

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X  
PBA LOCAL 109  
AND PBA LOCAL 109A,

Petitioners,

DOCKET NO. CO-2002-96

DOCKET NO. CO-2002-97

-And-

LITIGATION ALTERNATIVE  
PROCEDURE

COUNTY OF HUDSON,

Joseph Licata, Esq., LAP Umpire

*OPINION AND AWARD*

Respondent.

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## *PART I – BACKGROUND/PROCEDURAL HISTORY*

The Hudson County Correctional Facility, located in Kearny, New Jersey, at last count, houses an average of 1,879 inmates. (See County Exhibit 1, 1997-2001 prison population statistics). The Facility operates 24 hours per day, 7 days per week. PBA Local 109 and PBA 109A, representing rank-and-file and superior corrections officers, respectively, are party to separate collective bargaining agreements with the County of Hudson. Historically, the work schedule pertaining to Hudson County Corrections Officers had consisted of four (4), eight (8) hour working days on, followed by two (2) days off (hereinafter, the "4/2"). The 4/2 schedule yields a total of 243 working days and 1,944 working hours per year. Since in or around 1992, the County has attempted to move all officers to a 5/2 shift, which yields 260 working days and 2,080 working hours per year. The methods previously used by the County to eliminate the 4/2 shift, include:

- a. attrition and grandfathering; permitting those already working the 4/2 shift to continue to do so, while making all other officers work the 5/2 shift;
- b. incentives; by offering better shifts or better assignments or weekends off in return for working a 5/2 shift; and,
- c. punishment avoidance; permitting officers to avoid discipline by moving to a 5/2 shift.

In the early 1990's, the County partially negotiated a change in the 4/2 work schedule to a 5/2 work schedule. Some employees in both units benefitted from a

grandfather clause, whereby they remained on the 4/2 schedule. Those employees assigned to the 5/2 schedule received an additional 14 days pay. The current collective bargaining agreement for each union memorializes the simultaneous existence of the two work schedules as well as the additional pay for those officers assigned to the 5/2 work schedule.

In 1998, the shift issue again became the subject of dispute. The County issued an order that all officers, upon receiving a promotion, would be placed on the 5/2 schedule on the theory that the promotion constituted a new position. This order was the subject of a grievance by the PBA 109A ("SOA"). The County, in response, rescinded the order and indicated that it would petition the Public Employment Relations Commission ("PERC") for a scope of negotiations determination. The County never took such action.

In or about July of 1999, the County implemented the "Weekend Squad" proposal for a relatively small number of corrections superior officers on a 90 day trial period. (See County's Exhibit 36 and related testimony). After the trial period, the schedule was discontinued.

On March 23, 2001, Interest Arbitrator Robert E. Light issued an Opinion and Award in County of Hudson and PBA Local 109, Docket No. IA-99-124. Among other proposals, Arbitrator Light was asked to address each party's proposed work schedule change. The County proposed the Pittmann or 12-hour schedule, while the PBA presented its "Weekend Squad" proposal, each discussed more fully, *infra*. Arbitrator Light rejected each proposal, maintained the *status quo ante*, and suggested that the

parties further explore a work schedule change, if they so desired, in future negotiations. (See, PBA Exhibit G, Light Opinion & Award, pages 42-47).

In October of 2001, the parties became embroiled in a dispute over the County's announced intent to unilaterally assign the 4/2 employees to a 5/2 work schedule. Both unions filed unfair practice charges and interim relief applications with PERC. The charges were assigned Docket No. CO-2002-96 and 97.

On November 1, 2001, the parties appeared for argument before Stuart Reichman, the PERC Director of Unfair Practices/Representation, pursuant to the interim relief applications filed by the unions. The unions sought to enjoin the County's implementation of a change in work schedule pending the resolution of the unfair practice charges.

In order to prevail on the interim relief application before PERC, the unions bore the burden of demonstrating, among other things, a substantial likelihood of success on the merits of the unfair practice charge. In denying interim relief, Director Reichman reasoned:

Under cases such as Borough of Bogota and Pemberton Township and a host of others, Irvington and others that are cited primarily in the employer's brief, while it's clear that work schedules are negotiable terms and conditions of employment, that negotiation is only in circumstances where negotiations on a schedule would not interfere with the determination of government policy. If it would do so, then the matter then becomes nonnegotiable and indicating – appearing that to be the case, that allegation or that claim on the part of the employer would serve to undermine the charging parties likelihood of success element requisite for a grant of the interim relief and on that basis the interim relief application is denied.. [Transcript of November 1, 2001 interim relief argument, pages 2-3].

During the course of the same day, the parties engaged in discussions over the implementation of a Litigation Alternative Procedure (“LAP”) in order to, initially, resolve the impact issues flowing from a change in work schedule, such as, additional compensation, shift bidding, vacation scheduling, etc. To facilitate the LAP, the parties agreed to a schedule of negotiations, my appointment as “LAP Umpire” and to a “conventional authority” terminal procedure, according to N.J.S.A. 34:13A-14, et. seq., the Interest Arbitration statute.

Shortly after the LAP commenced, on December 10, 2001, I issued a Dispute Management Consent Order (See, Attachment A). In pertinent part, Paragraph 7 of the Order states: “The LAP Officer shall have the sole discretion to determine all procedural and substantive issues related to the scope and conduct of the proceedings.” With the goal of promoting labor stability in mind, the parties also thought it wise to expand the scope of the LAP, beyond the impact issues, to include: (1) the negotiability of County’s elimination of the 4/2 schedule; and (2) the most reasonable work schedule (among the parties’ respective proposals) to be implemented pursuant to the criteria set forth under N.J.S.A. 34:13A-16g and N.J.A.C. 19:16-5.1. (See, December 10, 2001 Dispute Management Order, Par. 4). The parties also stipulated that the results of the LAP shall be final and binding with no right of appeal in any forum. (Id.).

