

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration between

COUNTY OF ESSEX,

Public Employer,

Docket No.
IA-2024-004

and

FRATERNAL ORDER OF POLICE LODGE 106,

Union.

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Before **DEAN L. BURRELL, ESQ., Impartial Arbitrator**

APPEARANCES:

For the Union

Catherine Elston, Esq.	Attorney, C. Elston and Associates
Nathaniel Richardson	FOP Lodge 106, President
James Troisi	FOP Lodge 106, Vice President
Edward DeFrancesco	FOP 106, Member, Contract Committee
James Palma	FOP 106, State Delegate

For the County

Joseph Hannon, Esq.	Attorney, Genova Burns LLC
Sydney Shubert, Esq.	Attorney, Genova Burns LLC
Jerome St. John, Esq.	County Counsel, County of Essex
Robert Jackson	County Administrator
Sylvia Hall	Director of Labor Relations, County of Essex
Maya Lordo	County Health Officer and Head of the Office of Public Health
Diolinda Soares	Management Assistant for Health Benefits
Hassam Mohamed	County Financial Officer

I. **PROCEDURAL HISTORY**

The Essex County Correctional Police Superior Officers, FOP Lodge No. 106 (“FOP” or the “Union) and the County of Essex, New Jersey (the “County” or the “Employer”) were signatories to a collective bargaining agreement with a duration from January 1, 2011, through December 31, 2013, and a subsequent Memorandum of Agreement from January 1, 2014, through December 31, 2017, covering the unit of “All County Correction Sergeants, Lieutenants and Captains employed by the County of Essex.” Bargaining sessions were held with the County and FOP, initially with PBA 183 and PBA 183A, on September 27 and October 10, 2023. On October 31, 2023, the County filed the instant Petition to Initiate Compulsory Interest Arbitration in this matter pursuant to the Police and Fire Interest Arbitration Reform Act. N.J.S.A. 34:13A-16 (the “Act”).

In its Petition the County identified the economic issues in dispute as “Term, Wages (Article 6), Cessation of isolation payments for COVID-19.” The County left blank any description of non-economic issues. The Union filed its Response on November 3, 2023, stating “all economic and non-economic issues are in dispute, including, but not limited to: wages, health/medical benefits, death benefits for active members and retirees, deletion of Chapter 78 language from the contract and the term of the contract.”

Prior to the initiation of the interest arbitration, the New Jersey Public Employment Relations Commission, In the County of Essex, and FOP 106 et seq., PERC NO. 2023-60 (June 29, 2023), found the County had unilaterally changed contractual health benefits by changing its health carrier from Aetna to the NJ State Health Benefits Program, ordering the County to establish a health benefits reimbursement fund for any costs or losses incurred by unit employees as a result of this change. This obligation is to continue until the parties negotiate and agree to a

different level of health benefits or “otherwise settle the matter.” The County’s appeal of that decision is currently pending. The Union filed a motion with PERC seeking compliance and enforcement of this decision on January 10th.

The undersigned was randomly selected to hear this interest arbitration petition by the New Jersey Public Employment Relations Commission (“PERC”) on November 17, 2023. Mediation was unsuccessfully attempted by the undersigned on December 15, 2023, and January 5, 2024. Final Offers were submitted by the parties on January 2, 2024.

On January 3, 2024, the County filed its objection and request to bar consideration of proposals contained in the Union’s final offer. The County also filed an expedited scope of negotiations petition with the New Jersey Public Employment Relations Commission (“PERC”) on January 5, 2024. Christine Lucarelli-Carneiro, General Counsel of the PERC, denied the expedited petition on January 8, 2024, stating

This matter is currently actively engaged in the interest arbitration process. The County has a motion pending before the arbitrator on the same issues that are the subject of its expedited scope petition request. Those issues shall be properly determined by the arbitrator.

After reviewing the Union’s opposition to the County’s objection and request to bar consideration of proposals contained in the Union’s final offer I issued an Order on January 11th granting in part and denying in part the County’s objection. Therein proposals I found encompassed within the Union’s original Response to the County’s Petition to Initiate Compulsory Interest Arbitration were permitted, but I determined items contained in the Union’s final proposal pertaining to the improper practice proceeding were not encompassed in the Union’s Response so were stricken.

On January 11th the Union filed a motion to stay this proceeding with the PERC. Lourdes M. Ciervo, Secretary to the General Counsel and Commission Case Administrator of PERC

responded the following day, granting the County until January 18th to file its response to the Union's motion for compliance and enforcement of the PERC ruling in the alleged unilateral change of health providers, and until January 19th to file its response to the motion to stay. I am unaware of the current status of those matters.

On January 9, 2024, I permitted the Union to submit a revised Final Offer over the County's objection. The hearing was conducted on January 12, and 17, 2024 at the Essex County Offices. During the January 17th hearing prior to its close I again permitted the Union to revise its Final Offer over the County's objection.¹

During the hearing the State provided eight binders containing Exhibits 1-94 (with omissions) and presented testimony from Maya Lordo, Essex County Health Officer and head of the Office of Public Health; Hassam Mohamed, the County Financial Officer; Robert Jackson, County Administrator; and Diolinda Soares, Management Assistant for Health Benefits. The Union submitted four binders containing Exhibits 1-33 (with omissions) and testimony from Union Vice President and retired unit member James Troisi; Union State Delegate Lieutenant James Palma; Union Committee Member Edward DeFrancesco; and Union President Captain Nathaniel Richardson.

Both parties were afforded the full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. The parties submitted briefs on January 29, 2024, and the record was closed. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in preparation of this Interest Arbitration and Award.

¹ The revision on January 17, 2024, was the addition of the proposal to increase the stipend at paragraph 9 to the second contract for 2020-2023.

This proceeding as governed by the Act requires the application of the nine §16g interest arbitration criteria to the extent deemed relevant. See N.J.S.A. 34:13A-16.7(b) and 16g.

Pursuant to P.L. 2014, c.11, the arbitrator has ninety (90) days from appointment, or here by February 15, 2024, in which to render an award. This has resulted in a greatly compressed time period for its issuance.

II. PARTIES FINAL OFFERS ON DISPUTED ISSUES

In accordance with the Act, each party submitted a Final Offer (the “Final Offer”). These Final Offers are set forth in their entirety.

THE EMPLOYER’S FINAL OFFER

Economic Items

1. Term – 6 years (January 1, 2018, through December 31, 2023)
2. Wages – Effective January 1 of each calendar year wages shall be increased by the following percentages for individuals who are currently active or former eligible FOP members who retired from the County on or after January 1, 2018, in good standing:
 - a. 2018-1.9%
 - b. 2019-2%
 - c. 2020-2%
 - d. 2021-2%
 - e. 2022-2%
 - f. 2023-2%
3. Health Insurance: Effective January 1, 2017, the County switched to the State Health Benefits Program. The language necessary to effect this change shall be made to the Collective Negotiations Agreement. Chapter 78 contributions remain unchanged at Tier 4 levels as set by P.L. 2011, c.78.
4. Covid-19 Isolation Pay -The County shall cease paying for COVID-19 isolation pay for the period of isolation due to testing positive for coronavirus. Employees must use their accrued benefit time instead.

[No non-economic proposals were submitted by the County]

THE UNION'S FINAL OFFER

January 9, 2024

REVISED FINAL OFFER

Terms of Contracts: Two Separate Contracts as below:

Contract for the term 2018-2019

Contract for the term 2020-2023

CONTRACT-2018-2019

1. Term of Contract: 2018-2019

2. Wages

2018: 2.25%

2019: 2.25%

3. Medical Benefits: Active Members: Effective January 1, 2018, capped at Tier 3; Retirees below Medicare age: Effective January 1, 2018, reduced to and capped at 1.5% gross pension.

~~4. Medical Benefits Upon Employee's Death: Effective January 1, 2018 active members and retirees, if the employee or retiree shall die and leave behind a spouse and/or other dependents, said spouse/dependents shall have the option to remain on the County's medical and prescription insurance paying the same rate as the employee or same 1.5% of gross pension amount as the retiree, until such time as child dependents age out of the insurance and prescription plan, or until such time as the surviving spouse remarries.²~~

~~5. Effective January 1, 2018, dental coverage in SHBP is to be included at a 50%-50% cost split (County and member)~~

~~6. Sick Time Upon Retirement: Effective January 1, 2018, sick time upon retirement to be paid on a 1 for 2 basis to a maximum of \$15,000.~~

² In its post-hearing brief the Union withdrew "its proposal as to continuation of medical benefits upon a pre-medicare employee's death," which is indicated as the strikethrough in paragraph 4 of the 2018-2019 and 2020-2023 proposals. By email dated February 9, 2024, I requested the Union confirm these strikethroughs which it did by email dated February 11, 2024. The Union also withdrew its proposals regarding sick time upon retirement, dental coverage, and medical benefits under an employee's death. Those changes are shown as strike-throughs and the County's related arguments in its post-hearing brief has not been addressed herein.

7. Full retroactive wages, including but not limited to, base wages, overtime amounts, compensatory time cash-outs, refunds for medical insurance and prescription plan premiums, etc., will be paid to all active members of the bargaining unit as well as anyone who may have separated from the bargaining unit and/or department between January 1, 2018, and the date of ratification.

8. If PERC's June 29, 2023 Award is reversed as to reimbursement award, an additional wage increase of 1.5% for each year.

9. Stipend for line-up, range, and monthly meetings: Effective January 1, 2018, (using 37.25 per hour (average of 3 ranks straight time hourly rate divided by 2)): Line up=\$4842; Two monthly meetings=\$894; Range, 6 hours per year: \$223. Total is \$5,950 per member.

CONTRACT- 2020-2023

1. Term of Contract: 2020-2023

2. Wages
 - 2020: 2.75%
 - 2021: 3.00%
 - 2022: 3.25%
 - 2023: 3.50%

3. Medical Benefits: Active Members: Effective January 1, 2020, capped at Tier 3; Retirees below Medicare age: Effective January 1, 2018, reduced to and capped at 1.5% gross pension.

