

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

In the Matter of Interest Arbitration Between :
 :
COUNTY OF BURLINGTON :
"the County or Employer" :
 :
and :
 :
BURLINGTON COUNTY :
CORRECTION PBA LOCAL 249 :
"the PBA OR Union" :
 :

**INTEREST ARBITRATION
AWARD**

Docket No: IA-2001-60

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE EMPLOYER:

Alan R. Schmoll, Esq.
Daniel Hornickle, Esq.
Assistant County Solicitor
On the Brief

FOR THE PBA:

Richard D. Loccke, Esq.

Background & Procedural History

The County of Burlington and Burlington County Corrections, P.B.A. Local 249 are parties to a collective negotiations agreement (“CBA” or “contract”) which expired on December 31, 2000. Upon expiration of the collective bargaining agreement, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA filed a petition with the New Jersey Public Employment Relations Commission (“PERC”) on March 2, 2001 requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 which resulted in my mutual selection by the parties and my subsequent appointment by PERC on March 30, 2001 from its Special Panel of Interest Arbitrators.

I met with the parties in voluntary mediation sessions on May 24, July 2, and August 1, 2001. The mediation sessions did not resolve all of the issues included in the impasse. Formal interest arbitration proceedings were invoked and hearings were conducted on January 11 and 14, 2002 at which time the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs. The hearing was declared closed as of June 11, 2002, upon receipt of the briefs. The parties agreed to extend the time for the issuance of the award to September 30, 2002.

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

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

Statutory Criteria

The statute requires the arbitrator to:

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c 68 (C.40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C. 34:13A-16.2); provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

Final Offer - PBA

The final offer of the PBA is as follows:

1. **Duration:** January 1, 2001 through December 31, 2004.

2. **Salary**

The PBA proposes a 6% across the board wage increase on the first day of each calendar year in a four-year contract.

3. **Steps on Salary Schedule**

The PBA proposes a reduction in the number of steps. The PBA proposes that four steps be removed from the guide. The PBA proposes that the guide will then be equalized (equal total dollar steps) from the new minimum to the new maximum.

4. **Worker's Compensation**

The PBA proposes that Article III, Worker's Compensation be amended by replacing it with new "Work Incurred Injury" language:

Where an employee covered under this Agreement suffers a work-connected injury or disability, the employer shall continue such employee at full pay, during the continuation of such employee's inability to work, for a period of up to one year. During this period of time, all temporary benefits accruing under the provisions of the Workers' Compensation Act shall be paid over to the employer

The employee shall be required to present evidence by certificate of a responsible physician that he is unable to work and, the employer may reasonably require the said employee to present such certificates from time to time.

In the event the employee contends that he is entitled to a period of disability beyond the period established by the treating physician,, or a physician employed by the employer or by its insurance carrier, then, and in that event, the burden shall be upon the employee to establish such additional period of disability by obtaining a judgement in the Division of workers' Compensation establishing such further period of disability and such finding by the Division of Workers' Compensation, or by final decision of the last reviewing court shall be binding upon the parties.

For the purposes of this Article, injury or illness incurred while the employee is attending an employer sanctioned training program, shall be considered in the line of duty.

In the vent a dispute arises as to whether an absence shall be computed or designated as sick leave or as to an injury on duty, the parties agree to be bound by the decision of an appropriate Workers' Compensation judgement, or, if there is an appeal therefrom, the final decision of the last reviewing court.

An injury requiring time off for treatment, recuperation or rehabilitation shall not be construed as sick leave or a sick leave occasion under the terms of the sick leave policy heretofore agreed upon by the parties.

5. **Vacation Leave**

The PBA proposes a deletion of the limitations in Article XI, paragraph H to permit unlimited fragmentation of the stated vacation entitlement. Fragmentation would be permitted in the individual employee's discretion. Any vacation day use would be the subject of prior employer approval.

6. **Overtime**

The PBA proposes a modification of paragraph A to provide for a new definition of overtime as all work beyond eight (8) hours in a day or beyond forty (40) hours in a seven (7) day work-week cycle.

7. **Work Rules**

The PBA proposes a deletion of paragraph D1 of Article XIX, Work Rules.

8. **Officers' Bill of Rights**

The PBA proposes the addition of the "Procedure for Investigation" language to be added as Article XXIII, Officers' Bill of Rights.

Departmental Investigations

In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

1. *The interrogation of a member of the department shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate otherwise.*
2. *The interrogations shall take place at a location designated by the Employer or designee. Usually it will be at the Employer's office or in the location where the incident occurred.*
3. *The member of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the members of the allegations should be provided. If it is known that the member of the department is being interrogated as a witness only, he should be so informed at the initial contact.*
4. *The questioning shall be reasonable in length. Fifteen (15) minutes time shall be provided for personal necessities, meals, telephone calls and rest periods at the end of every two (2) hours.*
5. *The member of the department shall not be subject to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions.*
6. *At every stage of the proceedings, the Department shall afford an opportunity for a member of the department, if he so requests, to consult with counsel and/or his Association representative before being questioned concerning a violation of the rules and regulations during the interrogation of a member of the department, which shall not delay the interrogation beyond one (1) hour for consultation with his Association representative.*
7. *In case other than departmental investigations, if an officer is under arrest or if he is a target of a criminal investigation, he shall be given his right pursuant to current decisions of the United States Supreme Court.*
8. *Nothing herein shall be construed to deprive the Department or its officers of the ability to conduct the routine and daily operations of the Department.*
9. *No employees covered by this Agreement shall be subjected to any*

urinalysis or blood screening unless one of the two (2) circumstances exist: (1) Where the employer has probable cause to suspect that there is a job-related individualized impact with respect to the individual employee being tested. (2) Where the urinalysis or blood testing is done as a bona fide annual physical which is done by the Employer's Office.

10. *Under no circumstances shall the employer offer or direct the taking of a polygraph or voice print examination for any employee covered by this Agreement.*

11. *Under no circumstances shall an employee be subject to any charge whatsoever after 45 days. The 45 day period shall be calculated consistent with N.J.S.A. 40A:14-147.*

12. **Management Rights**

The PBA proposes that the addition of "Preservation of Rights" language to be added as Article XXX, Management Rights.

Preservation of Rights

The parties agree that all benefits, rights, duties, obligations and conditions of employment relating to the status of the Correctional Facility which benefits, rights, duties, obligations and conditions of employment are not specifically set forth in this Agreement, shall be maintained in not less than the highest standards in effect at the time of collective negotiations between the parties leading to the execution of this Agreement.

Unless a contrary intent is expressed in this Agreement, all existing benefits, rights, duties, obligations and conditions of employment applicable to any Officer pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired, removed or abolished.

13. **Term & Renewal**

The PBA proposes a replacement of the current language in Article XXXVII, Term of Agreement, with its proposed "Term and Renewal" language.

This Agreement shall have a term of January 1, 2001 through December 31, 2004. If the parties have not executed a successor agreement by December 31, 2004, then this Agreement shall continue in full force and effect until a successor agreement is executed. Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

14. **Complete Agreement**

The PBA proposes the deletion of Article XXXIX, Complete Agreement.

The following is the relevant language:

The Employer and the Representative acknowledge this to be their complete Agreement and that this Agreement incorporates the entire understanding by the parties.

Final Position - County

1. **Duration:**

January 1, 2001 through December 31, 2004.

2. **Salary:**

The County proposes a comprehensive salary schedule which includes a reduced number of steps, significant four-year salary increases for employees moving through the salary schedule and increases in the maximum salary of 3% annually. The County seeks the implementation of two separate salary schedules. Schedule A includes all Correction Officers hired between 1975 and 1990. Schedule B includes all Correction Officers hired between 1991 and 2001 and thereafter. All Correction Officers are placed on a certain step in 2001 and move on step on the salary schedule on January 1 of 2002, 2003 and 2004. There are no automatic steps on January 1, 2005 under the County's proposal.

3. **Uniform Allowance**

The County proposes to increase the clothing allowance to \$635 in 2001, \$650 in 2002, \$680 in 2003 and \$700 in 2004.

4. **Health/Dental Benefits**

The County proposes new co-pays to be effective January 1, 2002. These new co-pays are applicable to doctor's visits, prescription drugs and emergency room visits. The County also proposes to eliminate dual coverage in the case of a husband and wife who both work for the County. The County also proposes to provide a new 80/20 family dental plan for preventive, diagnostic and basic benefits.

5. **Workers' Compensation**

The County proposes to retain the current contract language.

6. **Overtime**

The County proposes a new procedure to assign overtime on an "inverse seniority" basis. This will replace the current procedure included in Article XII, C (1-5).

7. **Family and Medical Leave**

The County proposes that Article VII (Family and Medical Leave Act) be modified as follows:

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

8. **Vacation Leave**

The County proposes that Article XI (H) be modified as follows:

During the period commencing May 1 through September 30 (premium vacation time) no officer shall be granted more than ten (10) days off.

9. **Seniority for Bidding**

The County proposes that Article XIII (D) be amended as follows:

The position shall be filled with the most senior employee who bids on the assignment, who has fifteen (15) months of service and who has the minimum qualifications to perform the job. There shall be a maximum of ten (10) regular bid posts per shift in each facility. All other posts are to be assigned by the shift supervisor.

10. **Work Schedule**

The County proposes to amend Article XVII (G) by deleting the words “*unless requested otherwise in writing*” and adding the following new language:

1. Management maintains its right to change officers work schedules to meet the needs of its operation to include filling any open assignments where the assignment requires minimum qualifications that include at least 15 months experience as a Correction Officer with the County. Assignments shall be based on inverse seniority.

11. **Work Rules**

The County proposes to amend Article XIX (D) by adding the following:

The procedure for the following provisions shall be set forth in the Burlington County Corrections Department Drug Testing Procedure.

The County proposes the deletion of the following from D.2:

Current employees whose sample shows the presence of illegal drug in a confirmation test upon the recommendation of the physician and the Jail Administrator shall be offered a temporary medical leave of absence without pay so that an employee may enter a detoxification, rehabilitation and counseling program. Should such an employee test positive in a subsequent confirmation test, he shall be terminated. The results of any urinalysis testing shall remain confidential.

The County proposes to revise D.3 as follows:

The Employer, may, on a routine random basis at its discretion but not more than twice per year, mandate current employees to submit to a urinalysis drug test. Such test shall be unannounced, however; the Employer shall give to each correctional officer at least thirty (3) days prior to the first drug test being administered upon the employees a written policy statement to include but not limited to confidentiality and the establishment of a standardized the above referenced procedure.

The County proposes the deletion of the following from D.3:

Current employees whose sample shows the presence of illegal drug in a confirmation test upon the recommendation of the physician and the Jail Administrator shall be offered a temporary medical leave of absence without pay so that an employee may enter a detoxification, rehabilitation and counseling program. Such cost shall be at the insurance carrier of employee's expense. Should such an employee test positive in a subsequent confirmation test, he shall be terminated.

12. **Disciplinary Procedures**

The County proposes the following revised Article XX (E):

An adverse determination from a minor disciplinary hearing may be submitted to the grievance procedure at Step 3, ~~commencing at Step 1, at the election of the aggrieved employee. However, if the disciplinary hearing was conducted by the Jail Administrator the grievance shall proceed to Step 3.~~

The County proposes the deletion of Article XX (J):

J. ~~Attendance Policy Attached hereto as Exhibit B.~~

13. **Grievance Procedure**

The County proposes the following revised Article XXI (B):

Step 3: Such request for arbitration shall be submitted to the New Jersey Public Employment Relations Commission for the selection of an arbitrator, ~~made to the appropriate arbitrator as determined by a mutually agreed upon rotating panel of six (6) arbitrators with a copy of the request letter to the Clerk/ Administrator/Board Clerk or designee. If for any reason the arbitrator scheduled to be utilized from the list is not available, the next arbitrator shall be utilized.~~

14. **Officer's Bill of Rights**

The County proposes to retain the current contract language.

15. **Management Rights**

The County proposes to retain the current contract language.

16. **Leave of Absence**

The County proposes the deletion of Article XXXII (A & B) regarding leave of absence without pay.

17. **Term of Agreement**

The County proposes to retain the current contract language.

18. **Complete Agreement**

The County proposes to retain the current contract language.

Arguments of The PBA

Interests and Welfare of the public

The PBA asserts that Burlington County Correction Officers have a difficult job and they do it well. Corrections are an integral part of the law enforcement community and in Burlington, perhaps more than most other places, a great deal is expected of the Correction Officers. The PBA maintains that the public is well served by these men and women who not only perform well at the correction facilities but in addition are frequently called upon for extra work outside the correction facilities.

The PBA cites PBA President Vernon Scott's testimony in support of its position. Officer Scott, a veteran of many years of correction service, described the unique nature of duty in the Burlington Correction facility. Burlington County is a "direct supervision" facility. The officers work in and among the inmates. This is not a facility that provides cutting edge correction procedures where officers work inside a pod, a secure area. In Burlington County the officer is on the floor with the inmates. While there are differing opinions with respect to the best procedure for inmate supervision, those procedures utilized in Burlington County demand a great deal from the Correction Officers and the risks attendant to a situation getting out of hand are substantial. The PBA submits that it is a great credit to the professionalism of the entire Correction Staff that the facility is well maintained with safety provided for the public, the inmates and the officers.

The PBA notes that the record of success evidenced in the testimony does not mean that there are not problems. Inmate discipline was the subject of substantial testimony at hearing. Major disciplinary statistics were discussed and the full time hearing process was described. The inmate population may be considered to be like a small town with a 200-member police force and a full time judge. The substantial population increases over the years have led to crowding and additional challenges for the Correction Staff. For example,

the old segregation unit had five single cells whereas the new 'C' Wing was described as utilizing multiple cells for "Administrative segregation". The modern term of "Administrative segregation" is what may be referred to as "solitary". Administrative segregation was described by witness Scott as being virtually non-existent ten years ago and now it is regularly utilized. Regardless of cause however additional duties, exposures, obligations and danger are presented to correction personnel. Inmate weapons were a subject of presentation at hearing. The danger is real. Virtually every officer, according to the testimony, has been injured, attacked, bitten, stabbed, or otherwise during their respective careers. It's part of the job.

Corrections in New Jersey is not an isolated undertaking. Correction facilities are part of an inter-related matrix of correction on essentially a state-wide basis. In Burlington County alone there are six prisons: New Jersey State Prison at Wagner, Garden State Prison, Mid State Prison, Wharton Tract, New Jersey State Facility at New Lisbon and the Federal Prison at Fort Dix. Those facilities at Wagner, Garden State, Mid State, Wharton Tract and New Lisbon are all New Jersey State Corrections Systems facilities. There is an interchanging of inmates between the prisons based upon certain specific protocols which were testified to at hearing. For example, when there are problem inmates who must be removed from the Burlington Facility they are generally sent to the bordering county of Monmouth. In return, under this same inmate swapping arrangement, Monmouth problem inmates are sent to Burlington County. All State Police arrests result in those persons arrested being brought to the Burlington County Correction Facility. The State Police do not have a holding facility for such keeping.

The census of inmates is made up of persons not just from Burlington County but from other counties and other states. Examples of inmate census components include the following:

- New Jersey State Corrections Inmates
- Immigration and Naturalization Service - detainees
- Federal Prisoners
- Military prisoners
- Transcor - Transportation services for prisoners passing through this area of the country.
- Other county inmates held as “swaps”
- Protective custody

The PBA asserts that an appropriate universe of comparisons for the work load, the nature of duty, and other comparisons is best based upon the types of interaction described above. The nature of work performed and the type of interaction creates a matrix of comparability which includes State Prisons, Monmouth County and State Police. The universe of comparisons may also be based on those persons with whom these officers regularly work.

Unlike most correction facilities, the Correction Officers at Burlington County are called upon to work outside of the Correction facility and along with other law enforcement entities. President Scott described many of these special services. Some examples of these special services include the following:

- County Prosecutor’s office work where Burlington County Correction officers have worked with State Police and local police on certain types of raids. Details were supplied at hearing.
- Counterfeit merchandise raids at the Columbus Market where additional personnel were required and other law enforcement agencies were supplemented by persons from the Burlington County Corrections Department.
- Dead beat Dads raid
- County warrant raids
- Honor Guards for county activities

- Boot Camp participation
- Hospital transportation and armed guards at Hospitals
- Transport of prisoners when Sheriff's officers were not available
- Weekender duty
- Work details outside of the correction facility

The PBA notes that the special unit designated as "Critical Incident Stress Management (CISM)" was even called upon and detached to work at Ground Zero following the tragedy of September 11, 2001.

The PBA contends that the most significant of all the statistics introduced at hearing is the turnover rate within this bargaining unit. The PBA maintains that the poor compensation program makes it extremely difficult to retain officers. This has an impact on both the work load and productivity since officers are constantly being called upon to either work short or train new officers. The safety record is clearly a tribute to the hardworking professionalism of the entire correction staff.

The PBA contends that the poor compensation program creates an impediment to the effective delivery of public service since the County is unable to provide either present compensation or long term incentives to retain employees. What is most unique is that the employer witnesses agreed with the PBA's case that the primary problem confronting this employer-employee relationship is turnover. The PBA asserts that it made its case through facts and figures. All elements of the compensation comparisons were fully and completely documented. The PBA contends that the County's case is void of any supportive documentation. Every employer witness who testified admitted on cross examination that the main issue confronting effective management at the Burlington County Corrections center is employee turnover. Even the warden, an employer witness, and undoubted

professional in the field, testified that it was extremely difficult to maintain continuity of service, officer safety, inmate safety with a constant revolving door employment situation. The employee work force is under constant change. Experienced employees are constantly leaving, many times for law enforcement jobs paying very substantially higher wage rates. New employees coming in needing fundamental skills training and without experience. In addition to these factors, the public has to fund the enormous and ongoing recruitment and training costs. For the public, it is a classic "lose - lose" situation. The PBA submits that it is less expensive to properly compensate and retain career oriented law enforcement personnel.

The PBA asserts that it presented testimony and exhibits showing a clear explanation of the current circumstances and why the turnover exists. Exhibit P-3 is a compilation of employer statistics illustrating turnover rate at the Burlington County Correction facility over the last ten years. The average loss rate of new officers hired and trained has been an astounding 69% annual average. In one year, 1995, the annual loss rate for newly hired officers was 91%. Sheet 3 of P-3 provides a year-by- year analysis and calculation. On Sheet 6 of P-3 is a graph with a green bar illustrating the loss of personnel. In today's employee census there are only a very small percentage from any of the past classes, except those with less than one year service.

The PBA maintains that employee turnover is a clear and present problem in the effective delivery of this essential public service. P-3 lists the persons newly hired and those who have left since the commencement of the last CBA. Since the commencement of the last contract (January 1, 1998), 150 new correction officers were hired and only 55 remain. P-2 shows that most of the officers who left the County stayed in law enforcement. Many went to New Jersey State Corrections and a significant block went to Federal Corrections.

The largest single recipient of the training and experience attained by persons while in the employ of Burling County Corrections is the State Corrections. The PBA argues that a position at the Burlington County Corrections facility should not be seen as the finishing school for the Academy so that officers can later move on to State Corrections. This is a hard job and it's done by people who work hard. Employees in this bargaining unit are only asking for compensation that is consistent with the work obligations and demands presented. They should not be at the bottom of the list on virtually every method of comparison.

The average salary paid to employees in this bargaining unit employees is \$31,712. Few employees stay long enough to reach maximum. Even maximum itself ranks poorly. For proper comparisons purposes the concept of maximum salary at the Burlington County Correction center is more of an illusion than a reality.

In Burlington County the Correction Officer starts at a below average wage rate, ends up at an extremely low maximum wage rate if he survives that long and takes an inordinate amount of years to reach that top level. Chart 1 below analyzes the starting salaries for all New Jersey County Correction Facilities.