I also issued two interim rulings in this matter. First, on January 2, 2002, pursuant to the joint motion of the unions, I issued a stay of the County’s implementation of a

change in work schedule from a 4/2 to a 5/2 schedule, pending final resolution of the LAP (See, Attachment B). Second, on May 8, 2002, pursuant to the County's April 18, 2002 proposal, the opposing motion of the SOA union, and the neutral position of the PBA, I ruled that the County may submit an additional work schedule proposal. The County's most recent work schedule proposal follows a 2/2, 3/2, 2/3 – 12-hour day format, with two 45 minute breaks per workday, otherwise known as the "Pittmann" schedule. However, in light of the SOA's concern over the timing of the County's proposal, the ruling requires that the County's previously proposed 5/2 work schedule remain active as well. In the same ruling, I also granted the unions the reciprocal right to submit any new work schedule counter proposal by the close of business on May 24, 2002 (See, Attachment C).

By letter dated May 24, 2002, the PBA union proposed the "Weekend Squad." The PBA's proposed schedule consists of four separate shifts, but only one type of shift is in operation at any 8-hour period. The particulars are as follows: 5/2 weekdays, 8:00 a.m. to 4:00 p.m. (110 officers/40 hours per week); 4/2 weekdays 4:00 p.m. to midnight (85 officers/40 hours per week), midnight to 8:00 a.m. (105 officers/3 squads of 35 officers each, covering weekdays as well as weekends, for a total of 37.5 hours weekly); and a Weekend Squad, 8:00 a.m. to midnight (80 officers, working 16 hours each day totaling 32 hours per week).

By letter dated May 24, 2002, the SOA proposed that all corrections officers uniformly be placed on a 4/2, 8-hour per day, 37.5 hour per week schedule.

According to my May 8, 2002 ruling, absent the parties' unanimous consent, no new proposals were permitted. Indeed, subsequent to my May 8, 2002 ruling, I sustained the PBA's oral motion to exclude the County's belated proposal to modify its Pittmann schedule proposal to include a 5/2 "break out" component for administrative positions.

On June 10, 2002, pursuant to the County's motion, as opposed by the unions, I issued a Scope of Negotiations Determination ruling: (1) that given past inefficiencies, and to achieve the legitimate goal of implementing an operational methodology known as "Unit Management", the County was not obligated to simultaneously maintain the 5/2 and 4/2 work schedules that are currently in place; and (2) the particular unified work schedule to replace the current schedule would be determined by me after the parties presented evidence and argument under the criteria of N.J.S.A. 34:13A-16(g)2, and under the guidance provided by such relevant cases as *Township of Teaneck*, P.E.R.C. No. 2000-33, 25 *NJPER* (¶30199 1999) and *Township of Clinton*, P.E.R.C. No. 2000-37, 26 *NJPER* (¶31002 1999) (See, Attachment D).

On June 28, 2002, I issued a "Second Dispute Management Order" to facilitate the interest arbitration portion of this proceeding (See, Exhibit E). In response, the parties exhaustively developed an impressive record in this matter. Transcribed formal proceedings took place on July 23, July 30, August 29, September 5, September 17 and September 26 of 2002.<sup>1</sup>

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<sup>1</sup> Informal proceedings, i.e., without the aid of a court reporter, transpired on November 19, 30, December 5, 10 of 2001, January 31, May 1 and June 5 of 2002.

At the conclusion of the September 26, 2002 hearing, a briefing schedule was established. By November 8, 2002, the SOA and PBA submitted a briefs. On November 27, 2002, the County submitted a brief, whereupon the record was closed.

I would be remiss in not noting the expertise and diligence consistently displayed by the parties' representatives throughout this proceeding.

***PART II – THE CURRENT WORK SCHEDULE, STAFFING & OVERTIME***

Article XXIII, Section 1 of the PBA's Collective Bargaining Agreement, entitled, "Work Schedules", states: Subject to the conditions and limitations contained in this article, corrections officers may be assigned to one of the following work schedules:

- a. Four days on duty and two days off duty within recurring periods of six calendar days, hereinafter referred to as the "4/2 schedule"; or
- b. Five days on duty and two days off duty within recurring periods of seven calendar days, hereinafter referred to as the "5/2 schedule."

In 1996, a Side Letter Agreement was entered into by the SOA and County. (Exhibit "A" to Kruznis Certification). The Side Letter Agreement sets forth that newly hired sergeants would be subject to a 5/2 schedule, but that all current officers, unless agreeing otherwise, would be grandfathered on the 4/2 shift. All officers who work according to a 5/2 schedule receive 14 days of additional pay at the straight time rate.

There are 39 superior officers (1 deputy warden, 3 captains, 2 lieutenants and 33 sergeants) working a 5/2 and 264 corrections officers working a 5/2. There are 90 corrections officers working a 4/2 and 9 superior officers working a 4/2 (2 captains, 5



lieutenants and 2 sergeants).<sup>2</sup> The 5/2 employees have fixed days off (i.e., every Monday and Tuesday off). The 4/2 employees have rotating days off on a weekly basis. For example, a 4/2 employee who is off on Monday and Tuesday in a given week will be off Sunday and Monday the following week, and so on. The 4/2 employees are divided into three (3) "squads" per tour for a total of nine (9) squads. In any given tour, there are always two (2) squads working and one (1) squad off.

In terms of staffing posts, the current schedule permits for 8 – 2-man posts and 4–3-man posts. (See, County Exhibit 35, and related testimony).

In 2001, the most recent full year measured, total overtime for rank and file corrections officers was \$3,966,363.39 or \$10,067 per person average; for sergeants, \$472, 074 or \$11, 802 per person average; for lieutenants, \$54, 261 or \$5, 426 per person average; and, for captains, \$66, 133.22 or \$11,022 per person average. (See, County Exhibit 24). Although some overtime is attributed to special assignments and training, the vast majority of overtime is the result of filling voids caused by staffing shortages (See, County Exhibit 2, "PBA Roster Turnover Rate"), sick, vacation and personal days usage and disciplinary suspensions. (See, County Exhibit 35, "Net Annual Hours Worked, Current 4/2, 5/2 schedule, 8-2 Man Posts with Full Coverage"). According to the County's staffing analysis, the current work schedule requires the additional hiring of

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<sup>2</sup> Although the number of corrections officers actively employed at any one time varies, based on a 5-year period, 1997-2002, the parties agreed to use 380 officers (with a variance of 5%) as a benchmark. This means that the parties are free to argue their positions based on manpower levels ranging from a low of 361 officers to a high of 399 officers.