4. ~~Medical Benefits Upon Employee's Death: Effective January 1, 2018 active members and retirees, if the employee or retiree shall die and leave behind a spouse and/or other dependents, said spouse/dependents shall have the option to remain on the County's medical and prescription insurance paying the same rate as the employee or same 1.5% of gross pension amount as the retiree, until such time as child dependents age out of the insurance and prescription plan, or until such time as the surviving spouse remarries.~~

5. ~~Effective January 1, 2023, dental coverage in SHBP is to be included at a 50%-50% cost split (County and member)~~

6. Juneteenth: Effective January 1, 2023, added as a paid holiday and rolled into base the same as all other 14 holidays.
7. Bereavement Leave: Effective January 1, 2023, bereavement days increased from 3-5.
8. Uniform allowance: Effective January 1, 2023, increased to \$1200.
9. Stipend for line-up, range, and monthly meetings: Effective January 1, 2018, (using 37.25 per hour (average of 3 ranks straight time hourly rate divided by 2)): Line up=\$4842; Two monthly meetings= \$894; Range, 6 hours per year: \$223. Total is \$5,950 per member.
- ~~10. Sick Time Upon Retirement: Effective January 1, 2020, sick time upon retirement to be paid on a 1 for 2 basis to a maximum of \$15,000.~~
11. Full retroactive wages, including but not limited to, base wages, overtime amounts, compensatory time cash-outs, refunds for medical insurance and prescription premiums, etc., will be paid to all active members of the bargaining unit as well as anyone who may have separated from the bargaining unit and/or department between January 1, 2018, and the date of ratification.
12. If PERC's June 29, 2023, Award is reversed as to reimbursement award, an additional wage increase of 1.5% for each year.

III. STATUTORY CRITERIA

In rendering my Award, I am bound to apply the statutory criteria set forth in 34:13A-16(g) which states;

The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factor set forth in paragraph (6) of this subsection in any award:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

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

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

© In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, 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 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison

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

(7) The cost of living.

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

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

IV. **BACKGROUND**

A. The County of Essex

As of the 2020 census, Essex County is the State of New Jersey's second-most populous county with a population of 863,728, a decline from its population of 933,179 in 1970. While only 1.7% of the land mass of New Jersey at around one hundred and twenty-seven (127) miles, Essex County is 9.3% of the State's population. It is part of the North Jersey region of the State. The County seat is Newark, the State's most populous city with a 2020 census population of 311,549. The 2020 median family income was \$67,568 compared to \$89,703 for the State. The County's unemployment at 3.8% in 202' compares to 3.4% for the State of New Jersey and 3.5% for the United States. 15.5% of the County's residents are below the poverty level. The

CPI-U Inflation Rate for New Jersey was 3.2% in December 2023 versus 7.7% for the twelve months prior.

B. The Bargaining Unit

The FOP 106 unit is comprised of approximately eighty (80) Superior Corrections Officers, specifically Sergeants, Lieutenants and Captains. At the time of the contract expiration in 2017 there were five (5) captains, twenty (20) lieutenants , and fifty-five (55) sergeants.

Superior Officers are responsible for the County of Essex correctional facility. The facility has four buildings with four floors per building. Each sergeant is assigned to supervise ten officers and two hundred and fifty-six inmates per floor. Lieutenants supervise a building. Captains manage the shift.

C. Bargaining History

FOP Local 106 represents the Superior Officers. The most recent agreements were from January 1, 2011, through December 31, 2013; and January 1, 2014 through December 31, 2017. The annual wages in the 2011-2013 contract beginning January 1, 2011, were 2%, 2%, 2% and 2%. The annual wages in the 2014-2017 MOA beginning January 1, 2014, were 2%, 2%, 2% and 2%.

Initially the FOP 106 unit bargained with the County along with PBA 382 (correctional rank and file) PBA183 (Sheriff's rank-and-file), and PBA 183A (Sheriff's Superior Officers). Each of these law enforcement Unions filed improper practice charges with PERC regarding the change of health benefits from Aetna to the State Health Benefit Plan, which were consolidated into a single matter. Each was a party in the decision issued by PERC discussed *supra*. On December 4, 2023, PBA 382 entered into an MOA with the County agreeing to wages beginning annually

on January 1, 2018, of 2.25%, 2.25%, 2.8%, 2.9%, 3%, and 3%; and consenting to the change of health providers along with the withdrawal of the unfair practice charge. The remaining unions currently do not have a contract with the County.

V. **POSITION OF THE PARTIES**

A. **THE EMPLOYER**

a) **Wages-The 2% Hard Cap**

The contract in this matter expired on December 31, 2017. Any subsequent contract imposed by interest arbitration is subject to a 2% base salary hard cap in accordance with N.J.S.A. 34:13A-16.9, which applies to “collective negotiations agreements [which] expired prior to or on December 31, 2017, but for whom a final settlement has not been reached. “

This 2% cap is applicable to “base salary,” as stated at N.J.S.A. 34:13A-16.7

An arbitrator shall not render any award pursuant to section 3 of P.L. 1977 c.85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

“Base salary” is defined under the Act as:

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

N.J.S.A. 34:13A-16.7a. Crucially, base salary under this agreement includes wages, holiday pay (also known as Base 1), stipend (also known as Base 2), and educational pay. Base salary also includes salary increments paid to unit members as they progress through the steps of the salary guide and is therefore included in calculations of the 2% cap.

When the original statute containing the 2% cap was first implemented effective January 1, 2011, multiple decisions of the PERC found that contracts expiring on December 31, 2010, were not subject to the cap. Burlington County Prosecutor’s Office, 39 NJPER 20 (¶4 2012); Borough of Bloomingdale, 37 NJPER 143 (¶43 2011). Accordingly, here pursuant to the exception in N.J.S.A. 34:13A-16.7(b), the 2% hard cap applies for a successor agreement where the MOA expired December 31, 2017. In accordance with N.J.A.C. 19:16-5.9(c), the arbitrator is compelled to apply the 2% cap and has no discretion to the contrary.

The Union has proposed two successive contracts of varying length, the first for 2018-2019, and the second for 2020-2023. However, N.J.A.C. 19:16-5.9(c) is non-discretionary by its terms and compels one contract only with a two percent cap

Where applicable, the arbitrator’s economic award must comply with the two percent cap on average annual increases to base salary items pursuant to N.J.S.A. 34:13A-16.7, as amended by P.L. 2014, c.11. In all awards, whether or not subject to the two percent cap, the arbitrator’s decision shall set forth the costs of all “base salary” items for each year of the award, including the salary provided pursuant to a salary increment, any amount provided for longevity or length of service, and any other item agreed to by the parties or that was included as a base salary item in the prior award or as understood by the parties in the prior

contract. These cost-out figures for the awarded base salary items are necessary in order for the arbitrator to determine, pursuant to N.J.S.A. 34:13A-16.d, whether the total net annual economic changes for each year of the award are reasonable under the statutory criteria.

For the Arbitrator here to permit multiple contracts would allow, for example, the absurd result of one contract with a term of six months and a second contract with a term of five and a half years. This would make a mockery of the Act. Thus, in Township of Irvington and Irvington Police Superior Officers Association, Docket No. IA-2019-010 (S. Osborn), where the union sought an uncapped four-year contract versus the employer's proposed three-year 2% capped contract, the Arbitrator awarded a four-year capped contract, the maximum sought by the parties, finding that a longer contract term promotes stability.

b) Duration

In this proceeding the terms of the successor agreement are not in dispute where both parties have proposed six-year terms. The Employer has sought one six (6) year term. The Union had initially sought a single six (6) year term in its original January 2 Final Proposal. As will be discussed *infra*, the Union was improperly permitted to revise its final offer on January 9 (prior to the hearing) to two (2) successive contracts, from 2018 to 2019 and 2020 to 2023 for a total duration of six years. It further revised its Final Offer during the hearing dates on January 12 and 17 but retained the modified two (2) successive contracts with a total six (6) years duration. This is confirmed by the testimony of the President of the Union. The Union also entered into evidence two County commissioner's meetings which also discuss the unit not having a contract for seven years. All of these prove the Union seeks a six (6) year contract to bring them current.

Awarding a less-than-six-year contract would be unprecedented. No award issued since 1996 shows an interest arbitration imposed award expiring a year or more before the award issued. The Employer's research establishes only three (3) of around five hundred and fifty-four (554) interest arbitration awards in which the term of the award expired before the year of the award. In each of those three decisions, the arbitrator granted the parties' mutual proposal as to duration. See Burlington Sheriff's Office and FOP Lodge 166, IA-2009-102 (J. Mastriani 2013); Mercer County and PBA Local 187, IA-2009-060 (J. Mastriani 2013); UMDNJ and FOP Lodge 74, IA-2008-099 (J. Mastriani 2012). Clearly, the parties' mutual goal is to bring the contract current, otherwise the County could have sought a longer term.

Either the Union or County could have filed a petition for interest arbitration after the MOA's expiration on December 31, 2017. The Union could have filed earlier to minimize the duration of the 2% cap but did not.

Most importantly, there has never been an interest arbitration award granting two separate contracts within the same award. Neither the statute nor rules expressly permit such award. The sole purpose of such a proposal is to avoid the two percent cap, which is mandated, since the contract expired by its terms on December 31, 2017. Therefore, a single full six (6) year contract should be awarded.

c) Methodology to Costing the Proposals and the 2% Hard Cap

There are four components to the increment; the salary fixed by contract for the three ranks in the unit (Sergeant, Lieutenant, and Captain); Base 1 or holiday pay for the fourteen paid holidays; Base 2 or the stipend (which covers line-up, range and monthly meetings), and the educational incentive. The increment for the base salary on December 31, 2017, was \$9,527,516.51. One individual moved a step in 2018 with a salary increase of \$10,026.51,

leaving the entire unit at the top of the step guide with no further increments from 2019 through 2023 and a total base salary in 2018 of \$9,537,543.89. The movement along the guide equals .01%, thus the County's 1.9% wage proposal for 2018.

Base 1 or holiday pay is calculated at time and a half of the hourly rate for fourteen days, along with a pension contribution rate of 36.51% and FICA at 7.65%. Holiday pay for 2017 was \$700,816.13 and as a function of base salary correspondingly increases.