**CHART NO. 1
STARTING SALARIES**

COUNTY	STARTING SALARY
BURLINGTON CO.	\$25,000
CAMDEN COUNTY	26,476
MERCER COUNTY	22,962
MONMOUTH CO.	27,000
ATLANTIC COUNTY	23,000
OCEAN COUNTY	28,464
SALEM COUNTY	26,000
PASSAIC COUNTY	23,806

SUSSEX COUNTY	31,463
UNION COUNTY	25,500
ESSEX COUNTY	26,000
WARREN COUNTY	25,700
HUNTERDON CO.	28,597
MORRIS COUNTY	27,160
BERGEN COUNTY	24,000
SOMERSET COUNTY	28,796
CUMBERLAND CO.	23,000
GLOUCESTER CO.	26,000
CAPE MAY CO.	23,200
MIDDLESEX COUNTY	25,704
HUDSON COUNTY	24,500
AVERAGE	\$25,825
BURLINGTON COUNTY COMPARED TO AVERAGE	- \$ 825

Chart 1 establishes the poor relative position of the minimum salary in Burlington County. In addition, a Burlington County Officer has to work significantly more years to reach maximum salary than officers in other county correction facilities. Of all 21 county correction facilities only one has as many steps as are found in Burlington County.

CHART NO. 2

COUNTY	YEARS TO MAX
BURLINGTON CO.	12
CAMDEN COUNTY	4
MERCER COUNTY	9
MONMOUTH CO.	11
ATLANTIC COUNTY	7

OCEAN COUNTY	6
SALEM COUNTY	4
PASSAIC COUNTY	11
SUSSEX COUNTY	11
UNION COUNTY	8
ESSEX COUNTY	5
WARREN COUNTY	12
HUNTERDON CO.	N/A
MORRIS COUNTY	9
BERGEN COUNTY	9
SOMERSET COUNTY	9
CUMBERLAND CO.	11
GLOUCESTER CO.	4
CAPE MAY CO.	7
MIDDLESEX COUNTY	6
HUDSON COUNTY	12
AVERAGE	8.35
BURLINGTON COUNTY COMPARED TO AVG.	3.65

The PBA notes that the maximum salary is significantly below average. Chart 3 sets forth the maximum pay rate for correction officers in the 21 New Jersey counties.

CHART NO. 3

COUNTY	TOP STEP
BURLINGTON CO.	\$42,555
CAMDEN COUNTY	49,837
MERCER COUNTY	57,000
MONMOUTH CO.	52,000
ATLANTIC COUNTY	46,500
OCEAN COUNTY	64,700

SALEM COUNTY	34,700
PASSAIC COUNTY	61,856
SUSSEX COUNTY	54,112
UNION COUNTY	58,635
ESSEX COUNTY	52,000
WARREN COUNTY	43,155
HUNTERDON CO.	51,378
MORRIS COUNTY	57,879
BERGEN COUNTY	74,000
SOMERSET COUNTY	51,245
CUMBERLAND CO.	42,000
GLOUCESTER CO.	46,000
CAPE MAY CO.	44,300
MIDDLESEX COUNTY	56,573
HUDSON COUNTY	60,000
AVERAGE	\$52,401
BURLINGTON COUNTY COMPARED TO AVERAGE	- \$9846

Once again Burlington County is not just low, it is almost \$10,000 below average. Only one county in the entire state, rural Salem County, is below the Burlington County Correction Officer. The statistics introduced into the record by the PBA fully support the testimony at hearing by PBA witnesses which establish the direct relationship between the inability to retain employees and the poor compensation program. The PBA points out that there are no offsetting benefits which in any way could balance these compensation inequities. There is no longevity program. There is no annual stipend available for the attainment of a college degree.

Chart 4 reflects some of the top step wage rates among law enforcement personnel who regularly work with the Burlington County Correction Officers.

CHART NO. 4
Samples of Top Step Pay Rates for
Area Law Enforcement Agencies (2001)
Based on Contracts Placed Into Evidence By the PBA

NJ STATE CORRECTION OFFICERS	\$ 57,507
NJ STATE TROOPERS	79,880
FED. BUREAU OF PRISONS	49,605
BURLINGTON PROS. OFFICER (DET. II)	67,626
CAMDEN CO. CORRECTIONS	50,253
MERCER CO. CORRECTIONS	57,386
OCEAN CO. CORRECTIONS	62,350
MT. HOLLY POLICE OFFICERS	55,380
WESTAMPTON POLICE	52,427
BURLINGTON TWP. POLICE	61,558
BURLINGTON CITY POLICE	59,686

The PBA asserts that the above salary data shows why a Burlington County Correction Officer seeking to make a career in law enforcement would have to consider moving on to another law enforcement agency.

The PBA notes that the evidence in the record shows that the average compensation rates are so low that they qualify many of the bargaining unit members for Federal assistance programs. The United States Government defines those in need and qualifying for federal assistance for many programs to include persons with the average salary paid to the Burlington County Correction Officer. P-6 is a booklet graphically depicting several of these programs.

P-11 is average wage income status WIC eligibility, free/reduced school lunch eligibility, Section 8 one person requirements for assistance, Section 8 two person

requirements for assistance, Section 8 three person requirements for assistance, and earned income credit eligibility. The PBA submits that this is related to the County's inability to retain employees. The PBA points out that the same shortfalls from average and qualifications for federal assistance do not plague other types of Burlington County employees. The PBA contends that the Correction Officers appear to be bearing the brunt of the wage shortfalls. The PBA reiterates that all employer witnesses agreed with the PBA's premise that the inability to retain skilled and trained employees was the key problem in delivering the essential public service provided by this agency.

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

Private Sector Comparisons

The PBA contends that due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison to private sector employees as compared to police officers must result in a strong justification for significantly higher compensation to be paid to police officers. In a recent decision, well known Interest Arbitrator Carl Kurtzman considered this subject of private sector comparisons and wrote as follows:

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

The PBA asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that

of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Once again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of pension in the law enforcement community after age 35. Police officers may not take their skills and market them in other states as one may market one's own personal skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

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

1. The Federal Fair Labor Standards Act, 29 USCA sect.201, et seq applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7 day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, et seq does not apply to the employment relationship between a police officer and the officer's public employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, Perry v. Borough of Swedesboro, 214 NJ Super. 488 (1986).
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority.

NJSA 40A:14-118. There is no such statute covering private employment in New Jersey.

4. NJS 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, NJS 40A:14-122. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under 40A:14-122.2. There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be resident of the State of New Jersey, NJS 40A:14-122.8. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, 40A:14-127.1. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, NJS 40A:14-127.3. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage NJS 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency". NJS 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.

11. NJS 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65 year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, NJS 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

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

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

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial employer might move that plant to a another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

The PBA contends that local comparisons are more relevant with police wages. These types of issues were considered in the recent decision issued by the well known arbitrator William Weinberg in the Village of Ridgewood case.

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

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

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be

considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g,(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

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

and most important public franchise. The police officer should be considered on a higher wage plane than private employment generally.

Stipulations of the Parties

The PBA notes that the stipulations entered into the record by the parties at hearing were essentially procedural in nature and therefore not likely to be determinative of the key issues in this case. Both parties have submitted four-year proposals for the Arbitrator's consideration. This appears to be a stipulation as to the duration of the new CBA.

Lawful Authority of the Employer

The PBA asserts that an analysis of this case presents no issue of the employer's ability to comply with the statute. The employer raises no ability to pay argument.

With the County budget the cap is on the levy. This county has no cap problem. The cap banking process has provided even more flexibility to the issue of the cap law calculation for Burlington County. For example, the cap bank available as a result of the 1999 cap calculation was 3.2 million dollars. Once again in 2000 there was a cap bank carry forward for future use of 1.6 million. There is a strong history of cap banking and under-utilization of cap authority.

For the most recent budget in evidence, 2001, utilizing the cap formula there was 124 million dollars available under the cap. The adopted budget utilized only \$115 million dollars. The resulting cap was the highest of all year's sampled, 9 million dollars. The trend is clear. Notwithstanding the stipulation of the employer, there is certainly no ability to pay argument affected by the New Jersey Cap Law.

Impact on the Residents and Tax Payers

Given the fact that the employer advances no ability to pay argument, one might be tempted to not address this issue under the Act. The PBA believes however that its case is strong in this area and in fact an award of the PBA's last offer position will actually be

favorable to the public interest. Exhibit P-3 establishes that the approximate cost to train a new officer is just over \$8,261. Exhibit P-2, earlier analyzed, establishes that since the start of the last contract only approximately 50 of 150 persons hired remain. Using simple arithmetic, the result of the employer's inability to retain new officers has cost the public close to a million dollars. Some of the employees who left had several years of experience with additional training, another type of cost to the employer. If this employer has lost close to a million dollars under its current compensation program, the facts speak for themselves. Something has to be changed. The public interest cannot be properly fiscally served by this circumstance and the safety of the officers, public and inmates generally, cannot be so provided. Change is essential.

Burlington County itself is a wealthy county with an exceptional growth rate and extremely low taxes. Some general observations of the Burlington County fiscal situation are in order:

- The results of operation for the budget year 2000 were \$11,639,385. This establishes excellent flexibility. This is an important concept because it indicates the amount of surplus generated during the year. Conceptually it gathers or summarizes the closing entries to operations of the various holding accounts. (Source: AFS, Sheet 19, P-39)
- Budget revenues realized substantially exceeded budget revenues anticipated. For the year 2000 \$162,928,746 were anticipated. The amount realized was \$163,667,627. This results in an excess of realized amount over anticipated amount in the sum of \$738,881. (Source: AFS, P-39)
- The unexpended balance of appropriation reserves canceled in 2000 from the year 1999 was \$5,317,867. Over 5 million is left over in the budget. (Source: AFS, Sheet 19, P-39)
- The fund balances, current fund, over the last 5 years had significantly improved. The fund balance in 2000 was 19.4 million dollars. This is a result of a steady increase from 1996 when it was only 13 million dollars. The amount utilized in 2000 was only 11.3 million dollars. This represents a utilization rate of only 58.1%. This is an excellent fiscal position. Surplus continues to grow. (Source: 2000 Report of Audit, P-40)

- The County Tax Rate has either remained the same or dropped in each of the last 5 years.

1996 - .4938
 1997 - .4938
 1998 - .4937
 1999 - .4928
 2000 - .4928

This is an outstanding situation. There's been a flat tax rate for the last 5 years. (Source: 2000 Report of Audit, P-40)

- Notwithstanding the flat tax rate, the tax levy has continued to grow.

2000 - \$110,750,000.
 1999 - \$106,980,000.
 1998 - \$104,730,000.
 1997 - \$100,749,500.
 1996 - \$99,098,000.

This continuing levy increase notwithstanding a flat tax rate clearly indicates strong ratable growth in Burlington County. It has sustained long term growth. As the proofs indicated, it is continuing. (Source: 2000 Report of Audit, P-40)

- The assessed values continue to grow in Burlington County.

2000 - 21.4 billion
 1999 - 20.6 billion
 1998 - 20.1 billion
 1997 - 19.7 billion
 1996 - 19.4 billion

Clearly established is the fact that the county's assets are continuing to increase. (Source: 2000 Report of Audit, P-40)

- The value of a single tax point is \$2,139,060. (Source: 2000 Report of Audit, P-40)
- The County of Burlington has only marginally touched its borrowing power. It is well below the debt limit. On an equalized valuation basis the County has the ability to borrow up to \$434,559,811. The net debt is close to half that amount of \$256,829,252. The PBA is certainly not suggesting that the county borrow's the pay for a wage increase. Rather the PBA indicates the strong fiscal picture of this public entity. ((Source: 2000 Report of Audit, P-40)
- The credit rating of the County of Burlington under the Moody's evaluation system is AA.

- The cash balances as of December 31, 2000 are substantial. As of that date the current fund had 34.9 million dollars. The capital fund had 22.1 million dollars. The interest on investments was \$3,124,519. These factors once again support the premise of a strong fiscal picture. (Source: 2000 AFS, Sheet 9, P-39)

The PBA points out that, in addition to the fiscal points raised above, the County was also the beneficiary of the abatement legislation for pension payments. As result of Senate Bill S-1961, counties and municipalities around the State received substantial abatements in pension obligations. P-34 in evidence is a copy of the PFRS employer contribution savings resulting from the legislation indicated. The savings in Burlington County were annually \$722,510. The largest single grouping of law enforcement personnel at the County level is the Correction Officers. This bargaining unit should properly lay claim to a significant portion of said reduction in employer pension contribution. Such saving is properly attributable to the cost calculations in this case.

The cost of an employee base wage point for the entire bargaining unit has an approximate value of \$70,400. This is calculated by multiplying the actual census of correction officers (P-1) by the average pay rate which was established at hearing and in the proofs of \$31,712. The gross cost of base wage is \$7,040,064. The single base wage point of \$70,400 has virtually no expanders on it. There is no longevity program at this workplace. There are no differentials based upon percentage of income such as night differential, shift differential, etc.

The PBA suggests that an interesting comparison is made if one looks at the sole component of savings by the employer by virtue of the pension abatement legislation, S-1961, of \$722,510. This single savings, if applied to this bargaining unit alone, would result in a 10.3% savings converted to total bargaining unit base wage percentage points. The costs of recruitment and replacement of employees as was analyzed at over \$800,000 which

converts in base wage percentage points to 11.8 percentage points. In other words, the simple up front obvious savings in a couple of clear and well defined areas provides significant source money for funding of an appropriate base wage program.

The PBA maintains that, not only does the County have no ability to pay argument, as was properly stipulated to by County Labor Counsel, but indeed the County has the assets to do even more than the PBA has requested.

The Cost of Living

The PBA contends that an analysis of this factor provides additional support for its position. P-35 is an Exhibit prepared and dated September 26, 2001 by the New Jersey Public Employment Relations Commission. Two key points are made.

First, on sheet 2 the local government averages exceed the average pay rates for these employees. Substantial short fall in the annual average wage comparisons are clear. The next sheet is captioned "Private Sector Average Annual Wages for Jobs Covered by Unemployment Insurance by County 1999 and 2000". Burlington County shows average wages of \$37,337. Once again this is approximately 20% higher than these Correction Officers are paid on average in Burlington County. A percentage of change from 2000 over 1999 is again reflected by the same PERC figures for Burlington County on this same sheet at 4.9%. The PBA asserts that this data clearly shows that the Correction Officers are underpaid. The PBA contends that even if average percentage increases are applied to the current pay rates the short fall would increase. The PBA submits that average salary increases would only exacerbate the unacceptable short fall conditions which currently exist. The PBA contends that wage revision is in order and compensation revision is essential. This situation does not call for a simple wage increase.

Continuity and Stability of Employment

The PBA maintains that private sector concepts of area standards and prevailing wages clearly are key factors in an evaluation of continuity and stability of employment and heavily supportive of its position. The PBA submits that Burlington County Correction Officers are paid so poorly that they cannot stay on the job even when they want to. The PBA contends that Correction Officers are forced off of the job here. The choices appear at present at least to be clear; one either stays on the job and qualifies for Federal Assistance or one moves on to other employment. The PBA contends that the public is not well served by such a program. This is essential public service. These people are doing a very important job. There is measure of danger and safety risk to the Correction Officers, the general public and the inmates.

The PBA submits that the County's response to this situation is to seek a series of completely unacceptable and totally unsupported in the record concessions. The PBA argues that these grossly underpaid employees who are performing essential public services, in a difficult work environment, are being called upon by the County to give up some of that small bit of compensation that they currently receive. The PBA contends that there is no justification whatsoever to take any benefit or part of any benefit from these employees. The PBA submits that the County has not made a case for such a change and in fact, cannot make a case for such change based on the evidence in the record.

The Warden testified that he would like to do away with certain seniority related bid procedures. The PBA submits that being able to enjoy seniority-based work selection is an important benefit that needs to be retained. The PBA maintains that the job is getting done and no case was made by the County that the job would be done better if the County's reduction in benefit proposal is awarded. One may speculate that the employer wants to

open up some preferred shifts to new employees in hopes of helping retain the new employees. That is flawed logic. The employees, to be kept on the job and retained, have to be properly paid. Letting them get a slight bit of benefit by a preferred shift is not the answer. Those few employees who do stay should be encouraged to continue and should be provided with additional incentives. There is no longevity. There is no senior officer differential. There are only a few opportunities which occasionally present themselves for promotion. What is there then? The PBA contends that the only answer is an occasional opportunity to bid for a better shift. The bidding procedure has been in place for decades. It was described on rebuttal by PBA witnesses as one of the very few things that encourages a person to stay. The PBA contends that if the employer were to prevail on taking that benefit away then there is even less of an incentive to stay. At least now a Correction Officer with a few years experience can bid into a shift which will let said officer spend a little bit more time with his family or work the essential second job. Now the County wants to take that away. The PBA asserts that this is an unacceptable proposal and is not supported in the record by any creditable facts. In fact, to the contrary, the PBA contends that the Warden seemed a bit confused himself on cross examination when the County team expected him to carry the ball on this issue. The Warden, for example, admitted to the link between a no bid system and the perception of favoritism. The comparisons that the County offered to make simply didn't hold up. The other counties have different types of systems of supervision, (for example direct supervision versus indirect supervision) as well as numerous other distinctions. The PBA submits that the fiscal changes to take away benefits are inexcusable here and are at cross purposes with the public interest and directly opposite to criteria established under the Act.

The PBA asks that I reject the County's health benefits proposal on substantive and procedural grounds.¹ I will review the PBA's substantive arguments in this section. First, the PBA contends that it is plainly and simply a bad idea. The PBA contends that the County offers only its own rough draft analysis of current versus proposed plans. No plan documents were presented. No expert testimony was presented. No specifics other than the County's own "thumb nail" sketch type analysis is offered. Simply stated, this isn't enough.

The PBA contends that under the Act an arbitrator is required to assess the value of the various changes. The PBA submits that no such information was offered by the County which could lead to such analysis and the costing out of its proposal. The PBA contends that Interest Arbitration must not be perceived as a "free shot" for an employer to take an opportunistic crack at long standing employee benefits. If there's a problem then the burden must be on the party advancing the issue to go forward with credible proofs that support the proposition. The PBA asserts that the County's health care proposal does not meet those standards and is therefore not awardable.

The PBA maintains that the County, with respect to its other issues, has not met its burden of proof. In order to be considered much more is required. The PBA contends that the employee compensation plan should be the focus of a proper resolution in this case. If the County is not able to turn around the trend and start retaining employees then the provision of this essential public service will be further damaged. There are, of course, many benefits and nuances to the employment relationship which will be appropriate for future employer-employee relations and negotiations.

The PBA asserts that the major issue in this matter is employee retention and proper compensation and asks that its proposals be awarded.

¹The PBA's procedural arguments regarding the County's health benefits proposal will be discussed and analyzed in a later section of this award.

Arguments of the County

The County agrees with the PBA that salaries are a major factor in employee turnover (as an issue that is costly to the County). The County also contends that several other employment conditions also drive new employees from employment. These other conditions include work schedules, overtime selection, job assignments, and vacations.

The County cites the testimony of Augustus Mosca, the County's chief negotiator. Mosca has served as the chief County negotiator for more than fifteen years. Mosca testified concerning the impact of the County's economic proposals on the bargaining unit. Mosca examined the County's proposal to create a two-tiered salary system.

The first tier, for experienced officers, was designed to protect more senior employees' reasonable expectations of achieving the top step and receiving the benefit of the salary "bubble". For Guide A, Mosca testified that it applies to officers hired prior to 1991. The value of the guide to the 77 affected officers is \$784,332 for four years, presenting a total salary compensation increase of 27%. Mosca also noted that officers at the top salary step have historically received approximately a two to three percent annual increase; the County's proposal continues this practice.