62 corrections officers (above the stipulated 380-person manpower benchmark) to achieve full staffing on a non-overtime basis. (Id.).

In addition, I previously found that the dual shift system does, in part, impede attendance monitoring (See, Scope of Negotiations Decision and Order, dated June 10, 2002, Attachment D). Due to the amount of work expected of a Tour Commander, and the lack of consistent mid-level supervisor/subordinate relationships, it is more difficult to know when a particular officer is abusing sick leave as compared to a unified system. I also found that the dual shift system does, in part, impede the ability of Tour Commanders to pinpoint which particular superior officer should be held accountable for not correcting, teaching, guiding or instructing a corrections officer in the proper performance of his/her duties due to the constant rotation of superiors and subordinates (Id.).

Consequently, the 5/2, 4/2 work schedule was eliminated by my June 10, 2002 Scope of Negotiations Determination, which takes effect upon the County's implementation of the new work schedule established by this Award.

### ***PART III – THE PROPOSED NEW WORK SCHEDULES***

In this case, there are four (4) work schedules under consideration:

The County is seeking a twelve (12) hour work day on a "Pittmann Schedule" (2 days on, 2 days off, 3 days on, 2 days off, 2 days on, 3 days off) with a 5/2 schedule for certain posts that only operate Monday through Friday;

The PBA is seeking a Weekend Squad comprised of: (a) certain employees working a fixed 5/2 Monday through Friday for two eight-hour shifts (8 a.m. to 4 p.m. and 4 p.m. to 12 a.m.); (b) certain employees working a rotating 4/2 schedule on the midnight shift (12 a.m. to 8 a.m.); and (c) certain employees working only two days per

week (Saturday and Sunday) for 16 hours per shift (8 a.m. to 12 a.m.);

The SOA wishes to have all employees work a 4/2 rotating work schedule with a 5/2 schedule for certain posts that only operate Monday through Friday; and

The LAP Officer retained the County's initial 5/2 work schedule with fixed days off.

#### *PART IV – ANALYSIS*

Pursuant to the December 10, 2001 Consent Management Order, I have been vested with “Conventional Authority” to decide the parties’ dispute. See, N.J.S.A. 34:13A-16d(2) (See, Attachment A). Under conventional arbitration, an arbitrator’s award is in no way limited by either party’s last offer. The arbitrator has the power to select from either party’s last offer *or, alternatively, the arbitrator may use his or her judgement and grant an award that he or she feels is more reasonable than any offers made by the parties.* See e.g., Hudson County Prosecutor and PBA Local 232, P.E.R.C. NO. 98-88, 24 NJPER \_\_\_\_ (¶29043 1997) (Arbitrator did not err by establishing third year salary for county prosecutor investigators which was lower than the employer’s offer)[emphasis supplied].

To paraphrase the Interest Arbitration statute, N.J.S.A. 34:13A-16(g) provides the following relevant considerations:

1. The interest and welfare of the public, which consists of 2 competing interests:
  - (a) the employer’s ability to pay; and
  - (b) the morale of the unit;

2. Comparison of terms and conditions of employment both externally and internally;

3. Comparison of overall compensation received;

4. Stipulations of the parties;

5. Lawful authority;

6. Financial impact of taxpayers and the entity;

7. The Cost of Living; and

8. The Continuity and stability of employment;

Finally, in awarding a major work schedule change, an Interest Arbitrator, or in this case, the LAP Umpire, “must carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as its impact on employee morale and working conditions.” Township of Teaneck, P.E.R.C. No. 2000-33, 25 *NJPER* (¶30199 1999); see also, Township of Clinton, P.E.R.C. No. 2000-37, 26 *NJPER* (¶31002 1999).

Generally speaking, I am reluctant to dramatically change the work schedule of the corrections officers before me, especially since a well-known, experienced Interest Arbitrator recently held that no change at all should be imposed upon the parties. As one legal scholar phrased it, the “law must be stable and yet it cannot stand still.” *Roscoe Pound, Interpretations of Legal History (1923)*. Labor relations too must be stable, yet it should not stand still in the face of reason for change. I recognized this in my June 10, 2002 Scope of Negotiations Determination (See, Attachment D). There, I found that the

5-2/4-2 schedule resulted in significant operational inefficiencies and, therefore, should be changed to a unified work schedule. Having said this, however, I firmly believe that the ensuing change must be gradual in order to be acceptable and, equally as important, operationally successful. I am further committed to honoring this principle due to the well documented history of job turnover and morale problems already experienced by this institution's workforce. (See, e.g., County Exhibit 2).

Consistent with the foregoing, the burden of showing why the status quo should be altered falls upon the moving party. See, e.g., Township of Union and PBA Local 69, P.E.R.C. Docket No. IA-91-103. In this case, I generally view the County's Pittmann proposal, which requires all officers to work 12-hour days, as the most dramatic change to the status quo, particularly because corrections officers have historically worked 8-hour shifts. Thus, a substantial burden devolves upon the County to show that 12-hour shifts are necessary. A similar burden is placed on the PBA's Weekend Squad proposal, which partially entails some officers working 16-hour days on weekends. Nonetheless, each of the relevant proposals will be further evaluated under the analytical framework discussed below.

#### 1. ACCEPTABILITY AND PROVEN OPERATIONAL EXPERIENCE.

As noted previously, the LAP Umpire is directed to carefully consider, among other factors, the operational, supervision and managerial implications of a work schedule proposal. Township of Teaneck, P.E.R.C. No. 2000-33, 25 *NJPER* (¶30199 1999); see also, Township of Clinton, P.E.R.C. No. 2000-37, 26 *NJPER* (¶31002 1999).

