

State of New Jersey
Public Employment Relations Commission

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In the Matter of the Compulsory :

Interest Arbitration :

-between- : **Opinion and Award**

Sussex County Prosecutor :

-and- :

Sussex County Prosecutor Investigators & :

Detectives, PBA Local No. 138 :

Docket No. IA-98-15 :

_____ :

BEFORE: CARL KURTZMAN, ARBITRATOR

APPEARANCES: For Sussex County Prosecutor Investigators & Detectives
Loccke & Correia

By: Richard D. Loccke, Esq.

For Sussex County Prosecutor

Giblin & Giblin, Esqs.

By: Brian T. Giblin, Esq.

Pursuant to a petition to initiate Compulsory Interest Arbitration, filed by the Sussex County Prosecutor Investigators & Detectives, PBA Local No. 138 (PBA or Investigative Unit) on August 18, 1997, the undersigned was appointed by the Public Employment Relations Commission, (PERC), on October 14, 1997, pursuant to P.L. 1995, c. 425, to hear and decide the contract issues in dispute. After two unsuccessful mediation sessions, held on Jan. 21, 1998 and April 28,

1998, the undersigned scheduled a formal hearing for Dec. 8, 1998. At the Dec. 8 hearing, the parties submitted their final positions and supporting evidence and documentation. After the grant of an extension, summary briefs were filed by both parties and received by the undersigned by April 6, 1999. The parties executed an approval of an extension of time, to May 21, 1999, for the issuance of an award by the arbitrator (copy enclosed).

The Public Employment Relations Commission has advised that these arbitration proceedings shall be conducted in accordance with the provisions of P.L. 1995, c. 425. Accordingly, since the parties in this proceeding have not agreed to a terminal procedure for resolving the contract issues in dispute, the award issued in this matter will be based on the conventional arbitration mode.

FINAL OFFERS

Sussex County Prosecutor

Economic:

1. **Duration:** Jan. 1, 1996 - Dec. 31, 2000
2. **Salary:** The Prosecutor proposes the increment system as set forth in Exhibit C-1, attached hereto and made a part hereof.

Non-Economic:

1. The Prosecutor does not propose any non-economic changes.

PBA Local No. 138

1. **Duration:** January 1, 1996 through December 31, 1999
2. **Salary- Wage Increase/Step System:** PBA proposes an increase of five (5%) percent each year to the entry and maximum salary rates (minimum and maximum bargaining unit rates). All bargaining unit employees would receive a five percent increase to their present pay rate annually effective each January 1

until the maximum pay rate is attained. PBA seeks the creation of an automatic annual step system that will survive the agreement.

3. PBA proposes a Longevity Program of one (1%) of base pay for each four years of completed law enforcement service. Law Enforcement service would be defined consistent with the New Jersey Police and Fire Pension System Standards.

Non-Economic:

1. PBA proposes that the final step of the parties' contractual grievance procedure be binding arbitration consistent with the rules for binding arbitration selection and procedure under the auspices of the New Jersey Public Employment Relations Commission.

STATUTORY CRITERIA

The eight statutory criteria set forth in N.J.S.A. 34-13A-16G which will guide the disposition of this matter are as follows:

1. The interests and welfare of the public; considering, *inter alia*, the limitations imposed upon the employer by the CAP Law, N.J.S.A. 40A:4-45.1 et seq.
2. Comparison of the wages, salaries, compensation, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, salaries, compensation, 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;
 - b. In public employment in general;
 - c. In public employment in the same or similar comparable jurisdictions,

as determined in accordance with N.J.S.A. 34:13A-16.2.

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; considering, inter alia, the limitations imposed upon the employer by the CAP Law, N.J.S.A. 40A:4-45.1 et seq.

6. The financial impact on the governing unit, its residents and taxpayers. The arbitrator shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element of the local property tax; a comparison of the percentage of the municipal purposes element or in the case of a County, the County purposes element required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to

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

Positions of the Parties

Sussex County Prosecutor

The Prosecutor believes that its Final Offer enables the County to provide the essential services of the Prosecutor's Office in a more affordable manner while remaining competitive with comparable counties and other County and municipal employees. The Prosecutor maintains that its proposed economic package is more reasonable and thoughtful than the PBA proposal.

The Prosecutor notes that Sussex County is one of the five third class counties in New Jersey, the others being Hunterdon, Cumberland, Salem and Warren. The Prosecutor's Office prepares and brings criminal cases to trial and handles internal affairs investigations for County and local police agencies. Prosecutor Investigators do not do shift work, do not handle initial investigations and are not the first response to a crime. The number of annual investigations has declined from 1,458 in 1994 to 863 in 1997. There is a pool of qualified applicants for the position of Prosecutor Investigator and vacancies in the unit are easily filled.

The Prosecutor analyzes the statutory criteria as they apply to this matter and claims that the analysis proves that the Prosecutor's proposals present a more reasonable approach than that of the PBA.

The interests and welfare of the public

The Prosecutor maintains that the public's interest is served best by the striking of a balance between providing fair wages and conditions of employment for its employees and maintaining the economic viability of the County and its inhabitants. Essential government services should not be reduced to meet unreasonable employee wage demands of a single employee group. The Prosecutor cautions that the decision in this matter can be used in subsequent arbitration proceedings for other bargaining units as an indication of an appropriate wage increase and, therefore, the marginal effect of a salary award in this small unit may be significantly enlarged when applied to other units.

The County is endeavoring to maintain the current level of services while moderating the tax increase on its already overburdened taxpayers. The Prosecutor cites the agreements between Sussex County and two large CWA units (over 600 members) for 1996-1998 which provide wage increases of 3 to 4% per year and do not have a step system, as requested by PBA in this matter. The Prosecutor argues that its proposal contains a fair, reasonable and sensible economic package within the Employer's ability to pay whereas the PBA proposal ignores the economic conditions of the community and ignores the benefits and salaries of other County employees. Accordingly, the Prosecutor maintains that the current PBA contract, as modified by the Employer's offer, is fair and equitable.

2. Comparison of the wages, salaries, compensation, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, salaries, compensation, 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;**
- b. In public employment in general;**
- c. In public employment in the same or similar comparable jurisdictions;**

The Prosecutor notes that there is a lack of private employees performing the services performed by the Prosecutor's unit. However, the Prosecutor claims that the evidence in the record shows that wages, in general, and for other County employees have increased at a rate which is closer to the Employer proposal than the PBA proposal. In addition, the Prosecutor proposes an increment system which is similar to the system applying to most other County employees. The Prosecutor notes that the CWA employees' overall wage scale is considerably below that of the PBA and similar percentage increases would produce higher dollar increases in the PBA unit.

The Prosecutor notes that recent arbitration awards are closer to the Employer's proposal than the PBA proposal and cites awards providing for increases between 3% and 3.5%. The Prosecutor cites salary adjustments in other Prosecutor's bargaining units in third class counties as follows:

<u>County</u>	<u>Step System</u>	<u>Salary Adjustment</u>
Cumberland	no	less than 4% in 1996 and 1997
Salem	no	2.8% in 1997 and 1998
Warren	yes	3% in 1996 and 1997 + 1% (Merit)
Hunterdon	no	4% or less in 1996 and 1997

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.

The Prosecutor claims that Prosecutor Investigators enjoy a generous contract in terms of wages and conditions of employment which include a thirty five hour work week, paid medical and dental coverage, 14 paid holidays, up to 25 vacation days per year, up to 15 days of sick leave, up to 3 days of personal leave, up to 3 working days per incident of bereavement leave, longevity stipends after 5 years of continuous service, reimbursable mileage, lodging and meal expenses and tuition allowance. In the face of these contractual terms, the Prosecutor claims the unit members clearly enjoy liberal benefits.

4. Stipulations of the parties.

The parties have not submitted any significant stipulations.

5. The lawful authority of the employer; considering, inter alia, the limitations imposed upon the employer by the CAP Law. N.J.S.A. 40A:4-45.1 et seq.

In this section, the Employer costs and contrasts the competing offers. The Prosecutor notes that, under the PBA proposal, the top base salary

for an Investigator 1 would increase from \$45,526 in 1995 to \$55,337 in 1999, an increase of \$9,811 or 21.55% over the proposed four year period. The Prosecutor maintains that the PBA proposal is unreasonable and inconsistent with current settlements which show an average increase of less than 4% annually over the life of the contract. The Prosecutor notes the absence of detail in the PBA proposal but, assuming the PBA is seeking annual increases of 5% at the minimum and maximum and an automatic annual step plan with five equal steps throughout the life of the contract and utilizing the minimums and maximums contained in the Table of Organization (Exhibit P-17),, the Prosecutor points out that an employee with a \$25,000 salary in 1995 would receive \$49,835.76 in 1999, an increase of 100% in the four years of the new agreement.