Mosca testified that the second tier was designed for newer officers (those hired from 1991 on forward) to cut down the number of steps to the maximum salary, and to provide for larger raises at the bottom of the scale which has historically been depressed. Mosca verified that Guide B reduces the number of salary steps from 12 to 9, moving employees through the system more rapidly. Accounting for 140 officers, the value of the salary guide over the course of four years is \$1,369,687, representing a total compensation increase of 37%. Mosca noted that while the PBA demanded a 6.0% increase per year, the County's proposal averages 5.62% annually.

Mosca explained the effect of the County's present salary offer to other forms of economic compensation. Exhibit C-2 was offered to show the impact upon the average hourly rate, while C-5 demonstrates the increase in vacation costs per year and C-6 displays the effect upon the value of employees' holidays. Mosca acknowledged that the County had recognized and attempted to rectify the high employee turnover during negotiations over the expired contract. Mosca observed that the County offered the correction officers unit \$264,000 more than the PBA's previous salary proposal for 1998 to 2000. (C-7). The PBA's salary proposal for 1998 to 2002 was eventually accepted by the County.

Mosca offered documentation comparing the salary increases of other County unions for years 2001 and 2002 as a point of reference for the present proceeding. (C-3, C-4). Mosca discussed the County's reasons for implementing a revised health benefits plan described in C-11. Mosca disclosed that the revised language is intended to bring the correction officers unit in line with what every other County union (save superior correction officers) receives, including managerial, confidential and executive employees. Mosca also explained the County's position regarding its offer to modestly increase the uniform allowance. The uniform expense figures include an estimated cost for replacing the shank-proof vests in 2004.

Warden Juel E. Cole was the County's second witness. Cole has served as Warden for more than four years. Cole testified regarding the County's non-economic proposals, addressing substantial operating issues confronted due to the recurring loss of employees. Warden Cole gave a general overview of the number of inmates maintained by the Corrections Department as well as the number of staff, number of shifts per day, and approximate number of officers needed to staff each facility by shift. Cole focused on a number of specific operational issues which impact on his ability to supervise his department and which concurrently cause additional unfavorable working conditions for younger officers.

The first operational issue is the post-bidding system where officers select where they want to work in either jail.² Cole explained that for each facility and shift, approximately 80% of the work assignments are locked up by officers holding bidded posts. The practical impact is that more experienced correction officers work in isolated control booths or positions with limited inmate contact leaving the newest and most inexperienced officers to work the “more difficult” assignments on the housing tiers or those assignments with regular inmate contact. Cole noted that the inversion between seniority/experience and job difficulty is adverse to institutional security. Cole testified that the County’s proposal preserves a limited number of bidded positions on each shift for senior officers while allowing his supervisors to assign remaining experienced officers to shared tasks.

The second operational issue concerns contractual overtime provisions. Cole testified that the greatest volume of overtime is placed upon the most junior officers who find themselves stuck on a regular basis. Overtime is created by sick call outs, vacation leaves and contractual leaves of absence. (C-15 to C-19). Cole notes that overtime is greater during the summer months due to the number of officers taking vacation during that season. Cole testified that the County’s proposal for overtime distributes the work equitably, relieving a portion of the constant burden placed upon newer employees. Cole also pointed out that the County’s proposal does not affect senior officers’ preferences to work voluntary overtime if desired, recognizing that many senior officers do work great quantities of overtime. The Warden also verified that in year 2000, he requested and received approval for ten additional correction officer positions in hopes of reducing overtime, but that despite the additional slots, overtime did not substantially decrease in 2001.

The third operational issue concerns summer vacation schedules. Cole explained that newer officers’ poor working conditions are aggravated by the fact that most new employees

² The Warden clarified that the County’s proposal on post bidding is distinct from shift bidding. The County’s proposal is not intended to interfere with employees’ seniority rights to select preferable shifts.

do not have an opportunity for summer vacations, the most sought-after vacation season, when the weather in Burlington County (and the State) is the mildest.³ Cole testified that summer vacations are selected in December of the preceding year based upon seniority. Cole noted that junior employees, as a general rule, were not able to enjoy summer vacation time in 2001. The County's proposal limits the maximum number of vacation days between May and September to 10 days per officer thus affording junior officers the opportunity to request prime vacation time.

The fourth operational issue concerns excessive leaves of absence. This is currently permitted by the CBA impeding staffing and increasing the volume of daily overtime. Cole testified that the number of days and hours lost by employees taking contractual leave (only those taking in excess of the twelve weeks permitted under federal or State law) at approximately 1,000 officer days per year. (C-18). Cole explained that those absences in most cases must be filled by overtime which is regularly borne by junior officers. The County proposal limits family and medical leaves of absence to twelve weeks as permitted under federal and State law.

Cole testified regarding the proposed changes to the provisions regarding work rules. He requested the codification of a grievance arbitration award clarifying contractual terms related to seniority and minimum qualifications to work bidded posts. (C-14). Cole testified about his need for revised drug testing provisions.⁴ Cole examined the importance of having effective testing mechanisms to protect the safety of the institution and inmates, the integrity of the law enforcement position, and to reflect the standards generally prevalent in the law enforcement community (as pronounced by the NJ Attorney General's guidelines).

³ This working condition is compounded by the fact that junior officers' regular work schedules generally have no parts of the weekends off (e.g., Monday/Tuesday off or Tuesday/Wednesday off, etc.).

⁴ Although the County maintains that it has a non-negotiable managerial prerogative to implement the revised drug testing policy submitted with its final proposal, the County is requesting the abolition of contractual language which conflicts with the terms of that policy.

Cole expressed his confidence that the proposed non-economic changes, when combined with the County's salary proposals, will positively impact the entire unit, improving the security of the institution and the working conditions of newer employees.

Stipulations of the Parties

The County agrees with the PBA that Correction Officers' salaries need improvement, and that recent (e.g., 1998 to the present) poor salaries coupled with a lengthy salary step system are a major factor in the unit's turnover rate. The consensus that the present salary guide is ineffective as a means of retaining employees is supported by the testimony of Officer Scott, Management Specialist Mosca, and Warden Cole.⁵ Through the testimony of Officer Scott, Warden Cole and union Exhibit P-2, there is ample support that the turnover rate is high and that employees leave the Burlington County Corrections Department due in part to this circumstance.

The County notes that an implied stipulation is its proposal to modestly increase the annual uniform allowance for the entire unit, and to change the date on which this economic benefit is to be paid. The PBA neither submitted a counterproposal nor presented testimony objecting to this topic. Mosca's unchallenged testimony explained the increases to be borne by the County along with the anticipation of a 2004 spike in uniform expenses due to replacing shank proof vests. The County urges that I award this provision in its entirety, and to take the benefits of this provision (as demonstrated in Exhibit C-8) into account when fashioning a salary award.

The County further notes that the parties agree on the four-year term of the new CBA. A final stipulation is that the County has the financial ability to fund a reasonable interest arbitration award in its favor. On the second day of hearing, the County represented that it does have the financial capability to fund an interest arbitration award under the

⁵ The County maintains that other factors substantially contribute to the high turnover rate for newer employees which will be discussed under the criteria for interest and welfare of the public.

proposals it presented. In this regard, the parties agree to the lawful authority of Burlington County as a participant and funding source.

Lawful Authority of the Employer

The County submits that P-37 and P-38 show that the County has some flexibility in calendar year 2001 to finance an award of retroactive economic benefits including salary payments estimated at \$761,700 (C-1), increased costs for vacation leave (C-5), additional expenses for holidays (C-6), greater uniform maintenance payments (C-8) and presumptively the cumulative effect on overtime costs when the hourly rate in C-2 is meshed with the overtime data in C-15. Arguably, the County's prudence in maintaining a cushion in its budget to control costs lends credence to this proposition.

Notwithstanding the County's consistency in maintaining or decreasing the County tax rate, P-37 and P-38 indicate that the cap rate for 2000 was a meager 2.5% for calendar year 2000 and just 1.5% for 2001. Within these cap constraints, the appropriation for the Corrections Department in 2000 was \$12,541,047 of which \$10,627,009 or 84.74% consumed salaries; in 2001 the sum was \$14,034,606 for which \$10,962,653 or 78.11% represented salaries. While recognizing no income or revenue from this aspect of government service, nevertheless, the costs to the County to maintain and operate custodial facilities continue to escalate. While the County may be prudent in managing its overall budget and providing many essential and beneficial services, the County does not agree that it has lawful authority to implement the PBA's economic proposals. Because the union has consistently objected to defining the costs of its own proposal, any assertion by the PBA that the County has the lawful authority to implement its economic package is fatally flawed for failure to show due diligence.

Financial Impact upon the Governing Body

In the summary section of the 2000 budget (labeled "Explanatory Statement, Budget Message"), the Freeholder Board notes a 3.6% increase for salaries and wages; in the 2001

budget, that amount escalates to 4.6%. Although an award of the County's final economic proposals or a reasonable variation thereto may not demonstrably change the prior years' appropriations, the County asks that I consider its steadfast mission of providing the most efficient governmental services at the least cost to the taxpayers. This is reflected by a per capita tax rate of \$357 for 2000 and \$376 for 2001 and also by an average tax assessment of \$621 for 2000 and \$610 for 2001 compared to average home values of \$126,012 and \$125,580 respectively.

The annual budget statements for both years expected that regular services would continue to be sustained and enhanced. With respect to future services, the budgets anticipated developing a new County-wide parks system, expanding the 9-1-1 emergency communications network, making drastic improvements to roads and bridges, providing more funds for education, and pursuing both economic development and open space/farmland preservation. These plans for additional public services and/or augmentation of existing services were made within the constraints of the preexisting financial and budgetary considerations.

Although the County's economic proposals were made with authorization from the Freeholder Board, and hence there is no dispute about the County's ability to budget the necessary funds, the arbitrator should be wary of PBA's representations regarding the financial impact of its own proposal as the record in this hearing is barren of any concrete figures regarding the boundaries of PBA's proposals. While essential and other beneficial services will not be impacted by an award in the vicinity of the total figures proposed by the County, the PBA has not and cannot demonstrate no adverse financial impact for an economic proposal which is not subject to calculation.

Cost of Living

The County points out that neither party introduced any financial or statistical data with respect to this factor. The County asks that I take, "arbitral notice" of the fact that the cost of living in 2000 and 2001 increased 4.1% and 2.1% respectively.

The County acknowledges that both parties' entire economic proposals far exceed the cost of living increases for 2000 and 2001. The County also submits that the present economic conditions constituting the factors that determine changes in the cost of living index will likely continue to progress slowly. The County asserts that its economic proposal is finite and is closer to the CPI index than the PBA's undelineated proposal.

The County maintains that its proposal for the maximum salary step for each year of the new CBA reflects fair and reasonable increases that are comparable and will remain comparable to the annual anticipated increases in the cost of living.

Interest and welfare of the public

The County submits that it is undisputed that the operation of correctional facilities is an essential service provided to the public. As testified to by Warden Cole, this service occurs on a daily basis between two facilities which contain an aggregate average population of 450 inmates per day. What is not contested is the value of the work efforts the correction officers unit contributes to the stability of this service. In other words, the interest and welfare of the public are served everyday by the correction officers unit; the work that the unit performs is invaluable to protecting the public's interests while criminal charges against detainees are processed.

Generally, the interests and welfare of the public are served by having a properly paid police force. The County submits that a determination in favor of its noneconomic proposals is also in the interests and welfare of the public.

The County acknowledges the arbitral principal that a party seeking to change a condition of employment bears the burden of showing why such a change is necessary. The County maintains Warden Cole's testimony meets this burden of proof for two broad topics: the working conditions of newer employees and the overall efficiency and safety of jail operations. These two topics are complimentary because the effects of the County's proposals are intended to benefit each broad topic. If the working conditions of newer employees improve, the overall efficiency and safety of the jail improves. If the overall efficiency and safety of the jail improves, then the working condition of all employees should improve as well.

With respect to the working conditions of newer employees, the County submits that the public interest is best served by maintaining a corrections department with fresh (rested) employees. In C-17, Warden Cole verified the overtime hours worked by each officer in the applicable unit. The substance of the Warden's testimony is that while many senior officers choose to and in fact work many overtime hours, newer employees bear the brunt of overtime because the compulsory system requires that junior officers always work unwanted ("stuck") overtime. The Warden explained that the County's payroll system does not distinguish between voluntary and involuntary overtime. The Warden testified that many of the same newer officers work daily overtime on a repetitive basis because Article XII presents an inequitable system. He noted that C-17 shows that senior officers worked very little overtime in 2001 while other junior officers, hire in 2001 with four weeks of on-the-job training, worked several hundred overtime hours in a time period of less than six months.

The County cites the proposed changes to two articles that contribute excessively (and perhaps unnecessarily) to mandatory overtime (Articles VII and XXXII). In C-18, the Warden explained that approximately one thousand (1,000) working *days* per year are lost due to excessive leaves of absence, e.g., leaves greater than the twelve weeks contemplated

by federal or state law. These leaves of absence create overtime slots on a consistent and recurring basis because the absent employees are carried on the payroll records and counted in the total number of correction officer positions allotted by the Freeholder Board. The Warden testified that scheduling slots generated by leaves of absence are generally filled by the provisions of Article XII, "Overtime".

The County contends that most newer officers are precluded from having any semblance of a summer vacation. Warden Cole verified that prime vacation time, selected in the preceding December, is absorbed by senior officers, blocking for the most part junior officers' access to the summer months. Warden Cole noted the ancillary effect of several officers taking summer vacations: summer vacations increase daily overtime, which by default is borne by junior officers.⁶

The County maintains that it has met its burden of proof that a more equitable system of overtime, limiting summer vacations to ten days per officer and curbing excessive leaves of absence are needed changes to improve the morale and physical well being of newer officers.

The County cites the testimony of Warden Cole that in order to improve the safety and supervision of the facilities, the Jail must have the ability to limit the number of bidded posts to a manageable proportion. Presently, 140 positions between three shifts and two facilities are bidded posts. (C-12). Warden Cole explained his proposal regarding curbing the number of selected posts to 10 per facility per shift (60 total) as an effort to match qualified employees to job assignments. That this factor weighs heavily in the County's

⁶ Warden Cole's testimony also revealed that newer officers often do not enjoy any part of the weekend with respect to their regular days off. Also, junior officers work the less desirable shifts. Generally senior officers, he testified, have the choice days off -- either Friday/Saturday or Sunday/Monday and the choice shifts (e.g. 7:00 AM to 3:30 PM). These circumstances, according to the Warden, are also aggravating facts of life for newer officers which the arbitrator should consider when considering the County's arguments to change a few specific non-economic terms of employment to give newer employees some relief or incentive to remain correction officers.

favor as a proposal in the interests and welfare of the public is shown by the testimony of PBA witness, Officer Scott. Officer Scott testified that newer officers are placed in assignments, such as on housing tiers, where their presence causes additional pressure to experienced officers to make up for or watch out for likely mistakes on the part of newer officers. Warden Cole expanded on this theme in discussing the brutal stabbing that took place on a housing tier last year.(P-8). The brutal stabbing of a social worker took place in May of 2001 on a housing tier staffed by two junior officers having maybe one year experience each. Although the Warden indicated that the newer officers did the best job they could under the circumstances, nevertheless the Warden had no managerial authority to staff the housing tier with a combination of inexperienced and experienced officers. Because experienced officers can lock into bidded posts, management is contractually obligated to assign experienced officers to less difficult assignments, leaving inexperienced officers on housing tiers with maximum inmate contact.

The County submits that Warden Cole's testimony reveals the anomaly of the correction officers unit. Those officers with the most job benefits, salary and seniority work the least difficult jobs. Management is handcuffed from improving operational security by the terms of the contract. The converse of the anomaly is also demonstrated by Warden Cole's testimony. Those officers with the least job benefits and lowest salary work the most difficult job assignments and often do so twice per day as a result of compulsory overtime.

In contrast to the County's efforts to improve working conditions, other than the topic of salary, the PBA's proposal does nothing to improve the lot of half of its members. Rather, the PBA's proposals if granted would aggravate the lot of newer workers. First, the PBA seeks to abolish the limitations imposed upon summer vacations making it even more impossible for newer employees to enjoy any piece of summer. Second, while the PBA proposes to remedy overtime issues only by requiring the County to pay more money, it makes no attempt to ease the burdens faced by newer members caused by the compulsory

overtime system. Paying people more money to work overtime they don't want does not solve the problem.

The County disputes the PBA's anticipated contention that I should reject the County's system because it erodes seniority expectations that have developed over the course of several agreements. The County disagrees with this assertion because the County's proposals have been crafted to strike a medium between seniority and function. The County asserts that its overtime proposal is not an attempt to remove senior officer's ability to apply for voluntary overtime. Senior officers who wish to continue working large quantities of overtime may still elect to do so under the County's proposal. On the issue of bidded posts, the County still proposes ten bidded posts per shift per facility, meaning that senior officers will still be able to select among sixty fixed positions.⁷

The County contends that the public interest and welfare is best served by awarding its proposals regarding overtime, seniority, vacation, work schedules and family/medical leave. The County contends that its proposals are likely to improve the working conditions of all officers, especially newer officers. The quality of the services being performed will improve with increased officer morale. Additionally, matching experienced officers to job assignments improves the operational security of the department's two facilities. Finally, the County maintains that its proposals respect the seniority rights earned by senior officers by maintaining limited but generous benefits for these officers.

Overall Compensation

In determining which party submitted a more reasonable award, the arbitrator must determine the value of each party's total compensation package. The County submits that its proposal is subject to such a calculation while the PBA's proposal is not subject to such

⁷ The County also requests that the arbitrator award language modifications to Article XIII (Seniority) and Article XVII (Work Schedule) to codify the results of Arbitrator Barbara Zausner's October 12, 2000 grievance award presented in the record at Exhibit C-14.

calculation. The County contends that I am constrained in conducting a statutory analysis of the PBA's final proposal under most, if not all, of the statutory criteria listed in N.J.S.A. 34:13A-16g.

The County's salary proposal was presented through the testimony of Mosca. The cost in 2001 is \$7,358,355 and \$8,750,674 in 2004. (C-1). In C-5, the County predicts that the expenses for vacation leave, at an average of fifteen vacation days per year,⁸ will rise from \$422,933 for 2001 to \$502,789 for 2004. The cost of holidays will also increase under the County's proposal from \$394,696 in the first year to \$469,376 in the final year. (C-6). The County submits that paid sick time, at a maximum, could equal the costs predicted for vacation leave in C-5, although C-16 demonstrates that the average number of sick leave days has been a few days less than the maximum permitted under Article V. Also a part of the County's costs are uniform maintenance payments to be made annually (C-8) and health benefits. Recognizing that the use of sick leave time and the amount of overtime vary by year, and using \$1,416,525 as the average annual overtime expenditure,⁹ and 12.4 as the average annual number of sick days used (average of C-16), the County estimates that the costs of its basic economic proposal (inclusive of salary, vacation, holidays, overtime and sick leave only) will be \$9,592,509 for 2001 and \$11,139,364 for 2004.¹⁰ The 2001 economic package, inclusive of the benefits described, is approximately \$44,205 per officer in 2001 and \$51,333 in 2004, exclusive of health benefits, uniform maintenance allowance, protective vests, pension benefits (other required employer contributions such as social security, FICA, etc.), training costs, convention leaves/paid union time and other payments to be made to unit members.

⁸ Under Article XI, new employees receive 12 vacation days per year while employees with 20 years earn 25 vacation days per year.

⁹ Calculated by taking the yearly totals in Exhibit C-15 and dividing by the number of years.

¹⁰ These calculations assume that overtime will remain consistent with the prior average despite a sharp salary spike; sick leave time was computed in accordance with the methods used in Exhibits C-5 and C-6: 2001 was calculated to cost \$349,589 while 2004 was calculated to cost \$415,772.