I preliminarily point out that the parties, to varying degrees, accept the 5/2 schedule without similar consensus regarding any other work schedule. Approximately 3/4ths of the work force currently works according to a 5/2 schedule. The County itself advocated a unified 5/2 schedule from the inception of this dispute before PERC through April 18, 2002, the date on which the County submitted, for the first time, the Pittmann, 12-hour schedule. From April 18, 2002 through the present, the County advanced the unified 5/2 schedule as the next best schedule. Indeed, near the end of this proceeding, the County acknowledged that it desired to place all administrative posts that operate Monday to Friday on a 5/2 "break out" schedule.

Likewise, I note that the PBA's Weekend Squad proposal and the SOA's 4/2 proposal similarly contain 5/2 components with respect to administrative posts that are tied to Monday through Friday, 8-hour operations. I also agree with the sentiments of the Unions and Arbitrator Light that a work schedule that is at least somewhat mutually acceptable has a better chance of success than one that is imposed against the clear wishes of one or both parties to a dispute. The 5/2 schedule is the only schedule where there is common ground, proven experience and general acceptability among the parties.

In my June 10, 2002 Scope of Negotiations Determination, I agreed with the County that changing the work schedule to a unified schedule and implementing a unit management concept will significantly improve the operational efficiency of the Hudson County Correctional Facility (See, Attachment D). Some of the more credible virtues touted by a unit management system include:

Distinct group settings (i.e., units) and continuity of management (i.e., the same supervisors for a fixed group of subordinates).

A simplified table of organization. (See Exhibit G to the Aviles Certification).

Fixed units (e.g., Alpha Pod, Beta Pod, Charlie Pod and Delta Pod).

More evenly delegated supervisory responsibility as sergeants and lieutenants are primarily responsible for the proper operation of their units, not Tour Commanders. A lieutenant, who will work with two sergeants in supervising 14 corrections officers (See Exhibit H to the Aviles Certification), will head each housing unit. At least one of the two sergeants will be on duty at all times during each 8-hour shift.

Increased accountability of middle management.

However, as I also held that Unit Management could be implemented on any unified work schedule, e.g., the SOA's preferred 4/2 schedule, the County's originally proposed 5/2 schedule, the County's proposed Pittmann schedule, and even on the PBA's Weekend Squad schedule, so long as supervisors and their subordinates work together consistently on an independent pod basis (Id).

The following staffing/cost analysis, prepared by the County, is credited by me as a legitimate methodology for measuring the operational and fiscal implications of the various work schedule proposals in this proceeding:

HUDSON COUNTY  
COST OUT OF PROPOSED WORK SCHEDULES

Proposed Work	Total	Average	Difference	Cost of	Cost of	Cost of Overtime	Differen
							ce

Schedule	FTEs	FTEs		Replacement Needed	Replacement 2002*	Replacement Available w/Overtime	for
8 2-man Post w/ Full Coverage	3-Man Post	to Work					
12-hour with 5/2 Posts	411.94	380.00	31.94	\$1,115,542.19	\$1,516,393.02	\$3,929,778.00	-
						\$2,413,384.98	
12-hour Day NAW	456.72	380.00		76.72	\$2,679,536.53	\$3,499,986.75	
						\$3,929,778.00-\$429,791.25	
5/2, 8 Hour Day NAHW	462.55	380.00	82.55	\$2,883,156.16	\$3,657,168.90	\$3,929,778.00	-
						\$272,609.10	
Weekend Squad	468.90	380.00	88.90	\$3,104,937.40	\$3,695,977.50	\$3,929,778.00	-
						\$233,800.51	
4/2 with 5/2 Posts	472.35	380.00	92.35	\$3,225,432.72	\$3,958,104.38	\$3,929,778.00	
						\$28,326.38	
4/2 8 Hour Day	515.68	380.00	135.68	\$4,738,784.10	\$5,391,712.90	\$3,929,778.00	
						\$1,461,934.90	

[See County Exhibit 32]

\* This represents the weighted average for overtime:

60 employees working on 5/2 schedule (60 x 26.23 x 1689) = 2,658,148}  
3,929,778.00

32 employees working on 4/2 schedule (32 x 26.23 x 1515) = 1,271,630}

NAHW stands for Net Annual Hours Worked, i.e., total annual hours under each work schedule less all contractual time off.



While the County would receive the most staffing coverage under the Pittman 12-hour schedule, this is so primarily because only 2 shifts per day, instead of 3, are needed to staff the jail, and because corrections officers work 2,184 hours per year under a 12-hour schedule, which is the most hours required of any of the work schedule proposals in this proceeding.

However, I also note that the 5/2 schedule offers 2,080 hours per year of coverage and requires only 7 more officers to fully staff the jail as compared to the County's pure 12-hour proposal of April 18, 2002. Moreover, the County itself recognizes the operational suitability of the 5/2 schedule: The County contends that by creating a fixed 5/2 shift for all officers, the HCCC will be able to better allocate its human resources to maximize supervision and control. Moreover, the single 5/2 shift will greatly improve efficiency and accountability. The same superior officers will supervise a small group of officers. Thus, the middle level managers (i.e., the sergeants and lieutenants) will work with a small group of corrections officers on a regular basis. Such intimate contact should help foster a sense of teamwork and increase accountability, thereby having an inescapable positive impact on efficiency. The days where no one superior will know the pattern of absences of a particular corrections officer will be gone. Nor will superior officers be able to avoid performing their duties under the guise that a particular corrections officer is not within his/her control. Moreover, this staffing plan will have no adverse impact on overtime. Indeed, it may cause a short-term increase in overtime during the time that newly budgeted-for employees fill the ranks. [County of Hudson's Post-Hearing Brief, page 52].

In terms of staffing and coverage, the Weekend Squad is the next suitable schedule after the County's 12-hour Pittmann schedule and the 5/2 schedule. Indeed, the Weekend Squad requires 469 employees to staff a 3-man post, as compared with 462 employees necessary to staff a 3-man post on a 5/2 work schedule. The 4/2 work schedule with 5/2 posts requires an additional 4 officers to staff a 3-man post.