The Prosecutor opposes the adoption of any automatic step system because it would infringe on his discretion to award merit increases, because it would entail large increases and because there is no evidence of the need for a step system. The Prosecutor notes that an arbitrator declined to remove an existing step system in another County unit because it constituted a radical departure from the historic compensation arrangement between the parties. The Prosecutor believes that the imposition of a step system, where none previously existed, is also a radical departure which should only be implemented for compelling reasons. The Prosecutor notes the absence of compelling evidence for a step system and, instead, points to a review of other Third Class Counties. Three of these six counties have no automatic step movement, one has salary ranges based upon experience and one has three steps of four years each. The Prosecutor notes the absence of information

concerning the implementation of the step system in Warren County.

The Employer notes that, under its economic offer, an employee at the entry salary level in 1995 would receive an increase of \$3,856 or 15.12% over the five year life of the contract. The Employer believes that all employees are treated equally in the increment system that it proposes whereas the step system will provide huge increases for only certain employees and the step system will constitute an uncontrollable continuing financial stranglehold on the Employer.

The Prosecutor notes that, during distressed economic conditions in the County, this unit has continued to receive significant salary increases and currently enjoys salaries much higher than the average per capita income of most County citizens. The Prosecutor can see no justification for a further widening of this gap.

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

The Prosecutor cites the testimony of the Director of the Division of Budget Management which indicated that the 1991 fund balance of 9.5 million dollars has been significantly reduced to seven million dollars in 1998 thus lessening a budget stabilization fund which must meet unexpected contingencies and which must be used to moderate the tax rate change each year. The Budget Director also noted a decrease, from 1991 to 1998, of more than 150 million dollars in rateables in the County putting pressure on the tax rate. The Director also showed that the County property tax, in 1998, equates to 71% of the total County budget as compared to representing 64% of the total County budget in 1991.

The Prosecutor notes that the County taxpayers must bear the costs of

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these negative economic trends.

7.The cost of living

The Prosecutor notes that, because of its importance and reliability in determining the cost of living, the Consumer Price Index is widely used to determine the reasonableness of proposed wage increases. The Employer argues that higher cost of living increases justified higher salaries in the past and, conversely, the current modest increase in the C.P.I.should justify lower increases. The Employer notes that this unit received huge increases in the last few contracts which exceeded the rise in the Cost of Living (a 12.5% increase in three years compared to a C.P.I. rise of only 8.6%). The Employer points out that the increases sought by the PBA, even without steps, are almost twice the rise in the C.P.I. in recent years (2.4 in 1997).

The Employer notes that, for the years 1996 and 1997, the Prosecutor's Offer would provide percentage increases greater than the C.P.i. for most unit members. The Employer also notes that it has had to absorb the increased costs of health insurance and other mandated obligations. The Prosecutor maintains that, like other segments of the economy, the Employer of this unit must analyze each expense category so as to cut costs while still providing the same quality of goods or services.

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.

The Prosecutor does not believe that the evidence in the record shows that the continuity and stability of employment would be adversely affected by the Employer proposal or enhanced by the PBA proposal. The Prosecutor notes again that there is a continuing source of qualified candidates seeking employment in this unit. Accordingly, the Employer believes that the maintenance of the current salary system, modified by the proposed increments, will result in future continuity and stability of employment as it has in the past.

The Employer also notes that the continuity and stability of employment will be enhanced by its proposal of a five year agreement as opposed to the PBA request for a four year agreement. The Employer believes that the parties will be better served by a contract term which will provide them with at least one year of a valid and continuing agreement before returning again to the bargaining table.

Non-Economic:

- 1. PBA proposes that the final step of the parties' contractual grievance procedure be binding arbitration consistent with the rules for binding arbitration selection and procedure under the auspices of the New Jersey Public Employment Relations Commission.**

The Prosecutor notes that the PBA has failed to provide any justification or establish the need for this contractual change. On the other hand, the Employer's witness testified to the virtual absence of grievances because most problems are quickly resolved without formal proceedings.

The Prosecutor objects to the introduction the new concept of binding arbitration in the absence of compelling evidence of the need for the change.

The Prosecutor urges the acceptance and award of its proposal because it is more reasonable than the PBA proposal.

PBA

The interests and welfare of the public

PBA argues that the interest and welfare of the public are well served by the high level of activity and varied special services provided by the Sussex County Prosecutor's Investigators which has managed these functions with a relatively small number of personnel. PBA cites the most recent "Office of the Prosecutor 1997 Annual Report" to illustrate the varied services and facilities, new programs and support services for the local municipalities. PBA cites the testimony of Association and Employer witnesses attesting to the fact that this department is a well trained and proficient department whose performance well serves the interest and welfare of the public.

PBA argues that the public is best served by a properly compensated, well motivated and stable work force in the Prosecutor investigative positions. However, PBA maintains that these conditions do not exist in Sussex County. PBA claims that there is a high level of employee turnover due to employees leaving for better paying jobs in other Prosecutor's offices. PBA notes that, because of the training of three new hires, the unit has had to perform substantially under strength. PBA questions the validity of the Employer's willingness to accept a "revolving door" employment policy as it affects the interest and welfare of the public. PBA claims that the public interest is better supported by a stable, experienced and career oriented work force based on a satisfactory compensation program.

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

PBA maintains that Sussex County Prosecutor Investigators are among the lowest paid among their peers in New Jersey. PBA references a chart showing top pay rates in nine contracts in evidence (seven of the contracts involve Prosecutor Offices) and shows that the average top pay in 1998 is \$60,183, as compared to the 1995 actual maximum rate of pay of \$45,526 for the Sussex County Investigator. PBA notes that a 32.2% increase would be required in the 36 month period in order to reach the average in 1998, an increase far beyond what PBA seeks in this proceeding.

PBA notes that the maximum pay rate in the Sussex County Prosecutor's contract is irrelevant because the contract lacks any methodology to attain the maximum rate. PBA claims that the trend in negotiations has been in favor of including step systems and, by contrast, is unaware of any situations where step systems have been abandoned. PBA cites Camden County, Mercer County and the recent Somerset County Prosecutor's award which created a step system for the investigative staff. PBA also notes that the Sheriff's Office, in corrections and sheriff's personnel, have a step system. PBA points out that Arbitrator Weiss recently rejected the Sussex County proposal to eliminate the step system. PBA also notes that the County agreed, in the CWA contract, to provide an additional increment to employees not at maximum pay, thus expediting their advancement toward a maximum.

PBA claims that the trend in law enforcement is to provide an automatic step system. PBA charts the automatic step plans in evidence and shows that the average number of steps to reach maximum pay is 7.14 steps in fourteen contracts (twelve contracts pertain to Prosecutor employees).

PBA points out unusual unilateral increases since the last contract which illustrate the randomness of salary administration in the Prosecutor's Office. PBA maintains that it is seeking wage increases which are consistent with wage increases in evidence. PBA references a chart showing average increases of 4.65% in 1996, 4.46% in 1997, 4.49% in 1998 and 4.26% in 1999. PBA notes that these figures reflect base rate change only and provide no additional value to the step system, present in each of the departments charted.

PBA claims that the Sussex County Prosecutor's Investigator Longevity program is among the worst in the entire region, as shown by the Longevity programs in Hopatcong, Byram, the Passaic Prosecutor's Office, the Mercer Prosecutor's Office, the Morris County Prosecutor's Office, the Atlantic County Prosecutor's Office and the Gloucester County Prosecutor's Office.

PBA points out the correlation between compensation and length of service. Citing the State Attorney General's publication on staff resources in County Prosecutor's Offices (Exhibit C-12), PBA notes that the median salary of Assistant Prosecutors is highest of all in the Sussex County Prosecutor's Office and Sussex County also ranks number 1 in average length of service. On the other hand, Sussex County Investigator's pay is 20th of 22 departments and Sussex County Investigators rank 20th out of 22 departments in average length of service. PBA argues that these facts support its drive for a step system in order to retain skilled employees and provide advancement on a career path.

4. Stipulations of the parties.

The parties have not submitted any significant stipulations.

5. The lawful authority of the employer; considering, inter alia, the limitations imposed upon the employer by the CAP Law. N.J.S.A. 40A:4-45.1 et seq.

PBA claims that there is no lawful authority of the employer issue raised by the Cap Law in this case because the Cap Law does not mention the office of a county prosecutor in its text. The County of Sussex is a public entity which is directly covered and controlled by the Cap Law. PBA notes that the Prosecutor does not levy taxes or raise funds directly but has a unique means of funding the costs of his office, including the payroll of investigators. PBA cites the Supreme Court's Bigley decision in which it rejected the argument that the County Freeholder Board was the final authority on Prosecutor Office expenditures. PBA points out that, in accord with Bigley, the Prosecutor controls his own budget and is merely subject to the ultimate decision of the Assignment Judge.

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

PBA claims that implementation of its proposal will have a de minimus impact on the County taxpayers and residents. PBA notes the difficulty, due to turnover and unilateral employer salary modifications, to establish the actual cost of the payroll in this unit. PBA estimates the payroll at \$468,921 on the basis of two Investigator 1s, three Investigator 11s and nine Investigators. Accordingly, PBA estimates that a percentage point is worth a little more than \$4,000. PBA notes that the longevity program is stated in dollars and is unaffected by salary changes. PBA also points out that there is no cost involved

in any step movement at this time. In addition, compensatory overtime does not have a cash impact.