The stipend is unchanged in the County's proposal at \$2,200 per year. The cost based on the annual use of the educational incentive is presumed to remain unchanged annually and neither party has proposed an increase from the current amount set forth in the contract, which equaled \$485,297.00 in 2017.³

d) Costing the County's Proposal

The County has proposed the following wage increases:

Effective January 1, 2018	1.9% increase
Effective January 1, 2019	2% increase
Effective January 1, 2020	2% increase
Effective January 1, 2021	2% increase
Effective January 1, 2022	2% increase
Effective January 1, 2023	2% increase

The County has made no other proposals encompassing base salary. Using the methodology set forth above the County has costed out these proposals as follows, where the

³ The amount listed in Er-2 for the education incentive is \$468,164.60, I will use \$485,297.00 as stated in the County's post-hearing brief for these calculations.

education incentive and the stipend remain the same through the proposed six-year life of the successor agreement:

- 2018 1.9% increase equals increase of 2.0% of the 2017 base salary
- 2019 2% increase equals increase of 1.85% of the 2018 base salary
- 2020 2% increase equals increase of 1.86% of the 2019 base salary
- 2021 2% increase equals increase of 1.86% of the 2020 base salary
- 2022 2% increase equals increase of 1.86% of the 2021 base salary
- 2023 2% increase equals increase of 1.87% of the 2022 base salary

A total aggregate of 12% is available to maintain compliance with the 2% statutory hard cap, the sum of 2% annually over six years. The aggregate increase totaling the above base salary increases is 11.3% and therefore the County's proposal is compliant with the statute and regulations.

e) Costing the Union's Proposal

The Union has proposed the following increases:

Wages

Effective January 1, 2018	2.25% increase
Effective January 1, 2019	2.25% increase
Effective January 1, 2020	2.75% increase
Effective January 1, 2021	3% increase
Effective January 1, 2022	3.25% increase
Effective January 1, 2023	3.5% increase

Stipend – Effective January 1, 2018, increase of \$5,950 from \$2,200 annually

Holidays – Effective January 1, 2023, add 15th holiday to base pensionable salary.

Costing out these proposals using the base salary calculations, according to the County, leads to the following results:

2018	2.25% increase and \$3750 stipend increase result in 5.83% increase to 2017 base salary
2019	2.25% increase results in 2.02% increase to the 2018 base salary
2020	2.75% increase results in 2.47% increase to the 2019 base salary
2021	3% increase results in 2.70% increase to the 2020 base salary
2022	3.25% increase results in 2.94% increase to the 2021 base salary
2023	3.5% increase results in 3.7% increase to the 2022 base salary ⁴

As noted a total aggregate of 12% is available to maintain compliance with the 2% statutory hard cap, the sum of 2% annually over six years. The aggregate increase totaling the above base salary increases is 19.15% and therefore the wage proposal exceeds the 2 percent statutory hard cap so cannot be granted by the Arbitrator.

f) Tier 4 Contributions Under Chapter 78 Should Remain Unchanged

All members of the unit are currently at Tier 4 of the NJ State Health Benefits Plan. The County has proposed that Tier 4 benefits should continue to maintain the status quo. Conversely, the Union has proposed contributions be reduced to Tier 3 for active members and that contributions for pre-Medicare retirees be capped at 1.5%.

Chapter 78 establishes Tier 4 contribution as the *status quo*, but which can be changed via negotiations when fully implemented. Past decisions of PERC have recognized that a

⁴ The County did not add making the 15th holiday (Juneteenth) pensionable into this calculation.

consistent pattern of health benefits and contributions across different units is important with the same employer. County of Union, IA-2001-45, 28 NJPER 459, 461 (2002).

A number of PERC cases have confirmed Tier 4 Chapter benefits as the beginning point of negotiations, and the importance of internal comparisons in deciding whether reductions should be awarded. See County of Burlington and PBA Local 249, IA-2021-023 (B. Kronick) (no other bargaining units or unrepresented County employees made other than Chapter 78 required contributions). Arbitrator Mastriani noted in two cases that no other single bargaining unit standing alone had negotiated reduced contribution rates in those jurisdictions. Township of Hillside and Hillside Fire SOA, IA-2022-006 (J. Mastriani); Borough of Madison and FMBA Local 74, IA-2023-018 (J. Mastriani).

In the instant matter no County law enforcement unit, civilian unit, or any unrepresented County employee contributes less than Tier 4. This includes contracts with two units of the International Brotherhood of Electrical Workers, and the newly negotiated and ratified MOA with the County and PBA 382 (rank-and-file Correction officers). Twenty-two of twenty-six County bargaining units have agreements through 2023 and none contain Chapter 78 reductions. The four remaining units, including the instant unit, all contribute at the Tier 4 level.

The County provided evidence showing that both it and the FOP have benefited from the switch to the State Health Benefit Plan (“SHBP”) beginning in 2017 when the County and its employees paid approximately ninety-six (96) million dollars in premiums versus the one hundred and five (105) million dollars it would have paid to its prior private carrier. In fact, the cost of SHBP was less each year than the private carrier costs conservatively estimated to increase 3% annually. Since employees pay a portion of the cost in the form of Tier 4 premiums

their costs, including this unit, were less than they would have paid had the County remained with the private carrier.

Since the actual costs to retroactively reduce premiums to Tier 3 are known, the County has calculated and shown that such change would cost it \$945,599 over the proposed six-year duration of the contract, and \$172,379 for this unit of eighty (80). While as a more senior unit, the Superior Officers are all at Tier 4, they only represent around 2% of the County's employee complement. If all of the other three thousand five hundred (3,500) had their rates halved the cost would total almost \$4M annually, which would increase as premiums increased.

The Union seeks to justify this proposal by arguing that some members no longer became eligible for the insurance waiver payments totaling more than \$250,000 over the proposed six-year duration of this award. However, this waiver is not a negotiable item and is therefore subject to the sole discretion of the County. See County of Essex and PBA Local 382, 46 NJPER ¶88 (2020).

This is a result of N.J.S.A. 52:14-17.31a(c) which states for SHBP, "The decision of an employer to allow its employees to waive coverage and the amount of consideration to be paid therefore shall not be subject to the collective bargaining process." Such language also appears in N.J.S.A. 40A:10-17.1 which governs the waiver of coverage for non-SBHP plans, "The decision of a county, municipality or contracting unit to allow its employees to waive coverage and the amount of consideration to be paid therefore shall not be subject to the collective bargaining process." Accordingly, the Union seeks to justify Chapter 78 relief on the basis of the loss of a benefit to which it never had the right to claim, where it has already benefited from lower premium costs as a result of the change to SBHP.

There is only one case where an interest arbitrator granted reduced Chapter 78 contributions, on the basis of a very unique set of facts. In Township of Little Egg Harbor and PBA Local 295, IA-2020-007. Arbitrator Mastriani so granted where the Township refused to switch plans to a less expensive plan for both the employer and the bargaining unit. The arbitrator was faced with a similar consideration as the Union's dental proposal here; such a concession cannot be awarded to the unit despite the cost savings because it would necessitate bargaining with all other represented units. Accordingly, the award reduced the contribution to Tier 3 since this procured rates similar to the plan change proposed by the Union. However here the Union has not offered any lower cost option, nor can it point to any other employee, represented or not, who is paying less than Tier 4. This proposal should be rejected.

g) The Union's Revised Final Offers were Untimely and Should not Be Considered, The Scope Petition should be Considered

N.J.S.A. 34:13A-16(d) requires that upon the filing of an interest arbitration petition, the non-petitioning party has five days to inform the Commission in writing of all issues in dispute. The parties then have ten days to file a petition for an expedited scope of negotiations determination. Here the Arbitrator improperly permitted FOP to submit proposals in their Final Offer on January 2, 2024 not stated in their initial Response to the petition for interest arbitration. The County then bought its motion to bar certain proposals on January 3 in this proceeding and separately filed a scope petition with PERC on January 5, 2024. The Employer could not have previously filed the Scope Petition on November 13, 2023, since it was not on notice of the issues FOP would be raising until January 2, 2024.

PERC determined the County's motion pending before the arbitrator were the same issues contained within its expedited scope petition request, and therefore those issues should be

properly determined by the Arbitrator. However, PERC appears to misunderstand the issues before it versus the Arbitrator. The County's motion before the Arbitrator seeks to limit the scope of interest arbitration to issues not raised in the Union's Response to the Petition for Interest Arbitration, whereas the scope petition seeks to exclude some of the same proposals but also additional matters, specifically retiree health benefits and the benefits for surviving family after the death of an active or retired employee.⁵ Therefore this interest arbitration cannot be decided until the scope petition first resolves those issues so it is known what is properly before the Arbitrator.

The County also seeks reconsideration of my Order dated January 11 overruling its objections to the Union's proposals, by permitting the Union to submit proposals in its Final Offer of January 2 that were not encompassed within its Response to Petition filed on November 17, 2023.⁶

In arguing substantively that the appropriate duration for the contract is six years, the County points to N.J.A.C. 19:16-5.7(g)(2) for the proposition that the Union's modification from a single duration of six years to two separate contracts should not have been permitted:

⁵As previously noted the Union modified its proposal in its post-hearing brief, withdrawing its proposed continuation of medical benefits upon a pre-Medicare employee's death. Thus the sole issue, according to the Union, relevant to the scope petition is medical benefits for retirees.

⁶ I permitted the Union to submit a Revised Final Offer on January 9, 2024, over the County's objection in which the Union changed its January 2 Final Offer from one contract with a duration of January 1, 2018, to December 31, 2023, to two contracts running respectively from 2018-2019 and 2020-2023. Subsequent to issuing my Order on January 11, I also permitted the Union to revise its Revised Final Offer (adding the stipend proposal to the 2020-2023 proposed contract) during the second hearing date on January 17, after advising the parties that they would be permitted to revise their final offers until the close of the hearing. I closed the record on that date, other than providing the parties the opportunity to revise and or correct costing of the increment, base salary, etc. as needed prior to the submission of their post-hearing briefs.

The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. (emphasis added).

The County points out that it did not agree to permit the revision nor did the Union's revision narrow the issue. The change only served to hedge the Union's bet on the 2% cap. The County also requests that I extend my Order striking certain proposals to Item 12; that if PERC's June 29, 2023, Order is reversed as to reimbursement award an additional wage increase of 1.5% is granted for each year.

h) The Statutory Factors Favor the County's Final Wage Offer

The statutory factors favor awarding the State's final wage offer.

The first factor, N.J.S.A. 34:13A-16(g)(1), requires the interest arbitrator to consider the "interests and welfare of the public." This factor has been construed as requiring that public safety employees be well compensated, but also considers the priority to be given budget considerations, where simply raising taxes to finance a public-sector interest award would render other factors hollow. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 NJ Super. 163, 188 (App. Div. 1993).