The County provided data showing the history of the benefits received by the Correction Officers bargaining unit and how such compare to the actual costs borne by all other County employee units including the Sheriff's Officers. (C-11). Mosca explained that the County's proposal is intended to make the union's health benefits consistent with all other County union and non-union personnel. Mosca revealed that the health benefits proposal reflects changes to the officers' co-payments to the level presently being paid by non-correctional employees, and that this unit has had the benefit of low co-payments since 1993 while the costs of health care have risen since 1993. The County notes that its proposed changes do not affect the type or level of health benefits that officers presently receive. The County asks that I take notice of the breadth of health benefits offered by the County in considering the overall compensation package earned or to be earned by the Correction Officers bargaining unit.

The County submits that it is committed to providing unit members with a comprehensive and rewarding benefits package for their service as uniformed law enforcement officers. The County asserts that its proposals are the most reasonable since there is no mechanism to determine the PBA's present economic proposals.

Continuity and stability of employment

The County maintains that its non-economic proposals as discussed under the *interest and welfare of the public* arguments are also applicable to this factor. The County reiterates its position that newer officers will be encouraged to retain employment if their wages are improved as well as other working conditions — such as a revised overtime system, more opportunity for summer vacation and the opportunity to work a variety of job assignments that are presently not available due to bids.

The County acknowledges, as stipulated, that both parties agreed that the salary system needs wholesale improvement. One facet of improvement is the reduction of the

number of salary steps it takes an officer to reach the maximum salary. The County submits that its two tiered salary system promotes the goals of the *continuity and stability of employment* factor. The County points out that approximately half of the unit has nine years or greater experience. (C-1). The County maintains that these employees are likely to continue their employment with the County notwithstanding my decision on the economic issues in dispute.

The County, citing Mosca's testimony, asserts that the two-tiered salary system adequately protects the reasonable expectations of the entire correction officers unit. Salary Guide 'A' for experienced officers allows those officers to complete the salary scheme to which they have become accustomed by way of prior contracts. It also includes the one-time jump ("bubble") that officers will earn when moving to the final step of the pay scale. Over the course of four years, Salary Guide 'A' delivers a 27% increase to the employees affected by the guide. The salary system delivers the final salary steps these employees reasonably expected to gain in their employment with Burlington County. It also provides for a 3% annual increase to maximum. The County contends that this is fiscally reasonable since it reflects the historical practice of the parties as verified by Mosca's testimony. The 3% annual supplements to the maximum salary are greater than the gains in the expired contract representing the bargaining unit's own salary scheme. The increases to the annual maximum are also reasonable since they exceed the cost of living increases that the unit is likely to face. Finally, the increases are reasonable when compared to the increases in other County law enforcement contracts.

The County contends that its proposed Salary Guide 'B' presents a sound plan for encouraging newer employees to pursue a career with the Burlington County Corrections Department. Salary Guide B reduces the number of steps to maximum salary from twelve to nine. Recognizing that officers move in a diagonal line (over and down) through the

guide, the revised system delivers more equitable steps. The County's guide raises the minimum salary to \$28,000, meaning that within less than two years, an officer will already receive a salary of \$30,000. Over the course of the new CBA, the second-tier guide expects to pay approximately 37% to the eligible officers while providing for fair annual increases.

The County submits that the PBA will likely attack its grouping of officers with differing years of experience as an invalid means of reducing steps. The PBA will likely make such an argument without ever itself having proposed an equitable procedure for eliminating steps. The County urges the arbitrator to reject the PBA's blanket proposals because the PBA's proposals are financially irresponsible. The County submits that the PBA has proposed no solution to the quandary caused by its own 1998 to 2000 salary schedule. Although it seeks to eliminate four steps from the salary scale, its proposal makes no attempt to identify which steps should be eliminated or why. The County submits that the PBA's proposal is indeterminate, providing the arbitrator with no means to calculate whether and how its proposals comply with N.J.S.A. 34:13A-16g.

The County argues that the PBA's 6% salary proposal does not promote continuity and stability of employment. A 6% across-the-board salary proposal does little to rectify the inherent inequities in the lower steps of the PBA's expired salary system. The first eight steps of the PBA's system applicable to officers with 0 to 7 years are separated by a total of just \$6,759 representing an average of only \$966 a step. Applying the PBA's across-the-board 6% adjustment, the average for those eight steps jumps to \$1,023 assuming that none of those steps are cut, compressed, combined or eliminated. Combined with the PBA's position on adverse non-economic topics such as overtime, vacation and bidded posts, and taking into account that junior employees enjoy no weekends off and work the least desirable shifts and assignments, the County asserts that the PBA's bargaining position deters newer employees from pursuing careers in the Burlington County Corrections Department.

**Comparison of wages salaries, hours
and conditions to public and private employment**

Three areas of comparison are listed: private employment in general, public employment in general and public employment within the *same* jurisdiction or similar jurisdictions. The plain language of N.J.S.A. 34:13A-16g.2 differs from all other factors; the law permits the parties to rely upon information outside of what was produced at formal hearings: “provided, however, each party shall have the right to submit *additional* evidence for the arbitrator’s consideration.”

Comparison to Private Employment

The PBA introduced the September 26, 2001 report of the Public Employment Relations Commission regarding compilations of wage data in the private sector for 1999 and 2000. This exhibit, required by law to be published by September 1st of each year (N.J.S.A. 34:13A-16.6), purports to provide a measure of Statewide and county-wide wages subject to a list of 32 exclusions. (P-35).

Examining the report of wages by “major industry division”, the first line indicates that private sector wages were \$40,805 in 1999 and \$43,638 in 2000, a 6.9% increase. Local government wages appear as the last line of the report, just above the State’s total average. The figures for 1999 and 2000, \$41,503 and \$42,612 are believed to be the average wage for municipal employees from Sussex County down to Cape May County and every municipality in between. While wages for the private sector grew 6.9%, wages for federal and State government grew just 3.4%, with local wages growing at just 2.7%.

The County contends that the PBA’s 6% salary proposal apparently seeks to ride the coattails of the private sector which is not constrained to raise revenues by the Local Budget Law or other statutes fixing the fees that local governments can charge for specific services. The County asserts that the PBA’s four-year salary proposal, appears to more than double the going rate of salary increases offered by municipalities.

The second page of the report purports to describe private sector wages classified by county. For Burlington County, the average private sector wages for 1999 and 2000 show an increase of 4.9% from \$35,602 to \$37,337. Again, the County submits that its salary proposals are the more reasonable choice reflecting fair increases that even exceed the percentage increases received by private sector employees.

The County submits that while 4.9% may represent private sector increases in the jurisdiction, the Statewide figures appear to be unnaturally inflated. Comparing both pages of the report, the arbitrator should note disproportionate increases in Hudson, Hunterdon and Morris counties which are almost double the gains by the nearest trailing county (Middlesex - 6.2%). In the eight counties historically considered part of South Jersey (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem), the average wage increase for the private sector was 3.96% for the region. The County submits that its proposal, at an average of 5.62% per year, is closer to the regional wage increases in the private sector, than the PBA's proposal in excess of 6%.

Comparing the wages of the eight South Jersey counties, the average employee in the private sector for the region earned \$31,573 in 2000. Assuming that wages increase at the rate of 3.96% for 2001, the average worker will have earned \$32,823. For 2001, Burlington County's wage proposals intend to pay an average salary rate of \$33,909 representing \$1,086 or 3.3% more than the average private sector regional wage.

Comparison to Public Employment

P-35 provides average wages and salary increases between 1999 and 2000, however PERC's statistics do not differentiate between counties as it does for private industry wages. PERC's documentation does distinguish between wages earned in federal, State and local government service. The salary increases for these sectors were 3.4% for federal and State and just 2.7% for municipal service. The data also suggests an average annual salary for government service irrespective of the types of jobs that are actually performed.

The County cites both specific and general data regarding public employment provided by the U.S. Department of Labor's National Compensation Survey for the Philadelphia-Wilmington-Atlantic City (PA-NJ-DE-MD) region. Two particular surveys provide insight into the present dispute. Those surveys are the January 2000 survey and the December 2000 survey, demonstrating the average wage figures for those two dates in time.¹¹

According to the January 2000 survey (at page 54), the median salary for all types of government service was \$18.86 per hour. Taking this figure and multiplying the same by 261 eight-hour working days yields an average Delaware Valley salary for government service of \$39,379. For the December 2000 survey (at page 49), the hourly median wage increased to \$19.25 per hour, yielding a new average salary of \$40,194. The US Dept. of Labor's statistics include straight wages, cost-of-living adjustments and hazard pay if applicable. The figures exclude premium compensation such as overtime pay, vacation, holidays and tips.

These two surveys also provide median figures for the specific occupation of correctional officer. For the earlier survey, the statistics reflect a median hourly wage of \$16.06 per hour which translates to \$33,533 annually (at page 54). The later survey reflects a decreased median hourly wage to \$15.51 per hour or \$32,385 as of December 2000 (at page 49). Taking these figures at face value for the purposes of examining the parties' proposals, Exhibit C-2 reflects an average salary of \$30,399 for year 2000 with an average hourly wage of \$14.55 as the product of the expired collective bargaining agreement applicable to 217 employees. For 2001, the County's salary proposals expect to yield an average hourly wage of \$16.23, translating to an average officer salary of \$33,909 for that year.

¹¹ The January 2000 survey (Bulletin 3105-11) was published by the US Dept. of Labor in October 2000 while the December 2000 survey (Bulletin 3110-07) was published in September 2001.

The County submits that its salary proposals for 2001 are extremely close to the average Delaware Valley regional wage paid to the corrections industry. Taking an average 2000 hourly wage of \$15.79 ($\$16.06 + \$15.51 / 2$) or \$32,970 and multiplying it by the cost of living adjustment for 2001, the adjusted regional wage for correction officers is expected to be \$16.12 per hour or \$33,479 for 2001. The County's salary proposals for 2001 exceed the anticipated average regional industry salary by \$430 in the County employee's favor. Considering recent annual trends in the CPI, the County expects that its proposed salary increases will far exceed the cost of living adjustments for 2002, 2003 and 2004, placing the present bargaining unit's average annual salary well above the anticipated published median salaries for the future period.

**Comparison of employment in the same
or comparable jurisdictions**

Comparisons within this jurisdiction

In C-3, the County showed the expected wage increases for the seven other County employee unions which represent both law enforcement and civilian personnel in 2001 and 2002. The County paid an average of 4.0% to 4.5% in salary increases during calendar year 2001. The CBA with the Sheriff's Officer's unit provided for salary increases between 2.9% and 7.1%, with an average wage increase of 4.5% for the 41 rank-and-file Sheriff's Officers in 2001. For Superior (Correction) Officers, the unit received wage increases between 2.4% and 11.7% depending upon rank and years of service with an average wage increase of 4.4% for 2001. C-3 (Attachments A and B) show wage increases of 2.9% for Sheriff's Officers, 2.5% for Correction Sergeants and 3% for Correction Lieutenants at maximum.

The County asserts that its salary proposals in this matter substantially exceed the salary increases received by other County employees. The County acknowledges that this is necessary to recruit and retain a stable work force. C-3 shows salary raises of 4.0% to 4.5% in 2002.

The County asserts that its salary proposals in this matter exceed the gains for other Burlington County law enforcement units. The County disputes the PBA's anticipated argument that the Correction Officers' salaries lag behind the total salaries or hourly wages received by County Detectives and Sheriff's Officers. C-4 shows the average salaries of Sheriff's Officers for 2000 and 2001 were \$31,426 and \$31,538. The latter salary figure reflects a substantial decrease in the unit's years of service. The County acknowledges that Sheriff's Officers salaries are based upon a thirty-five hour work week resulting in a higher hourly wage.

The County contends that the qualifications for the position of Sheriff's Officer are not identical to the qualifications for a Correction Officer. First, although the both positions require a high school diploma and completion of a common Civil Service examination, the standards for the Sheriff's Officer position are higher than the standards for Corrections Officers. Second, Sheriff's Officers must complete standard twenty-week agency training similar to municipal police officers. Correction officers receive approximately eight to ten weeks of training at a Correction Officers Training Academy. Sheriff's Officers must remain weapons qualified. Only certain special assignments such as the transportation bid or hospital watch require weapons qualifications for Correction Officers. Finally, Sheriff's Officers jobs are more fluid. Sheriff's Officer can gain employment in any of New Jersey's 500+ municipalities as a police officer. While county Correction Officers move to State Corrections from time to time, the transfer is not lateral; all new State Corrections recruits must attend a State Corrections academy.

Notwithstanding the differences between the two positions, the County asserts that its salary proposals for the Correction Officers unit are far more lucrative for Correction Officers in both 2001 and 2002 than for almost every group of officers. There is one less step in the Correction Officers Salary Guide 'B' with greater salary increases for each move on

the guide. The proposed maximums for Correction Officers for 2001 and 2002 exceed the maximums that Sheriff's Officers could earn even applying off scale increases of \$1,200 per year.

The County acknowledges that rank-and-file County Detectives, holding four different degrees of title, exceed the compensation presently earned by Correction Officers. The County asserts that the qualifications and demands for the position are not similar. As a general practice, County Detectives must hold a four-year college degree to be considered for employment or have significant experience as a municipal police officer. County Detectives must also attend a standard agency training (full police academy) and remain continually qualified to carry weapons. The County also submits that the nature of a County Detective's job is different than that of correction officers.¹² County Detectives are responsible to investigate crimes, apprehend suspects and file criminal charges while County Correction Officers are responsible to maintain those detainees in confined locations while the charges are prosecuted.

The County asserts that its proposals to make the Correction Officers' health benefit package consistent with the remainder of the County, including other County law enforcement units, is reasonable. Undeniably, maintaining a separate health benefits system for 250 or so employees when the other 1,100+ employees use a different system is not model government in regards to administrative efficiency. C-11 shows that the Correction Officers unit is well below the balance of the County for co-payments and fees. The fact that this unit has enjoyed special privileges for a number of years is reflected by the Sheriff's Officers' contract (P-14 at 18-20) and the County Detectives' contract (P-15, at 13-15). Correction Officers have enjoyed lower fees and co-payments than other County law enforcement units since at least 1999,.

¹² This reality is not intended in anyway to denigrate the important public and law enforcement function that correction officers perform on a daily, weekly, monthly and yearly basis.

The PBA contends that the arbitrator should award its 6% across-the-board proposal and reduce steps to pay the Correction Officers what Correction Officers are paid in other county, state, federal or municipal units. The County argues that any analysis that singles out Burlington County Correction Officers from other Burlington County units on the basis of exterior units is patently unfair. The County contends that there is no evidentiary record showing that the qualifications or responsibilities of Corrections Officers are greater or riskier than the responsibilities of other law enforcement units. Also, with an average County proposed salary of \$33,909 in 2001 based upon six years of service, the correction officers unit exceeds the Sheriff's Officer's unit and all CWA Local #1034 employees with an average of nine to ten years service in 2001. (C-4). Finally, the County's salary proposals place correction officers' average salaries well above the average salary of 78% of all other unionized County employees despite the fact that rank-and-file correction officers exercise no supervisory responsibilities.

Comparison to other jurisdictions generally

The County contends that the PBA is unable to demonstrate that it is entitled to its proposed salary increases when compared inside or outside of Burlington County. The County submits that the PBA has not produced a record that proves it is entitled to its salary proposal on the basis of additional job responsibilities or any other new obligation that affects the parties' status quo. Although the PBA submitted documentation regarding crime statistics at P-4, there is no evidence in the record to show that the number of additional arrests in Burlington County directly corresponds to the number of inmates incarcerated in the Corrections Department's two facilities. For example, the PBA could have submitted documentation showing an increase in the number of commitments received by the Corrections Department. There is nothing in the record that reveals whether the 7% increase in arrests between 1999 and 2000 led to 1,251 additional commitments in the County's

facilities or that the types of offenses for which people were arrested reflect a more dangerous inmate clientele.¹³ Although the County accepts the testimony of Officer Scott and P-7 regarding the fact that the Corrections Department houses more inmates than it did when the Burlington County Detention Center opened in 1989, Warden Cole testified the County has amply responded to staffing concerns by increasing the number of correction officer positions from 216 to 226 in 2000.

The County notes that the Corrections Department has one of the lowest officer-to-inmate ratios among county correctional facilities in the State making it one of the safer working correctional environments.¹⁴ C-12 and C-13 show that Burlington County employs 58 officers on the day shift to guard 450 inmates, a ratio of 1 Correction Officer (C/O) to 7.7 Inmates (I/M). In Atlantic County, the day shift has 25 officers for approximately 1,200 inmates, a ratio of 1 C/O to 48 I/Ms. In Camden County, there are 54 officers guarding 1815 inmates, a ratio of 1 C/O to 33.6 I/Ms. In Ocean County, 22 officers monitor 346 inmates, a ratio of 1 C/O to 15.7 I/Ms. In Monmouth County, there are 76-86 officers on during the day compared to 1,011 inmates, a ratio of approximately 1 C/O to 11.8 - 13.3 I/Ms. For smaller venues, such as Gloucester and Salem counties, the ratios are 1 C/O to 13 I/Ms and 1 C/O to 9.5 I/Ms respectively.

The fact that the I/M ratio is very low in Burlington County is rationally explained by Warden Cole's testimony. Two facilities require more employees than one facility. Also,

¹³ Similarly, PBA's Exhibit P-5 provides little value to the issues in dispute. The report reflects a decrease in population of 12% between 1999 and 2001. The report also states that there has been a 47% decrease in crimes committed per 100,000 residents in 20 years and a decrease of 34% in arrests. The report continues to explain that inmates committed for violent crimes as a percentage has decreased since 1987. Nevertheless, the County challenges the evidentiary value of the State's prison population since the report does not distinguish from which counties the various types of inmates originated. With ¾ of the State's population living in North Jersey, there is nothing in the record that demonstrates a greater quantity of inmates transferring from Burlington County facilities or that the inmates transferred from Burlington County are more violent or aggressive than in the past.

¹⁴ Notwithstanding the specific statistics in the record at Exhibits C-12 and C-13, Burlington County is confident that its overall staff to inmate ratio, approximately 250 correction officers and supervisors to 450 inmates (1 C/O to 1.8 I/Ms) is the best in the State of New Jersey, far exceeding the rates in State Corrections (1 C/O to 5.6 I/Ms) as accounted in Exhibit P-17A, page 49.

the housing tiers in Burlington County are much smaller than the housing tiers in other county facilities. Having visited other facilities such as Monmouth County and Camden County, the Warden testified credibly that the “direct supervision” method in Burlington County requires officers to work directly on the housing tiers using personal skills to maintain population control. In the Warden’s opinion, direct supervision produces a safer and more efficient custody environment than indirect supervision practiced by other facilities such as Camden County.

Comparison to jurisdictions outside Burlington County

The PBA introduced twenty contracts in support of its case. (P-13 to P-29). Based upon the criteria expressed in N.J.A.C. 19:16-5.14(d), the County contends that I should reject almost all of the contracts submitted unless the PBA can prove similar conditions to those in Burlington County and similar treatment of other non-unit unionized employees in such jurisdictions.

In P-13, P-16, and P-17 (A-D) the PBA attempts to compare federal correction officers, State Police officers, State Correction officers and a variety of other police law enforcement units to the Burlington County correction officers’ unit. However, the PBA offered no proofs other than the contracts themselves to explain how these other various public servants perform duties similar to Burlington County Correction Officers. Federal and State correction officers guard sentenced inmates, and usually only inmates who have committed crimes of a degree that merit imprisonment. In Burlington County, two facilities are operated: a “minimum security” facility for low level detainees and the Main Jail. Although the County holds its share of dangerous inmates, the County does not engage in a business of keeping State sentenced inmates who should be contained in State prisons. Additionally, there are no proofs regarding the difficulty levels of Federal or State corrections positions compared to Burlington County such as similar inmate ratios or inmate

population crime statistics. Burlington County maintains that Federal and State correction officers have more onerous job responsibilities which the PBA cannot synthesize to this unit.