Although PBA restates its position that the Prosecutor has unique statutory provisions for funding, PBA acknowledges the need to address financial impact because the taxpayer is the ultimate funding source. PBA cites the information concerning the "Total County Tax Levy Per Capita" contained in the 1993 New Jersey Municipal Data Book (Employer Exhibit C-35). PBA notes that Sussex County ranks the lowest among all north Jersey counties in actual county tax levy per capita. In addition, PBA cites the graph in Employer Exhibit C-4A which shows an annual growth in the rateable base from 1994 through 1998. PBA also points out that the 1998 Budget indicates that, in 1997, the anticipated surplus was \$2,141,175 whereas the anticipated surplus in 1998 is \$3,000,000. It is also noted by PBA that Sussex County utilized only the 2.5% index rate for Cap Law calculations instead of the permissible 5% rate. PBA notes that the County has substantial Cap flexibility as a result of the Cap bank carry forward into 1999 of almost two million dollars.

PBA notes that the amount appropriated for Prosecutor Office salary and wages was \$2,262,662 or \$208,455 more than the \$2,054,207 actually paid in 1997. In addition, PBA cites the availability of \$106,774 on the "Reserved" line for Prosecutor salaries which was not expended in the preceding budget year. PBA claims that the evidence is clear that there is adequate funding in the budget and on the actual salary line item for the Prosecutor's office to fund the PBA proposal easily.

Cost of Living

PBA concedes that the rate of cost of living increase is now somewhat

less than the PBA position but notes that, in the past, there were shortfalls in wage settlements when compared to cost of living increases in the double digit range. PBA points out that New Jersey data is more applicable than national data and cites the fact that Federal officers receive a 16% pay differential when they work in New Jersey.

PBA references the September, 1997 Public Employment Relations publication which indicates the average percent change in base wage to be 4%. In PERC's recap of wages impacted by unemployment insurance, the average change is 4.3%.

PBA points out that this unit is at the bottom of comparable compensation among its peers and, as a result, the award of an average rate increase will generate less dollars for Sussex Prosecutor Investigators because of their low base wage position. Since these employees are not receiving average pay, they should not be penalized with a limitation to the average cost of living increase.

Continuity and Stability of Employment

PBA maintains that it has shown that the high turnover rate in the Sussex Prosecutor's office is attributable to the correlation between this unit's low position in length of service and the equally low position of pay rate, as shown by the Attorney General Survey (Exhibit C-12). PBA claims Sussex Prosecutor Investigators are leaving for other law enforcement agencies because of the lack of a career path and an extremely low pay rate. PBA believes that an annual step system which is automatic and survives the contract will provide the necessary career path to keep Investigators in this unit. PBA restates that prevailing wages are not found in the Sussex Prosecutor's Investigators salaries

and there are no compensating offsets. PBA looks to the award in this proceeding to rectify some part of the problem.

Non-Economic:

1. PBA proposes that the final step of the parties' contractual grievance procedure be binding arbitration consistent with the rules for binding arbitration selection and procedure under the auspices of the New Jersey Public Employment Relations Commission.

PBA claims that a contract which is not reasonably enforceable is worthless. PBA points out that, at this time, the processing of even a small disputed grievance would require the costly and time-consuming expense of a Superior Court proceeding. PBA questions the Employer concern about a rain of grievances because the cost of such a tactic would be prohibitive.

PBA notes that the last step in the grievance procedure is currently held by the Prosecutor, the same person who formulates most policies and positions in this department. PBA points out that, in all fairness, binding arbitration is a necessity since Prosecutor Investigators are non-tenured employees who serve at the pleasure of the Prosecutor. PBA is not surprised that there have not been more grievances in view of the ineffectual grievance procedure and the employees' non-tenure status. In fact, PBA believes that the existence of a grievance procedure terminating in binding arbitration may encourage more equitable actions by the Prosecutor in the future.

PBA notes that neither PERC nor the Courts will defer to arbitration which is not final and binding.

PBA asks the arbitrator to take arbitral notice that almost all law enforcement contracts provide for binding arbitration. PBA points out that

the Sussex Co./CWA agreement provides for binding arbitration and the Sussex County Jail employees' and Corrections Officers' contracts contain binding arbitration on grievances. PBA seeks the same contractual benefit.

PBA seeks a ruling in favor of the PBA final position on the two economic issues and on the non-economic issue relating to binding arbitration.

Analysis

The Office of the Sussex County Prosecutor and PBA Local 138, Prosecutor's Association, were parties to a collective negotiations agreement which expired on December 31, 1995. The negotiations unit includes all Prosecutor's Investigators below the rank of Sergeant. The unit currently includes the following twelve officers, based on the information provided by the Prosecutor in the "County's Proposal", dated December 8, 1998.

Name	Rank	Year of Hire	Base Salary 8/26/97
Holl	Investigator		
Kardos	Investigator	8/11/97	25000
Schmidt	Investigator	8/11/97	25000
Sperry	Investigator	8/11/97	25000
Accetta	Investigator	10/28/96	25000
Reynolds	Investigator	5/1/90	36463
Stone	Investigator	12/17/90	40969
Jentzen	Investigator II	10/26/87	41467
Peter	Investigator II	12/5/94	25750
Risdon	Investigator II	11/30/92	28119
Sandage	Investigator 1	2/1/88	38671
Sandberg	Investigator 1	10/17/88	44465

The Hiring dates and Salaries, as of 8/26/97, were taken from Exhibit P-17, a list of employees represented by PBA-Prosecutor's Unit which was prepared by Connie J. Sutton, Personnel Director. Exhibit P-17 shows the following roster and payroll cost as of 8/26/97:

Name	Rank	Year of Hire	Base Salary 8/26/97
Hare	Investigator	9/1/95	25000
Kardos	Investigator	8/11/97	25000
Schmidt	Investigator	8/11/97	25000
Sperry	Investigator	8/11/97	25000
Accetta	Investigator	10/28/96	25000
Reynolds	Investigator	5/1/90	36463
Stone	Investigator	12/17/90	40969
Peter	Investigator	12/5/94	25750
Ciasullo	Investigator 1	4/4/88	45526
Then	Investigator 1	11/30/92	42500
Jentzen	Investigator II	10/26/87	41467
Risdon	Investigator II	11/30/92	28119
Sandage	Investigator II	2/1/88	38671
Sandberg	Investigator II	10/17/88	44465
Total:			468930

Promotions:	Name	From	To	Eff. Date
	Peter	Investigator	Investigator II	10/1/98
	Risdon	Investigator	Investigator II	1/1/98
	Sandage	Investigator II	Investigator 1	1/1/98
	Sandberg	Investigator II	Investigator 1	10/1/98

The information concerning promotions was taken from the "County's Proposal", Exhibit C-1, dated Dec. 8, 1998.

The disposition of this matter has been guided by the application of the eight statutory criteria set forth in N.J.S.A. 34-13A-16G.

- 1. The interests and welfare of the public; considering, inter alia, the limitations imposed upon the employer by the CAP Law, N.J.S.A 40A:4-45.1 et seq.**

In analyzing and evaluating the interests and welfare of the public, the arbitrator must confront the concerns of both parties and attempt to reconcile these concerns in the development of a conventional arbitration decision which is based on a reasonable determination of the issues.

It is undisputed that the interests and welfare of the public are well served by the high level of activity and varied special services provided by the Sussex County Prosecutor's Investigators. The charts, listed above, confirm that the unit has managed these functions with a relatively small number of personnel, fourteen in the 8/26/97 survey and twelve in the 12/8/98 record. The "Office of the Prosecutor 1997 Annual Report" attests to the varied services and facilities, new programs and support services for the local municipalities. In addition, the testimony of Association and Employer witnesses are in agreement that this department is a well trained and proficient department whose performance well serves the interest and welfare of the public.

Certainly, the public interest of the residents of Sussex County and the affected municipalities is served by the continued maintenance of a professional Prosecutor's Investigative force which , as a result of high morale,

is motivated to continue the productive performance of the various activities noted above. On the other hand, although the County residents seek to support a productive Prosecutor's Investigative Department as well as a force large enough to meet the specialized law enforcement needs of the County, the County's residents and taxpayers are intent on limiting the costs of the Prosecutor's Office so that other County services may be preserved and, at the same time, keep the tax rate as low as possible.

Productivity and high morale are achieved and maintained when unit members receive adequate compensation for their training, experience and unique responsibilities. Morale and a commitment to dedicated performance of these unique responsibilities is dependent on a recognition by Prosecutor's Investigators that there is a reasonable correlation between their working conditions and the working conditions of other Investigators in comparable communities. On the other hand, the County is endeavoring to maintain the current level of services while moderating the tax increase on its already overburdened taxpayers.