In contrast, I agree with the County concerning the following critique of the Weekend Squad proposal. The Weekend Schedule will not result in greater operational control. Under the PBA's proposal, there will be two squads on a 5/2 (8am to 4pm & 4pm to 12am), three 4/2 squads working midnight to eight, and one Weekend Squad working two 16-hour days. Given the differing start times and lengths of the Weekend Schedule, it has the potential of being inefficient once absences arise or manpower regresses.

The testimony of Essex County Department of Corrections Warden Keith Ali and Essex County Lieutenant Carmen Montalbano, both with over 25 years department experience, was instructive. Lieutenant Montalbano explained that in order for the Weekend Squad to work, the facility must be "fully staffed on all shifts" [T. V. VI, Page 54, L16- 17]. Lieutenant Montalbano attributed Essex County's staffing problem on the same issues that plague the HCCC, i.e., sick calls, regular days off, military leaves, comp time, etc. [T. V. VI, Page 55, L2- 3]. More importantly, when asked about relief factor in Essex County, Lieutenant Montalbano stated:

If you have proper staffing then you'll have a proper relief factor.  
And we don't have that proper relief factor because we don't have  
the proper personnel on staff.

When asked why, he responded:

The weekend shift. If we did not have our Weekend Squad I could  
assign more officers to our other shifts. We could have proper  
staffing.

[T. V. VI, Page 56, L4-19]. Finally, Lieutenant Montalbano testified that Essex County is "thinking of eliminating the Weekend Squad." [T. V. VI, Page 63, L4 - 7].

Likewise, the SOA 4/2 proposal has certain operational disadvantages as well.

The 4/2 schedule is essentially a “flip flop” of the current dual shift system. Instead of staffing the facility with the majority of officers on the 5/2 schedule and a minimum on the 4/2 schedule, the SOA proposal staffs the majority of officers on the 4/2 schedule and a small percentage of officers on the 5/2 schedule. This will result in loss of manpower needed to cover the shifts, and in turn, loss of hours worked and a greater reliance on overtime.

Under the SOA model, there are 394 employees, of which 22.8% or 90 employees will work the 5/2 and 77.2% or 304 employees will work the 4/2. [T. V. IV, Page 142, L8-23]. Officers working on the 5/2 schedule work 260 days per year while officers working on the 4/2 schedule work 243 days per year [T. V. IV, P137, L15]. As such, the 5/2 officers work a potential 2,080 hours per year (260 days x 8 hours per day), which becomes 1,689 net annual work hours. The 4/2 officers work a potential 1,944 hours per year (243 days x 8 hours per day), which becomes 1515 net annual work hours.

If the SOA's schedule were implemented, the majority of officers would be working only 243 days per year and, thus, the County's correctional facility would suffer a loss of 174 hours (1689 – 1515) per officer. If that were the case, the County would be missing 52,896 hours per year. Therefore, as a result of these lost hours, the County will need to spend over \$1.38 million in overtime just to bring the facility back to the inefficiencies of today's schedule.

Based on the foregoing, I find that the County's 12-hour schedule, closely followed by the 5/2 schedule, provides the most coverage for the County's operation of the jail. However, what the County's statistical analysis cannot measure is the potential offset to efficiency under a

12-hour work day that could be caused by a correlating increase in sick outs and employee turnover, if Warden Ali's fears concerning the impact of a 12-hour schedule on employee morale are realized in Hudson County. As stated earlier, the 5/2 schedule is the only schedule where there is common ground, proven experience and general acceptability among the parties.

**2. N.J.S.A. 34:13A-16(g)1 – INTEREST & WELFARE OF THE PUBLIC.**

This criterion has been deemed to consist of two competing factors: (1) the employer's ability to increase appropriations for a police or fire salary award without deleteriously affecting the amounts budgeted for other programs and without exceeding the CAP on municipal/county expenditures; and (2) the need to provide a salary and benefit package sufficient to ensure the good working morale of public safety employees. County of Middlesex, 23 NJPER 598 (¶ 28293 1997). Likewise, in considering a work schedule change for public safety employees, PERC has similarly advised interest arbitrators to consider, among other factors, the fiscal implications of such a proposal, as well as its impact on employee morale. Township of Teaneck, P.E.R.C. No. 2000-33, 25 NJPER (¶30199 1999); see also, Township of Clinton, P.E.R.C. No. 2000-37, 26 NJPER (¶31002 1999).

In the present matter, it is clear to me that the unified 5/2 schedule strikes the most appropriate balance concerning the above criterion. The morale of this work force historically has been low, characterized by high turnover rates, overuse of paid leave, forced overtime and substantial disciplinary problems – collectively costing the County millions of dollars in overtime and repetitive training. In part, the salary step system (with automatic step movement)

recently implemented by Arbitrator Light in Docket No. IA-99-124 was designed to significantly improve the turnover rate and, accordingly, employee morale. In fact, the early returns seem to indicate such improvement.

In 2000, the year prior to the step system, 101 corrections officers and 9 superior officers retired, resigned or were terminated. In 2001, the first operative year of Arbitrator Light's Award, 57 corrections officers and 7 superior officers retired, resigned or were terminated. In the first half of 2002, only 19 corrections officers and no superior officers met similar fates. (See County Exhibit 2). In light of the progress created, I do not wish to implement any work schedule that will turn back the hands of time when it comes to the morale of this workforce.