This reasoning is reflected in the 1996 Reform Act, which changed the outcome of interest arbitration from raising police and fire wages beyond other public sector employees to taking into account the public sector's ability to pay. For that reason, the interest and welfare of the public here is fostered by the statutory 2% cap, which is stricter than the first statutory interest arbitration 4% cap. Considering, when compared to the State, Essex County's lower median salary, the higher unemployment rate, and the higher poverty rate a lot of County residents are doing worse than their States so their interests must be made a part of this Award.

§(16)(g)(6) considers the financial impact of the interest arbitration award on the municipality, residents, and taxpayers; property tax limitations; and the ability of the jurisdiction to keep and expand local programs and services for which monies have been provided in the budget. This does not equate to the jurisdiction's ability to pay, nor should an employer have to prove they would experience a substantially detrimental effect. Borough of Hillsdale, 263 N.J.Super. at 86, 194. Thus, in Fox v. Morris County Policemen's Association, 266 N.J. Super 501, 516 (App. Div. 1993), the arbitrator was faulted for not explaining how salary increases got priority over other budgetary items, and for inferring that additional monies resulting from budget cuts should be applied to salary increases.

Here the County obtained testimony and evidence from the County Treasurer regarding County finances. The Union offered no expert testimony. The Treasurer testified that the County is financially sound, but this is based on responsible management, including maintenance of the fund balance, and "one shot" revenues. Fifty-one (51) percent of the budget is raised from resident taxes, which was increased by 1.5% in 2023 and is anticipated to be increased by 1.75% in 2024.

While the County receives grants from the State, such grants are specifically designated. Revenue streams may decline, as occurred in 2023 in a number of departments, such as a \$4M drop at the Register of deeds and mortgages, and less federal inmates resulting in a decline of \$3M. Revenue reductions totaled \$7.5M and under State law, the County can only budget for what those categories received the previous year.

The County received one shot revenues from the American Rescue Plan in 2023 of \$15M and \$5M and 2024 (which is no longer available), and the County sold property for \$9.9M. While the County Executive claimed \$116.9M in new recurring revenue in 2024, those revenues

were achieved over his twenty-year tenure, actually equaled \$113M in 2023, and were not new but rather recurring.

The fund balance is key for unexpected liabilities and to maintain a strong bond rating, which reduces borrowing costs and maintains cash flow. While the 2023 fund balance was \$126,295,695, which is acceptable, it is less than the 35% surplus balance needed to maintain the highest bond rating. This fund balance has allowed the County to avoid issuing Tax Anticipation Notes which costs additional interest. \$36M of the fund balance was used in 2023 to balance the budget and that amount is anticipated to be used for that purpose in 2024. A \$90M fund balance is not significant when the County pays \$12M in salary and \$20M to vendors biweekly.

The FOP also points to the \$50M certificate of deposit. However this is a surplus used to earn short-term interest when available, not money unaccounted for in the budget.

Despite the County's sound financial management, Moody's recently downgraded the County's bond rating on December 21, 2022, for the first time in six years, from Aaaa to Aa1. This was due to the County's median household income compared to the United States. Such reduction results in higher borrowing costs.

Pursuant to §16(g)(5) the arbitrator must consider the "lawful authority of the employer." This factor includes the Local Government Cap Law which originally imposed the 4% cap, and was subsequently revised to impose the 2% cap. That statute requires the arbitrator to consider the cap and obligates the County to submit a balanced budget annually.

§16(g)(2) compares the wages and conditions of employment of the FOP unit to other employees, which here compels the granting of the County's Final Wage Offer. Assuming implementation of the 2% cap, the top-step salaries in 2023 for Sergeants was \$113,105.60;

Lieutenants \$130,082.55; and Captains \$149,584.03. These wages are higher than public and private sector:

Sector	2022
Private Sector	\$78,870
All Government	\$76,570
Federal Government	\$91,871
State Government	\$83,862
Local Government	\$72,264
TOTAL NJ AVERAGE	\$78,563

Sheriff Superior Officers are represented by PBA 183A, and Prosecutor Detectives Superiors are represented by FOP 205. The following chart verifies that FOP 106 fares better than other County superior officers, so granting the Union’s proposal would make the unit grossly out of line compared to its peers:

	FOP 106	FOP 205	PBA 183A
Bereavement	3 days for immediate family	5 days for “more” immediate family, 3 days for “less” immediate family	3 days for immediate family
Uniform	\$800 per year	No yearly allowance	\$550 per year
Holiday Roll In	Yes	No	No
Stipend	\$2,200 per year	No	No

The next comparison is with the unit to other New Jersey superior correctional officers generally engaged in the same work. This chart shows all such officers state-wide assuming the

County's Final Offer at 2% in 2023, and again confirms the County's Final Offer is in line with the Superior Officers' peers:

	2023 Max Salary
FOP Lodge 106 (Sergeants)	\$113,105.60
Atlantic	\$107,524
Bergen	
Burlington	\$97,068
Camden	\$115,183
Cape May	\$106,000
Cumberland	
Gloucester	\$122,302
Hudson	\$128,828
Hunterdon	
Mercer	\$109,604 (2019)
Middlesex	\$130,762
Monmouth	\$153,896
Morris	\$135,212
Ocean	\$131,903
Passaic	\$128,177 (2024)
Salem (hourly rates)	\$53.69
Somerset	\$112,792 (2021)
Sussex	\$113,918
Union	
Warren	\$108,366
AVERAGE	\$119,665

	2023 Max Salary
FOP Lodge 106 (Lieutenants)	\$130,082.55 ⁷
Atlantic	\$120,335
Bergen	
Burlington	\$108,358
Camden (8-hour)	\$110,567.14
Camden (12-hour)	\$116,095.45
Cape May	
Cumberland	
Gloucester	\$134,325 (2022)
Hudson	\$135,256
Hunterdon	
Mercer	\$124,946 (2019)

⁷ This number reflects the Essex salary projected to 2023 with the County's proposal of a 2% increase each year.

Middlesex	\$148,456
Monmouth	\$170,404
Morris	\$144,716
Ocean	\$144,684
Passaic	\$141,322 (2024)
Salem (hourly rates)	\$60.67
Somerset	\$124,071 (2021)
Sussex	\$121,075
Union	
Warren	\$127,751
AVERAGE	\$131,402

	2023 Max Salary
FOP Lodge 106 (Captains)	\$149,584.03 ⁸
Atlantic	\$135,918
Bergen	
Burlington	
Camden (8-hour)	\$133,346.01
Camden (12-hour)	\$140,013.18
Cape May	
Cumberland	
Gloucester	\$134,325 (2022)
Hudson	
Hunterdon	
Mercer	
Middlesex	\$170,727
Monmouth	
Morris	\$151,306
Ocean	\$157,465
Passaic	\$153,095 (2024)
Salem (hourly rates)	\$62.66
Somerset	\$136,478 (2021)
Sussex	\$129,853
Union	
Warren	\$131,584
AVERAGE	\$132,591

⁸ This number reflects the Essex salary projected to 2023 with the County's proposal of a 2% increase each year.

These tables demonstrate that Sergeant's wages are slightly less than the average county correctional superior officer, Lieutenant's wages are comparable on average and Captain's wages are above average. However, using the 2% increase, Sergeants have a higher average than at least four counties, Lieutenants earn more on average than eight counties, and Captains have a higher average salary than their peers in at least six counties.

Sergeant's salaries would be closer to the average under the Union's proposals, however, there is no reason that the unit should make the same or more than their counterparts, especially in light of the hardships faced by County residents and the 2% cap. Lieutenants with the yearly 2% cap would be around the average and Captains would be well above it.

The Union has compared unit county correctional officers to state corrections officers. Pursuant to N.J.A.C. 19:16-5.14 factors for an appropriate outside comparison include geographic size, population, average income, revenue, budget, expenditures, compensation, and other conditions of employment. These factors prove this is not an appropriate comparison with the County comprising only around 1.7% of the total area of the State; the median family income in 2020 for the County was \$67,568 versus \$89,703 for the State; Essex County with 863,728 residents versus the state population of 9,288,994, and a budget of \$865.9M for the County with a \$46M bonus versus \$58.9B and a \$4.2B surplus for the State. In fact, FOP unit wages should be compared to other county state corrections officers which also absorb inmates from other counties, they also have pre-trial, state sentenced prisoners, prisoners in federal custody, and those who have committed a serious crime.

The Union has not presented evidence that distinguishes its prison from others at the county level. The Union provided data as to incidents at the County jail without providing data

from other county prisons. It has not proven a unique factor distinguishing this County jail from others.

§16(g)(3) takes into account overall compensation including vacation, holiday, excused leave, insurance, pension, medical, hospitalization, and all economic benefits of the relevant unit. FOP wages are higher than average employee wages in the private and public sectors. Adoption of the County's Final Offer will continue to provide unit members with excellent health benefits via the SHBP with lower contributions than had they remained in the private plan, competitive wages, holiday, vacation, sick time, and personal time. Many of these benefits are not available to comparable officers in other counties. This factor also supports awarding the County's Final Offer and the overall compensation of the unit is appropriate.

Cost of living must be considered by the Interest Arbitrator in accordance with §16(g)(7). While the Union's concern regarding current inflation is understandable, inflation is more than likely a temporary aberration not warranting modification of the pattern. Indeed, after a spike undoubtedly due to the pandemic higher inflation has proven temporary and does not warrant deviating from the County pattern. Inflation dropped to an annual rate of 5.0% in March 2023 and 4.9% in April 2023, and the December 2023 rate is 3.1% less than December 2022 going from 6.5% to 3.4%. Overall inflation since 1999 has averaged just above 2%. Crucially, even though unemployment reached 15.3% during the pandemic in May 2020, unit employees had stable employment. Regardless, with the matter being governed by the 2% cap this factor is not significant in the overall analysis.

The final factor supporting the County's final offer is §16(g)(8), continuity and stability of employment, which considers the likelihood of layoffs, "give-backs," salary freezes, overall

salary structure, the unemployment rate, turnover, and the lack of unemployment among police. Borough of Hillsdale, 263 N.J. Super. at 195; Fox, 266 N. J. Super at 519.

Here the unit has been highly stable with only forty-seven (47) employees leaving the unit since 2018, including two disciplinary terminations and forty-five retirements. Union witness's testimony supported this stability and while staffing shortages exist, they are not unique to this facility. Despite these shortages, not many supervisors have left for comparable jobs in other counties. There were no layoffs during the term of the contract as contrasted with high furloughs and layoffs during the pandemic. Thus, the current stability of the unit supports this factor.

i) The County's Final Offer of Covid-19 Isolation Pay Removal Should Be Awarded

The County has proposed cessation of pay for employees during their isolation period resulting from a positive Covid-19 test result. Presently unit employees receive five (5) paid days in isolation pursuant to the Center for Disease Control's recommendation, rather than using accrued contractual sick leave.