The County contends that P-17 does not support the PBA's arguments. In the State Law Enforcement Officers Interest Arbitration award (6/30/2000), Arbitrator Mastriani granted raises to State Correction Officers of 4% per year, which although slightly higher than the "State Package" for every other State union, were within the range contemplated by the State Package but augmented for the loss of gratuitous 20 minute per day overtime payments.

The Count argues that State and local police departments are not proper comparisons. Neither State Troopers (P-16), Mt. Holly police (P-27), Westampton police (P-28), Burlington Township police (P-29), Burlington City police (P-30), Beverly police (P-31) or any other local police department can be compared to the Burlington County Corrections Department. The County contends that there are no proofs in the record validating any comparisons. The County contends that municipal and State police officer jobs are "front line" positions, meaning that the risks are greater when confronting people in traffic stops, domestic violence encounters, during the commissions of crimes and in other circumstances where police officers must control situations in otherwise uncontrollable environments in order to effectuate apprehensions or arrests and enforce laws.

The PBA also seeks to compare working conditions of selected county correction departments. The PBA offered P-18 for Camden County, P-19 for Mercer County, P-20 for Ocean County, P-21 for Morris County, P-22 for Union County, P-23 for Monmouth County, P-24 for Passaic County, P-25 for Sussex County and P-26 for Warren County. For a balanced record, the County offered C-20 for Salem County, C-21 for Atlantic County and C-22 for Cumberland County.

The County asserts that the PBA cannot accurately compare any county corrections department with Burlington County because there is insufficient evidence in the record regarding other facilities' designs (e.g., size of facilities, size of housing tiers, number of facilities operated by a particular jurisdiction), other facilities' staffing requirements (e.g., officer to inmate ratios, number of officers per shift per facility), other facilities' supervision procedures and philosophies (direct versus indirect supervision, mixed) or the nature and quantity of the inmates in custody (number of commitments, types of offenses, types of inmates -- whether State sentenced, 364 time or pre-trial, etc.). The County notes that it produced some evidence regarding these factors, however it asserts that comparisons to neighboring counties are all markedly distinguishable.

The County submits that if Camden County Correction Officers are paid more than their counterparts in Burlington County, it can be justified by the fact that Camden County's lone facility holds over 1800 inmates who are subject to indirect supervision and a high officer to inmate ratio of 1 C/O to 34 I/Ms. (C-12, C-13) The County submits that the higher salaries paid to Monmouth County Correction Officers can be attributed to Monmouth's population of 1,011, inclusive of State-sentenced inmates. The County suggests that Monmouth County makes a business of housing. Also, the daytime officer ratios varies between 1:12 to 1:13. The County suggests that higher salaries in Atlantic County can be attributed to an I/M ratio three times greater than Burlington County.

The County submits that North Jersey county corrections departments are not realistic comparisons to this unit. Without a record of similar sized populations, tax based budget comparisons, property value comparisons, and cost of living comparisons (North Jersey including Trenton is included in the U.S. Department of Labor's New York survey region), in addition to the physical working conditions of these same jurisdictions'

correctional facilities, pure contractual comparisons do not comply with N.J.A.C. 19:16-5.14(d) and should be discarded out of hand. The County contends that the record is barren of evidence that demonstrates the similarity between Burlington County Corrections and any other county corrections department. The County contends that, without such evidence, the PBA's 6% salary proposals must be rejected.

In summary, the County submits that it has met its burden of proof by a preponderance of the credible evidence as to all issues in dispute in this Interest Arbitration. The County asserts that it provided ample support for its proposals to change contractual provisions related to overtime, vacation leave, family leave and bidded posts. The County notes that these changes, if awarded, will improve the efficiency of the Corrections Department by increasing employee morale, improving the physical well being of the work force, and making the position of correction officer a more attractive career. Additionally, the changes will permit the Jail Administration to assign or match job responsibilities to the experience levels of officers, a fundamental and sound employment policy.

The County maintains that its four-year salary and compensation proposals, can be favorably compared to the trends in both private and government employment in the South Jersey and Delaware region, as well as to the specific position of correction officer. The County also asserts that its proposed changes to health benefits are consistent with what all other County employees, unionized or non-union receive. Finally, the County's economic proposals compared to both law enforcement and civilian employment in the jurisdiction show that the correction officers on average will be paid higher than 75% of the County's unionized workforce.

In conclusion, the County asks that I rule in favor on both its economic and non-economic proposals.

Inclusion of Health Benefits Proposal in County's Last Offer

The first issue for discussion is the scope of the County's economic and noneconomic proposals. The PBA contends that the County is barred from presenting the Health Benefits issue since the issue was not submitted to PERC on a timely basis.

PBA Position

The PBA relies on specific standards established by PERC for the presentation and listing of issues. The PBA contends that the County has not met its legal obligation under said rules and as such the issue of Health Benefits is not an arbitrable issue. The original petition filed in March of 2001 by the PBA was introduced into evidence as J-2. J-2 has as an attachment entitled "Schedule A". The PBA asserts that those listed issues on Schedule A are the only issues, as a matter of law, that can be arbitrated. The PBA notes that the County did not provide a response to J-2, as provided under the PERC rules, and is therefore barred from presenting the issue of medical benefit modification in this proceeding.

The PBA asserts that the non-petitioning party in an Interest Arbitration proceeding must file an answer to a petition within seven days of the petition receipt and a failure to do so shall be deemed as an agreement to the contents of the filed interest arbitration petition. The specific Act provision is set forth at subsection f.(1) of the Act which provides as follows:

"At a time prescribed by the Commission, the parties shall submit to the arbitrator or tripartite panel of arbitrators their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to paragraph (2) of subsection d. of this section. The Commission shall promulgate rules and procedures governing the submission of the offers required under this paragraph, including when those offers shall be deemed final, binding and irreversible." (Emphasis supplied)

Pursuant to this statutory provision, the Commission promulgated rules which are specific to the subjects at issue in this proceeding.

N.J.A.C. 19:16-5.5(a) and (b) provide:

(a) In the absence of a joint petition requesting the initiation of compulsory Interest Arbitration, the non-petitioning party shall file within seven days of receipt of a petition, a statement of response setting forth the following:

1. Any additional unresolved issues to be submitted to arbitration;
2. A statement as to whether it disputes the identification of any of the issues as economic or non-economic;
3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and
4. Any other relevant information with respect to the nature of the impasse.

(b) Proof of service on the petition of the respondent's statement shall be supplied to the Director of Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory Interest Arbitration as submitted by the filing party. The substance of this response shall both provide the basis for any delay in effectuating the provisions of this chapter. (Emphasis supplied) .

The PBA contends that N.J.A.C. 19:16-5.5(a) and (b) has been the subject of strict enforcement by the Commission in several decisions.

In the case of the Middlesex County Police, PERC No. 97-63, 23 NJPER 17 (§28016-1996), the Commission upheld an Interest Arbitrator's ruling at hearing which prohibited the public employer from placing issues on the record as part of its last offer position because the public employer did not comply with NJAC 19:16-5.5. The Commission reasoned that the goal of Interest Arbitration, to provide an expeditious and binding procedure for resolution of disputes involving law enforcement and firefighters, would not be served if a party could freely submit additional issues at any time.

The PBA contends that the fact that an issue may have been mentioned during the mediation phase does not substitute for compliance with the above cited rule. PERC

specifically considered this question of whether mediation on a subject could be considered as substantial compliance or in any way provide shelter to the non-positioning party so as to permit said non-petitioning party to add an issue at hearing which was not in compliance with N.J.A.C. 19:16-5.5. The PBA cites PERC's decision in the Borough of Allendale case:

"In light of this framework, discussion of the Borough's proposals during mediation cannot substitute for compliance with NJAC 19:16-5.5. Mediation is distinct from the formal arbitration hearing, as evidenced by the fact that an Interest Arbitrator may not penalize a party for conduct during mediation or rely on information not presented at the formal hearings. Aberdeen Tp. v. PBA, 286 NJ Super. 372, 377 (App. Div. 1996); see also NJAC 19:16-5.7(c). Given these principles, discussion of a topic in mediation would not put an adversary on notice that the matter would be addressed in the formal arbitration proceeding." Borough of Allendale, PERC Docket No. IA-95-71, PERC No. 98-27, Page 8.

The PBA asserts that strict compliance with the rule is mandated. The rule in question uses the directory word "shall" when it provides that "the non-petitioning party shall file within seven days ...". In this same rule PERC promulgated a rule that provides:

"If a party has not submitted a response within the time specified it shall be deemed to have agreed to the request for the initiation of compulsory Interest Arbitration as submitted by the filing party." (Emphasis supplied.)

The PBA asserts that the County must be considered to have agreed to the list of issues in the Interest Arbitration petition filed by the PBA on March 2, 2001. The PBA further asserts that the County should not be permitted to add any issue to this formal arbitration proceeding which does not appear as a listed issue on Schedule A of the Interest Arbitration Petition.

The PBA contends that, based upon the clear rules of PERC, no issue not on Schedule A of the petition can be the subject of Interest Arbitration proceedings including most of the positions presented by the County in its belated final offer position which was amended and submitted on January 10, 2002. This includes the well meaning but clearly misdirected drug policy as well as the medical policy proposal and the bidding proposal.

The PBA asserts that those County positions which are not responsive to the issues presented in this case consistent with the rules as listed on Schedule A of the petition should not be a part of this proceeding and should be barred.

County Position

The County asserts that I should permit and consider its final proposal on the topic of health benefits and any other provisions not listed on the Interest Arbitration petition due to the prejudice caused by the PBA's belated objection. On the second day of hearing, after testimony had been offered and accepted on the first day of hearing, the PBA objected to the County's proposal to change the language under Art. IV entitled Health Benefits because the County did not file a response to the Interest Arbitration petition.¹⁵ The County responded that the subject had always been a part of its bargaining proposals, that there was no surprise to the PBA, nor was the PBA's position prejudiced. As noted by PBA's counsel, the controlling Commission case law is found in Borough of Allendale, 23 NJPER P 28248 (PERC 1997) and subsequent rulings. The County relies upon Commission decisions and contractual principles as a basis for the arbitrator to include the topic of health benefits.

The County contends that the decision to include or exclude an issue not listed on the petition for Interest Arbitration is within the discretion of the Interest Arbitrator. The County further asserts that it can show good cause why the topic of health benefits should be included.

The County urges that I exercise my discretion to include the topic of health benefits as part of the Interest Arbitration proceedings due to the harm caused by the PBA's belated objection. Although the facts in the Allendale case are similar to the present dispute, those

¹⁵ At the Interest Arbitration hearing on January 14, 2002, the PBA objected to the subject of health benefits. It did not voice objection to five other non-economic subjects contained in the County's final proposal: Art. VII (Family and Medical Leave); Art. XIII (Seniority); Art. XVII (Work Schedule); Art. XX (Disciplinary Procedures); Art. XXXII Leave of Absence. Further, the PBA offered no counter-proposals to these issues which have been on the table during the course of the entire negotiations.

facts are not identical to the facts in this matter. In both Allendale and Burlington County, the PBA filed for Interest Arbitration listing the subjects it believed were outstanding. In Allendale, the PBA objected on the first day (of two hearing dates) to certain employer proposals because the employer failed to respond to the Interest Arbitration petition. In the present case, the PBA waited until the second day to object, under comparable circumstances (e.g., lack of a formal response from Burlington County). The arbitrator in Allendale ruled in the Union's favor, excluding non-listed topics from consideration when issuing his award. The employer appealed to the Commission alleging an error the arbitrator's failure to properly apply statutory criteria (N.J.S.A. 34:13A-16g) when issuing his award, and that the arbitrator's decision on the PBA's objection was not timely therefore prejudicing the employer's final position.

Similar to the present case, the parties in Allendale engaged in mediation sessions which included negotiations over non-included topics. However, the PBA in Allendale claimed to have announced an intention to raise an N.J.A.C. 19:16-5.5 objection prior to the date of hearing. No such similar claim has been made in the present dispute.

The Commission reaffirmed the principle (as codified) that a failure to respond to an Interest Arbitration petition means that the non-responding party has acquiesced to the subjects listed on the petition. The Commission based its rationale on the tenet that the goals of Interest Arbitration would be frustrated if parties could "freely submit additional issues at any time." Citing Middlesex County, 23 NJPER P 28026 (PERC 1996). The Commission also rejected the arguments advanced by the employer that discussions during mediation sessions place the opposing party on notice; therefore, it maintained the formality of Interest Arbitration proceedings.

Nevertheless, the County asserts that the Commission partially ruled in the employer's favor remanding the case to the arbitrator for reconsideration of a new employer

proposal, but it affirmed the arbitrator's ruling that the non-responsive subjects were to remain excluded. The Commission concluded that although N.J.A.C. 19:16-5.5 should be strictly applied, the employer there (as here) was prejudiced because it did not know the parameters of the dispute, even as late as when it submitted its post-hearing brief. The Commission also explained that neither it nor the arbitrator could properly evaluate the employer's proposal, particularly which issues were integral to its economic package, if some of those issues were not timely excluded. The employer was deprived of the opportunity to change its final proposal based upon a timely ruling suppressing the employer's exterior subjects.

The County, in comparing Allendale to this matter, points out that the PBA did not object until after the arbitrator had accepted testimony. The County asserts that it did not know the parameters of the parties' dispute even as late as the filing of this brief. The County contends that the PBA's untimely objection deprived it (notwithstanding N.J.A.C. 19:16-5.5(b)) of its administrative remedy to change its position under N.J.A.C. 19:16-5.7(f). The County submits that if it had known that its proposal to bring the PBA's health benefits in line with all other County unions would be barred, it would have changed its position on its entire economic package to compensate for the continued administrative burdens of processing an outmoded health benefits plan.

The County submits that subsequent Commission decisions regarding N.J.A.C. 19:16-5.5 have slightly altered the ruling in Allendale. For example, in Borough of Bogota, 24 NJPER P 29066 (PERC 1998), the appointing authority attempted to press two issues not covered in the union's petition for Interest Arbitration. One issue related to the health benefits plan while the second issue was an attempt by the employer to convert uniform positions to civilian positions ten months after negotiations had begun. The union timely objected to the insertion of the two additional topics, and the arbitrator ruled prior to the

hearing that health benefits would be considered while the uniform to civilian transfer would be excluded. The employer, but not the union, appealed the arbitrator's determination. The Commission affirmed the arbitrator's ruling on the N.J.A.C. 19:16-5.5 objection, finding that the employer had ample time to change its position prior to the dates of hearings and noting that the employer was not prejudiced under the circumstances when it learned of the decision on the date the hearing were convened.¹⁶ The Commission did not disturb or comment upon the arbitrator's discretion to permit the employer to present its proposal regarding the topic of health benefits.

In the companion cases of City of Trenton, 24 NJPER P 29172 and City of Newark, 24 NJPER P 29173 (PERC-Chair 1998), the Commission Chair addressed two requests for interlocutory appeals of arbitrators' decisions to exclude subjects not listed in the Interest Arbitration petitions or responses thereto. In both appeals, the Chairperson explained,

An arbitrator has the authority to relax N.J.A.C. 19:16-5.5(a) and (b) to permit a respondent to submit proposals on issues not listed in the interest arbitration petition or in a timely response. See N.J.A.C. 19:10-3.1(a) and (b); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (P 28293 1997). The Commission defers to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion.

In the Trenton case, the employer objected to the Interest Arbitration petition due to the lack of requisite negotiation sessions. The facts in Trenton demonstrate that the appointing authority (e.g., City) was well aware of its duty to respond, but neglected to do so.¹⁷ Additionally, the employer had several months to change its bargaining position due

¹⁶ The Commission recognized that the transfer of duties from uniform to civilian personnel could be accomplished outside negotiations through administrative application to PERC. The Commission vacated and remanded the arbitrator's award on other grounds, namely for the arbitrator's failure to compare private sector wage increases to those he awarded.

¹⁷ At the arbitration hearing held January 14, 2002, it was more than apparent that $\frac{3}{4}$ of the County's negotiating unit learned about the Interest Arbitration petition for the first time on that date.

to its non-response, and a hearing date for Interest Arbitration had yet to be scheduled. The Chairperson also dismissed the employer's protest that mediation sufficed to place the union on notice.

In the Newark case, the employer argued that it was entitled to additional time to respond to the Interest Arbitration petition due to failing health and court appearances on the part of the human resources director and the absence of counsel. Again, similar to the facts in Trenton, the union gave the employer sufficient advance notice of its intent to bar exterior topics. The Chairperson denied the request for interlocutory review, finding that the employer's proffered reasons did not constitute good cause to disturb the arbitrator's ruling.

The County points out that, unlike the cited companion cases, it did not have advance notice or an opportunity to explore its reasons for failing to respond to the petition. The County requests that I be mindful of the physical health of Burlington County's lead counsel. Furthermore, the County asserts that it was not aware of and did not have an opportunity to alter its position once testimony was elicited. The County contends that it was surprised at the hearing by the objection and thereafter lacked guidance regarding the topics to be considered by the arbitrator. Relying upon the discretionary authority permitted to arbitrators as discussed in the companion cases, the County submits that it has shown good cause for inclusion of the health benefits issue in the interest arbitration proceedings.

The County contends that common law contractual principles of equitable estoppel and/or waiver apply as a defense to the PBA's objection because it relied upon the PBA's inaction and lack of prior objections on the topic of health benefits to its detriment.

The County also relies upon common law contract principles in support of its arguments that the arbitrator should include the topic of health benefits in his decision. The operating tenets in this regard are the defenses of equitable estoppel and/or waiver. In Scibek v. Longette, 339 N.J.Super. 72, 83-85 (App.Div. 2001), the court described the distinction

between these two types of defenses. The court expressed that the doctrine of estoppel should be applied in cases “where the interests of justice, morality and common fairness clearly dictate that course.” 339 N.J.Super. at 83 *quoting Gruber v. Mayor of Raritan Township*, 39 N.J. 1, 13 (1962). In distinguishing between estoppel and waiver, the court explained,

Estoppel differs from waiver in that estoppel requires the reliance of another party. *citing Country Chevrolet Inc. v. Township of North Brunswick Planning Board*, 190 N.J.Super. 376, 380 (App.Div. 1983). Whereas waiver is a unilateral relinquishment of a right, estoppel is based on the reliance of one individual upon another. *citing Mattia v. Northern Ins. Co. of New York*, 35 N.J.Super. 503, 510 (App.Div. 1955).

To establish a defense of equitable estoppel, the court explained that a party must show that the other party conducted itself or made representations under circumstances that would induce the first party to rely upon the second party’s conduct. There is no requirement that the second party’s actions must be intentional; however, the first party must demonstrate that it relied upon the second party’s actions to change its position or to its detriment. Although the facts in *Scibek* and the facts of the cases cited in that opinion are not analogous to the present case, the legal principles do apply.

The County maintains that it acted upon a good faith belief that all of the subjects included in its final proposal would be considered by the Interest Arbitrator. The County asserts that this good faith belief was manifested over the course of several mediation sessions and embodied in the proposal submitted on December 3, 2001. This good faith belief was apparent throughout the County’s presentation including January 14, 2002, the first time that the PBA objected. From the date of the County’s first proposal (January 18, 2001) through the date of hearings, the County relied upon its good faith belief and the PBA’s lack of objection that its proposal for health benefits would be part of the arbitrator’s jurisdiction. At no time prior to the commencement of the second day hearing did the PBA protest the County’s subjects.

The County notes that the interest arbitration petition was filed on or about March 2, 2001. On March 30, 2001, I was appointed by PERC. For over nine months, the PBA was aware that the County did not file a response to the Interest Arbitration petition. Yet it waited until after the arbitrator had taken testimony and had locked in the County's final position (N.J.A.C. 19:16-5.7(f)) prior to lodging an objection.¹⁸ The County is not suggesting that the PBA engaged in deliberate misrepresentation. Nevertheless, it argues that it was prejudiced by relying upon the PBA's silence. The County asserts that the PBA's silence caused the County to believe that the subject would be part of the Interest Arbitration proceedings and therefore caused prejudice to the County by a belated objection, The County urges that I permit the topic of health benefits as part of these proceedings.