Consistent with the foregoing, I first note that the above improvement in turnover occurred while approximately 3/4ths of the workforce worked under a 5/2 work schedule. Conversely, I note the persistent rejection of 12-hour work days by both unions. In a formal poll conducted at my direction (See, Second Dispute Management Order, page 3, Attachment E), the workforce favored the 4/2 schedule first, the Weekend Squad second, the 5/2 third, and the 12-hour schedule last. Even significant economic enticements, such as, advancement on the negotiated salary guide plus a 3.5% salary increase, did not earn support for a change to a 12-hour shift system. The main complaints were that, in a jail setting, as opposed to a police department setting, 12-hour days are too long, lead to exhaustion, jeopardize safety, interfere with family obligations and restrict outside educational opportunities.<sup>3</sup> Indeed, Warden Keith

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<sup>3</sup> Variation in assignments, interaction with the public, as contrasted with the prison population, and more down time, e.g., traffic monitoring, are some likely

Ali of the Essex County Jail, the most experienced law enforcement officer to testify in this proceeding, had this to say about morale issues associated with the 12-hour schedule:

Q. Warden, there was testimony from the lieutenant that your predecessor considered 12-hour work schedule. Is that something that you're still considering?

A. Not me.

Q. You have abandoned that thinking?

A. Yes.

Q. Why would that be?

A. I am watching sick time abuse and looking at what they do with eight hours and how would I expect them to work twelve. (T., V. VI, Page 80).

Q. If you lose officers with eight hours sick time you're going to end up losing officers with 12-hours sick call?

A. And also if we are having difficulty with staff and safety issues, dangerous element inmates that are in the actual effect and the draining of the officers' energy, attention span, if you will, wouldn't be useful to us, and overtime, it's not always useful either . . . (Id., Page 81).

Based on the foregoing, in terms of employee morale, while I acknowledge that the workforce would prefer either the Weekend Squad or 4/2 schedule over the 5/2 schedule, it is clear that the morale of this workforce has improved in 2001 and 2002 under a predominantly 5/2 schedule, and that the 5/2 schedule is preferred over the 12-hour schedule, which Warden Ali and this workforce have squarely rebuked as undesirable.

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reasons why the 12-hour schedule is more suitable for local police departments, as contrasted with a jail setting.

When balanced against the fiscal implications component, it is clear that the 5/2 schedule is the most reasonable schedule under the Interest and Welfare of the Public Criterion. It is interesting to note that the 5/2 work schedule, which yields 2,080 hours per year, approximates the cost effectiveness of the 12-hour work schedule proposal by the County without the 5/2 component. Only by including a 5/2 component does the County's work schedule proposal elevate significantly to the most cost effective proposal. As the parties know, I denied the County's motion to file a second amendment to its work schedule proposal from a traditional Pittmann schedule to a Pittmann plus 5/2 work schedule. It should also be noted that the reason why the 12-hour schedule proves to be the most cost effective, and theoretically operationally efficient, schedule is because it entails the greatest number of annual hours worked, i.e., 2,184 hours. In addition, during a 24 hour rotation, the 12-hour work schedule only requires 2 shifts to provide coverage, whereas any work schedule predicated on an 8 hour day obligates the County to staff 3 shifts in a 24 hour cycle.

I also note for the record that the County has not traditionally staffed all its posts with a 3-person compliment. Rather, as established during this proceeding, 8 posts are staffed with 2 employees, whereas 4 posts are staffed with 3 employees per shift. This operational reality, if incorporated in the County's analysis, would yield less total costs in each of the relevant categories contained in the above chart, yet the relevant ranking of work schedule costs would remain the same. In addition, what the County's statistical analysis cannot measure is the potential offset to cost savings under a 12-hour work day that could be caused by increased sick outs and employee turnover, if Warden Ali's fears concerning the 12-hour schedule are realized.

Finally, it should be noted that the County's analysis does not include the additional costs associated with the impact proposal that the County has made in order to effectively lobby for a change to a 12-hour day work schedule. In the County's August 30, 2002 letter, the County proposed the following impact issues to be awarded by me in conjunction with the 12-hour work schedule:

1. The County will move each PBA member to the same step on the 2003 salary guide as they were on for 2002, include a new salary guide for 2003 by increasing the existing 2003 guide by 3.5% of each step; and
2. The County will provide each SOA member with \$3,000 and settle the outstanding interest arbitration at the County's last best offer in that proceeding.

According to County Exhibit 21, the average salary for a corrections officer in 2002 is \$34,926. Taking that average salary and multiplying it by 3.5% yields \$1,222.00 per Corrections Officer. This number further multiplied by 304 Corrections Officers yields an annual increase cost of \$371,612.00, which would be further enhanced by the step movement contemplated by the County's proposal. Using the County's \$3,000.00 annual increase to superior officers, multiplied by 53 superior officers (See County Exhibit 27), yields an additional cost of \$159,000.00. Therefore, without even factoring in the costs of step advancement, the County's impact proposal adds a combined annual cost of \$530,612.00.

In contrast, the 5/2 work schedule entails an increased impact cost of 14 days pay to approximately 90 corrections officers. Using 243 days as the denominator for those officers currently working a 4/2 work schedule, the resulting cost is \$2,012 per officer multiplied by 90



officers for a total cost of \$181,097.00 ( $34,926 \div 243 \times 14 \times 90$  officers). Therefore, the approximate difference in impact cost between the County's Pittmann 12-hour proposal (\$530,612.00) and the 5/2 proposal (\$181,097.00) is \$349,515.00 annually. To put this cost differential in perspective, the County could hire an additional 10 corrections officers under the 5/2 schedule while implementing Unit Management on a unified schedule that has proven experience and acceptability.

Finally, I note that the PBA and SOA proposals come with no impact costs attached to them. Potentially, if I were to award a 4/2 schedule, those officers currently receiving 14 additional days base pay under the PBA Agreement would forfeit said pay resulting in a savings to the County of \$1,880.00 per officer multiplied by 304 officers for a total savings of \$571,711.00 annually. To a lesser extent, savings would also be realized by the SOA's Weekend Squad proposal. However, as noted previously, the County's ability to staff the jail would be significantly reduced if either of the union work schedule proposals were awarded over the Pittmann and 5/2 work schedules.

In summary, based on a balancing of the morale and fiscal interests involved in this proceeding, I conclude that the 5/2 work schedule is the most reasonable work schedule proposal under N.J.S.A. 34:13A-16(g)1.