The Governor of the State of New Jersey ended the public emergency for Covid-19 in 2021. Around August 11, 2022, the CDC ended recommended quarantining upon exposure. Isolation is the recommended action to take upon being informed of a positive test regardless of vaccination status. The CDC now only recommends isolation for five days, for a positive test or for someone who feels sick and is waiting for test results. Quarantining means keeping someone who has been in contact with someone with Covid away from other people and is no longer recommended. The CDC recommends treating Covid as any other communicable disease without reference to quarantining.

The County isolation policy commenced pre-vaccine and has followed CDC and NJ Department of Health recommendations. Thus, in September 2021 per CDC changes in their recommendation the County ceased paid time for Covid-19 quarantining, without objection from FOP.

The County's predicament is that the County continues to pay (from revenues) the five-day isolation period but no longer **requires** testing to determine the need to isolate. In accordance with CDC guidance, the County proposes that Covid be treated as any other communicable illness allowing employees to use their accrued sick time for the five-day period.

The County makes this proposal to cease paying out of its revenue as the CDC only **recommends** testing and isolation. The isolation pay period was provided to all County employees including FOP during the emergency, but the County no longer **requires** Covid testing per the CDC. Since CDC testing is only recommended and Covid now is treated like other communicable diseases there is no longer a basis for the County to pay for isolation. This does not impact the sick leave entitlement.

The Union has countered with the Canzanella Act, which creates the presumption that infectious diseases are work-related and therefore compensable under worker's compensation. However, this only reinforces the County's proposal that pay not continue for the five-day isolation, where there is an alternative source of compensation to redress time taken due to Covid. Since the Union has failed to justify the need to maintain isolation the County's proposal should be awarded.

j) The Union's Proposals Should Not Be Awarded

1. Reduction of Premiums for Retirees below Medicare Age

The Union also proposes that premiums for retirees below Medicare age be reduced to and capped at 1.5% of gross pension. This proposal is non-negotiable and cannot be considered in an interest arbitration because retirees are no longer represented by the majority representative. Borough of Belmar, 14 NJPER ¶19252 (1988); County of Middlesex, 5 NJPER ¶10111 (1979) aff'd App. Div. 6 NJPER ¶11216 (1980); Twp. of Ocean, 7 NJPER ¶12152 (1981); Borough of Keansburg, 12 NJPER ¶17114 (1986). Accordingly, any proposals concerning retirees must be denied.

2. Adding Juneteenth as Paid Pensionable Holiday

The Union has proposed adding Juneteenth as a paid holiday and roll it into base salary, the same as the other fourteen holidays. Though Juneteenth is currently paid, because it is not rolled into the base it is not pensionable. However no other County unit has such a provision in its contract as proposed, and the Union has not proven why it warrants special treatment. This is at its best a wage proposal for which deviation from the County pattern is unwarranted.

This proposal is also costly. Increasing the base pay increases related costs, such as the overtime rate. It would result in higher pension contributions which equals around 36% of the holiday pay. The decision is ultimately subject to the pension board's authority. This proposal is subject to the 2% cap. The Union has failed to justify this modification so it should be rejected.

The Union has proposed that bereavement leave be increased from three to five days.

The PBA 183, PBA 183A, and PBA 382 law enforcement units receive three days for immediate family members. The PBA 325 and FOP 205 law enforcement units and the Assistant Prosecutors Association (the only non-law enforcement unit receiving bereavement leave) are granted three days for in-laws, siblings, grandparents, and other family members living in the household. They receive five days for a spouse, child, parent, step-parent, or legal guardian.

No County unit receives five days for all of these categories of bereavement leave.

Fifteen out of twenty-one counties in the State provide bereavement leave. Pursuant to the chart *supra*, two counties provide between sixteen and sixty hours; five counties grant three days for all deaths; one county permits three days for immediate family and two days for other family members; a county gives four days for immediate family and three days for other family; a county gives five days for immediate family and three days for other family, and five counties give five days for all deaths. Thus, only five counties of the fifteen that provide bereavement pay give a uniform five days whereas the other ten counties offer less or different days based on the relationship between the employee and the deceased.

The County has given FOP a generous allotment of three bereavement days, which compares favorably to the other Essex County and other county correctional units. The Union has not provided an objective reason why it should receive more bereavement days than other units so its proposal should be denied.

3. Increase of Uniform Allowance

The Union proposes increasing its annual uniform allowance from eight hundred to twelve hundred dollars, an increase of four hundred dollars per member. This is a fifty percent

increase that would put the unit out of line with other law enforcement and corrections officers.

County civilian units with uniform allowances receive ninety dollars. PBA 325 (rank and file) and FOP 205 (Superior Officers) have damaged uniforms replaced by the County. PBA 183 (rank and file) and PBA 183A (Superior Officers) have an annual uniform allowance of five hundred and fifty dollars. PBA 382 (rank and file) and FOP 106 (Superior Officers) get eight hundred dollars annually for uniforms.

The Union's justification is that the allowance has not increased in ten years while costs have gone up. However numerous other counties do not provide a uniform allowance and increasing the allowance to twelve hundred dollars per year would put FOP in an even better position, putting the unit in the top range. The Union has failed to demonstrate that the uniform allowance is insufficient. The Union has also presented no evidence showing the financial impact if any of increased uniform costs eroding the current allowance. This proposal should be rejected.

4. Increase of Stipend

The Union's next proposal is to increase the current stipend from its current annual amount of \$2,200 to \$5,950 per member, an increase of \$3,750. This stipend is intended to cover line-up, range, and monthly meetings. This is an absurd 170% increase that is subject to the 2% hard cap.

The only County law enforcement units receiving the stipend are PBA 382 and FOP 106. PBA 382 receives \$400 annually, FOP 106 gets \$400. Of the other county agreements in the State, only three provide stipends ranging from \$1,000 to \$1,950. FOP 106 gets \$2,200 which puts it in a significantly better position than all other law enforcement units.

The Union's justification is that there has not been a recent increase of the stipend. Since the Union already receives one of the highest stipends in the County and the State this is an insufficient basis for an increase.

5. The Union's Proposed "Extra 1.5%" Wage Increase

The Union has proposed that should the County's current appeal of the PERC decision In the County of Essex and FOP 106 et seq., PERC NO. 2023-60 (June 29, 2023), ultimately prevailing wages be raised retroactively by 1.5%. The County has sought to extend the Arbitrator's Order of January 11 removing certain proposals from consideration to this proposal, since such a determination would be consistent with that Order. This is appropriate where this item was not contained in the Union's Response to Petition, because ruling otherwise would avoid it having been subject to a timely scope of negotiations petition. Furthermore, this proposal would be subject to the 2% hard cap, and therefore if granted would leave only .5% in salary increases unencumbered. Accordingly, it would also be in the Union's best interest for the Arbitrator to not grant this proposal.

B. THE UNION'S POSITION

Members of the unit have been without a successor agreement since January 1, 2018, because of the County's unfair labor practice in 2016, as determined by the PERC on June 29, 2023, when the County unilaterally reduced the level of medical benefits by transferring this and other units into the State Health Benefit Plan. Thereafter the Union and three other uniformed units including PBA 382 met twice with the County to bargain with proposals exchanged on the second meeting. The County, however, abruptly filed the instant petition for interest arbitration

while bargaining secretly with PBA 382. In its Response to the interest arbitration petition, the Union preserved its rights to all disputed issues despite the County's failure to list medical benefits as a disputed item in its petition.

i. The Arbitrator Has the Authority to Permit Revised Offers

Parties are permitted to revise final offers until the closing date of the record pursuant to regulations, judicial, and PERC precedent. *N.J.A.C. 19:16-5.7(g)(2)*, "Conduct of the Arbitration Proceeding," states in part,

At least 10 days before the hearing, the parties shall submit to the arbitrator and to each other their final offers on each economic and noneconomic issue in dispute. The parties must also submit written estimates of the financial impact of their respective last offers on the taxpayers as part of their final offer submissions. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing. Upon taking testimony or evidence, the arbitrator shall notify the parties that their offers shall be deemed final, binding and irreversible unless the arbitrator approves an agreement between the parties to permit revisions before the close of the hearing. (Emphasis added)

See also: City of Newark, 90 N.J. 44 (1982); City of Orange and PBA Local 89, 43 NJPER 31 (2016); Borough of Bergenfield and PBA Local 309, 49 NJPER 21 (2022); Township of Nutley and PBA Local 33, 25 NJPER 30109 (1999); Borough of Seaside Park and PBA Local 182, 18 NJPER 23230 (1992); and, Borough of Union Beach and PBA Local 291, 40 NJPER 57 (2013).

It was appropriate here for the Arbitrator to accept the Revised Final Offers where mediation continued after Final Offers were submitted. The second day of mediation was necessitated after Final Offers had to be submitted because the County refused to respond to Union proposals made at the first mediation session, forcing the Union to revise its Final

Proposal because of the County's bad faith in appearing at that session without authority to mediate.

The second Revised Offer was submitted after the Arbitrator stated during the second hearing day that revisions would be permitted that day. Regardless, the County cannot both rely during the hearing on the Union's removal of certain proposals while complaining that the Union cannot revise its offers.

ii The Interest Arbitration Criteria Strongly Favors The Union's Final Offer

§16(g)(1) considers the interests and welfare of the public. §16(g)(6) relates to the financial impact on the governing unit, its residents, and limitations on the local unit's property tax levy. §16(g)(9) is the statutory ability to pay.

The Union's Revised Final Offers met these criteria where the County has been financially stable since at least 2018. There was a substantial surplus ending in 2023 available for use in budget year 2023. There is also an additional \$116M of regenerating revenue resulting from shared service agreements, recurring revenue, and tax levies. The County had an annual surplus from 2018-2023 of over one hundred million dollars. For each of those years, Corrections revenues exceeded its wages and salaries.

The County Financial Officer conceded that the County had a AAA rating since 2017 until it was downgraded by Moody's to AA1 in December 2022, but this was due to demographics. However, as he admitted all urban community bond ratings, not just the County, were reduced as a result of this new methodology. This AA1 rating still reflects the County's strong finances and diverse economy.