The Prosecutor cites the agreements between Sussex County and two large CWA units (over 600 members) for 1996-1998 which provide wage increases of 3 to 4% per year and do not have a step system, as requested by PBA in this matter. The Prosecutor argues that its proposal for this unit, somewhat similar to the settlement with the CWA units, contains a fair, reasonable and sensible economic package within the Employer's ability to pay whereas the PBA proposal ignores the economic conditions of the community and ignores the benefits and salaries of other County employees.

PBA, arguing that the public is best served by a properly compensated,

well motivated and stable work force in the Prosecutor investigative positions, notes that, instead, there is a high level of employee turnover due to employees leaving for better paying jobs in other Prosecutor's offices. PBA claims that the public interest is better supported by a stable, experienced and career oriented work force based on a satisfactory compensation program. Accordingly, PBA proposes an increase of five percent each year to the entry and maximum salary rates and that all bargaining unit employees would receive a five percent increase to their present pay rate annually effective each January 1 until the maximum pay rate is attained. Above all, PBA stresses that it seeks the creation of an automatic annual step system that will survive the agreement.

The undersigned does not believe that either the PBA proposal or the Prosecutor's proposal reasonably addresses the diverse concerns which must be reconciled in the development of this decision in order to be consistent with the public interests and welfare. As shown later in this decision, the PBA proposal exceeds the rate of increase in the cost of living, exceeds the average of current wage increases, exceeds the rate of increase in the private sector and the rates of increase in the County/Law Enforcement Awards and settlements and the rate of increase in the internal settlement between the County and their CWA covered employees. On the other hand, the Prosecutor's proposal fails to address the stability of the compensation program, would fall below the average of current wage increases, would be less than the rate of increase in the private sector and the wage increase percentages contained in the internal Awards and settlements. Accordingly, the undersigned intends to develop an Award which is more consistent with the public interests and welfare than the competing final offers submitted by the parties.

The statute requires, in the consideration of the interests and welfare of the public, that an assessment be made of the limitations imposed on the employer by N.J.S.A. 40A:4-45.1 et seq., the CAP law. As will be noted in the “Lawful Authority” section of this analysis, the arbitrator’s award will not exceed the limits imposed by the CAP law.

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

As other arbitrators have noted, it is difficult to compare the working conditions of public sector law enforcement officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison can be made. The standards for recruiting public sector law enforcement officers, the requisite physical qualifications and training and the unique responsibilities which require public sector law enforcement officers to be available and competent to protect the public in various circumstances sets law enforcement officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.

However, the rate of wage change in the private sector generally is a consideration which must be accorded significant weight. The rate of wage change in the private sector and the rate of wage change among public sector law enforcement units are affected by the same national and local factors, such

as the health of the economy, prevailing interest rates, status of unemployment, rate of inflation and the impact of tax legislation. Accordingly, this factor merits consideration in conjunction with the rate of wage change in public employment in general and public employment in the same or similar comparable jurisdictions.

Since the parties' most recent agreement expired at the end of 1995, the undersigned is constrained to take administrative notice of information, excerpted from the Labor Relations Reporter, 152 LRR 398, dated 7/29/96, which indicates that nationwide private sector settlements have exhibited median average increases of 3% for 1996. However, the Labor Relations Reporter notes that wage increases of unspecified amounts and cost-of-living adjustments were not included in the tabulations of the medians. Accordingly, the rate of change in the private sector appears to be somewhat in excess of 3% for 1996. The Public Employment Relations Commission has furnished the arbitration panel with reports of private sector wage changes compiled by the New Jersey Department of Labor. The September, 1997 Report, which shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system, indicates a 4.9% increase in Sussex County in 1996 as compared to 1995 and a private sector wage increase of 4.3% for all counties in the State of New Jersey in 1996 compared to 1995. The December, 1998 Report, which shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system, indicates a 2.63% increase in Sussex County in 1997 as compared to 1996 and a private sector wage increase of 4.3% for all counties in the State of New Jersey in 1997 compared to 1996. In fashioning the Award in this matter, the

undersigned has given this factor significant weight.

b. In public employment in general.

The BLS Report on Negotiations, 8:310, No.1298, dated 3/2/95, published by the Bureau of National Affairs, Inc., notes that State and local government contracts (usually negotiated in 1993 and scheduled for renegotiation in 1995) showed settlement terms that yield annual wage changes (including COLA payments) averaging 2.5% in all State and Local Government contracts over their contract life. The same BLS Report notes that the rate of increase for protective services averaged 3.1%. However the BLS Report notes the following:

Recent settlements suggest a more favorable bargaining climate for at least some State and local government workers with contracts set to expire in 1995. As noted earlier, for the first time since the second half of 1990, settlements reached in the first six months of 1994 provided wage gains that were larger, on average, than those negotiated in the replaced contracts. Both first-year changes (3.0 percent) and annual changes over the contract term (3.3 percent) were at their highest level since the six month period from July 1990 to December 1990. In addition, the proportion of workers with decreases or no changes in their wage rates was considerably lower than in recent years.

Thus the BLS Report on Negotiations confirms the emergence of a more favorable collective negotiations climate in the public sector with fewer wage freezes and annual changes over the contract term increasing to 3.3 percent

when parties negotiated renewal contracts for contracts expiring in 1995. This is an additional significant factor to which the undersigned has assigned weight and has been considered in the formation of the Award.

c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with N.J.S.A. 34:13A-16.2.

PBA offers for comparison contracts and awards in evidence utilizing percentage rate of change on the base rate only in the following mix of Prosecutor's Offices and relevant municipalities:

Name	1996	1997	1998	1999
Byram			4.5	4.64
Cumberland Pros	3.9	3.95		
Passaic		4 (2/2)	4(2/2)	
Essex Pros		5	5	
Mercer Pros			4.5 (2/2.5)	4.75(2/2.75)
Camden Pros	5	5	5	
Leonia		4	4	4.25
Garfield		3.75	3.75	4
Lodi	4	4	4	4
Bloomingtondale			3.9	
Cape May Pros	6	5.9		
Gloucester Pros	4(3/1)	4		
Stanhope	5	5	5	
Averages:	4.65%	4.46%	4.49%	4.26%

The Prosecutor offers for comparison the wage increases in third class counties which are similar in socio-economic status to Sussex.

Name	1996	1997	1998	1999
Cumberland Pros	3.9	3.95		
Salem Cty Pros		2.8	2.8	
Warren Cty Pros	4 (3+1)	4 (3+1)		
Hunterdon Pros	4	4		
Averages:	3.97	3.68	2.8	

Although there is some merit to the consideration of the salary increases in third class counties, the information provided is quite sketchy and contains little information beyond 1997, although the Prosecutor seeks a new agreement including 1998, 1999 and 2000. In accordance with the Comparability Guidelines contained in the Public Employment Relations Commission Rule, N.J.A.C. 19:16-5.14, the undersigned believes that all of the Prosecutor's Offices contained in the record submitted by both parties are relevant and form an appropriate basis of comparison. Listed below is the following comparison:

Name	1996	1997	1998	1999
Cumberland Pros	3.9	3.95		
Essex Pros		5	5	
Mercer Pros			4.5 (2/2.5)	4.75(2/2.75)
Camden Pros	5	5	5	
Cape May Pros	6	5.9		
Gloucester Pros	4(3/1)	4		
Salem Cty Pros		2.8	2.8	
Warren Cty Pros	4 (3+1)	4 (3+1)		
Hunterdon Pros	4	4		
Averages:	4.46%	4.33	4.33	4.75

In addition, the Public Employment Commission, on Feb. 11, 1999, released a Five Year Salary Increase Analysis for Interest Arbitration which is listed below:

Time Period	# of Awards	Avg Sal Inc	#Settlemts	Avg Sal Inc
1998	41	3.87	42	3.77
1997	37	3.63	62	3.96
1996	21	4.24	35	4.19
1995	37	4.52	44	4.59
1994	35	5.01	56	4.98
5 Year Averages:		4.25		4.3
3 Year Averages (96,97 and 98)		3.91		3.97

The undersigned has computed the five and three year averages from the information provided by the Commission.

There are also significant comparisons in public employment in the same jurisdiction.

The Sussex County Sheriff and Sussex County have negotiated an agreement with PBA Local 138 (Jail Unit) covering the period from January 1, 1996 through December 31, 1999 and providing the following increases:

January 1, 1996: 3.5%

January 1, 1997: 4.0%

January 1, 1998: 4.0%

January 1, 1999: 4.0%

The Jail Unit agreement has a step schedule and provides that all employees shall move to the next step of the salary schedule on January 1 of the immediate succeeding year.

□

The Sussex County Sheriff and Sussex County have negotiated an agreement with PBA Local 138 (Sheriff's Unit) covering the period from January 1, 1996 through December 31, 1999 and providing the following increases:

January 1, 1996: 3.5%

January 1, 1997: 4.0%

January 1, 1998: 4.0%

January 1, 1999: 4.0%

The Sheriff's Unit agreement has a step schedule and provides that all employees shall move to the next step of the salary schedule on January 1 of the immediate succeeding year.

