified to accommodate the concerns addressed above, is in the interests of the employees, the interest of the County, and the interests of the taxpayers. The proposal, as modified, is awarded effective January 1, 2013.

### AWARD

#### Duration of Agreement (Art. XXXVII)

January 1, 2012 through December 31, 2014.

#### Salaries (Art. II)

Effective January 1, 2013: 2.0% across-the-board increase to all unit employees.

Effective January 1, 2014: 1.0% across-the-board increase to all unit employees.

Effective July 1, 2014: Increments to be paid to all unit employees in steps 1 through 6 on the salary guide.

Effective August 1, 2014: 2.0% across-the-board increase to all unit employees.

The new Salary Guides are as follows:

<b>1/2013 (2%)</b>			<b>1/2014 (1%)</b>			<b>8/2014 (2%)</b>		
<b>Step</b>	<b>Salary</b>	<b>Step Diff</b>	<b>Step</b>	<b>Salary</b>	<b>Step Diff</b>	<b>Step</b>	<b>Salary</b>	<b>Step Diff</b>
1	41,153	2,533	1	41,564	2,558	1	42,396	2,609
2	43,686	2,261	2	44,122	2,284	2	45,005	2,330
3	45,947	2,228	3	46,406	2,250	3	47,335	2,295
4	48,175	5,008	4	48,656	5,058	4	49,629	5,159
5	53,183	5,064	5	53,715	5,115	5	54,789	5,217
6	58,247	7,117	6	58,830	7,188	6	60,006	7,331
7	65,364		7	66,017		7	67,338	

**Work Schedule (Art. XVII)**

I award the following 12-hour shifts on a trial basis, effective July 1, 2013:

6 a.m. to 6 p.m.  
 9 a.m. to 9 p.m.  
 6 p.m. to 6 a.m.

The County reserves the right to determine the number of officers on each shift. Additionally, officers in specialized assignments will maintain their current work schedules.

The experimental schedule will be in effect for a period of 18 months. Consistent with the Commission's rulings in City of Clifton, the schedule will not be part of the status quo, but rather, in the absence of the parties' agreement to either maintain it or abandon it, the County will have to justify its continuation to an interest arbitrator in the interest arbitration for a successor agreement. Further, the parties will retain the existing schedule after the expiration of the contract until a new agreement is reached or an interest arbitration award is issued. Clifton.

**Overtime (Art. XII)**

Add new clause:

In no event shall an employee be required to work more than 16 hours within a 24-hour period.

**Converting Leave Time (Various Articles)**

Articles V, IX and XI will be modified to state that effective July 1, 2013, leave time will be calculated in hours. Further, all other clauses in the contract, such as the discipline clause must be changed to refer to the calculation of days as hours.

**Equal Treatment (Art. XXXVI)**

The clause will be amended as follows:

. . .sex, age, nationality, race, religion, marital status, political status, political affiliation, sexual orientation, gender expression (as defined under NJ State law), national origin, color, handicap,

union membership, union activities, or the exercise of any concerted rights or activities or any other legally protected class.

The following clause will be added:

The Association and the Employer shall continue to discourage bias, prejudice and bigotry, and foster understanding of others in the workforce regardless of race, creed, color, national origin, sexual preference, gender and its expression, age, or physical condition.

**Health Benefits (Art. IV)**

The following clause will be added:

The health plan shall provide for well child and baby care, including vaccinations and gynecological coverage for dependents, consist with coverage that is provided to members of other County bargaining units.

**Work Rule Changes (Art. XIX)**

Amend Article IX, "Work Rules", to include the following:

The Employer is required to provide the Association with any proposed changes and that the changes shall not be implemented until the Association has had a minimum of seven days to review and comment on the same, except in emergency situations.

**Reciprocal Days Off (New Article)**

Add the following clause:

Purpose:

To provide a means by which employees who occupy 24 hour per day, 7 day per week positions can temporarily reorganize their work schedules to attend to personal business.

Procedure:

When circumstances demand an employee's absence from his/her shift on a given day, the employee may submit a request for a Reciprocal Day. A Reciprocal day is a

temporary reassignment between two employees with the same job title who are employed within the same organizational unit. Such reassignments must be mutually agreed upon by both employees, and must take place during the same workweek.

To be eligible for a reciprocal day, the petitioner must identify another employee with the same job title within the organizational unit, who will formally agree to work the shift in question. In exchange, the employee requesting the reciprocal day must formally agree to work a shift during the same workweek for the employee who agreed to the temporary assignments. If one of the assignments requires a current weapons qualification, valid driver's license or commercial driver's license, for example, the employee accepting that assignment must possess that qualification. Applications where employees are not properly qualified for the respective assignments shall be denied. Applications where employees are properly qualified will be approved.

To apply for a Reciprocal Day the Petitioner and the co-worker who is willing to be temporarily reassigned will complete their respective portions of an Application for Reciprocal Day form that will be mutually developed by the parties. The completed application, which has been signed by both parties, will be submitted to the employees' department head at least five (5) days before the first schedule change. Applications that are submitted less than five (5) days in advance may be denied. No request for a reciprocal day will be unreasonably denied.

The department head, or designee, shall render a determination on the application for a Reciprocal Day within two days of receipt.

The employees who cosigned the application are responsible for contacting the operations unit (for custody staff) or their department head (for non-custody personnel) to determine the status of their application. When the department approves the request, he or she will forward it to the operations unit (for custody) or the unit's timekeeper (for non-custody). Operations unit staff or the timekeeper will note the necessary scheduling assignments for the days on which the temporary reassignments will occur. When an employee agrees to work, as the applicant or co-worker, he/she shall be subject to all Department



of Corrections rules and regulations and shall be subject to appropriate disciplinary action for any violation of rules and regulations on a Reciprocal Day he/she agreed to work.

Limitations:

In no event may an employee work more than 16 hours during any 24 hour period. Nor may an employee on a 12-hour schedule switch a day off with an employee on the 8.5 hour schedule. Further, the days being switched must be within the same week.

Switches are limited to two days a month per employee, regardless of which officer initiates the switch.

\* \* \*

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

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

*Susan W Osborn*  
Susan W. Osborn  
Interest Arbitrator

Dated: November 26, 2012  
Trenton, New Jersey

On this 26th day of November, 2012, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

**PAMELA JEAN SUTTON-BROWNING**  
ID # 2424173  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
My Commission Expires August 20, 2017

*Pamela Jean Sutton-Browning*