Procedural Issue Discussion

I have reviewed the parties' arguments and the Commission's Rules and Regulations and decisions regarding the PBA's contention that the County is precluded from submitting the Health Benefits issue to interest arbitration since it did not respond to the Union's Interest Arbitration ("IA") Petition filed on March 2, 2001. The PBA asserts that the issues listed on Schedule A of the IA Petition are the only issues, as a matter of law, that can be arbitrated. The PBA notes that the County did not provide a response to the IA Petition, as provided under the PERC rules, and is therefore barred from presenting the Health Benefits issue in this proceeding. The PBA asserts that the non-petitioning party in an Interest Arbitration proceeding must file an answer to a petition within seven days of the petition receipt and a failure to do so shall be deemed as an agreement to the contents of the filed interest arbitration petition.

¹⁸ Burlington County also submits that during the course of discussions regarding the dates of hearing, evidence to be adduced and potential witnesses, the County alerted the PBA of its intent to use Kurt Brock, Budget Officer to explain the County's proposal for health benefits in the event that the PBA sought to produce its own benefits specialist to contest the County's proposed changes. No objection was raised to calling Mr. Brock.

The PBA relies on N.J.A.C. 19:16-5.5(a) and (b) which provides, in part, that “the non-petitioning party (the County) shall file within seven days of receipt of a petition, a statement of response setting forth . . . any additional unresolved issues to be submitted to arbitration.” Section (b) further provides that “if a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory Interest Arbitration as submitted by the filing party.” The PBA cites certain Commission and court decisions regarding what it describes as “strict enforcement” of N.J.A.C. 19:16-5.5(a) and (b). [Middlesex County Police, PERC No. 97-63, 23 NJPER 17 (§28016-1996); Borough of Allendale, PERC Docket No. IA-95-71, PERC No. 98-27; Aberdeen Tp. v. PBA, 286 NJ Super. 372, 377 (App. Div. 1996)].

The PBA essentially argues that I find that the County agreed to the list of issues in the Interest Arbitration petition filed by the PBA on March 2, 2001.

The County asserts that I should permit and consider its final proposal on the topic of health benefits and any other provisions not listed on the Interest Arbitration petition due to the prejudice caused by the PBA’s belated objection. The County’s comprehensive arguments, discussed above, need not be repeated.

The Commission, in Middlesex Cty, held that N.J.A.C. 19:16-5.5(a) and (b) may be relaxed, or its time periods extended, where good cause is shown or where strict compliance would result in unfairness or interfere with the proper effectuation of the Act. The Commission referenced N.J.A.C. 19:10-3.1 (a) and (b) in Middlesex Cty, excerpted in relevant part, as follows:

“(a). . . . whenever the commission or a designated officer finds that unusual circumstances or good cause exists and that strict compliance with the terms of these rules will work an injustice or unfairness, the commission or such officer shall construe those rules liberally to prevent injustices and to effectuate the purposes of the Act.”

“(b) When an act is required or allowed to be done at or within a specified time, the commission may at any time, in its discretion, order the time period altered where it shall be manifest that strict adherence will work surprise or injustice to interfere with the proper effectuation of the Act.”

The Commission further held that it will defer to the arbitrator’s decision to admit or exclude additional issues unless it finds an abuse of discretion. For the following reasons, I find that the County’s Health Benefits issue and certain “work rule” issues are properly before me.¹⁹

I agree with the PBA’s statement that the interest arbitration process “would not be served if a party could freely submit additional issues at any time.” This is an essential component of effective collective bargaining and dispute resolution. There is simply no basis, other than mutual agreement or an emergent, unforeseen development, to permit a party to submit additional issues after the commencement of negotiations and exchange of written proposals. However, that is not so in this matter. Evidence in the record, County Exhibit 23 dated February 20, 2001, shows that the County provided the PBA with a comprehensive, written proposal that included a proposal on Health Benefits. This proposal is identical to the County’s proposal on Health Benefits included in its “last offer” which I received on December 3, 2001 and simultaneously served on PBA Labor Counsel. The County’s submission of its “last offer” (and the PBA’s “last offer”) was pursuant to my October 26, 2001 directive scheduling hearing dates for December 13 and 14, 2001:

In accordance with *N.J.A.C. 19:16-5.7* (f) of the Commission’s Rules and Regulations please submit your final offers on each economic and non-economic issue in dispute to the undersigned and to each other no later than December 3, 2001.

¹⁹The PBA did not dispute the inclusion of certain “work rule” issues in the County’s submission.

The December hearings were postponed and rescheduled for January 11 and 14, 2002. The PBA was aware on February 20, 2001 that the County was proposing a modification in Health Benefits. A review of Joint Exhibit 2, the Petition to Initiate Compulsory Interest Arbitration, filed by the PBA on February 26, 2001 (docketed by PERC on March 2, 2001), confirms February 20, 2001, as the third and final bargaining session between the PBA and the County.

The PBA's objection to the County's Health Benefits proposal was made on January 14, 2002 at the second and final day of hearing, after the PBA had presented its case and rested. The PBA objected during the County's presentation of its case. The PBA did not object to the Health Benefits proposal prior to January 14, 2002. This objection was made nearly eleven months after the PBA was first put on notice that the County was proposing a modification in Health Benefits; more than ten months after I was appointed as arbitrator; and more than three months after I suspended the "mediation" phase of the interest arbitration process; and more than five weeks after the PBA received the County's "last offer" which included its proposed modification in Health Benefits.

The PBA is well aware that this is not the first procedural disagreement in this matter. On December 7, 2001, I rejected the County's request to postpone the hearings scheduled for December 13 and 14, 2001 as follows:

"I received your letter of December 6, 2001 requesting, on behalf of the County of Burlington, the postponement of the interest arbitration hearings scheduled for December 13 and 14, 2001. You state that the County seeks this postponement because of the "failure of Local 249 to submit its final offer as directed by you is a violation of *N.J.A.C. 19:16-5.7(f)* and deprives the County of a full opportunity to prepare for the hearing now scheduled for December 13 and 14, 2001.

I received the County's last offer by facsimile transmission late in the afternoon on December 3, 2001 and by regular mail on December 5, 2001. I received the PBA's last offer by facsimile transmission and special delivery late in the

afternoon on December 6, 2001. The County requests that I postpone the hearings until Local 249 is in compliance with the regulation and the County has the benefit of having received Local 249's final offer at least 10 days prior to the rescheduled hearing dates.

I was appointed as interest arbitrator in this matter on March 30, 2001. I held several mediation sessions with the parties. The parties' formal positions remained essentially unchanged during mediation. At the conclusion of the August 1, 2001 mediation session, the parties agreed to two days of hearing to be held on October 30 and November 2, 2001. On October 5, 2001, I sent a letter confirming that the first day of hearing would be October 30, 2001. This hearing date was postponed and the current December 13 and 14 hearing dates were confirmed by letter to the parties on October 26, 2001.

I have reviewed the final offer submitted by the PBA and find that the ten issues included in the PBA's December 6, 2001 letter are the same issues that were at impasse at the August 1, 2001 mediation session. They are also the same issues included in a summary sheet provided by the County at the first mediation session in May of 2001. The PBA's letter of December 6, 2001 merely confirms what the County knew on and before August 1, 2001 when mediation ended and hearings were scheduled in this matter.

The County has known since August 1, 2001 that it needed to prepare for hearings in this matter. I received the PBA's last offer on December 6, 2001, seven (7) days before the December 13, 2001 hearing date when the PBA will present its case and eight (8) days before the December 14, 2001 hearing date when the County will present its case. Both the PBA and the County have had ample time to prepare their case in this matter. The County's receipt of the PBA's final offer, either seven or eight days prior to the scheduled hearings, as opposed to ten days prior to the scheduled hearings, cannot be considered significant. The County (and the PBA) had at least forty-two (42) days (since the October 26, 2001 notice of hearing dates) to prepare for the December hearing dates and more than one-hundred and thirty (130) days to prepare going back to the August 1, 2001 final mediation session. Strict adherence to the requirements of *N.J.A.C. 19:16-5.7(f)* would not best effectuate one of the major purposes of the Act which is the prompt resolution of labor disputes.

I find that the issues in dispute were sufficiently defined several months prior to the scheduled arbitration hearings and the County is not prejudiced by a relaxation of the requirements of *N.J.A.C. 19:16-5.7(f)*. The County has not been deprived of the opportunity to prepare its case. The County's request to postpone the hearings scheduled for December 13 and 14, 2001 is denied."

The above letter was in response to the County's request for a postponement claiming prejudice for the late filing of the PBA's "last offer". As I stated in my December 7th letter, the parties had more than six months to prepare for the December 13-14 hearings.

By January 11, 2002, the parties now had more than seven months to prepare. This is the same seven-month period that either the PBA or the County could raise procedural objections to the arbitrator or the Commission. No such procedural objections were raised by the PBA until January 14, 2001, the last day of hearing.

The PBA's late objection to the County's Health Benefits issue, after the PBA had presented its case, and after the County had submitted a comprehensive salary proposal created a "surprise" which inadvertently gave the PBA an unfair advantage. The County, if it had timely notice of the PBA's objection, would have had the opportunity to seek a timely ruling on the scope of its submission. Obviously, the exclusion of the County's Health Benefits proposal from its "last offer" would have given the County the opportunity to revise its "last offer" on salary and other economic issues. The County's Health Benefits proposal increases certain co-pays resulting in cost savings from such changes if awarded.

As stated in my December 7th letter rejecting the County's procedural arguments: "Strict adherence to the requirements of *N.J.A.C.* 19:16-5.7(f) would not best effectuate one of the major purposes of the Act which is the prompt resolution of labor disputes." I also find that strict adherence to *N.J.A.C.* 19:16-5.5(a) and (b) will not effectuate the prompt resolution of this labor dispute. Furthermore, strict compliance would result in unfairness and interfere with the proper effectuation of the Act.²⁰ I find that "good cause is shown" to relax the timelines in *N.J.A.C.* 19:16-5.5(a) and (b). I find that the PBA had ample opportunity to make a timely objection to the County's Health Benefits issue. The PBA's January 14, 2001 objection was untimely. The PBA's "eleventh hour" objection also

²⁰The County's argument regarding its "good faith" belief that the Health Benefits issue is credited. "This good faith belief was apparent throughout the course of the County's presentation including January 14, 2002, the first time that the PBA objected. From the date of the County's first proposal (January 18, 2001) through the date of hearings, the County relied upon its good faith belief and the PBA's lack of objection that its proposal for health benefits would be part of the arbitrator's jurisdiction."

deprived me of the opportunity to provide an interim ruling on the merits of its objection. The PBA was fully aware on December 3, 2001 that the County included the Health Benefits proposal in its last offer.²¹ A timely objection by the PBA after receipt of the County's last offer on December 3, 2001 would have permitted an interim ruling. This ruling to include or exclude²² the County's Health Benefits proposal would have given the County the opportunity to modify its last offer based on full knowledge of the parameters of the dispute.²³

The PBA made a strong procedural argument on the Health Benefits issue. It also made an equally strong and forceful substantive argument on the merits in opposition to the County's proposed Health Benefits modification at the January 14, 2002 hearing and in its post-hearing brief. I find that the PBA had full opportunity to argue its opposition to the County's Health Benefits proposal. The PBA's arguments have been given full consideration in my discussion and analysis of the Health Benefits issue.

For all of the above reasons, and in full consideration of the evidence and testimony in the record, I find the County's Health Benefits proposal is properly before me.

²¹The County's last offer is identical to the written proposal submitted to the PBA on February 20, 2001, nearly two weeks before the PBA filed its Petition to Initiate Interest Arbitration.

²²In Middlesex Cty., the Commission provided clear direction concerning N.J.A.C. 19:16-5.5 (a) and (b): "The Commission will defer to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion." Describing the Health Benefits issue as an "additional" issue is inaccurate given C-23.

²³The County properly argues that if it had known that its proposal to bring PBA's health benefits in line with all other County unions would be barred, it would have changed its position on its entire economic package to compensate for the continued administrative burdens of processing an outmoded health benefits plan.

Discussion and Analysis

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

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

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

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

The parties agree that the duration of the new four-year agreement shall be January 1, 2001 to December 31, 2004. I accept this agreement as a stipulation as to the term of the new agreement and shall award a four-year agreement. The agreement shall be effective January 1, 2001 and continue to December 31, 2004.

I have determined that the 2000 base salary that the 2001 salary increases will be applied to is \$6,596,655 for 217 Correction Officers.²⁴

The County proposed a salary schedule that provides significant increases to Correction Officers moving through the steps. The County proposes two salary schedules. Schedule A for all Correction Officers hired between 1976 and Schedule B for all Correction Officers hired between 1991 and 2001. The County salary proposal places employees on a designated step in 2001. Employees move one step per year on January 1, 2002, January 1, 2003 and January 1, 2004. These four-year increases range from 31% to more than 45%. The County proposes to increase the maximum salary by 12.55% over four years. The County proposes that the salary schedule "expire on December 31, 2004 and officers shall not be moved at anytime thereafter."

The County's proposed total salary increase in 2001 is \$761,700. The total salary base in 2001 is \$7,358,355.

The County's proposed total salary increase in 2002 is \$380,939. The total salary base in 2002 is \$7,739,294.

The County's proposed total salary increase in 2003 is \$583,608. The total salary base in 2003 is \$8,322,902.

The County's proposed total salary increase in 2004 is \$427,772. The total salary base in 2004 is \$8,750,674.

²⁴This is the figure provided by the County and stipulated to by the PBA. This figure includes 37 Correction Officers hired in 2001 and placed on the current 0-1 year step of the salary schedule. (C-1).

The PBA also proposed a salary schedule that provides significant increases to Correction Officers moving through the steps. The PBA's proposal includes a reduction of four steps with the balance of the salary schedule equalized between the new minimum salary and maximum salary. These four-year increases range from 61% to more than 78%. The PBA proposes that the salary schedule provide for incremental movement on an officer's anniversary date for all years of the new CBA and automatically thereafter. The PBA proposes to increase the maximum salary by 26.2% over four years.

The PBA's proposed total salary increase in 2001 is \$1,162,425. The total salary base in 2001 is \$7,759,080.

The PBA's proposed total salary increase in 2002 is \$1,162,425. The total salary base in 2002 is \$8,592,206.

The PBA's proposed total salary increase in 2003 is \$833,126. The total salary base in 2003 is \$9,472,579.

The PBA's proposed total salary increase in 2004 is \$883,884. The total salary base in 2004 is \$10,356,463.

I shall award a Salary Schedule that reduces the number of steps from the current thirteen-step Salary Schedule to seven steps in the final year of the CBA.

I shall award an increase at the maximum step on the salary schedule of 4.5% to be retroactive to January 1, 2001. I shall award an increase at the maximum step on the salary schedule of 4.5% to be retroactive to January 1, 2002. I shall award an increase at the maximum step on the salary schedule of 4.5% to be effective January 1, 2003. I shall award an increase at the maximum step on the salary schedule of 4.5% to be effective January 1, 2004. These four-year increases range from 38% to more than 54%. The award provides for movement on the salary schedule on January 1 for all years of the new CBA and automatically thereafter. The maximum salary shall increase by 19.25% over four years.

The cost of my award in 2001 is \$7,380,685. The cost of my award in 2002 is \$7,875,236. The cost of my award in 2003 is \$8,546,759. The cost of my award in 2004 is \$9,174,121.

I award a clothing allowance increase to \$675 to be paid in a lump sum on December 1, 2001; \$700 to be paid in a lump sum on December 1, 2002; \$725 to be paid in a lump sum on December 1, 2003; and \$750 to be paid in a lump sum on December 1, 2001. The cost of the clothing allowance increase is \$10,850 in 2001 and \$5,425 in 2002, 2003 and 2004.

I award the County's Health Benefits proposal.

I deny the PBA's Worker's Compensation proposal.

I award a modified form of the County's Vacation Leave proposal.

I award a modification of the language of paragraph H to permit the use of vacation time in segments of less than five days. I remand to the parties the development of appropriate language with respect to number of days, notice, etc. The final language shall not impact on the summer vacation schedule. The final language must protect the County's need to maintain staffing. I remand this issue of vacation time in segments of less than five days back to the parties for a period of sixty days to 'flesh out' the details and to finalize contract language. I shall retain jurisdiction to award final contractual language failing voluntary resolution.

I award the County's proposal that Article VII (Family Leave) be modified to include the reference to the *Federal Family and Medical Leave Act*.

I award the County's overtime proposal.

I deny the PBA's overtime proposal.

I remand the "Departmental Investigations" and "Drug Testing" issues back to the parties for a period of sixty days to finalize contract language. Both parties clearly recognize

the need to have clear guidelines for drug testing and departmental investigations. Mutual development of such language is essential. I shall retain jurisdiction to award final contractual language failing voluntary resolution.

I remand the issue of “Seniority for Bidding on Posts” back to the parties for a period of sixty days to develop contract language to address the need to provide the highest level of institutional security to include the designation of certain posts to be filled by seniority. I am convinced that a change is necessary to assure that appropriate staffing is maximized to provide the highest level of institutional security. I shall retain jurisdiction to award final contractual language failing voluntary resolution.

I award the County’s proposal that appeals of minor disciplinary matters be submitted directly to the Third Step of the grievance procedure.

I deny the County’s proposal to eliminate the “rotating panel of six arbitrators.”

I deny the County’s proposal on leaves of absence.

I deny the PBA’s proposal on “Preservation of Rights.”

I deny the County’s proposal to amend Article XVII (G).

I deny the PBA’s proposal on “Term and Renewal.”

I deny the PBA’s proposal to delete Article XXXIX.

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

Interests and Welfare of the Public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor.

I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the County to exceed its authority under the CAP law. The award can be funded without the County exceeding its spending authority.²⁵

The interests and welfare of the public require the arbitrator to balance a number of considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels in order to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Correction Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Correction Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Correction Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in a recent interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for

²⁵The County acknowledges that P-37 and P-38 show that the County has some flexibility in calendar year 2001 to finance an award of retroactive economic benefits including salary payments estimated at \$761,700 (C-1), increased costs for vacation leave (C-5), additional expenses for holidays (C-6), greater uniform maintenance payments (C-8) and the cumulative effect on overtime costs when the hourly rate in C-2 is meshed with the overtime data in C-15.

the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony."

(In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall discuss the other open issues with respect to the interests and welfare of the public factor.

Salary Schedule

The parties agree that the single most important issue in this matter is the high turnover rate and the need to improve the terms of conditions of employment of Correction Officers. This issue is paramount to *the interests and welfare of the public*. Recruitment and retention of Correction Officers have been a serious problem in Burlington County during the last decade. Evidence in the record shows that 481 Correction Officers were hired between 1990 and 2000. As of November 1, 2001, only 149 of the original 481 were still serving as Correction Officers. (P-3).²⁶ This is a 69% turnover rate. Training Correction Officers is justifiably an expensive proposition. It is exceedingly expensive when you have a 69% turnover rate.²⁷ High turnover produces a continuing spiral of recruitment and training resulting in a significant number of inexperienced Correction Officers. The parties agree that is in the best interests of the County and the PBA (and certainly *the interests and welfare of the public*) to reverse the high turnover rate and stabilize the workforce. This is

²⁶The breakdown of 481 new hires and 149 current employees is: 1990 - 113 new hires/36 still employed; 1991 - 35 new hires/11 still employed; 1992 - 25 new hires/10 still employed; 1993 - 17 new hires/4 still employed; 1994 - 33 new hires/5 still employed; 1995 - 33 new hires/3 still employed; 1996 - 40 new hires/15 still employed; 1997 - 35 new hires/10 still employed; 1998 - 33 new hires/7 still employed; 1999 - 38 new hires/10 still employed; 2000 - 79 new hires/38 still employed.