Sussex County and Communications Workers of America (CWA Local 1032) have negotiated an agreement covering the period from January 1, 1996 through December 31, 1998 and providing the following increases:

January 1, 1996: 3.0%

January 1, 1997: 2.0%

July 1, 1997: 2.0%

January 1, 1998: 2.0%

July 1, 1998: 2.0%

In addition, effective Jan. 1, 1996, the job titles of Laborer, Truck Driver-Heavy, Equipment Operator, Heavy Equipment Operator and Supervisor-Roads are upgraded one salary range Job Group. Effective Jan. 1, 1996, each eligible employee holding one of the above job titles shall be given a salary adjustment of \$1,200 added to his/her base annual salary or the minimum of the new salary range, whichever is greater. The salary adjustment shall be added to the base annual salary prior to the application of the negotiated wage increase

which is also effective January 1, 1996.

It should be pointed out that the additional \$1200 increase has an approximate percentage value ranging from 2.83% at Range 9, to 3.93% at Range 3 when applied to the maximums of the range before upgrading.

Although the evidence in the record does not indicate the number of employees affected, the undersigned takes administrative notice that the job titles affected normally contain a significant number of employees.

The Prosecutor has offered the County/CWA settlement as an appropriate comparable in this proceeding. The undersigned believes that the County/CWA settlement is a very significant comparable and should be given considerable weight. Since there are a considerable number of County employees involved in the County/CWA settlement and the agreement was reached in negotiations during the term of the proposed agreement in this unit, this agreement merits serious consideration.

The undersigned, in the consideration of the statutory criterion of "Comparables" also takes administrative notice of the summary of Interest Arbitration Awards and voluntary settlements issued by P.E.R.C. and listed above which includes three of the five years involved in this proceeding.

It is noted that the average of Interest Arbitration Awards is on a downward slope. However, it appears that the average, between settlements and Interest Arbitration Awards, is still higher than the rate of increase in the Consumer Price Index. In addition, the composite three year increase in IA Awards is 11.74% in the three year period analyzed, higher than the Prosecutor's Offer and lower than the PBA offer. Accordingly, the undersigned believes that the above listed salary comparisons are pertinent and should

provide guidance in the development of the Award in this matter.

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.

In addition to salaries, the parties have submitted two other items of compensation for consideration in this proceeding. PBA seeks the implementation of a salary step system which is not presently received by the employees in this unit. PBA also seeks an increase in the longevity pay currently received by the employees in this unit. The Prosecutor rejects both proposals.

The record and payroll data confirm the PBA argument that the maximum pay rate in the Sussex County Prosecutor's contract is irrelevant because the contract lacks any methodology to attain the maximum rate. The record also supports the PBA claim that there are not any recorded situations where parties have negotiated or an arbitrator has awarded an abandonment of an existing step system. On the other hand, there is evidence of the inclusion of step systems where none existed before. Of special interest is the recent Somerset County Prosecutor's award, issued in June, 1998, which created a step system for the investigative staff. In fact, in the Somerset County Prosecutor proceeding, the arbitrator accepted the Prosecutor's proposal which sought the creation of a six step salary guide for non-supervisory detectives and which provides for an automatic step increase each year. The record also verifies that the Sussex County Sheriff's Office, in corrections and sheriff's personnel, have a step system and that Arbitrator Weiss recently rejected the

Sussex County proposal to eliminate the step system. PBA maintains that the County agreed, in the CWA contract, to provide an additional increment to employees not at maximum pay to expedite their advancement toward maximum pay. The undersigned has carefully studied the County/CWA agreement and notes that each pay grade has a minimum and a maximum and an increment with a value of approximately 4.7% of the minimum for that range. The contract does not specifically spell out whether the increment is paid in lieu of or in addition to the across-the-board increase for those employees who are below the maximum rate of pay. In any event, the payment of a 4.7% annual increment would provide more of an advancement to the maximum pay than the mere payment of the across-the-board increase.

PBA has provided charts of the automatic step plans in evidence and claims they show that the average number of steps to reach maximum pay is 7.14 steps in fourteen contracts, of which twelve contracts pertain to Prosecutor employees. The Prosecutor has provided information which is limited to other Prosecutor's bargaining units in third class counties and shows that three of these counties do not have a step system. The Prosecutor has indicated that Hunterdon County does not have a step system and the salary adjustment was 4% or less in 1996 and 1997. However, the Hunterdon County Prosecutor/PBA Local 358 contract, at page 19, indicates that the parties have negotiated a salary range for 0 to 3 years of experience, another range for 3 to 8 full years of experience and another range for Investigators with over 8 years of experience. A review of Schedule "B" shows that three Investigators received increases ranging from 5.34 to 6.90% in 1997 in order to attain the specified salary of \$44,250 for Investigators with over 8

years of experience.

The undersigned has studied each contract in evidence to determine the prevalence of step systems in the County Prosecutor's Offices and has found the following:

Name	Step System
Bergen	yes
Passaic	yes
Essex	yes
Mercer	yes
Union	yes
Camden	yes
Warren	yes
Cumberland	no
Salem	no
Morris	yes
Hunterdon	yes (as described above)
Cape May	yes
Somerset	yes
Monmouth	yes
Atlantic	yes
Gloucester	yes
Burlington	no

Thus, fourteen of the seventeen counties for which there was information showed the presence of a step system in the parties' contract. Based on the evidence in the record, it appears that there are step systems for almost all

Prosecutor Investigator staffs in the counties examined above, that there is no evidence of abandonment of step systems and, in fact, there is evidence of the proposed adoption of a step system by a Prosecutor's office where none existed before.

The undersigned also notes, from Exhibit P-17, a list of employees represented by PBA-Prosecutor's Unit which was prepared by Connie J. Sutton, Personnel Director, showing the roster and payroll cost as of 8/26/97, that five of the fourteen unit employees were at the minimum salary, six of the fourteen unit employees had less than three years of service and only one employee was earning the contractual maximum rate of pay. The instability of the unit and the inadequacy of the existing salary schedule is further illustrated by a number of salary increases, since the last contract, for some unit members which are beyond the contractual requirements. Finally, the State Attorney General's publication on staff resources in County Prosecutor's Offices (Exhibit C-12) shows that Sussex County Investigators rank 20th out of 22 departments in average length of service. Based on all the facts cited and analyzed above, the undersigned believes that a step system is warranted in order to retain skilled employees and provide planned advancement on a career path.

Although there is some merit to the PBA claim that the Sussex Prosecutor's Investigator Longevity program is inferior to the programs in the Passaic Prosecutor's Office, the Mercer Prosecutor's Office, the Morris Prosecutor's Office, the Atlantic Prosecutor's Office and the Gloucester Prosecutor's Office, the undersigned's primary focus in this matter is on the adoption of a step system and costs beyond the going rate of settlements and awards, if any, should be allocated solely toward the implementation of the

step system. Accordingly, this award will provide for no changes in the Sussex Prosecutor's Investigator longevity program.

4. Stipulations of the parties.

There are no pertinent, substantive stipulations of the parties which require consideration in this matter.

7. The cost of living.

The Employer has submitted Bureau of Labor Statistics Data, Consumer Price Index for all Urban Consumers , (Exhibit C-15) which indicates a 2.7% increase from January, 1995 to January, 1996 and a 3.0% increase from January, 1996 to December, 1996. The Prosecutor notes that these unit employees received salary increases in their last contract which substantially exceeded the rate of CPI increase during the relevant period. Furthermore, the Prosecutor notes that his salary proposal will provide most unit employees with percentage increases which are greater than the CPI.

The low level of inflation, as shown in the 1996 and 1997 CPI figures, has persisted for several years and, despite the improved conditions now apparent in the national economy, the inflation rate has not accelerated to date.

Under the Prosecutor's proposal, the salaries of many Investigators would keep pace with the recent increase in the cost-of-living and would, therefore, not result in a loss of purchasing power for these officers. On the other hand, the PBA proposal would entail annual increases which are much higher than the present rate of inflation.

Under these circumstances, the undersigned believes that the Prosecutor's proposal is closer to the provisions of this statutory criterion. Furthermore, the internal County agreements with the two Sheriff's units and

the two CWA units are closer to the current rate of inflation than the PBA proposal. In the development of the award in this matter, the undersigned has been guided by these internal settlements and awards because they more closely track the cost-of-living index increase and, therefore, are more consistent with this statutory criterion.

5. The lawful authority of the employer; considering, inter alia, the limitations imposed upon the employer by the CAP Law, N.J.S.A. 40A:4-45.1 et seq.

6. The financial impact on the governing unit, its residents and taxpayers. The arbitrator 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 of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

At this point, based on the factors analyzed above, the terms of the economic award will be listed and the costs calculated in order to determine how the award will comport with the two statutory criteria listed above. As noted above, in developing the economic award, the undersigned has

determined that only the category of salaries should be modified in this matter in order to provide employees with a step system and the maximum wage improvement within the reasonable constraints of the Prosecutor/County fiscal situation. Thus, as noted above, the PBA request for an improvement in longevity pay is not included in this award.