The County had sufficient excess cash in December 2022 that \$40M was placed in a one-month CD, and was liquidated in January 2023 to cash for that year and placed in the bank. The County's fund balance had a surplus of \$126,294,95 at the end of 2023. The CFO testified that \$116M was anticipated in recurring revenue in 2024. These come from shared service agreements for U.S. Marshall inmates, Union County inmates, Juvenile Justice, and Passaic County inmates. Recurring revenue also comes from the Register of deeds and mortgages and probate fees.

There was a complete absence of testimony from the County that taxes would need to be raised should the Union's proposals be adopted. The County receives tax levies from twenty-two municipalities. Such taxes have a 100% collection rate, plus further ratables were assessed which adds to the strength of tax collections. The County has not needed to issue tax anticipation notes for the past few years.

The County has had a strong and stable economy since 2018 with a surplus of more than \$100M. It has provided no financial proof of the impact should the Union's proposed pay and retro be awarded nor is there reason to believe there would be such a significant impact. Anticipated wage increases and related retro have been factored into the 2024 budget which is sound. Thus the §§16(g)(1), (6), and (9) criteria are met by the Union's proposals.

Both parties in the Petition and Response referenced contract duration as a disputed item and the Union revised its final offer on January 9, prior to the commencement of hearings, to include two separate multi-year contracts. Statutory criteria §16(g)(1) and (2)(a) are met where in accordance with PERC precedent and the Compulsory Interest Arbitration Act (N.J.S.A. 34:13A-14, et al.) the Arbitrator has authority to award the two separate contracts as proposed by the Union. This award is consistent with past FOP 106 and all other county union contracts.

The length or duration of a contract can be presented to compulsory arbitration where the parties, as here, do not resolve the issue. City of Union, 7 NJPER ¶12222 (1981). This includes multi-year contract terms. As PERC noted, Id at 2,

The Respondent Unions believe that allowing the arbitrator to decide unresolved issues of contract duration will prompt parties to submit several alternative proposals based upon different contract durations and would produce improvident awards. The Commission believes that the interest arbitration procedures, including the provisions for judicial review of interest arbitration awards, are sufficient safeguards to discourage a party from taking an extreme position on the length of the contract and to prevent an unrealistic and unreasonable award.

The granting of a shorter contractual term is appropriate in accordance with County of Burlington and FOP Lodge 166, 49 NJPER 8 (2022), where the Arbitrator awarded a shorter term (three years) though the Union had proposed a four-year term, the county five years and the expired contract was five years in duration. In his Award the Arbitrator found

[a] shorter contract duration than what the parties proposed is desirable in light of the applicability of the Cap...The parties can promptly resume negotiations for a new contract . . .for whatever duration that can be agreed to voluntarily or to invoke statutory impasse proceedings in the absence of the CAP if voluntary bargaining efforts do not succeed.

Though here the contract expired at the end of 2017 but for the County's unfair labor practice in 2016 a successor contract could have been negotiated that would have limited the duration of the 2% cap to less than six years. FOP 106 has never had a six-year contract as now proposed by the County and the last two contracts were three and four years. But for the County's unlawful conduct, the Union could have negotiated an even shorter term of two years, so consistent with past practice and as a matter of law the County should not be permitted to benefit from its own unclean hands by being granted a six-year award. Faustin v. Lewis, 85 N.J. 507, 511(1981).

In fact, of all twenty-four unions the only unit with a six-year contract is the recently negotiated deal with PBA 382, a non-supervisory unit. All other County law enforcement units have contracts of two, three, or four years in duration. All other County civilian contracts have lengths of two or three years. Only three of the twenty-two comparable units outside of the County have six-year contracts. All but those two have two contracts covering the six-year period encompassed by this matter. Thus, this issue is properly before the Arbitrator, and the aforementioned criteria are met.

The criteria of §§16(g)(1), (2)(b), (c)(3), and (7) are met when considering as comparable units those representing similar inmate populations outside of the County, rather than those cited by the County as comparables. Here the most relevant comparisons are not police and firefighters in similar municipalities.

Essex County Correctional Facility (“ECCF”), the work situs of the FOP 106 unit, houses inmates from other counties, state, and the federal government. Only South Woods with 3,030 inmates has a higher population and Northern States is comparable at 1,938 inmates. The jail also houses 800-900 federal and state inmates. ECCF has a significantly higher population than all other county jails in the state. Essex and Camden together have almost one-quarter of the NJ Department of Corrections commitments. ECCF has 11% of state prisoners due to the Union County and Passaic County jail closures. The proper comparables are the State Department of Corrections, Bergen County, and Hudson County as to population and /or type of inmate.

Violence has surged at ECCF since 2019, directed at officers and other inmates. Code Blue responses, where an officer is attacked or in danger doubled in 2019 and 2020, and use of force incidents tripled. This has led to at least one serious injury and in the

first six months of 2021, fourteen offices were assaulted resulting in hospital emergency visits, and eighteen staff members were exposed to “K2” with fifteen sent to the emergency room. In the first two weeks of January 2024, there were 390 incidents requiring a police report, thirteen use of force incidents, and twenty-four incidents with evidence reports. There were twenty-two incidents of inmate violence in fourteen days. There are incidents daily.

There is also low morale due to insufficient staffing by superior officers. Overtime is used, and staffing shortages have gotten worse. This has also resulted in shorter periods for inmates being let out of their cells.

In accordance with N.J.S.A. 34:13A-16(g)(1), (2)(b), (c)(3), (5), (6), (8) and (9) the Union’s wage proposal is reasonable. This unit has been without a wage increase since 2018, their health benefits were unilaterally and unlawfully reduced in 2016, and they work in the most heavily populated increasingly violent jail in New Jersey. The cost of living went from 1.23% in 2020, 4.7% in 2021, and 8% in 2022.

The top base salary of the unit is the following:

Sergeants: \$100,434;
Lieutenants: \$115,509
Captains: \$132,825.
Investigators: \$97,931

The pay for PBA 382, a non-supervisory union, as a result of its recent contract, is \$105,379, around \$5,000 more than sergeants in FOP 106. No other County uniformed unions have contracts for 2018-2023, and this unit’s base salaries are less than all other comparables as shown herein:

1. **State DOC** (Northern State and South Woods):

Contract term: 2019-2022: (2%, 2%, 3%, 3%)

Sgt. \$124,255
Lt. \$130,472
Capt. \$139,633

2. **Bergen County** (Supervisors except Captain):⁹

Contract Term: 2022-2026 (1%, 1%, 1%, 1% and 0.5%)

CO \$137,194
Sgt. \$150,194
Lt. \$163,711

3. **Bergen County** (Captains):¹⁰

Contract Term: 2019-2025: (1% across the board)

Captain \$176,000

4. **Hudson County:**

Contract Term: 2018-2022 (2.80%, 2.75%, 2.75%, 2.75%)

Sgt. \$116,794
Lt. \$126,396
Capt. \$132,740

5. **Union County Sheriffs Supervisors:**

Contract Term: 2018-2020 (2018: 2.75%, 2019-2.5% with \$1,000 added to base; 2020-.75%)

Sgt. \$113,885
Lt. \$126,193
Capt. \$139,541

⁹ Bergen County supervisors receive “senior officer pay” of \$6,200 for lieutenant and \$6,758 for sergeant.

¹⁰ Bergen County Captains were granted senior officer pay in 2019 of \$12,495; \$12,995 for 2020; \$13,495 for 2021; \$14,995 for 2022 and 2023.

The financial information previously discussed along with the cost-outs of the parties shows that monies that may be due as a result of the Award do not run afoul of the Property Tax Levy Cap, N.J.S.A. 40A:4-45.44. Also, N.J.S.A. 40A:4-45.45 (Limitations upon amounts to be raised by taxation; exclusions) excludes increases in pension contributions and accrued liability for pension contributions in excess of 2.0% from the calculation of the adjusted tax levy.

Crucially, the 2% cap does not apply here under N.J.S.A. 34:13A-16.9 (Effective date and application of legislative enactment upon certain public fire and police department collective negotiations) which states:

This act shall take effect January 1, 2011; provided however, section 2 of P.L. 2010, c. 105 (C.34:13A-16.7) shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L. 2010, c. 105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.

The 2% cap does not apply when but for the County's 2016 unfair labor practice the successor agreement would have been resolved before the contract's expiration eliminating the 2% cap as of January 1, 2018. Even should the cap be applicable it applies only the Union's proposed contract for 2018-2019 and not thereafter. The 2% cap would be less than the 2.25% increase recently negotiated with PBA 382 for 2018 and 2019, showing that the Union's proposal would not breach any statutory budget restrictions.

Further, a cap of only 2% would cause FOP 106 to receive less than the twenty-two unions that agreed to the unilateral change to SHBP and received an increase of .25% to the original 2.0% wage increase for 2017, and were then given 2.25% wage increases in 2018 and 2019. A number of civilian units received increases in excess of 2% during the period under

which FOP 106 would be subject to the 2% cap. CWA received 2.8%, 2.9%, 3.0%, and 3.0% respectively; nurses 2.25% for 2018 and 2.25% for 2019; Public Employees Supervisors Union received 2.20% for 2017, 2018, and 2019; PESU Administrators received 2.2% for 2017, 2018 and 2019. Thus the 2% cap should not be imposed.

The Union's proposal to reduce Chapter 78 contributions for active members and retirees is reasonable and meets the criteria set forth in N.J.S.A. 34:13A-16(g)(1), (2)(b) and (c)(3), (5), (6), (8), (9). The entire FOP 106 unit reached the full Tier 4 contribution rate during the term of the December 31, 2017, expired contract, imposing on the County the obligation to negotiate costs for the next contract beginning January 1, 2018.

N.J.S.A. 40A:10-21.1 legislated a four-year phase-in of premiums paid by public employees for health care benefits commencing 2011. The statute states that the minimum "amount payable by any employee . . . shall not under any circumstance be less than the 1.5 percent of base salary" It requires union members pay "one-fourth of the . . . contribution" during the first year (Tier I), "one-half" in the second year (Tier II), "three-fourths" during the third year (Tier III), and the full premium rate during the fourth year (Tier IV). Chapter 78 "sunseted" four years after its effective date and requires contracts finalized after Tier IV rates are reached to negotiate "for health care benefits as if the full premium share was included in the prior contract." Ibid. Thus contributions may be less, more, or equal to the Chapter 78 Tier IV level as long as there's no interference with the 1.5% floor.