²⁷P-3 estimates the cost of hiring and training a new Correction Officer as \$8,261. 332 Correction Officers left the service of the County. Evidence in the record does not indicate at what stage of training the new recruits left however the cost to the County for this required training hundreds of thousands of dollars if not millions. In P-3, the PBA estimates this cost to be more \$2.7 million dollars.

important in all work environments but it is particularly important in a correctional facility given the inherent dangers of the job and the need to maintain the highest levels of safety and supervision. Highly trained and experienced Correction Officers are the keys to maintaining these high standards of safety and supervision.

Both the PBA and the County have submitted proposals intended to reverse the high turnover rate and provide a better salary structure as well as better working conditions. Their salary proposals are similar in form with both proposing a reduction, compression and combining of steps. The major difference in the parties' salary proposals is the increases at maximum with the County proposing 3% increases in each of the four years of the new CBA whereas the PBA proposes 6% increases. The PBA's proposed step increases are significantly higher than the County's proposed step increases. The PBA salary proposal in 2001 costs \$400,000 more than the County's salary proposal providing for a 17.6% increase. The County provides for a 11.6% increase in 2001.

I have followed the County's format in developing the salary schedule for Correction Officers not at maximum in 2001. The County proposed the merger of the following classes²⁸ on the 2001 salary schedule: 2000 and 2001 classes at \$28,000; 1997, 1998 and 1999 classes at \$29,759; 1993 and 1994 classes at \$35,036; 1991 and 1992 at \$36,795. The County's proposal is an aggressive effort to reverse the 10-year trend of high turnover. The County fully recognizes that a major improvement in salaries for Correction Officers moving through the salary schedule will dramatically improve the likelihood of retaining these junior Correction Officers. The County's proposal in 2001 provides for a \$723,395 increase for the 187 Correction Officers moving through the steps. This is a 13.6% increase in 2001 and an average increase of \$3,868. The dollar increases in 2001 range from \$3,000 to \$4,559 for

²⁸I shall refer to officers hired in a specific calendar year as a "class", i.e., officers hired in 2000 are the class of 2000.

182 Correction Officers moving through the steps; and \$7,528 for the five Correction Officers moving to maximum.

The PBA's salary proposal in 2001 for Correction Officers moving through the steps, costs \$1,085,760 representing a 20.4% increase over 2000. The County's proposal for step movement, which I have adopted in my award, provides for a \$723,395 increase for the 187 Correction Officers moving through the steps. This is a 13.6% increase. The PBA's proposed salary schedule on the steps includes many of the components that I have adopted in my award with the exception of one — "equalization" of steps between minimum and maximum. This is an expensive proposition that compounds its costs in the later years of the CBA. I have incorporated a variation on the PBA's proposal in the fourth year of the CBA.

The County's format in 2001, which I have adopted in my award, provides for significant salary increases for 187 of the 217 bargaining unit members moving through the steps. It is substantially more than any other comparable correction bargaining units with the exception of other counties that have experienced similar problems with recruitment and retention.²⁹ These increases will contribute greatly to reversing the County's high turnover rate.

However, there is more that needs to be done. In my view, the County's 3% maximum step increase in 2001 (and 2002-2004) is inconsistent and inadequate when compared with the significant increases on the steps of the salary schedule. The maximum salary is the "benchmark" that all current and future Correction Officers aspire to as they gain experience and move through the steps on the salary schedule.³⁰ This is the salary (or

²⁹Monmouth County and Atlantic County experienced retention problems similar to Burlington County. Both counties made major revisions in salary schedules with equivalent significant salary increases in order to reverse high turnover rates and high training costs.

³⁰The "benchmark" salary is important for retention purposes but it is an equally important recruitment tool.

equivalent in later years) that a Correction Officer will earn for most of his years of service. It is also the salary that a Correction Officer will take into retirement. This “benchmark” salary is the single most important component in a salary schedule. A 3% annual increase at the maximum step will undermine the County’s efforts to reverse the high turnover rates.

Neither the PBA’s 6% increase nor the County’s 3% increase in 2001 is unreasonable. However, in my view neither is the most reasonable. I have determined that a 4.5% increase at maximum is appropriate and the most reasonable given the current high turnover rate. The PBA and the County must accept joint responsibility for the non-competitive structure of the 1998-2000 salary schedule as well as prior salary schedules. After all, these salary schedules were negotiated and mutually agreed to by the County and the PBA. It took many years of bad decisions on salary structure to create the high turnover rates. It may also take many years to correct the problems. It is commonly understood that you cannot “do everything” in one contract. The following is the structure of the 2001 salary schedule:

Step	Officers	2000 Base	YEAR HIRED	Step	Officers	2001 Base
1	37	25000	2001			
1	37	25000	2000			
1	10	25000	1999			
2	7	25274	1998			
3	10	25790	1997			
4	15	27094	1996			
5	3	28500	1995	1	74	\$28,000
6	5	29759	1994	2	27	\$29,759
7	1	30477	1993	3	15	\$31,518
8	7	31759	1992	4	3	\$33,277
9	8	33079	1991	5	6	\$35,036
10	30	34119	1990	6	15	\$36,795
11	12	35160	1989	7	30	\$38,000
12	5	36304	1988	8	12	\$39,500
13	30	42555	1975-87	9	35	\$44,470
	217	2000 Base			217	2001 Cost
		\$6,596,605				\$7,380,685

I have included the data on the number of Correction Officers in each class (1975-87 through 2001) to clearly identify the movement from 2000 to 2001 and to show which steps have been combined as discussed on 85-86. The 2001 salary schedule is reduced to nine steps by the merger of certain classes. There is no reason to establish a minimum salary below \$28,000 in 2001 for new hires. Establishing a lower minimum and an additional step would undermine recruitment and retention.

I have followed the same format in developing the salary schedule for Correction Officers not at maximum in 2002. The major modification is with respect to the class of 2001. This group of 37 Correction Officers were hired in 2001 at \$25,000. The County increased this hiring rate to \$28,000 in 2001 which I adopted in my award. However, the County "froze" the "class of 2001" in 2002 at the same \$28,000 salary. This is not the way an "incremental" salary schedule works. Employees on an incremental salary schedule are expected to move horizontally and vertically. This is the way 99% of all police and fire salary schedules work in New Jersey. It is a variation on the "journeyman" and "apprentice" system in the private sector. An employee is expected to get to maximum. Freezing steps is inconsistent with an incremental salary schedule. There is simply no basis to freeze the 37 Correction Officers in the class of 2001 in 2002. This will undermine the County's strong efforts at reversing the high turnover rate. The class of 2001 shall be merged with the class of 2000 in 2002 and shall be paid \$30,009 at the second step on the salary schedule. The hiring rate in 2002 shall be \$28,500. There shall be nine steps on the salary schedule in 2002. The 2002 salary schedule provides a 4.5% increase at maximum for essentially the same reasons as I stated for 2001. The following is the structure of the 2002 salary schedule:

Step	Officers	2001 Base	Step	Officers	2002 Base
1	74	\$28,000	1		\$28,500
2	27	\$29,759	2	74	\$30,000
3	15	\$31,518	3	27	\$31,768
4	3	\$33,277	4	15	\$33,527
5	6	\$35,036	5	3	\$35,286
6	15	\$36,795	6	6	\$37,045
7	30	\$38,000	7	15	\$38,804
8	12	\$39,500	8	30	\$40,009
9	35	\$44,470	9	47	\$46,471
	217	2001 Cost		217	2002 Cost
		\$7,380,685			\$7,875,236

The 2003 salary schedule continues the incremental pattern for all Correction Officers. The 2003 salary schedule provides a 4.5% increase at maximum. The hiring rate in 2003 shall be \$30,500. There shall be eight steps on the salary schedule in 2003. The following is the structure of the 2003 salary schedule:

Step	Officers	2002 Base	Step	Officers	2003 Base
1		\$28,500			
2	74	\$30,000	1		\$30,500
3	27	\$31,768	2	74	\$32,268
4	15	\$33,527	3	27	\$34,027
5	3	\$35,286	4	15	\$35,768
6	6	\$37,045	5	3	\$37,545
7	15	\$38,804	6	6	\$39,304
8	30	\$40,009	7	15	\$41,063
9	47	\$46,471	8	77	\$48,562
	217	2002 Cost		217	2003 Cost
		\$7,875,236			\$8,546,759

The 2004 salary schedule continues the incremental pattern for all Correction Officers. The 2004 salary schedule provides a 4.5% increase at maximum. The hiring rate in 2003 shall be \$32,500.

The County salary schedule in 2004 added a step before maximum. This has the effect of adding an additional year to reach maximum for all Correction Officers in the 1991-2001 classes, a group which comprises a large majority of the bargaining unit. This is inconsistent with the purposes of an incremental salary schedule and would undermine the County's efforts in reducing the high turnover rates. There shall be seven steps on the salary schedule in 2004. This is one step less than the 2003 salary schedule. I have reduced the steps by dropping the initial step. This accomplishes two things. First, it increases the minimum starting salary which enhances the County's recruitment efforts. Second, it reduces the number of steps to get to maximum, commonly referred to as the "benchmark" salary. As previously discussed, this "benchmark" salary is the single most important component in a salary schedule.

I have provided a measure of equalization in the steps on the 2004 salary schedule. This will make the incremental structure of the 2004 salary schedule more competitive. It also means that subsequent across-the-board increases in 2005 and thereafter will maintain the incremental integrity of the salary schedule. The following is the structure of the 2004 salary schedule:

Step	Officers	2003 Base	Step	Officers	2004 base
1		\$30,500			
2	74	\$32,268	1		\$32,500
3	27	\$34,027	2	74	\$34,500
4	15	\$35,768	3	27	\$36,286
5	3	\$37,545	4	15	\$38,045
6	6	\$39,304	5	3	\$42,000
7	15	\$41,063	6	6	\$46,000
8	77	\$48,562	7	92	\$50,747
	217	2003 Cost		217	2004 Cost
		\$8,546,759			\$9,174,121

The 2004 salary schedule, a schedule that will be effective in fifteen months, is a much more competitive salary schedule than the 2000 salary schedule. The number of steps has been reduced from thirteen to seven. The hiring rate has been increased from \$25,000 to \$32,500. The maximum salary has been increased by 19.25%. Correction Officers moving through the steps of the salary schedule will enjoy significantly higher cumulative earnings over the four years of the new CBA.

Under the 1998-2000 CBA, a Correction Officer hired in 1998 at \$24,000 would only move to \$25,790 in the third year of the CBA. This represents a \$1,790 increase which is 7.5%. This is the major reason why the County has experienced such high turnover.

Under the 2001-2004 CBA, a Correction Officer hired in 2001 at \$25,000 moves to \$32,268 in 2003, the third year of the CBA. This represents a \$7,268 increase which is 29%. The cumulative earnings for the three-year period under the new CBA for a newly hired Correction Officer are \$90,268 versus \$74,691 for the Correction Officer hired at \$24,000 in 1998. This is \$15,577 more in cumulative earnings for the newly hired Correction Officer in 2001. A similar increase in cumulative earnings will be realized by all Correction Officers not at maximum under the new 2001-2004 CBA.

The 2004 salary schedule costs \$9,174,121 in 2004. This represents a 39% increase from the 2000 salary base of \$6,596,655. The County's proposed salary schedule costs \$8,750,674 in 2004. This represents a 32.7% increase from the 2000 salary base. The PBA's proposed salary schedule costs \$10,356,463 in 2004. This represents a 57% increase from the 2000 salary base.

The PBA's salary proposal is excessive when compared with other settlements and awards throughout the State. The County's salary proposal, while responsive to the high

turnover rate on the steps, is far below comparable increases at maximum throughout the State and would undermine its efforts to develop a compensation program with the compensation levels needed to attract and retain the most qualified Correction Officers.

As previously stated, a reasonable level of compensation is a necessary ingredient in maintaining a productive work force with requisite high morale. I am required to balance the competing and diverse needs of the County and the PBA in order to satisfy the interests and welfare of the public. I believe that the awarded salary increases achieve that balance and are consistent with the public interest.

The interests and welfare of the public will be best served by the implementation of the 2001-2004 salary schedules that I have awarded.

I shall now discuss certain other open issues with respect to the *interests and welfare of the public* factor.

Clothing Allowance

I shall award a clothing allowance increase to \$675 to be paid in a lump sum on December 1, 2001; \$700 to be paid in a lump sum on December 1, 2002; \$725 to be paid in a lump sum on December 1, 2003; and \$750 to be paid in a lump sum on December 1, 2001. Article III provides that "the lump sum payments made . . . are intended by the parties to be utilized for replacement and maintenance of their uniforms." The above increases are in line with the overall salary settlement and intended to maintain the value of this benefit. This is consistent with the requirements of this criterion.

Health Benefits

I shall award a modified form of the County's Health Benefits proposal to be effective January 1, 2003, for the following reasons:

Evidence in the record shows that the County's proposal does not affect the level of health/prescription benefits that Correction Officers currently receive. The County seeks to bring the Correction Officers' health benefits in line with all other County union and non-union personnel. The County's proposal will increase certain co-pays (prescription drugs, office visits, emergency room visits, etc.) that have not been increased in nearly ten years since 1993.

Emergency room co-pays will increase from \$15 to \$25. Pre-certification and second opinion deductible for noncompliance will increase from \$175 to \$500; Office visits co-pays, now \$2, will increase to \$10. Prescription co-pays will increase from \$3 to \$7 for generic drugs and from \$7 to \$20 for brand name drugs. The employee's co-pay will be \$7 if a generic equivalent is not available. These are all in line with other health care and prescription plans throughout the State.

I shall award the County's proposal to eliminate "premium participation for prescription" which is currently \$30.08 per month for family coverage and \$5.80 per month for husband/wife and parent/child. This is a benefit to PBA members.

I shall award the County's request to eliminate dual health coverage and establish eligibility requirements for dependent children as follows:

In the case of a husband and wife working for the County, the employee with the earliest hire date shall be listed for coverage and the other spouse will not have separate coverage. If, for any reason, the subscriber has his/her coverage terminated, the spouse shall be added immediately. The children dependents of the employees shall be covered until the end of the calendar year in which they reach age 21, or if the dependent is in school or, still a dependent (as evidenced by being claimed on the employee's Federal income tax), until the end of the calendar year in which they turn 23. Employees must submit a copy of their Federal 1040 tax form or information from the school that demonstrates that the child is still a dependent or still in school.

This change is identical to the current practice for all other County bargaining and non-bargaining unit employees. All changes, which the County identified as "current practice", including the "80/20 family dental plan" shall be included in the new CBA. Other changes, including "out-of-network coverage", that are currently in effect on a uniform basis for all other County employees shall be implemented effective January 1, 2003. I shall retain jurisdiction for the limited purpose of resolving any questions with respect to the scope of these health benefit changes.

The balancing of negotiations proposals is an integral part of the bargaining process. It is also an integral part of interest arbitration which, after all, is an extension of the collective bargaining process. The salary proposal which I have awarded incorporates elements of both the PBA and County salary proposals. The County has made a significant financial commitment to reversing the ten-year excessive turnover problem. The PBA's presentation at hearing contributed to the County's awareness of the need to "stop the

bleeding” on retention of trained Correction Officers. The County’s financial commitment to a revised salary schedule is expensive. The County made this financial commitment with the expectation that co-pays would be brought in line with other organized and unorganized employees. This is in line with other health care plans throughout the State. The increase in employee co-pays (co-pays that are already being paid by the vast majority of other County employees) will provide some financial offset to the County in 2003 and 2004. This is consistent with the requirements of this criterion.

Workers’ Compensation

The PBA proposes that Article III, Workers’ Compensation, be amended by replacing it with “Work Incurred Injury” language. (See page 5). I recommend the continuation of the status quo on this issue. The PBA has not met its burden of demonstrating a need for such change.

Vacation Leave

The County proposes that Article XI (H) be modified as follows:

During the period commencing May 1 through September 30 (premium vacation time) no officer shall be granted more than ten (10) days off.

Warden Cole testified that most new employees do not have an opportunity for a summer vacation. The County contends that this is compounded by the fact that junior officers’ generally do not get weekends off (e.g., Monday/Tuesday off or Tuesday/Wednesday off, etc.). Cole testified that summer vacations are selected in December of the preceding year based upon seniority. Cole noted that junior employees, as a general rule, were not able to enjoy summer vacation time in 2001. The County’s proposal limits the maximum number of vacation days between May and September to 10 days per officer thus affording junior officers the opportunity to request prime vacation time.

The County's proposal is reasonable and is awarded with a minor modification. The summer vacation period shall be June 1 to September 30. The seniority system will be maintained regarding the implementation of the ten-day limitation on summer time vacation. This modification does not preclude a second opportunity for a summer vacation after all Correction Officers have been offered an opportunity for a summer vacation and blocks of time still exist. This issue implicates the high turnover problem experienced by the County. A fair shot at a summer vacation for junior employees will provide an additional incentive to continued employment. This is consistent with the requirements of this criterion.

The PBA proposes a deletion of the limitations in Article XI, paragraph H to permit unlimited fragmentation of the stated vacation entitlement. Fragmentation would be permitted in the individual employee's discretion. Any vacation day use would be the subject of prior employer approval.

I award a modification of the language of paragraph H to permit the use of vacation time in segments of less than five days. I remand to the parties the development of appropriate language with respect to number of days, notice, etc. The final language shall not impact on the summer vacation schedule. The final language must protect the County's need to maintain staffing. Therefore, I remand this issue of vacation time in segments of less than five days back to the parties for a period of sixty days to 'flesh out' the details and to finalize contract language. I shall retain jurisdiction to award final contractual language failing voluntary resolution.

Family and Medical Leave

I shall award the County's proposal that Article VII (Family Leave) be modified to include the reference to the *Federal Family and Medical Leave Act*.

Family leave as set forth in the Federal Family and Medical Leave Act (29USC Section 2601 et seq) and/or the New Jersey Family Leave Act (N.J.S.S. 34: 11B-1 et seq) shall be available to all employees covered under this agreement pursuant to the terms of these Acts.

Overtime

The County proposes a new procedure to assign overtime on an “inverse seniority” basis. This is intended to replace the current procedure included in Article XII, C (1-5). The new procedure is:

- C. The Jail Administrator shall establish an updated seniority roster for overtime on a monthly basis. Daily overtime shall be assigned on the basis of inverse seniority. When an officer notifies the employer that he/she will not be reporting for his/her shift, overtime shall be assigned to those officers presently working based upon inverse seniority as recorded on the list.
 - 1. No officer shall be assigned mandatory overtime who has worked in excess of eight (8) hours prior to the oncoming shift except in cases of emergencies as determined by the Jail Administrator or his designee.
 - 2. Mandatory overtime shall be assigned to the most junior officers on the seniority roster. Once an officer works mandatory overtime, said officer shall go to the bottom of the list.
 - 3. Overtime slots may be filled by volunteers. The officer presently on a post whose relieving officer calls out may elect to continue working the post as overtime so long as he has not worked in excess of eight hours prior to the start of the relieving shift. If an officer volunteers to work his/her day off, he shall not be mandated to work beyond the end of the shift for which he/she volunteered.

Warden Cole testified that the greatest volume of overtime is placed upon the most junior officers who find themselves stuck on a regular basis. Overtime is created by sick call outs, vacation leaves and contractual leaves of absence. Cole notes that overtime is greater during the summer months due to vacations. I credit Cole’s testimony that the County’s proposal for overtime distributes the work equitably, relieving a portion of the constant burden placed upon newer employees. Newer employees should not have to “shoulder” the overtime burden. It is well known that forced involuntary overtime negatively impacts on morale in correctional facilities. A more equitable overtime procedure which maintains seniority rights is reasonable. The County’s proposal does not affect senior officers’

preferences to work voluntary overtime if desired. This modification will help in retaining junior officers.