Term:

PBA seeks a four year agreement while the Prosecutor requests a five year agreement. The undersigned notes that this award will issue in May, 1999, only seven months before the end of a four year agreement. In that event, the parties would be obliged to almost immediately begin negotiations for a new agreement. Accordingly, a five year agreement would provide the parties with an opportunity to implement this award and evaluate its ramifications before starting a new round of negotiations. In addition, the undersigned believes that a five year term is needed to accommodate the implementation of a step system within reasonable financial constraints.

Accordingly, the term of the new agreement shall run from Jan. 1, 1996 to Dec. 31, 2000.

Salaries:

As noted above, the development of the award in this matter has been guided by internal settlements, comparable settlements in other Prosecutor Offices, the rates of settlements and awards in the public sector, private sector salary increase trends and Consumer Price Index trends.

The Arbitrator's Award on Minimums, Maximums and Salaries is contained in Exhibit A, attached hereto and made a part hereof. The Arbitrator has accepted the Prosecutor's proposed minimums and maximums for

Investigator and Investigator II. For Investigator 1, the undersigned has accepted the Prosecutor's proposed maximums. However, for Investigator 1, the undersigned has retained the previous \$42,500 minimum for the term of the agreement instead of the unexplained substantial reduction in the Investigator 1 minimum proposed by the Prosecutor.

The undersigned has provided for a 3.5% increase in the first year, 3.5% in the second year and 3.5% in the third year. It should be noted that these increases are smaller than the internal settlements and the comparable settlements in other Prosecutor Offices and the rates of settlements and awards in the public sector during the similar period. Starting with January 1, 1999, those employees who are below the maximum for their classification will initially receive a 1% increase toward achievement of that classification maximum and then a 3.5% increase. On January 1, 2000, those employees who are below the maximum for their classification will initially receive a 1% increase toward achievement of that classification maximum and then a 3.5% increase. It should be noted, in Exhibit A, that Investigator Stone will reach the Investigator maximum on Jan. 1, 2000 and Investigator 1 Sandberg will reach the Investigator maximum on Jan. 1, 2000.

The provision for a 1% increase on January 1 of each year for those employees who are below the maximum for their classification in order to expedite the achievement of their classification maximum shall constitute the step system which will continue beyond the termination of this agreement.

The annual costs of implementing the Award are contained in Exhibit A. Costs for 1996 and 1997 have been applied only to those employees listed in the Prosecutor's Proposal, Exhibit C-1. Costs for promoted employees have

been allocated based on their promotion dates (See Exhibit B for a recap of the earnings of Peter and Sandberg). Risdon and Sandage were moved to their higher classifications as of the date of their promotion, 1/1/98. Peter, Sandberg and Risdon were allocated the salaries provided on promotion to avoid a reduction in pay. Sandage was allocated a 5% increase as of the date of promotion to Investigator 1 in accordance with Article VI (Pg. 7) of the prior contract.

The Prosecutor's Proposal is costed in Exhibit C (See Exhibit D for a recap of the earnings of Peter and Sandberg). The PBA proposal is costed in Exhibit E (See Exhibit F for a recap of the earnings of Peter and Sandberg).

The annual costs of the Prosecutor, PBA and Arbitrator's Award appear as follows:

	Prosecutor	PBA	Arbitrator
1996	288,153	294,949	290,360
1997	374,813	392,385	379,318
1998	427,315	455,046	432,958
1999	444,861	481,768	456,212
2000	458,288	505,856	475,877

As noted above, Exhibit P-17 shows a roster of fourteen employees in this unit and an annual payroll cost, as of 8/26/97, of \$468,930. If this roster of unit employees continued for the years of 1998, 1999 and 2000 without any increase, the Prosecutor's three year payroll cost would be \$1,406,790. From the data supplied by the Prosecutor in this proceeding, the unit functioned in 1998 and 1999 with twelve Investigators and the Prosecutor, in its Proposal, lists only twelve Investigators for 2000. The Arbitrator's award for 1998, 1999

and 2000 will have a cost of \$1,365,047 or \$41,743 less than a three year continuation of the payroll existing in 1997.

The statutory criterion relating to the lawful authority of the Employer specifically requires consideration of the limitations imposed upon the employer by the CAP Law, N.J.S.A. 40A:4-45.1 et seq. Under the CAP Law, an employer is limited to expenditures within a specified index rate unless it takes the required steps to utilize the maximum CAP rate of 5%. The Prosecutor is not restricted by the terms of the CAP Law although the County, the ultimate source of funding, is constrained by the limitations imposed upon the employer by the CAP Law, N.J.S.A. 40A:4-45.1 et seq. The Prosecutor does not levy taxes or raise funds directly and is not referenced in the Cap Law. The Supreme Court's Bigley decision rejected the claim that the County Freeholder Board was the final authority on Prosecutor Office expenditures and, instead, held that the Prosecutor controls his own budget and is merely subject to the ultimate decision of the Assignment Judge. The Prosecutor has not presented any evidence or argument which challenges the lawful authority of the Prosecutor to adopt and implement an arbitrator's award in this matter.

At this point, the analysis of the statutory criteria requires a consideration of the financial impact of the Award on the County, its residents and taxpayers, who are the ultimate source of funding of the Prosecutor's Office. In 1996, as noted above, the arbitrator's award will cost only \$2,207 more than the amount proposed by the Employer on behalf of the employees listed in the Employer Proposal, Exhibit C-1. In 1997, the arbitrator's award will cost merely \$4,505 more than the amount proposed by the the Employer on behalf of the employees listed in the Employer Proposal, Exhibit C-1.

The undersigned believes that the record indicates that there is sufficient surplus to accommodate the slightly higher costs of the arbitrator's award without making a substantial reduction in the current fund. Sheet 4 of the 1998 Sussex County budget indicates a Current Fund , realized in cash in 1997, of \$2,141,175. If the additional cost of the arbitrator's award in the first two years of the contract, \$6,712, was removed from the Current Fund Surplus shown above, the Current Fund Balance would be reduced to \$2,134,463, a 0.3% reduction.

Furthermore, as noted above, the Arbitrator's award for 1998, 1999 and 2000 will have a cost of \$1,365,047 or \$41,743 less than a three year continuation of the payroll existing in 1997. Since the 1998 County Budget (P-12, sheet 12) appropriates \$2,262,662 for the Prosecutor's Office salaries, \$208,455 more than the \$2,054,207 actually paid in 1997, it does not appear that this arbitration award, costing less than a three year continuation of the payroll existing in this unit in 1997, will place any unanticipated burden on the County, its residents and taxpayers. In fact, the ability of a unit of twelve investigators to adequately and proficiently perform their assigned duties at a lesser cost to the County is a demonstration of greater productivity and, in effect, represents this unit's contribution toward the County's goal of achieving the rendition of needed services while keeping costs under control.

It should also be noted that the costs of this arbitration award, in percentage terms, is quite similar to the voluntary County/CWA settlement when one factors in that agreement's split raises and their carryover effect and the effect of the classification upgrades and the effect of increment payments.

Inasmuch as evidence has not been introduced in these areas, the arbitrator need not make a comparison of the percentage of the county purposes element required to fund the employees' contract in the preceding local budget year; consider the impact of the award for each income sector of the property taxpayers of the local unit ; consider the impact of the award on the ability of the county to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the county in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the county in its proposed budget.

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.

Each party maintains that adoption of its position will enhance the continuity and stability of employment of this unit of Prosecutor's Investigators. As stated above, the record indicates that, in 1997, five of the fourteen unit employees were at the minimum salary, six of the fourteen unit employees had less than three years of service and only one employee was earning the contractual maximum rate of pay. The undersigned noted the instability of the unit and the inadequacy of the existing salary schedule by showing that apparently there had been a need for a number of salary increases, since the last contract, for some unit members which were beyond the contractual requirements. The instability was further demonstrated by the State Attorney

General's publication on staff resources in County Prosecutor's Offices (Exhibit C-12) which showed that Sussex County Investigators rank 20th out of 22 departments in average length of service. On the other hand, the undersigned notes that the Prosecutor's Office has been able to attract replacements when needed and to retain a competent and profesional investigative force. In any event, the undersigned believes that the adoption and implementation of the step system, included in this award, will provide employees with a more recognizable progression to category maximums and a defined career path. The undersigned believes that the compensation package developed in this award is fair and reasonable. A fair and reasonable compensation package coupled with a moderate step system, applied within the confines of budgetary constraints, should promote the stability and continuity of employment in this unit by encouraging employees to persevere in their law enforcement efforts on behalf of the Prosecutor's Office and serve the interests of the County taxpayers.

Non-Economic:

PBA proposes that the final step of the parties' contractual grievance procedure be binding arbitration consistent with the rules for binding arbitration selection and procedure under the auspices of the New Jersey Public Employment Relations Commission.