Not surprisingly, a number of Chapter 78 reductions have been negotiated, or alternatively, senior pay or some other financial benefit has been added, and in many jurisdictions retirees no longer pay any premium health care costs. For example, in Middlesex while Chapter 78 remained unchanged for active employees, those at top pay received a 1%

increase for 2021-2024 and senior officer pay of 4% at 15 years, 3% at 20 years, and a \$600 salary adjustment for 2021-2033. Union County Sheriff retirees received \$540 per month from the employer for the family plan under 65, and \$5,000 for opting out of medical; active employees get senior officer pay of \$1,575 at 10 years, \$2,575 at 15 years, and \$3,075 at 20 years. Passaic, Morris, Bergen, and Hudson counties have free medical insurance upon retirement. Passaic County also gives active senior officer pay of \$2,500 at 15 years; \$3,500 at 20 years and \$5,000 at 24 years. Hudson County granted current employees a \$1,000 salary adjustment in 2018 and a \$3,000 salary adjustment in 2019. In each instance as the quid pro quo for remaining at Chapter 78, these unit members receive an economic benefit besides increased wages.

A crucial difference between contracts referenced by both parties in this proceeding is that no other active supervisory member or union experienced the unilateral loss of medical and health benefits. Thus FOP 106 is unique for comparison purposes. The County's unlawful conduct added an extra \$9.7M to its budget. This does not include the unilateral elimination of the "opt-out" for which the County has received a savings of around \$250,000. Thus the County has saved approximately \$10M by its unlawful conduct, a fact which should not be disregarded by the Arbitrator when fashioning the instant Award.

For these reasons, the Union's proposal in its Revised Final Offers, that contributions be reduced to Tier 3 are reasonable and proper where unit members have unlawfully paid the top tier for six years longer than they should. For this same reason, retroactivity as to this proposal should also be granted.

The civilian unions decided in 2016 when entering into contracts to accept the County's take it or leave it offer rather than joining FOP 106 and the law enforcement unions in their unfair

practice charge with PERC. Awarding FOP 106 a lesser amount than it has proposed would violate §16(g)(1) as being counter to the public interest since it would discourage public employees from exercising their right to oppose unfair practices by their employer. Retirees should have their contributions reduced or eliminated as shown by the pattern of other jurisdictions.

It is finally noted that in accordance with N.J.S.A. 40A:4-45.45 health care cost increases are excluded from the calculations of the adjusted tax levy. Thus the Union's proposals will not have the financial implications raised by the County and are fair and reasonable.

The Union's Offer as to stipend, uniform pay; retroactivity and bereavement leave are reasonable pursuant to N.J.S.A. 34:13A-16(g)(1), (2)(b), (c)(3), (5), (6), (8), and (9). The County's cost-outs improperly include stipends which are not rolled into base salary and should be so reduced. In accordance with N.J.S.A. 40A:4-45.45 (Limitations upon amounts to be raised by taxation; exclusions), increases in pension contributions and accrued liability for pension contributions in excess of 2.0% should not be included in the calculation of the adjusted tax levy.

Testimony establishes that the stipend covers reporting thirty minutes early at the beginning of the shift to be briefed by the outgoing shift, lineup, monthly and quarterly meeting, and two range firearm qualifications. This equates to around one hundred and seventy hours annually or twelve dollars an hour, which is significantly lower than unit members' current wage rates. The \$2,200 amount of this stipend has remained unchanged for around twenty years.

The Union has calculated its \$5,950 proposal by taking the average of the three ranks straight-time hourly rate divided by 2, which equals \$37.25, multiplied by 170 hours. This hourly rate of \$37.25 is still substantially lower than the members' current hourly rate proving the Union proposal is reasonable.

The current uniform allowance of \$800 has not been increased for at least fifteen years. It covers uniforms, along with safety equipment such as leather gear, footwear, and vest maintenance. The \$800 per annum does not cover expenses. It should be contrasted with the NJ State Department of Corrections' uniform allowance of \$1,100 and the \$1,250 received by the Bergen County Captains.

The Union has sought to increase bereavement leave from three to five days for the death of immediate family members, because as a 24/7 facility with three eight-hour shifts, the time necessary to address the details of a family member's passing may not coincide with a unit member's regular day off. This usage is infrequent and tightly limited to immediate family only, so the addition of two additional days does not impose a significant burden on the County. Morris County Supervisors and Hudson County supervisors already receive five days.

The Union has proposed an additional 1.5% wage increase should the reimbursement ordered by the PERC in its decision finding an unlawful unilateral reduction of health benefits be reversed on appeal. If that reimbursement is eliminated, unit members would have to absorb significant expenditures for medical care and treatment. To not grant this additional 1.5% wage increase would leave members without a remedy for their losses. The Union asks that should the Arbitrator decline to take jurisdiction over this issue the Award state "it doesn't include consideration of the issue of reimbursement." This is needed to ensure the Award does not interfere with rights PERC has given via reimbursement.

Juneteenth should be rolled into the base where, as noted earlier, N.J.S.A. 40A:4-45.45 (Limitations upon amounts to be raised by taxation; exclusions) increases for pension contributions and accrued liability for pension contributions above 2% are not included in the calculation of any adjusted tax levy. This statutory exclusion applies to the County's objection

to the Union's proposal that Juneteenth be treated as all other holidays and rolled into a base premised on the additional pension cost. Most importantly, the unit is being paid for the holiday anyway and simply asks that Juneteenth be given the same treatment as all other holidays.

Retroactive monies on wages, overtime, and compensatory time cash-outs are fair, reasonable, and consistent with prior contracts. No evidence has been represented to the contrary so it should be granted.

The contracts that have been entered into the record by the County are not comparable to the FOP 106 collective negotiated agreement and therefore should not be considered under the criteria of N.J.S.A. 34:13A-16(g)(2)(c)(6)(9). Prison facilities are not comparable to civilian work environments and therefore the IBEW contract cannot be considered comparable with the FOP 106 contract. While IBEW members are in Tier 4, due to their lower salaries they contribute much less than FOP 106 members.

Likewise, the County's reliance upon the newly negotiated PBA 382 contract is similarly misplaced where that is a non-supervisory unit with dissimilar duties to those of a superior officer who is the first line supervisor and the incident commander in the event of an incident. Sergeants are typically responsible for two floors of cellblocks and a lieutenant has an entire building. Thus they are responsible for more inmates than is contained at most of the other county prisons. Not only do PBA 382 members not have this level of authority but they also generally have less seniority. This means they are making a lower percentage contribution than the full 35% contribution on a lower salary, a substantial monetary difference with the FOP 106 unit.

In applying §16(g)(1) and (2)(a) there were no private employment comparables suggested by either party as there are no privately owned or operated jails or prisons in New

Jersey. Likewise, working at a private security firm is not comparable to working in a correctional facility housing murderers, rapists, and drug dealers.

The County's proposal as to Covid isolation pay is preempted by N.J.S.A. 34:15-31.2, the Thomas P. Canzanella Twenty-First Century First Responders Protection Act, ("Act"). This Act makes it unnecessary for essential workers who become ill with Covid to show how it was contracted and presume it is job-related. This Act covers FOP 106 unit members pursuant to N.J.S.A. 34:15-31.4, and therefore a member with Covid would be compensable under the Workers Compensation Act. Such compensation includes temporary disability benefits, pay for medical expenses, lost wages, and disability compensation.

Accordingly, the County's Covid isolation pay proposal is preempted by the workers compensation statute and should be denied. This is consistent with the decision in State of New Jersey v. State Supervisory Employees Association, 78 N.J. 54, 81 (1978), where the Court held that "the adoption of any specific statute or regulation setting or controlling a particular term or condition of employment will preempt" negotiations on that subject.

For all of these reasons, statutes, precedent, data and evidence presented, the Union's Final Revised Offers are substantiated, constitute the more reasonable and fairer Offer and should be awarded.

IV. ARBITRATOR'S FINDINGS/ANALYSIS

A. DURATION

This matter is driven by the County's unlawful act of unilaterally moving the FOP 106 unit, along with other units, from a private health care provider into the State Health Benefits Plan, as PERC ruled in the County of Essex and FOP 106 et seq., PERC No. 2023-60 (June 29, 2023).¹¹ This Award is separate and apart from that decision, and other than the fact of its pendency and the impact on duration is of no moment nor will otherwise be considered in this Award.

The PERC decision is relevant to duration because while pending FOP 106 chose not to relinquish its statutory right to await that determination. While it could have agreed to accept the unilateral change and withdrawn its unfair practice complaint, as did other units to procure a new contract, the Union chose not to do so. That's its right and the Union should not be forced to accept a lower long-term deal as a result of the County's illegal act. A public employer should not be allowed to benefit from its unlawful conduct.

Accordingly as a of FOP 106's lawful decision to await the PERC decision and its subsequent concern with the long term implications of the applicability of the 2% hard cap, the Union chose to revise its Final Offer from a six-year term for a successor agreement to sequential multiple successor agreements, the first with a one-year term and the second for five years, totaling the six-year period from 2018 to 2023. The Union argues this is lawful where duration is a negotiable item and an arbitrator has the authority to award multi-year contracts, or in the

¹¹The County's pending appeal for purposes of this Award is without relevance to this Award.

alternative, the Arbitrator may award a contract with a duration less than that proposed by the parties.

I do not agree with the proposition that multiple collective bargaining agreements may be awarded in a single interest arbitration matter. While this is a unique set of circumstances I construe my grant of jurisdiction as limited to the issuance of a single successor agreement. Nowhere in the original letter from PERC assigning me this matter am I given the authority beyond a single matter. None of the cases cited by the Union stand for that proposition.

This is an attempt by the Union to avoid the long-term consequences of the 2% cap, which while understandable is beyond my ability to award. Nowhere does it state that the commission of an unfair labor practice creates a statutory exclusion and as an Arbitrator, it is my role to construe the law, not to change it or find an exception where one does not exist. As a neutral I cannot be part of an effort to evade the applicability of a law.