The County's overtime proposal is awarded. This is consistent with the requirements of this criterion.

The PBA proposed a modification of Article XII (A) to provide for a new definition of overtime as all work beyond eight hours in a day or beyond forty hours in a seven-day work-week cycle. I have reviewed the language in Article XII (A) and find no basis in the record for a modification. The PBA has not met its burden of demonstrating a need for such change.

Officers' Bill of Rights/Drug Testing Procedures

The PBA proposes the addition of the "Procedure for Investigation" language to be added as Article XXIII, Officers' Bill of Rights.

Departmental Investigations

In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

1. The interrogation of a member of the department shall be at a reasonable hour, preferably when the member of the department is on duty, unless the exigencies of the investigation dictate otherwise.
2. The interrogations shall take place at a location designated by the Employer or designee. Usually it will be at the Employer's office or in the location where the incident occurred.
3. The member of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the members of the allegations should be provided. If it is known that the member of the department is being interrogated as a witness only, he should be so informed at the initial contact.
4. The questioning shall be reasonable in length. Fifteen (15) minutes time shall be provided for personal necessities, meals, telephone calls and rest periods at the end of every two (2) hours.

5. The member of the department shall not be subject to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions.
6. At every stage of the proceedings, the Department shall afford an opportunity for a member of the department, if he so requests, to consult with counsel and/or his Association representative before being questioned concerning a violation of the rules and regulations during the interrogation of a member of the department, which shall not delay the interrogation beyond one (1) hour for consultation with his Association representative.
7. In cases other than departmental investigations, if an officer is under arrest or if he is a target of a criminal investigation, he shall be given his right pursuant to current decisions of the United States Supreme Court.
8. Nothing herein shall be construed to deprive the Department or its officers of the ability to conduct the routine and daily operations of the Department.
9. No employees covered by this Agreement shall be subjected to any urinalysis or blood screening unless one of the two (2) circumstances exist: (1) Where the employer has probable cause to suspect that there is a job-related individualized impact with respect to the individual employee being tested. (2) Where the urinalysis or blood testing is done as a bona fide annual physical which is done by the Employer's Office.
10. Under no circumstances shall the employer offer or direct the taking of a polygraph or voice print examination for any employee covered by this Agreement.
11. Under no circumstances shall an employee be subject to any charge whatsoever after 45 days. The 45 day period shall be calculated consistent with N.J.S.A. 40A:14-147.

The PBA proposed the deletion of Article XIX (D) (1). This language includes procedures for drug testing. The County has proposed modifications to Article XIX (D) (1) as follows:

The County proposes to amend Article XIX (D) by adding the following:

The procedure for the following provisions shall be set forth in the Burlington County Corrections Department Drug Testing Procedure.

The County proposes the deletion of the following from D.2:

Current employees whose sample shows the presence of an illegal drug in a confirmation test upon the recommendation of the physician and the Jail Administrator shall be offered a temporary medical leave of absence without pay so that an employee may enter a detoxification, rehabilitation and counseling program. Should such an employee test positive in a subsequent confirmation test, he shall be terminated. The results of any urinalysis testing shall remain confidential.

The County proposes to revise D.3 as follows:

The Employer, may, on a routine ~~random~~ basis at its discretion but not more than twice per year, mandate current employees to submit to a urinalysis drug test. Such test shall be unannounced, however; the Employer shall give to each correctional officer at least thirty (30) days prior to the first drug test being administered upon the employees a written policy statement to include but not limited to confidentiality and the establishment of a ~~standardized the above referenced~~ procedure.

The County proposes the deletion of the following from D.3:

Current employees whose sample shows the presence of illegal drug in a confirmation test upon the recommendation of the physician and the Jail Administrator shall be offered a temporary medical leave of absence without pay so that an employee may enter a detoxification, rehabilitation and counseling program. Such cost shall be at the insurance carrier of the employee's expense. Should such an employee test positive in a subsequent confirmation test, he shall be terminated.

I have reviewed the County and PBA proposals on Departmental Investigations and Drug Testing Procedures. Testimony and argument at the hearings convince me that there is merit to both the PBA and County proposals. However, testimony and argument also convince me that these issues were not completely "fleshed out" by the parties. Both parties clearly recognize the need to have clear guidelines for drug testing and departmental investigations. Mutual development of such language is essential.

Therefore, I remand these two issues back to the parties for a period of sixty days to finalize contract language. I shall retain jurisdiction to award final contractual language failing voluntary resolution.

Seniority for Bidding on Posts

The County proposes that Article XIII (D) be amended as follows:

The position shall be filled with the most senior employee who bids on the assignment, who has fifteen (15) months of service and who has the minimum qualifications to perform the job. There shall be a maximum of ten (10) regular bid posts per shift in each facility. All other posts are to be assigned by the shift supervisor.

The current language provides:

The position shall be filled with the most senior employee who bids on the assignment and who has the minimum qualifications to perform the job. An employee shall not be permitted more than two (2) bids per year.

This issue is the post-bidding system in which officers select assignments (posts) by strict seniority. The County's proposal does not impact on shift bidding and will not interfere with employees' seniority rights to select preferable shifts. Warden Cole testified that for each facility and shift, approximately 80% of the work assignments are filled by officers holding bidded posts. The County contends that this creates a staffing pattern in which the more experienced correction officers work in isolated control booths or positions with limited inmate contact leaving the newest and least experienced officers to work the "more difficult" assignments on the housing tiers or those assignments with regular inmate contact. Warden Cole contends that the inversion between seniority/experience and job difficulty jeopardizes institutional security.

The PBA is opposed to any change in the current language. The PBA submits that being able to enjoy seniority-based work selection is an important benefit that needs to be retained. The PBA contends that the Warden admitted to the link between a no bid system and the perception of favoritism. The PBA argues that other counties have different types of systems of supervision, (for example direct supervision versus indirect supervision) as well as numerous other distinctions.

The County's argument regarding institutional security deserves consideration. The PBA correctly argues that shift bidding should not be modified. I agree. However, I think it is time to reexamine the current procedure regarding the bidding of posts. A review of the collective bargaining agreements in evidence shows different methods of dealing with this issue. The ~~Camden~~ CBA provides a very detailed procedure regarding the seniority rights and post bidding with a percentage limitation on the number of senior officers as well as a delineation of the "posts designated as bid posts." (P-18) Other contracts simply refer to shift bidding and in some cases posts are referred to without any details.

The County and the PBA need to address a staffing pattern in which more experienced correction officers may be required to work in more difficult assignments on the housing tiers or other assignments requiring regular inmate contact. The current language clearly provides that posts are filled with the "most senior employee . . . who has the minimum qualifications to perform the job." Arbitrator Barbara Zausner, in a recent award, held that "there is no express limitation on management's right to determine the minimum qualifications for holding certain positions." Arbitrator Zausner further held that "under Article XIII, D., positions are to be filled by seniority and minimum qualifications."

I am convinced that a change is necessary to assure that appropriate staffing is maximized to provide the highest level of institutional security. Accordingly, I remand this issue back to the parties for a period of sixty days to develop contract language to address the need to provide the highest level of institutional security and to include the designation of certain posts to be filled by seniority. I shall retain jurisdiction to award final contractual language failing voluntary resolution.³¹

³¹I agree with the County that the findings of Arbitrator Zausner in her October 12, 2002 award be included in Article XVII (G) in the new CBA.

Disciplinary/Grievance Procedures

The County has two proposals concerning disciplinary procedures and grievance procedures. The first proposal seeks to have an adverse determination from a minor disciplinary matter “be submitted to the grievance procedure at Step 3.” The current language provides that it be submitted at Step 1. This change eliminates the Clerk/Administrator of the Board of Freeholders step in the grievance procedure with the matter going directly to arbitration.

The County’s proposal will expedite the processing of grievances involving minor discipline to arbitration. This is desirable and is awarded.

The second proposal seeks to eliminate the “rotating panel of six arbitrators” with requests for arbitration submitted to the Public Employment Relations Commission. The County did not offer any evidence to support this change. It has not met its burden. The County’s proposed change is rejected.

The County and the PBA submitted proposals on several other issues: 1) Management Rights; 2)Term and Renewal; 3) Complete Agreement; 4)Leaves of Absence; and 5) Work Schedule (XVII (G)). I have reviewed the parties’ arguments on these issues and find that none of the proposals shall be granted. The proposing party has not met its burden of demonstrating a need for such change.

This completes my discussion and analysis of the *interests and welfare of the public* factor. I shall now proceed to a discussion and analysis of the other factors.

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

Comparisons of the wages, salaries, hours and conditions of employment of the County's Correction Officers are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions. I shall discuss these in order.

The first part, private sector comparisons, calls for comparisons with private sector employees performing similar services as well as private employees generally. As both parties acknowledged, there are no easily identified private sector police officers who perform services similar to those performed by Borough police officers. I find this aspect of the comparison to be of no relevance.

The second part of this factor requires a comparison with other employees generally in private employment. National wage increases in the private sector fall significantly below the 6% three-year average salary increase demanded by the PBA. The County cited statistics in support of its economic proposal and somewhat above the County's 3% maximum increase. The PBA and County proposals are both well above any private sector comparisons because of the need to address the high turnover rate. This sub-factor does not favor the PBA or the County. My salary award in 2001 at maximum is more in line with private sector wage data.

There is a trend toward higher salary increases in the private sector which is consistent with the awarded salary increases. The four-year salary increases awarded at maximum may be slightly higher than the average private sector salary increases over the same four-year period.

The only other evidence on private sector employees in general is a report of private sector wage changes compiled by the New Jersey Department of Labor (“NJ DOL”) for the Public Employment Relations Commission in accordances with N.J.S.A. 34:13A-16-6. This survey is provided to members of the Special Panel of Interest Arbitrators by the Commission. Again, when you factor in the high incremental costs needed to address the high turnover issue, the NJDOL data is not relevant.³²

The next comparison is with public employees in general. This has two parts: comparisons with public employees in the same jurisdiction and comparisons with public employees in comparable jurisdictions.

The first comparison is with employees in Burlington County. Neither party submitted extensive data. Salary data in the record shows that maximum salaries increased by 4% in 2001 and 2002 in the PBA Local 320 CBA. (P-15). This is more in line with the awarded maximum increases than either the County or PBA proposals.

The next part of this comparison involves comparison with employees in comparable jurisdictions. The PBA submitted extensive salary data on Correction Officers in other counties. This data clearly shows that Burlington County is below average on minimum salaries; has 13 steps to maximum as compared to 8.35 state-wide; and has a maximum salary that is significantly below the state-wide average.

Comparability is always an important factor for consideration. However, the need to address the high turnover rate is implicated more under the interests and welfare of the public factor previously discussed. The awarded salary schedules are consistent with the requirements and data in the record concerning this factor.

³²I agree with the analysis of Arbitrator Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement.

Overall compensation

Overall compensation levels within the County, in terms of benefits are reasonably similar. All employees are covered by or receive social security, workers' compensation, disability and health care benefits. They are covered by State pension plans. The Police and Fire Retirement System, to which Correction Officers, Sheriff's Officers, and Prosecutor's Investigators all belong, is much richer than that available to employees in the Public Employees Retirement System, although employee contributions to PFSR are appreciably higher than those to PERS. All law enforcement personnel belong to the same pension system and enjoy similar vacation, holidays, sick leave and personal leave.

The overall compensation factor favors the four-year salary schedules that will provide higher cumulative earnings for Correction Officers moving through the steps of the salary schedule.

Stipulations

The only substantive point of agreement between the parties in this proceeding is the term of agreement. Both parties have submitted four-year proposals which I have adopted in my award.

Lawful Authority of the Employer

This factor, among other things, requires the arbitrator to consider the limitations imposed on the Employer by the CAP Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

This can be a significant factor in interest arbitration matters when the parties' fair and final offers on salary are extreme or when a party is asserting that the CAP Law affects their ability to fund salary increases.

The PBA asserts that an analysis of this case presents no issue of the County's ability to comply with the statute. I agree with the PBA that the County has no Cap problem. The cap bank available as a result of the 1999 cap calculation was 3.2 million dollars. In the most recent budget in evidence, 2001, there was \$124 million available under the cap formula. The adopted budget utilized only \$115 million. There is certainly no ability to pay argument affected by the New Jersey Cap Law given the difference between the cost of the County's four-year salary proposal and my award. A more detailed analysis would be required if I had awarded the PBA's salary proposals which are much higher than my award.

There is absolutely no evidence in the record to demonstrate that any aspect of this award will cause the County to approach the limits of its financial authority or to breach the constraints imposed by the CAP Law in funding the salary increases I have awarded.

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

The financial impact of my award will be minimal. Based on the evidence submitted, I cannot conclude that the award's financial impact will affect the governing unit, its residents and its taxpayers.

The County acknowledged that annual budget statements in evidence show that regular services would continue to be sustained and enhanced. With respect to future services, the budgets anticipated developing a new County-wide parks system, expanding the 9-1-1 emergency communications network, making drastic improvements to roads and bridges, providing more funds for education, and pursuing both economic development and open space/farmland preservation. These plans for additional public services and/or augmentation of existing services were made within the constraints of the preexisting financial and budgetary considerations.

The County acknowledged that its economic proposals were made with authorization from the Freeholder Board and that there is no dispute about its ability to budget the necessary funds. The County expressed concern about funding the PBA's salary proposals. However, the County conceded that essential and other beneficial services will not be impacted by an award in the vicinity of the total figures proposed by the County.

Based on the evidence in the record, I conclude that the award's financial impact will not adversely affect the governing unit, its residents and its taxpayers.

Cost of Living

The cost of living data shows that increases in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), are well below the salary proposal of both the PBA and the County and my award in this matter.

These CPI figures demonstrate that the awarded salary increases will result in an increase in real earnings of Correction Officers for the 2000-2004 duration of the new CBA.

Thus, I conclude that the awarded salary increases, while higher than the increase in the cost of living in 2001 and 2002, provide for an acceptable increase in real earning that must be measured against the reduced labor costs that will be achieved by the County through sharply reduced turnover. The higher than CPI salary increases will be offset by a reduction in the significant costs caused by high turnover.

Continuity and Stability of Employment

The salary award in this matter will not jeopardize either employment levels or other governmental services. It is undisputed that the single most important issue in this matter is the high turnover rate and the need to improve the terms and conditions of employment of Correction Officers. The salary award will provide a more competitive salary and permit the County to recruit and retain qualified Correction Officers.

The terms of this award will improve the continuity and stability of employment and satisfy the requirements of this criterion.

I have carefully considered the evidentiary record in this matter including the testimony of the parties' witnesses and the numerous exhibits. I have calculated the cost of the award each year. I have also carefully considered the arguments advanced by the parties in support of their respective positions. I have considered the evidence and arguments in relation to the statutory criteria which I am bound to consider and apply. Each of the statutory criteria has been considered. I have found each factor to be relevant although I have accorded more weight to some factors than others.

Accordingly, I hereby issue the following award:

AWARD

1. The term of the new agreement shall be January 1, 2001 through December 31, 2004.
2. I award the following salary schedules. All Correction Officers will be placed at the designated step in 2001 and move one step per year on January 1, 2002, January 1, 2003 and January 1, 2004. Example: The 74 employees in the class of 2000 and 2001 shall be placed on Step 1 in 2001(\$28,000); move to Step 2 (\$30,000) on the 2002 salary schedule on January 1, 2002; move to Step 2 (\$32,268) on the 2003 salary schedule; and finally to Step 2 (\$34,500) on the 2004 salary schedule. The retroactive wage provisions of this agreement shall apply to those employees who are employed on October 1, 2002.

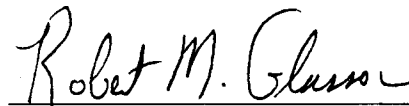
Step	Officers	2000 Base	YEAR HIRED	Step	Officers	2001 Base	Step	Officers	2002 Base
1	37	25000	2001						
1	37	25000	2000						
1	10	25000	1999						
2	7	25274	1998						
3	10	25790	1997						
4	15	27094	1996						
5	3	28500	1995	1	74	\$28,000	1		\$28,500
6	5	29759	1994	2	27	\$29,759	2	74	\$30,000
7	1	30477	1993	3	15	\$31,518	3	27	\$31,768
8	7	31759	1992	4	3	\$33,277	4	15	\$33,527
9	8	33079	1991	5	6	\$35,036	5	3	\$35,286
10	30	34119	1990	6	15	\$36,795	6	6	\$37,045
11	12	35160	1989	7	30	\$38,000	7	15	\$38,804
12	5	36304	1988	8	12	\$39,500	8	30	\$40,009
13	30	42555	1975-87	9	35	\$44,470	9	47	\$46,471
	217	2000 Base			217	2001 Cost		217	2002 Cost
		\$6,596,605				\$7,380,685			\$7,875,236

Step	Officers	2003 Base	Step	Officers	2004 base
1		\$30,500			
2	74	\$32,268	1		\$32,500
3	27	\$34,027	2	74	\$34,500
4	15	\$35,768	3	27	\$36,286
5	3	\$37,545	4	15	\$38,045
6	6	\$39,304	5	3	\$42,000
7	15	\$41,063	6	6	\$46,000
8	77	\$48,562	7	92	\$50,747
	217	2003 Cost		217	2004 Cost
		\$8,546,759			\$9,174,121

3. I award a clothing allowance increase to \$675 to be paid in lump sum on December 1, 2001; \$700 to be paid in lump sum on December 1, 2002; \$725 to be paid in lump sum on December 1, 2003; and \$750 to be paid in lump sum on December 1, 2001.
4. I award the County's Health Benefits proposal.
5. I deny the PBA's Worker's Compensation proposal.
6. I award a modified form of the County's Vacation Leave proposal.
7. I award a modification of the language of paragraph H to permit the use of vacation time in segments of less than five days. I remand to the parties the development of appropriate language with respect to number of days, notice, etc. The final language shall not impact on the summer vacation schedule. The final language must protect the County's need to maintain staffing. Therefore, I remand this issue of vacation time in segments of less than five days back to the parties for a period of sixty days to 'flesh out' the details and to finalize contract language. I shall retain jurisdiction to award final contractual language failing voluntary resolution.
8. I award the County's proposal that Article VII (Family Leave) be modified to include the reference to the *Federal Family and Medical Leave Act*.
9. I award the County's overtime proposal.
10. I deny the PBA's overtime proposal.
11. I remand the "Departmental Investigations" and "Drug Testing" issues back to the parties for a period of sixty days to finalize contract language. It is clear that both parties recognize the need to have clear guidelines for drug testing and departmental investigations. Mutual development of such language is essential. I shall retain jurisdiction to award final contractual language failing voluntary resolution.
12. I remand the issue of "Seniority for Bidding on Posts" back to the parties for a period of sixty days to develop contract language to address the need to provide the highest level of institutional security to include the designation of certain posts to be filled by seniority. I am convinced that a change is necessary to assure that appropriate staffing is maximized to provide the highest level of institutional security. I shall retain jurisdiction to award final contractual language failing voluntary resolution.
13. I award the County's proposal to submit minor disciplinary matters to the Third Step.

14. I deny the County's proposal to eliminate the "rotating panel of six arbitrators."
15. I deny the County's proposal on leaves of absence.
16. I deny the PBA's proposal on "Preservation of Rights."
17. I deny the County's proposal to amend Article XVII (G).
18. I deny the PBA's proposal on "Term and Renewal."
19. I deny the PBA's proposal to delete Article XXXIX.

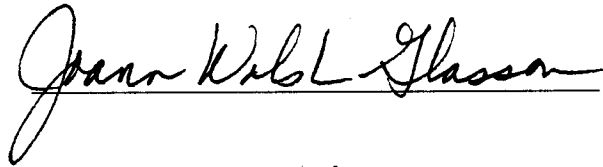
Dated: September 30, 2002
Pennington, NJ



ROBERT M. GLASSON
ARBITRATOR

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

On this 30th day of September 2002, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



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