The undersigned has researched the Prosecutor Office contracts in the record to determine the prevalence of contractual grievance procedures which contain final step binding arbitration. The results of this research are listed below:

Name	Binding Arbitration
Bergen	yes
Passaic	yes
Essex	yes
Mercer	yes
Union	yes
Camden	yes
Warren	yes
Cumberland	yes
Salem	yes
Morris	yes
Hunterdon	yes
Cape May	yes
Somerset	yes
Monmouth	yes
Atlantic	yes
Gloucester	yes
Burlington	no

Thus, sixteen of the seventeen counties for which there was information showed the presence of binding arbitration as the final step of the contractual grievance procedure. The Prosecutor objects to the introduction of the new concept of binding arbitration in the absence of compelling evidence of the need for the change. Essentially, the Prosecutor cites the absence of a large volume of grievances or evidence of unresolved complaints. Prosecutor Investigators are non-tenured employees who serve at the pleasure of the

Prosecutor. The absence of grievances may be attributable to the existence of a contractual grievance procedure which requires a non-tenured employee to challenge, at the last step in the grievance procedure, the Prosecutor, the same person who formulates most departmental policies.

The undersigned takes administrative notice of the correctness of the PBA contention that neither PERC nor the Courts will defer to arbitration which is not final and binding.

It is also noted that the County/CWA contract provides for binding arbitration as the final step of the grievance procedure and the two Sheriff's Law Enforcement Units have access to binding arbitration, if needed.

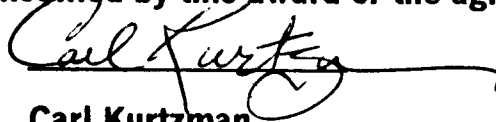
There is nothing in the record to indicate that the presence of binding arbitration in the CWA and Sheriff's Units contracts has created an unmanageable problem for the County. Furthermore, there is no evidence in the record to establish the inability of the Prosecutor to perform his/her unique responsibilities in the sixteen of the seventeen counties where binding arbitration exists as the final step of the contractual grievance procedure. In light of the above facts and analysis, the undersigned believes it is appropriate to extend binding arbitration to the Investigators in this unit. Based on a study of the various grievance procedures in Prosecutor's contracts in this record, the undersigned believes the restrictive grievance procedure language contained in the Warren County Prosecutor Investigator contract is an appropriate model for the new contractual clause in the Sussex Prosecutor contract and will award same, effective Jan. 1, 2000. The new grievance procedure language, awarded herein, is annexed hereto as Exhibit G.

In the resolution of this dispute, the undersigned has deemed each of the statutory criteria relevant (except for the criterion relating to stipulations) and has assigned due weight to the criteria discussed above. In addition, the undersigned has carefully considered the evidence and arguments presented by the parties. In this analysis, the undersigned has assigned considerable weight to the trend in private sector increases and other public sector increases generally as well as the current rate of increase in the Consumer Price Index. The undersigned has given significant weight to the internal settlements and awards in Sussex County. The undersigned has considered the average rate of increases among the other Prosecutor agencies in New Jersey but has awarded a somewhat lower percentage package in order to reasonably accommodate the introduction of a moderate step system. The undersigned believes that the arbitrator's award does not require expenditures which will exceed the Prosecutor's lawful authority. In my role as an arbitrator with conventional authority, I have sought to develop an award which addresses and balances the concerns of both parties. The undersigned believes that the interests and welfare of the public will benefit by an Award containing a reasonable compensation package which will have a modest financial impact on the County's residents and taxpayers and contribute to the continuity and stability of employment in this negotiations unit.

Accordingly, based on an evaluation of the evidence submitted and the arguments advanced by each party and, after due consideration of each of the statutory criteria contained in N.J.S.A. 34:13A-16, the undersigned renders the following

INTEREST ARBITRATION AWARD

- 1. The term of the agreement shall be from January 1, 1996 through December 31, 2000.
- 2. The minimums, maximums and salaries shall be adjusted in accordance with the Arbitrator's Award contained in Exhibit A, attached hereto.
- 3. Binding Arbitration: The parties shall include in their new agreement a contractual grievance procedure in accordance with Exhibit G.
- 4. All other proposals made by both parties are denied.
- 5. All of the provisions of the prior agreement shall be retained in the new agreement, except as modified by this award or the agreement of the parties.



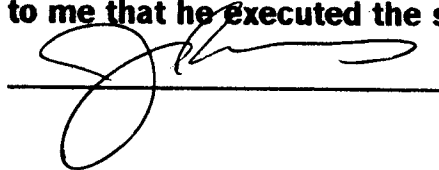
Carl Kurtzman

Arbitrator

Dated: May 18, 1999

State of New York)
County of Nassau)

On the 18th day of May, 1999, before me personally came and appeared Carl Kurtzman, to me known and known to me to be the person desribed herein who executed the foregoing instrument, and he acknowledged to me that he executed the same.



JOSEPH B. POWERS
Notary Public, State of New York
No. 01P05082606
Qualified in Nassau County
Commission Expires July 28, 1999

Investigat	Minimum	Maximum	Increment
1995	25,000	41,000	
1996	25,500	42,250	893
1997	26,265	43,518	919
1998	27,053	45,041	947
1999	28,000	46,392	980
2000	28,840	47,784	1,009

Investigator II	Minimum	Maximum	Increment
1995	25,000	46,881	
1996	30,250	48,287	1,059
1997	31,158	49,736	1,091
1998	32,092	51,477	1,123
1999	33,215	53,021	1,163
2000	34,212	54,612	1,197

Investigator I	Minimum	Maximum	Increment
1995	42,500	45,526	
1996	35,000	49,736	1,225
1997	36,050	51,228	1,262
1998	37,132	53,021	1,300
1999	38,431	54,612	1,345
2000	39,584	56,250	1,385

Minimums	\$25,500	\$26,265		\$27,053		\$28,000		\$28,840	
Investigator	1996	1997		1998		1999		2000	
N. Holl				\$ 27,053		\$ 28,033	3.6%	\$ 29,042	3.6%
K. Kardos		26,265		\$ 27,212	3.6%	\$ 28,192	3.6%	\$ 29,201	3.6%
E. Schmidt		26,265		\$ 27,212	3.6%	\$ 28,192	3.6%	\$ 29,201	3.6%
M. Sperry		26,265		\$ 27,212	3.6%	\$ 28,192	3.6%	\$ 29,201	3.6%
T. Accetta	25,500	26,419	3.6%	\$ 27,366	3.6%	\$ 28,346	3.6%	\$ 29,356	3.6%
D. Peter	26,643	27,562	3.5%	\$ 28,509	3.4%	<i>Promoted</i>		<i>10/1/98</i>	
I. Risdon	29,012	29,931		<i>Promoted</i>		<i>1/1/98</i>			
R. Reynolds	37,356	38,275	2.5%	\$ 39,222	2.5%	\$ 40,202	2.5%	\$ 41,211	2.5%
M. Stone	41,862	42,781	2.2%	\$ 43,728	2.2%	\$ 44,708	2.2%	\$ 45,717	2.3%

Minimums	30250	31158		32092		33215		34212	
Investigator II	1996	1997		1998		1999		2000	
D. Jentzen	42526	43616	2.6%	44,739	2.6%	\$ 45,902	2.6%	\$ 47,099	2.6%
D. Peter				32,092		\$ 33,255	3.6%	\$ 34,452	3.6%
I. Risdon				36,812		\$ 37,975	3.2%	39172	3.2%
N. Sandage	39730	40820	2.7%	<i>Promoted 1/1/98</i>					
G. Sandberg	45524	46614	2.4%	47,737	2.4%	<i>Promoted 10/1/98</i>			

Minimums	35,000	36,050		37,132		38,431		39,584	
Investigator I	1996	1997		1998		1999		2000	
N. Sandage				\$ 49,050		\$ 50,395	2.7%	\$ 51,781	2.7%
G. Sandberg				\$ 50,124		\$ 51,469	2.7%	\$ 52,855	2.7%

			Exhibit A				
Arbitrator's Award: Minimums, Maximums and Salaries							
Investigator	1995	1996	1997	1998	1999	2000	
Minimums	25000	25500	26265	27053	28000	28840	
Maximums	41000	42250	43518	45041	46392	47784	
Investigator 11							
Minimums	25000	30250	31158	32092	33215	34212	
Maximums	46881	48287	49736	51477	53021	54612	
Investigator 1							
Minimums	42500	42500	42500	42500	42500	42500	
Maximums	45526	49736	51228	53021	54612	56250	
	1995	1996	1997	1998	1999	2000	
Investigator							
Holl				27053	28280	29563	
Kardos 8/11/97			26265	27184	28417	29706	
Schmidt 8/11/97			26265	27184	28417	29706	
Sperry 8/11/97			26265	27184	28417	29706	
Accetta 10/96		25500	26393	27316	28555	29850	
Peter 12/94	25750	26652	27584				
Risdon 11/92	28719	29103	30122				
Reynolds 5/90	36463	37739	39060	40427	42261	44177	
Stone 12/90	40969	42403	43887	45423	46392	47784	
Investigator II							
Jentzen 10/87	41467	42918	44420	45975	48060	50240	
Peter 12/94			*	29435	33547	35069	
Risdon 11/92				36812	38481	40226	
Sandage 2/88	38691	40024	41425				
Sandberg 10/88	44465	46021	47632				
Investigator 1							
Sandage 2/88				49050	51274	53600	
Sandberg 10/88			*	49915	54111	56250	
* See Exhibit B							
Totals:		290360	379318	432958	456212	475877	