The applicability of the 2% cap is clear in this matter where the contract expired on December 31, 2017. I agree with the ruling of Arbitrator Mastriani in County of Burlington and FOP Lodge 166, IA-2021-07 (January 15, 2022), that the 2% hard cap applies regardless of the passage of time and whether the interest arbitration petition was filed before or after contract expiration. I further agree with the ruling of Arbitrator Mastriani where in that matter case where he awarded a shorter duration than that sought by the parties ruling

A shorter contract duration than what the parties have proposed is desirable in light of the applicability of the CAP. This would provide the parties with greater flexibility to negotiate over base salary issues earlier and in the absence of CAP applicability and with sufficient available evidence on salaries for years beyond [2020] which have yet to be determined for internal County law enforcement units. The parties can promptly resume negotiations for a new contract . . . for whatever duration that can be agreed to voluntarily or to invoke statutory impasse proceedings in the absence of the CAP if voluntary bargaining efforts do not succeed.

Ibid at 72.

This reasoning is no less applicable here. A contract of shorter duration will permit the parties the ability to return to the table with greater flexibility to negotiate over base salary issues. There, as here, a number of the remaining law enforcement units are without a contract and are parties to the unfair labor practice finding by PERC. A contract of shorter duration will facilitate the return of all of the law enforcement unions to the table with the County.

The two prior agreements between the County and FOP 106 had durations of 2014-2017, and 2011-2013. The record does not include earlier contracts. I chose to Award a three year agreement beginning January 1, 2018 through December 31, 2020 for the above reasons.

B. WAGES

The parties are bound to the 2% cap annually over three years so the increment cannot total more than the sum of 6%. The components of the increment are salary, holiday pay, education reimbursement, and uniform. As the County explained, a 2% salary increase does not translate into a 2% increase of increment because the usage of education reimbursement by the unit is assumed to remain the same for purposes of the cost-outs, the stipend remains unchanged (as discussed *infra*), and other than the movement of one person in 2018 the entire unit is at the top end of the guide. Only the salary and holiday pay (as a function of salary) increases.

Using this analysis the County established that 1.99% was available in 2018 (taking into account the single employee's movement), a 2% salary increase in 2019 equals 1.85%, and a 2% in 2020 costs 1.86%. Having adopted the County's cost-outs, and I, therefore, Award wage increases of 2.1% effective January 1, 2018; 2.1% effective January 1, 2019; and 2.0% effective January 1, 2020. The cost-out of these increases are:

2018 2.1% increase equals increase of 2.17% of the 2017 base salary

2019 2.1% increase equals increase of 1.94% of the 2018 base salary

2020 2.0% increase equals increase of 1.86% of the 2019 base salary

These increases together equal 5.97% which is less than 6.0% and therefore compliant with the 2% hard cap.

C. REMAINING ECONOMIC PROPOSALS

The Union has withdrawn a number of economic proposals from its Revised Final Proposals leaving the following: Juneteenth as a holiday; retroactivity, reduction of Chapter 78 contributions for active members and retirees; increasing the stipend from \$2,200 to \$5920 per year; increasing uniform pay from \$800 to \$1,200 annually; increasing bereavement leave from three to five days for immediate family, and the 1.5% retroactive increase should the PERC reimbursement order be reversed on appeal.

Retroactivity is granted. It is part of the increment calculations, unopposed by the County and there is no reason to not grant it.

Juneteenth is currently paid as if a holiday but is not treated as a pensionable holiday. I reject the Union's proposal because it will have some financial impact, no matter how negligible and all available monies were utilized to increase wages. In addition, this is a matter best left to bargaining.

The 1.5% retroactive wage is rejected as too expensive and unduly speculative. Interest arbitration creates certainty by imposing a contract with clearly defined terms and economics. A retroactive wage increase based upon the possible reversal of a PERC decision is not only unduly speculative and potentially expensive, it would create a precedent dangerous to the process of

collective bargaining and its related statutes. It infringes upon an employer's own ability to exercise its statutory rights, such as the right to appeal an adverse PERC ruling, by imposing a huge potential penalty for that exercise. As the County correctly points out, the only way to anticipate such result is to agree to a contract granting .5% a year in wages. Such a choice is not conducive to collective bargaining.

I also reject each of the Union's remaining proposals, all of which are economic and therefore have a financial impact, because all available monies were utilized in my wage determination pursuant to the cost-out of the 2% hard cap. Therefore none of these can be added without exceeding the 6% total increment over three years. Salaries are the immediate concern where unit members have not received a raise since the contract expiration six years ago and that is where available monies were directed.¹²

D. THE COUNTY'S COVID-19 ISOLATION PAY PROPOSAL

The County has proposed eliminating Covid isolation pay. This is not an economic proposal, nor is it a term found in the contract. Rather this is practice necessitated by and commenced with the pandemic and implemented by the County based upon guidance from the Center for Disease Control and Executive Orders of the Governor of the State of New Jersey

¹² In so ruling, along with my rejection of the Union's proposal of multiple successive contracts, the County's motion for reconsideration of my January 11, 2024 Order is moot. No items from any proposals presented by the Union after the submission of the January 2, 2024 Final Offers have been granted and I been given no new facts, law or convincing reason to grant the County's motion for reconsideration of my January 11th Order. Further, I do not construe the PERC letter of January 8, 2024 as doing anything more than acknowledging the overlap of some but not all of the items in the County's scope of bargaining petition, and the PERC taking the practical step of holding its authority in abeyance pending the outcome of this interest arbitration to see what issues then need to be addressed. PERC's letter does not confer upon me the jurisdiction to resolve scope of bargaining issues.

declaring a medical emergency (now ended). The County does not wish to cease paying for time spent away from the facility by unit members due to Covid, but rather to shift the source of payment so it is the same as all other infectious diseases, for which time lost from work is paid out of the member's accrued sick leave. By this shift the County seeks to treat Covid like any other infectious disease.

The Union counters that time off for Covid is determined by the Canzanella Act which creates a presumption that infectious disease exposure occurred at the workplace, so is covered by workers compensation. Accordingly, the Union claims that the County's proposal is preempted by the workers compensation statute.

As noted the County adopted this practice in response to guidance from the CDC. CDC still maintains separate guidelines for Covid which continue to evolve. I take arbitral notice of a CDC announcement this very week stating an intent to modify its guidelines reducing the isolation period from five days to a single day in the event of a positive test result.

I am unclear as to the relevance of the Canzanella Act to this proceeding. There is no claim that the County has refused to pay isolation time, only the source from which that money should be paid. Should the Union or its members believe time off for a positive Covid test is best compensated via workers compensation they should act accordingly, however, that argument is without significance in this interest arbitration proceeding, and the Union's claim that the County's proposal is somehow preempted is puzzling.

I, therefore, Award the County's proposal that it be permitted to change its practice with regards to the number of days of isolation to adhere to CDC, County, and State orders or guidance. However, as long as the CDC itself treats Covid differently than other infectious diseases, monies should be paid out of the current budget and not accrued sick leave.

D. THE STATUTORY FACTORS ARE MET

I find that my Award meets the criteria contained in NJSA 34:13-16(g).

This Award is in the interest and welfare of the public pursuant to §16(g)(1). The statutory 2% hard cap was created for this purpose and by determining the best use of the cap public concerns are made a part of this Award. This Award will not result in higher taxes or borrowing. It will facilitate and encourage bargaining between this and all remaining law enforcement units without a contract and the County. The change to Covid isolation pay is of no significance under this or any of the other criteria.

Criteria §16(g)(2)(a)-(c) compares the wages, salaries, hours, overall compensation, and conditions of employment of the employees involved in this proceedings with other employees performing the same or similar services and with other employees generally in private and public employment. It is met where the record establishes that the wage proposal of the County applying the hard cap, which I have modified slightly, would put sergeants and lieutenants slightly below the average of law enforcement corrections superiors statewide and captains slightly above. The unit makes and will continue to make above the average salary when compared to the public and private sectors in the State of New Jersey. While I have no flexibility with the 2% cap as to amount, only to duration, I cannot state that the wages contained in this Award are problematic with regard to this criteria.

This Award is not disruptive of the overall compensation received by the Unit, including wages, salary, and all economic benefits received. It conforms with past agreements within the meaning of §16(g)(3).

There were no stipulations by the parties within the meaning of §16(g)(4).

Criteria 5 and 6 consider the lawful authority of the employer to implement the Award in light of its financial impact. The Award will have a less than negligible impact on County finances and surplus. Accordingly, there is compliance with §16(g)(5) and (6).

Criteria §16(g)(7) addresses the cost of living. While the cost of living spiked during the pandemic it is returning to a normal percentage. The 2% cap is not helpful but with the shorter duration the Union should be able to overcome loss of earning power in the future. This criteria is met.

Any award imposes a financial impact which must be balanced with the continuity and stability of the Unit and other employees pursuant to §16(g)(8). As a Superior Officers unit the members have for the most part made a long term commitment to the County. Retention has not been a concern where attrition is not significant and almost all attrition has been for retirement. While the wage increases may or may not be exceeded or matched in future bargaining, they should not create additional attrition therefore complying with this criteria.

The final criteria, the statutory restrictions on the employer is not at issue here as the 2% hard cap has been adhered to, and there are no additional tax considerations. See §16(g)(9).

VI. **DETAILED SUMMARY OF THE AWARD**

Pursuant to the Discussion set forth above the Contract shall be amended as follows. All proposals by the County and Union not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of the Award.

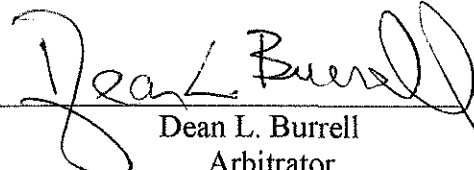
1. Term of Agreement: January 1, 2018 to December 31, 2020
2. Salary Increases: Across-the-board salary increases to all employees with full retroactivity.

- a. Effective retroactive to first pay period following January 1, 2018: 2.1% increase
- b. Effective retroactive to first pay period following January 1, 2019: 2.1% increase
- c. Effective retroactive to first pay period following January 1, 2020: 2.0 increase

I. CERTIFICATION

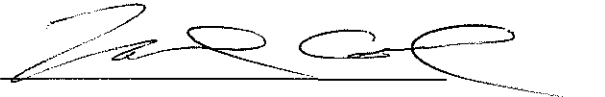
I hereby certify that I have given due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g) and I conclude the terms of this Award represent a reasonable determination of the issues.

Dated: February 15, 2024
Morristown New Jersey


Dean L. Burrell
Arbitrator

State of New Jersey)
County of Morris)

On this 15th day of February 2024 before me personally came and appeared Dean L. Burrell to me known and known to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



MATTHEW C. AMICK
NOTARY PUBLIC OF NEW JERSEY
COMMISSION EXPIRES NOVEMBER 2, 2026
COMMISSION #50176822