3. N.J.S.A. 34:13A-16(g)2 – COMPARABILITY.

This criterion can be broken down into external and internal comparability. External comparability entails comparisons between the present group and other public safety employees in similar jurisdictions, other public employees, generally, and private sector comparisons.

Internal comparability can be broken down into two general categories consisting of uniformed and non-uniformed employees within the same jurisdiction. Without question, comparisons of the subject group with public safety employee statistics in the same or similar jurisdictions carries the most weight at interest arbitration.

In the present case, this interest arbitration is not benefitted from a comparison of Hudson County Corrections Officers with other Hudson County employees. Rather, the most relevant line of comparison is Hudson County Corrections Officers with other corrections officers in New Jersey. Toward that end, County Exhibit 22 is informative. Out of the 18 New Jersey Counties listed with information, only 2 county corrections facilities (or 11%), Gloucester County and Salem County, operate according to a 12-hour work schedule. Gloucester follows a 2-3; 2-2; 3-2 rotation, entailing 12-hour days with a 5-2, eight hour component for administrative positions. Similarly, Salem County follows a 12-hour rotation of 2-2; 3-2; 2-3 days coupled with a 5-2, eight hour component. Exhibit 22 illustrates the novelty of, and inexperience with, the 12-hour schedule in New Jersey.

In stark contrast, 11 out of the 18 jurisdictions responding (or 61%) operate according to a pure 5-2 work schedule. I also note the existence of at least a partial 5-2 work schedule in neighboring counties, such as, Union County, Essex County and Bergen County. In addition, only Essex County operated the Weekend Squad schedule advocated by the PBA. Finally, only Bergen County, Warren County and Essex County have partial 4-2 components to their 5/2 work schedule. No county corrections facility in New Jersey operates according to a predominant 4/2 schedule, as proposed by the SOA.

Based on the foregoing, I deem that the pure 5-2 work schedule is the most widely used county correctional facility work schedule in the State of New Jersey. The experience, trials and tribulations of all of these New Jersey-based correctional facilities leads to a logical inference that the 5-2 work schedule is particularly suited to the idiosyncracies associated with the operations of a correctional facility. Therefore, I find that the 5/2 schedule is the most reasonable work schedule under N.J.S.A. 34:13A-16(g)2.

4. N.J.S.A. 34:13A16(g)3 – COMPARISON OF OVERALL COMPENSATION RECEIVED.

In this interest arbitration proceeding, I do not deem an analysis of the current employment package received by Hudson County Corrections Officers to be relevant to a determination of the particular work schedule to be implemented. Rather, the above criterion has historically existed for interest arbitrators to utilize in determining increases or decreases to salary and economic benefits. Therefore, further discussion of this criterion will not prove useful in this proceeding.

5. N.J.S.A. 34:13A-16(g)4 – STIPULATIONS OF THE PARTIES.

\_\_\_\_\_The stipulations reached in this proceeding are as follows.

- Unit Managers shall receive a \$900 annual stipend to carry a pager on their off hours and to respond to telephone calls. Additionally, Unit Managers shall receive a minimum of 4 hours overtime in the event that he/she is required to respond to the jail during off hours. Unit Managers shall receive prior approval from the jail administration before reporting to the jail on a call-in basis.
- If a post is eliminated or the number of officers required to staff a particular post are reduced, the displaced corrections officer(s) shall retain their days off and be reassigned within the unit at the discretion of the Unit Manager. Corrections Officers will be displaced on a reverse seniority basis (i.e., least senior officer)

unless a volunteer asks to be displaced. [See County's December 17, 2001 letter from Mark A. Tabakin, Esq. to Jeffrey Garrigan, Esq. and Robert C. Griffin, Esq.].

6. N.J.S.A. 34:13A-16(g)5 – LAWFUL AUTHORITY.

The discussion of the public interest criterion, *supra*, is adopted by reference herein. In addition, I note that no evidence was introduced by any party to suggest that the implementation of a 5/2 work schedule, coupled with a salary increase to approximately 90 corrections officers in the amount of 14 days pay, would in any way impact this criterion. See, N.J.S.A. 40A:4-45.1, et. seq. To the contrary, the County has advocated the 5/2 work schedule, as awarded by me, as the County's alternative work schedule proposal in this proceeding. (See, County of Hudson's Post-Hearing Brief, pages 52-55). Therefore, I conclude that the "Lawful Authority" criterion is satisfied by this Award.

7. N.J.S.A. 34:13A-16(g)6 – FINANCIAL IMPACT.

\_\_\_\_\_The discussion of the fiscal implications associated with the various work schedule proposals set forth under the Interest and Welfare of the Public criterion is incorporated herein by reference. Furthermore, I note that the County did not contend that an award of the 5/2 work schedule, coupled with 14 days pay to approximately 90 corrections officers, would in any way have a significant effect on the above criterion. To the contrary, the County has advocated the 5/2 work schedule, as awarded by me, as the County's alternative work schedule proposal in this proceeding. (See, County of Hudson's Post Hearing Brief, pages 52-55). Therefore, I conclude that the "Financial Impact" criterion is satisfied by this Award.

8. N.J.S.A. 34:13A-16(g)7 – THE COST OF LIVING.

\_\_\_\_\_ The cost of living was not a factor in the proceeding before me concerning the most reasonable work schedule to be adopted by the Hudson County Correctional Facility.

9. N.J.S.A. 34:13A-16(g)8 – CONTINUITY AND STABILITY OF \_\_\_\_\_ EMPLA

As mentioned previously, this particular employment setting has historically suffered from high turnover and concomitant low morale. I am particularly sensitive to the Continuity and Stability of Employment criterion in this proceeding. Specifically, I adopt herein by reference the discussion of the morale considerations set forth under the Interest and Welfare of the Public Criterion, *supra*. Accordingly, I conclude that the “Continuity and Stability of Employment” criterion is satisfied by this Award.