Exhibit B					
Peter:	1/1/98-9/30/98		21412		
	10/1/98-12/31/98		8023		
	1/198-12/31/98		29435		
Sanberg:	1/1/98-9/30/98		36974		
	10/1/98-12/31/98		12941		
	1/198-12/31/98		49915		

			Exhibit C			
Cost of Prosecutor's Proposal						
Investigator	1995	1996	1997	1998	1999	2000
Minimums	25000	25500	26265	27053	28000	28840
Maximums	41000	42250	43518	45041	46392	47784
Investigator 11						
Minimums	25000	30250	31158	32092	33215	34212
Maximums	46881	48287	49736	51477	53021	54612
Investigator 1						
Minimums	42500	35000	36050	37132	38431	39584
Maximums	45526	49736	51228	53021	54612	56250
	1995	1996	1997	1998	1999	2000
Investigator						
Holl				27053	28033	29042
Kardos 8/11/97			26265	27212	28192	29201
Schmidt 8/11/97			26265	27212	28192	29201
Sperry 8/11/97			26265	27212	28192	29201
Accetta 10/96		25500	26419	27366	28346	29356
Peter 12/94		26643	27562			
Risdon 11/92	28719	29012	29931			
Reynolds 5/90	36463	37356	38275	39222	40202	41211
Stone 12/90	40969	41862	42781	43728	44708	45717
Investigator II						
Jentzen 10/87	41467	42526	43616	44739	45902	47099
Peter 12/94			*	29405	33255	34452
Risdon 11/92				36812	37975	39172
Sandage 2/88	38691	39730	40820			
Sandberg 10/88	44465	45524	46614			
Investigator 1						
Sandage 2/88				49050	50395	51781
Sandberg 10/88			*	48334	51469	52855
* See Exhibit D						
Totals:		288153	374813	427345	444861	458288

Exhibit D						
Peter:	1/1/98-9/30/98			21382		
	10/1/98-12/31/98			8023		
	1/198-12/31/98			29405		
Sanberg:	1/1/98-9/30/98			35803		
	10/1/98-12/31/98			12531		
	1/198-12/31/98			48334		

			Exhibit E			
Cost of PBA Proposal						
Investigator	1995	1996	1997	1998	1999	2000
Minimums	25000	26250	27563	28941	30388	31907
Maximums	41000	43050	45203	47463	49836	52328
Investigator 11						
Minimums	25000	26250	27563	28941	30388	31907
Maximums	46881	49225	51686	54271	56984	59833
Investigator 1						
Minimums	42500	44625	46856	49199	51659	54242
Maximums	45526	47802	50192	52702	55337	58104
	1995	1996	1997	1998	1999	2000
Investigator						
Holl				28941	30388	31907
Kardos 8/11/97			27563	28941	30388	31907
Schmidt 8/11/97			27563	28941	30388	31907
Sperry 8/11/97			27563	28941	30388	31907
Accetta 10/96		26250	27563	28941	30388	31907
Peter 12/94		27038	28389			
Risdon 11/92	28719	29525	31001			
Reynolds 5/90	36463	38286	40200	42210	44321	46537
Stone 12/90	40969	43017	45168	47427	49798	52288
Investigator II						
Jentzen 10/87	41467	43540	45717	48003	50403	52924
Peter 12/94			*	30781	35381	37151
Risdon 11/92				38653	40585	42614
Sandage 2/88	38691	40605	42635			
Sandberg 10/88	44465	46688	49023			
Investigator 1						
Sandage 2/88				51503	54078	56782
Sandberg 10/88			*	51764	55262	58025
* See Exhibit F						
Totals:		294949	392385	455046	481768	505856

Exhibit F						
Peter:	1/1/98-9/30/98			22357		
	10/1/98-12/31/98			8424		
	1/198-12/31/98			30781		
Sanberg:	1/1/98-9/30/98			38606		
	10/1/98-12/31/98			13158		
	1/198-12/31/98			51764		

EXHIBIT G

ARTICLE 12

GRIEVANCE PROCEDURE

Definition: The term grievance as used herein means any controversy arising from the interpretation, application or violation of policies, reduction in rank, or seniority, agreements, administrative decisions which affect the terms and conditions of employment of a Detective. It is understood between both parties that no Detective shall be dismissed as a result of political affiliation.

Purpose: The purpose of this procedure is to secure at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of this Agreement. The parties agree that this procedure will be kept as informal as may be appropriate.

STEPS OF THE GRIEVANCE PROCEDURE

The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement and shall be followed in its entirety unless any step is waived by mutual consent:

STEP ONE

Any Detective having a grievance shall discuss the matter informally with any appropriate member of the departmental supervisory staff and having the grievance adjusted without the intervention of the P.B.A.

Any grievance must be raised by a Detective and sanctioned by the P.B.A. Employee has the right to personal representation by counsel of their choice at the expense of the P.B.A. and/or the Detective, in accordance with the by-laws of Warren County Local # 331.

STEP TWO

An aggrieved Detective shall institute action under the provisions hereof by submitting his/her grievance in writing within ten (10) calendar days after its occurrence or ten (10) calendar days from the date on which the grievant should reasonably have known of its occurrence to the P.B.A. representative and with a copy to the Prosecutor and/or his designee. To be timely and effective, the written grievance must

state in reasonable detail the underlying facts, the alleged violation and the remedies sought. Having completed this, an earnest effort shall be made to settle the differences between the aggrieved Detective and the Chief of Detectives for the purpose of resolving the matter informally. Failure to file his/her grievance in writing as aforesaid shall be deemed to constitute an abandonment of the grievance and shall bar the Detective from any right to proceed further with the grievance. The Chief of Detectives shall render a written decision within ten (10) calendar days after receipt of the grievance. The Chief of Detectives shall render a written decision within ten (10) calendar days after receipt of the grievance. Failure to render such written decision within the time provided shall be deemed a denial of the grievance.

STEP THREE

In the event a satisfactory settlement has not been reached with the Chief of Detectives, the Detective may appeal his/her grievance to the Prosecutor within ten (10) calendar days following receipt by the Detective of the Chief of Detective's written decision or twenty (20) calendar days from the date of filing the complaint with the Chief of Detectives, should the Chief of Detectives fail to render such written decision within the time provided. Such appeal shall be in writing, signed by the aggrieved detective and shall contain an explanation of the reasons for his dissatisfactions with the decision of the Chief of Detectives.

The Prosecutor shall render a written decision within ten (10) calendar days from his receipt of the grievance. Failure to render such written decision within the time provided shall be deemed a denial of the grievance. The Prosecutor's decision shall conclude the grievance procedure, except for the grievances involving interpretation and application of the provisions of this Agreement.

STEP FOUR

Grievance affecting the interpretation and application of the provisions of this Agreement not settled through steps one, two and three may be referred to the Public Employment Relations Commission within ten (10) calendar days after the determination by the Prosecutor. An arbitrator shall be selected pursuant to the rules of PERC, however, no arbitration hearing shall be scheduled sooner than thirty (30) calendar days after the final decision by the Prosecutor.

ARBITRATION

Any party wishing to move an arbitrable grievance to arbitration shall notify the Public Employment Relations Commission that they are moving the grievance to arbitration. Appointment of an arbitrator will be consistent with the Public Employee Relations Commission guidelines, the arbitrator appointed will hear the matter and render his/her award in writing. The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel subsistence expenses and the cost of the hearing room shall be borne equally by both parties. The decision of the arbitrator shall be in writing and binding as to each party.

EXCEPTION FOR GRIEVANCES

Any matter for which a review is prescribed by law or any regulation or rule of the Sate Attorney General, Prosecutor's Office or any matter which is beyond the scope according to law of the Prosecutor or limited to the action of the Prosecutor or his agents.

Dismissal is not grievable.

CARL KURTZMAN

Arbitration - Mediation - Fact Finding

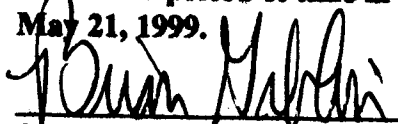
April 23, 1999

**Brian Giblin, Esq.
Giblin & Giblin
2 Forest Avenue., Suite 200
Oradell, NJ 07649**

**Richard D. Loccke, Esq.
Loccke & Correia
24 Salem Street
Hackensack, New Jersey 07601**

**RE: Sussex County Prosecutor
and
PBA Local 138
Docket No. IA-98-15**

This will confirm that the parties in the above-docketed matter have agreed to extend the period of time in which to issue an interest arbitration award to May 21, 1999.



Sussex County Prosecutor

PBA Local 138

CARL KURTZMAN

Arbitration · Mediation · Fact Finding

April 23, 1999

**Brian Giblin, Esq.
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Sussex County Prosecutor



PBA Local 138