In summary, consistent with the foregoing tenets, it is my decision that the most appropriate work schedule change, at this time, is a gradual change from the current 5/2-4/2 schedule, to a unified 5/2 schedule, effective no sooner than Monday, January 6, 2003.<sup>4</sup> PART

V – IMPACT ISSUES

1. Adjustments For Officers Transferring From A 4/2 To A 5/2 Work Schedule

Since both parties have previously negotiated the proper adjustment to pay and benefits for officers who transfer from a 4/2 work schedule to a 5/2 work schedule, I see no reason to alter the byproduct of those negotiations and create a two-tiered pay and benefit structure for

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<sup>4</sup> Near the conclusion of the LAP, I asked the parties to analyze a compromise work schedule, consisting of 5 days on (8 hours) 2 days off (permanent weekends off) in tandem with a Weekend plus squad (Sat/Sun – 12 hours each day with 1-8 hour day during the first week, followed by 2- 8 hour days during the second week, and repeating). However, due to time and other constraints, no meaningful analysis was given to this schedule by any party. Therefore, I cannot award such a schedule at this time, but I recommend continued exploration of it.

officers who will be working the identical schedule. Accordingly, the County's prior agreements with the PBA and SOA regarding pay and benefit adjustments for officers transferring from the 4/2 to the 5/2 work schedule shall apply to the implementation of this Award, including, but not limited to, 14 days pay added to base pay for each affected officer.

## 2. Shift Bidding Procedures

With the exception noted below, I see no need to significantly alter the shift bidding criteria currently in place simply because some corrections officers will be switching from a 4/2 to a 5/2 schedule. The current contractual shift bidding system and existing PERC precedent concerning the subject are more than adequate to facilitate annual shift bidding on the newly implemented 5/2 work schedule. Having said this, however, the following procedure discussed during this LAP proceeding for selecting shifts appears satisfactory to all parties, makes sense from a procedural standpoint, and is hereby awarded, as follows.

Shift bids will be completed live or via telephone with one Union representative and one management representative present at all times. All corrections officers shall be given a date and time to report to make their selection. No officer shall receive additional compensation for appearing to make a shift selection. If a corrections officer fails to appear at the designated time and fails to call in to make a selection, despite having received prior notice to appear for selection, the Union to which the officer belongs shall make the selection.

## 3. Vacation Bidding

Until the County actually implements Unit Management throughout the operational sectors of the jail, vacation bidding shall be based on jail-wide seniority. However, as soon as the County has substantially implemented Unit Management throughout the correctional facility, vacation bidding shall be based on shift seniority.

#### **4. Stipulations Of The Parties**

The stipulations reached in this proceeding are as follows.

- Unit Managers shall receive a \$900 annual stipend to carry a pager on their off hours and to respond to telephone calls. Additionally, Unit Managers shall receive a minimum of 4 hours overtime in the event that he/she is required to respond to the jail during off hours. Unit Managers shall receive prior approval from the jail administration before reporting to the jail on a call-in basis.
- If a post is eliminated or the number of officers required to staff a particular post are reduced, the displaced corrections officer(s) shall retain their days off and be reassigned within the unit at the discretion of the Unit Manager. Corrections Officers will be displaced on a reverse seniority basis (i.e., least senior officer) unless a volunteer asks to be displaced. [See County's December 17, 2001 letter from Mark A. Tabakin, Esq. to Jeffrey Garrigan, Esq. and Robert C. Griffin, Esq.].

#### **5. Dismissal of the Unfair Practice Charges**

Consistent with the December 10, 2001 Dispute Management Order (See, Attachment A), this Award constitutes a full and final resolution to the unfair practice charges filed by the unions in Docket Nos. CO-2002-96 and CO-2002-97, and same are hereby dismissed.

## PART VI – AWARD

### 1. Work Schedule

Effective January 6, 2003, the work schedule for the Hudson County Correction Facility shall be a unified 5/2 work schedule.

### 2. Adjustments for Officers Transferring From A 4/2 to A 5/2 Work Schedule

The County's prior agreements with the PBA and SOA regarding pay and benefit adjustments for officers transferring from the 4/2 to the 5/2 work schedule shall apply to the implementation of this Award, including, but not limited to, 14 days pay added to base pay for each affected officer.

### 3. Shift Bidding Procedures

The only exception to the current shift bidding system is as follows.

Shift bids will be completed live or via telephone with one Union representative and one management representative present at all times. All corrections officers shall be given a date and time to report to make their selection. No officer shall receive additional compensation for appearing to make a shift selection. If a corrections officer fails to appear at the designated time and fails to call in to make a selection, despite having received prior notice to appear for selection, the Union to which the officer belongs shall make the selection.

### 4. Vacation Bidding

Until the County actually implements Unit Management throughout the operational sectors of the jail, vacation bidding shall be based on jail-wide seniority. However, as soon as the County has substantially implemented Unit Management throughout the correctional facility, vacation bidding shall be by shift seniority.

### 5. Stipulations Of The Parties

- Unit Managers shall receive a \$900 annual stipend to carry a pager on their off hours and to respond to telephone calls. Additionally, Unit Managers shall receive a minimum of 4 hours overtime in the event that he/she is required to respond to the jail during off hours. Unit Managers shall receive prior approval from the jail administration before reporting to the jail on a call-in basis.



- If a post is eliminated or the number of officers required to staff a particular post are reduced, the displaced corrections officer(s) shall retain their days off and be reassigned within the unit at the discretion of the Unit Manager. Corrections Officers will be displaced on a reverse seniority basis (i.e., least senior officer) unless a volunteer asks to be displaced.

**6. Dismissal of the Unfair Practice Charges**

Consistent with the December 10, 2001 Dispute Management Order (See, Attachment A), this Award constitutes a full and final resolution to the unfair practice charges filed by the Unions in Docket Nos. CO-2002-96 and CO-2002-97, and same are hereby dismissed.

Respectfully submitted,

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Joseph Licata, Esq.  
LAP Umpire

Dated: December 24, 2002

State of New Jersey )  
                                  :SS  
County of Bergen    )

On the 24<sup>th</sup> day of December 2002, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.

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Notary Public